

1997

**SENATE
FINANCE
COMMITTEE**

MINUTES

NORTH CAROLINA GENERAL ASSEMBLY

SENATE FINANCE COMMITTEE

1997

JOHN H. KERR, III
CHAIRMAN

Evelyn S. Hartsell
Committee Clerk

DAVID W. HOYLE
CHAIRMAN

Penny N. Williams
Committee Clerk

SENATE FINANCE COMMITTEE MEMBERS

John H. Kerr, III, Chair
David W. Hoyle, Chair

J. Richard Conder, Vice Chair
Roy A. Cooper, III, Vice Chair
Robert G. Shaw, Vice Chair
R. C. Soles, Jr., Vice Chair

Austin M. Allran, Ranking Minority Member

Charles W. Albertson
Patrick J. Ballantine
John M. Blust
John H. Carrington
Betsy Cochrane
Walter H. Dalton
Charlie S. Dannelly
Virginia Foxx
Wib Gulley
Fletcher L. Hartsell, Jr.
Howard N. Lee
J. Mark McDaniel
Beverly M. Perdue
Jim W. Phillips, Sr.
Anthony E. Rand
Eric Miller Reeves
Larry Shaw
Hugh Webster
David F. Weinstein
Allen H. Wellsons
Leslie Winner

NORTH CAROLINA GENERAL ASSEMBLY
COMMITTEE SUMMARY REPORT
SENATE: FINANCE

1997-98 Regular Session		Valid Through 21-OCT-1997			
BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
H 13	CANSLER	SIMPLIFY AND REDUCE INHERITANCE TAX	*H -REF TO COM ON RULES	03-11-97	08-20-97
H 14	CANSLER	TAX ON CUSTOM COMPUTER SOFTWARE	*R -CH. SL 97-0370	07-07-97	07-10-97
H 15	CANSLER	CONFORM TAX ON RESTORED INCOME	*R -CH. SL 97-0213	02-26-97	03-12-97
H 19=	MCMAHAN	EXPAND CORP. CHARITABLE DEDUCTION	S -REF TO COM ON FINANCE	03-03-97	
H 20=	MCMAHAN	INCREASE CHARITY TAX CREDIT	S -REF TO COM ON FINANCE	03-05-97	
H 34=	BRAWLEY	CATAWBA ANNEXATIONS	*R -CH. SL 97-0002	02-24-97	02-26-97
H 35	CAPPS	CONFORM SALES/FUEL TAX REFUND PERIOD	*R -CH. SL 97-0423	02-27-97	07-10-97
H 36	CAPPS	CONSUMER USE TAX RETURNS	R -CH. SL 97-0077	03-04-97	05-13-97
H 39	ALLRED	SWEPSONVILLE INCORPORATION	*R -CH. SL 97-0448	08-27-97	08-27-97
H 53	WARNER	82ND AIRBORNE DIVISION PLATES	*R -CH. SL 97-0156	04-23-97	05-19-97
H 54	WARNER	PEARL HARBOR/VALOR PLATE FEES	*S -REF TO COM ON FINANCE	07-31-97	
H 55	WARNER	PURPLE HEART SPECIAL PLATES	*S -RE-REF COM ON FINANCE	06-04-97	
H 57	NEELY	TAX WITHHOLDING FOR NONRESIDENTS	*R -CH. SL 97-0109	03-25-97	04-17-97
H 59	NEELY	UPDATE IRC REFERENCE	R -CH. SL 97-0055	03-05-97	04-16-97
H 62=	IVES	HENDERSON CO. ANNEXATION AGREEMENTS	*S -RE-REF COM ON FINANCE	03-18-97	03-24-97
H 62=	IVES	HENDERSON CO. ANNEXATION AGREEMENTS	*S -RE-REF COM ON FINANCE	03-26-97	
H 63	NICHOLS	RIVER BEND ZONING/ANNEXATION	*R -CH. SL 97-0363	06-25-97	07-01-97
H 65	BEALL	CANTON DEANNEXATION	R -CH. SL 97-0100	05-07-97	05-21-97
H 71	CRAWFORD	HALIFAX-ROANOKE RAPIDS AIRPORT	R -CH. SL 97-0275	05-21-97	07-01-97
H 72	DECKER	OAK RIDGE INCORPORATED	*H -RE-REF COM ON RULES	08-14-97	08-27-97
H 96	DICKSON	INTANGIBLES TAX REMEDY	*R -CH. SL 97-0318	07-09-97	07-17-97
H 97	DICKSON	GASTONIA RETIREMENT FUND	*R -CH. SL 97-0161	03-18-97	06-04-97
H 99=	HUNTER H	CAMDEN/BURKE SCHOOL AQUISITION	*R -CH. SL 97-0409	07-28-97	08-07-97
H 101	BAKER	EXTEND TRI-COUNTY ADMIN.	*R -CH. SL 97-0280	03-13-97	07-02-97
H 105	BEALL	JACKSON COUNTY AIRPORT AUTHORITY	*R -CH. SL 97-0022	03-13-97	04-08-97
H 115=	CULPEPPER	1997 TECHNICAL CORRECTIONS	*R -CH. SL 97-0456	08-19-97	08-20-97
H 136	WEATHERLY	LATE VIDEO RETURN/SALES TAX	*S -RE-REF COM ON FINANCE	03-19-97	06-19-97
H 136	WEATHERLY	LATE VIDEO RETURN/SALES TAX	*S -RE-REF COM ON FINANCE	06-24-97	
H 149	SHUBERT	ACCOUNT FOR 911 SURCHARGE	R -CH. SL 97-0008	03-04-97	03-18-97
H 204	NEELY	FORECLOSURE FILING FEES	R -CH. SL 97-0114	03-27-97	05-13-97

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

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

BOLDED LINE INDICATES BILL INDEXED AS AFFECTING APPROPRIATIONS.

NORTH CAROLINA GENERAL ASSEMBLY
COMMITTEE SUMMARY REPORT
 SENATE: FINANCE

1997-98	Regular Session	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	Valid Through	21-OCT-1997
BILL					IN DATE	OUT DATE
H 225=	WEATHERLY		DRY-CLEANING SOLVENT CLEAN-UP ACT	*R -CH. SL 97-0392	07-10-97	07-28-97
H 236	DOCKHAM		TRINITY INCORPORATED	*R -CH. SL 97-0044	05-06-97	05-07-97
H 248=	CLARY		GRADUATED DRIVERS LICENSES	*R -CH. SL 97-0016	03-17-97	03-25-97
H 251=	CULP		WELL CONTRACTORS CERTIFICATION	*R -CH. SL 97-0358	06-26-97	07-17-97
H 260=	GRAY		CONSERVATION EASEMENTS/TAX CREDIT	*R -CH. SL 97-0226	04-17-97	04-22-97
H 260=	GRAY		CONSERVATION EASEMENTS/TAX CREDIT	*R -CH. SL 97-0226	04-23-97	06-04-97
H 271=	SHUBERT		SCHOOL DISTRICT SALES TAX REFUNDS	*S -REF TO COM ON FINANCE	03-18-97	
H 272=	SHUBERT		PUBLIC COLLEGE SALES TAX REFUNDS	*S -REF TO COM ON FINANCE	03-18-97	
H 283	CULPEPPER		PERQUIMANS SCHOOL ACQUISITION	R -CH. SL 97-0162	04-16-97	06-03-97
H 295=	CANSLER		NO TAX ON INTANGIBLE PROPERTY	*R -CH. SL 97-0023	03-19-97	04-02-97
H 299	SEXTON		VIETNAM VETERANS PLATES	*R -CH. SL 97-0339	05-28-97	07-02-97
H 305	MORGAN		PEANUT/STRAWBERRY ASSESSMENT	*R -CH. SL 97-0371	05-15-97	07-09-97
H 311	CANSLER		ESCHEAT SUNSET REMOVED	*R -CH. SL 97-0279	04-02-97	06-26-97
H 313	ALLRED		PROHIBIT INTANGIBLES TAX ASSESSMENT	*S -REF TO COM ON FINANCE	03-27-97	
H 337	CULP		RANDOLPH OCCUPANCY TAX	*R -CH. SL 97-0342	04-07-97	06-18-97
H 337	CULP		RANDOLPH OCCUPANCY TAX	*R -CH. SL 97-0342	06-23-97	07-17-97
H 340	MOORE		KANNAPOLIS PROPERTY ACQUISITIONS	*R -CH. SL 97-0295	05-14-97	07-09-97
H 342	ALEXANDER		MECKLENBURG BID LIMIT INCREASED	*R -CH. SL 97-0184	05-07-97	06-11-97
H 348	EDDINS		CIDER/VINEGAR MANUFACTURER PERMIT	*R -CH. SL 97-0134	04-10-97	05-21-97
H 363	GARDNER		CHILD SUPPORT OPTIONS/FEES	*R -CH. SL 97-0223	05-21-97	06-18-97
H 367	HUNTER H		NORTHEAST COUNTIES INSPECTION LIEN	*S -RE-REF COM ON FINANCE	05-07-97	
H 400	TALLENT		BANK ASSESSMENTS	*R -CH. SL 97-0285	05-13-97	06-19-97
H 408	IVES		PLUMBING/HEATING CONTRACTORS	*R -CH. SL 97-0382	06-26-97	07-17-97
H 411	OWENS		CURRITUCK GAME COMM. CHANGES	R -CH. SL 97-0163	04-16-97	06-03-97
H 418	THOMPSON		MISCELLANEOUS LOCAL ACTS	*R -CH. SL 97-0410	07-24-97	07-31-97
H 430	CULP		PERMISSIBLE SALES AT ZOO	*R -CH. SL 97-0258	06-24-97	06-24-97
H 457	WEATHERLY		AMEND FOREST DEVELOPMENT ACT	*R -CH. SL 97-0352	06-16-97	07-10-97
H 460	CULPEPPER		ABOLISH AQUARIUMS COMMISSION	*R -CH. SL 97-0286	05-19-97	06-19-97
H 463	OWENS		FARM PRODUCTS WEIGHT EXEMPTION	*R -CH. SL 97-0354	04-23-97	07-17-97
H 469=	TALLENT		PERMIT FEES	*R -CH. SL 97-0479	08-06-97	08-20-97

NOTES- = AFTER BILL NUMBER SHOWS THAT BILL IS IDENTICAL, AS INTRODUCED, TO ANOTHER BILL.
 * AFTER NUMBERS INDICATES THAT TEXT OF BILL WAS ALTERED BY ACTION ON THE BILL.

BOLDED LINE INDICATES BILL INDEXED AS AFFECTING APPROPRIATIONS.

NORTH CAROLINA GENERAL ASSEMBLY
COMMITTEE SUMMARY REPORT
SENATE: FINANCE

1997-98 Regular Session		Valid Through 21-OCT-1997			
BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
H 474	SUTTON	INDUSTRIAL REVENUE BONDS	*R -CH. SL 97-0111	04-10-97	05-21-97
H 476=	HURLEY	VITAL RECORDS ACCESS	*R -CH. SL 97-0242	05-06-97	06-11-97
H 485	DOCKHAM	FUNERAL ESTABLISHMENTS	*R -CH. SL 97-0399	06-03-97	07-28-97
H 488=	BARBEE	INCREASE RABIES TAG FEE	R -CH. SL 97-0069	03-26-97	04-16-97
H 495	OWENS	NATURAL GAS	*R -CH. SL 97-0426	06-02-97	07-28-97
H 506	HUNTER H	HERTFORD LOCAL ACT	*S -RE-REF COM ON FINANCE	06-05-97	
H 524=	MORRIS	UNC ALCOHOL STUDIES FUND	*R -CH. SL 97-0377	07-07-97	07-17-97
H 529	CLARY	NO TAX ROLLBACK ON CONDEMNATION	*R -CH. SL 97-0270	05-12-97	05-22-97
H 537	GRADY	RELIEF FOR FEDERAL RETIREES	*R -CH. SL 97-0499	05-26-97	08-26-97
H 549	IVES	ASHEVILLE/BILTMORE BOUNDARY	R -CH. SL 97-0250	06-11-97	06-26-97
H 554	DAVIS D	LICENSES FOR DISABLED VETERANS	*S -RE-REF COM ON FINANCE	05-28-97	
H 566	ELLIS	WAKE SCHOOLS DEVELOPMENT CHARGES	*R -CH. SL 97-0450	07-22-97	07-28-97
H 566	ELLIS	WAKE SCHOOLS DEVELOPMENT CHARGES	*R -CH. SL 97-0450	08-04-97	08-14-97
H 568	ELLIS	WAKE FOREST/BEAUFORT ANNEXATION	*R -CH. SL 97-0432	07-23-97	07-28-97
H 590	CREECH	WILSON'S MILLS CHARTER	R -CH. SL 97-0413	08-18-97	08-19-97
H 600	HOLMES	FOXFIRE ASSESSMENT CLARIFICATION	*R -CH. SL 97-0451	07-22-97	08-26-97
H 603=	RAMSEY	MADISON OCCUPANCY TAX	*R -CH. SL 97-0102	04-16-97	05-12-97
H 604	SMITH	NEWPORT-MOREHEAD BOUNDARIES	*R -CH. SL 97-0185	06-03-97	06-10-97
H 611	HACKNEY	INCREASE COMP. FOR ERR. CONVICTION	*R -CH. SL 97-0388	07-23-97	07-29-97
H 631	DECKER	FORSYTH LOCAL ACT	*R -CH. SL 97-0408	07-21-97	08-04-97
H 643	RAYFIELD	BELMONT ANNEXATION AGREEMENT	R -CH. SL 97-0105	05-14-97	05-22-97
H 653	SEXTON	WENTWORTH CHARTER AMENDMENTS	*R -CH. SL 97-0322	07-03-97	07-17-97
H 655	SEXTON	MADISON ANNEXATION	*R -CH. SL 97-0251	06-25-97	06-26-97
H 681=	WILKINS	ROXBORO CHARTER	*R -CH. SL 97-0282	05-21-97	07-01-97
H 698	SMITH	MOREHEAD-NEWPORT/MOORESVILLE ANNEX.	*R -CH. SL 97-0219	06-03-97	06-10-97
H 704	THOMPSON	SHERIFF'S REGISTRATION PLATES	*R -CH. SL 97-0158	05-13-97	05-19-97
H 722	HARDY	WASHINGTON ANNEXATION AGREEMENTS	*R -CH. SL 97-0323	06-25-97	07-17-97
H 748	GULLEY J	MATTHEWS/CHARLOTTE BOUNDARY	R -CH. SL 97-0220	06-04-97	06-18-97
H 750	BEALL	CHARTER OF FOREST HILLS	*R -CH. SL 97-0345	07-09-97	07-17-97
H 754	DICKSON	ILLICIT LIQUOR TAX	R -CH. SL 97-0292	04-28-97	06-26-97

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

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

BOLDED LINE INDICATES BILL INDEXED AS AFFECTING APPROPRIATIONS.

NORTH CAROLINA GENERAL ASSEMBLY
COMMITTEE SUMMARY REPORT

1997-98 BILL	Regular Session INTRODUCER	SHORT TITLE	SENATE: FINANCE	LATEST ACTION ON BILL	Valid Through 21-OCT-1997 IN DATE	OUT DATE
H 769	SHERRILL	DROPOUT PREVENTION/ DRIVERS LICENSE		*R -CH. SL 97-0507	06-26-97	08-11-97
H 773	REDWINE	BALD HEAD ISLAND CHARTER		*R -CH. SL 97-0324	05-14-97	06-18-97
H 789	BARBEE	TOWN OF OAKBORO		*R -CH. SL 97-0254	06-11-97	06-26-97
H 804	KISER	LINCOLN LOCAL ROADS		*R -CH. SL 97-0169	05-19-97	06-04-97
H 810	TOLSON	NASH ROOM TAX/ROCKY MOUNT ANNEX		*R -CH. SL 97-0255	05-06-97	05-21-97
H 810	TOLSON	NASH ROOM TAX/ROCKY MOUNT ANNEX		*R -CH. SL 97-0255	06-18-97	06-19-97
H 832	THOMPSON	COLLECT DELINQUENT PROPERTY TAX		*H -COM SUB RULED MATERIAL	06-11-97	06-26-97
H 832	THOMPSON	COLLECT DELINQUENT PROPERTY TAX		*H -COM SUB RULED MATERIAL	06-26-97	07-01-97
H 843	STARNES	CEDAR ROCK INCORPORATED		*R -CH. SL 97-0317	06-24-97	07-10-97
H 844	COLE	REIDSVILLE ANNEXATION RESTRICTED		*R -CH. SL 97-0360	06-26-97	07-29-97
H 847	CULP	WATER AUTHORITY POWERS		*R -CH. SL 97-0436	05-20-97	07-22-97
H 859	REDWINE	ROOM TAX CHANGES		*R -CH. SL 97-0364	07-21-97	07-24-97
H 866=	PRESTON	CARTERET/MOORE SCHOOL BD ELECTIONS		*R -CH. SL 97-0389	07-30-97	07-31-97
H 867	GULLEY J	MATTHEWS ANNEXATION/ZONING		*R -CH. SL 97-0283	06-04-97	06-26-97
H 933	JARRELL	INCREASE PHARMACY FEES		*R -CH. SL 97-0231	05-12-97	06-04-97
H 989=	ROGERS	SCHOOL ADMINISTRATOR'S EXAM FEE		*H -RE-REF COM ON RULES	05-14-97	06-11-97
H 989=	ROGERS	SCHOOL ADMINISTRATOR'S EXAM FEE		*H -RE-REF COM ON RULES	06-12-97	06-19-97
H 990	CHURCH	EXEMPT CERTAIN NONPROFIT UTILITIES		*R -CH. SL 97-0437	05-06-97	07-28-97
H 993	GRAY	REGIONAL TRANSPORTATION AUTHORITIES		*R -CH. SL 97-0393	06-18-97	07-09-97
H1027	OWENS	STATE TREASURER VENTURE CAPITAL		*S -REF TO COM ON FINANCE	07-01-97	
H1044	ROGERS	COUNTY TAX INFORMATION-RECIPIENT		*R -CH. SL 97-0340	05-06-97	07-09-97
H1057=	GRADY	EXEMPT AUDIOVISUAL MASTERS		*R -CH. SL 97-0521	06-02-97	07-01-97
H1061	MCCOMBS	DISABLED SPORTSMAN LICENSES		*R -CH. SL 97-0326	06-10-97	07-02-97
H1082	SUTTON	NATIVE AMERICAN SPECIAL PLATES		*S -RE-REF COM ON FINANCE	07-14-97	
H1097	PRESTON	FISHERIES REFORM ACT-2		*R -CH. SL 97-0400	07-23-97	08-04-97
H1107	NEELY	FACILITY AUTHORITIES		*R -CH. SL 97-0068	05-14-97	05-15-97
H1108	MCMAHAN	BREW ON PREMISES		*R -CH. SL 97-0467	06-18-97	07-17-97
H1110	MCMAHAN	LANDSCAPE ARCHITECTS		*R -CH. SL 97-0406	07-17-97	07-31-97
H1114	EDDINS	BAD CHECK COLLECTIONS PILOT		*S -RE-REF COM ON APPROPR	07-31-97	08-07-97
H1121	MCCOMAS	BROWNFIELD PROPERTY REUSE ACT		*R -CH. SL 97-0357	07-03-97	07-17-97

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

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

BOLDED LINE INDICATES BILL INDEXED AS AFFECTING APPROPRIATIONS.

NORTH CAROLINA GENERAL ASSEMBLY
COMMITTEE SUMMARY REPORT

1997-98 Regular Session	INTRODUCER	SHORT TITLE	SENATE: FINANCE	LATEST ACTION ON BILL	Valid Through 21-OCT-1997
BILL				IN DATE	OUT DATE
H1126	MINER	NO SALES TAX ON PAY PHONES		*S -REF TO COM ON FINANCE	07-17-97
H1137	CULP	SOIL AND WATER CONSERVATION PLATES		*R -CH. SL 97-0477	07-14-97
H1156	MORRIS	SPECIAL PLATES		*R -CH. SL 97-0484	07-14-97
H1157	MORRIS	VARIOUS CORPORATE TAX LAW CHANGES		*R -CH. SL 97-0439	06-02-97
H1158	HUNTER R	REDUCE PROPERTY TAX/ANTIQUÉ PLANES		*R -CH. SL 97-0355	05-19-97
H1187	DECKER	COUNTY/CITY SALES TAX EXEMPTION		*S -REF TO COM ON FINANCE	07-21-97
H1231	MINER	LOCAL TRANSIT REVENUE OPTIONS		*R -CH. SL 97-0417	07-28-97
S 25	HORTON	REDUCE FOOD TAX		S -REF TO COM ON FINANCE	02-03-97
S 33	COCHRANE	REVENUE LAWS TECHNICAL CHANGES		*R -CH. SL 97-0006	02-03-97
S 34	COCHRANE	ADJUST CITY RECEIPTS TAX SHARE		*R -CH. SL 97-0118	02-03-97
S 36	KERR	UNIFORM TAX ON PIPED NATURAL GAS		S -REF TO COM ON FINANCE	02-03-97
S 39	SHAW L	MODIFY SETOFF DEBT COLLECTION		*R -CH. SL 97-0490	04-01-97
S 39	SHAW L	MODIFY SETOFF DEBT COLLECTION		*R -CH. SL 97-0490	07-29-97
S 41	WEBSTER	NO SALES TAX ON PRESCRIPTION DRUGS		S -REF TO COM ON FINANCE	02-03-97
S 48=	COCHRANE	CREDIT FOR LONG-TERM CARE INSURANCE		S -REF TO COM ON FINANCE	02-06-97
S 56=	ALLRAN	CATAWBA ANNEXATIONS		*S -RE-REF COM ON FINANCE	02-24-97
S 59=	BALLANCE	LOCAL SCHOOL ACQUISITION		*R -CH. SL 97-0024	02-20-97
S 69	FOXX	STOKES SCHOOL ACQUISITION		*R -CH. SL 97-0190	02-20-97
S 77=	WINNER	SALES TAX REFUNDS FOR SCHOOLS		S -REF TO COM ON FINANCE	02-10-97
S 82	WEBSTER	REFUND INTANGIBLES TAX/INTEREST		S -REF TO COM ON FINANCE	02-11-97
S 93=	HOYLE	MODIFY/EXTEND PORTS TAX CREDIT		*S -RE-REF COM ON APPROPR	02-12-97
S 97=	KERR	INTERSTATE AUDITORS/REGULATORY FUND		S -RE-REF COM ON APPROPR	03-03-97
S 98	KERR	TAX AT RACK IMPROVEMENTS		R -CH. SL 97-0060	02-12-97
S 106	COOPER	SALE OF PROPERTY FOR UNPAID TAXES		*R -CH. SL 97-0121	02-13-97
S 123=	BALLANTINE	EXEMPT AUDIOVISUAL MASTERS		S -RE-REF COM ON APPROPR	02-17-97
S 124	ODOM	AMEND WHITE GOODS TAX		*H -REF TO COM ON FINANCE	02-17-97
S 127=	ODOM	DRY-CLEANING SOLVENT CLEANUP ACT		S -REF TO COM ON FINANCE	02-17-97
S 147=	WINNER	INCREASE FEE BIRTH/DEATH CERTIF.		S -REF TO COM ON FINANCE	02-17-97
S 149=	COOPER	GRADUATED DRIVERS LICENSES		*S -RE-REF COM ON FINANCE	03-05-97
S 153=	ODOM	SCRAP TIRE DISPOSAL TAX AMEND.		*R -CH. SL 97-0209	03-04-97

NOTES-- = AFTER BILL NUMBER SHOWS THAT BILL IS IDENTICAL, AS INTRODUCED, TO ANOTHER BILL.
 * AFTER NUMBERS INDICATES THAT TEXT OF BILL WAS ALTERED BY ACTION ON THE BILL.
 BOLDED LINE INDICATES BILL INDEXED AS AFFECTING APPROPRIATIONS.

NORTH CAROLINA GENERAL ASSEMBLY
COMMITTEE SUMMARY REPORT
 SENATE: FINANCE

1997-98 Regular Session		Valid Through 21-OCT-1997			
BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
S 157=	HARTSELL	CORPORATE AMENDMENTS	*R -CH. SL 97-0485	02-25-97	04-07-97
S 157=	HARTSELL	CORPORATE AMENDMENTS	*R -CH. SL 97-0485	08-11-97	08-14-97
S 158=	HARTSELL	ADMINISTRATIVE DISSOLUTION/REPORT	*S -RE-REF COM ON APPROPR	03-11-97	04-14-97
S 163	HARTSELL	SECURITIES TRANSFER ON DEATH	S -RE-REF COM ON FINANCE	03-04-97	
S 165=	HOYLE	INCREASE CHARITY TAX CREDIT	S -REF TO COM ON FINANCE	02-17-97	
S 166=	HOYLE	EXPAND CORP. CHARITABLE DEDUCTION	S -REF TO COM ON FINANCE	02-17-97	
S 168	HOYLE	INCREASE NURSES FEES	*R -CH. SL 97-0384	02-17-97	04-10-97
S 176=	KINNAIRD	CONSERVATION EASEMENTS/TAX CREDIT	S -REF TO COM ON FINANCE	02-18-97	
S 179	BLUST	EXEMPT ALL INTANGIBLE PROPERTY	S -REF TO COM ON FINANCE	02-18-97	
S 185=	HOYLE	NO TAX ON INTANGIBLE PROPERTY	S -REF TO COM ON FINANCE	02-19-97	
S 197=	WELLONS	REPEAL SUNSET ON FICA SAVING USE	S -REF TO COM ON FINANCE	02-20-97	
S 198=	JENKINS	HENDERSON CO. ANNEXATION AGREEMENTS	R -CH. SL 97-0188	03-06-97	03-19-97
S 232	KERR	CLEAN WATER BONDS	*S -HELD AS FILED	02-24-97	04-17-97
S 237	PERDUE	MANICURISTS LICENSING CHANGES	S -RE-REF COM ON FINANCE	04-23-97	
S 245	LEDBETTER	INSTALLMENT PURCHASE/SEWER DIST.	*H -REF TO COM ON ENVIRON	02-26-97	04-22-97
S 249	CARPENTER R	BOND PAYMENT CHANGE	*R -CH. SL 97-0307	02-26-97	03-18-97
S 253	WINNER	TELEPHONE CONSUMER PROTECTION	*R -CH. SL 97-0482	04-08-97	04-17-97
S 261=	ODOM	WELL CONTRACTORS CERTIFICATION	*S -RE-REF COM ON FINANCE	06-03-97	
S 262=	ODOM	HUNTERSVILLE ANNEXATION AGREEMENT	*R -CH. SL 97-0266	02-27-97	03-19-97
S 266	LEDBETTER	PRODUCTION AND SALE OF RED DEER	*R -CH. SL 97-0142	03-18-97	04-10-97
S 271	SHAW L	SMALL BUSINESS CAPITAL/GROWTH ACT	*S -RE-REF COM ON APPROPR	02-27-97	06-04-97
S 280	ODOM	EARNED INCOME TAX CREDIT	S -REF TO COM ON FINANCE	03-03-97	
S 289=	HOYLE	RAISE HOUSING BOND LIMIT	R -CH. SL 97-0013	03-04-97	03-25-97
S 297=	GULLEY W	AMEND CHARTER SCHOOL LAWS	*R -CH. SL 97-0430	04-28-97	04-28-97
S 312	JORDAN	REGULATE CHECK CASHING	*R -CH. SL 97-0391	04-02-97	04-08-97
S 314=	WEBSTER	PUBLIC COLLEGE SALES TAX REFUNDS	S -REF TO COM ON FINANCE	03-05-97	
S 315=	WEBSTER	SCHOOL DISTRICT SALES TAX REFUNDS	S -REF TO COM ON FINANCE	03-05-97	
S 316=	KERR	AMEND BILL LEE ACT	*R -CH. SL 97-0277	03-05-97	03-12-97
S 316=	KERR	AMEND BILL LEE ACT	*R -CH. SL 97-0277	05-15-97	05-20-97
S 317	WINNER	LOCAL GOVERNMENT DEBT CHANGES	*H -REF TO COM ON FINANCE	03-05-97	04-14-97

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

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

BOLD LINE INDICATES BILL INDEXED AS AFFECTING APPROPRIATIONS.

NORTH CAROLINA GENERAL ASSEMBLY
COMMITTEE SUMMARY REPORT
 SENATE: FINANCE

1997-98	Regular Session	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	Valid Through	21-OCT-1997
BILL					IN DATE	OUT DATE
S 323	HORTON		HISTORIC REHABILITATION TAX CREDIT	*R -CH. SL 97-0139	03-06-97	04-28-97
S 328=	KINNAIRD		REDUCE FOOD TAX BY TWO CENTS	S -REF TO COM ON FINANCE	03-10-97	
S 339	CONDER		CREDIT FOR TIER ONE COUNTIES	H -REF TO COM ON COMM	03-10-97	05-07-97
S 356=	FOXX		REIDSVILLE ANNEXATIONS	*R -CH. SL 97-0343	03-19-97	04-17-97
S 360	ALBERTSON		BOAT NUMBER FEES	*H -RE-REF COM ON FINANCE	06-12-97	07-01-97
S 363	PAGE		HARNETT COMM. COLL. ACQUISITION	R -CH. SL 97-0042	03-24-97	04-02-97
S 365=	RUCHO		PROPERTY TAX CLERICAL ERROR	S -REF TO COM ON FINANCE	03-11-97	
S 374	ODOM		CHIROPRATOR SUPPLEMENTS EXEMPT	*R -CH. SL 97-0369	03-11-97	05-26-97
S 388	HOYLE		NO BACK INTANGIBLES TAX ASSESSMENT	R -CH. SL 97-0017	03-13-97	03-19-97
S 389	HOYLE		BASEBALL PARK DISTRICTS	*R -CH. SL 97-0380	03-13-97	04-03-97
S 390	ODOM		HUNTERSVILLE ANNEXATION	*R -CH. SL 97-0267	03-26-97	04-07-97
S 404=	KINCAID		SCHOOL BOND INTEREST USE	S -REF TO COM ON FINANCE	03-17-97	
S 421=	COOPER		LOCAL OPTION HOMESTEAD RELIEF	H -REF TO COM ON WAYS&MNS	03-18-97	04-22-97
S 424	MILLER B		WAKE ANNEXATIONS	*SA-CONF REPORT ADOPTED	03-27-97	04-09-97
S 425	MILLER B		REFRIGERATION CONTRACTORS	H -RE-REF COM ON FINANCE	03-27-97	04-09-97
S 426	HOYLE		MAGISTRATES/TRUCK SPECIAL PLATES	*R -CH. SL 97-0461	04-22-97	05-19-97
S 427	HOYLE		WOOD CHIP HAULING WEIGHT EXEMPTION	H -REF TO COM ON TRANSPOR	04-16-97	04-29-97
S 439=	REEVES		SECURITIES/INVESTMENT ADVISERS	*R -CH. SL 97-0419	04-14-97	05-22-97
S 441	PLYLER		HANDGUN FEE REALLOCATION	*R -CH. SL 97-0470	03-20-97	04-17-97
S 446	LEDBETTER		LOW INCOME AND DECEASED RETIREES	S -REF TO COM ON FINANCE	03-20-97	
S 447	WEINSTEIN		LUMBERTON ECONOMIC DEV. DIST.	*R -CH. SL 97-0182	03-20-97	04-02-97
S 455=	HOYLE		IMPROVE HMO SERVICES	*R -CH. SL 97-0474	08-13-97	08-21-97
S 466	HARTSELL		TAX EXEMPT PARENTAL SAVINGS TRUST	*R -CH. SL 97-0328	03-24-97	05-22-97
S 469	HARTSELL		CABARRUS REVENUE OPTIONS/SCHOOLS	S -REF TO COM ON FINANCE	03-24-97	
S 475=	PERDUE		WOMEN WORK FUND	*H -RE-REF COM ON APPROP	03-25-97	06-19-97
S 477	PERDUE		SEPTIC TANK SYSTEMS BMPS	*S -RE-REF COM ON FINANCE	04-24-97	
S 480=	LUCAS		INCREASE RABIES TAG FEE	S -REF TO COM ON FINANCE	03-25-97	
S 482=	LUCAS		PERMIT FEES	S -REF TO COM ON FINANCE	03-25-97	
S 483=	LUCAS		PHYSICIAN SERVICES FEE	*R -CH. SL 97-0508	05-15-97	06-26-97
S 484=	LUCAS		VITAL RECORDS ACCESS	*S -RE-REF COM ON FINANCE	04-29-97	

NOTES- = AFTER BILL NUMBER SHOWS THAT BILL IS IDENTICAL, AS INTRODUCED, TO ANOTHER BILL.
 * AFTER NUMBERS INDICATES THAT TEXT OF BILL WAS ALTERED BY ACTION ON THE BILL.

BOLDED LINE INDICATES BILL INDEXED AS AFFECTING APPROPRIATIONS.

NORTH CAROLINA GENERAL ASSEMBLY
COMMITTEE SUMMARY REPORT

1997-98 Regular Session		SENATE: FINANCE			Valid Through 21-OCT-1997		
BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE		
S 487	FORRESTER	CREDIT FOR HIRING RESERVE & GUARD	S -REF TO COM ON FINANCE	03-25-97			
S 489=	LEDBETTER	MADISON OCCUPANCY TAX	S -REF TO COM ON FINANCE	03-25-97			
S 500=	ODOM	MTN. ISLAND LAKE MARINE COMMISSION	*R -CH. SL 97-0257	04-02-97	04-09-97		
S 501=	GULLEY W	ROXBORO CHARTER	*S -RE-REF COM ON FINANCE	04-24-97			
S 508	PLYLER	TURKEY GROWER USE VALUE EXCEPTION	*R -CH. SL 97-0272	04-29-97	05-07-97		
S 516	BALLANCE	LEAD-BASED PAINT MGMT.	*R -CH. SL 97-0523	03-26-97	06-02-97		
S 518	PERDUE	LOCAL 1-YEAR 1 CENT SALES TAX/VOTE	S -REF TO COM ON FINANCE	03-26-97			
S 522	KINCAID	AVERY OCCUPANCY TAX	S -REF TO COM ON FINANCE	03-26-97			
S 529	RAND	HOPE MILLS/WEAVERVILLE ANNEXATIONS	*R -CH. SL 97-0151	04-09-97	04-21-97		
S 534	SHAW R	PLEASANT GARDEN INCORPORATED	R -CH. SL 97-0344	06-26-97	07-01-97		
S 548	FOXX	STOKES/DELINQUENT PROP. TAXES	S -REF TO COM ON FINANCE	07-09-97			
S 559	PLYLER	INCREASE COURT COSTS	S -REF TO COM ON FINANCE	04-01-97			
S 570	DALTON	CLEAN WATER LICENSE PLATE	*H -RE-REF COM ON FINANCE	04-16-97	05-19-97		
S 578	FOXX	MOUNT AIRY/AVERY OCCUPANCY TAX	*H -RE-REF COM ON FINANCE	04-01-97	04-16-97		
S 585	WEINSTEIN	LUMBERTON/SHELBY ROOM TAX CHANGES	*R -CH. SL 97-0361	04-01-97	04-16-97		
S 585	WEINSTEIN	LUMBERTON/SHELBY ROOM TAX CHANGES	*R -CH. SL 97-0361	04-22-97	04-23-97		
S 594	RAND	LOCAL SALES TAX FOR SCHOOLS	*H -REF TO COM ON RULES	07-28-97	08-26-97		
S 613	MILLER B	INSURANCE COMPANY AUDITS AND EXAMS	*H -REF TO COM ON RULES	05-01-97	05-07-97		
S 615	HORTON	KERNERSVILLE VEHICLE TAX	H -CAL PURSUANT RULE 36 (A)	04-01-97	04-17-97		
S 624	MARTIN W	SEDALIA INCORPORATED	*R -CH. SL 97-0444	08-13-97	08-14-97		
S 629=	WELLONS	EXPEDITE JOHNSTON SCHOOL CONSTR.	*S -RE-REF COM ON FINANCE	07-23-97			
S 630=	KINNAIRD	CARRBORO CHARTER AMENDMENTS	S -REF TO COM ON FINANCE	04-01-97			
S 633=	KINNAIRD	CHATHAM CONVEYANCE TAX	S -REF TO COM ON FINANCE	04-01-97			
S 635	SHAW L	EXPAND INTERSTATE HIGHWAYS	S -RE-REF COM ON FINANCE	04-02-97			
S 639	GULLEY W	SHERIFF'S REGISTRATION PLATES-2	S -RE-REF COM ON FINANCE	04-23-97			
S 649	MILLER B	LOBBYIST PENALTY	*H -RE-REF COM ON FINANCE	04-02-97	05-20-97		
S 654	JORDAN	ORTHOPAEDIC PHYSICIAN ASSISTANTS	S -REF TO COM ON FINANCE	04-02-97			
S 660=	HOYLE	LICENSE ATHLETIC TRAINERS	*R -CH. SL 97-0387	04-02-97	05-15-97		
S 660=	HOYLE	LICENSE ATHLETIC TRAINERS	*R -CH. SL 97-0387	05-19-97	05-20-97		
S 687=	RAND	REDUCE FARM/INDUSTRY FUEL TAX	S -REF TO COM ON FINANCE	04-03-97			

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

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

BOLDDED LINE INDICATES BILL INDEXED AS AFFECTING APPROPRIATIONS.

NORTH CAROLINA GENERAL ASSEMBLY
COMMITTEE SUMMARY REPORT

1997-98 Regular Session	INTRODUCER	SHORT TITLE	SENATE: FINANCE	LATEST ACTION ON BILL	Valid Through 21-OCT-1997	IN DATE	OUT DATE
BILL							
S 689=	LUCAS	CREDIT/HIRE WELFARE RECIPIENTS		S -REF TO COM ON FINANCE		04-03-97	
S 696	PERDUE	GRANTSBORO INCORPORATED-1		*H -CAL PURSUANT RULE 36 (A)		07-09-97	07-17-97
S 696	PERDUE	GRANTSBORO INCORPORATED-1		*H -CAL PURSUANT RULE 36 (A)		07-21-97	07-21-97
S 699	HORTON	MODIFY VEHICLE DEALER REQUIREMENTS		*R -CH. SL 97-0429		04-07-97	04-29-97
S 701	ODOM	BREAST CANCER RESEARCH		S -REF TO COM ON FINANCE		04-07-97	
S 711=	SOLES	GRANTSBORO INCORPORATED-2		*R -CH. SL 97-0446		04-24-97	05-12-97
S 712	REEVES	SUBSTANCE ABUSE SPECIALISTS		*R -CH. SL 97-0492		04-07-97	06-02-97
S 719=	KERR	GOLDSBORO ROOM TAX USE		*R -CH. SL 97-0447		04-07-97	04-10-97
S 724=	MILLER B	WAKE TOWNS IMPACT FEES		S -REF TO COM ON FINANCE		04-07-97	
S 727	MILLER B	FOOD TAX REDUCTION/FEE CHANGES		*R -CH. SL 97-0475		04-07-97	04-14-97
S 727	MILLER B	FOOD TAX REDUCTION/FEE CHANGES		*R -CH. SL 97-0475		06-02-97	08-14-97
S 730	BALLANCE	INDUSTRIAL REVENUE BOND CHANGES		*R -CH. SL 97-0463		04-07-97	06-10-97
S 737	HARTSELL	KANNAPOLIS PROPERTY ACQUISITIONS		S -REF TO COM ON FINANCE		04-07-97	
S 738	HARTSELL	UNEMPLOYMENT BENEFITS/TAX CHANGES		S -REF TO COM ON FINANCE		04-07-97	
S 781	KERR	AMEND COST OF ADMINISTRATION		S -REF TO COM ON FINANCE		04-10-97	
S 784	WEBSTER	CONFORM TAX EXTENSION RULES		*R -CH. SL 97-0300		04-10-97	05-22-97
S 793=	CONDER	OPTOMETRY CHANGES		S -RE-REF COM ON FINANCE		07-17-97	
S 805	RAND	PORTS AUTHORITY SALES TAX REFUND		S -REF TO COM ON FINANCE		04-10-97	
S 812	JENKINS	SMOKY MOUNTAINS SPECIAL PLATE		R -CH. SL 97-0427		04-16-97	05-15-97
S 816	CONDER	ALLIGATOR/YELLOW PERCH PRODUCTION		*R -CH. SL 97-0198		04-14-97	04-29-97
S 817=	SHAW L	REINVESTMENT TAX CREDITS		S -REF TO COM ON FINANCE		04-14-97	
S 826=	MILLER B	SCHOOL BOARD "QUICK TAKE"		*S -RE-REF COM ON ST GVT		04-14-97	04-29-97
S 829=	LUCAS	CREDIT/HIRE WELFARE RECIPIENTS		S -REF TO COM ON FINANCE		04-14-97	
S 833=	KERR	UNC RECEIPT-SUPPORTED CAPITAL PROJ.		*R -CH. SL 97-0425		04-14-97	04-28-97
S 841	HOYLE	MODIFY CORPORATE DIVIDEND TAXATION		*S -RE-REF COM ON FINANCE		04-15-97	08-04-97
S 841	HOYLE	MODIFY CORPORATE DIVIDEND TAXATION		*S -RE-REF COM ON FINANCE		08-28-97	
S 847	ODOM	NO SALES TAX/REUSEABLE CONTAINERS		*R -CH. SL 97-0397		04-15-97	05-19-97
S 850	KINNAIRD	SPAY/NEUTER PROGRAM		S -REF TO COM ON FINANCE		04-15-97	
S 857	LEE	UNC BONDS		S -REF TO COM ON FINANCE		04-15-97	
S 858=	LEE	INCREASE SCHOOL ADMIN EXAM FEE		S -REF TO COM ON FINANCE		04-15-97	

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

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

BOLDDED LINE INDICATES BILL INDEXED AS AFFECTING APPROPRIATIONS.

NORTH CAROLINA GENERAL ASSEMBLY
COMMITTEE SUMMARY REPORT

1997-98	Regular Session	INTRODUCER	SHORT TITLE	SENATE: FINANCE	LATEST ACTION ON BILL	Valid Through	21-OCT-1997
BILL						IN DATE	OUT DATE
S 861	LEE		DISPENSING OPTICIANS		*R -CH. SL 97-0424	04-15-97	05-12-97
S 867	RAND		1997 LOTTERY		S -REF TO COM ON FINANCE	04-15-97	
S 872	KERR		YOUTH WORKERS AT ABC PERMITTEES		*H -REF TO COM ON COMM	04-23-97	04-29-97
S 874=	KERR		RESOLUTION OF SEED CLAIMS		*S -RE-REF COM ON FINANCE	06-03-97	
S 875	KERR		REVISE RECORDS LAWS-2		*R -CH. SL 97-0309	04-24-97	05-22-97
S 882	WINNER		CIVIL PENALTIES FUND ESTABLISHED		S -REF TO COM ON FINANCE	04-15-97	
S 883	SHAW L		MANUFACTURED HOME PROPERTY TAX		S -REF TO COM ON FINANCE	04-15-97	
S 886=	JORDAN		HIRE AMONG MOST QUALIFIED		*R -CH. SL 97-0520	07-14-97	08-04-97
S 913	GULLEY W		LOCAL TRANSIT REVENUE OPTIONS		S -REF TO COM ON FINANCE	04-17-97	
S 915	KERR		INTANGIBLES TAX REMEDY		*H -REF TO COM ON FINANCE	04-17-97	06-26-97
S 916	KERR		COSMETOLOGISTS		*H -REF TO COM ON RULES	04-17-97	05-15-97
S 916	KERR		COSMETOLOGISTS		*H -REF TO COM ON RULES	05-19-97	05-20-97
S 921	ODOM		CHARITABLE SOLICITATIONS EXEMPTION		*R -CH. SL 97-0329	04-17-97	05-08-97
S 925=	SHAW L		UNC MILITARY TUITION		S -REF TO COM ON FINANCE	04-17-97	
S 926	COOPER		SMART START FUND		S -REF TO COM ON FINANCE	04-17-97	
S 938=	JORDAN		CONSTRUCTION WORKER TRAINING CREDIT		*H -REF TO COM ON WEL REF	04-17-97	06-11-97
S 940=	ODOM		TREASURER STUDY LOCAL INVESTMENTS		*H -REF TO COM ON RULES	04-17-97	04-29-97
S 942	RAND		BARBERS		H -REF TO COM ON FINANCE	04-17-97	05-07-97
S 956=	HOYLE		VENTURE CAPITAL INVESTMENT INCENTIVE		S -RE-REF COM ON FINANCE	07-22-97	
S 965	MILLER B		INSURANCE DEPARTMENT FEES		S -REF TO COM ON FINANCE	04-17-97	
S 971	REEVES		SELF-EMPLOYED HEALTH INS DEDUCTION		S -REF TO COM ON FINANCE	04-21-97	
S 974	FOXX		ESC LAW CHANGES		*R -CH. SL 97-0398	04-21-97	05-07-97
S 979	COOPER		SCHOOL PROPERTY FINANCING		S -REF TO COM ON FINANCE	04-21-97	
S1001	KINNAIRD		EXPAND AMUSEMENT TAX EXEMPTION		*H -REF TO COM ON FINANCE	04-21-97	07-10-97
S1007	GULLEY W		TRANSIT AUTH VEHICLE RENTAL TAX		S -REF TO COM ON FINANCE	04-21-97	
S1008	HOYLE		INSULATING SPECIALTY CONTRACTORS		S -RE-REF COM ON FINANCE	04-29-97	
S1010=	HOYLE		LOCAL GOV. FUNDING AGREEMENTS		S -REF TO COM ON FINANCE	04-21-97	
S1012=	RUCHO		PUBLICATION OF APPELLATE DECISIONS		S -RE-REF COM ON FINANCE	04-30-97	
S1017	ALBERTSON		ENVIRONMENTAL/AGRICULTURE ACT		S -RE-REF COM ON FINANCE	06-19-97	
S1019	COCHRANE		EMPLOYEE GED TAX INCENTIVE		S -REF TO COM ON FINANCE	04-21-97	

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

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

BOLDED LINE INDICATES BILL INDEXED AS AFFECTING APPROPRIATIONS.

NORTH CAROLINA GENERAL ASSEMBLY
COMMITTEE SUMMARY REPORT

1997-98 Regular Session	SENATE: FINANCE		Valid Through 21-OCT-1997		
BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
S1025	BLUST	INCREASE CIVIL PROCESS FEES	S -REF TO COM ON FINANCE	04-21-97	
S1029	MILLER B	INSOLVENT INSURER REVENUE BONDS	*S -RE-REF COM ON FINANCE	05-22-97	
S1035	KERR	MODIFY FOOD TAX/MERCHANT'S DISCT.-2	*S -RE-REF COM ON APPROPR	04-21-97	05-22-97
S1037	KERR	NC RAILROAD ACT	S -RE-REF COM ON FINANCE	06-03-97	
S1042	KINNAIRD	ESTHETICIAN LICENSURE	S -REF TO COM ON FINANCE	04-21-97	
S1062	HOYLE	PROPERTY TAX ON LEASEHOLDS	S -REF TO COM ON FINANCE	04-21-97	
S1064=	HOYLE	PROPERTY TAX INTEREST/STUDY	*R -CH. SL 97-0205	04-21-97	05-12-97
S1065	HOYLE	EXEMPT SEVERANCE PAY	*R -CH. SL 97-0525	07-02-97	08-18-97
S1073	HOYLE	AUCTIONEER AMENDMENTS	*H -REF TO COM ON RULES	06-04-97	07-10-97

NOTES - = AFTER BILL NUMBER SHOWS THAT BILL IS IDENTICAL, AS INTRODUCED, TO ANOTHER BILL.
 * AFTER NUMBERS INDICATES THAT TEXT OF BILL WAS ALTERED BY ACTION ON THE BILL.
 BOLDDED LINE INDICATES BILL INDEXED AS AFFECTING APPROPRIATIONS.

SENATE FINANCE COMMITTEE
(Joint Meeting with Senate Appropriations)

WEDNESDAY, FEBRUARY 5, 1997

9 A.M. - ROOM 643 LOB

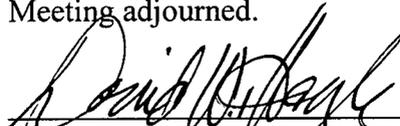
The Senate Finance Committee met jointly with the Senate Appropriations Committee on Wednesday, February 5, 1997 at 9 o'clock in Room 643. Senator Plyler presided over the meeting and both he and Senator Kerr made opening remarks.

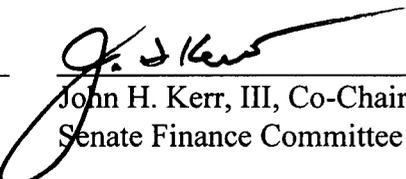
Robert Powell, State Budget Office, was recognized for remarks concerning the projected budget. At the conclusion of his presentation Mr. Powell answered several questions from the members of both committees. Included with the minutes is a copy of Budget Estimates from 1997 - 2001 prepared by the Office of State Budget and Management.

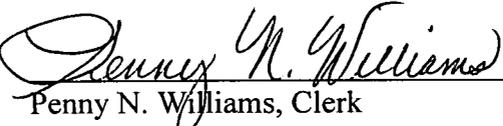
David Crotts, Fiscal Research, gave an overview of Selected Economic, Revenue, and Budget Data and a copy of his report is included with the minutes.

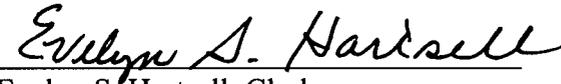
Senator Plyler concluded the meeting with a projected timetable for preparing the budget.

Meeting adjourned.


David W. Hoyle, Co-Chair
Senate Finance Committee


John H. Kerr, III, Co-Chair
Senate Finance Committee


Penny N. Williams, Clerk

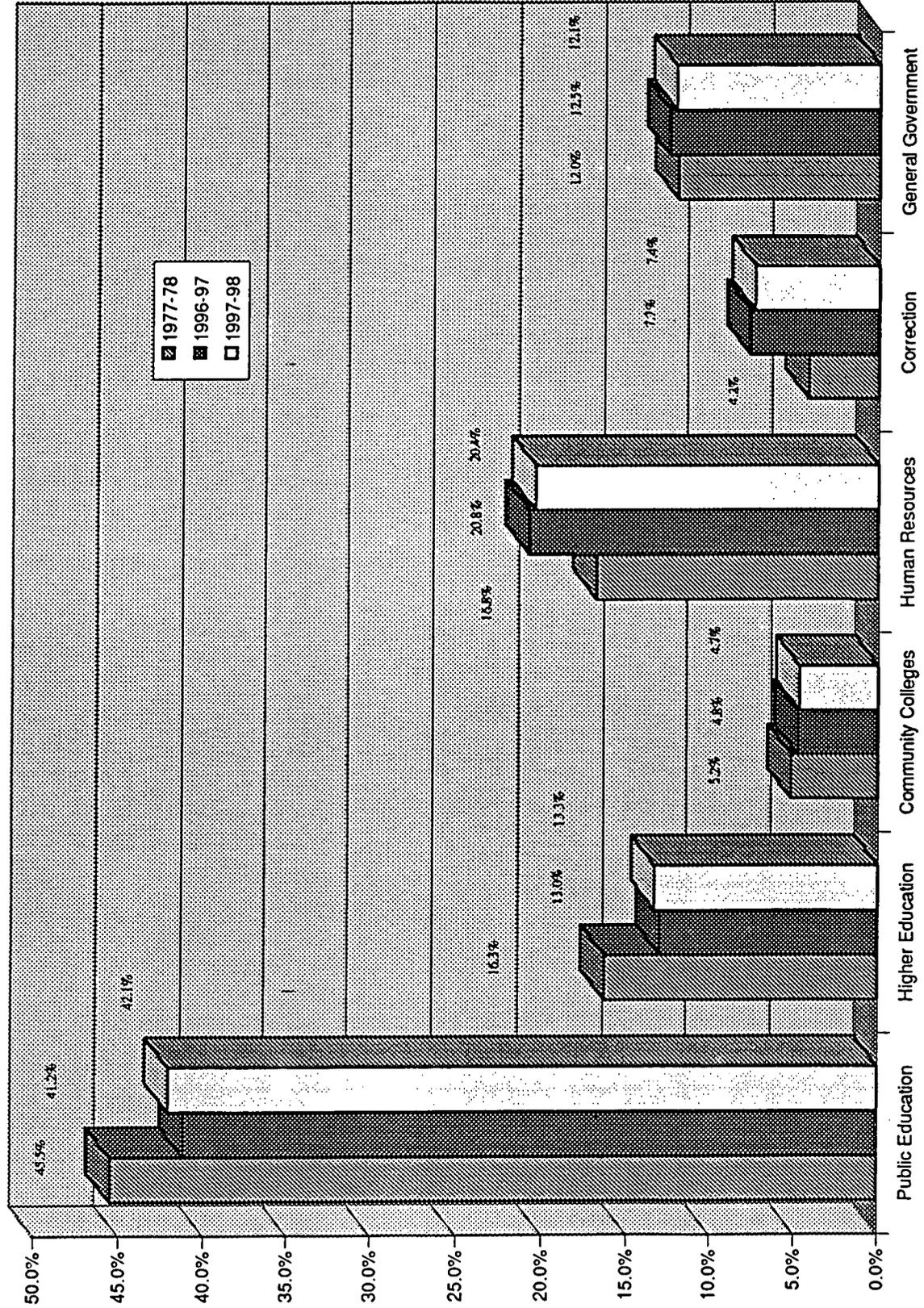

Evelyn S. Hartsell, Clerk

Prville - 1

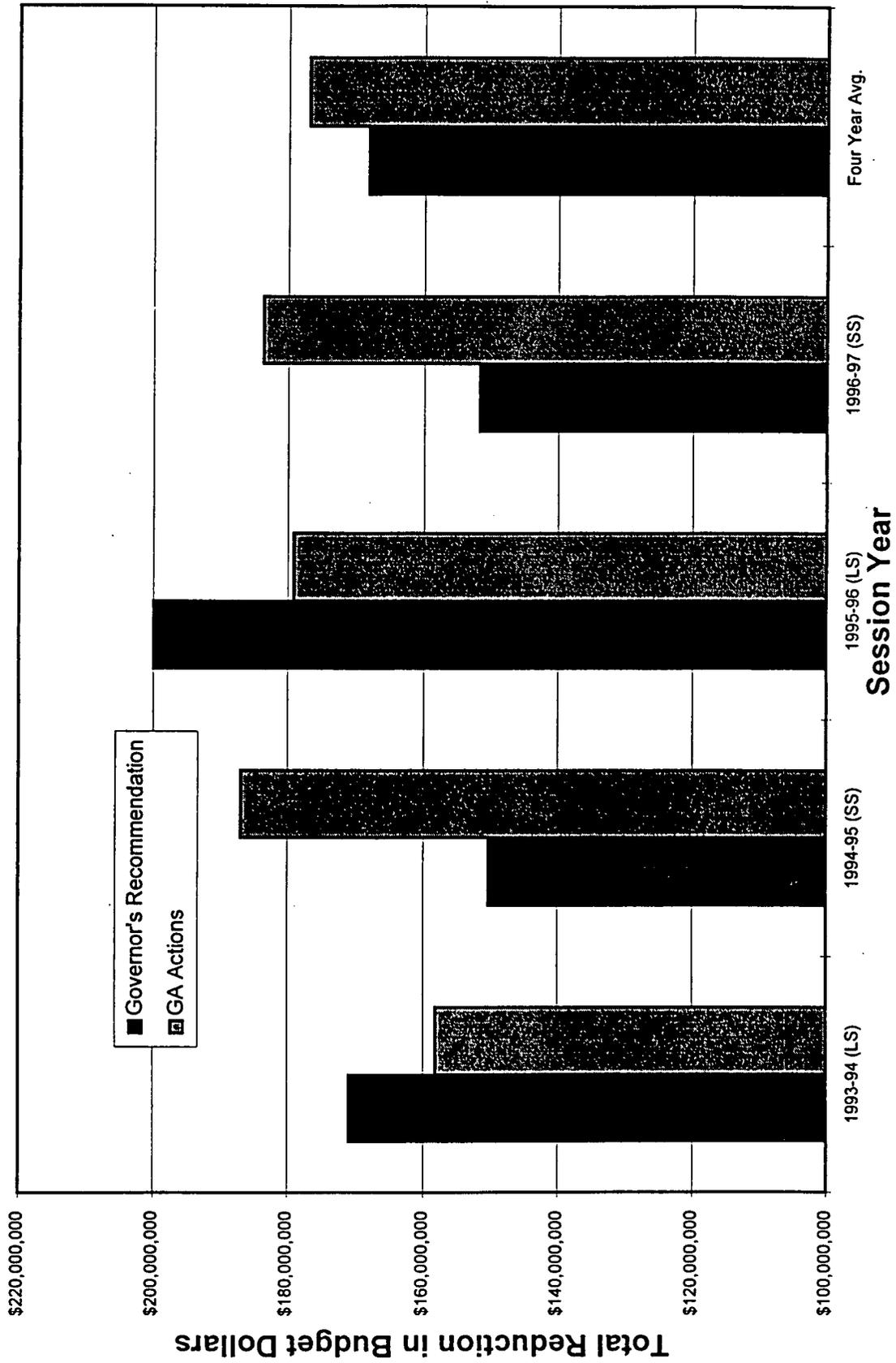
1997-2001 Budget Estimates

	1997-98	1998-99	1999-00	2000-01
1. Total Revenue Forecast (Base Line)	11,622.2	12,353.1	13,149.4	13,988.7
2. Adjustments for Tax Issues				
3. 1995 Package	(391.1)	(398.7)	(407.6)	(415.7)
4. 1996 Package	(189.7)	(252.1)	(307.0)	(340.4)
5. Subtotal Tax Reductions	(580.8)	(650.8)	(714.6)	(756.1)
6. Adjustments nontax revenue				
7. 1996 Enhancements	6.0	6.4	6.8	7.2
8. Penalties, Fines, Forfeitures	(3.7)	(3.7)	(3.7)	(3.7)
9. Adjusted Revenue	11,043.7	11,705.0	12,437.9	13,236.1
10. Original Continuation Requirements	10,832.9	11,202.7	11,548.9	11,911.6
11. Continuation Budget Adjustments	(116.2)	(110.6)	(111.4)	(112.2)
12. Revised Continuation	10,716.7	11,092.1	11,437.5	11,799.4
13. Beginning Availability	327.0	612.9	1,000.4	1,436.7
14. Additional Adjustments	131.1	290.1	440.1	590.1
15. subtotal availability	458.1	903.0	1,440.5	2,026.8

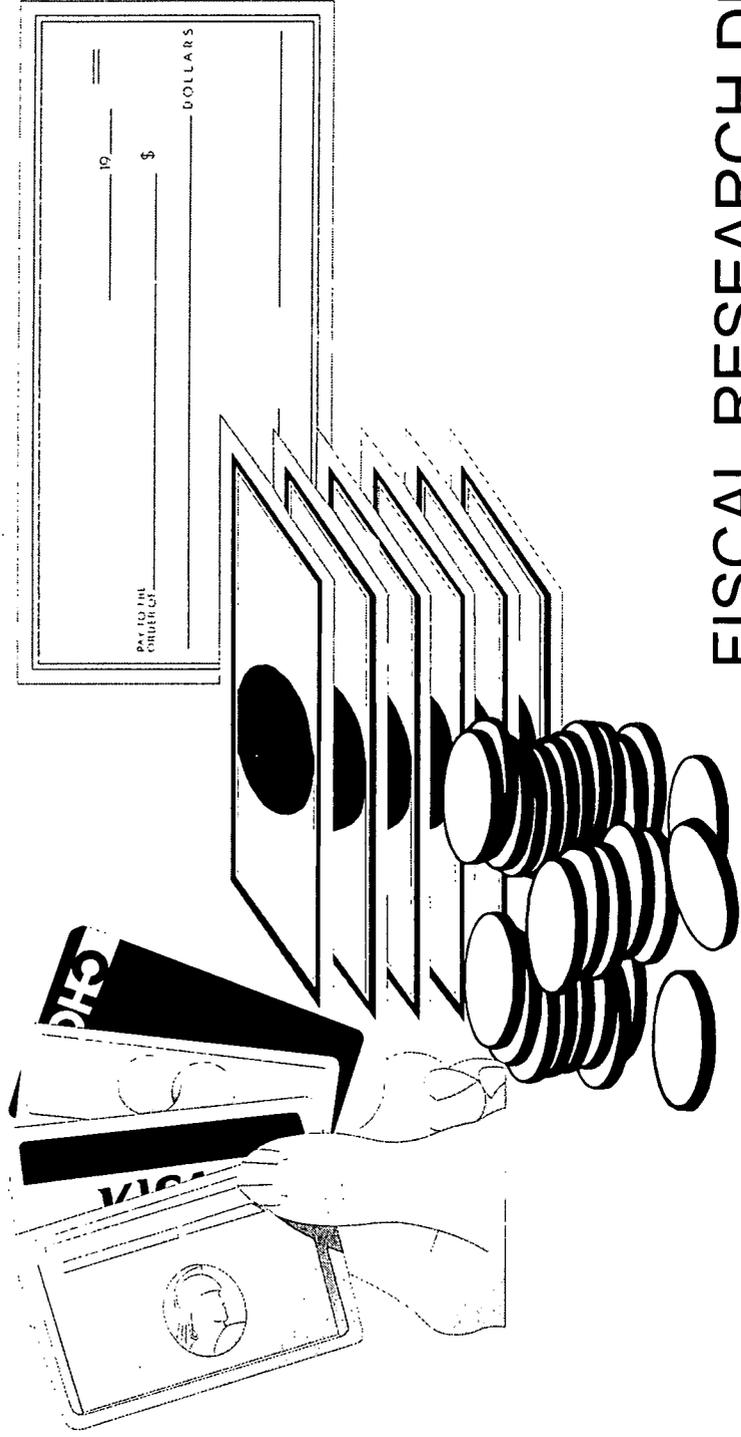
Trends in General Fund Operating Budget



Total Budget Reductions by Session



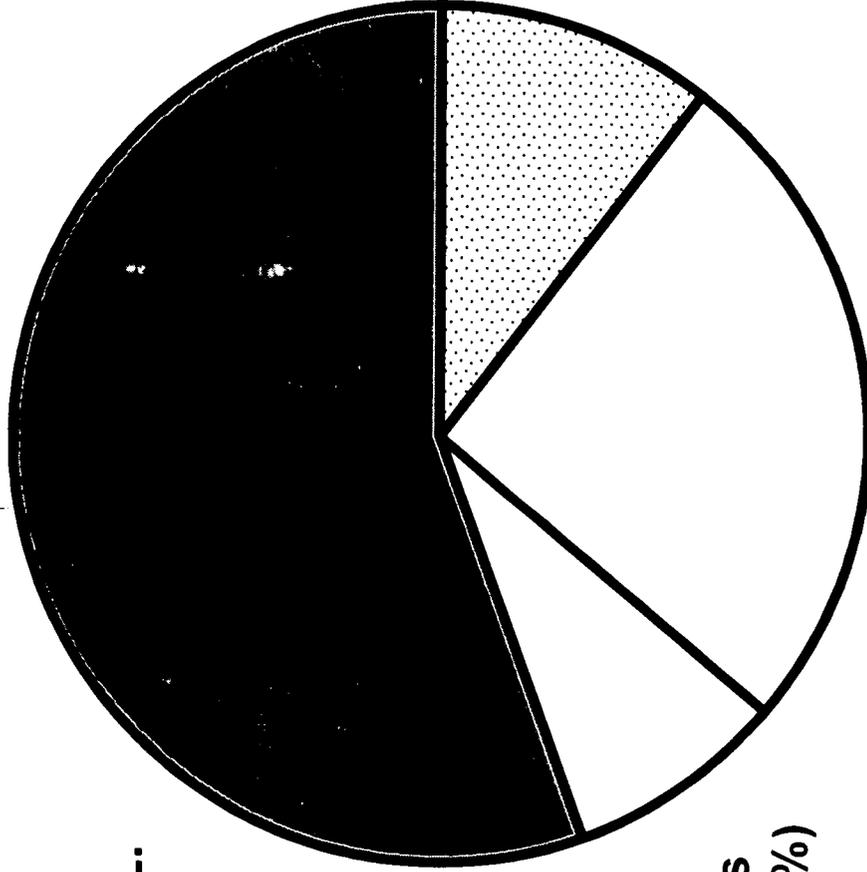
SELECTED ECONOMIC, REVENUE, AND BUDGET DATA



FISCAL RESEARCH DIVISION
JANUARY 16, 1997

THE TOTAL STATE BUDGET (1996-97)

General Fund
\$10.60 BIL. (55.41%)



TOTAL \$19.13 BIL.

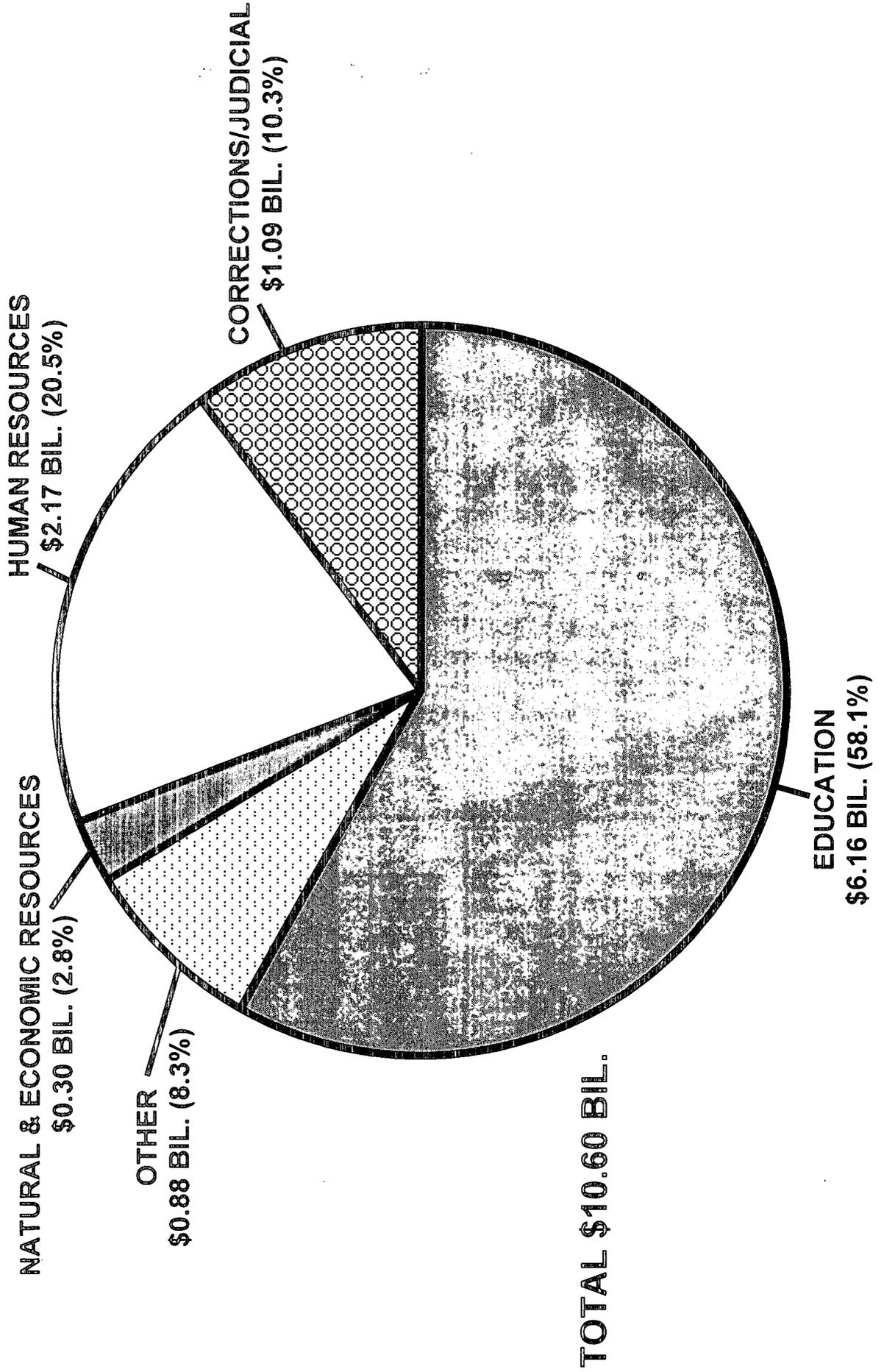
Agency Receipts*
\$1.99 BIL. (10.40%)

Highway Funds
\$1.62 BIL. (8.47%)

Federal Funds
\$4.92 BIL. (25.72%)

* AGENCIES FEES (INCLUDING UNIVERSITY TUITION) THAT AGENCIES MAY USE IN LIEU OF GENERAL FUND APPROPRIATION

EDUCATION FUNDING COMPRISES ABOUT 58% OF THE GENERAL FUND BUDGET (1996-97)



FEDERAL MANDATES AND OTHER MANDATORY ITEMS HAVE CROWDED OUT EDUCATION SPENDING

GENERAL FUND BUDGET
(\$ MILLION)

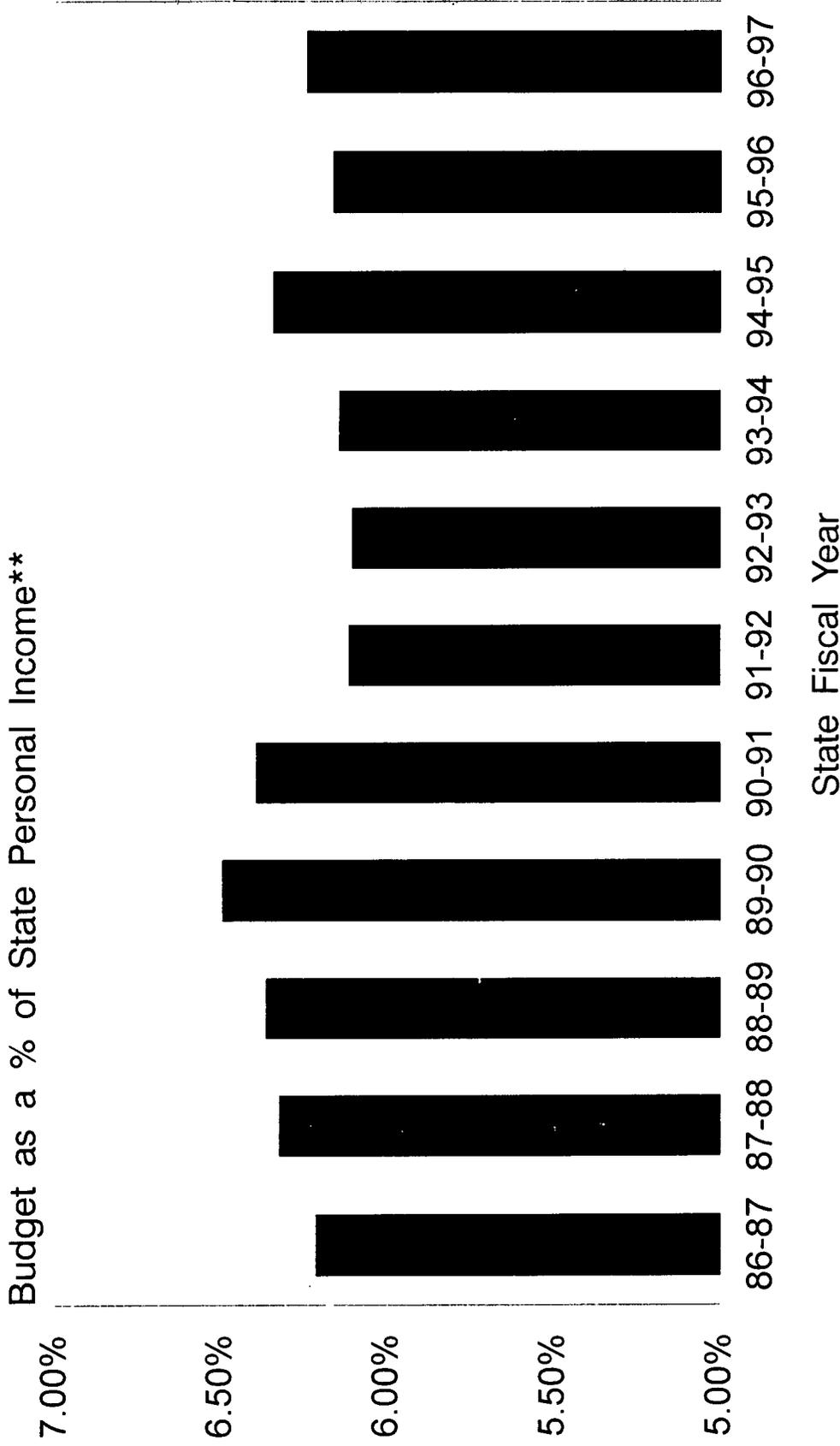
	86-87	87-88	88-89	89-90	90-91	91-92	92-93	93-94	94-95	95-96	96-97
RECURRING ITEMS	\$5,187.9	\$5,714.4	\$6,229.5	\$6,838.6	\$7,212.8	\$7,350.5	\$7,876.9	\$8,426.3	\$9,289.4	\$9,688.2	\$10,401.4
% INCREASE		10.1%	9.0%	9.8%	5.5%	1.9%	7.9%	6.9%	10.4%	4.3%	7.4%
LOCAL TAX AID* NONRECURRING:	-	-	-	\$231.8	\$476.8	\$474.6	\$236.8	\$236.8	\$236.8	\$228.5	\$157.3
CAPITAL IMPROVEMENTS	\$282.5	\$164.8	\$258.7	\$245.3	\$207.3	-	\$95.2	\$135.4	\$189.4		
ALLOCATION TO RAINY-DAY FUND					141.0	0.4			66.7		
PAYDATE RESTORATION								214.2	120.0		
OTHER ONE-TIME ITEMS								248.2	306.1		
REPAIRS AND RENOVATIONS	45.6	98.7	72.9	44.3	36.1		0.6	57.0	60.0	104.9	44.6
TOTAL-NONRECURRING	\$328.1	\$263.5	\$331.6	\$289.6	\$384.4	\$0.4	\$95.8	\$654.8	\$742.2	\$458.4	\$201.9
TOTAL BUDGET**	\$5,516.0	\$5,977.9	\$6,561.1	\$7,360.0	\$8,074.0	\$7,825.5	\$8,209.5	\$9,317.9	\$10,268.4	\$10,146.6	\$10,603.3
% INCREASE	7.8%	8.4%	9.8%	12.2%	9.7%	-3.1%	4.9%	13.5%	10.2%	-1.2%	4.5%
BUDGET HIGHLIGHTS											
MEDICAID	\$221.6	\$255.4	\$305.1	\$391.3	\$487.5	\$581.1	\$676.0	\$861.1	\$939.6	\$1,038.9	\$1,156.2
% INCREASE		15.3%	19.5%	28.3%	24.6%	19.2%	16.3%	27.4%	9.1%	10.6%	11.3%
% OF RECURRING BUDGET	4.3%	4.5%	4.9%	5.7%	6.8%	7.9%	8.6%	10.2%	10.1%	10.7%	11.1%
CORRECTIONS/JUDICIAL	354.8	414.3	452.3	550.7	580.4	683.4	732.4	806.7	962.5	1,045.8	1090.7
% INCREASE		16.8%	9.2%	21.8%	5.4%	17.7%	7.2%	10.1%	19.3%	8.7%	4.3%
% OF RECURRING BUDGET	6.8%	7.3%	7.3%	8.1%	8.0%	9.3%	9.3%	9.6%	10.4%	10.8%	10.5%
EDUCATION	\$3,562.3	\$3,946.2	\$4,302.2	\$4,609.8	\$4,860.0	\$4,759.8	\$5,005.2	\$5,284.8	\$5,695.1	\$5,794.5	\$6,162.3
% INCREASE	68.7%	10.8%	9.0%	7.1%	5.4%	-2.1%	5.2%	5.6%	7.8%	1.7%	6.3%
% OF RECURRING BUDGET		69.1%	69.1%	67.4%	67.4%	64.8%	63.5%	62.7%	61.3%	59.8%	59.2%

* The year-to-year variation in this item reflects the decision to convert certain items from an earmarking of taxes to an appropriation and the subsequent decision to move items back off-budget.

**Excludes bond funds run through budget for accounting purposes.

GENERAL FUND OPERATING BUDGET*

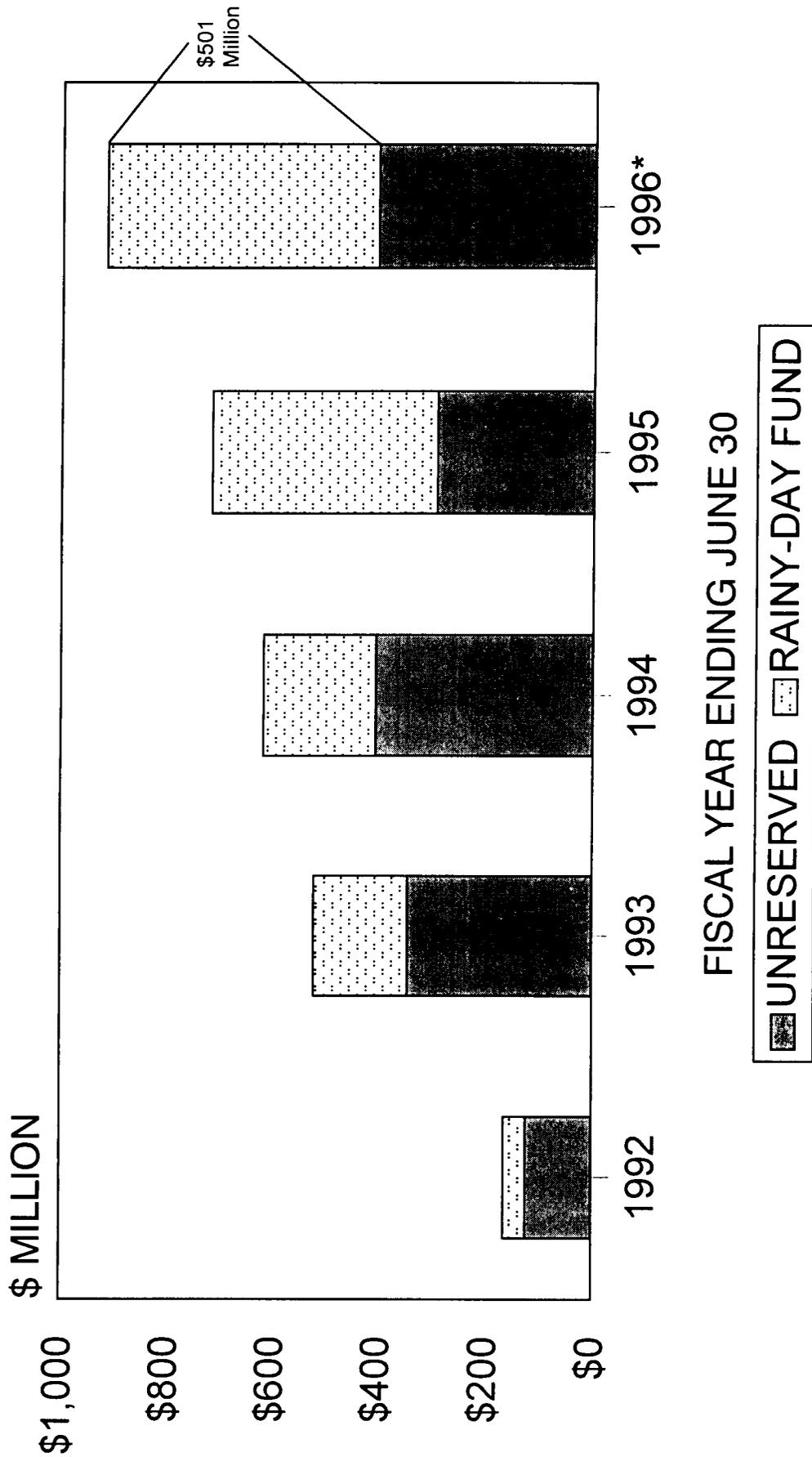
RELATIVE TO THE INCOME OF NORTH CAROLINIANS



* Recurring Items Only

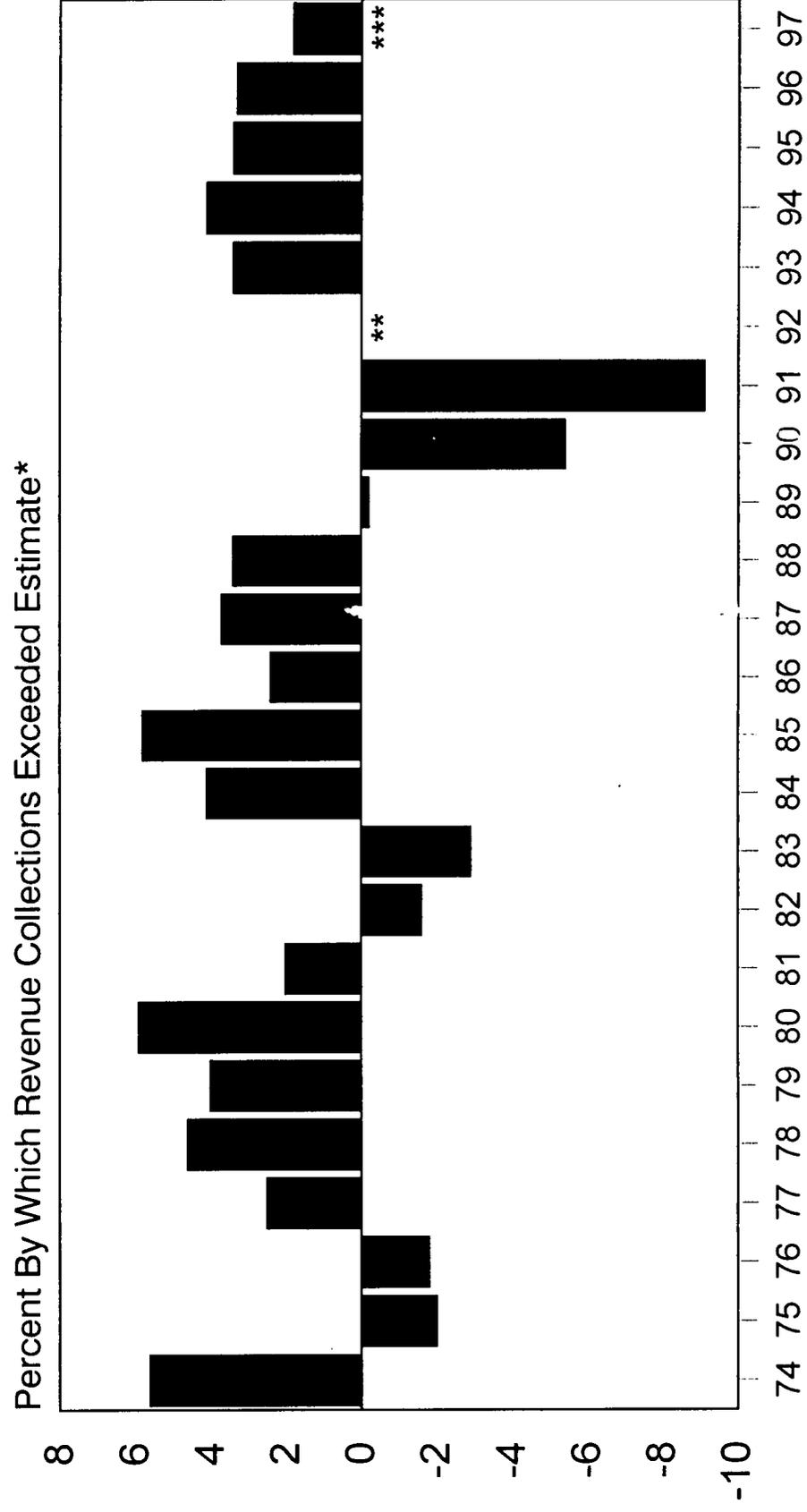
** Personal income represents the income from all sources for the state's residents.

GENERAL FUND CASH BALANCES JUNE 30 BALANCES



* THE RAINY-DAY FUND HAS "CAPPED OUT" AT 5% OF OPERATING BUDGET. IN THE FUTURE THE ONLY EARMARKING TO FUND IS THE AMOUNT TO KEEP UP WITH BUDGET GROWTH.

**THE USE OF CONSERVATIVE REVENUE ESTIMATES FOR THE LAST SIX YEARS
HAS RE-ESTABLISHED THE FAVORABLE TRACK RECORD
PRIOR TO THE 1989-91 BIENNIUM**

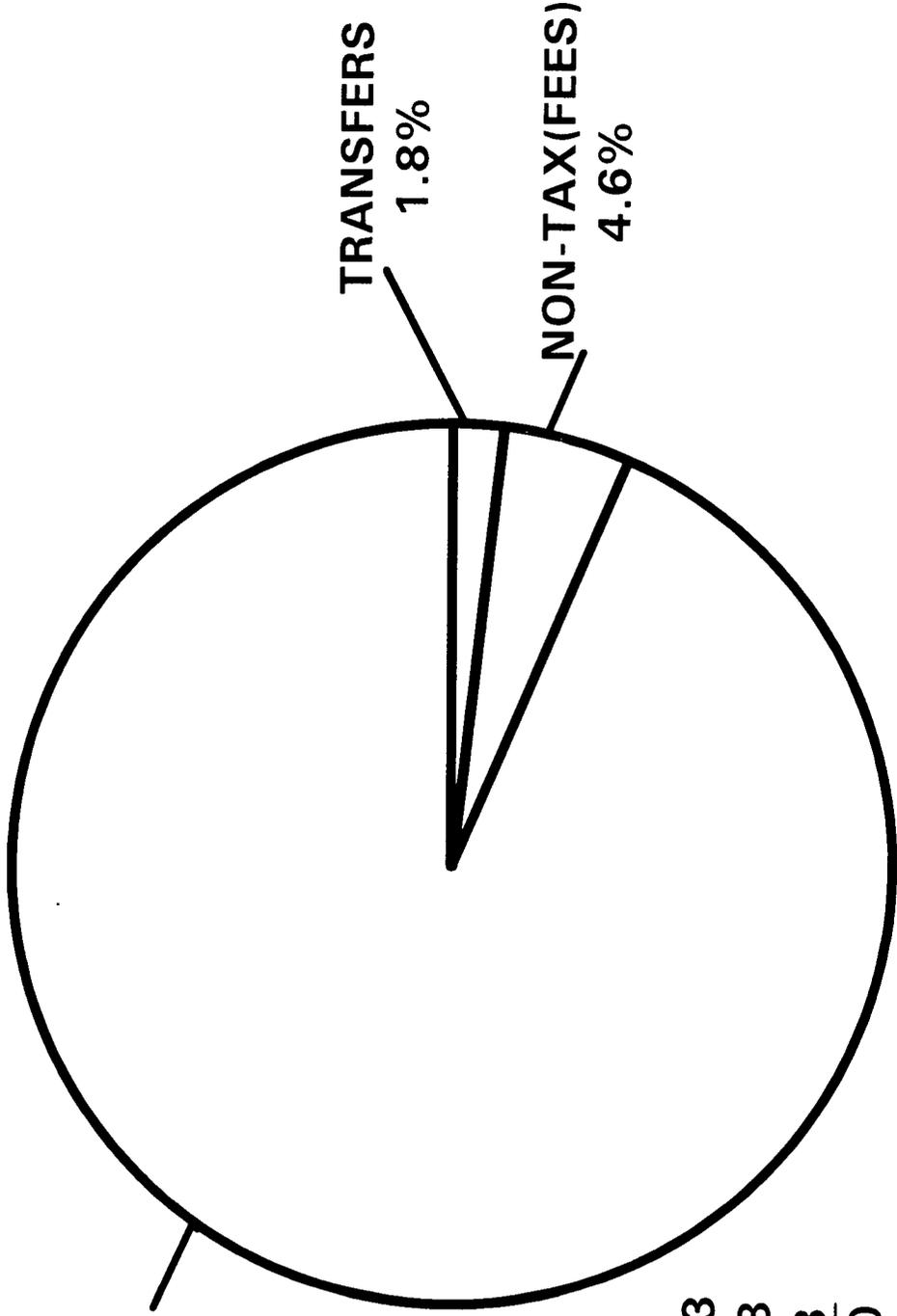


Fiscal Year Ending June 30

* General Fund Revenues
 ** Actual Collections Were Within .1% of Target
 *** Estimated, based on experience through December.

GENERAL FUND REVENUE SOURCES

(1996-97)



TAX
93.6%

TRANSFERS
1.8%

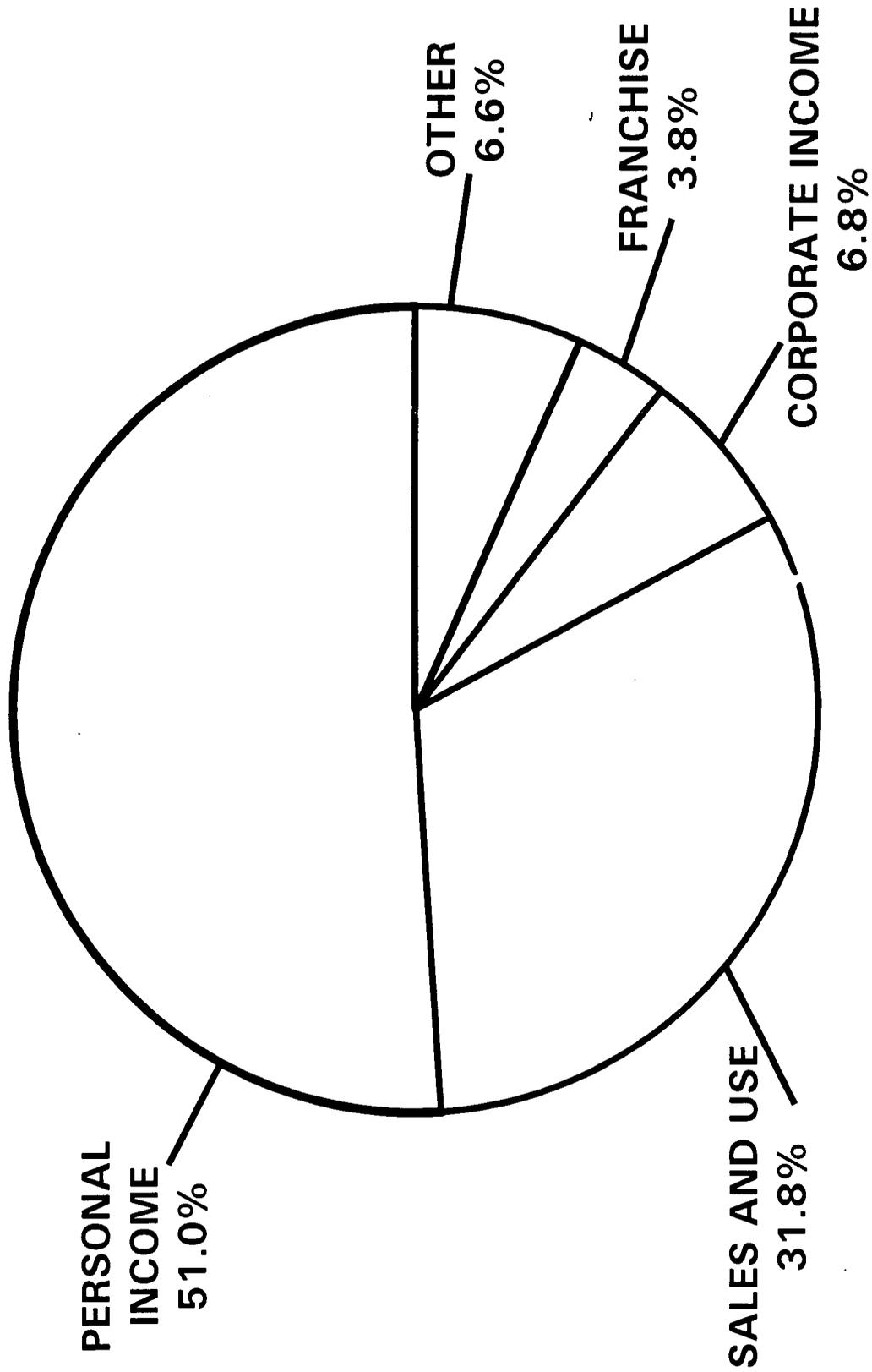
NON-TAX (FEES)
4.6%

(\$BIL.)

TAX	9.73
NON-TAX	.48
TRANSFERS	.18
TOTAL	<u>10.40</u>

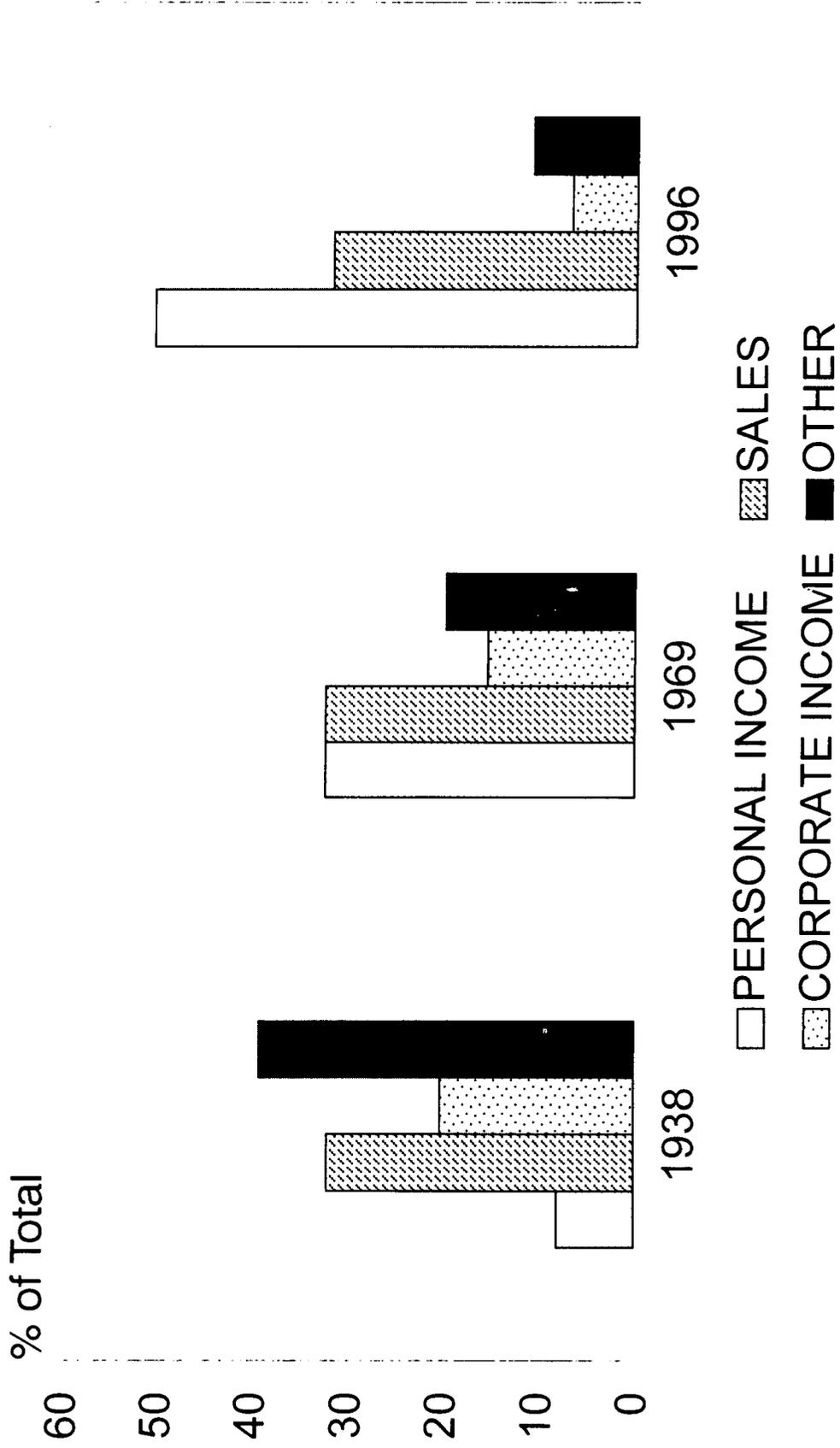
GENERAL FUND TAX SOURCES

(1996-97)



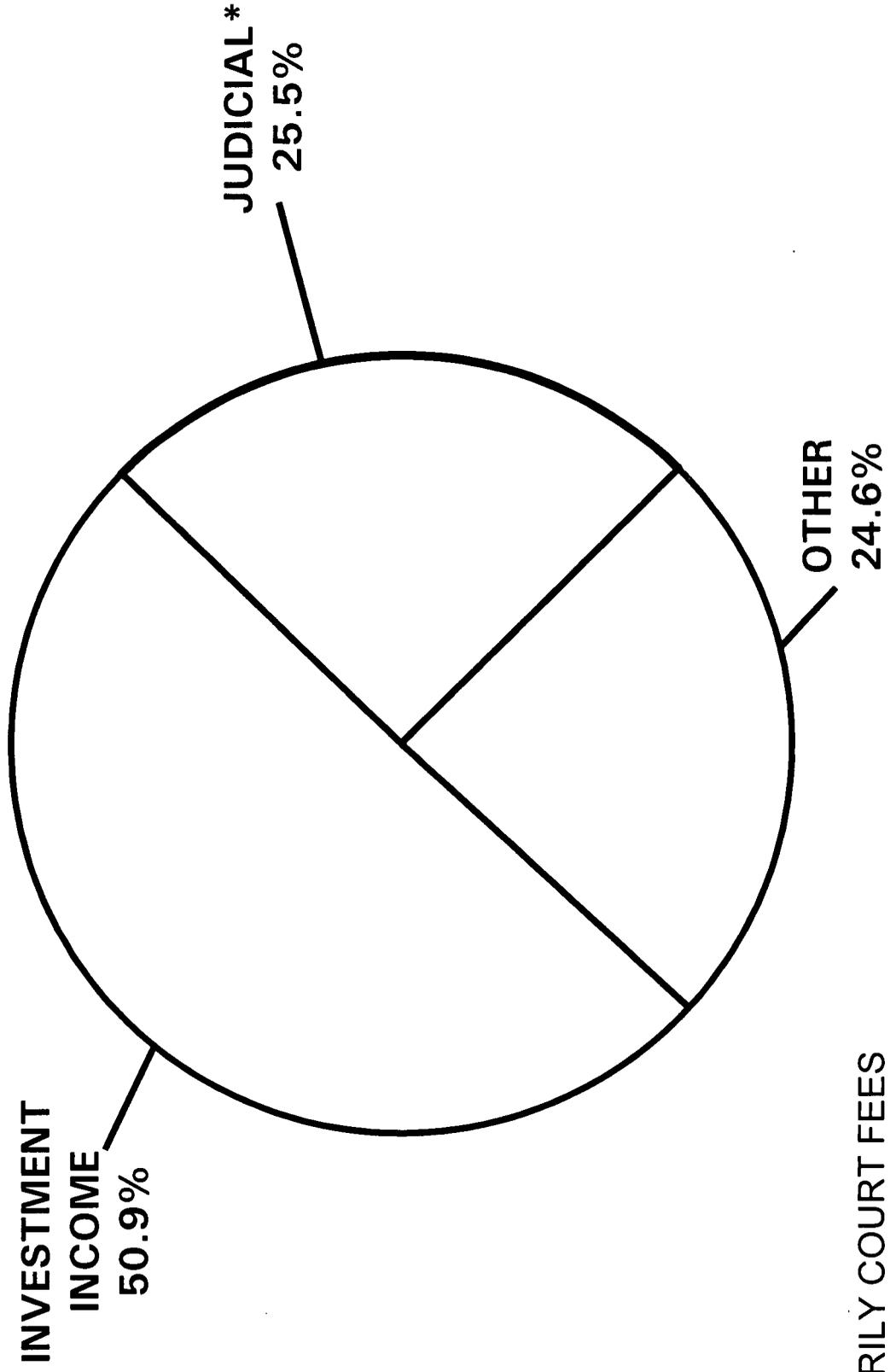
GENERAL FUND TAXES

FISCAL YEAR BASIS



GENERAL FUND NON-TAX REVENUE

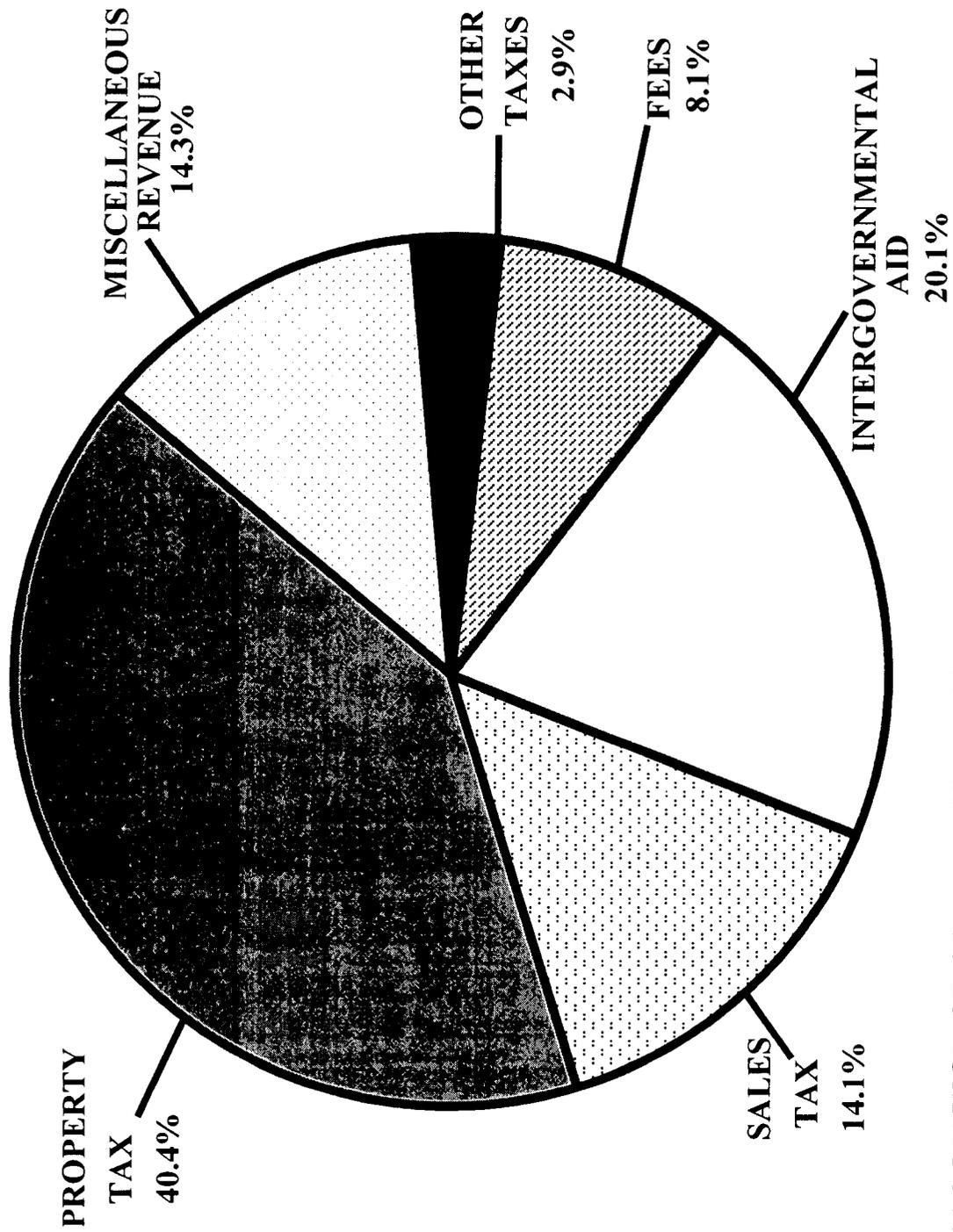
(1996-97)



* PRIMARILY COURT FEES

COUNTY REVENUE SOURCES

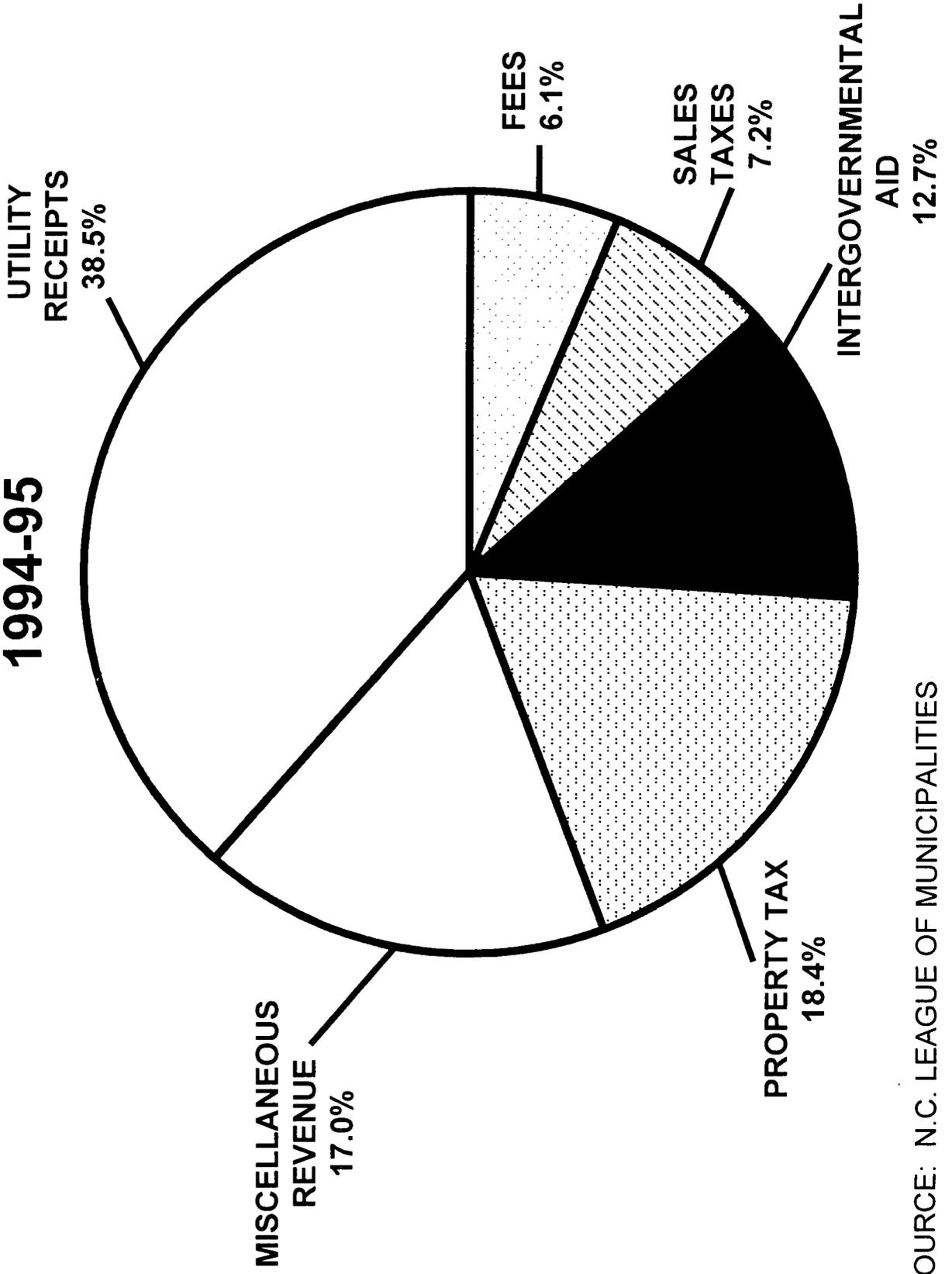
1994-95



SOURCE: N.C. ASSOCIATION OF COUNTY COMMISSIONERS

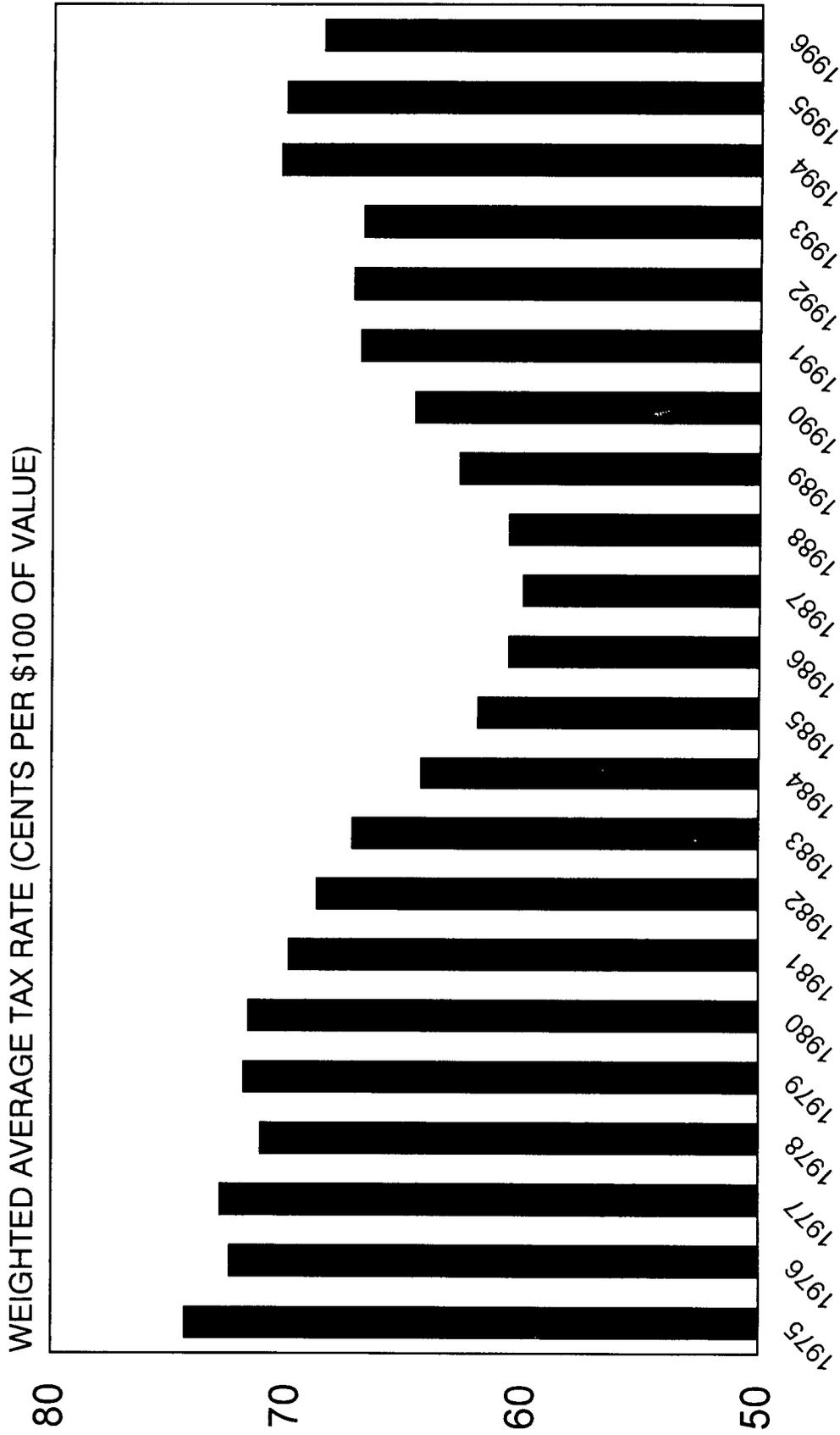
CITY REVENUE SOURCES

1994-95



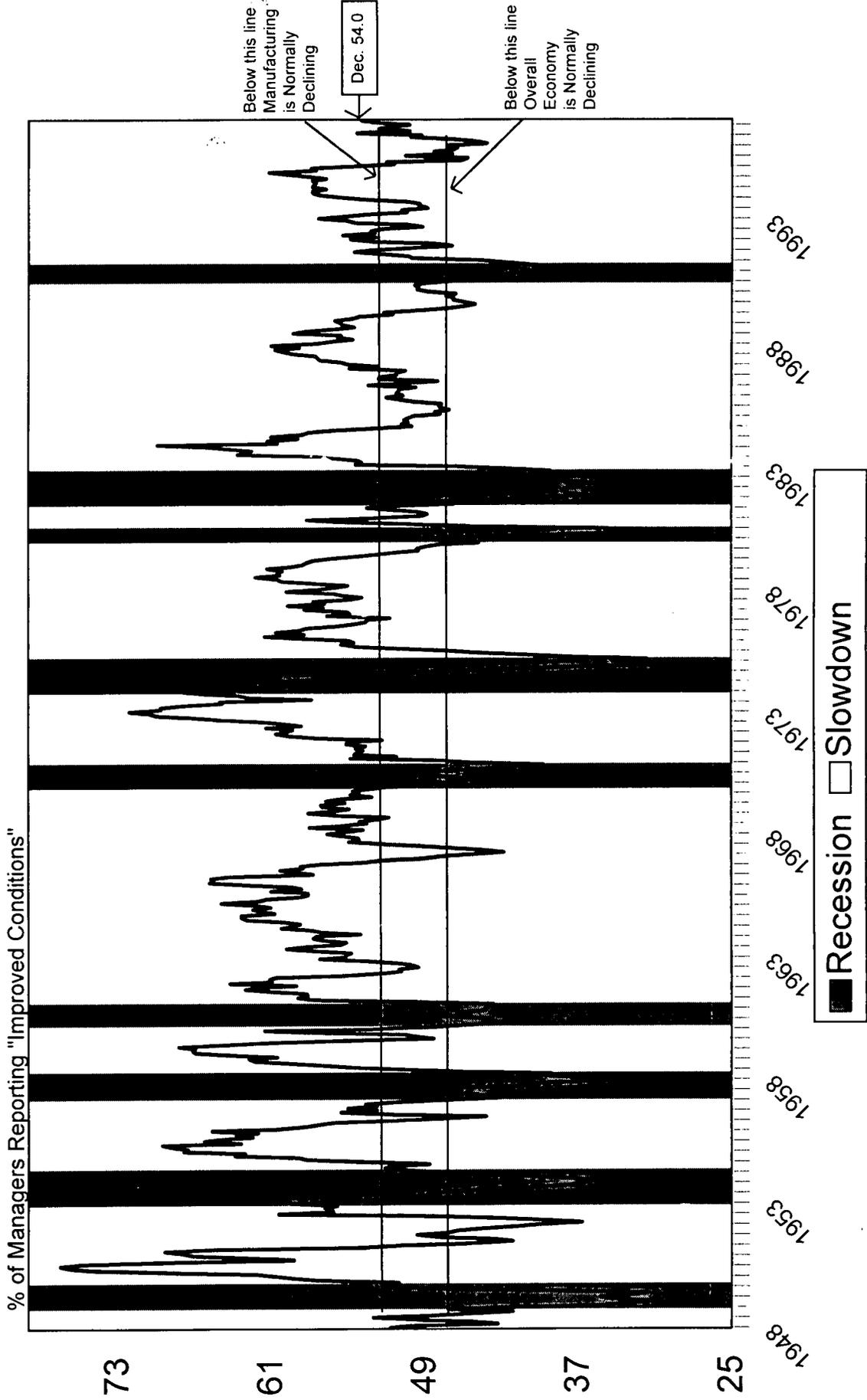
SOURCE: N.C. LEAGUE OF MUNICIPALITIES

LOCAL-OPTION SALES TAXES IN 1971 AND 1983 HAVE ENABLED COUNTIES TO LOWER THE PROPERTY TAX BURDEN*

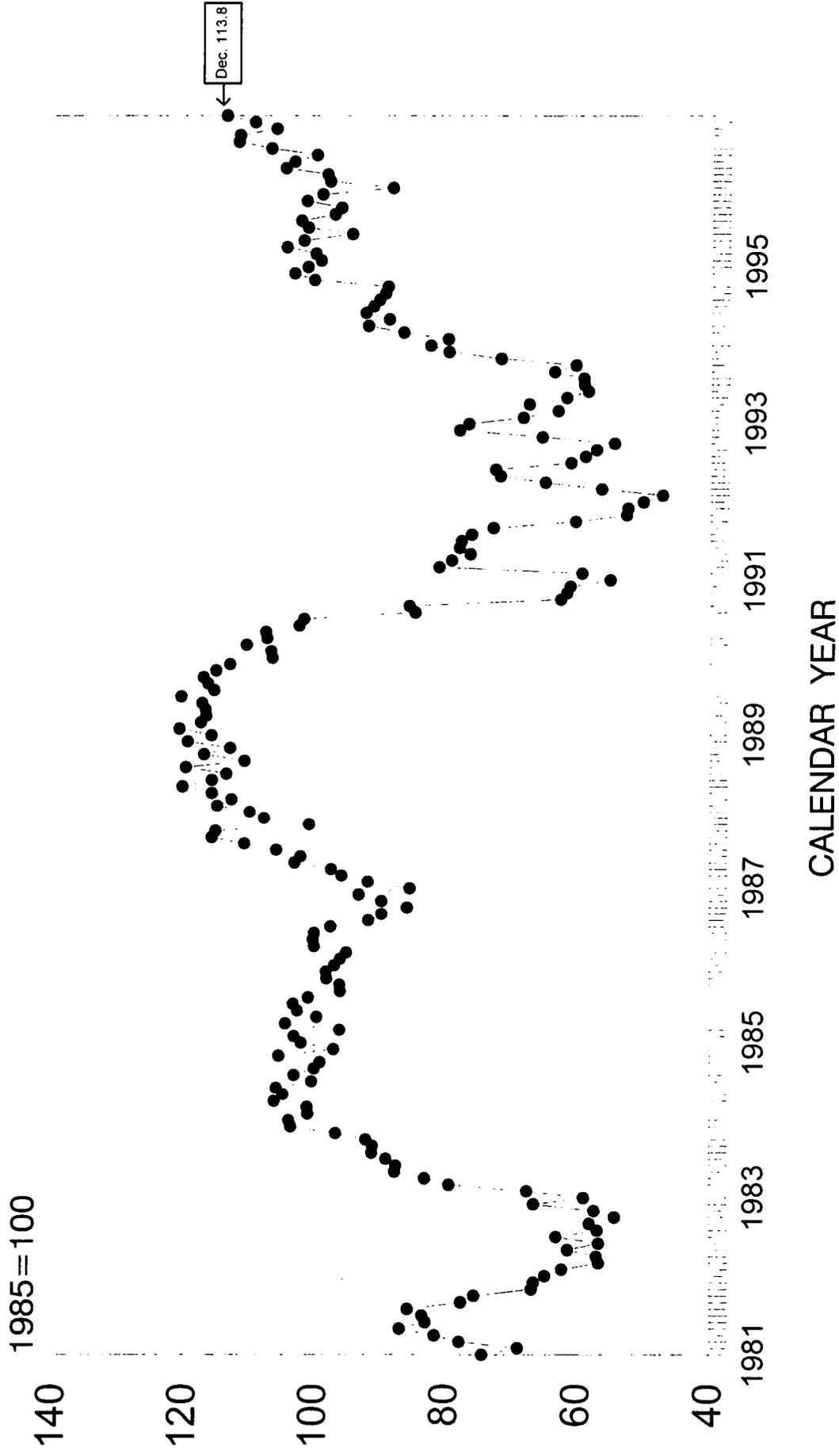


* THE BENEFIT OF THE 1986 LOCAL-OPTION TAX HAS BEEN UNDERMINED BY MEDICAID, AFDC

THE MONTHLY SURVEY OF THE NATION'S PURCHASING MANAGERS HAS HISTORICALLY BEEN A GOOD ECONOMIC INDICATOR



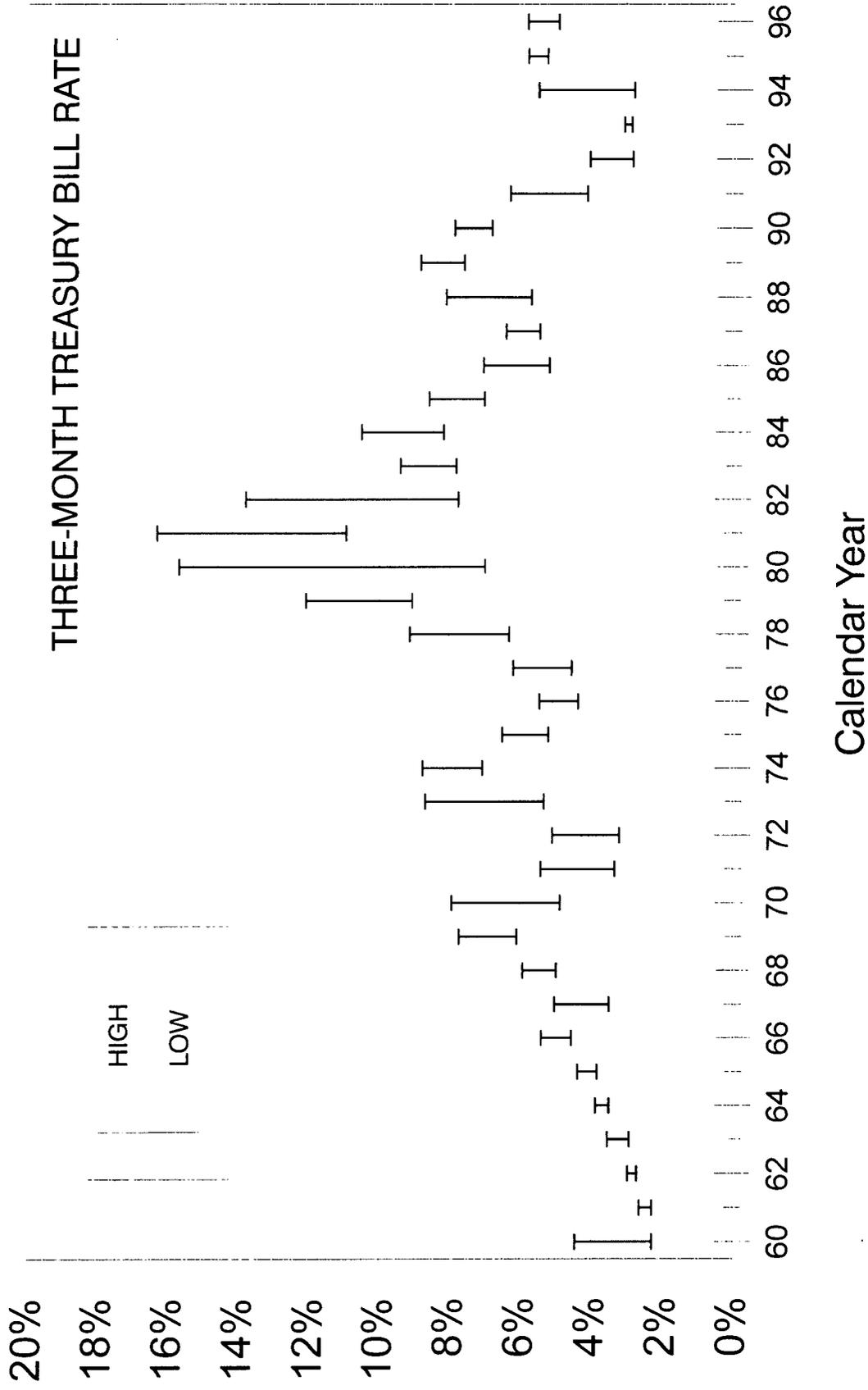
THE NATION'S CONSUMER CONFIDENCE IS STRONGEST SINCE 1989



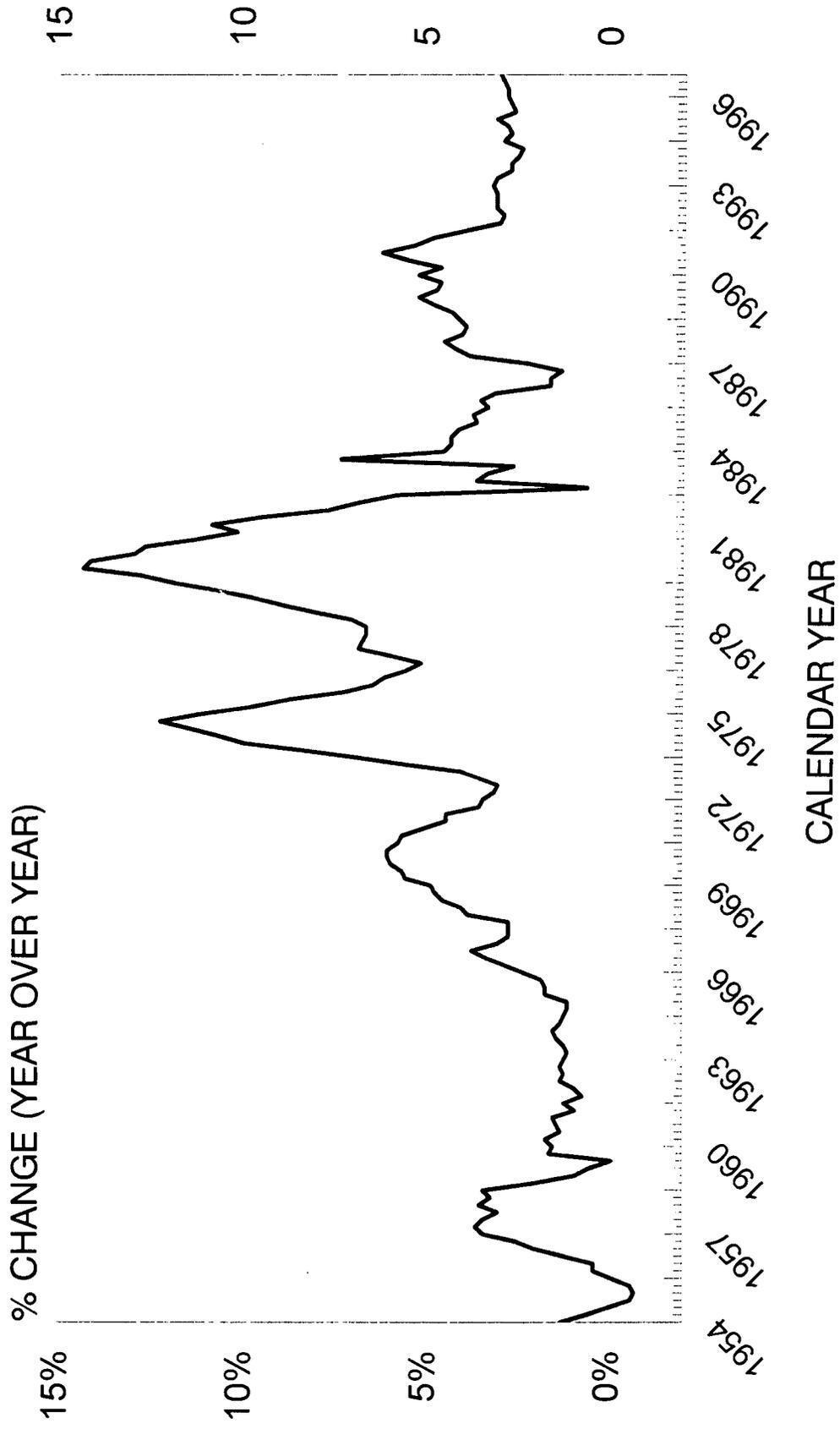
Source: Conference Board

SHORT-TERM INTEREST RATES

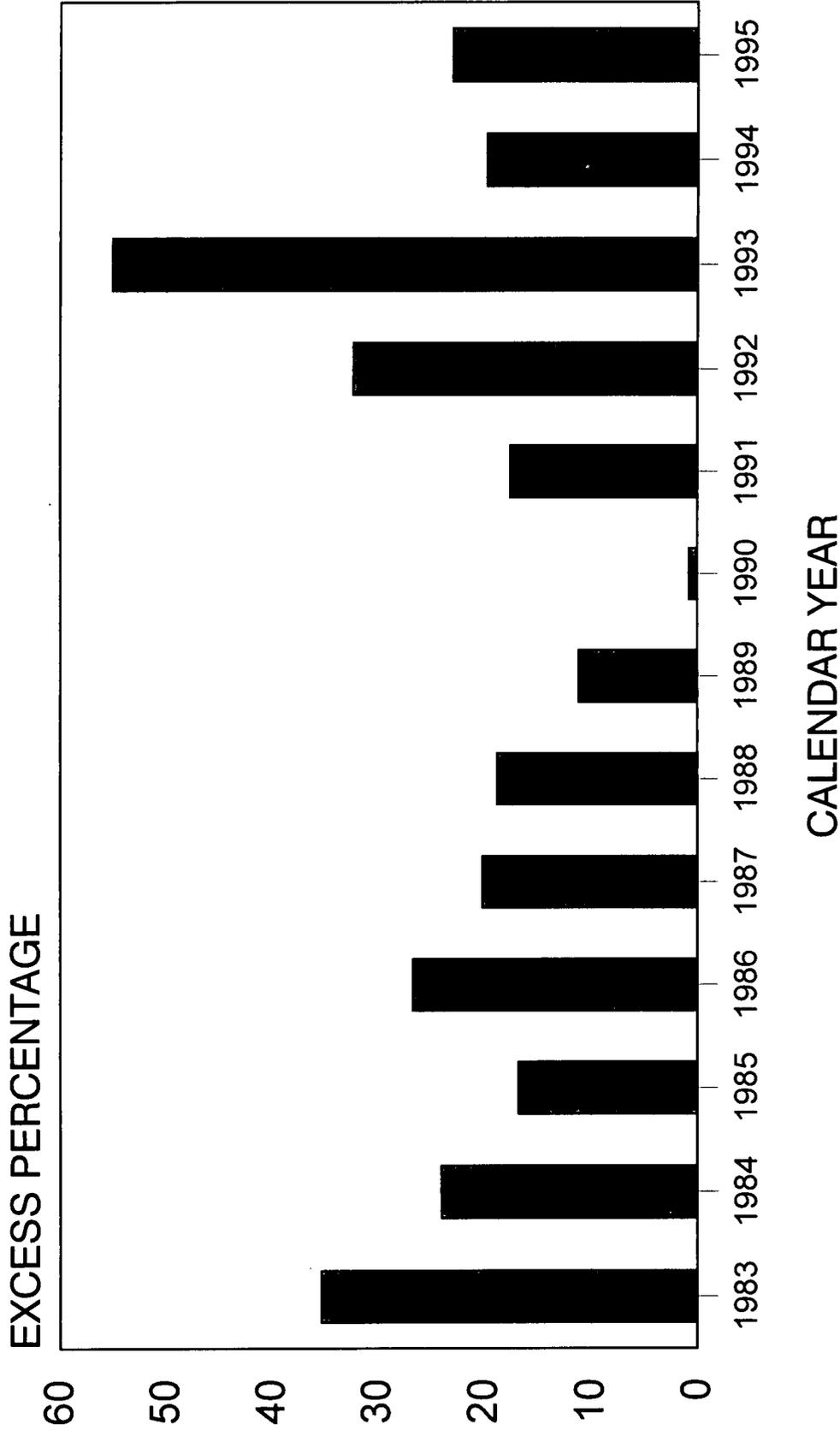
THREE-MONTH TREASURY BILL RATE



INFLATION AS MEASURED BY CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS



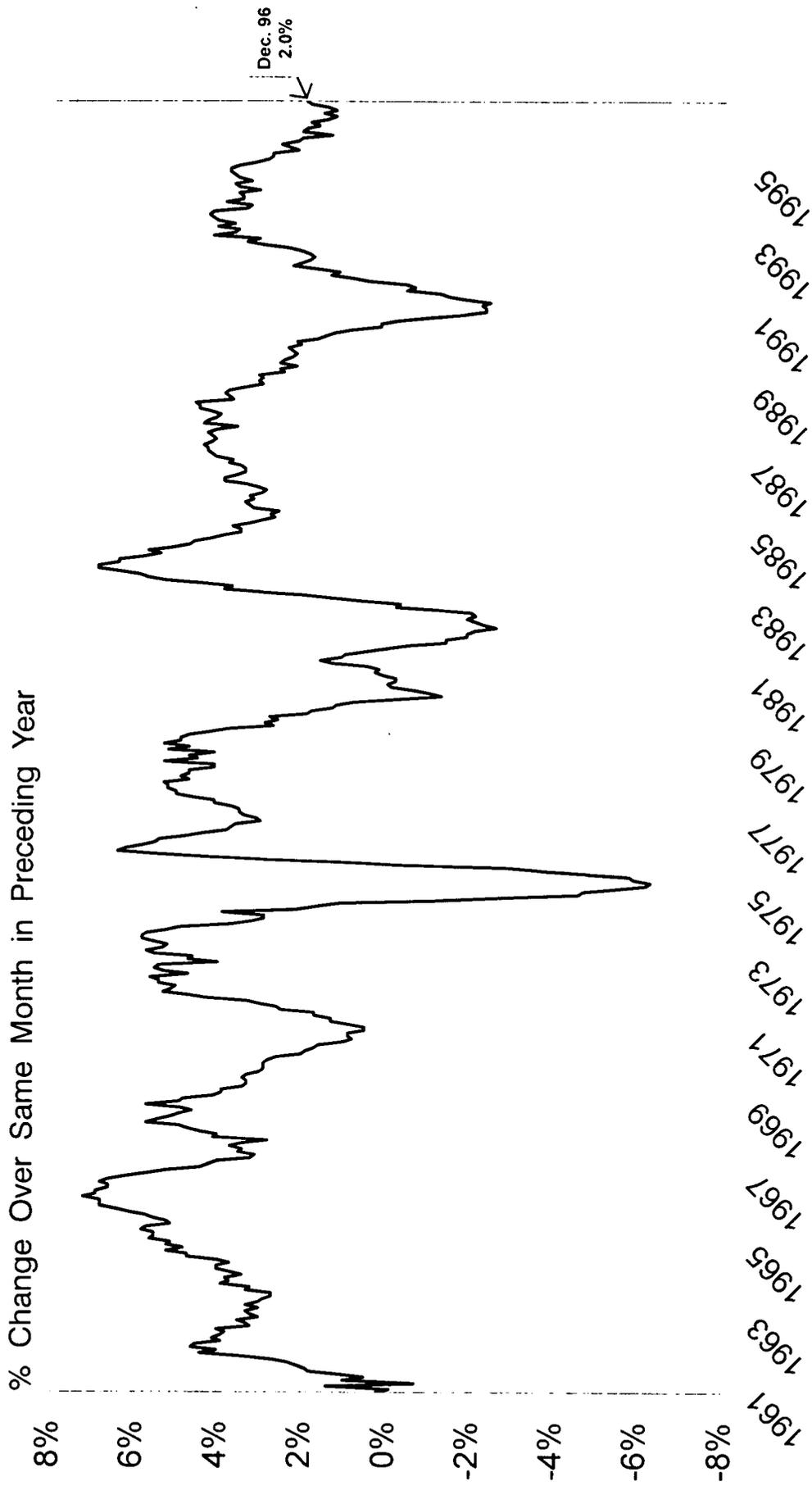
PERCENT BY WHICH NORTH CAROLINA PERSONAL INCOME GROWTH RATE EXCEEDED U.S.*



* CALCULATION BASED ON NOMINAL DOLLARS (INCLUDING INFLATION)

EMPLOYMENT IN NORTH CAROLINA

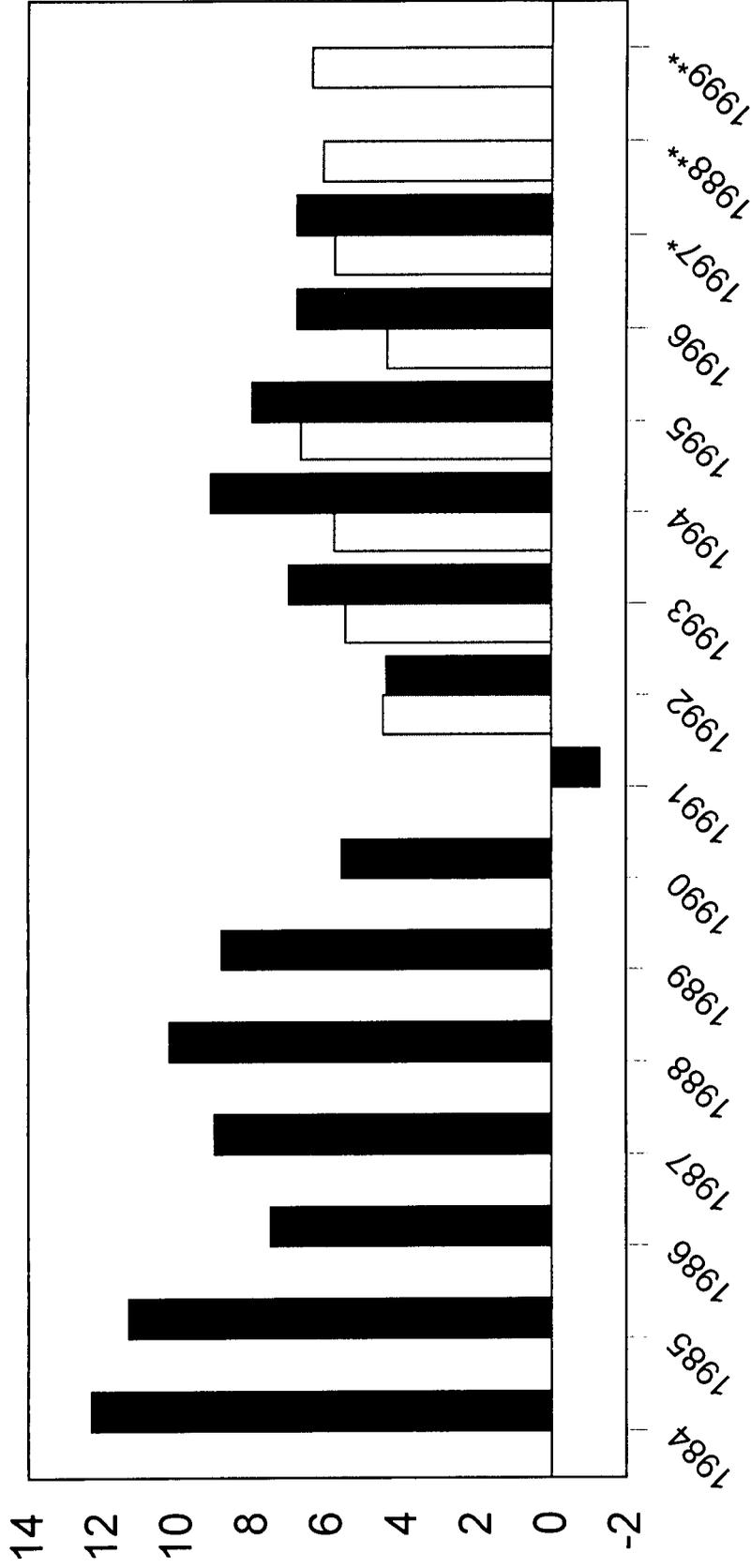
Nonagricultural Employment



Source: Employment Security Commission

GENERAL FUND TAX COLLECTION GROWTH

Adjusted for Tax Law and Other Changes



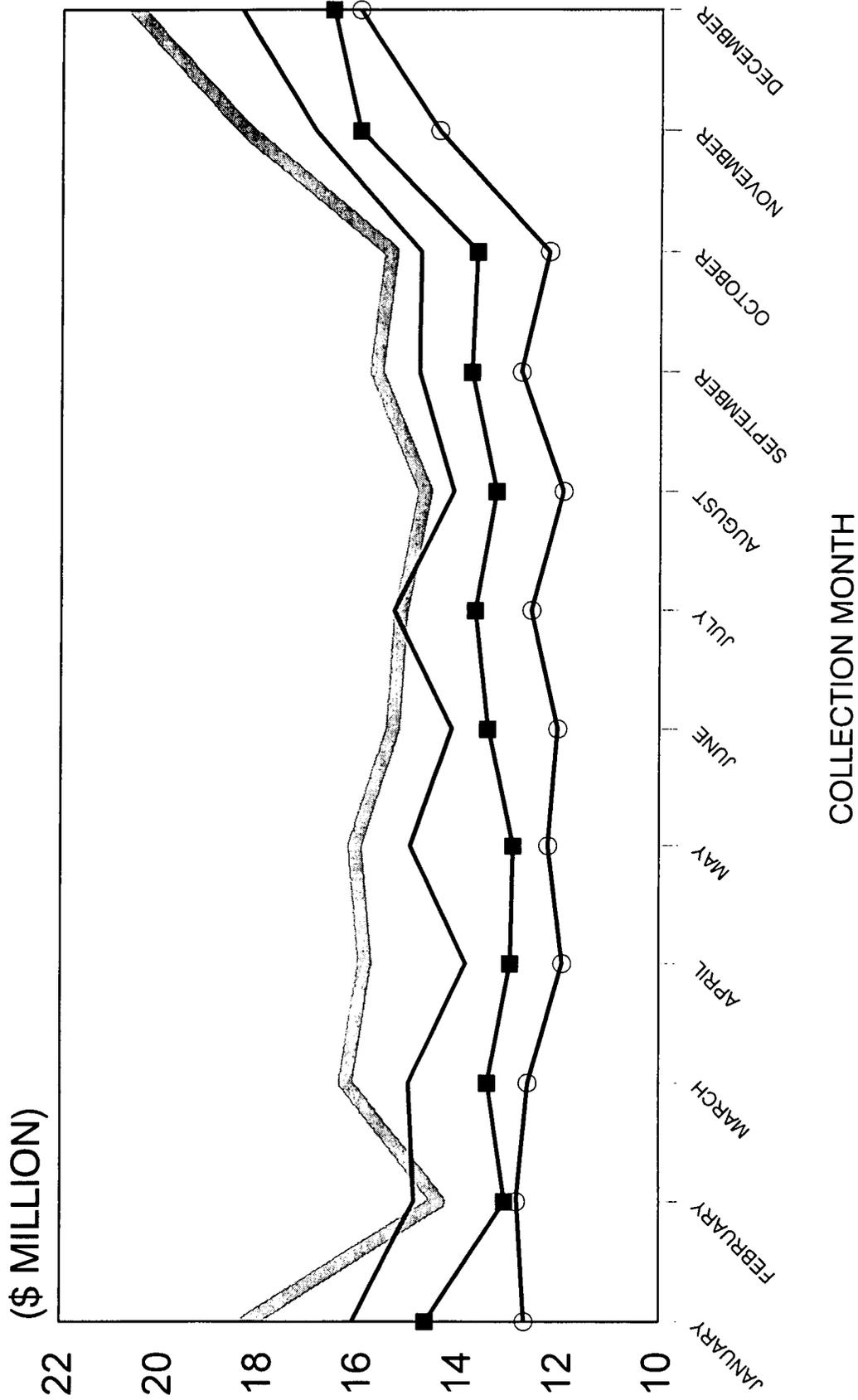
FISCAL YEAR ENDING JUNE 30

□ ESTIMATED ■ ACTUAL

* THROUGH DECEMBER

** CONSENSUS ESTIMATE BETWEEN STATE BUDGET OFFICE AND FISCAL RESEARCH DIVISION

WITHHOLDING TAX COLLECTIONS FROM LARGE EMPLOYERS AMOUNT COLLECTED PER DAY

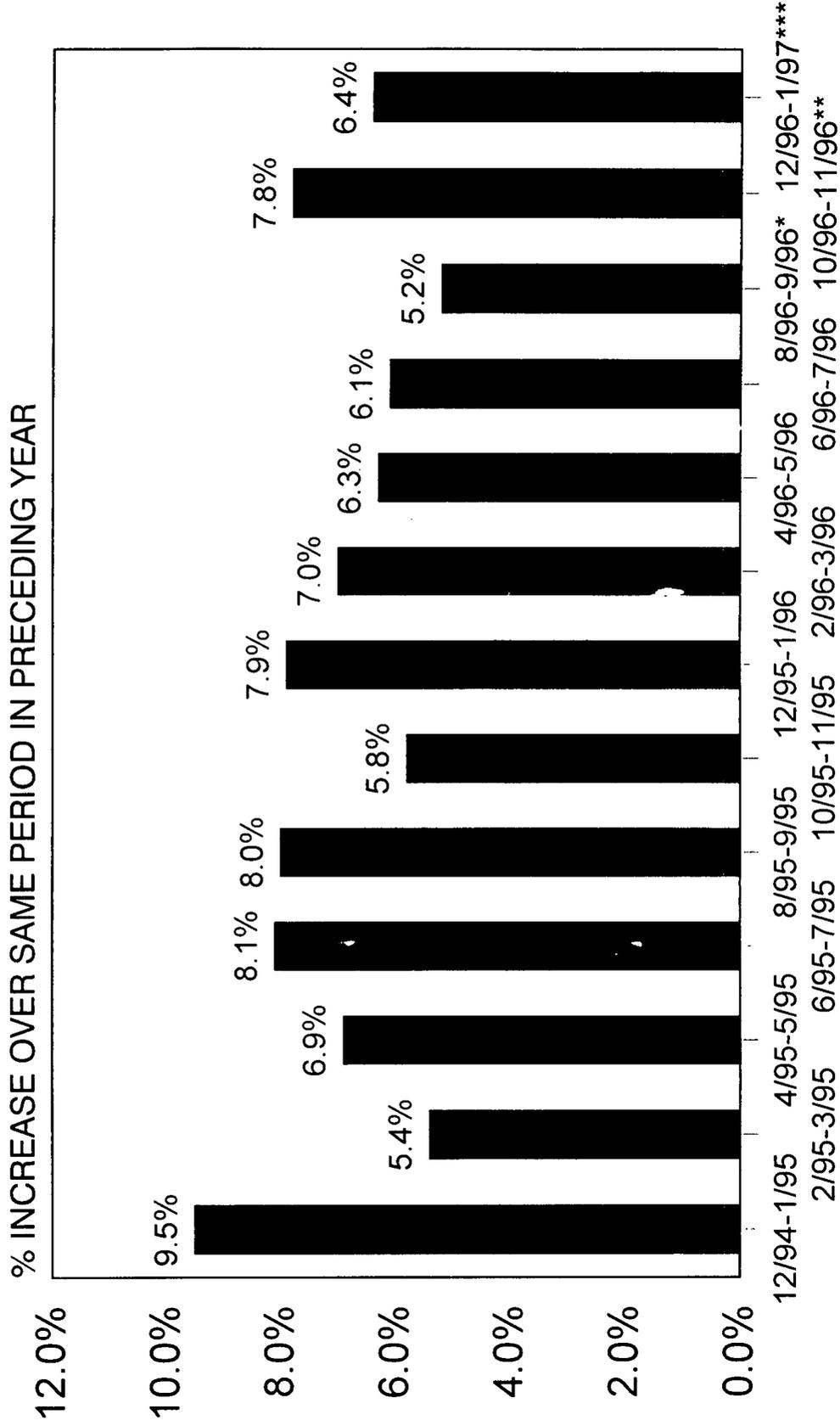


COLLECTION MONTH

○ 1993
■ 1994
— 1995
▨ 1996

NOTE: LOWER GROWTH FOR 1996 DUE TO 1995 INCOME TAX CUT

RECENT STATE SALES TAX COLLECTIONS HAVE BEEN AFFECTED BY HURRICANE FRAN



* SEPTEMBER COLLECTIONS AFFECTED BY HURRICANE FRAN
 ** AFFECTED BY HURRICANE FRAN RE-BUILDING
 *** DECEMBER ONLY

MAJOR 1995 AND 1996 SESSION TAX CHANGES*

GENERAL FUND (\$ MILLIONS)

1995 Session

<u>Item</u>	<u>96-97</u>	<u>97-98</u>	<u>98-99</u>	<u>99-00</u>	<u>00-01</u>
Income Tax Cut: (Personal Exemp., Kids' Credit).	(244.1)	(251.4)	(259.0)	(266.7)	(274.0)
Intangibles Tax Repeal (1)	(124.5)	(124.6)	(124.7)	(124.8)	(124.9)
25% Soft Drink Tax Rate Cut.	(9.8)	(10.1)	(10.5)	(11.2)	(11.6)
Other Revenue Changes (Net Impact)	1.5	2.8	3.7	3.6	3.6
Total - 1995 Tax Changes	(376.9)	(383.3)	(390.5)	(399.1)	(406.9)

1996 Session

<u>Item</u>	<u>96-97</u>	<u>97-98</u>	<u>98-99</u>	<u>99-00</u>	<u>00-01</u>
Food Tax Reduction from 4% to 3%	(36.7)	(87.0)	(89.6)	(92.2)	(95.1)
Corporate Rate Reduction from 7.75% to 6.9% over 4 years	(14.2)	(46.2)	(79.0)	(103.2)	(110.2)
Incentive Credits:					
General Investment Tax Credit (4.5%, \$100,000 cap)	(2.2)	(6.8)	(11.7)	(16.9)	(22.3)
Targeted Investment Tax Credit (7%, threshold)		(3.1)	(9.2)	(18.4)	(30.7)
Jobs Credit Expansion (range \$12,500 to \$500)		(0.7)	(2.3)	(4.5)	(7.5)
Research & Development Tax Credit		(8.1)	(8.6)	(9.1)	(9.6)
Worker Training Tax Credit		(0.5)	(1.2)	(1.7)	(2.2)
Soft Drink Tax Phase-out Over 3 Years	-	(9.9)	(20.4)	(31.8)	(32.8)
Sales Tax on Bundled Transactions	(6.7)	(6.7)	(6.7)	(6.7)	(6.7)
Inheritance Tax Reform (Class A, QTIP, Installment Pay)		(3.5)	(3.8)	(4.1)	(4.4)
2.75% Nonitemizer Credit above 2% AGI		(4.9)	(5.0)	(5.0)	(5.1)
Severance Pay Exemption (\$35,000 cap)	(3.6)	(3.8)	(4.0)	(4.3)	(4.5)
Manufacturing Energy Tax Reduction From 3% to 2.83%	(5.0)	(5.3)	(5.6)	(6.0)	(6.3)
Other Revenue Changes (Net Impact)	24.0	2.8	1.4	3.7	4.2
Total - 1996 Tax Changes	(44.4)	(183.7)	(245.7)	(300.2)	(333.2)
Total - 1995 and 1996 Tax Cuts	(421.3)	(567.0)	(636.2)	(699.3)	(740.1)

(1) Represents cost to General Fund. The amount of actual relief to taxpayers is \$162 million for 1996-97.

**ANNUAL DEBT SERVICE REQUIREMENTS
\$1.8 BILLION SCHOOL BOND ISSUE
(\$ MILLION)**

Fiscal Year	Principal	Interest	Total Debt Service
1997-1998	\$8.0	\$24.8	\$32.8
1998-1999	24.0	55.8	79.8
1999-2000	42.5	85.8	128.3
2000-2001	62.5	114.4	176.9
2001-2002	65.0	110.2	175.2
2002-2003	79.5	105.8	185.3
2003-2004	79.5	100.6	180.1
2004-2005	80.0	95.5	175.5
2005-2006	80.0	90.2	170.2
2006-2007	80.0	85.1	165.1
2007-2008	84.5	79.9	164.4
2008-2009	91.0	74.4	165.4
2009-2010	98.5	68.5	167.0
2010-2011	98.5	62.1	160.6
2011-2012	98.5	55.7	154.2
2012-2013	106.0	49.3	155.3
2013-2014	126.5	42.4	168.9
2014-2015	126.5	34.0	160.5
2015-2016	132.5	25.6	158.1
2016-2017	140.5	16.6	157.1
2017-2018	82.5	6.7	89.2
2018-2019	13.5	1.0	14.5
Total	\$1,800.0	\$1,384.2	\$3,184.2

Note: Analysis assumes \$450 million of bonds are sold on March 1 of each year, beginning in 1997 and that the average interest rate is 7% (5.5% on 1997 bonds

BUDGET AVAILABILITY CONCLUSIONS

- ✓ REVENUE ESTIMATES: CONSENSUS BETWEEN STATE BUDGET OFFICE AND FISCAL RESEARCH ON CURRENT-YEAR ESTIMATES AND NEXT 4 YEARS (ROUGHLY 6% REVENUE GROWTH, PRIOR TO IMPACT OF TAX CUTS)
- ✓ BOTH OFFICES AGREE THAT STARTING POINT IN ANALYZING 1997-98 RECURRING BUDGET AVAILABILITY IS \$125 - \$225 MILLION. GUBERNATORIAL RECOMMENDATIONS MADE PUBLIC HAVE PUSHED NUMBER UP TO \$464 MILLION. ADDITIONAL ADJUSTMENTS WILL BE NEEDED IF GOVERNOR IS TO FUND HIS INITIATIVES
- ✓ NONRECURRING AVAILABILITY (CAPITAL PROJECTS, ONE-TIME BONUSES, ETC.) IS \$135 - \$225 MILLION, DEPENDING ON HOW 1996-97 BUDGET ITEMS ARE TREATED

SENATE FINANCE COMMITTEE
(Joint Meeting with Senate Appropriations and House Finance and Appropriations)

WEDNESDAY, FEBRUARY 12, 1997

8:30 A.M. - ROOM 643 LOB

The Senate Finance Committee met jointly with the Senate Appropriations, the House Finance and House Appropriations on Wednesday, February 12, 1997, at 8:30 A.M. in Room 643. Representative Holmes, House Appropriations Chairman, presided over the meeting and introduced his Co-Chairs: Representative Crawford, Representative Creech and Representative Esposito. Senator Plyler, Chairman of Senate Appropriations, was recognized and introduced Senator Odom and Senator Perdue, Representative Holmes also introduced Senator Kerr and Senator Hoyle as Senate Finance Chairs and introduced Representative Gray, Representative Dickson, Representative Brawley and Representative Wilson as House Finance Chairs.

Dave Crotts, Fiscal Research, was recognized and give a General Fund Revenue Estimate Summary. Copy included with the minutes. He told the committees that while North Carolina is not achieving the growth rate in the 90's that it did in the 80's that it is very stable and the population growth is exceeding expectations.

Marvin Dorman, State Budget Officer in the Office of Budget and Management, was recognized for remarks. Included in the minutes is the information he furnished the committee members concerning the budget recommendations. At the conclusion of his presentation, Mr. Dorman answered questions from the members. There was not enough time to answer all the questions and at the request of Representative Esposito, Mr. Dorman agreed to return 15 minutes after session to answer additional questions from the committee members.

Meeting adjourned.

David W. Hoyle, Co-Chair
Senate Finance Committee

John H. Kerr, III, Co-Chair
Senate Finance Committee

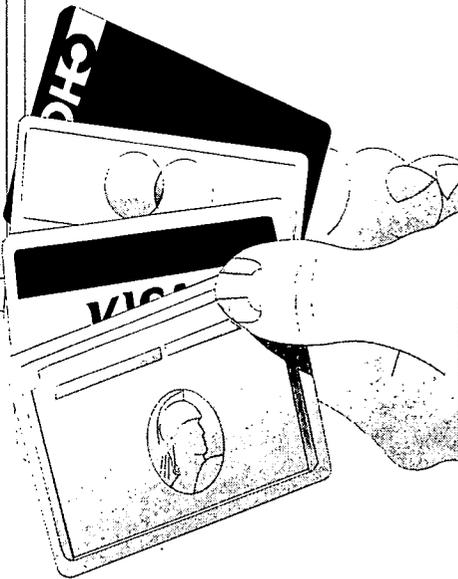
Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

ECONOMIC OUTLOOK AND GENERAL FUND REVENUE ESTIMATES

PAY TO THE ORDER OF _____ 19 _____ \$ _____ DOLLARS

FOR _____

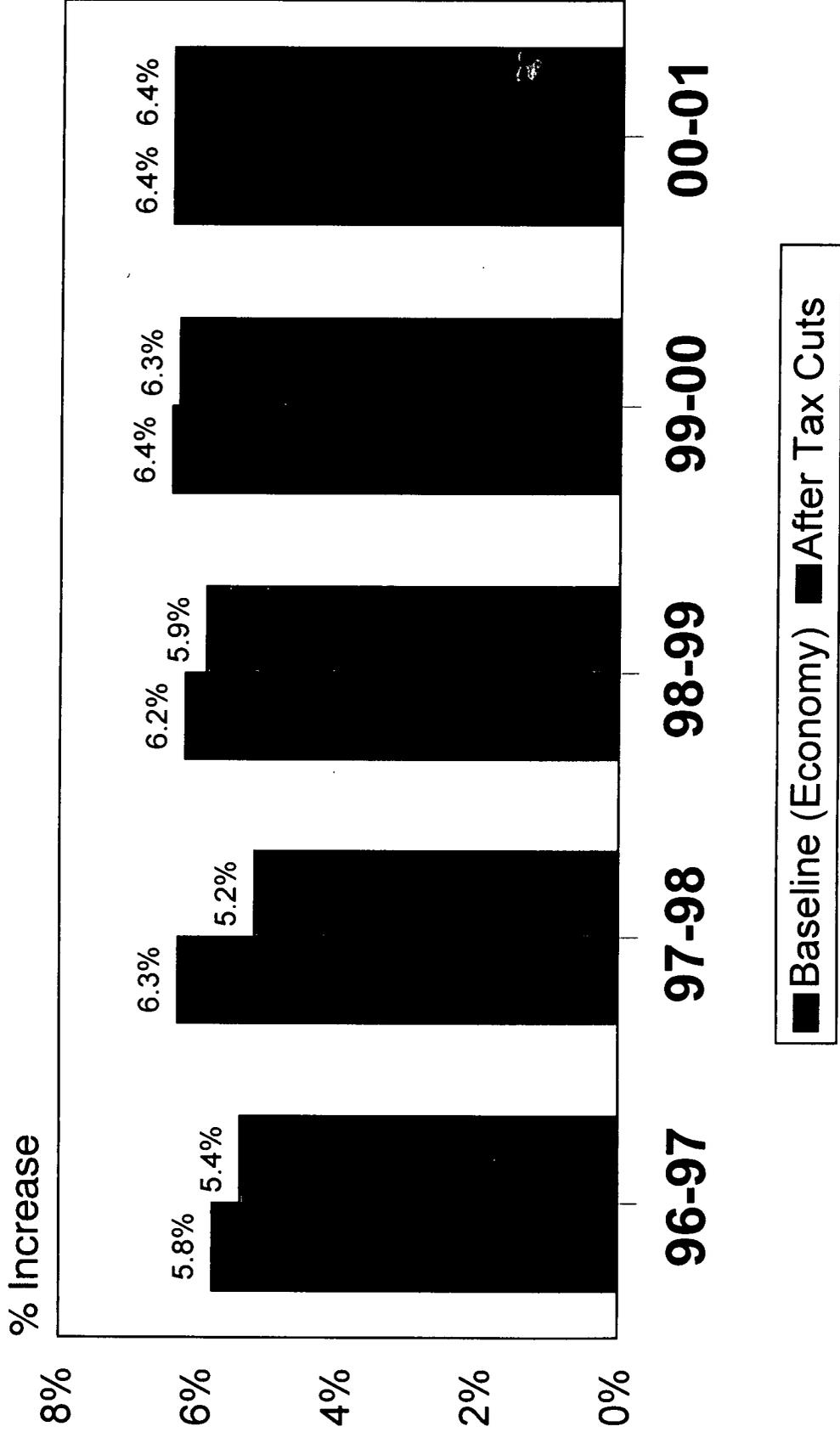


FISCAL RESEARCH DIVISION
FEBRUARY 12, 1997

GENERAL FUND REVENUE ESTIMATE SUMMARY

- ✓ ESTIMATES OF TOTAL REVENUES FOR 1996-97 THROUGH 2002-03 REFLECT CONSENSUS BETWEEN OFFICE OF STATE BUDGET AND MANAGEMENT AND FISCAL RESEARCH DIVISION.
- ✓ THE SINGLE-NUMBER ESTIMATE OF TOTAL REVENUE (AND ASSOCIATED GROWTH RATE) IS THE SUMMATION OF 51 SEPARATE ESTIMATES TAX AND NON-TAX REVENUE SOURCES. FOR TOTAL REVENUES (INCLUDING HIGHWAY TRANSFERS), THE GROWTH RATES ARE SHOWN ON THE NEXT PAGE AND ON PAGE 13 OF GOVERNOR'S BUDGET SUMMARY.
- ✓ THE KEY ECONOMIC ASSUMPTION USED TO FORECAST MAJOR TAX SOURCES IS STATE PERSONAL INCOME (INCOME FROM ALL SOURCES FOR NORTH CAROLINA RESIDENTS). THIS NUMBER INCLUDES INFLATION. FOR 1992-93 THROUGH 1996-97 THE AVERAGE RATE OF GROWTH IN THIS MEASURE WAS 6.7%. FOR 1997-98, THE CONSENSUS ESTIMATE IS 6.0%. FOR 1998-99, THE CONSENSUS ESTIMATE IS 6.2%. THESE GROWTH RATES ARE ABOUT 20% FASTER THAN THE NATIONAL FORECAST. THIS IS IN LINE WITH THE AVERAGE SINCE THE EARLY 1980'S.
- ✓ EXPRESSED ANOTHER WAY, THE MAINSTREAM NATIONAL ECONOMIC GROWTH FORECAST IS FOR 2.0 - 2.3% REAL ECONOMIC GROWTH AND 3% INFLATION. TO GET TO THE NORTH CAROLINA NUMBER WE ADD 1% ADDITIONAL REAL ECONOMIC GROWTH.
- ✓ THE GOVERNOR'S BUDGET SUMMARY LISTS A NUMBER OF KEY STATE AND NATIONAL ECONOMIC ASSUMPTIONS ON PAGE 9 OF THAT SUMMARY.

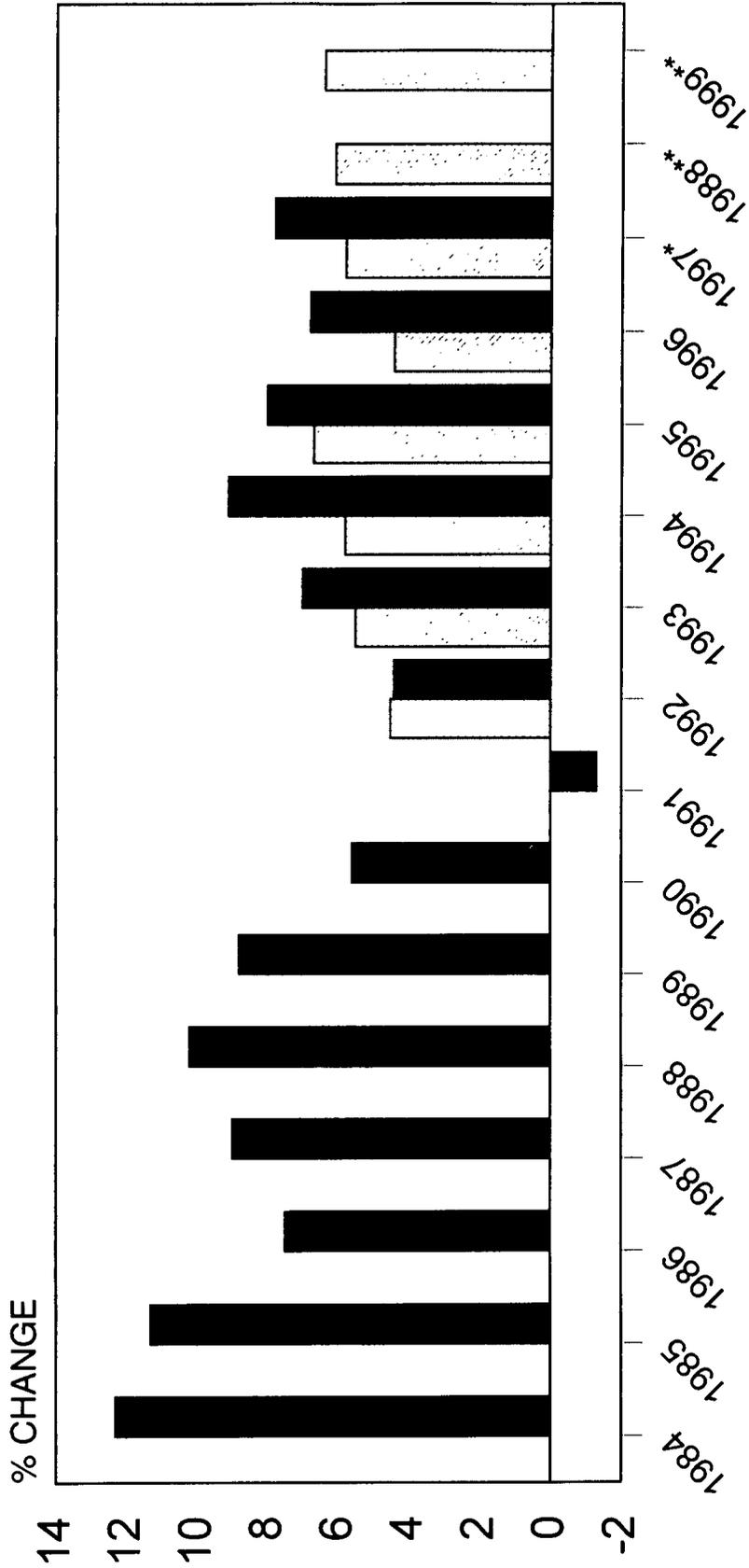
GENERAL FUND REVENUE GROWTH RATES*



* INCLUDING HIGHWAY FUND AND HIGHWAY TRUST FUND TRANSFERS

GENERAL FUND TAX COLLECTION GROWTH

Adjusted for Tax Law and Other Changes

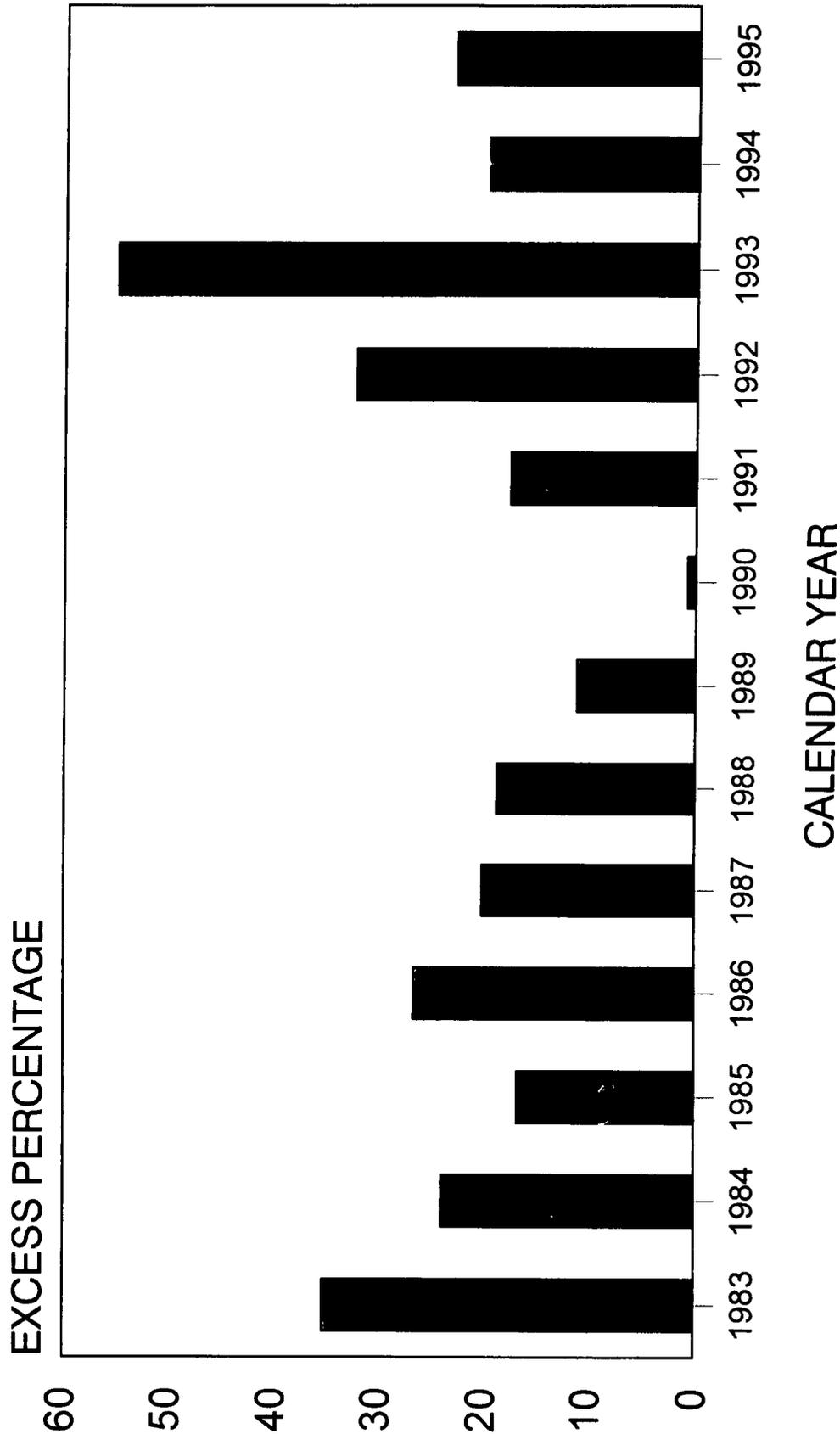


FISCAL YEAR ENDING JUNE 30

□ ESTIMATED ■ ACTUAL

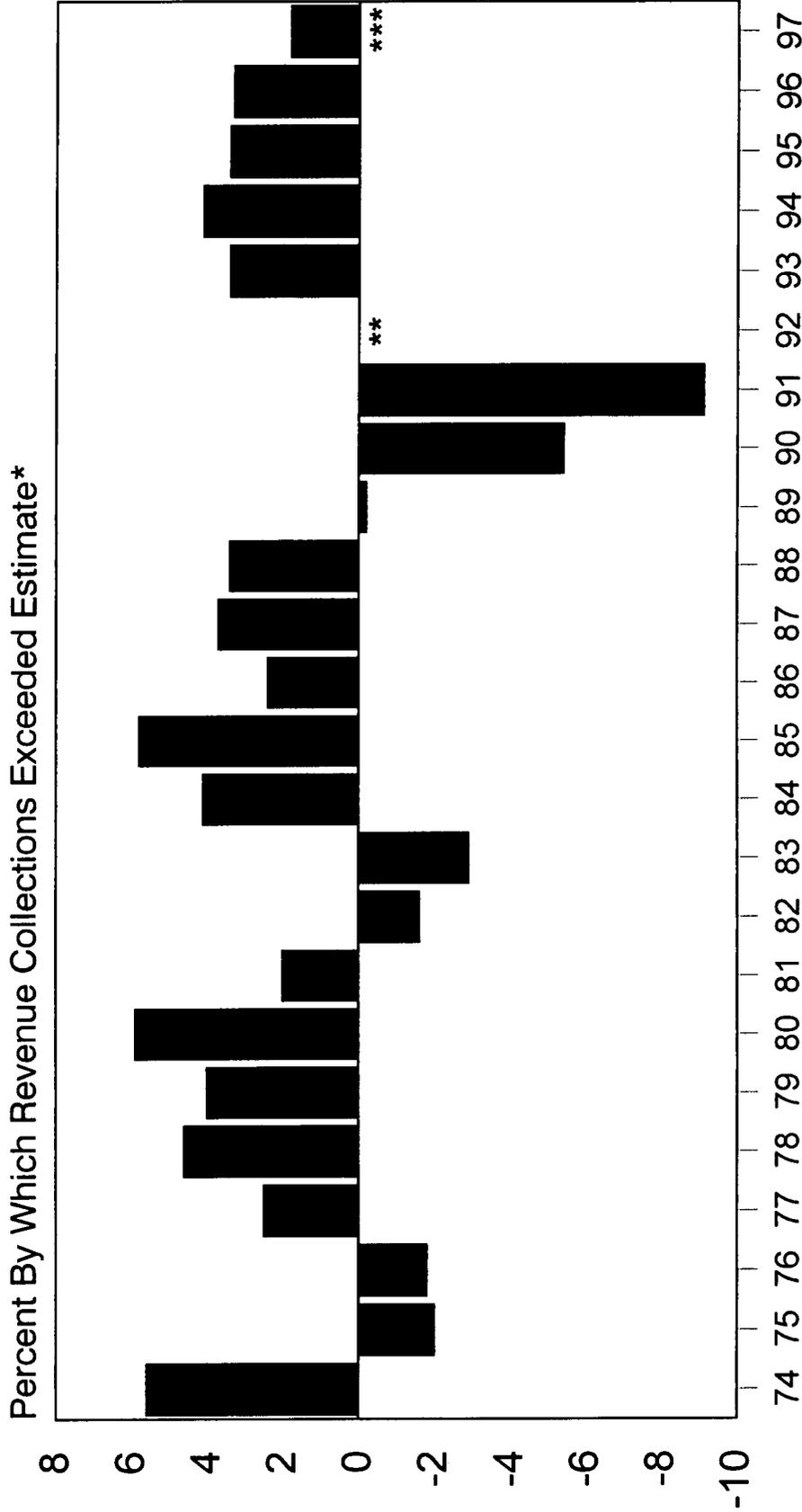
* THROUGH JANUARY (INCLUDED SURGE IN ESTIMATED TAX PAYMENTS UNDER PERSONAL INCOME TAX)
 ** CONSENSUS ESTIMATE BETWEEN STATE BUDGET OFFICE AND FISCAL RESEARCH DIVISION

PERCENT BY WHICH NORTH CAROLINA PERSONAL INCOME GROWTH RATE EXCEEDED U.S.*



* CALCULATION BASED ON NOMINAL DOLLARS (INCLUDING INFLATION)

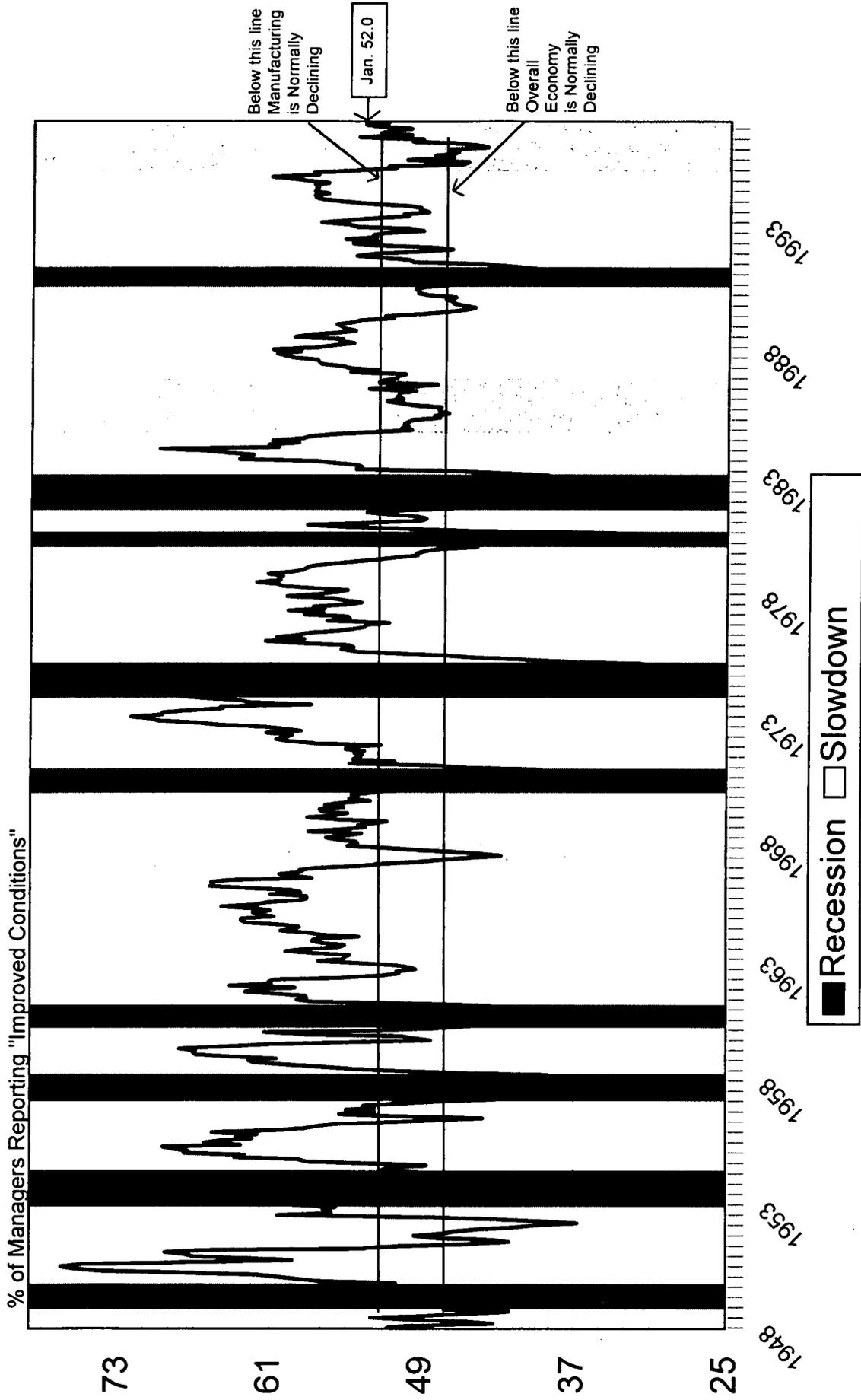
**THE USE OF CONSERVATIVE REVENUE ESTIMATES FOR THE LAST SIX YEARS
HAS RE-ESTABLISHED THE FAVORABLE TRACK RECORD
PRIOR TO THE 1989-91 BIENNIUM**



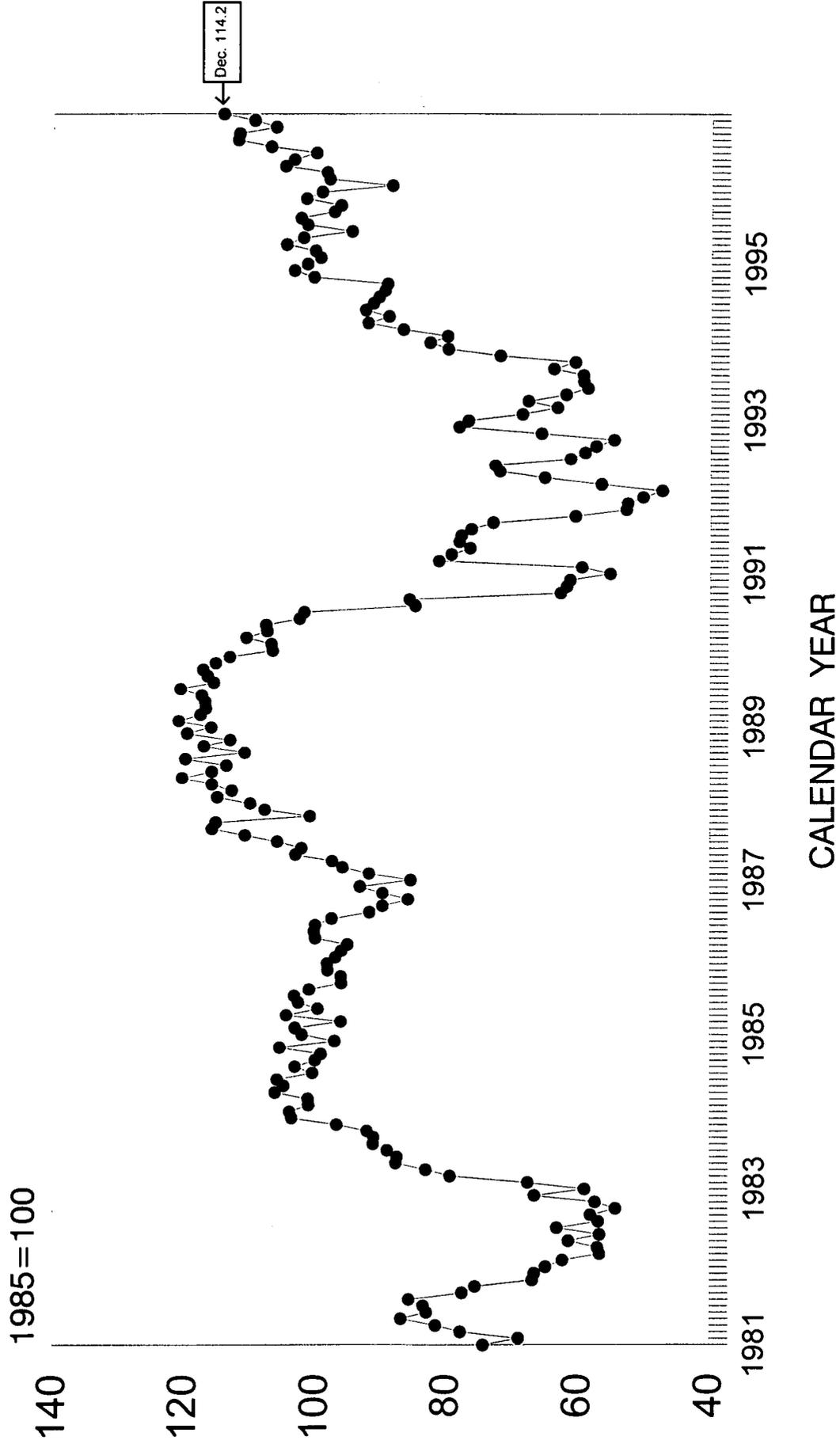
Fiscal Year Ending June 30

* General Fund Revenues
 ** Actual Collections Were Within .1% of Target
 *** Estimated, based on experience through January/

THE MONTHLY SURVEY OF THE NATION'S PURCHASING MANAGERS HAS HISTORICALLY BEEN A GOOD ECONOMIC INDICATOR

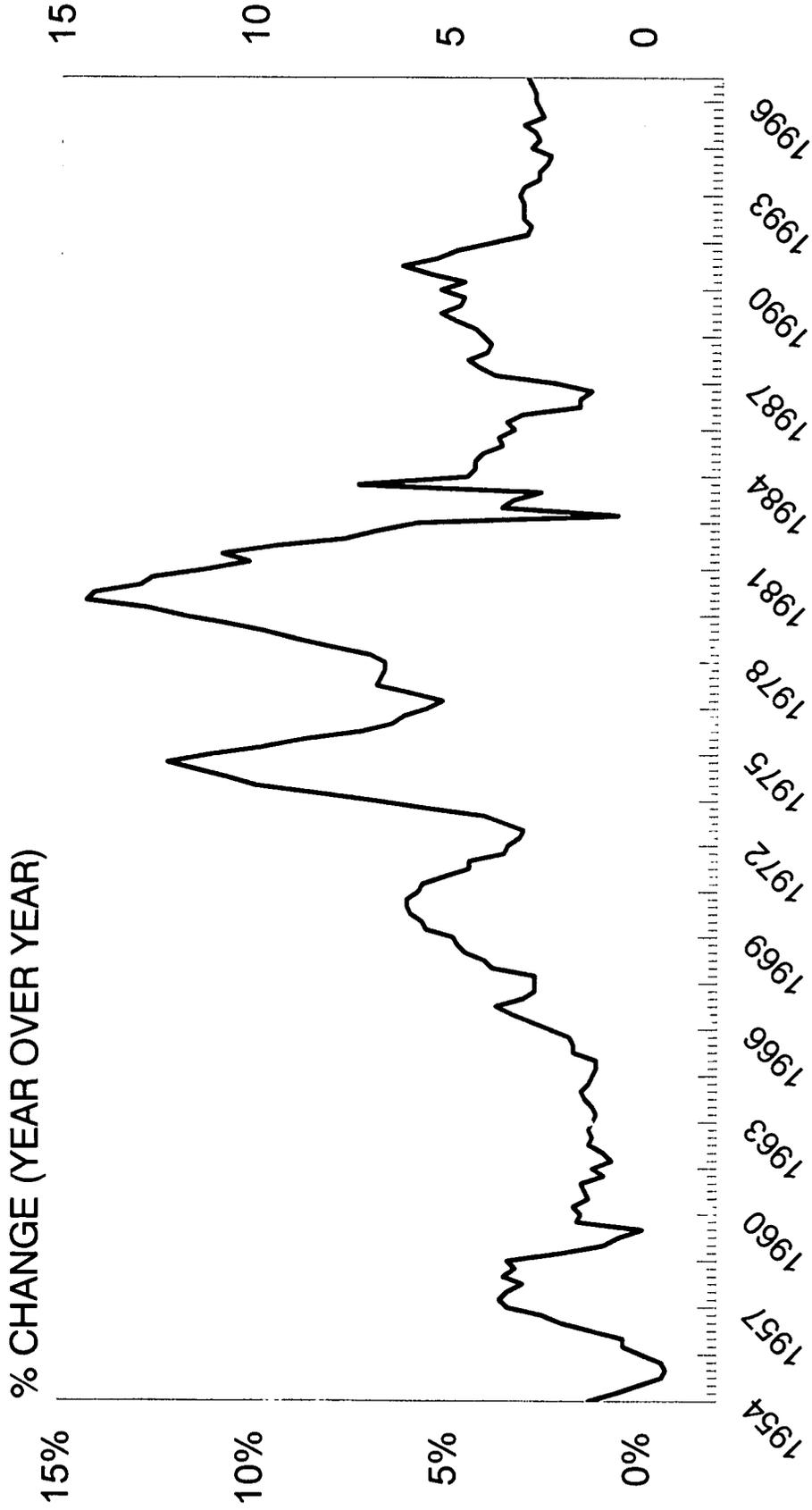


THE NATION'S CONSUMER CONFIDENCE IS STRONGEST SINCE 1989



Source: Conference Board

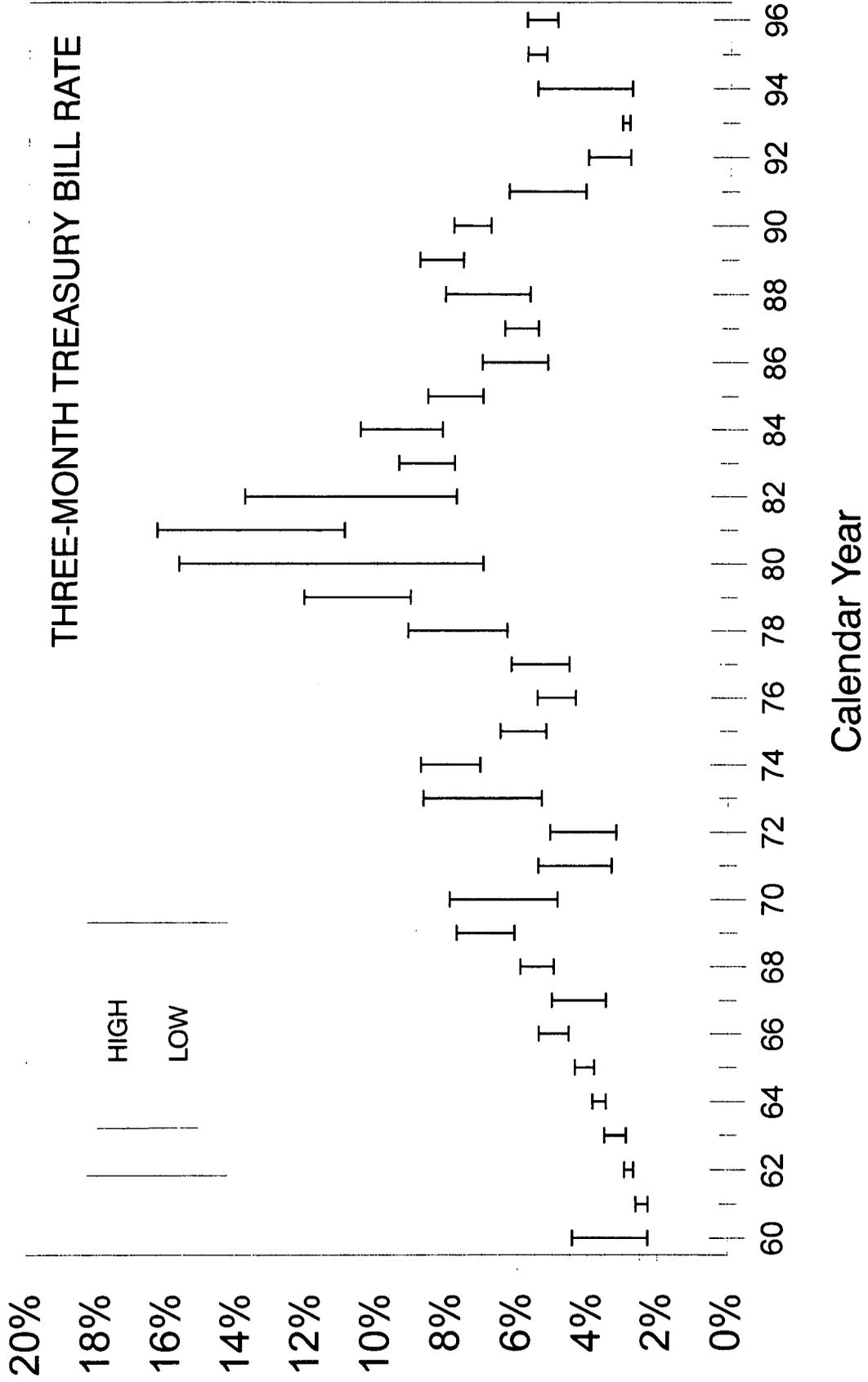
INFLATION AS MEASURED BY CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS



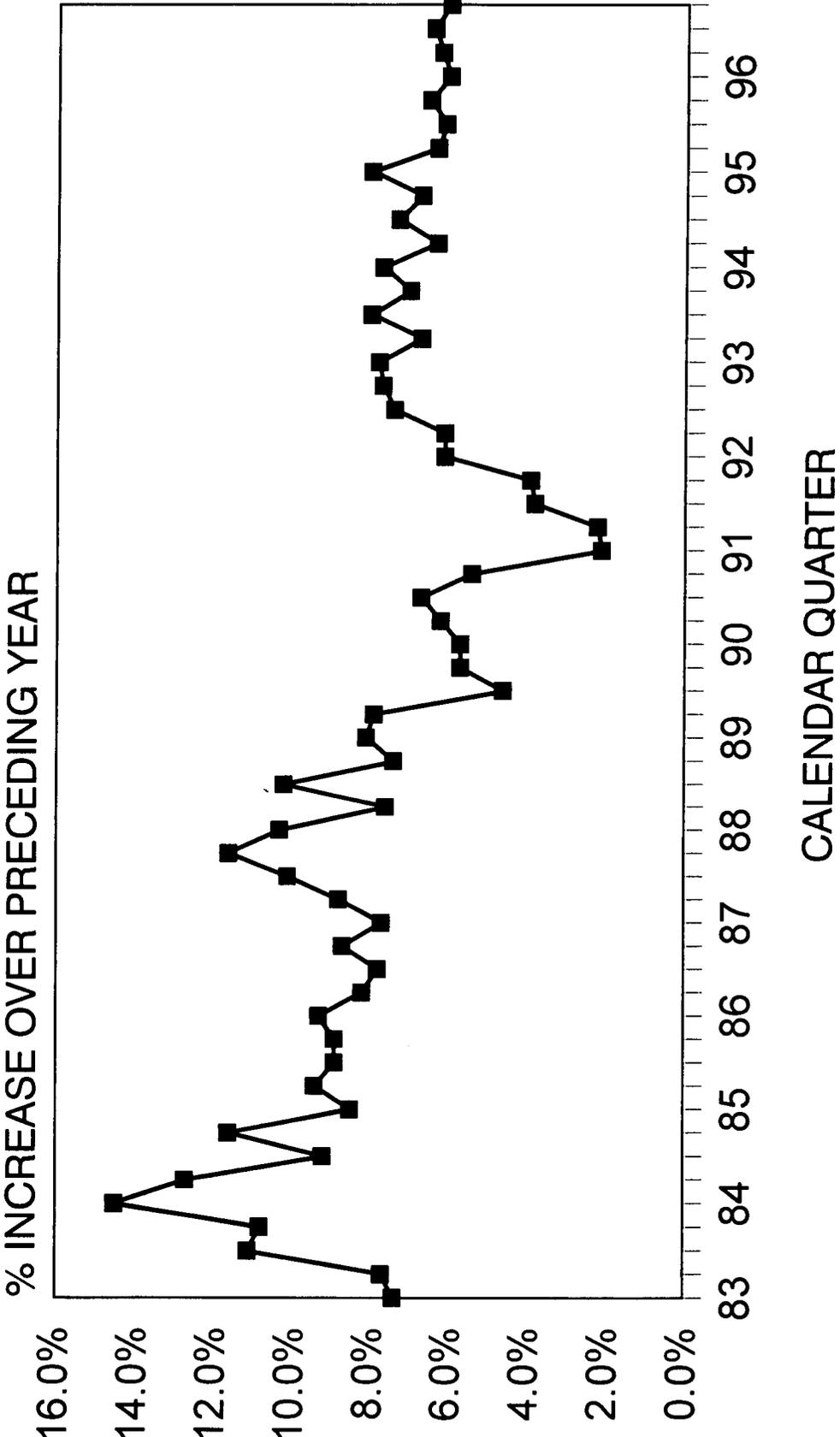
CALENDAR YEAR

SHORT-TERM INTEREST RATES

THREE-MONTH TREASURY BILL RATE

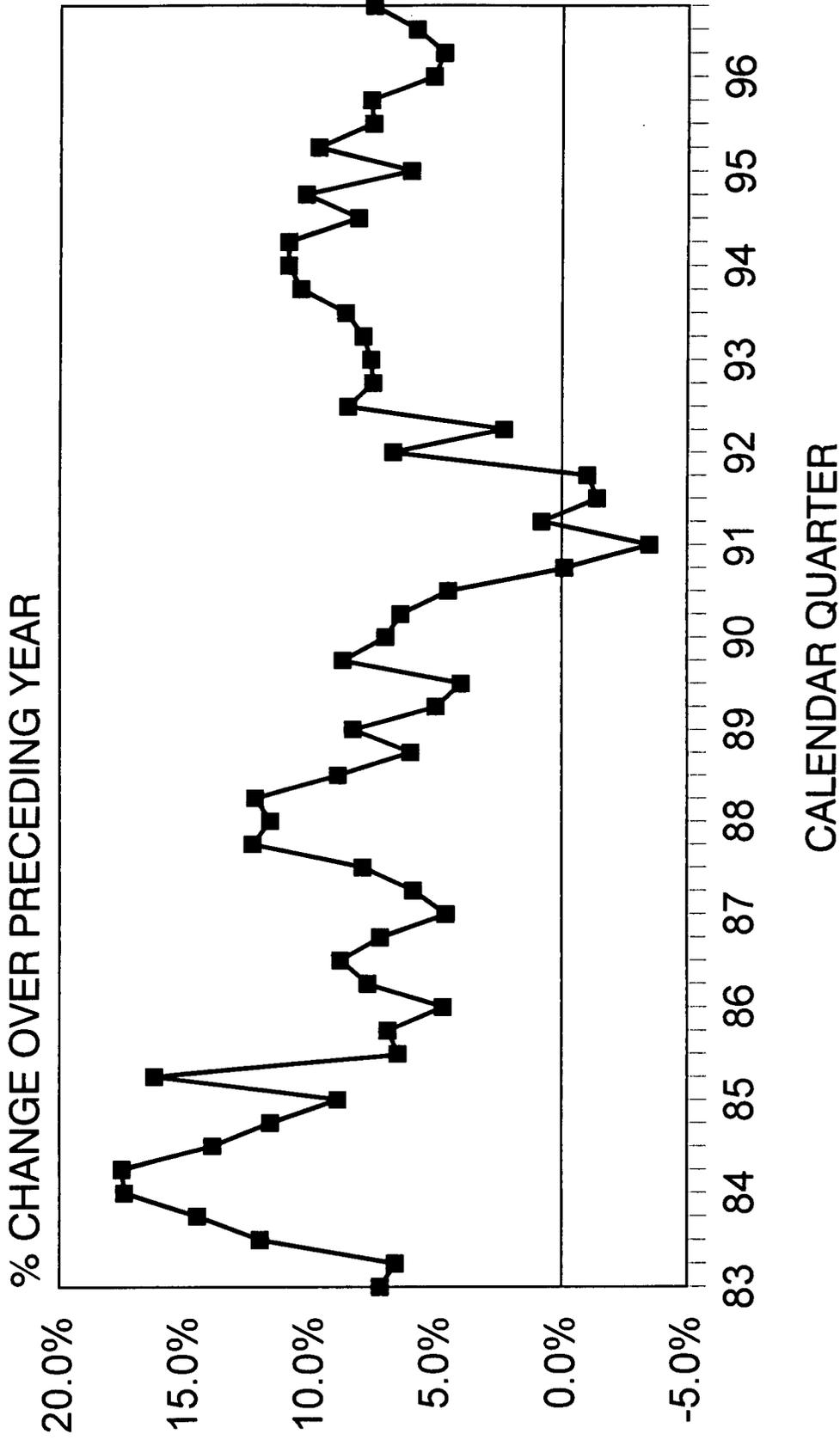


WAGE & SALARY PAYMENT GROWTH IN NORTH CAROLINA HAS BEEN UNUSUALLY STEADY FOR ALMOST 4 YEARS



Note: Data for fourth quarter of 1996 is estimated, based on withholding tax receipts.

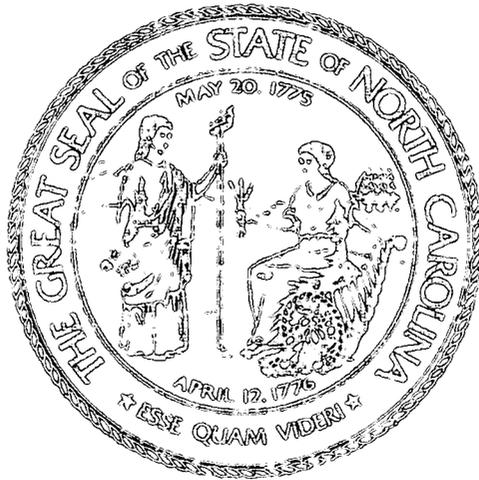
SALES TAX RECEIPTS HAVE BEEN RELATIVELY STABLE FOR OVER 4 YEARS



Note: Data reflects gross tax collections prior to refunds.

1997-99

The North Carolina State Budget Summary of Recommendations



A handwritten signature in black ink, appearing to read "J. B. Hunt, Jr.", is positioned below the seal.

James B. Hunt, Jr.

Governor

Summary Volume

SENATE FINANCE COMMITTEE

WEDNESDAY, FEBRUARY 12, 1997

12 NOON - ROOM 544 LOB

The Senate Finance Committee met on Wednesday, February 12, 1997, for the first regular meeting of the session. There were 21 committee members present. Senator Kerr presided and introduced Senator Hoyle as the new co-chair. Senator Kerr and Senator Hoyle welcomed the members and thanked them for agreeing to serve on the Finance Committee. Senator Kerr introduced his clerk, Evelyn Hartsell, and Senator Hoyle introduced Penny Williams, his clerk. List of committee members is included in the minutes.

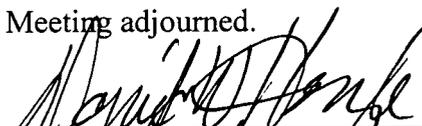
Senator Kerr asked the committee members to introduce themselves and give brief remarks. Upon the completion of these introductions, Senator Kerr introduced the following staff members:

David Crotts - Fiscal Research
Richard Bostic - Fiscal Research
Warren Plonk - Fiscal Research
Sabra Faires - Fiscal Research
Cindy Avrette - Research
Martha Harris - Bill Drafting

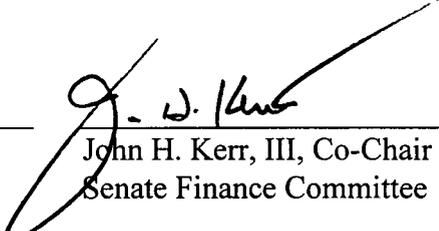
Senator Hoyle introduced intern, Kristin Crosson, who will be working with the Finance Committee and Senator Bob Shaw introduced his intern, Kelly Gruber. Representative Gray, House Finance Chairman, was also recognized

Sabra Faires was recognized to give an overview of some of the issues that the Finance Committee would be handling this year and copies of the information furnished to the committee are included in the minutes. At the conclusion of her presentation, Ms. Faires answered questions from the committee.

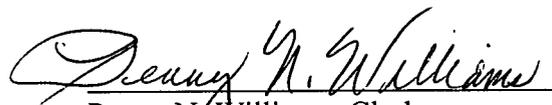
Meeting adjourned.



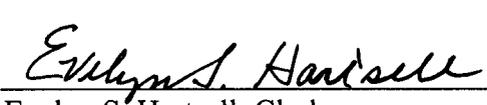
David W. Hoyle, Co-Chair
Senate Finance Committee



John H. Kerr, III, Co-Chair
Senate Finance Committee



Penny N. Williams, Clerk



Evelyn S. Hartsell, Clerk

NOTE:

Visitors' Sign Up Sheet is Attachment # 1

SENATE FINANCE COMMITTEE MEMBERS

John H. Kerr, III, Chair
David W. Hoyle, Chair

J. Richard Conder, Vice Chair
Roy A. Cooper, III, Vice Chair
Robert G. Shaw, Vice Chair
R. C. Soles, Jr., Vice Chair

Austin M. Allran, Ranking Minority Member

Charles W. Albertson
Patrick J. Ballantine
John M. Blust
John H. Carrington
Betsy Cochrane
Walter H. Dalton
Charlie S. Dannelly
Virginia Foxx
Wib Gulley
Fletcher L. Hartsell, Jr.
Howard N. Lee
J. Mark McDaniel
Beverly M. Perdue
Jim W. Phillips, Sr.
Anthony E. Rand
Eric Miller Reeves
Larry Shaw
Hugh Webster
David F. Weinstein
Allen H. Wellsons
Leslie Winner

Intangibles Tax Lawsuit -- Fulton

On February 10, 1997, the North Carolina Supreme Court ruled that the part of the intangibles tax statute that the United States Supreme Court held unconstitutional on February 21, 1996, should be severed and that the severance applies retroactively. The Court's opinion makes it possible for holders of North Carolina stock to be assessed by the Department of Revenue for tax due on the value of stock that was excluded from tax because of the unconstitutional deduction. Taxes can be assessed for three back tax years for those who filed a return and for an indefinite period for those who did not file.

No taxpayer who took the invalid deduction is liable for any back tax until the tax is assessed. If the Governor decides to assess the tax, the General Assembly can enact a law that forgives the payment of the tax. The case therefore requires no action by the General Assembly. If the executive branch assesses the back taxes, the General Assembly can forgive the payment of the assessed taxes.

The Fulton court case is not over. It has been remanded to the Court of Appeals. From that decision, it will likely be appealed further.

Prior to 1995, North Carolina levied an intangibles tax of 25¢ per \$100 market value of stock and shares in mutual funds. The stock tax statute exempted a proportion of corporate stock equal to the percentage of the corporation's business that was conducted in North Carolina. Thus, stock of a corporation that did 55% of its business in North Carolina was 55% exempt from the intangibles tax. This exemption was known as the "taxable percentage" deduction.

The North Carolina Court of Appeals ruled in June 1993 that the taxable percentage deduction violated the Commerce Clause of the federal constitution. The North Carolina Supreme Court overturned this ruling on December 9, 1994, holding that the taxable percentage deduction was not unconstitutional. The United States Supreme Court reversed the North Carolina Supreme Court on February 21, 1996, when it held the tax unconstitutional on the basis of the taxable percentage deduction.

The General Assembly repealed the intangibles tax on stock, bonds, mutual funds, and accounts receivable effective for the 1995 tax year. Since the repeal was not retroactive, it did not affect the 1991 through 1994 tax years. The United States Supreme Court returned the case to the North Carolina Supreme Court to determine the proper remedy. The United States Supreme Court noted that the State might refund the additional taxes imposed upon the taxpayers who did not receive the benefit of the taxable percentage deduction or it could retroactively impose equal burdens on the tax's former beneficiaries.

The State argued that the intangibles tax statute should be declared unconstitutional and that full refunds, including interest, should be made in accordance with G.S. 105-267 to all taxpayers who filed a timely protest or demand for refund within 30 days after paying the tax. This course of action would have cost about \$155 million in General Fund revenue. The Court, however, eliminated only the taxable percentage deduction, thus expanding the scope of the tax to include all stock in North Carolina companies. This expansion applies to publicly traded shares of stock as well as shares of stock in closely held corporations that have never before been subject to the intangibles tax on stock.

2/13/97

[Link to original WordPerfect file](#)

[How to access the above link?](#)

IN THE SUPREME COURT OF NORTH CAROLINA

No. 305A93-2

Filed: 10 February 1997

FULTON CORPORATION

v.

JANICE H. FAULKNER, SECRETARY OF REVENUE

On remand from the Supreme Court of the United States. Heard in the Supreme Court 9 September 1996.

In this action, the plaintiff has challenged the intangibles tax formerly imposed by N.C.G.S. § 105-203 on the ground it violates the Commerce Clause of the Constitution of the United States. N.C.G.S. § 105-203 provided for an annual tax of \$0.25 on each \$100.00 of the fair market value of all shares of stock on 31 December of each year. The section provided for a reduction of this tax in proportion to the issuing company's income taxed in North Carolina. It is this reduction which the plaintiff says violates the Commerce Clause.

The superior court allowed a motion for summary judgment by the defendant, upholding the tax. The Court of Appeals reversed. *Fulton Corp. v. Justus*, 110 N.C. App. 493, 430 S.E.2d 494 (1993). It did not order a refund, however, but severed the offending part of N.C.G.S. § 105-203 and ordered that the intangibles tax be paid without any reduction for income taxes paid to the State.

This Court reversed the Court of Appeals. *Fulton Corp. v. Justus*, 338 N.C. 472, 450 S.E.2d 728 (1994). We held that the reduction in the intangibles tax did not offend the Commerce Clause. On 18 April 1995, the General Assembly repealed the intangibles tax in its entirety effective 1 January 1995. Act of April 18, 1995, ch. 41, sec. 1(b), 1995 N.C. Sess. Laws 84. The legislation also provided that the repeal

does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal.

Id. sec. 11, 1995 N.C. Sess. Laws at 88.

The Supreme Court of the United States reversed this Court. *Fulton Corp. v. Faulkner*, ___ U.S. ___, 133 L. Ed. 2d 796 (1996). It held that the reduction violated the Commerce Clause and remanded the case to this Court to fashion a remedy.

We ordered that the parties "brief the question of why, in light of the decision of the Supreme Court of

the United States in this case, this Court should not affirm the decision of the North Carolina Court of Appeals."

Womble Carlyle Sandridge & Rice, PLLC, by Jasper L. Cummings, Jr., for plaintiff-appellee.

Michael F. Easley, Attorney General, by Andrew A. Vanore, Jr., Chief Deputy Attorney General, Edwin M. Speas, Jr., Senior Deputy Attorney General, Thomas F. Moffitt, Special Deputy Attorney General, and Marilyn R. Mudge, Assistant Attorney General, for defendant-appellant.

Womble Carlyle Sandridge & Rice, PLLC, by G. Eugene Boyce, of counsel, amicus curiae.

WEBB, Justice.

This case brings to the Court the question of the remedy to be applied after a portion of the intangibles tax statute has been declared unconstitutional. The Court of Appeals held that the part of the statute which was unconstitutional should be severed and that the balance of the statute should be enforced. This would leave the intangibles tax to be enforced without any reduction for income taxes paid to this State. We believe the Court of Appeals was correct in this holding.

In determining whether an unconstitutional part of a statute should be severed and the rest of the statute enforced, we look first at the intention of the General Assembly. If the legislature intended that the constitutional part of the statute be enforced after the other part has been declared unconstitutional, and if the separate parts of the statute are not so interrelated and mutually dependent that one part cannot be enforced without reference to another, the offending part must be severed and the rest of the statute enforced. *Flippin v. Jarrell*, 301 N.C. 108, 117, 270 S.E.2d 482, 488 (1980); *Constantian v. Anson County* 244 N.C. 221, 228, 93 S.E.2d 163, 168 (1956).

The General Assembly has stated its intention. N.C.G.S. § 105-215 provided in part:

If any clause, sentence, paragraph, or part of this Article or schedule shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Article or schedule, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

N.C.G.S. § 105-215 (1992) (repealed 1995). We believe this section shows clearly that the General Assembly intended that if any part of the statute providing for an intangibles tax was declared unconstitutional, that part should be severed from the statute, and the balance of the statute should be enforced.

In this case, the offending portion of the intangibles tax statute and the other parts of the statute were not so interrelated or mutually dependent that the imposition of the tax could not be done without reference to the offending part. The valid part is complete in itself and capable of enforcement.

The plaintiff argues that the United States Supreme Court in this case declared the entire intangibles tax unconstitutional. We do not agree with this interpretation. The Supreme Court noted that the Court of Appeals had addressed the issue of severability and decided that the clause required severance of the taxable percentage deduction. *Fulton v. Faulkner*, ___ U.S. at ___ n.12, 133 L. Ed. 2d at 815 n.12. The Court gave no indication that applying the severability clause in that manner would contravene its holding or that a tax on corporate stock is per se unconstitutional. To the contrary, the Court's language and

reasoning revealed the intangibles tax violated the Commerce Clause because of the discriminatory portion -- the taxable percentage deduction. It gave no reason to believe that absent the discriminatory deduction, the tax would violate the Commerce Clause.

The defendant asserts and the plaintiff agrees that it was the intention of the General Assembly that if the taxable percentage reduction were to be held unconstitutional, it should not be severed from N.C.G.S. § 105-203, and the whole section must fail. They concede that N.C.G.S. § 105-215 provides for the severance of any part of the statute which is declared unconstitutional. They say, relying on *State ex rel. Andrews v. Chateau X, Inc.*, 296 N.C. 251, 259-60, 250 S.E.2d 603, 609 (1979), *judgment vacated on other grounds*, 445 U.S. 947, 63 L. Ed. 2d 782 (1980), and *Sheffield v. Consolidated Foods Corp.*, 302 N.C. 403, 421-22, 276 S.E.2d 422, 434-35 (1981), that the "presence of a severability clause is not conclusive but provides some guidance to the courts as to legislative intent." They say we must look at all relevant parts of the statute to discern legislative intent.

The plaintiff and defendant contend that the General Assembly, since the inception of the intangibles tax, has never intended to tax all stocks and that by severing the unconstitutional part of N.C.G.S. § 105-203, the Court of Appeals has broadened the tax contrary to the legislative will. They argue that the taxable percentage deduction has always been an essential element of the tax and an expression of the legislative intent not to tax all shares of corporate stock. They argue that we should hold all of N.C.G.S. § 105-203 unconstitutional.

We do not agree with the parties' interpretation of *Andrews* and *Sheffield*. *Andrews* involved an action to abate a nuisance. We held that assuming one of the remedies provided in the statute was unconstitutional, it could be severed from the statute and the other remedies enforced. We said that severability depended on the will of the General Assembly. *Andrews*, 296 N.C. at 259-60, 250 S.E.2d at 608-09. We did not say how that will was to be discovered, but simply referred to the portion of the statute which provided for severability. *Sheffield* dealt with disclosures required by the North Carolina Tender Offer Disclosure Act, N.C.G.S. ch. 78B (1977). In that case we held that the Act did not apply to purchases of stock in the open market. The plaintiff argued that because of a severability clause in the statute, the disclosure requirement nevertheless applied. It contended that partial application of the statute was mandated by the severability clause. We held that this was not the intention of the General Assembly. We do not believe *Sheffield* or *Andrews* is authority for the proposition that a severability clause is not conclusive as to the intention of the General Assembly.

Even assuming *arguendo* that the parties are correct, looking beyond the severability clause and at the entire act to determine the will of the General Assembly does not help the plaintiff. The General Assembly has said by the severability clause that the unconstitutional part of the statute should be severed. The parties have made good arguments as to why it should not be severed, but they do not overcome the plain meaning of the statute. We affirm that part of the opinion of the Court of Appeals which holds that the unconstitutional part of N.C.G.S. § 105-203 be severed. *Fulton Corp. v. Justus*, 110 N.C. App. at 504, 430 S.E.2d at 501.

We reverse that part of the opinion of the Court of Appeals which holds that the rule of this case should not be applied retroactively. *Id.* at 504-05, 430 S.E.2d at 501-02. In reaching this result, the Court of Appeals relied on our opinion in *Swanson v. North Carolina*, 329 N.C. 576, 407 S.E.2d 791, *on reh'g*, 330 N.C. 390, 410 S.E.2d 490 (1991). On 18 June 1993, three days after the Court of Appeals decided this case, the United States Supreme Court handed down *Harper v. Virginia Dep't of Educ.*, ___ U.S. ___, 125 L. Ed. 2d 74 (1993). Ten days later, the Supreme Court issued an order vacating our opinion in *Swanson* in light of *Harper*. *Swanson v. North Carolina*, 509 U.S. 916, 125 L. Ed. 2d 713 (1993). The United States Supreme Court held in *Harper* that its application of a rule of federal law requires every court to give

retroactive effect to that decision. We are thus required by *Harper* to apply the law retroactively in this case. Whether to enforce the tax as to all shareholders is within the province of the General Assembly.

The General Assembly may forgive this tax if it so chooses. We do not have the authority to do so.

We affirm that part of the decision of the Court of Appeals which holds that the unconstitutional part of N.C.G.S. § 105-203 must be severed and the balance of the section enforced. We reverse that part of the decision which holds that the rule of this case should not be enforced retroactively.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

No. 305A93-2 - Fulton Corp. v. Faulkner

Justice ORR dissenting.

The majority applies a plain-meaning analysis to the statute in question and concludes that the taxable percentage deduction contained in N.C.G.S. § 105-203 should be severed and the remainder of the statute upheld as applied. The opinion states that "[t]he General Assembly has said by the severability clause that the unconstitutional part of the statute should be severed." However, this Court has rejected such a plain-meaning analysis in determining whether an unconstitutional provision may be severed and the remainder of the statute upheld. In *State ex rel. Andrews v. Chateau X, Inc.*, 296 N.C. 251, 250 S.E.2d 603 (1979), judgment vacated on other grounds, 445 U.S. 947, 63 L. Ed. 2d 782 (1980), this Court prescribed the utilization of a two-part test for deciding the issue of severability:

To determine whether the portions are in fact divisible, the courts first see if the portions remaining are capable of being enforced on their own. They also look to legislative intent, particularly to determine whether that body would have enacted the valid provisions if the invalid ones were omitted.

Id. at 259, 250 S.E.2d at 608. Because I believe that the majority's holding in this case is contrary to the intent of the North Carolina legislature, I respectfully dissent.

In *State v. Waddell*, 282 N.C. 431, 194 S.E.2d 19 (1973), this Court also addressed the issue of severability and enunciated the following principle:

"If the objectionable parts of a statute are severable from the rest in such a way that the legislature would be presumed to have enacted the valid portion without the invalid, the failure of the latter will not necessarily render the entire statute invalid, but the statute may be enforced as to those portions of it which are constitutional. If, however, the constitutional and the unconstitutional portions are so dependent on each other as to warrant the belief that the legislature intended them to take effect in their entirety, it follows that if the whole cannot be carried into effect, it will be presumed that the legislature would not have passed the residue independently, and accordingly, the entire statute is invalid."

Id. at 442, 194 S.E.2d at 27 (quoting 16 Am. Jur. 2d *Constitutional Law* § 186 (1964)). In support of our position in the present case, the Court in *Waddell* went on to note that "[w]hen exceptions, exemptions, or provisos in a statute are found to be invalid, the entire act may be void on the theory that by striking out the invalid exception the act has been widened in its scope and therefore cannot properly represent the legislative intent." *Id.* at 443, 194 S.E.2d at 27 (quoting J.G. Sutherland, *Statutes and Statutory Construction* § 2412 (Frank E. Horack, Jr., ed., 3d ed. 1943)).

In this case, as the remaining intangibles tax on stock is clearly capable of standing on its own, it is an examination of the legislative intent which compels the conclusion that the taxable percentage deduction is not severable. Although the presence of a severability clause provides some guidance as to legislative intent, *State ex rel. Andrews v. Chateau X, Inc.*, 296 N.C. at 260, 250 S.E.2d at 609, it is not conclusive. In *Sheffield v. Consolidated Foods Corp.*, 302 N.C. 403, 276 S.E.2d 422 (1981), this Court discussed the presence of a severability clause and commented that

[p]laintiffs' reliance on the severability clause is misplaced. While the severability clause obviously protects other provisions of the Act from invalidity due to a finding that one or more provisions are invalid, a severability [clause] is relevant to a decision only when the validity of a *particular* provision of the Act is at issue. Here, the inapplicable provisions of G.S. 78B-3 remain relevant to our consideration *in determining legislative intent* with respect to the application of the Act as a whole to open market purchases. Clearly in interpreting the legislative intent, we cannot ignore all the provisions of the Act simply because it contains a severability clause common to most statutes enacted by our Legislature.

Id. at 421, 276 S.E.2d at 434.

In determining that the severability clause could not be applied in *Sheffield*, the Court applied the following well-established canon of statutory construction:

"In order to discover and give effect to the legislative intent we must consider the act as a whole, having due regard to each of its expressed provisions; for there is no presumption that any provision is useless or redundant. That the act consists of several sections is altogether immaterial on the question of its unity. The construction of a statute can ordinarily be in no wise affected by the fact that it is subdivided into sections or titles. A statute [is] passed as a whole and not in parts or sections and is animated by one general purpose or intent. Consequently the several parts or sections of an act are to be construed in connection with every other part or section and all are to be considered as parts of a connected whole and harmonized, if possible, so as to aid in giving effect to the intention of the lawmakers."

Id. at 421-22, 276 S.E.2d at 434 (quoting *Jones v. Board of Educ.*, 185 N.C. 303, 307, 117 S.E. 37, 39 (1923) (citation omitted)). The Court concluded that "[w]e will not apply the severability clause to vary and to contradict the express terms of a statute, for we cannot believe the Legislature intended such a result." *Id.* at 422, 276 S.E.2d at 434.

In the present case, the taxable percentage deduction is contained in the provision of the intangibles tax which applies to stocks. N.C.G.S. § 105-203 provides in pertinent part:

All shares of stock . . . owned by residents of this State or having a business, commercial, or taxable situs in this State on December 31 of each year, with the exception herein provided, shall be subject to an annual tax, which is hereby levied, of twenty-five cents (25¢) on every one hundred dollars (\$100.00) of the total fair market value of the stock on December 31 of each year less the proportion of the value that is equal to:

- (1) In the case of a taxpayer that is a corporation, the proportion of the dividends upon the stock deductible by the taxpayer in computing its income tax liability under G.S. 105-130.7
- (2) In the case of a taxpayer that is not a corporation, the proportion of the dividends upon the stock that would be deductible by the taxpayer, if the taxpayer were a corporation, in computing its income tax liability under the provisions of G.S. 105-130.7(1), (2), (3), (3a), and (5)

N.C.G.S. § 105-203 (1992) (repealed 1995). In *Fulton Corp. v. Justus*, 338 N.C. 472, 450 S.E.2d 728 (1994), this Court explained the procedure involved in calculating the intangibles tax on stock as follows:

Thus, the intangibles tax on stock is computed in the following manner: the greater the percentage of the issuing corporation's total income which is allocated to and taxed in this state the more dividend income from that corporation a corporate shareholder is allowed to deduct and the less intangibles tax the shareholder pays. The amount by which the intangibles tax against the shareholder is reduced, therefore, is directly related to the amount of the issuing corporation's income which is allocated to and taxed in this state. If 70% of the issuing corporation's income is allocated to North Carolina, then 70% of the dividends on that corporation's stock are deductible by the corporate shareholder as income, the stock's value for intangibles tax purposes is reduced by 70%, and the intangibles tax thereby decreased by 70%.

Id. at 475, 450 S.E.2d at 730. For a more detailed discussion of the application of the intangibles tax on stock, see *Fulton v. Justus*, 338 N.C. 472, 450 S.E.2d 728. Because of the process involved in calculating the intangibles tax on stock, the elimination of the taxable percentage deduction would subject all stock in North Carolina companies to a full tax burden under N.C.G.S. § 105-203.

Further, because plaintiff in this case is a corporate taxpayer, the majority addresses only N.C.G.S. § 105-203(1), the taxable percentage deduction for stock owned by corporations. However, as the Secretary of Revenue's brief notes, the constitutional infirmity in N.C.G.S. § 105-203(1) is also present in N.C.G.S. § 105-203(2), the taxable percentage deduction for stock owned by individuals. Thus, if the taxable percentage deduction which applies to corporations must be severed, it follows that the taxable percentage deduction which applies to stock owned by individuals must also be severed. Under the logic of the majority's decision, excising the discriminatory deduction would eliminate the only unconstitutional feature of N.C.G.S. § 105-203. This would result in the remainder of N.C.G.S. § 105-203 becoming a constitutional tax on all shares of stock owned by corporations and individual taxpayers of North Carolina. Thus, the tax would apply not only to stock in publicly traded companies from around the world, but also to every small, incorporated business in our state. The full tax would also apply to corporate shareholders and individual stockholders. To contend that the legislature would have "passed the residue independently" is to defy the practical and political reality of the impact of such a tax.

When the General Assembly enacted the intangibles tax on stock in 1937, the shares of all corporations that paid taxes in North Carolina were excluded. Act of Jan. 6, 1937, ch. 127, sec. 706, 1937 N.C. Public Laws 170, 331 (an act to raise revenue). It was in 1939 that the General Assembly narrowed the exclusion to the proportion of tax the corporation paid in North Carolina. Act of Mar. 24, 1939, ch. 158, sec. 705, 1939 N.C. Public Laws 176, 359 (an act to raise revenue). In the portion of N.C.G.S. § 105-203 that levies the tax, the 1939 General Assembly stated that "[a]ll shares of stock . . . owned by residents of this State . . . , with the exceptions herein provided, shall be subject to an annual tax." *Id.* (emphasis added). The remainder of the statute then listed the exceptions, including the taxable percentage deduction on all shares of stock owned by corporations and individual taxpayers in North Carolina. Thus, the General Assembly has always manifested its intent that the scope of the intangibles tax on shares of stock be narrowed by these exceptions.

Severing the taxable percentage deduction as the majority opinion has done contravenes the intent of the legislature because it expands the scope of N.C.G.S. § 105-203. By severing the deduction, not only publicly traded shares of stock but also shares of stock in closely held corporations which have never before been subject to the intangibles tax on stock are now subject to such taxation.

Further evidence that the majority's decision contravenes the intent of the legislature can be found in the

repeal of the intangibles tax in its entirety -- including N.C.G.S. § 105-203 -- which became effective on 1 January 1995. Act of Jan. 25, 1995, ch. 41, sec. 1(b), 1995 N.C. Sess. Laws 59, 60 (an act to repeal the intangibles tax and to reimburse local governments for their resulting revenue loss). In the Legislative Research Commission's Report to the General Assembly, the Commission expressed three reasons for repealing the intangibles tax:

First, many consider it an unfair tax because, unlike tangible property, intangible property does not require local government services and thus should not be subject to tax. Second, many also believe the tax has a negative effect on economic development, causing corporate executives, retirees, and wealthy individuals to leave the State or to decide against moving into the State. *Third, if the United States Supreme Court overturns the North Carolina Supreme Court's decision and agrees with the court of appeals that the taxable percentage deduction is invalid, the result would be a tax increase for many taxpayers, particularly individuals who own small, in-State businesses.*

Legislative Research Comm'n, Revenue Laws, Report to the 1995 Gen. Assembly of N.C., at 97 (1995) (emphasis added). Because of the repeal of North Carolina's intangibles tax, N.C.G.S. § 105-203, the legislature also amended N.C.G.S. § 105-275, which classifies property that is excluded from the tax base and includes, *inter alia*, "[s]hares of stock, including shares and units of ownership of mutual funds, investment trusts, and investment funds." N.C.G.S. § 105-275(31c) (1995). The explicit exemption of stock from taxation in the General Statutes clearly illustrates the intent of the legislature.

Thus, although a severability clause is contained in the statute, that alone does not determine that the constitutional portion should remain. Clearly, the legislature did not intend that the scope of N.C.G.S. § 105-203 be broadened. As this Court has recognized, invalidation of some exceptions or exemptions may require an entire statute to fail if severing the invalid provisions would widen the scope of the statute beyond the legislature's intended coverage. *State v. Waddell*, 282 N.C. at 443, 194 S.E.2d at 27. This is exactly what severing the taxable percentage deduction and upholding the residue of the tax would do in the present case. Therefore, I conclude that the majority is in error and would agree with both the Secretary of Revenue and the corporate plaintiff that the entire tax must fail and that plaintiff is therefore entitled to a refund.

Justices FRYE and LAKE join in this dissenting opinion.

**** End of Document ****

Converted from WordPerfect

**FISCAL IMPACT OF INTANGIBLES TAX REFUNDS BY TAX YEAR
(\$MILLION)**

ALL TAXPAYERS

	1991 Tax Year	1992 Tax Year	1993 Tax Year	1994 Tax Year	All 4 Years
Refunds Only	\$78.22	\$87.34	\$94.83	\$93.40	\$353.79
Interest*	34.35	31.62	27.70	20.47	114.14
Refunds Plus Interest	<u>\$112.57</u>	<u>\$118.96</u>	<u>\$122.53</u>	<u>\$113.87</u>	<u>\$467.93</u>
Number of Taxpayers	221,850	231,513	246,117	249,456	

PROTESTORS ONLY

	1991 Tax Year	1992 Tax Year	1993 Tax Year	1994 Tax Year	All 4 Years
Refunds Only	\$1.00	\$1.00	\$70.00	\$51.00	\$123.00
Interest*	0.44	0.36	20.45	11.18	32.42
Refunds Plus Interest	<u>\$1.44</u>	<u>\$1.36</u>	<u>\$90.45</u>	<u>\$62.18</u>	<u>\$155.42</u>
Number of Taxpayers (Est.)	500	500	142,000	90,000	

COST OF ADDING NONPROTESTORS

	1991 Tax Year	1992 Tax Year	1993 Tax Year	1994 Tax Year	All 4 Years
Refunds Only	\$77.22	\$86.34	\$24.83	\$42.40	\$230.79
Interest*	33.91	31.26	7.25	9.29	81.72
Refunds Plus Interest	<u>\$111.13</u>	<u>\$117.60</u>	<u>\$32.08</u>	<u>\$51.69</u>	<u>\$312.51</u>
Number of Taxpayers (Est.)	221,350	231,013	104,117	159,456	

*Interest calculated through September 30, 1997 at rate in effect for assessments and refunds (assumes 9% rate that will be in place through June 30, 1997 continues to be the rate in effect through September 30).

Source: Fiscal Research Division tabulation based on data supplied by N.C. Dept. of Revenue

**BAILEY CASE (ASSUMING AN ADVERSE RULING IN PENDING LITIGATION
ON STATE/LOCAL RETIREE ISSUE):**

ONE-TIME COST	ANNUAL COST
	\$102.0

RESTORE FULL TAX EXEMPTION (1)

GRANT REFUNDS FOR 1989-95 TAX YEARS (1):

REFUNDS	\$575.1
INTEREST	100.3
TOTAL	\$675.4

(1) COST IS HIGH BECAUSE FULL EXEMPTION FOR STATE AND LOCAL RETIREES WILL REQUIRE SAME EXEMPTION FOR FEDERAL CIVIL SERVICE AND MILITARY RETIREES (DAVIS DECISION)

TAX LEGISLATION SINCE 1979

This document includes tax and fee changes since 1979 that have an estimated fiscal impact of \$100,000 or greater. Fiscal staff updated the fiscal estimates of all major tax legislation. Many of the bills with a fiscal estimate of less than \$1 million in revenue have not been revised.

I. TAX INCREASES

	Item	Year	(\$Million) Estimated 1996-97 Impact
Sales Tax	Increase sales tax registration fee from \$1 to \$5	1979	\$.13
	Approve 1/2 cent local sales tax.	1983	333.5
	Restructure sales tax on motor vehicles (1).	1983	92.3
	Approve 1/2 cent local sales tax.	1986	333.5
	Increase sales tax on leased motor vehicles.	1989	7.4
	Repeal exemption for ice.	1989	.4
	Increase state sales tax 1 cent.	1991	667.0
	Increase tax on boats and aircraft from 2% to 3% with \$1500 limit.	1991	2.4
Highway Use Tax	Convert sales tax on motor vehicles to highway use tax with broader base, higher rate, higher limit (1).	1989	158.7
Vehicle Fees	Increase various fees.	1979	3.1
	Increase motor vehicle registration, titling fees.	1981	48.0
	Increase titling fees.	1989	62.9
	Repeal the credit allowed against the road tax for the amount of a temporary road tax permit.	1991	.275
	Increase fees for learners' permits, ID cards, duplicate drivers license, single trip permits, and oversize/overweight permit fees.	1991	9.4
	Increase tax on out of state vehicles registering in NC.	1991	1.1
	Raise temporary motor carrier permit fee and lack of registration penalty.	1992	.65
	Make changes in the dealer plate law.	1994	.15
Increase tracking of fuel shipments	1994	9.0	

(1) Rough guess (no data available to break out impact)

I. TAX INCREASES (continued)

	Item	Year	(SMillions) Estimated 1996-97 Impact
Gas Tax	Increase gas tax 3 cents.	1981	136.2
	Increase gas tax 3.5 cents.	1986	158.9
	Increase gas tax 5.2 cents.	1989	236.1
Ind. Income Tax	Repeal income tax exclusion for \$1,500 of National Guard pay.	1989	2.0
	Raise income tax on high-income taxpayers (7.75% tax rate).	1991	90.0
	Conform state income tax to 1990 federal changes.	1991	14.9
	Repeal the \$300 tax credit for dividends received from North Carolina companies.	1996	11.5
Corp. Income Tax	Require multistate corporations to add back to income any credit taken on property taxes paid on inventories.	1986	.3
	Increase corporate income tax from 6% to 7% (2).	1987	128.9
	Require corporations to include in state taxable income the amount of credits claimed against the income tax.	1987	.1
	Limit jobs credit to manufacturing & industrial activities	1989	1.1
	Lower threshold from \$5000 of tax due to \$500 for determining whether corporation must estimate and pay tax during income year.	1990	3.9
	Increase corporate income tax rate to 7.75%.	1991	96.7
	Repeal the \$15,000 tax deduction for dividends received from North Carolina companies	1996	2.0
Liquor Tax	Increase liquor excise tax rate 5.5%.	1987	14.8
	Increase liquor tax on mixed drinks and permit fees.	1991	7.0
Cigarette Tax	Increase cigarette tax from 2 cents per pack to 5 cents and levy tax on other tobacco products.	1991	28.2
	Eliminate cigarette tax stamps, require monthly reports and change merchant discount.	1993	1.1
Real Estate Tax	Double real estate transfer tax and close loophole.	1991	25.4
Franchise Tax	Increase minimum tax on corporations.	1986	.5

(2) Dedicated to school facilities assistance, inventory tax reimbursement

I. TAX INCREASES (continued)

			(SMillions) Estimated 1996-97 Impact
	Item	Year	
Privilege License	Require flea market vendors to have \$25 license.	1987	.1
	Modernize privilege license tax system.	1989	4.8
	Require real estate appraisers to have a privilege license.	1992	.15
Soft Drink Tax	Change method of payment of tax and change exemption of tax on juice drinks.	1991	.8
Ins. Premiums Tax	Increase tax on gross premiums.	1991	5.0
	Create 6.5% charge against gross premium tax liability to finance operations of Dept. of Insurance.	1991	20.1
Beer & Wine	Increase beer and wine license fees.	1979	.3

II. TAX CUTS

Inventory Tax	Repeal inventory tax (1)	1980	\$244.7
		1985	
		1987	
Ind. Income Tax	Increase personal exemptions and standard deduction by 10%.	1979	51.1
		1979	22.0
	Increase dependent care tax credit.	1981	
		1985	
		1989	
	Exclude \$1,500 of National Guard pay.	1979	1.0
		1981	1.2
	Allow non-residents a prorated share of itemized deductions.	1981	2.2
		1985	46.0
	Require property owned under a "tenancy by the entirety" to be reported one-half by each spouse.	1981	2.2
1985		46.0	
Allow low-income tax credit (later repealed).	1985	46.0	
	1989	8.1	
Allow the use of net economic loss carryforwards lost due to Tax Fairness Act.	1989	8.1	
		(over 3 years)	

(1) Rough guess (no data available to break out impact)

II. TAX CUTS (continued)

	Item	Year	(\$Million) Estimated 1996-97 Impact
	Allow taxpayers receiving federal tax credits to deduct full mortgage costs on state income tax.	1989	.2
	Replace special disability exemption with a uniform credit for disabled dependents.	1989	4.0
	Allow a credit for income tax paid for 1988 tax year on federal pensions.	1989	21.0 (over 3 years)
	Expand child care credit based on age of child and income level.	1993	4.0
	Create historic preservation tax credit.	1993	.7
	Provide tax credit for photovoltaic equipment	1994	.2
	Increase personal exemptions by 25% and allow credit of \$60 per dependent child.	1995	244.1
	Approve non-itemizer charitable contribution tax credit.	1996	5.0
	Exclude up to \$35,000 in severance pay from income tax.	1996	4.0
	Allow federal retirees income tax credits and partial refunds for state taxes paid on federal retirement benefits in 1985, 1986, 1987, and 1988.	1996	117.8 (over 3 years.)
Inheritance Tax	Exempt spouses and first \$500,000 for other Class A beneficiaries from inheritance tax.	1979 1985	106.2
	Exempt military survivor annuity.	1979	.3
	Increase Class A credit, adopt QTIP trust allow installment payment for taxes.	1996	3.5
Property Tax	Reimburse counties and cities for property tax homestead exemption change from \$7500 to \$8500.	1981	2.0
	Repeal property tax on household goods.	1986	55.2
	Expand property tax homestead exemptions.	1981 1985 1993	11.8
	Expand homestead exemption amount to \$20,000 and income amount to \$15,000. Reimburse local governments 50% for two years.	1996	3.0

II. TAX CUTS (continued)

	Item	Year	(\$Millions) Estimated 1996-97 Impact
Intangibles Tax	Repeal intangibles tax on money on deposit and certain accounts receivable.	1985	49.3
		1985	8.0
	Repeal remainder of intangibles tax.	1995	162.4
Corp. Income Tax	Allow credit of up to 10% of construction and equipment cost of electric power co-generating plant.	1979	.5
	Allow credit up to 15% of cost to convert oil or gas-fired boilers to wood.	1979	.3
	Restructure tax on savings and loan associations.	1981	7.0
	Create energy tax credits.	1981	3.0
	Provide income tax credit for employers who create jobs in severely distressed counties.	1987	3.0
	Authorizes tax credits for certain business investments.	1987	12.0
	Change corporate income tax allocation formula.	1988	66.0
	Modify ethanol distillery tax credit	1988	5.0
	Exempt interest earned on deposits with Federal Home Loan Bank.	1989	2.2
	Create new credit for users of NC ports.	1992	.6
	Expand jobs tax credit.	1993	2.0
	Modify co-generating power tax credit.	1994	.27
	Expand ports tax credit.	1995	.7
	Provide tax credit for poultry composting facility.	1995	.35
	Reduce the corporate income tax from 7.75% to 6.9% over four years (full cost by FY 2000).	1996	103.2
	Expand jobs tax credit and create new credits for worker training, research activities and investment in machinery and equipment. (FY 1997-98 cost)	1996	19.2
Provide tax credit for forest products shipped through Wilmington port.	1996	.2	
Sales Tax	Exempt core deposits.	1979	.7
	Exempt pre-arranged group meals.	1979	.4
	Allow refund to area mental health boards.	1979	.1
	Reduce tax on portable swine equipment, grain storage facilities, and bulk-feed equipment.	1979	.2
	Allow sales tax exemption for sale of vehicle to non-resident if transported immediately to other state.	1979	.45
	Exempt litter materials used for poultry livestock.	1981	.2
	Repeal sales tax on food stamp purchases.	1985	30.0
	Exempt farm products sold by producer who occasionally acts in capacity of retail vendor.	1986	.6

II. TAX CUTS (continued)

	Item	Year	(\$Million) Estimated 1996-97 Impact
	Exempt materials used in construction or repair of livestock or poultry building.	1986	.6
	Exempt coin operated laundries and change definition of sales price on vending machine items.	1987	.8
	Exempt agricultural equipment used for livestock.	1987	.2
	Exempt school lunches from taxation.	1992	.1
	Exempt donated food and drugs from sales tax	1992	.3
	Exempt some aeronautic replacement parts from definition of sales price.	1993	.1
	Allow tax refund on purchases by nonprofit retirement homes.	1995	1.5
	Exempt purchases of diesel fuel used by railroads.	1995	1.7
	Reduce state sales tax on food from 4% to 3% on 1/1/97 (annual cost shown).	1996	84.5
	Clarify tax on cellular phone sold in a bundled transaction if the bundled service is not subject to tax (also \$3.3 million loss to local govts.).	1996	6.7
	Reduce sales tax on farm and industry fuel.	1996	5.0
	Exempt from tax items donated by merchants to nonprofit organizations.	1996	.6
	Allow sales tax refunds to NC Memorial Hospital.	1996	3.9
Franchise Tax	Repeal special franchise tax on railroads.	1989	2.0
Premiums Tax	Restructure insurance premiums tax.	1986 1987	16.0
	Allow 20% credit against premium tax for guaranty fund assessments.	1991	34.1
	Exempt all annuities and funding agreements from insurance premium taxation.	1994	2.0
	Increase credit for Self-Insurance Guaranty Fund.	1995	1.8
Unemployment Tax	Reduce Unemployment tax.	1992 1993 1994 1995 1996	46.0 92.0 78.1 58.9 140.0 (one year only)
Soft Drink Tax	Reduce tax by ¼.	1995	10.6
	Phase out soft drink tax over 3 years (cost when phased out in FY 2000).	1996	31.8

II. TAX CUTS (continued)

			(\$Million) Estimated 1996-97 Impact
	Item	Year	
Privilege Tax	Repeal most privilege license taxes on 7/1/97.	1996	11.1
Highway Trust Fund	Eliminate the \$40 minimum highway use tax on vehicle title transfers involving name changes, inheritance, marital property, and family gifts.	1991	1.1
	Eliminate fee for transfer of title for salvage vehicle.	1995	.2
	Change leased vehicle trade-in allowance.	1995	1.5

III. FEE INCREASES

Corrections	Increase probation and parole supervision fees.	1990	2.1
	Charge fee for drug testing as a condition of probation and parole.	1992	.1
Insurance	Increase insurance fees	1990	5.4
Misc.	Impose \$25 fee for sanitary inspections.	1990	.45
Highway Fund	Increase motor vehicle title fees	1979	2.9
	Increase fee for failure to transfer title	1979	.14
Courts	Increase superior and district court fees by \$4.	1991	5.4
	Increase fees for civil and criminal actions by \$4 and increase misc. estate administration fees by \$5.	1992	6.7
	Increase the fees that support local judicial facilities by \$1.	1992	1.5
	Impose a processing fee on those who fail to appear in court.	1993	5.9
Wildlife Resources Fund	Increase fee for boat certificates.	1993	.8
DHR	Impose fee on those who manufacture, distribute, dispense, or conduct research with controlled substances.	1993	.22
Domestic Violence Center Fund	Increase marriage license from \$20 to \$40	1991	1.2

III. FEE INCREASES (continued)

			(\$Million) Estimated 1996-97 Impact
	Item	Year	
=====			
Tobacco Research Commission	Increase tobacco assessments by 10 cents per 100 pounds of tobacco.	1991	1.0
Agriculture	Charge \$75 fee for test of feed sample for presence of fumonism.	1991	.2
	Charge regulatory fees for electric/telephone membership.	1991	.5
Environmental Management Commission	Charge air pollution permit fees	1991	4.0
Environmental	Impose half cent increase in excise tax on motor fuels divided equally to Commercial Leaking Petroleum Underground Storage Tank Fund and the Groundwater Protection Loan Fund.		
	Increase fee for wastewater treatment plant operators.	1991	.15
	Charge fee for permit for community water system.	1991	.6
	Charge annual certification fee for water treatment operators.	1991	.1
	Establish Pesticide Environmental Trust Fund with assessments on persons who sale pesticides.	1993	.4
Labor	Increase fees for inspection of amusement devices and elevators.	1993	.13
Vital Records	Increase vital records fee from \$5 to \$10.	1991	1.5
ABC Comm.	Charge \$100 for catering service permit.	1991	.2
Sec. of State	Increase Notary Public fee from \$15 to \$25.	1991	.4
	Charge \$200 for same day corporation filing and \$100 for 24 hour filing.	1995	.37

III. FEE INCREASES (continued)

			(\$Million) Estimated 1996-97 Impact
	Item	Year	
Marine Fisheries	Modify commercial fishing license and add new licenses.	1993	.5

IV. FEE DECREASES

Highway Fund	Restructure bus annual registration fees.	1981	.6
	Increase truck weight tolerance.	1995	.4
Sec. of State	Eliminate annual report filing by non-profit corporations.	1995	.35

V. OTHER CHANGES

Sales Tax	Eliminate merchants' discount under sales tax.	1987	134.4
	Speed up collection of gross receipts and sales tax from utilities to generate more interest income.	1990	2.3
Income Tax	Require state agencies and institutions to send list of debts owed by individuals for set-off against income tax refunds.	1979 1990	10.1
	Accelerate withholding of personal income taxes by lowering threshold from \$3000 to \$500 on monthly remitting of payments. (one time effect)	1987	55.8
	Make employers pay withheld individual income taxes faster. (one - time effect)	1990	6.6
	Change payment of interest income on tax refunds	1993	1.0
	Revenue Code	Update the NC Revenue Code to correspond to the Internal Revenue Code	1987
	Adopt Internal Revenue Code changes	1989	1.6
	Update IRC references.	1993	-.1
	Update IRC references.	1994	1.6
	Make technical changes to various laws.	1994	-1.3
	Require electronic funds transfer for taxpayers who owe \$20,000 per month.	1993	2.0

V. OTHER CHANGES (continued)

Item		Year	(\$Million) Estimated 1996-97 Impact
Highway Fund/ Highway Trust Fund	Change point of collection of motor fuel tax to the terminal.	1995	10.0

OTHER LEGISLATION

Tax Amnesty (Fair Share Tax Act) - A one-time tax amnesty program for the period September 1-December 1, 1989. Imposed increased penalties for tax evasion and failing to file returns. Added tax enforcement personnel. Estimated to bring in \$25 million in one-time revenue and \$68.9 million in permanent revenue through enforcement.

Retirement Pay Tax Equalization - In reaction to Davis v. Michigan, provided uniform \$4,000 income tax exclusion for the retirement benefits received by federal, state or local government retirees and a \$2,000 exclusion for private sector benefits.

Tax Fairness Act of 1989 - Made sweeping changes to the state individual income tax.

- (1) Reduced tax brackets from five to two. (A third bracket was added in 1991 for incomes over \$100,000).
- (2) Increased standard deduction amounts from \$550 to \$3,000 for single person and to \$5,000 for joint returns.
- (3) Increased the personal exemption to \$2,000 per individual.
- (4) Allowed joint filing of returns for married couple.
- (5) Adopted the federal taxable income as the starting point for the calculation of state taxable income.

Designed to be revenue neutral.

SENATE FINANCE COMMITTEE

(Joint Meeting with Senate Appropriations, House Finance and House Appropriations Continued.)

WEDNESDAY, FEBRUARY 12, 1997

AFTER SESSION - ROOM 643 LOB

The Senate Finance Committee continued with the joint meeting and Mr. Dorman was again recognized to answer questions from the committee members.

At the conclusion of the question/answer session, Senator Plyler adjourned the meeting.

David W. Hoyle, Co-Chair
Senate Finance Committee

John H. Kerr, III, Co-Chair
Senate Finance Committee

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

SENATE FINANCE COMMITTEE
(Joint Meeting with House Finance)

THURSDAY, FEBRUARY 13, 1997

9 A.M. - ROOM 544 LOB

The Senate Finance Committee met on Thursday, February 13, 1997, with the House Finance Committee and Representative Gray, Chair of House Finance, presided.

Muriel K. Offerman, Secretary of the Department of Revenue, was recognized and introduced her staff. Included in the minutes is a list of the division heads and staff of the Department of Revenue.

At the conclusion of Ms. Offerman's remarks, there was a general discussion period with questions from the members of the committees to the Department of Revenue staff members.

Meeting adjourned.

David W. Hoyle, Co-Chair
Senate Finance Committee

John H. Kerr, III, Co-Chair
Senate Finance Committee

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

DEPARTMENT LISTING BY DIVISIONS
North Carolina Department of Revenue

Accounting Division

Keith F. McCombs, Director 733-7346
 Roy G. Cameron, Jr., Asst. Director 733-7151

Ad Valorem Tax Division

John C. Bailey, Director 733-7711
 William L. Connolly, Asst. Director 733-7711

Administrative Services Division

Thomas C. Lamar, Director 733-7196
 Doug Whitfield, Forms Mgmt 715-0776
 C. Ray Dudley, Mail Center 715-0856
 Frances Davis, Purchasing 733-2320
 Gerald Nordan, Supplies 733-3261
 Mike Parks, Building Maintenance 715-7562

Controlled Substance Tax

Richard W. Riddle, Director 733-6459

Corporate, Excise & Insurance Tax

Jack L. Harper, Director 733-8510
 William M. Daniel, Asst. Director 733-8510

Criminal Investigations

Thomas L. Dixon, Jr., Director 733-4799

Field Operations

Dewey N. Sanders, Asst. Secretary 733-3510
 Administrative Section 733-3510
 Ralph Foster, Director, Coll.-West . 704-251-6163
 Robie McLamb, Director, Coll.-East ... 733-5810
 John Sadoff, Director, Exam.-West . 704-342-6128
 Ron Wicker, Director, Exam.-East 733-3510
 Kaye Honeycutt, Director, Interstate 733-2995
 Benny Tippett, Raleigh Field Audit 733-9016
 Ed Voress, Raleigh Revenue Office 733-3981

Internal Audit

Joseph M. Hensgen 733-9570

Legislative Liaison

Willie D. Riddick 733-7211

Motor Fuels Tax Division

Robert E. Beck, Director 733-8200
 William T. Ellis, Asst. Director 733-8202

Office Examination Division

Reginald S. Hinton, Director 715-2991
 Sadie M. Pleasant, Asst. Director 733-4687
 Dorothy L. Wiggins, Asst. Director 733-4687

Office Services Division

J. O. Sugg, III, Director 733-9696
 Rebecca Mudd, Asst. Director 733-9165
 Bankruptcy Unit 733-4027
 Central Collection Unit 733-2208
 Taxpayer Assistance 733-4684

Personal Taxes Division

Nancy R. Pomeranz, Director 733-3565
 Gregory Radford, Asst. Director 733-3565

Personnel Division

E. B. "Chuck" Hunt, Director 733-7313
 Ida F. Cowan, Asst. Director 733-7313

Planning, Development & Technology

Ziegler Miller, Asst. Secretary 715-4023
 Michael Boone, Planning 715-7459
 Jim Cooke, Bus. Reengineering 733-4156
 Jim Dawson, Production Systems 733-0091
 Rachel Eagles, Technology Svcs 715-3678
 Wayland Garris, Database Adm 715-4446
 Anne Meares, Quality Assurance 715-7557
 William Zuellig, Business Systems 715-7558
 Information Technology-main line 733-3117
 Help Desk 733-8956

Public Information Officer

Kim Brooks 733-5327

Returns Processing Division

Edward H. West, Director 733-3026
 Edward L. Cline, Asst Director 733-5866
 Brenda G. Daniel, Asst. Director 733-3026
 Phyllis Barefoot, Central Files 733-4952

Sales and Use Tax Division

Charles D. Collins, Jr., Director 733-2151
 George Long, Asst. Director 733-2151
 William C. Smith, Asst. Director 733-2151

Security

Martin W. Hefley, Director 733-6841
 Lou Bernava, Computer Security 733-9673
 Mike Sumner, Physical Security 715-4381
 Security Center 733-6198

Tax Research Division

S. Nicole Underwood, Director 733-4548
 Patricia C. Seawell, Asst. Director 733-4548

* * * *

Attorney General's Office

Revenue Section 733-3252
 George W. Boylan Christopher E. Allen
 Marilyn R. Mudge Newton G. Pritchett, Jr.
 Kay Miller Hobart

NORTH CAROLINA DEPARTMENT OF REVENUE

Mailing Address:
P. O. Box 25000
Raleigh, NC 27640

Street Address:
501 N. Wilmington Street
Raleigh, NC 27604-8001

ADMINISTRATION

SECRETARY OF REVENUE - Muriel K. Offerman 733-7211
Betty Ward 715-9851

DEPUTY SECRETARY - Michael S. Hodges 733-7211
Ann Tilley 715-9855
Wynnette Kemp 715-9854
Mary Ann Finch 733-7211

ASSISTANT SECRETARIES

Field Operations - Dewey N. Sanders 733-3510
Legal & Financial Services - Michael A. Hannah 733-7211
Planning, Development & Technology - Ziegler N. Miller 715-4023
Tax Administration - Sabra J. Faires 715-0237
Tax Compliance - Bernice W. Thomas 733-4433

INFORMATION AND ASSISTANCE NUMBERS

FORMS 715-0397
GENERAL INFORMATION 733-3991
Ad Valorem Tax 733-7711
Bankruptcy Unit 733-4027
Business Licenses 733-3673
Checks Returned by Financial Institutions 733-7151
Controlled Substance Tax 733-6459
Corporate Income & Franchise Tax 733-3166
Criminal Investigations 733-4799
Electronic Funds Transfer (EFT) Helpline 733-7307
Gift Tax 733-3311
Individual Income Tax Refunds & Filing Inquiries 733-4682
Individual Income Tax 733-4684
Inheritance Tax 733-3311
Insurance Premiums Tax 715-0869
Intangibles Tax 733-0300
License and Excise Tax 733-3673
Motor Fuels Tax 733-3409
Privilege License Tax 733-3673
Property Tax 733-7711
Reception Desk in Rotunda 715-5400
Sales and Use Tax 733-3661
Security Center 733-6198
Taxpayer Assistance 733-4684
Tax Fraud 733-6354
Tax Fraud Toll-Free Hotline 1-800-232-4939
Withholding Tax 733-4626

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

February 12, 1997

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Kim Smith	NCLM
Heather Stewart	General Assembly - Legislative Intern
John Rustie	Hunter & Williams
John McNeill	Manning Feltz & Skinner P.A.
PERRI MORGAN	NFIB
Jerry Garcia	NCLCBFD
DB	MB
Joyce Peters	
James Pratt	none
Leslie Bewagun	NCCBI
David Simone	Zeb Alley, PA
BRAD Woodhock	

SENATE FINANCE COMMITTEE
(Joint Meeting with Senate Appropriations and House Finance and Appropriations)

WEDNESDAY, FEBRUARY 12, 1997

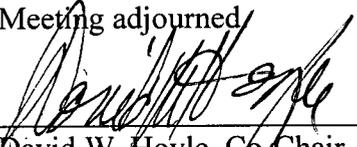
8:30 A.M. - ROOM 643 LOB

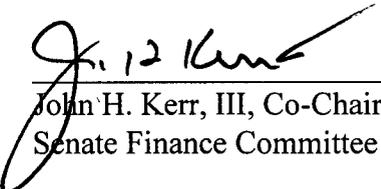
The Senate Finance Committee met jointly with the Senate Appropriations, the House Finance and House Appropriations on Wednesday, February 12, 1997, at 8:30 A.M. in Room 643. Representative Holmes, House Appropriations Chairman, presided over the meeting and introduced his Co-Chairs: Representative Crawford, Representative Creech and Representative Esposito. Senator Plyler, Chairman of Senate Appropriations, was recognized and introduced Senator Odom and Senator Perdue, Representative Holmes also introduced Senator Kerr and Senator Hoyle as Senate Finance Chairs and introduced Representative Gray, Representative Dickson, Representative Brawley and Representative Wilson as House Finance Chairs.

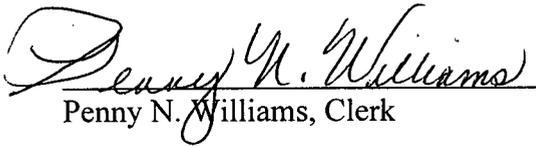
Dave Crotts, Fiscal Research, was recognized and give a General Fund Revenue Estimate Summary. Copy included with the minutes. He told the committees that while North Carolina is not achieving the growth rate in the 90's that it did in the 80's that it is very stable and the population growth is exceeding expectations.

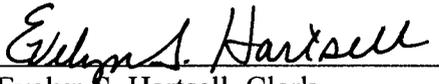
Marvin Dorman, State Budget Officer in the Office of Budget and Management, was recognized for remarks. Included in the minutes is the information he furnished the committee members concerning the budget recommendations. At the conclusion of his presentation, Mr. Dorman answered questions from the members. There was not enough time to answer all the questions and at the request of Representative Esposito, Mr. Dorman agreed to return 15 minutes after session to answer additional questions from the committee members.

Meeting adjourned


David W. Hoyle, Co-Chair
Senate Finance Committee


John H. Kerr, III, Co-Chair
Senate Finance Committee


Penny N. Williams, Clerk

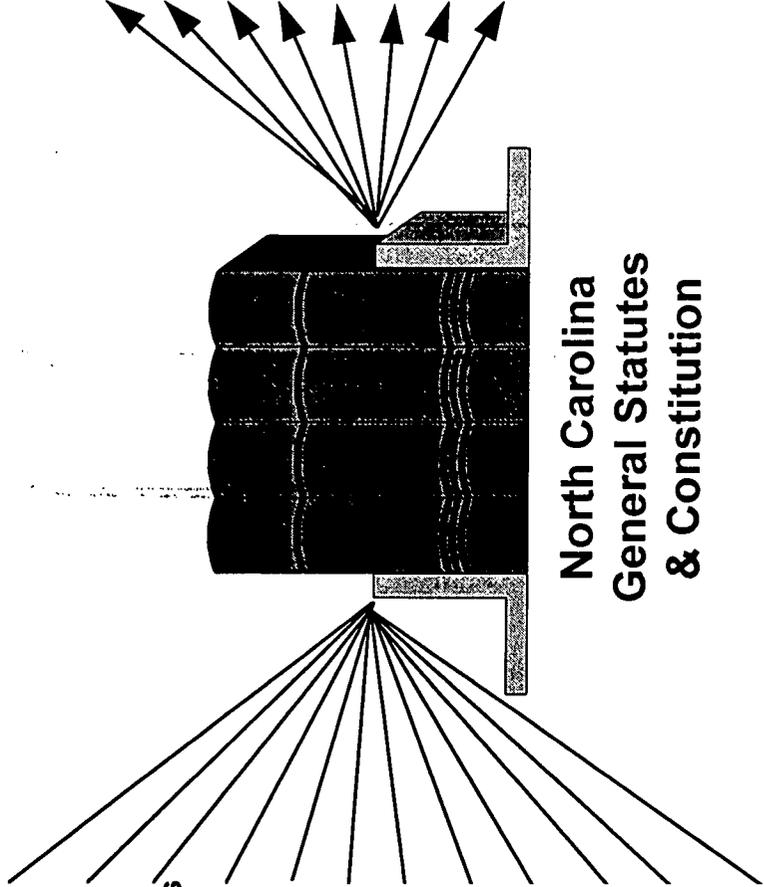

Evelyn S. Hartsell, Clerk

Perspective
of
Performance/Program Budgeting

Another Way of Looking at
Government Activities

Departments

- Administration
- Agriculture
- Auditor
- Commerce
- Community Colleges
- Controller
- Correction
- CCPS
- EHNR
- General Assembly
- Governor
- Human Resources
- Justice
- Labor
- Lt. Governor
- Public Instruction
- Revenue
- Secretary of State
- Transportation
- UNC System



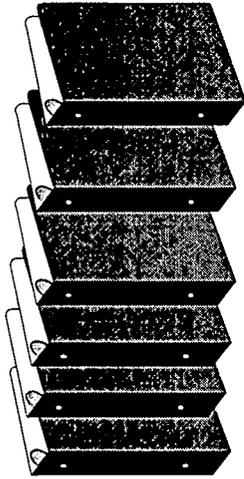
North Carolina
General Statutes
& Constitution

Program Areas

- Health
- Human Services
- Corrections
- Justice & Public Safety
- Environment
- Econ. Develop. & Comm.
- Education
- Transportation
- Cultural Resources
- General Government

**Documents
of
Performance/Program Budgeting**

Three sets of documents support the 1997-99 State Performance Budget

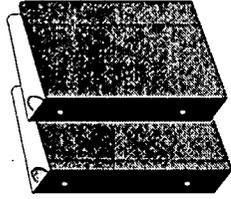


6 budget volumes

Organizationally

Structured

+

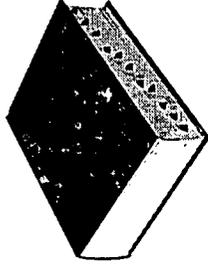


2 budget volumes

Programmatically

Structured

+



1 planning volume

organizationally

Structured

Planning Outputs for Performance/Program Budgeting

The Performance Planning process produces 11 outputs that are incorporated in the Department Operations Plan and the Performance/Program Budget Documents. Three outputs are incorporated in each of the documents and provide a link between them: program objectives, outcome measures, and funds supporting objectives.

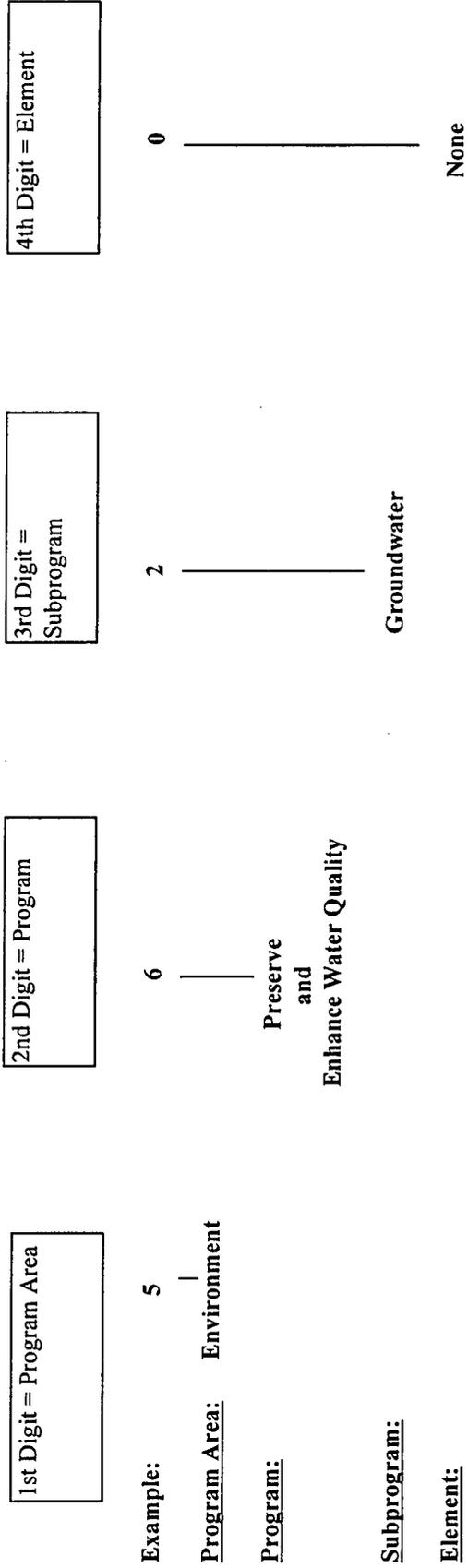
Performance Planning Outputs	Department Operations Plans	Program Budget (Volume 7)	Line-Item Budget (Volumes 1-6)
Mission statement	X		
Department Goals	X		
Trends and Implications	X	X	
Customers		X	
Expected Outcomes		X	X
Program Objectives	X	X	X
Administrative Objectives	X		
Outcome Measures		X	X
Performance Measures		X	X
Funds Supporting Objectives	X	X	X
Strategies/Activities	X	X	
Innovations	X		

PERFORMANCE BUDGET ACCOUNTING

As of the 1997-99 biennium, each budget fund will be linked to a program number and there will be no split funds. This change accommodates a new accounting system in the Office of the State Controller. The change will not affect the former budget and accounting for Performance Budget Accounting, which uses a four-digit program number to correspond to the hierarchy in the program classification outline. The **first digit** identifies the **Program Area**; the **second digit** identifies the **Program**; the **third digit** identifies the **Subprogram** (if applicable); and the **fourth digit** identifies the **Element** (if applicable).

The program number will not replace the operating fund number used in the traditional budget, but the program number will be used in addition to the operating fund number to accommodate Performance Budget implementation. The program number will be incorporated into all phases of budget and accounting to reflect the reporting and budgetary control that will be used when Performance Budgeting is implemented.

PROGRAM NUMBER



SENATE FINANCE COMMITTEE

(Joint Meeting with Senate Appropriations, House Finance and House Appropriations Continued.)

WEDNESDAY, FEBRUARY 12, 1997

AFTER SESSION - ROOM 643 LOB

The Senate Finance Committee continued with the joint meeting and Mr. Dorman was again recognized to answer questions from the committee members.

At the conclusion of the question/answer session, Senator Plyler adjourned the meeting.

David W. Hoyle, Co-Chair
Senate Finance Committee

John H. Kerr, III, Co-Chair
Senate Finance Committee

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

SENATE FINANCE COMMITTEE
(Joint Meeting with House Finance)

THURSDAY, FEBRUARY 13, 1997

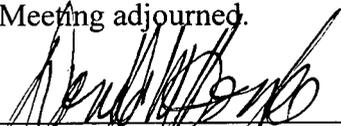
9 A.M. - ROOM 544 LOB

The Senate Finance Committee met on Thursday, February 13, 1997, with the House Finance Committee and Representative Gray, Chair of House Finance, presided.

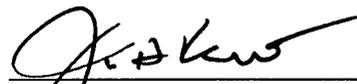
Muriel K. Offerman, Secretary of the Department of Revenue, was recognized and introduced her staff. Included in the minutes is a list of the division heads and staff of the Department of Revenue.

At the conclusion of Ms. Offerman's remarks, there was a general discussion period with questions from the members of the committees to the Department of Revenue staff members.

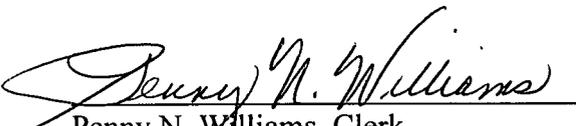
Meeting adjourned.



David W. Hoyle, Co-Chair
Senate Finance Committee



John H. Kerr, III, Co-Chair
Senate Finance Committee



Penny N. Williams, Clerk



Evelyn S. Hartsell, Clerk

DEPARTMENT LISTING BY DIVISIONS
North Carolina Department of Revenue

Accounting Division

Keith F. McCombs, Director 733-7346
 Roy G. Cameron, Jr., Asst. Director 733-7151

Ad Valorem Tax Division

John C. Bailey, Director 733-7711
 William L. Connolly, Asst. Director 733-7711

Administrative Services Division

Thomas C. Lamar, Director 733-7196
 Doug Whitfield, Forms Mgmt 715-0776
 C. Ray Dudley, Mail Center 715-0856
 Frances Davis, Purchasing 733-2320
 Gerald Nordan, Supplies 733-3261
 Mike Parks, Building Maintenance 715-7562

Controlled Substance Tax

Richard W. Riddle, Director 733-6459

Corporate, Excise & Insurance Tax

Jack L. Harper, Director 733-8510
 William M. Daniel, Asst. Director 733-8510

Criminal Investigations

Thomas L. Dixon, Jr., Director 733-4799

Field Operations

Dewey N. Sanders, Asst. Secretary 733-3510
 Administrative Section 733-3510
 Ralph Foster, Director, Coll.-West . 704-251-6163
 Robie McLamb, Director, Coll.-East ... 733-5810
 John Sadoff, Director, Exam.-West . 704-342-6128
 Ron Wicker, Director, Exam.-East 733-3510
 Kaye Honeycutt, Director, Interstate 733-2995
 Benny Tippett, Raleigh Field Audit 733-9016
 Ed Voress, Raleigh Revenue Office 733-3981

Internal Audit

Joseph M. Hensgen 733-9570

Legislative Liaison

Willie D. Riddick 733-7211

Motor Fuels Tax Division

Robert E. Beck, Director 733-8200
 William T. Ellis, Asst. Director 733-8202

Office Examination Division

Reginald S. Hinton, Director 715-2991
 Sadie M. Pleasant, Asst. Director 733-4687
 Dorothy L. Wiggins, Asst. Director 733-4687

Office Services Division

J. O. Sugg, III, Director 733-9696
 Rebecca Mudd, Asst. Director 733-9165
 Bankruptcy Unit 733-4027
 Central Collection Unit 733-2208
 Taxpayer Assistance 733-4684

Personal Taxes Division

Nancy R. Pomeranz, Director 733-3565
 Gregory Radford, Asst. Director 733-3565

Personnel Division

E. B. "Chuck" Hunt, Director 733-7313
 Ida F. Cowan, Asst. Director 733-7313

Planning, Development & Technology

Ziegler Miller, Asst. Secretary 715-4023
 Michael Boone, Planning 715-7459
 Jim Cooke, Bus. Reengineering 733-4156
 Jim Dawson, Production Systems 733-0091
 Rachel Eagles, Technology Svcs 715-3678
 Wayland Garris, Database Adm 715-4446
 Anne Meares, Quality Assurance 715-7557
 William Zuellig, Business Systems 715-7558
 Information Technology-main line 733-3117
 Help Desk 733-8956

Public Information Officer

Kim Brooks 733-5327

Returns Processing Division

Edward H. West, Director 733-3026
 Edward L. Cline, Asst Director 733-5866
 Brenda G. Daniel, Asst. Director 733-3026
 Phyllis Barefoot, Central Files 733-4952

Sales and Use Tax Division

Charles D. Collins, Jr., Director 733-2151
 George Long, Asst. Director 733-2151
 William C. Smith, Asst. Director 733-2151

Security

Martin W. Hefley, Director 733-6841
 Lou Bernava, Computer Security 733-9673
 Mike Sumner, Physical Security 715-4381
 Security Center 733-6198

Tax Research Division

S. Nicole Underwood, Director 733-4548
 Patricia C. Seawell, Asst. Director 733-4548

* * * *

Attorney General's Office

Revenue Section 733-3252
 George W. Boylan Christopher E. Allen
 Marilyn R. Mudge Newton G. Pritchett, Jr.
 Kay Miller Hobart

NORTH CAROLINA DEPARTMENT OF REVENUE

Mailing Address:
P. O. Box 25000
Raleigh, NC 27640

Street Address:
501 N. Wilmington Street
Raleigh, NC 27604-8001

ADMINISTRATION

- SECRETARY OF REVENUE – Muriel K. Offerman** 733-7211
- Betty Ward 715-9851
- DEPUTY SECRETARY – Michael S. Hodges** 733-7211
- Ann Tilley 715-9855
- Wynnette Kemp 715-9854
- Mary Ann Finch 733-7211

ASSISTANT SECRETARIES

- Field Operations – Dewey N. Sanders 733-3510
- Legal & Financial Services – Michael A. Hannah 733-7211
- Planning, Development & Technology – Ziegler N. Miller 715-4023
- Tax Administration – Sabra J. Faires 715-0237
- Tax Compliance – Bernice W. Thomas 733-4433

INFORMATION AND ASSISTANCE NUMBERS

- FORMS 715-0397
- GENERAL INFORMATION 733-3991
- Ad Valorem Tax 733-7711
- Bankruptcy Unit 733-4027
- Business Licenses 733-3673
- Checks Returned by Financial Institutions 733-7151
- Controlled Substance Tax 733-6459
- Corporate Income & Franchise Tax 733-3166
- Criminal Investigations 733-4799
- Electronic Funds Transfer (EFT) Helpline 733-7307
- Gift Tax 733-3311
- Individual Income Tax Refunds & Filing Inquiries 733-4682
- Individual Income Tax 733-4684
- Inheritance Tax 733-3311
- Insurance Premiums Tax 715-0869
- Intangibles Tax 733-0300
- License and Excise Tax 733-3673
- Motor Fuels Tax 733-3409
- Privilege License Tax 733-3673
- Property Tax 733-7711
- Reception Desk in Rotunda 715-5400
- Sales and Use Tax 733-3661
- Security Center 733-6198
- Taxpayer Assistance 733-4684
- Tax Fraud 733-6354
- Tax Fraud Toll-Free Hotline 1-800-232-4939
- Withholding Tax 733-4626

SENATE FINANCE COMMITTEE

WEDNESDAY, FEBRUARY 19, 1997

12:00 NOON - ROOM 544 LOB

The Senate Committee on Finance met.. There were twenty four members of the Committee present.

Senator David Hoyle, Co-Chair of the Committee, presided. He welcomed each one there and introduced the Page, Miss Elizabeth Hinnant from Knightdale, North Carolina, who is sponsored by Senator John Carrington.

The following bills were considered:

Senate Bill 33 Revenue Laws Technical Changes

Senator Betsy Cochrane, Sponsor of the Bill, came to explain the bill. She first made a motion for an amendment to the bill for technical changes, motion passed. Motion made by Senator Patrick Ballantine for a "favorable report, as amended", motion passed.

Senate Bill 34 Adjust City Receipts Tax Share

Senator Betsy Cochrane, Sponsor of the Bill, came to explain the bill. Senator Cochrane, after getting into the explanation of this Bill and having Senator Webster ask many questions relative to this Bill, decided to withdraw this Bill until the Staff could thoroughly answer the questions that had been raised by Senator Webster. Therefore, the Bill was pulled from the Agenda.

Senate Bill 98 Tax At Rack Improvements

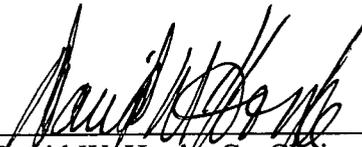
Senator John Kerr, Sponsor of the Bill, explained the Bill which makes fine tuning changes to the method of collecting motor fuels tax. Senator Kerr called on Mr. Gary Harris with the North Carolina Jobbers Association to speak briefly to the bill.

SENATE FINANCE COMMITTEE MEETING
FEBRUARY 19, 1997

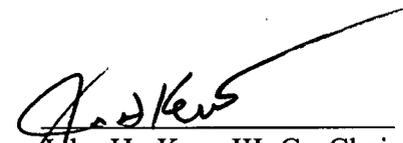
Page -2-

Senator R. C. Soles, Jr. made a motion for a "favorable" report for the Bill, motion passed.

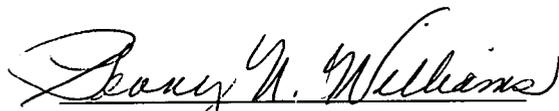
There being no further business, the meeting was adjourned.



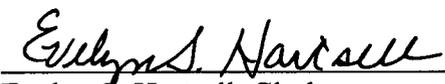
David W. Hoyle, Co-Chair
Senate Finance Committee



John H. Kerr, III, Co-Chair
Senate Finance Committee



Penny N. Williams, Clerk



Evelyn S. Hartsell, Clerk

NOTE:

Agenda is Attachment #1

Visitor's Registration Sheet is Attachment #2

Committee Report is Attachment #3

SENATE FINANCE COMMITTEE

February 19, 1997

Welcome

Introduction of Pages

Bills To Be Considered:

S.B. 33 - Revenue Laws Technical Changes

S.B. 34 - Adjust City Receipts Tax Share

S.B. 98 - Tax At Rack Improvements

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 33

Short Title: Revenue Laws Technical Changes.

(Public)

Sponsors: Senators Cochrane, Cooper, Kerr, Shaw of Cumberland, Soles; Foxx and Warren.

Referred to: Finance.

February 3, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE TECHNICAL AND CONFORMING CHANGES TO THE
3 REVENUE LAWS AND RELATED STATUTES.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 14-407 is repealed.

6 Section 2. Effective January 1, 1997, G.S. 105-23(b) reads as rewritten:

7 "(b) Exception. -- An inheritance tax return is not required to be filed for an
8 estate that meets all of the following conditions:

9 (1) Its beneficiaries are all either Class A beneficiaries, as described in
10 G.S. 105-4(a), or the surviving spouse.

11 (2) Its gross value, including the value of transfers over which the
12 decedent retained an interest and the value of gifts made within
13 three years before the decedent's death, as provided in G.S.
14 105-2(a)(3), is less than ~~four hundred fifty thousand dollars~~
15 ~~(\$450,000)~~ six hundred thousand dollars (\$600,000)."

16 Section 3. G.S. 105-130.22 reads as rewritten:

17 "**§ 105-130.22. Tax credit for construction of dwelling units for handicapped persons.**

18 There ~~shall be~~ is allowed to corporate owners of multifamily rental units located
19 in ~~North Carolina~~ this State as a credit against the tax imposed by this Division, an
20 amount equal to five hundred fifty dollars (\$550.00) for each dwelling unit
21 constructed by ~~such corporate owner which~~ the corporate owner that conforms to
22 ~~the requirements of section (11x)~~ Volume I-C of the North Carolina Building Code
23 for the taxable year within which the construction of ~~such~~ the dwelling unit is

1 ~~completed; provided, that credit will be allowed under this section only for the~~
2 ~~number of such completed.~~ The credit is allowed only for dwelling units completed
3 during the taxable year which that were required to be built in compliance with
4 section (11x) Volume I-C of the North Carolina Building Code; provided further, that
5 if Code. If the credit allowed by this section exceeds the tax imposed by this Division
6 reduced by all other credits allowed by the provisions of this Division, such excess
7 shall be allowed against the tax imposed by this Division allowed, the excess may be
8 carried forward for the next succeeding year; and provided further, that in year. In
9 order to secure the credit allowed by this section the corporation shall file with its
10 income tax return for the taxable year with respect to which such credit is to be
11 claimed; a copy of the occupancy permit on the face of which there shall be is
12 recorded by the building inspector the number of units completed during the taxable
13 year which conform to section (11x) that conform to Volume I-C of the North
14 Carolina Building Code. When he has recorded After recording the number of such
15 these units on the face of the occupancy permit, the building inspector shall promptly
16 make and forward a copy of the permit to the Special Office for the Handicapped,
17 Building Accessibility Section of the Department of Insurance."

18 Section 4. G.S. 105-151.1 reads as rewritten:

19 "**§ 105-151.1. Tax credit for construction of dwelling units for handicapped persons.**

20 There shall be is allowed to resident owners of multifamily rental units located in
21 North Carolina this State as a credit against the tax imposed by this Division an
22 amount equal to five hundred fifty dollars (\$550.00) for each dwelling unit
23 constructed by the resident owner that conforms to Volume I-C of the North Carolina
24 Building Code for the taxable year within which the construction of the dwelling unit
25 is completed. The credit is allowed only for dwelling units completed during the
26 taxable year that were required to be built in compliance with Volume I-C of the
27 North Carolina Building Code. If the credit allowed by this section exceeds the tax
28 imposed by this Division reduced by all other credits allowed, the excess may be
29 carried forward for the next succeeding year. In order to claim the credit allowed by
30 this section, the taxpayer shall file with its income tax return a copy of the occupancy
31 permit on the face of which is recorded by the building inspector the number of units
32 completed during the taxable year that conform to Volume I-C of the North Carolina
33 Building Code. After recording the number of these units on the face of the
34 occupancy permit, the building inspector shall promptly forward a copy of the permit
35 to the Building Accessibility Section of the Department of Insurance.

36 ~~to the recommendations of section (11x) of the North Carolina Building Code for~~
37 ~~the taxable year within which the construction of the dwelling units is completed;~~
38 ~~provided, that credit will be allowed under this section only for the number of~~
39 ~~dwelling units completed during the taxable year that were required to be built in~~
40 ~~compliance with section (11x) of the North Carolina Building Code; provided further,~~
41 ~~that if the credit allowed by this section exceeds the tax imposed by this Division~~
42 ~~reduced by all other credits allowed by this Division, the excess shall be allowed as a~~
43 ~~credit against the tax imposed by this Division for the next succeeding year; and~~
44 ~~provided further, that in order to secure the credit allowed by this section the~~

1 taxpayer shall file with the income tax return for the taxable year with respect to
2 which the credit is to be claimed, a copy of the occupancy permit on the face of
3 which there shall be recorded by the building inspector the number of units
4 completed during the taxable year that conform to section (11x) of the North
5 Carolina Building Code. After recording the number of units on the face of the
6 occupancy permit, the building inspector shall promptly forward a copy of the permit
7 to the Special Office for the Handicapped, Department of Insurance."

8 Section 5. G.S. 105-163.010 reads as rewritten:

9 "**§ 105-163.010.** (Repealed effective for investments made on or after January 1, 1999)

10 **Definitions.**

11 The following definitions apply in this Division:

- 12 (1) **Affiliate.** — An individual or business that controls, is controlled
13 by, or is under common control with another individual or
14 business.
- 15 (2) **Business.** — A corporation, partnership, association, or sole
16 proprietorship operated for profit.
- 17 (3) **Control.** — A person controls an entity if the person owns, directly
18 or indirectly, more than ten percent (10%) of the voting securities
19 of that entity. As used in this subdivision, the term 'voting
20 security' means a security that (i) confers upon the holder the right
21 to vote for the election of members of the board of directors or
22 similar governing body of the business or (ii) is convertible into, or
23 entitles the holder to receive upon its exercise, a security that
24 confers such a right to vote. A general partnership interest is a
25 voting security.
- 26 (4) **Equity security.** — Common stock, preferred stock, or an interest in
27 a partnership, or subordinated debt that is convertible into, or
28 entitles the holder to receive upon its exercise, common stock,
29 preferred stock, or an interest in a partnership.
- 30 (5) **Financial institution.** — A business that is (i) a bank holding
31 company, as defined in the Bank Holding Company Act of 1956,
32 12 U.S.C. §§ 1841 et seq., or its wholly owned subsidiary, (ii)
33 registered as a broker-dealer under the Securities Exchange Act of
34 1934, 15 U.S.C. §§ 78a et seq., or its wholly owned subsidiary, (iii)
35 an investment company as defined in the Investment Company Act
36 of 1940, 15 U.S.C. §§ 80a-1 et seq., whether or not it is required to
37 register under that act, (iv) a small business investment company as
38 defined in the Small Business Investment Act of 1958, 15 U.S.C.
39 §§ 661 et seq., (v) a pension or profit-sharing fund or trust, or (vi)
40 a bank, savings institution, trust company, financial services
41 company, or insurance company; provided, however, that a
42 business, other than a small business investment company, is not a
43 financial institution if its net worth, when added to the net worth
44 of all of its affiliates, is less than ten million dollars (\$10,000,000);

1 ~~provided further, however, that a business is not a financial~~
2 ~~institution if it does not generally market its services to the public~~
3 ~~and it is controlled by a business that is not a financial institution.~~

4 ~~(6) Repealed by Session Laws 1991, c. 637.~~

5 ~~(6a) North Carolina Enterprise Corporation. — A corporation~~
6 ~~established in accordance with Article 3 of Chapter 53A of the~~
7 ~~General Statutes or a limited partnership in which a North~~
8 ~~Carolina Enterprise Corporation is the only general partner.~~

9 ~~(6b) Pass-through entity. — An entity or business, including a limited~~
10 ~~partnership, a general partnership, a joint venture, a Subchapter S~~
11 ~~Corporation, or a limited liability company, all of which is treated~~
12 ~~as owned by individuals or other entities under the federal tax~~
13 ~~laws, in which the owners report their share of the income, losses,~~
14 ~~and credits from the entity or business on their income tax returns~~
15 ~~filed with this State. For the purpose of this Division, an owner of~~
16 ~~a pass-through entity is an individual or entity who is treated as an~~
17 ~~owner under the federal tax laws.~~

18 ~~(7) Qualified business venture. — A business that (i) engages primarily~~
19 ~~in manufacturing, processing, warehousing, wholesaling, research~~
20 ~~and development, or a service related industry, and (ii) is~~
21 ~~registered with the Secretary of State under G.S. 105-163.013.~~

22 ~~(8) Qualified grantee business. — A business that (i) has received~~
23 ~~during the preceding three years a grant or other funding from the~~
24 ~~North Carolina Technological Development Authority, the North~~
25 ~~Carolina Technological Development Authority, Inc., North~~
26 ~~Carolina First Flight, Inc., the North Carolina Biotechnology~~
27 ~~Center, the Microelectronics Center of North Carolina, the Kenan~~
28 ~~Institute for Engineering, Technology and Science, or the Federal~~
29 ~~Small Business Innovation Research Program, and (ii) is registered~~
30 ~~with the Secretary of State under G.S. 105-163.013.~~

31 ~~(9) Repealed by Session Laws 1993, c. 443, s. 1.~~

32 ~~(9a) Real estate-related business. — A business that is involved in or~~
33 ~~related to the brokerage, selling, purchasing, leasing, operating, or~~
34 ~~managing of hotels, motels, nursing homes or other lodging~~
35 ~~facilities, golf courses, sports or social clubs, restaurants, storage~~
36 ~~facilities, or commercial or residential lots or buildings is a real~~
37 ~~estate-related business, except that a real estate-related business~~
38 ~~does not include (i) a business that purchases or leases real estate~~
39 ~~from others for the purpose of providing itself with facilities from~~
40 ~~which to conduct a business that is not itself a real estate-related~~
41 ~~business or (ii) a business that is not otherwise a real estate-related~~
42 ~~business but that leases, subleases, or otherwise provides to one or~~
43 ~~more other persons a number of square feet of space which in the~~
44 ~~aggregate does not exceed fifty percent (50%) of the number of~~

- 1 square feet of space occupied by the business for its other
2 activities:
- 3 (9b) ~~Selling or leasing at retail. -- A business is selling or leasing at~~
4 ~~retail if the business either (i) sells or leases any product or service~~
5 ~~of any nature from a store or other location open to the public~~
6 ~~generally or (ii) sells or leases products or services of any nature by~~
7 ~~means other than to or through one or more other businesses.~~
- 8 (9e) ~~Service-related industry. -- A business is engaged in a~~
9 ~~service-related industry, whether or not it also sells a product, if it~~
10 ~~provides services to customers or clients and does not as a~~
11 ~~substantial part of its business engage in a business described in~~
12 ~~G.S. 105-163.013(b)(4). A business is engaged as a substantial part~~
13 ~~of its business in an activity described in G.S. 105-163.013(b)(4) if~~
14 ~~(i) its gross revenues derived from all activities described in that~~
15 ~~subdivision exceed twenty five percent (25%) of its gross revenues~~
16 ~~in any fiscal year or (ii) it is established as one of its primary~~
17 ~~purposes to engage in any activities described in that subdivision,~~
18 ~~whether or not its purposes were stated in its articles of~~
19 ~~incorporation or similar organization documents.~~
- 20 (10) ~~Security. -- A security as defined in Section 2(1) of the Securities~~
21 ~~Act of 1933, 15 U.S.C. § 77b(1).~~
- 22 (11) ~~Subordinated debt. -- Indebtedness that (i) by its terms matures~~
23 ~~five or more years after its issuance, (ii) is not secured, and (iii) is~~
24 ~~subordinated to all other indebtedness of the issuer issued or to be~~
25 ~~issued to a financial institution other than a financial institution~~
26 ~~described in subdivisions (5)(ii) through (5)(v) of this section. Any~~
27 ~~portion of indebtedness that matures earlier than five years after its~~
28 ~~issuance is not subordinated debt.~~
- 29 (1) Affiliate. -- An individual or business that controls, is controlled
30 by, or is under common control with another individual or
31 business.
- 32 (2) Business. -- A corporation, partnership, association, or sole
33 proprietorship operated for profit.
- 34 (3) Control. -- A person controls an entity if the person owns, directly
35 or indirectly, more than ten percent (10%) of the voting securities
36 of that entity. As used in this subdivision, the term 'voting
37 security' means a security that (i) confers upon the holder the right
38 to vote for the election of members of the board of directors or
39 similar governing body of the business or (ii) is convertible into, or
40 entitles the holder to receive upon its exercise, a security that
41 confers such a right to vote. A general partnership interest is a
42 voting security.
- 43 (4) Equity security. -- Common stock, preferred stock, or an interest in
44 a partnership, or subordinated debt that is convertible into, or

1 entitles the holder to receive upon its exercise, common stock,
2 preferred stock, or an interest in a partnership.

3 (5) Financial institution. -- A business that is (i) a bank holding
4 company, as defined in the Bank Holding Company Act of 1956,
5 12 U.S.C. §§ 1841, et seq., or its wholly owned subsidiary, (ii)
6 registered as a broker-dealer under the Securities Exchange Act of
7 1934, 15 U.S.C. §§ 78a, et seq., or its wholly owned subsidiary, (iii)
8 an investment company as defined in the Investment Company Act
9 of 1940, 15 U.S.C. §§ 80a-1, et seq., whether or not it is required
10 to register under that act, (iv) a small business investment company
11 as defined in the Small Business Investment Act of 1958, 15 U.S.C.
12 §§ 661, et seq., (v) a pension or profit-sharing fund or trust, or (vi)
13 a bank, savings institution, trust company, financial services
14 company, or insurance company. The term does not include,
15 however, a business, other than a small business investment
16 company, whose net worth, when added to the net worth of all of
17 its affiliates, is less than ten million dollars (\$10,000,000). The
18 term also does not include a business that does not generally
19 market its services to the public and is controlled by a business
20 that is not a financial institution.

21 (6) North Carolina Enterprise Corporation. -- A corporation
22 established in accordance with Article 3 of Chapter 53A of the
23 General Statutes or a limited partnership in which a North
24 Carolina Enterprise Corporation is the only general partner.

25 (7) Pass-through entity. -- An entity or business, including a limited
26 partnership, a general partnership, a joint venture, a Subchapter S
27 Corporation, or a limited liability company, all of which is treated
28 as owned by individuals or other entities under the federal tax
29 laws, in which the owners report their share of the income, losses,
30 and credits from the entity or business on their income tax returns
31 filed with this State. For the purpose of this Division, an owner of
32 a pass-through entity is an individual or entity who is treated as an
33 owner under the federal tax laws.

34 (8) Qualified business venture. -- A business that (i) engages primarily
35 in manufacturing, processing, warehousing, wholesaling, research
36 and development, or a service-related industry, and (ii) is
37 registered with the Secretary of State under G.S. 105-163.013.

38 (9) Qualified grantee business. -- A business that (i) has received
39 during the preceding three years a grant or other funding from the
40 North Carolina Technological Development Authority, the North
41 Carolina Technological Development Authority, Inc., North
42 Carolina First Flight, Inc., the North Carolina Biotechnology
43 Center, the Microelectronics Center of North Carolina, the Kenan
44 Institute for Engineering, Technology and Science, or the Federal

- 1 Small Business Innovation Research Program, and (ii) is registered
2 with the Secretary of State under G.S. 105-163.013.
3 (10) Real estate-related business. -- A business that is involved in or
4 related to the brokerage, selling, purchasing, leasing, operating, or
5 managing of hotels, motels, nursing homes or other lodging
6 facilities, golf courses, sports or social clubs, restaurants, storage
7 facilities, or commercial or residential lots or buildings is a real
8 estate-related business, except that a real estate-related business
9 does not include (i) a business that purchases or leases real estate
10 from others for the purpose of providing itself with facilities from
11 which to conduct a business that is not itself a real estate-related
12 business or (ii) a business that is not otherwise a real estate-related
13 business but that leases, subleases, or otherwise provides to one or
14 more other persons a number of square feet of space which in the
15 aggregate does not exceed fifty percent (50%) of the number of
16 square feet of space occupied by the business for its other
17 activities.
18 (11) Security. -- A security as defined in Section 2(1) of the Securities
19 Act of 1933, 15 U.S.C. § 77b(1).
20 (12) Selling or leasing at retail. -- A business is selling or leasing at
21 retail if the business either (i) sells or leases any product or service
22 of any nature from a store or other location open to the public
23 generally or (ii) sells or leases products or services of any nature by
24 means other than to or through one or more other businesses.
25 (13) Service-related industry. -- A business is engaged in a service-
26 related industry, whether or not it also sells a product, if it
27 provides services to customers or clients and does not as a
28 substantial part of its business engage in a business described in
29 G.S. 105-163.013(b)(4). A business is engaged as a substantial part
30 of its business in an activity described in G.S. 105-163.013(b)(4) if
31 (i) its gross revenues derived from all activities described in that
32 subdivision exceed twenty-five percent (25%) of its gross revenues
33 in any fiscal year or (ii) it is established as one of its primary
34 purposes to engage in any activities described in that subdivision,
35 whether or not its purposes were stated in its articles of
36 incorporation or similar organization documents.
37 (14) Subordinated debt. -- Indebtedness that (i) by its terms matures
38 five or more years after its issuance, (ii) is not secured, and (iii) is
39 subordinated to all other indebtedness of the issuer issued or to be
40 issued to a financial institution other than a financial institution
41 described in subdivisions (5)(ii) through (5)(v) of this section. Any
42 portion of indebtedness that matures earlier than five years after its
43 issuance is not subordinated debt."

44 Section 6. G.S. 105-163.1(8) is repealed.

1 Section 7. G.S. 105-164.3(15) reads as rewritten:

2 "(15) ~~"Sale"~~ Sale or selling. -- The transfer of title or possession of
3 tangible personal property, conditional or otherwise, in any
4 manner or by any means whatsoever, for a consideration paid or
5 to be paid.

6 The term includes the fabrication of tangible personal
7 property for consumers by persons engaged in business who furnish
8 either directly or indirectly the materials used in the fabrication
9 work. The term also includes the furnishing or preparing for a
10 consideration of any tangible personal property consumed on the
11 premises of the person furnishing or preparing the property or
12 consumed at the place at which the property is furnished or
13 prepared. The term also includes a transaction in which the
14 possession of the property is transferred but the seller retains title
15 or security for the payment of the consideration.

16 If a retailer engaged in the business of selling prepared food
17 and drink for immediate or on-premises consumption also gives
18 prepared food or drink to its patrons or employees free of charge,
19 for the purposes of this Article the property given away is
20 considered sold along with the property sold. If a retailer gives an
21 item of inventory to a customer free of charge on the condition
22 that the customer purchase similar or related property, the item
23 given away is considered sold along with the item sold. In all other
24 cases, property given away or used by any retailer or wholesale
25 merchant is not considered sold, whether or not the retailer or
26 wholesale merchant recovers its cost of the property from sales of
27 other property."

28 Section 8. G.S. 105-236(5)d. reads as rewritten:

29 "d. No double penalty. -- If a penalty is assessed under
30 subdivision (6) of this section, no additional penalty for
31 negligence shall be assessed with respect to the same
32 deficiency."

33 Section 9. G.S. 105-253(b)(3) reads as rewritten:

34 "(3) All taxes due from the corporation pursuant to the provisions of
35 ~~Article~~ Articles 36C and 36D of Subchapter V of this Chapter and
36 all taxes payable under those Articles by the corporation to a
37 supplier for remittance to this State or another state."

38 Section 10. G.S. 105-277.4(c) reads as rewritten:

39 "(c) Property meeting the conditions for classification under G.S. 105-277.3 shall
40 be taxed on the basis of the value of the property for its present use. The difference
41 between the taxes due on the present-use basis and the taxes which would have been
42 payable in the absence of this classification, together with any interest, penalties or
43 costs that may accrue thereon, shall be a lien on the real property of the taxpayer as
44 provided in G.S. 105-355(a). The difference in taxes shall be carried forward in the

1 records of the taxing unit or units as deferred taxes, but shall not be payable, unless
2 and until the property loses its eligibility for the benefit of this classification. Except
3 as otherwise allowed under G.S. 105-277.3, property loses its eligibility for the benefit
4 of this classification if it no longer meets any requirement for classification. The tax
5 for the fiscal year that opens in the calendar year in which a disqualification occurs
6 shall be computed as if the property had not been classified for that year, and taxes
7 for the preceding three fiscal years which have been deferred as provided herein,
8 shall immediately be payable, together with interest thereon as provided in G.S. 105-
9 360 for unpaid taxes which shall accrue on the deferred taxes due herein as if they
10 had been payable on the dates on which they originally became due. If only a part of
11 the qualifying tract of land loses its eligibility, a determination shall be made of the
12 amount of deferred taxes applicable to that part and that amount shall become
13 payable with interest as provided above. Upon the payment of any taxes deferred in
14 accordance with this section for the three years immediately preceding a
15 disqualification, all liens arising under this subsection shall be extinguished."

16 Section 11. G.S. 105-330.2(a) reads as rewritten:

17 "(a) The value of a classified motor vehicle listed pursuant to G.S. 105-330.3(a)(1)
18 shall be determined as follows:

- 19 (1) For a vehicle registered under the staggered system, the value shall
20 be determined annually as of January 1 preceding the date a new
21 registration is applied for or the current registration expires.
- 22 (2) For a vehicle newly registered under the annual system, the value
23 shall be determined as of January 1 of the year the new registration
24 is obtained. For a vehicle whose registration is renewed under the
25 annual system, the value shall be determined as of January 1
26 following the date the registration expires.

27 If the value of a new motor vehicle cannot be determined as of the date specified
28 above, the value of that vehicle shall be determined for that year as of the date that
29 model vehicle is first offered for sale at retail in this State. The ownership, situs, and
30 taxability of a classified motor vehicle listed pursuant to G.S. 105-330.3(a)(1) shall be
31 determined annually as of the day on which a new registration is applied for or the
32 day on which the current vehicle registration is renewed, regardless of whether the
33 registration is renewed after it has expired.

34 The value of a classified motor vehicle listed pursuant to G.S. 105-330.3(a)(2) shall
35 be determined as of January 1 of the year in which the motor vehicle is required to
36 be listed pursuant to G.S. 105-330.3(a)(2). The ownership, situs, and taxability of a
37 classified motor vehicle listed or discovered pursuant to G.S. 105-330.3(a)(2) shall be
38 determined as of January 1 of the year in which the motor vehicle is required to be
39 listed."

40 Section 12. G.S. 105-449.95(a) reads as rewritten:

41 "(a) Calculation. -- At the end of each calendar quarter, the Secretary must
42 review the amount of discounts each licensed distributor or licensed importer
43 received under G.S. 105-449.93(b). The Secretary must determine if the amount of
44 discounts the distributor or importer received under that subsection in each month of

1 the quarter is less than the amount the distributor or importer would have received if
 2 the distributor or importer had been allowed a discount on taxable gasoline
 3 purchased by the distributor or importer from a supplier during each month of the
 4 quarter under the following schedule:

<u>Amount of Gasoline Purchased</u>	<u>Percentage</u>
<u>Each Month</u>	<u>Discount</u>
7 First 150,000 gallons	2%
8 Next 100,000 gallons	1 1/2%
9 Amount over 250,000 gallons	1%."

10 Section 13. G.S. 105-449.105(e) reads as rewritten:

11 "(e) Refund Amount. -- The amount of a refund allowed under this section is the
 12 amount of excise tax paid, less the amount of any discount allowed on the fuel under
 13 G.S. 105-449.93."

14 Section 14. G.S. 105-449.106 reads as rewritten:

15 "**§ 105-449.106. Quarterly refunds for certain local governmental entities, nonprofit**
 16 **organizations, and taxicabs.**

17 (a) Government and Nonprofits. -- A local governmental entity or a nonprofit
 18 organization listed below that purchases and uses motor fuel may receive a quarterly
 19 refund, for the excise tax paid during the preceding quarter, at a rate equal to the
 20 amount of the flat cents-per-gallon rate plus the variable cents-per-gallon rate in
 21 effect during the quarter for which the refund is claimed, less one cent (1¢) per
 22 gallon. Any of the following entities may receive a refund under this section:

- 23 (1) A county or a municipal corporation.
- 24 (2) A private, nonprofit organization that transports passengers under
 25 contract with or at the express designation of a unit of local
 26 government.
- 27 (3) A volunteer fire department.
- 28 (4) A volunteer rescue squad.
- 29 (5) A sheltered workshop recognized by the Department of Human
 30 Resources.

31 An application for a refund allowed under this section must be made in
 32 accordance with this Part and must be signed by the chief executive officer of the
 33 entity. The chief executive officer of a nonprofit organization is the president of the
 34 organization or another officer of the organization designated in the charter or bylaws
 35 of the organization.

36 (b) Taxi. -- A person who purchases and uses motor fuel in a taxicab, as defined
 37 in G.S. 20-87(1), while the taxicab is engaged in transporting passengers for hire, or
 38 in a bus operated as part of a city transit system that is exempt from regulation by the
 39 North Carolina Utilities Commission under G.S. 62-260(a)(8), may receive a quarterly
 40 refund, for the excise tax paid during the preceding quarter, at a rate equal to the flat
 41 cents-per-gallon rate plus the variable cents-per-gallon rate in effect during the
 42 quarter for which the refund is claimed, less one cent (1¢) per gallon. An application
 43 for a refund must be made in accordance with this Part."

44 Section 15. G.S. 105-449.107 reads as rewritten:

1 **"§ 105-449.107. Annual refunds for off-highway use and use by certain vehicles with**
2 **power attachments.**

3 (a) Off-Highway. -- A person who purchases and uses motor fuel for a purpose
4 other than to operate a licensed highway vehicle may receive an annual refund for
5 the excise tax the person paid on fuel used during the preceding calendar year at a
6 rate equal to the amount of the flat cents-per-gallon rate in effect during the year for
7 which the refund is claimed plus the average of the two variable cents-per-gallon
8 rates in effect during that year, less one cent (1¢) per gallon. An application for a
9 refund allowed under this section must be made in accordance with this Part.

10 (b) Certain Vehicles. -- A person who purchases and uses motor fuel in one of the
11 vehicles listed below may receive an annual refund for the amount of fuel consumed
12 by any of the following vehicles:

- 13 (1) A concrete mixing vehicle.
- 14 (2) A solid waste compacting vehicle.
- 15 (3) A bulk feed vehicle that delivers feed to poultry or livestock and
16 uses a power takeoff to unload the feed.
- 17 (4) A vehicle that delivers lime or fertilizer in bulk to farms and uses a
18 power takeoff to unload the lime or fertilizer.
- 19 (5) A tank wagon that delivers alternative fuel, as defined in G.S. 105-
20 449.130, or motor fuel or another type of liquid fuel into storage
21 tanks and uses a power takeoff to make the delivery.

22 The refund rate shall be computed by subtracting one cent (1¢) from the combined
23 amount of the flat cents-per-gallon rate in effect during the year for which the refund
24 is claimed and the average of the two variable cents-per-gallon rates in effect during
25 that year, and multiplying the difference by thirty-three and one-third percent (33
26 1/3%). An application for a refund allowed under this section shall be made in
27 accordance with this Part. This refund is allowed for the amount of fuel consumed by
28 the vehicle in its mixing, compacting, or unloading operations, as distinguished from
29 propelling the vehicle, which amount is considered to be one-third of the amount of
30 fuel consumed by the vehicle."

31 Section 16. G.S. 105-449.108 reads as rewritten:

32 **"§ 105-449.108. When an application for a refund is due.**

33 (a) Annual Refunds. -- An application for an annual refund of excise tax is due by
34 April 15 following the end of the calendar year for which the refund is claimed. The
35 application must state whether or not the applicant has filed a North Carolina income
36 tax return for the preceding taxable year, and must state that the applicant has paid
37 for the fuel for which a refund is claimed or that payment for the fuel has been
38 secured to the seller's satisfaction.

39 (b) Quarterly Refunds. -- An application for a quarterly refund of excise tax is
40 due by the last day of the month following the end of the calendar quarter for which
41 the refund is claimed. The application must state that the applicant has paid for the
42 fuel for which a refund is claimed or that payment for the fuel has been secured to
43 the seller's satisfaction.

1 (c) Upon Application. -- An application for a refund of excise tax upon
2 application under G.S. 105-449.105 is due by the last day of the month that follows
3 the payment of tax or other event that is the basis of the refund."

4 Section 17. G.S. 117-19(c), (d), and (e) are repealed.

5 Section 18. G.S. 119-15(5) reads as rewritten:

6 "(5) Kerosene supplier. -- Either of the following:

7 a. A person who supplies both kerosene and motor fuel and,
8 consequently, is required to be licensed under Part 2 of
9 Article 36C of Chapter 105 of the General Statutes.

10 b. A person who is not required to be licensed as a supplier
11 under Part 2 of Article 36C of Chapter 105 of the General
12 Statutes and who maintains storage facilities for kerosene to
13 be used to fuel an airplane."

14 Section 19. G.S. 119-16.2(a) reads as rewritten:

15 "(a) When Required. -- A person may not engage in business as a kerosene
16 supplier unless the person is licensed under Part 2 of Article 36C of Chapter 105 of
17 the General Statutes or has a kerosene supplier license issued under this section. A
18 kerosene distributor is required to have a kerosene distributor license only if the
19 distributor imports kerosene. Other kerosene distributors may elect to have a
20 kerosene distributor license. A licensed kerosene distributor that buys kerosene from
21 a supplier licensed under Part 2 of Article 36C of Chapter 105 of the General
22 Statutes has the right to defer payment of the inspection tax until the supplier is
23 required to remit the tax to this State or another state. A licensed kerosene
24 distributor that pays the tax due a supplier licensed under that Part by the date the
25 supplier must pay the tax to the State may deduct from the amount due a discount in
26 the amount set in G.S. 105-449.93."

27 Section 20. G.S. 159-48(c) reads as rewritten:

28 "(c) Each county is authorized to borrow money and issue its bonds under this
29 Article in evidence ~~thereof~~ of the debt for the purpose of, in the case of subdivisions
30 (1) ~~to (4), inclusive, through (4a) of this subsection,~~ paying any capital costs of any
31 one or more of the purposes ~~mentioned therein~~ and, in the case of subdivision (5), ~~to~~
32 ~~finance the cost thereof.~~ (5) of this subsection, to finance the cost of the purpose:

33 (1) Providing community college facilities, including without limitation
34 buildings, plants, and other facilities, physical and vocational
35 educational buildings and facilities, including in connection
36 therewith classrooms, laboratories, libraries, auditoriums,
37 administrative offices, student unions, dormitories, gymnasiums,
38 athletic fields, cafeterias, utility plants, and garages.

39 (2) Providing courthouses, including without limitation offices, meeting
40 rooms, court facilities and rooms, and detention facilities.

41 (3) Providing county homes for the indigent and infirm.

42 (4) Providing school facilities, including without limitation
43 schoolhouses, buildings, plants and other facilities, physical and
44 vocational educational buildings and facilities, including in

1 connection therewith classrooms, laboratories, libraries,
2 auditoriums, administrative offices, gymnasiums, athletic fields,
3 lunchrooms, utility plants, garages, and school buses and other
4 necessary vehicles.

5 (4a) Providing improvements to subdivision and residential streets
6 pursuant to G.S. 153A-205.

7 (5) Providing for the octennial revaluation of real property for
8 taxation."

9 Section 21. G.S. 159I-30(e) reads as rewritten:

10 "(e) Special obligation bonds and notes shall be special obligations of the unit of
11 local government issuing them. The principal of, and interest and any premium on,
12 special obligation bonds and notes shall be payable solely from any one or more of
13 the sources of payment authorized by this section as may be specified in the
14 proceedings, resolution, or trust agreement under which they are authorized or
15 secured. Neither the faith and credit nor the taxing power of the unit of local
16 government are pledged for the payment of the principal of, or interest or any
17 premium on, any special obligation bonds or notes, and no owner of special
18 obligation bonds or notes has the right to compel the exercise of the taxing power by
19 the unit in connection with any default thereon. Every special obligation bond and
20 note shall recite in substance that the principal and interest and any premium on
21 ~~such the~~ bond or note are payable solely from the sources of payment specified in the
22 bond order or ~~trust~~, trust agreement under which it is authorized or secured,
23 ~~provided that: if the following conditions are met:~~

24 (1) Any such use of ~~such these~~ sources will not constitute a pledge of
25 the unit's taxing power; and

26 (2) The municipality is not obligated to pay ~~such the~~ principal or
27 interest or premium except from ~~such these~~ sources."

28 Section 22. This act does not affect the rights or liabilities of the State, a
29 taxpayer, or another person arising under a statute amended or repealed by this act
30 before the effective date of its amendment or repeal; nor does it affect the right to
31 any refund or credit of a tax that accrued under the amended or repealed statute
32 before the effective date of its amendment or repeal.

33 Section 23. Section 2 of this act is effective January 1, 1997, and applies
34 to the estates of decedents dying on or after that date. The remainder of this act is
35 effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 33

S33-ALJ-1

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

Date _____, 1997

Comm. Sub.
Amends Title

Senator _____

1 moves to amend the bill on page 1, line 21, by deleting the word
2 "comforms" and substituting the word "conforms";
3
4 and on page 8, lines 38 through 44, and page 9, lines 1 through 15,
5 by deleting Section 10 of the bill;
6
7 and on page 9, line 16 through page 13, line 33, by renumbering the
8 succeeding sections of the bill accordingly;
9
10 and on page 13, lines 22 and 23, by rewriting those lines to read:
11 "bond order or ~~trust~~, trust agreement under which it is authorized
12 or ~~secured, provided that:~~ secured. The following limitations apply
13 to payment from the specified sources:".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

EXPLANATION OF SENATE BILL 33
Revenue Laws Technical Changes

TO: Senate Finance Committee
FROM: Sabra Faires, Committee Counsel
DATE: February 19, 1997
SPONSOR: Senator Betsy Cochrane

Senate Bill 33 is one of the bills recommended to the 1997 General Assembly by the Revenue Laws Study Committee. It makes numerous technical and clarifying changes to the revenue laws and related statutes. The following table provides a section-by-section analysis of the proposed changes.

<u>Section</u>	<u>Explanation</u>
1	Repeals an obsolete statute that requires gun owners to list their guns for property taxes. This statute is not needed because nonbusiness personal property is exempt from property taxes and the listing requirements for business personal property are contained in the Machinery Act.
2	Increases the inheritance tax return filing threshold for Class A beneficiaries from \$450,000 to \$600,000 to conform to the increased credit enacted in 1996.
3 - 4	Correct incorrect cross-references to the North Carolina Building Code and Building Accessibility Section of the Department of Insurance and modernize language.
5	Places definitions in alphabetical order and renumbers them. The definition of "security" is out of order and cannot be included in the correct order without renumbering the list of definitions.
6	Deletes the definition of "fiduciary" from the withholding tax Article because the term is not used in the Article.
7	Removes improper quotation marks.
8	Restores language that was inadvertently deleted in 1996 due to a redlining error.
9	Corrects a grammatical error.
10	Clarifies that an owner is liable for deferred taxes that have accrued on property valued at its present use whenever the property loses its eligibility for present use value classification. The clarification codifies the Department's long-standing interpretation of the use value program.
11	Restores the missing word "the."
12	Restores the missing word "or."
13 - 16	Make it clear that the per gallon motor fuel tax refunds do not apply to

- the inspection tax.
- 17 Repeals three obsolete subsections concerning taxes payable by electric membership corporations for 1965 and 1966.
 - 18 - 19 Make it clear that a motor fuel supplier that sells kerosene is not required to have a separate license as a kerosene supplier.
 - 20 Makes a conforming change to a cross-reference to a subdivision and modernizes language.
 - 21 Deletes an improper comma and modernizes language.
 - 22 Provides a savings clause.
 - 23 Provides the effective date of the act.

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 33

SHORT TITLE: ADJUST CITY RECEIPTS TAX SHARE

SPONSOR(S): SEN. BETSY COCHRANE

FISCAL IMPACT: Expenditures: Increase () Decrease ()
 Revenues: Increase (X) Decrease (X)
 No Impact ()
 No Estimate Available ()

FUNDS AFFECTED: General Fund (X) Highway Fund () Local Fund (X)
 Other Fund ()

BILL SUMMARY: Prior to the 1989-90 fiscal year, the portion of the State Franchise tax on the gross receipts of utilities that was shared with municipalities was earmarked from taxes collected. In June, 1990 legislation was enacted to fund the State aid through an appropriation. During the 1991 budget crisis the General Assembly froze the statewide distribution for all future years at the 1990-91 level. Under this system, each city received a share of the statewide frozen amount based on utility taxes collected in the city, relative to the statewide total. The 1993 General Assembly enacted legislation, effective beginning with the 1995-96 fiscal year, that changed the funding system back to an earmarking of the State tax, less a holdback equal to the growth in actual collections for each city between 1990-91 and 1994-95. (The intent was to allow the State to keep the growth in collections during the freeze period as part of the local government contribution to the 1991 budget crisis).

The first-year implementation of the change has identified an issue that affects a handful of cities. The problem occurs in situations in which the utility gross receipts in a city increased between 1990-91 and 1994-95 as a result of the location or expansion of a large taxpayer (i.e., manufacturer) who was not part of the 1995-96 tax base (or at a much lower level). In this situation the city not only loses current revenues but is penalized by a holdback that includes the prior growth of a taxpayer who no longer is part of the city (or at a much lower level).

The bill corrects this inequity by reducing the holdback for any city whose 1995-96 distribution is at least 5% lower than the 1990-91 distribution, if the application of the holdback moves the city into the negative growth status. The holdback reduction is the amount necessary to ensure that the city is held harmless at the 1990-91 amount. Any adjustment to the holdback portion of the 1995-96 distribution will be carried forward to all future

years. This adjustment does not affect cities whose 1995-96 distribution is lower than 1990-91 for reasons other than the application of the holdback.

EFFECTIVE DATE: Upon ratification.

PRINCIPAL DEPARTMENT(S)/PROGRAM(S) AFFECTED: The distribution is administered by the Department of Revenue. It is not anticipated that the legislation will affect the Department's budget requirements.

FISCAL IMPACT

	<u>FY97</u>	<u>FY98</u>	<u>FY99</u>	<u>FY00</u>	<u>FY01</u>
REVENUES/RECEIPTS					
State:	-264,000	-132,000	-132,000	-132,000	-132,000
Cities*:	+264,000	+132,000	+132,000	+132,000	+132,000

*Total for the few cities impacted.

DATA, ASSUMPTIONS, METHODOLOGY: The cost estimate is based on an FRD computer simulation of the proposed system using actual data furnished by the Department of Revenue for the 1990-91 through 1995-96 fiscal year for all cities receiving a distribution.

FISCAL RESEARCH DIVISION

733-4910

PREPARED BY: Dave Crotts

APPROVED BY:

DATE: February 18, 1997

[FRD#003]

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 98

Short Title: Tax At Rack Improvements.

(Public)

Sponsors: Senators Kerr, Cochrane, Cooper, Shaw of Cumberland, and Soles.

Referred to: Finance.

February 12, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO IMPROVE THE ADMINISTRATION OF THE MOTOR FUEL TAX
3 LAWS.

4 The General Assembly of North Carolina enacts:

5 Section 1. Part 1 of Article 36C of Chapter 105 of the General Statutes is
6 amended by adding a new section to read:

7 "**§ 105-449.62. Nature of tax.**

8 This Article imposes a tax on motor fuel to provide revenue for the State's
9 transportation needs and for the other purposes listed in Part 7 of this Article. The
10 tax is collected from the supplier or importer of the fuel because this method is the
11 most efficient way to collect the tax. The tax is designed, however, to be paid
12 ultimately by the person who consumes the fuel. The tax becomes a part of the cost
13 of the fuel and is consequently paid by those who subsequently purchase and
14 consume the fuel."

15 Section 2. G.S. 105-449.65(a)(5), as repealed by Section 3 of Chapter 647
16 of the 1995 Session Laws (Reg. Sess. 1996), is reenacted and G.S. 105-449.65, with the
17 reenactment, reads as rewritten:

18 "**§ 105-449.65. List of persons who must have a license.**

19 (a) License. -- A person may not engage in business in this State as any of the
20 following unless the person has a license issued by the Secretary authorizing the
21 person to engage in that business:

- 22 (1) A refiner.
23 (2) A supplier.
24 (3) A terminal operator.

- 1 (4) An importer.
 2 (5) An ~~exporter, if the Secretary imposes this requirement by rule-~~
 3 exporter.
 4 (6) A blender.
 5 (7) A motor fuel transporter.
 6 (8) A bulk-end user of undyed diesel fuel.
 7 (9) A retailer of undyed diesel fuel.

8 (b) Multiple Activity. -- A person who is engaged in more than one activity for
 9 which a license is required must have a separate license for each activity, unless this
 10 subsection provides otherwise. A person who is licensed as a supplier is not required
 11 to obtain a separate license for any other activity for which a license is required and
 12 is considered to have a license as a distributor. A person who is licensed as an
 13 occasional importer or a tank wagon importer is not required to obtain a separate
 14 license as a distributor. A person who is licensed as a distributor is not required to
 15 obtain a separate license as an importer if the distributor acquires fuel for import
 16 only from an elective supplier or a permissive ~~supplier.~~ supplier and is not required
 17 to obtain a separate license as an exporter. A person who is licensed as a distributor
 18 or a blender is not required to obtain a separate license as a motor fuel transporter if
 19 the distributor or blender does not transport motor fuel for others for hire."

20 Section 3. G.S. 105-449.66 reads as rewritten:

21 "**§ 105-449.66. Types of importers; restrictions on who can get a license as an**
 22 **importer.**

23 (a) Types. -- An applicant for a license as an importer must indicate the type of
 24 importer license sought. The types of importers are as follows:

- 25 (1) Bonded importer. -- A bonded importer is a person, other than a
 26 supplier, who imports, by transport truck or another means of
 27 transfer outside the terminal transfer system, motor fuel removed
 28 from a terminal located in another state in any of the following
 29 circumstances:
 30 a. The state from which the fuel is imported does not require
 31 the seller of the fuel to collect motor fuel tax on the removal
 32 either at that state's rate or the rate of the destination state.
 33 b. The supplier of the fuel is not an elective supplier.
 34 c. The supplier of the fuel is not a permissive supplier.
 35 (2) Occasional importer. -- An occasional importer is any of the
 36 following that imports motor fuel by any means outside the
 37 terminal transfer system:
 38 a. A distributor that imports motor fuel on an average basis of
 39 no more than once a month during a calendar year.
 40 b. A bulk-end ~~user that is not a distributor.~~ user that acquires
 41 motor fuel for import from a bulk plant and is not required
 42 to be licensed as a bonded importer.
 43 c. A distributor that imports motor fuel for use in a race car.

1 (3) Tank wagon importer. -- A tank wagon importer is a person who
2 imports, only by means of a tank wagon, motor fuel that is
3 removed from a terminal or a bulk plant located in another state.

4 (b) Restrictions. -- A person may not be licensed as more than one type of
5 importer. ~~A person who is a bulk end user and is not also a distributor may not be~~
6 ~~licensed as a bonded importer. A person who is a bulk end user and is not also a~~
7 ~~distributor may be licensed as an occasional importer with the restriction that the~~
8 ~~person acquire motor fuel for import only from an elective supplier or a permissive~~
9 ~~supplier or from a bulk plant. A bulk-end user that imports motor fuel from a~~
10 terminal of a supplier that is not an elective or a permissive supplier must be licensed
11 as a bonded importer. A bulk-end user that imports motor fuel from a bulk plant
12 and is not required to be licensed as a bonded importer must be licensed as an
13 occasional importer. A bulk-end user that imports motor fuel only from a terminal of
14 an elective or a permissive supplier is not required to be licensed as an importer."

15 Section 4. G.S. 105-449.67 reads as rewritten:

16 "**§ 105-449.67. List of persons who may obtain a license.**

17 ~~(a) License. -- A person who is engaged in business as any of the following may~~
18 ~~obtain a license issued by the Secretary for that business:~~

- 19 ~~(1) A distributor.~~
20 ~~(2) A permissive supplier.~~
21 ~~(3) An exporter.~~

22 ~~(b) Effect on Exports. -- An exporter license or a distributor license authorizes the~~
23 ~~license holder to pay the destination state tax on motor fuel purchased for export~~
24 ~~instead of paying this State's tax on the fuel. An unlicensed exporter or unlicensed~~
25 ~~distributor must pay this State's tax on motor fuel purchased for export.~~

26 ~~(c) Multiple Activity. -- A person who is licensed as a distributor is considered to~~
27 ~~have a license as an exporter.~~

28 A person who is engaged in business as any of the following may obtain a license
29 issued by the Secretary for that business:

- 30 (1) A distributor.
31 (2) A permissive supplier."

32 Section 5. G.S. 105-449.72 reads as rewritten:

33 "**§ 105-449.72. Bond or letter of credit required as a condition of obtaining and**
34 **keeping certain licenses.**

35 (a) Initial Bond. -- An applicant for a license as a refiner, a terminal operator, a
36 supplier, an importer, ~~an exporter~~, a blender, a permissive supplier, or a distributor
37 must file with the Secretary a bond or an irrevocable letter of credit. A bond must
38 be conditioned upon compliance with the requirements of this Article, be payable to
39 the State, and be in the form required by the Secretary. The amount of the bond or
40 irrevocable letter of credit is determined as follows:

- 41 (1) For an applicant for a license as any of the following, the amount
42 is two million dollars (\$2,000,000):
43 a. A refiner.
44 b. A terminal operator.

- 1 c. A supplier that is a position holder or a person that receives
2 motor fuel pursuant to a two-party exchange.
- 3 d. A bonded importer.
- 4 e. A permissive supplier.
- 5 (2) For an applicant for a license as any of the following, the amount
6 is two times the applicant's average expected monthly tax liability
7 under this Article, as determined by the Secretary. The amount
8 may not be less than two thousand dollars (\$2,000) and may not be
9 more than two hundred fifty thousand dollars (\$250,000):
- 10 a. A supplier that is a fuel alcohol provider but is neither a
11 position holder nor a person that receives motor fuel
12 pursuant to a two-party exchange.
- 13 b. An occasional importer.
- 14 c. A tank wagon importer.
- 15 d. A distributor.
- 16 e. ~~An exporter.~~
- 17 (3) For an applicant for a license as a blender, a bond is required only
18 if the applicant's average expected annual tax liability under this
19 Article, as determined by the Secretary, is at least two thousand
20 dollars (\$2,000). When a bond is required, the bond amount is the
21 same as under subdivision (2) of this subsection.

22 (b) Multiple Activity. -- An applicant for a license as a distributor and as a
23 bonded importer must file only the bond required of a bonded importer. An
24 applicant for two or more of the licenses listed in subdivision (a)(2) or (a)(3) of this
25 section may file one bond that covers the combined liabilities of the applicant under
26 all the activities. A bond for these combined activities may not exceed the maximum
27 amount set in subdivision (a)(2) of this subsection.

28 (c) Adjustment to Bond. -- When notified to do so by the Secretary, a person that
29 has filed a bond or an irrevocable letter of credit and that holds a license listed in
30 subdivision (a)(2) of this section must file an additional bond or irrevocable letter of
31 credit in the amount requested by the Secretary. The person must file the additional
32 bond or irrevocable letter of credit within 30 days after receiving the notice from the
33 Secretary. The amount of the initial bond or irrevocable letter of credit and any
34 additional bond or irrevocable letter of credit filed by the license holder, however,
35 may not exceed the limits set in subdivision (a)(2) of this section."

36 Section 6. G.S. 105-449.77(b) reads as rewritten:

37 "(b) Supplier Lists. -- The Secretary must give a list of licensed suppliers, licensed
38 terminal operators, licensed importers, licensed distributors, and licensed exporters to
39 each licensed supplier. The list must state the name, account number, and business
40 address of each license holder on the list. The Secretary must send a monthly update
41 of the list to each licensed supplier.

42 The Secretary must give a list of licensed suppliers to each licensed distributor,
43 licensed exporter, and licensed importer. The Secretary must also give a list of
44 licensed suppliers to each unlicensed distributor ~~or unlicensed exporter~~ that asks for a

1 copy of the list. The list must state the name, account number, and business address
2 of each supplier on the list and must indicate whether the supplier is an elective
3 supplier, a permissive supplier, or an in-State-only supplier. The Secretary must send
4 an annual update of the list to each licensed distributor, licensed exporter, and
5 licensed importer, and to each unlicensed distributor ~~or unlicensed exporter~~ that
6 requested a copy of the list."

7 Section 7. G.S. 105-449.82(c) reads as rewritten:

8 "(c) Terminal Rack Removal. -- The excise tax imposed by G.S. 105-449.81(1) on
9 motor fuel removed at a terminal rack in this State is payable by the person that first
10 receives the fuel upon its removal from the terminal. If the motor fuel is removed by
11 an unlicensed distributor, the supplier of the fuel is jointly and severally liable for the
12 tax due on the fuel. If the motor fuel is sold by a person who is not licensed as a
13 supplier, as required by this Article, the terminal operator, the person selling the fuel,
14 and the person removing the fuel are jointly and severally liable for the tax due on
15 the fuel. If the motor fuel removed is not dyed diesel fuel but the shipping document
16 issued for the fuel states that the fuel is dyed diesel fuel, the terminal operator, the
17 supplier, and the person removing the fuel are jointly and severally liable for the tax
18 due on the fuel.

19 If the motor fuel is removed for export by an unlicensed exporter, the exporter is
20 liable for tax on the fuel at the motor fuel rate and at the rate of the destination state.
21 The liability for the tax at the motor fuel rate applies when the Department assesses
22 the unlicensed exporter for the tax."

23 Section 8. G.S. 105-449.87(c) reads as rewritten:

24 "(c) Imputed Knowledge. -- ~~An end seller of dyed diesel fuel is considered to~~
25 ~~have known or had reason to know that the fuel would be used for a purpose that is~~
26 ~~taxable under this section unless the end seller delivered the fuel into a storage~~
27 ~~facility that meets one of the following requirements:~~

28 (1) ~~It contains fuel used only in heating, drying crops, or a~~
29 ~~manufacturing process and is installed in a manner that makes use~~
30 ~~of the fuel for any other purpose improbable.~~

31 (2) ~~It is marked as follows with the phrase "Dyed Diesel", "For~~
32 ~~Nonhighway Use", or a similar phrase that clearly indicates the~~
33 ~~fuel is not to be used to operate a highway vehicle:~~

34 a. ~~The storage tank of the storage facility is marked if the~~
35 ~~storage tank is visible.~~

36 b. ~~The filleap or spill containment box of the storage facility is~~
37 ~~marked.~~

38 e. ~~The dispensing device that serves the storage facility is~~
39 ~~marked.~~

40 An end seller of dyed diesel fuel is considered to have known or had reason to
41 know that the fuel would be used for a purpose that is taxable under this section if
42 the end seller delivered the fuel into a storage facility that was not marked as
43 required by G.S. 105-449.123."

1 Section 9. Part 3 of Article 36C of Chapter 105 of the General Statutes is
2 amended by adding a new section to read:

3 "**§ 105-449.88A. Liability for tax due on motor fuel designated as exempt by the use**
4 **of cards or codes.**

5 (a) Exempt Cards at Rack. -- When a licensed distributor or licensed importer
6 removes motor fuel from a terminal by means of an exempt card or exempt access
7 code issued by the supplier, the distributor or importer represents that the fuel
8 removed will be resold to a governmental unit that is exempt from the tax. A
9 supplier may rely on this representation. A licensed distributor or licensed importer
10 that does not resell motor fuel removed from a terminal by means of an exempt card
11 or exempt access code to an exempt governmental unit is liable for any tax due on
12 the fuel.

13 (b) Exempt Cards at Retail. -- A supplier that issues to, or authorizes another
14 person to issue to, another person a credit card or an access code that enables the
15 person to buy motor fuel at retail without paying the tax on the fuel has a duty to
16 determine if the person is exempt from the tax. A supplier is liable for tax due on
17 motor fuel purchased at retail by use of a credit card or an access code issued to a
18 person who is not exempt from the tax.

19 (c) Card Holder. -- A person to whom an exempt card or exempt access card is
20 issued for use at a terminal or at retail is liable for any tax due on fuel purchased
21 with the card for a purpose that is not exempt. A person who misuses an exempt
22 card or code by purchasing fuel with the card or code for a purpose that is not
23 exempt is liable for the tax due on the fuel."

24 Section 10. G.S. 105-449.89 reads as rewritten:

25 "**§ 105-449.89. Removals by out-of-state bulk-end user.**

26 ~~An out-of-state bulk-end user may remove motor fuel from a terminal in this State~~
27 ~~for use in the state in which the bulk-end user is located as follows:~~

28 ~~(1) Upon payment to the supplier of tax on the motor fuel at the~~
29 ~~motor fuel rate.~~

30 ~~(2) Upon payment to the supplier of destination, state tax on the~~
31 ~~motor fuel, if the bulk-end user acquires the fuel from a supplier~~
32 ~~who, with respect to the destination state of the fuel, is either a~~
33 ~~permissive supplier or an elective supplier and therefore collects~~
34 ~~the destination state tax on the fuel.~~

35 An out-of-state bulk-end user may not remove motor fuel from a terminal in this
36 State for use in the state in which the bulk-end user is located unless the bulk-end
37 user is licensed under this Article as an exporter. An out-of-state bulk-end user that
38 is not licensed under this Article may remove motor fuel from a bulk plant in this
39 State."

40 Section 11. G.S. 105-449.90 reads as rewritten:

41 "**§ 105-449.90. When tax return and payment are due.**

42 (a) Filing Periods. -- The excise tax imposed by this Article is payable when a
43 return is due. A return is due annually, quarterly, or monthly, as specified in this

1 section. A return must be filed with the Secretary and be in the form required by the
2 Secretary.

3 An annual return is due within 45 days after the end of each calendar year. An
4 annual return covers tax liabilities that accrue in the calendar year preceding the date
5 the return is due.

6 A quarterly return is due by the last day of the month that follows the end of a
7 calendar quarter. A quarterly return covers tax liabilities that accrue in the calendar
8 quarter preceding the date the return is due.

9 A monthly return of a person other than an occasional importer is due within 22
10 days after the end of each month. A monthly return of an occasional importer is due
11 by the ~~1st~~ 3rd of each month. A monthly return covers tax liabilities that accrue in
12 the calendar month preceding the date the return is due.

13 (b) Annual Filers. -- A terminal operator must file an annual return for the
14 compensating tax imposed by G.S. 105-449.85.

15 (c) Quarterly Filers. -- A licensed importer that removes fuel at a terminal rack of
16 a permissive or an elective supplier and a licensed distributor must file a quarterly
17 return under G.S. 105-449.94 to reconcile exempt sales.

18 (d) Monthly Filers on 22nd. -- The following persons must file a monthly return
19 by the 22nd of each month:

- 20 (1) A refiner.
- 21 (2) A supplier.
- 22 (3) A bonded importer.
- 23 (4) A blender.
- 24 (5) A tank wagon importer.
- 25 (6) A person that incurred a liability under G.S. 105-449.86 during the
26 preceding month for the tax on dyed diesel fuel used to operate
27 certain highway vehicles.
- 28 (7) A person that incurred a liability under G.S. 105-449.87 during the
29 preceding month for the backup tax on motor fuel.

30 (e) Monthly Filers on ~~1st~~ 3rd. -- An occasional importer must file a monthly
31 return by the ~~1st~~ third day of each month. An occasional importer is not required to
32 file a return, however, if all the motor fuel imported by the importer in a reporting
33 period was removed at a terminal located in another state and the supplier of the fuel
34 is an elective supplier or a permissive supplier."

35 Section 12. G.S. 105-449.91 reads as rewritten:

36 "**§ 105-449.91. Remittance of tax to supplier.**

37 (a) Distributor. -- A distributor must remit tax due on motor fuel removed at a
38 terminal rack to the supplier of the fuel. A licensed distributor has the right to defer
39 the remittance of tax to the supplier, as trustee, until the date the trustee must pay
40 the tax to this State or to another state. The time when an unlicensed distributor
41 must remit tax to a supplier is governed by the terms of the contract between the
42 supplier and the unlicensed distributor.

43 (b) Exporter. -- An exporter must remit tax due on motor fuel removed at a
44 terminal rack to the supplier of the fuel. ~~A licensed exporter that is also licensed in~~

1 ~~the destination state has the right to defer the remittance of tax to the supplier until~~
2 ~~the date set by the law of the destination state of the fuel. The time when an~~
3 ~~unlicensed exporter, or a licensed exporter that is not also licensed in the destination~~
4 ~~state, must remit tax to a supplier is governed by the terms of the contract between~~
5 ~~the supplier and the exporter. The time when an exporter must remit tax to a~~
6 ~~supplier is governed by the law of the destination state of the exported motor fuel.~~

7 (c) Importer. -- A licensed importer must remit tax due on motor fuel removed at
8 a terminal rack of a permissive or an elective supplier to the supplier of the fuel. A
9 licensed importer that removes fuel from a terminal rack of a permissive or an
10 elective supplier has the right to defer the remittance of tax to the supplier until the
11 date the supplier must pay the tax to this State.

12 (d) General. -- The method by which a distributor, ~~an~~ a licensed exporter, or a
13 licensed importer must remit tax to a supplier is governed by the terms of the
14 contract between the supplier and the distributor, exporter, or licensed importer and
15 the supplier. G.S. 105-449.76 governs the cancellation of a license of a distributor, an
16 exporter, and an importer."

17 Section 13. G.S. 105-449.92(b) reads as rewritten:

18 "(b) Effect of Notice. -- A supplier that sells motor fuel to a distributor ~~or an~~
19 ~~exporter~~ after receiving notice from the Secretary that the Secretary has cancelled the
20 distributor's ~~or exporter's~~ license is jointly and severally liable with the distributor ~~or~~
21 ~~exporter~~ for any tax due on motor fuel the supplier sells to the distributor ~~or exporter~~
22 after receiving the notice. This joint and several liability does not apply to excise tax
23 due on motor fuel sold to a previously unlicensed distributor ~~or unlicensed exporter~~
24 after the supplier receives notice from the Secretary that the Secretary has issued
25 another license to the ~~distributor or exporter.~~ distributor."

26 Section 14. G.S. 105-449.96 reads as rewritten:

27 "§ 105-449.96. Information required on return filed by supplier.

28 A return of a supplier must list all of the following information and any other
29 information required by the Secretary:

- 30 (1) The number of gallons of tax-paid motor fuel received by the
31 supplier during the month, sorted by type of fuel, seller, point of
32 origin, destination state, and carrier.
- 33 (2) The number of gallons of motor fuel removed at a terminal rack
34 during the month from the account of the supplier, sorted by type
35 of fuel, person receiving ~~distributor, exporter, or importer,~~ the fuel,
36 terminal code, and carrier.
- 37 (3) The number of gallons of motor fuel removed during the month
38 for export, sorted by type of fuel, person receiving ~~distributor or~~
39 ~~exporter,~~ the fuel, terminal code, destination state, and carrier.
- 40 (4) The number of gallons of motor fuel removed during the month at
41 a terminal located in another state for destination to this State, as
42 indicated on the shipping document for the fuel, sorted by type of
43 fuel, person receiving ~~distributor, exporter, or importer,~~ the fuel,
44 terminal code, and carrier.

- 1 (5) The number of gallons of motor fuel the supplier sold during the
2 month to any of the following, sorted by type of fuel, exempt
3 entity, person receiving ~~distributor~~, the fuel, terminal code, and
4 carrier:
- 5 a. A governmental unit whose use of fuel is exempt from the
6 tax.
- 7 b. A licensed distributor or importer that resold the motor fuel
8 to a governmental unit whose use of fuel is exempt from the
9 tax, as indicated by the ~~distributor~~ distributor or importer.
- 10 c. A licensed exporter that resold the motor fuel to a person
11 whose use of fuel is exempt from tax in the destination state,
12 as indicated by the exporter.
- 13 (6) The amount of discounts allowed under G.S. 105-449.93(b) on
14 motor fuel sold during the month to licensed distributors or
15 licensed importers."

16 Section 15. G.S. 105-449.97 reads as rewritten:

17 "**§ 105-449.97. Deductions and discounts allowed a supplier when filing a return.**

18 (a) Taxes Not Remitted. -- When a supplier files a return, the supplier may deduct
19 from the amount of tax payable with the return the amount of tax any of the
20 following license holders owes the supplier but failed to remit to the supplier:

- 21 (1) A licensed distributor.
- 22 (2) A licensed importer that removed the motor fuel on which the tax
23 is due from a terminal of an elective or a permissive supplier.
- 24 (3) Repealed by Session Laws 1995, c. 647, s. 32.

25 A supplier is not liable for tax a license holder listed in this subsection owes the
26 supplier but fails to pay. If a listed license holder pays tax owed to a supplier after
27 the supplier deducts the amount on a return, the supplier must promptly remit the
28 payment to the Secretary.

29 (b) Administrative Discount. -- A supplier that files a timely return may deduct
30 from the amount of tax payable with the return an administrative discount of one-
31 tenth of one percent (0.1%) of the amount of tax payable to this State as the trustee,
32 not to exceed eight thousand dollars (\$8,000) a month. The discount covers expenses
33 incurred in collecting taxes on motor fuel.

34 (c) Percentage Discount. -- A supplier that sells motor fuel directly to an
35 unlicensed distributor ~~or unlicensed exporter~~ or to the bulk-end user, the retailer, or
36 user of the fuel may take the same percentage discount on the fuel that a licensed
37 distributor may take under G.S. 105-449.93(b) when making deferred payments of tax
38 to the supplier.

39 (d) Taxes Paid on Exempt Retail Sales. -- When filing a return, a supplier that
40 issues or authorizes the issuance of an exempt card or an exempt access code to a
41 person that enables the person to buy motor fuel at retail without paying tax on the
42 fuel may deduct the amount of excise tax imposed on fuel purchased with the exempt
43 retail card or code. The amount of excise tax imposed on fuel purchased at retail

1 with an exempt retail card or code is the amount that was imposed on the fuel when
2 it was delivered to the retailer of the fuel."

3 Section 16. G.S. 105-449.98 reads as rewritten:

4 "**§ 105-449.98. Duties of supplier concerning payments by distributors, exporters, and**
5 **importers.**

6 (a) As Fiduciary. -- A supplier has a fiduciary duty to remit to the Secretary the
7 amount of tax paid to the supplier by a licensed distributor, licensed exporter, or
8 licensed importer. A supplier is liable for taxes paid to the supplier by a licensed
9 distributor, licensed exporter, or licensed importer.

10 (b) ~~Notification to Distributor or Exporter.~~ Notice of Fuel Received. -- A supplier
11 must notify a licensed ~~distributor or licensed exporter~~ distributor, a licensed exporter,
12 or a licensed importer that received motor fuel from the supplier during a reporting
13 period of the number of taxable gallons received. The supplier must give this notice
14 after the end of each reporting period and before the ~~licensed distributor or licensed~~
15 ~~exporter~~ license holder must remit to the supplier the amount of tax due on the fuel.

16 (c) ~~Notification~~ Notice to Department. -- A supplier of motor fuel at a terminal
17 must notify the Department within 10 business days after a return is due of any
18 licensed ~~distributors or licensed exporters~~ distributors, licensed exporters, or licensed
19 importers that did not pay the tax due the supplier when the supplier filed the return.
20 The ~~notification~~ notice must be transmitted to the Department in the form required
21 by the Department.

22 (d) Payment Application. -- A supplier that receives a payment of tax from a
23 ~~distributor or a licensed exporter~~ licensed distributor, a licensed exporter, or a
24 licensed importer may not apply the payment to ~~debts~~ a debt that person owes the
25 supplier for motor fuel purchased from the supplier."

26 Section 17. G.S. 105-449.105(a) reads as rewritten:

27 "(a) Exempt Fuel. -- A ~~distributor~~ person may obtain a refund of tax paid by the
28 ~~distributor~~ person on motor fuel sold to a governmental unit whose use of motor fuel
29 is exempt from the motor fuel excise tax. A governmental unit whose use of motor
30 fuel is exempt from the motor fuel excise tax may obtain a refund of tax paid by it on
31 motor fuel. A person may obtain a refund of tax paid by the person on exported
32 fuel, including fuel whose shipping document shows this State as the destination state
33 but was diverted to another state in accordance with the diversion procedures
34 established by the Secretary."

35 Section 18. G.S. 105-449.116 reads as rewritten:

36 "**§ 105-449.116. Import confirmation number required for some imported motor fuel.**

37 (a) Requirement. -- A bonded importer or an occasional importer that acquires
38 motor fuel for import by transport truck from a supplier that is not an elective
39 supplier or a permissive supplier, and therefore will not be acting as trustee for the
40 remittance of tax to the State on behalf of the importer, must obtain an import
41 confirmation number from the Secretary before importing the motor fuel. The
42 importer must write the import confirmation number on the shipping document
43 issued for the fuel. The importer must obtain a separate import confirmation number
44 for each transport truck delivery of motor fuel into this State.

1 (b) Penalty. -- An importer that does not obtain an import confirmation number
2 when required by this section is liable for a civil penalty. The civil penalty is payable
3 to the Department of Transportation, Division of Motor Vehicles, or the Department
4 of Revenue and is payable by the person in whose name the transport truck is
5 registered. The amount of the penalty depends on whether the person against whom
6 the penalty is assessed has previously been assessed a penalty under this subsection.
7 For a first assessment under this subsection, the penalty is the same as the amount for
8 a first assessment under G.S. 105-449.115(f). For a second or subsequent assessment
9 under this subsection, the penalty is the same as the amount for a second or
10 subsequent assessment under G.S. 105-449.115(f). A penalty imposed under this
11 subsection is in addition to any motor fuel tax assessed."

12 Section 19. G.S. 105-449.117 reads as rewritten:

13 **"§ 105-449.117. Penalties for highway use of dyed diesel or other non-tax-paid fuel.**

14 It is unlawful to use dyed diesel fuel ~~for a highway use in a highway vehicle that is~~
15 licensed or required to be licensed under Chapter 20 of the General Statutes unless
16 that use is ~~permitted~~ allowed under section 4082 of the Code. It is unlawful to use
17 undyed diesel fuel in a highway vehicle that is licensed or required to be licensed
18 under Chapter 20 of the General Statutes unless the tax imposed by this Article has
19 been paid. A person who ~~operates on a highway a highway vehicle whose supply~~
20 ~~tank contains dyed diesel fuel whose use is unlawful under this section or contains~~
21 ~~other fuel on which the tax imposed by this Article has not been paid~~ violates this
22 section is guilty of a Class 1 misdemeanor and is liable for a civil penalty.

23 The civil penalty is payable to the Department of Transportation, Division of
24 Motor Vehicles, or the Department of Revenue and is payable by the person in
25 whose name the highway vehicle is registered. The amount of the penalty depends
26 on the amount of fuel in the supply tank of the highway vehicle. The penalty is the
27 greater of one thousand dollars (\$1,000) or five times the amount of motor fuel tax
28 payable on the fuel in the supply tank. A penalty imposed under this section is in
29 addition to any motor fuel tax assessed."

30 Section 20. G.S. 105-449.120(a)(3) reads as rewritten:

31 "(3) Willfully fails to pay a tax when due under this ~~Article. Article or~~
32 under former Article 36 or 36A of this Chapter. Failure to comply
33 with a requirement of a supplier to remit tax payable to the
34 supplier by electronic funds transfer is considered a failure to make
35 a timely payment."

36 Section 21. The catch line to G.S. 105-449.122 reads as rewritten:

37 **"§ 105-449.122. Miscellaneous Equipment requirements."**

38 Section 22. Part 6 of Article 36C of Chapter 105 of the General Statutes
39 is amended by adding a new section to read:

40 **"§ 105-449.123. Marking requirements for dyed diesel fuel storage facilities.**

41 (a) Requirements. -- A person who is a retailer of dyed diesel fuel or who stores
42 both dyed and undyed diesel fuel for use by that person or another person must mark
43 the storage facility for the dyed diesel fuel as follows with the phrase 'Dyed Diesel',

1 'For Nonhighway Use', or a similar phrase that clearly indicates the diesel fuel is not
2 to be used to operate a highway vehicle:

3 (1) The storage tank of the storage facility must be marked if the
4 storage tank is visible.

5 (2) The fillcap or spill containment box of the storage facility must be
6 marked.

7 (3) The dispensing device that serves the storage facility must be
8 marked.

9 (b) Exception. -- The marking requirements of this section do not apply to a
10 storage facility that contains fuel used only in heating, drying crops, or a
11 manufacturing process, and is installed in a manner that makes use of the fuel for any
12 other purpose improbable."

13 Section 23. G.S. 105-449.133 reads as rewritten:

14 "§ 105-449.133. Bond or letter of credit required as a condition of obtaining and
15 keeping license as alternative fuel provider. certain licenses.

16 (a) Who Must Have Bond. -- An applicant The following applicants for a license as
17 ~~an alternative fuel provider~~ must file with the Secretary a bond or an irrevocable
18 letter of credit ~~in an credit~~:

19 (1) An alternative fuel provider.

20 (2) A retailer or a bulk-end user that intends to store highway and
21 nonhighway alternative fuel in the same storage facility.

22 (b) Amount. -- The amount of the bond is the amount that would be required if
23 the fuel the applicant intended to provide or store was motor fuel rather than
24 alternative fuel. An applicant that is also required to file a bond or an irrevocable
25 letter of credit under G.S. 105-449.72 to obtain a license as a distributor of motor fuel
26 may file a single bond or irrevocable letter of credit under that section for the
27 combined amount.

28 A bond filed under this subsection must be conditioned upon compliance with this
29 Article, be payable to the State, and be in the form required by the Secretary. The
30 Secretary may require a bond issued under this subsection to be adjusted in
31 accordance with the procedure set out in G.S. 105-449.72 for adjusting a bond filed
32 by a distributor of motor fuel."

33 Section 24. G.S. 105-449.137(a) reads as rewritten:

34 "(a) Liability. -- A bulk-end user or retailer that stores highway and nonhighway
35 alternative fuel in the same storage facility is liable for the tax imposed by this
36 Article. The tax payable by a bulk-end user or retailer applies when fuel is
37 withdrawn from the storage facility. The alternative fuel provider that sells or delivers
38 alternative fuel is liable for the tax imposed by this ~~Article.~~ Article on all other
39 alternative fuel."

40 Section 25. G.S. 105-449.138 reads as rewritten:

41 "§ 105-449.138. Requirements for bulk-end users and retailers.

42 (a) Informational Return. -- A bulk-end user and a retailer must file a quarterly
43 informational return with the Secretary. A quarterly return covers a calendar quarter

1 and is due by the last day of the month that follows the quarter covered by the
2 return.

3 The return must give the following information and any other information
4 required by the Secretary:

5 (1) The amount of alternative fuel received during the quarter.

6 (2) The amount of alternative fuel sold or used during the quarter.

7 (b) Storage. -- ~~A storage facility used by a bulk-end user or a retailer must be~~
8 ~~marked in a manner similar to that required for diesel fuel by G.S. 105-449.87(e) if~~
9 ~~the alternative fuel stored in the facility is to be used for a purpose other than to~~
10 ~~operate a highway vehicle. A bulk-end user or a retailer may store highway and~~
11 nonhighway alternative fuel in separate storage facilities or in the same storage
12 facility. If highway and nonhighway alternative fuel are stored in separate storage
13 facilities, the facility for the nonhighway fuel must be marked in accordance with the
14 requirements set by G.S. 105-449.123 for dyed diesel storage facilities. If highway and
15 nonhighway alternative fuel are stored in the same storage facility, the storage facility
16 must be equipped with separate metering devices for the highway fuel and the
17 nonhighway fuel. If the Secretary determines that a bulk-end user or retailer used or
18 sold alternative fuel to operate a highway vehicle when the fuel was dispensed from a
19 storage facility or through a meter marked for nonhighway use, all fuel delivered into
20 that storage facility is presumed to have been used to operate a highway vehicle."

21 Section 26. Sections 1, 19, and 20 of this act are effective when this act
22 becomes law. The remaining sections of this act become effective October 1, 1997.

FISCAL ANALYSIS MEMORANDUM

DATE: February 18, 1997
TO: Senate Finance Committee
FROM: Richard Bostic
Fiscal Research Division
RE: SB 98 Tax at Rack Improvements

FISCAL IMPACT

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

FY 1997-98 FY 1998-99 FY 1999-00 FY 2000-01 FY 2001-02

REVENUES

EXPENDITURES

PRINCIPAL DEPARTMENT(S) & Department of Revenue, Motor Fuels Tax Division
PROGRAM(S) AFFECTED:

EFFECTIVE DATE: Effective October 1, 1997 except for sections 1, 19, and 20 that are effective upon ratification.

BILL SUMMARY:

Makes technical and clarifying changes to method of collecting motor fuel taxes commonly referred to as "tax at the rack." State adopted this method effective Jan. 1, 1996. Method bears this name because it imposes the per gallon excise tax when motor fuel is put into truck by means of "rack" at pipeline terminal.



North Carolina Department of Revenue

James B. Hunt, Jr.
Governor

February 18, 1997

Muriel K. Offerman
Secretary

MEMORANDUM

TO: Representative Lyons Gray, Representative Constance Wilson,
Representative Robert Brawley, and Representative Walter Dickson,
Co-Chairmen
House Finance Committee

Senator John H. Kerr III and Senator David Hoyle, Co-Chairmen
Senate Finance Committee

FROM: Muriel K. Offerman
Secretary of Revenue

RE: SENATE BILL 98 - A BILL TO BE ENTITLED AN ACT TO IMPROVE THE
ADMINISTRATION OF THE MOTOR FUEL TAX LAWS

This bill makes additional fine tuning changes to the method of collecting motor fuels tax, otherwise known as "tax at the rack". The tax is imposed when motor fuel is put into a transport or tank wagon truck, for distribution, at the terminal rack. This method of fuel tax collection was adopted by the General Assembly effective January 1, 1996.

This bill makes various clarifying changes and also changes the licensing requirements of exporters.

Section 1: Explains the nature of the motor fuels tax and although the tax is collected by the supplier or importer, the tax is designed as a "pass-through" tax to be paid by the ultimate consumer. This is the same principle as outlined by the United States Supreme Court in the Chickasaw case. In that case, the Oklahoma gas tax was held to not apply to Native American sellers because the tax was not a pass-through tax.

Sections 2 and 4: Removes the option of an exporter to be licensed and makes licensing mandatory, the same as for importers. Currently, if an exporter is not licensed in North Carolina, the unlicensed exporter must pay the North Carolina motor fuels tax and the destination state's tax. The unlicensed exporter must then apply to North Carolina for the refund.



Section 3: Changes the licensing provisions for a bulk-end user importing motor fuels into the state. Currently a bulk-end user, trucking company, may not be licensed as a bonded importer. This bill allows for a bulk-end user to be a bonded importer, thereby able to buy fuel at an out-of-state terminal that does not precollect the North Carolina motor fuel tax.

This section further relieves the bulk-end users of the importer licensing requirements if they purchase all of their imported fuel at an out-of-state terminal that precollects the North Carolina tax. Currently, the bulk-end user must be licensed as an occasional importer. This change parallels the requirements for a distributor.

Finally, this section requires a bulk-end user that imports motor fuel from a bulk plant, outside of the terminal rack system, to be licensed as an occasional importer. The North Carolina motor fuels tax has not been charged on this fuel and this licensing requirement allows for the bulk-end user to pay the tax on fuel from a bulk plant directly to the state.

Section 5: Deletes the bond requirement for an exporter. Currently the bond requirement is based on expected liability which ranges from \$2,000 to \$250,000. The bill now requires that all exporters be licensed which enables cross-border tracking of fuel shipments.

Section 6: Deletes references to unlicensed exporters since sections 2 and 4 of the bill requires all exporters to be licensed.

Section 7: The bill requires all exporters to be licensed but in the case that an exporter is not licensed and does export motor fuel, the bill allows for the Department to assess North Carolina motor fuel tax on the fuel purchased in this state.

Sections 8 and 22: Clarifies the marking requirements for dyed diesel storage tanks by requiring a dyed diesel tank to be marked at all retail locations and only at user locations which store both highway and nonhighway diesel. Currently all dyed diesel tanks must be labeled "For Nonhighway Use" unless the fuel in the tank is for home heating, drying crops or manufacturing and the accessibility to the tank makes use of the fuel for other purposes improbable.

This is consistent with the federal law.

Section 9: Clarifies the use of exempt or access cards. This section places the liability of the tax on the distributor if that distributor represents, by using an exempt access card, that the fuel is to be resold directly to an exempt entity but instead resells the fuel for a taxable purpose. By using the exempt access card, the distributor is getting the fuel taxfree.

This section also places the tax liability on the supplier if that supplier issues a card or code that allows a person to buy, less the tax, at a retail location, when in reality the person is not exempt.

This section further states that the card holder is liable for any misuse of the exempt card by the cardholder.

Section 10: Requires an out-of-state bulk-end user that buys fuel at a North Carolina terminal to be licensed as a distributor or exporter. A bulk-end user will only be licensed as a distributor if they fall within the grandfather group of bulk-end users that were licensed prior to tax at the rack as a distributor. All new out-of-state bulk-end user licensees will be licensed as an exporter.

Section 11: Made a change to the due date of the occasional importer return. Under current law, the return is due by the first day of the month following the close of the preceding month, if activity existed. This caused a hardship on the taxpayer who made the import on the last day on the month and was expected to file a return the following day.

Section 12: Clarifies the time that an exporter must remit tax to the supplier of the destination state tax. It further deletes any reference to unlicensed exporters.

Section 13: Deletes all references to an exporter.

Section 14: Adds importers to the categories of information contained on a supplier's return.

Section 15: Allows for the supplier to take credit on the supplier return for sales made at retail locations to exempt entities, by use of an access card or code issued by the supplier.

Section 16: Adds importers to the group of license holders that must receive certain information from suppliers and about whom the suppliers must notify the Department.

Section 17: Allows for anyone who pays tax on fuel that is exempt to apply to the Department for a refund of the tax paid.

Section 18: Adds a civil penalty for failure to get an import confirmation number. This proposed penalty is the same as the penalty for failure to obtain a diversion number when the fuel is diverted to a destination state other than what is on the bill on lading. Currently, there is no penalty for failure to obtain a import confirmation number.

Section 19: Clarifies that the penalty for using dyed diesel or other non-taxpaid fuel in a highway vehicle applies to all fuel used in the vehicle. Currently, the law applies the penalty to fuel used "for a highway use". This could be construed to mean that a vehicle that is parked and has dyed diesel in its tanks is not subject to the penalty because the fuel is not at that moment being used for a highway use.

Section 20: Clarifies the civil penalty for willful failure to pay a tax due to include tax due under the former law as well as tax due under the current statute. The Department was required to reissue licenses under the new law but had no provisions for canceling the licenses if tax due prior to the new law was not paid.

Section 21: Makes a technical change to accommodate the addition of a new statute in Section 22 to come after G.S. 105-449-122. Statutes with headings of miscellaneous requirements are typically the last statute in a Part or Article and this statute will no longer be the last one.

Section 22: See Section 8.

Section 23: Requires a retailer or bulk user of alternative fuel that will be the taxpayer to post a bond.

Section 24: Changes the liability of tax on alternative fuels stored in one tank from the alternative fuels provider to the retailer or bulk-end user of alternative fuels. Currently the provider must charge tax on all fuel if one storage facility for highway and nonhighway fuel is used.

Section 25: Allows a retailer or bulk-end user of alternative fuels to use one storage facility for highway and nonhighway fuel. There must be separate metering devices to measure fuel that is used for a highway or nonhighway use.

Section 26: Makes all sections of the act except three clarifying changes effective October 1, 1997. Sections 1, 19 and 20 are effective when the act becomes law.



North Carolina General Assembly
Legislative Services Office

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

W. Robinson, Director
Administrative Division
Room 5, Legislative Building
16 W. Jones Street
Raleigh, NC 27603-5925
(919) 733-7500

Gerry F. Cohen, Director
Bill Drafting Division
Suite 401, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Donald W. Fulford, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

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

February 10, 1997

MEMORANDUM

To: Senator John Kerr
From: Sabra Faires *SF*
Subject: Tax At Rack Results

The numbers are in for the first year of tax at the rack. The change in the method of collecting motor fuel taxes resulted in an increase in gallons of 3.26%. This increase in the gallons increased the amount of taxes collected by \$31,115,103.

The attached charts show the increases in the gallons and in the dollar amount of tax collected. The chart that sets out the increase in tax collections shows an increase of \$41,241,911. Only part of this amount is attributable to tax at the rack. The difference between \$41,241,911 and the tax at the rack increase, which is \$31,115,103, is attributable to an increase in the variable component of the motor fuel tax rate.

The switch to collecting taxes at the rack has increased motor fuel tax collections in an amount that is the equivalent of a tax increase of $\frac{3}{4}$ cent a gallon.

**Comparative Statement of Net Motor Fuels
for Feb - Jan 1995-96 & 1996-97**

	Feb 96 - Jan 97	Feb 95 - Jan 96	Increase Decrease	% of Change
GASOLINE GALLONS				
February	275,242,708	267,879,913	7,362,795	2.75%
March	268,358,689	267,253,576	1,105,113	0.41%
April	313,423,180	302,261,894	11,161,286	3.69%
May	311,387,966	301,364,480	10,023,486	3.33%
June	328,252,132	314,115,820	14,136,312	4.50%
July	311,068,322	313,190,916	(2,122,594)	-0.68%
August	329,420,552	313,451,647	15,968,905	5.09%
September	336,988,529	325,580,286	11,408,243	3.50%
October	303,481,925	294,939,487	8,542,438	2.90%
November	328,222,069	308,323,010	19,899,059	6.45%
December	311,603,097	302,474,305	9,128,792	3.02%
January	313,913,846	309,655,703	4,258,143	1.38%
NC Gas	3,731,363,015	3,620,491,037	110,871,978	3.06%

SPECIAL FUELS GALLONS				
February	57,200,546	38,787,755	18,412,791	47.47%
March	60,695,236	94,493,765	(33,798,529)	-35.77%
April	76,031,592	64,995,353	11,036,239	16.98%
May	70,372,135	58,561,264	11,810,871	20.17%
June	71,420,310	69,392,016	2,028,294	2.92%
July	67,386,229	65,958,285	1,427,944	2.16%
August	68,107,843	60,217,005	7,890,838	13.10%
September	73,284,092	69,592,610	3,691,482	5.30%
October	65,178,698	66,599,097	(1,420,399)	-2.13%
November	75,175,797	67,575,143	7,600,654	11.25%
December	67,351,260	65,772,882	1,578,378	2.40%
January	68,150,492	65,602,334	2,548,158	3.88%
NC SF	820,354,230	787,547,509	32,806,721	4.17%

GASOLINE & SPECIAL FUELS GALLONS				
February	332,443,254	306,667,668	25,775,586	8.41%
March	329,053,925	361,747,341	(32,693,416)	-9.04%
April	389,454,772	367,257,247	22,197,525	6.04%
May	381,760,101	359,925,744	21,834,357	6.07%
June	399,672,442	383,507,836	16,164,606	4.21%
July	378,454,551	379,149,201	(694,650)	-0.18%
August	397,528,395	373,668,852	23,859,743	6.39%
September	410,272,621	395,172,696	15,099,725	3.82%
October	368,660,623	361,538,684	7,122,039	1.97%
November	403,397,866	375,898,153	27,499,713	7.32%
December	378,954,357	368,247,187	10,707,170	2.91%
January	382,064,338	375,258,037	6,806,301	1.81%
NC COMB	4,551,717,245	4,408,038,646	143,678,699	3.26%

**Comparative Statement of Net Motor Fuels
for Feb - Jan 1995-96 & 1996-97**

	Feb 96 - Jan 97	Feb 95 - Jan 96	Increase Decrease	% of Change
GASOLINE TAXES				
February	\$60,553,396	\$58,129,941	\$2,423,455	4.17%
March	\$59,038,912	\$57,994,026	\$1,044,886	1.80%
April	\$68,953,100	\$65,590,831	\$3,362,269	5.13%
May	\$68,505,353	\$65,396,092	\$3,109,260	4.75%
June	\$72,215,469	\$68,163,133	\$4,052,336	5.95%
July	\$67,501,826	\$67,649,238	(\$147,412)	-0.22%
August	\$71,484,260	\$67,705,556	\$3,778,704	5.58%
September	\$73,126,511	\$70,325,342	\$2,801,169	3.98%
October	\$65,855,578	\$63,706,929	\$2,148,649	3.37%
November	\$71,224,189	\$66,597,770	\$4,626,419	6.95%
December	\$67,617,872	\$65,334,450	\$2,283,422	3.49%
January	\$70,944,529	\$68,124,255	\$2,820,275	4.14%
NC Gas	\$817,020,993	\$784,717,562	\$32,303,430	4.12%

SPECIAL FUELS TAXES				
February	\$12,584,120	\$8,416,943	\$4,167,177	49.51%
March	\$13,352,952	\$20,505,147	(\$7,152,195)	-34.88%
April	\$16,726,950	\$14,103,992	\$2,622,959	18.60%
May	\$15,481,870	\$12,707,794	\$2,774,075	21.83%
June	\$15,712,468	\$15,058,067	\$654,401	4.35%
July	\$14,622,812	\$14,246,990	\$375,822	2.64%
August	\$14,779,402	\$13,006,873	\$1,772,529	13.63%
September	\$15,902,648	\$15,032,004	\$870,644	5.79%
October	\$14,143,777	\$14,385,405	(\$241,627)	-1.68%
November	\$16,313,148	\$14,596,231	\$1,716,917	11.76%
December	\$14,615,223	\$14,206,943	\$408,281	2.87%
January	\$15,402,011	\$14,432,513	\$969,498	6.72%
NC SF	\$179,637,382	\$170,698,901	\$8,938,480	5.24%

GASOLINE & SPECIAL FUELS TAXES				
February	\$73,137,516	\$66,546,884	\$6,590,632	9.90%
March	\$72,391,864	\$78,499,173	(\$6,107,309)	-7.78%
April	\$85,680,050	\$79,694,823	\$5,985,227	7.51%
May	\$83,987,222	\$78,103,886	\$5,883,336	7.53%
June	\$87,927,937	\$83,221,200	\$4,706,737	5.66%
July	\$82,124,638	\$81,896,227	\$228,410	0.28%
August	\$86,263,662	\$80,712,429	\$5,551,233	6.88%
September	\$89,029,159	\$85,357,346	\$3,671,813	4.30%
October	\$79,999,355	\$78,092,334	\$1,907,021	2.44%
November	\$87,537,337	\$81,194,001	\$6,343,336	7.81%
December	\$82,233,095	\$79,541,392	\$2,691,703	3.38%
January	\$86,346,540	\$82,556,768	\$3,789,772	4.59%
NC COMB	\$996,658,375	\$955,416,464	\$41,241,911	4.32%

Tax Rates:

Jan 95-Jun 95	21.7 Cents
Jul 95-Dec 95	21.6 Cents
Jan 96-Jun 96	22.0 Cents
Jul 96-Dec 96	21.7 Cents
Jan 97-Jun 97	22.6 Cents

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

2/19/97
Date

Name of Committee

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jul J. King	DOR
Lennie Collins	DOR
Mike Underwood	DOR
Joe Plussa	DOR
Dana Alderson	DOR
Claire Gilbert	Governor's Office
Brian Whittington	NEAE
John Buel	DOR
Natalie Haskins	Charlotte Chamber
PERRI MORGAN	NFIB
Alice Garland	Electricities

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

2/19/97
Date

Name of Committee

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Doug Howey	NCPMA
Gary Harris	NC PMA
Patience Reeler	NCA CC
Cam Cover	NCA CS
Sherol Bamen	NCP
Alan Miles	Baily & Dixon LLP
VL McBride	NCP
Andy Romanet	N.C.L.M.
Joyce Peters	Electrical Co's
Bob Beck	DOR
Paul Lander	Lander Consulting

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

FINANCE COMMITTEE REPORT

Senator David Hoyle, Co-Chair
Senator John Kerr, Co-Chair

Wednesday, February 19, 1997

SENATOR HOYLE,

submits the following with recommendations as to passage:

FAVORABLE

S.B. 98 Tax At Rack Improvements
Sequential Referral: none
Recommended Referral: none

FAVORABLE, AS AMENDED

S.B. 33 Revenue Laws Technical Changes
Sequential Referral: none
Recommended Referral: none
Long Title Amended: No

TOTAL REPORTED: 2

Committee Clerk Comment: none

SENATE FINANCE COMMITTEE
(Joint Meeting with House Finance and Senate and House Appropriations Committees)

WEDNESDAY, FEBRUARY 19, 1997

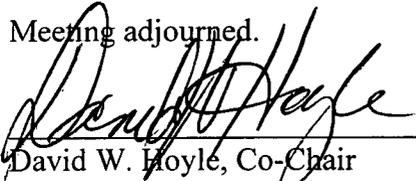
3 P.M. - ROOM 643 LOB

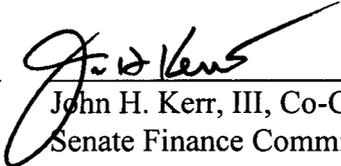
The Senate Finance Committee met jointly with the Senate Appropriations Committee and the House Finance and Appropriations Committees on Wednesday, February 19, 1997, to hear Tony Goldman from the Legislative Staff. Representative Holmes called the meeting to order and introduced Mr. Goldman.

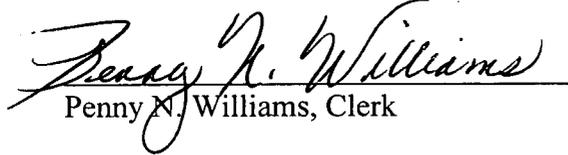
Mr. Goldman informed the committees that Governor Hunt had recommended a \$11.2 billion budget which included the first steps in raising teacher salaries to the national average and expanding Smart Start to all 100 counties. Included in the minutes is information provided by Mr. Goldman to the committee members.

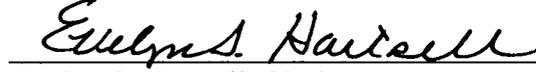
At the conclusion of Mr. Goldman's presentation, Representative Crawford, Chair of House Appropriations, presided over a question and answer general discussion.

Meeting adjourned.


David W. Hoyle, Co-Chair
Senate Finance Committee


John H. Kerr, III, Co-Chair
Senate Finance Committee


Penny N. Williams, Clerk


Evelyn S. Hartsell, Clerk

STATE OF NORTH CAROLINA

GENERAL FUND FINANCIAL MODEL SIMULATIONS

Fiscal Research Division
February 18, 1997

1997 GENERAL FUND FINANCIAL MODEL

INTRODUCTION

The North Carolina General Assembly utilizes an automated financial model to project General Fund revenues and expenditures over time, given certain plausible assumptions. The model is based on the concept that "current services" will continue at the level provided in the base year 1996/97, and that expenditures associated with those service levels will be adjusted by inflation.

The "current services" concept reflects the assumption that State departments will continue to provide the current scope and quality of services (as provided for in 1996/97 certified budget) to the populations or "clients" they serve. The model assumes that service delivery will expand in response to the growth in certain demographic or economic measures, such as total state population or total state employment.

Given North Carolina's future economic and demographic outlook, the model provides an effective way to "simulate" revenue and expenditure changes if the budget is allowed to grow in the future as it has in the past. The model can be updated annually so that key decisions, and the estimated fiscal impact that might result from those decisions, can be viewed from a long-term perspective.

It should be noted that while the model may "simulate" expenditures exceeding revenues, North Carolina operates under a Balanced Budget. The Financial Model results are not intended to suggest that the State's General Fund will not be balanced in future years, but to highlight where actions may be necessary to avoid long term budget problems.

N. C. GENERAL FUND FINANCIAL MODEL

02/18/97

FACT SHEET

I. PURPOSE:

- * To provide legislators with a neutral benchmark against which they may consider the long-term effects of potential changes in current law.
- * To identify quantitatively the long-term "structural" implications of the interplay between the General Fund budget, the economy, and selected demographic factors.

II. ASSUMPTIONS AND KEY DRIVERS:

A. CURRENT SERVICES CONTINUED FROM BASE YEAR ENDED 6/30/97

C. GENERAL EXPENDITURE DRIVERS FOR MAJOR CATEGORIES (Cont.)

B. BASELINE TREND ASSUMPTIONS:

Avg. Annual Growth FY 1996/97 - 2001/02:

Population = 1.3%
Personal Income = 6.2%
Consumer Price Index (CPI) = 3.0%
Employment = 1.6%

4. UNC System:

Full Time Equivalent (FTE) Growth
(Avg. annual FTE growth FY 96/97 - 01/02 = 1.5%)

5. Community Colleges:

Full Time Equivalent (FTE) Growth
(Avg. annual FTE growth FY 96/97 - 01/02 = 1.8%)

6. Human Resources:

Social Services
AFDC -- Growth in unemployment
Aid For Elderly -- Growth in population 65 & older
Medical Assistance
Medicaid -- Growth at 10% annually

1. Wage Increases:

Comparable to average hourly manufacturing employees in N.C.
(Approximately 3.4% - 3.9% annually)

2. State Employees Health Care Costs:

No growth FY 96/97-98/99, 9% annually thereafter.

3. Public Education (K-12):

State Aid Allotment Formulas
Average Daily Membership (ADM) Growth
(Avg. annual ADM growth FY 96/97 - 01/02 = 1.5%)

7. Correction:

Population Growth Projections For:
Inmates, Probationers, and Parolees

D. REVENUE DRIVERS:

General Fund Taxes:
Growth of Personal Income

GENERAL FUND FINANCIAL MODEL FY 1996/1997 BASE YEAR

CURRENT SERVICES SIMULATION

Feb. 18, 1997

(\$=Million)

GENERAL FUND EXPENDITURES AND REVENUE

	1997/98	1998/99	1999/00	2000/01	2001/02
Expenditures	11,129.1	11,787.4	12,435.6	13,167.3	13,892.6
Revenues	11,059.7	11,716.9	12,451.1	13,250.7	14,108.9
Surplus/(Shortage)	(69.4)	(70.5)	15.5	83.4	216.3
Growth Rates:					
Expenditures	7.0%	5.9%	5.5%	5.9%	5.5%
Revenue	5.1%	5.9%	6.3%	6.4%	6.5%

Note: If surplus is applied to recurring programs, expenditures for the following years are increased by that amount.

GROWTH ASSUMPTIONS

Avg. Annual Growth Assumptions	1996-2002	Annual Growth Assumptions
1. N.C. Population	1.3%	96/97-01/02 = 10%
2. Total Personal Income	6.2%	96/97-98/99 = 0%
3. CPI	3.0%	99/00-01/02 = 9%
4. Avg. Daily Mem.	1.5%	Comparable to Hourly Manufacturing (approx. 3.4%-3.9%)
5. Employment	1.6%	
6. UNC FTE	1.5%	
7. Compar. Col FTE	1.8%	
8. Inmates	-1.0%	
9. Proportions	-0.2%	

NOTES:

1. Gen'l Fund surplus/(shortage) does not consider prior reserves.
2. Capital improvements and other nonrecurring expenditures are not included in annual expenditures.
3. Medicaid disproportionate share non-tax revenue is not included in annual revenues.

GENERAL FUND MODEL RECONCILIATION
FISCAL RESEARCH DIVISION / OFFICE OF STATE BUDGET
General Fund Recurring Resources and Requirements

(\$=Million)

1. FISCAL RESEARCH DIVISION (FRD)

Current Services Simulation	1997/98	1998/99	1999/00	2000/01	2001/02
Revenues	11,059.7	11,716.9	12,451.1	13,250.7	14,108.9
Expenditures	11,129.1	11,787.4	12,435.6	13,167.3	13,892.6
Surplus/(Shortage)	(69.4)	(70.5)	15.5	83.4	216.3

2. OFFICE OF STATE BUDGET (OSBM)

Budget Summary Document *	1997/98	1998/99	1999/00	2000/01	2001/02
Revenues	11,049.7	11,711.4	12,444.8	13,243.5	14,100.7
Expenditures	11,045.5	11,710.5	12,443.8	13,209.8	13,810.9
Surplus/(Shortage)	4.2	0.9	1.0	33.7	289.8

* Continuation budget plus policy changes

3. RECONCILIATION OF FRD SIMULATION TO OSBM

	1997/98	1998/99	1999/00	2000/01	2001/02
REVENUES					
Current Services Simulation (FRD)	11,059.7	11,716.9	12,451.1	13,250.7	14,108.9
OSBM Revenue Reductions: **					
Highway Fund Transfer	(12.6)	(13.4)	(14.2)	(15.1)	(16.1)
OSBM Revenue Increases: **					
Interstate Auditors	2.6	7.9	7.9	7.9	7.9
Adjusted Revenues	11,049.7	11,711.4	12,444.8	13,243.5	14,100.7
EXPENDITURES					
Current Services Simulation (FRD)	11,129.1	11,787.4	12,435.6	13,167.3	13,892.6
OSBM Expenditure Reductions: **					
Recommended Cuts (Bud. Sum.)	(245.0)	(398.3)	(549.1)	(699.9)	(735.3)
Lower Wage Increase (St. Emp.)	(33.8)	(51.6)	(69.5)	(93.2)	(147.0)
Teachers/State Emp. Health Care			(26.7)	(64.7)	(106.1)
FTE Comm. College		(12.5)	(25.4)	(38.9)	(50.1)
ABC's of Public Ed. Program	(25.0)	(25.0)			
OSBM Expenditure Increases: **					
Smart Start	22.1	68.7	130.0	222.9	260.4
Teachers to the National Avg.	120.8	269.4	431.9	605.5	623.7
ABC's of Public Ed. Program			25.0	25.0	25.0
Reduction in Class Size	11.0	11.0	11.0	11.0	11.0
Other Items	41.7	56.7	58.7	58.7	58.7
Adjusted Expenditures	11,020.9	11,705.8	12,421.5	13,193.7	13,832.9
Surplus/(Shortage)	28.8	5.6	23.3	49.8	267.8

**Relative to FRD model

GENERAL FUND FINANCIAL MODEL FY 1996/1997 BASE YEAR

RECESSIONARY SIMULATION

(\$=Million)

GENERAL FUND EXPENDITURES AND REVENUE

	1997/98	1998/99	1999/00	2000/01	2001/02
Expenditures	11,079.4	11,838.9	12,398.5	13,091.0	13,915.0
Revenues	11,127.1	11,331.9	12,295.9	13,245.0	14,108.9
Surplus/(Shortage)	47.7	(507.0)	(102.6)	154.0	193.9
Growth Rates:					
Expenditures	6.5%	6.9%	4.7%	5.6%	6.3%
Revenue	5.8%	1.8%	8.5%	7.7%	6.5%

Note: If surplus is applied to recurring programs, expenditures for the following years are increased by that amount.

GROWTH ASSUMPTIONS

Avg. Annual Growth Assumptions	1996-2002
1. N.C. Population	1.3%
2. Total Personal Income	6.2%
3. CPI	3.0%
4. Avg. Daily Mem.	1.5%
5. Employment	1.6%
6. UNC FTE	1.5%
7. Comm Col FTE	1.8%
8. Inmates	-1.0%
9. Probationers	-0.2%

10. Medicaid	96/97-97/98=8%
	97/88-98/99=18%
	98/99-99/00=6%
	99/00-01/02=10%
11. State Emp Health Care	96/97-98/99=0%
	99/00-01/02=9%
12. Wage Increase (teachers & state employees)	comparable to Hourly Manufacturing (approx 3.4%-3.9%)

Revenue Reductions From Trend

Tax	97/98	98/99	99/00	00/01
Corp. Inc. Tax	\$23.3	(\$56.7)	(\$28.7)	\$6.3
Sales Tax	\$19.7	(\$143.4)	(\$19.4)	\$2.0
Personal Inc. Tax	\$24.4	(\$184.9)	(\$107.1)	(\$14.0)
Total	\$67.4	(\$385.0)	(\$155.2)	(\$5.7)

NOTES:

1. Gen'l Fund surplus/(shortage) does not consider prior reserves.
2. Capital improvements and other nonrecurring expenditures are not included in annual expenditures.
3. Medicaid disproportionate share non-tax revenue is not included in annual revenues.

SENATE FINANCE COMMITTEE

WEDNESDAY, FEBRUARY 26, 1997

12 NOON - ROOM 544 LOB

The Senate Finance Committee met February 26, 1997, with Senator Kerr presiding. There were 25 committee members present and the following bills were discussed:

H.B. 34 - Catawba Annexations

H.B. 34 was explained by Representative Brawley. Copy of bill and explanation included in the minutes. Upon motion by Senator Carrington, the bill was given a "favorable" report by the committee.

S.B. 69 - Stokes School Acquisition.

Senator Foxx was recognized to explain S.B.59 which was on the agenda for discussion only.

S.B. 59 - Gates School Acquisition.

Senator Ballance was recognized to explain S.B. 59. This bill was on the agenda for discussion only.

Sabra Faires, Staff Attorney, gave a brief background of these bills. Senator Winner was recognized for comments and informed the committee that she had a bill that would extend the COPS authority to all 100 counties. This bill is in the process of being drafted and should be filed on Monday. It will be referred to the Finance Committee. Copies of bills and explanations are included in the minutes.

S.B. 106 - Sale of Property for Unpaid Taxes.

S.B. 106 was explained by Senator Cooper. This bill was recommended by the Revenue Laws Study Commission. Rich Riddle with the Division of Controlled Substance Tax Division of the Department of Revenue was recognized for comments on the backlog of cases now in the Department. Senator Foxx moved for a "favorable" report and the motion was approved. Copy of bill, explanation and fiscal note is included in the minutes.

S.B. 147 - Increase Fee Birth/Death Certificate.

S.B. 147 was explained by Senator Winner. This bill is on the agenda for discussion only. Ron Aycock, representing the Association of County Commissioners, was

recognized and spoke in support of the bill. After questions and comments by members of the committee, Senator Winner informed the committee that she would do additional work on this bill and would like to be on the agenda at a later date. Copy of bill, explanation and fiscal note included in the minutes.

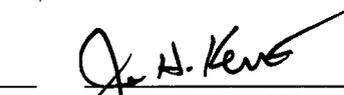
S.B. 34 - Adjust City Receipts Tax Share.

This bill was previously on the February 19th Agenda and a PCS had been adopted at this meeting. This PCS was explained by Senator Cochrane. After a long general debate on S.B. 34 with questions and concerns of the committee members discussed, Senator Kerr announced that S.B. 34 would be further considered at a later date.

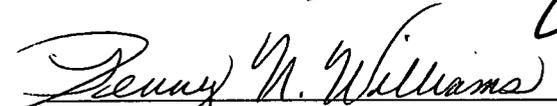
Meeting adjourned.



David W. Hoyle, Co-Chair
Senate Finance Committee



John H. Kerr, III, Co-Chair
Senate Finance Committee



Penny N. Williams, Clerk



Evelyn S. Hartsell, Clerk

NOTE:

Agenda is Attachment # 1
Visitors' Sign Up Sheet is Attachment # 2
Committee Report is Attachment # 3

AGENDA

SENATE FINANCE COMMITTEE

February 26, 1997

12 Noon - Room 544

S.B. 34 - Adjust City Receipts Tax Share

S.B. 56 - Catawba Annexations

S.B. 59 - Gates School Acquisition

S.B. 69 - Stokes School Acquisition

S.B. 106 - Sale of Property for Unpaid Taxes

S.B. 147 - Increase Fee Birth/Death Certif.

H.B. 34 - Catawba Annexations

EXPLANATION OF HOUSE BILL 34:
Catawba Annexations
2nd Edition

TO: Senate Finance Committee
FROM: Sabra J. Faires, Committee Counsel
DATE: February 26, 1997
SPONSOR: Representative Robert Brawley

House Bill 34 concerns voluntary satellite annexations by the Town of Catawba. The bill is identical to Senate Bill 56 (2nd Edition), introduced by Senator Austin Allran. The bill gives the Town of Catawba the ability to annex property that is not contiguous with its primary corporate limits even though the annexed property will exceed 10% of the area within the primary city limits. The bill applies only to annexation ordinances adopted on or before December 31, 1997.

G.S. 160A-58.1 governs the voluntary annexation of noncontiguous property. Property owners may petition a city for voluntary annexation of noncontiguous property if the property meets several standards. Under G.S. 160A-58.1(b)(5), the area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, may not exceed 10% of the area within the primary corporate limits of the annexing city.

There is less than 4,400 acres within the primary corporate limits of the Town of Catawba. The property owners of approximately 440 acres of land noncontiguous to the primary corporate limits of Catawba desire to petition the Town for voluntary satellite annexation. This annexation will not be permissible unless the 10% standard is modified or eliminated. This bill proposes to eliminate the standard for a specified period of time. Five cities have eliminated this standard altogether: Hickory, New Bern, Statesville, Kenly, and Troy. Several other cities have modified the standard, much in the same way as this bill modifies it for the Town of Catawba.

The bill does not release the proposed satellite annexation from meeting the other standards listed in G.S. 160A-58.1(b), which are:

1. The nearest point on the proposed satellite corporate limits must be not more than 3 miles from the primary corporate limits of the annexing city.

2. No point on the proposed satellite corporate limits may be closer to the primary corporate limits of another city than to the primary corporate limits of the annexing city.
3. The area must be so situated that the annexing city will be able to provide the same services within the proposed satellite corporate limits that it provides within its primary corporate limits.
4. If the area proposed for annexation is a subdivision, all of the subdivision must be included.

1 (d) Board of Education May Contract for Construction. -- Notwithstanding the
2 provisions of G.S. 115C-40 and G.S. 115C-521, a local board of education may enter
3 into contracts for the erection or repair of school buildings upon sites owned in fee
4 simple by one or more counties in which the local school administrative unit is
5 located.

6 (e) Scope. -- This section applies to Alleghany, Ashe, Avery, Bladen, Brunswick,
7 Cabarrus, Carteret, Cherokee, Chowan, Columbus, Currituck, Dare, Duplin,
8 Edgecombe, Forsyth, Franklin, Gates, Graham, Greene, Guilford, Halifax, Harnett,
9 Haywood, Hyde, Iredell, Jackson, Johnston, Jones, Lee, Macon, Madison, Martin,
10 Moore, Nash, New Hanover, Orange, Pasquotank, Pender, Person, Pitt, Randolph,
11 Richmond, Rockingham, Rowan, Sampson, Scotland, Stanly, Surry, Union, Vance,
12 Wake, Wilson, and Watauga Counties."

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

EXPLANATION OF SENATE BILL 59
Gates School Acquisition

TO: Senate Finance Committee
FROM: Sabra Faires, Committee Counsel
DATE: February 26, 1997
SPONSOR: Senator Frank Ballance

Senate Bill 59 is a local bill that applies only to Gates County and the local boards of education for school administrative units in that county. The substance of the bill is that same as that enacted in past legislative sessions for 52 other counties.

The bill makes the following changes concerning the acquisition and financing of public school facilities:

- (1) It authorizes Gates County to acquire real or personal property for use by a school administrative unit located in the county when requested to do so by the unit. Under current law, only those counties listed in G.S. 153A-158.1(a), have this authority. Under general law, a county is authorized to acquire real or personal property only on behalf of the county or an agency of the county and a school administrative unit is not an agency of the county.
- (2) It authorizes the local boards of education to contract with Gates county for the erection or repair of a public school building that is located on a site owned by the county. Under current general law, local boards of education are required to hold title to all school property and therefore have no authority to make contracts concerning the construction or repair of school buildings located on sites not owned by them.
- (3) It authorizes the local boards of education to transfer to the county property on which a school building in need of renovation or repair is located for any price agreed to by the board of education and the county. Current law requires transfers from a local board of education to a county to be at fair market value and allows a local board of education to transfer property to a county only if the board does not believe the property is necessary or desirable for a school.

The effect of these changes is to allow certain installment financing to be used for public school construction or renovation. The installment financing that can be used is an installment contract secured by a security interest in the building constructed or renovated. This type of financing is available to counties

but is not generally available to school administrative units. Under G.S. 160A-20, only a school administrative unit located in a county whose population exceeds 90,000 and whose local board of education can levy a school tax is authorized to use this type of financing.

One type of installment financing is the issuance of certificates of participation. A certificate of participation is a document setting out the share of a local unit's debt that is owed to that person. In practice, the holder of the certificate receives interest and principal payments in a manner similar to interest and principal payments on a bond issued by the borrowing unit. Unlike the issuance of a bond, however, the issuance of a certificate of participation is not subject to a vote of the people.

If a county builds and equips a school on behalf of a local school administrative unit, the county can receive a refund of sales and use taxes paid on the project. In contrast, the local school administrative unit could not receive a refund of these taxes if it built and equipped the school itself. This is because a local school administrative unit is not one of the governmental entities that are allowed refunds of sales and use taxes under G.S. 105-164.14(c).

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 69

Short Title: Stokes School Acquisition.

(Local)

Sponsors: Senators Foxx; and East.

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

February 10, 1997

1 A BILL TO BE ENTITLED

2 AN ACT TO ALLOW STOKES COUNTY TO ACQUIRE PROPERTY FOR USE
3 BY ITS COUNTY BOARD OF EDUCATION.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 153A-158.1 reads as rewritten:

6 "**§ 153A-158.1. Acquisition and improvement of school property in certain counties.**

7 (a) Acquisition by County. -- A county may acquire, by any lawful method, any
8 interest in real or personal property for use by a school administrative unit within the
9 county. In exercising the power of eminent domain a county shall use the procedures
10 of Chapter 40A. The county shall use its authority under this subsection to acquire
11 property for use by a school administrative unit within the county only upon the
12 request of the board of education of that school administrative unit and after a public
13 hearing.

14 (b) Construction or Improvement by County. -- A county may construct, equip,
15 expand, improve, renovate, or otherwise make available property for use by a school
16 administrative unit within the county. The local board of education shall be involved
17 in the design, construction, equipping, expansion, improvement, or renovation of the
18 property to the same extent as if the local board owned the property.

19 (c) Lease or Sale by Board of Education. -- Notwithstanding the provisions of G.S.
20 115C-518 and G.S. 160A-274, a local board of education may, in connection with
21 additions, improvements, renovations, or repairs to all or part of any of its property,
22 lease or sell the property to the board of commissioners of the county in which the
23 property is located for any price negotiated between the two boards.

1 (d) Board of Education May Contract for Construction. -- Notwithstanding the
2 provisions of G.S. 115C-40 and G.S. 115C-521, a local board of education may enter
3 into contracts for the erection or repair of school buildings upon sites owned in fee
4 simple by one or more counties in which the local school administrative unit is
5 located.

6 (e) Scope. -- This section applies to Alleghany, Ashe, Avery, Bladen, Brunswick,
7 Cabarrus, Carteret, Cherokee, Chowan, Columbus, Currituck, Dare, Duplin,
8 Edgecombe, Forsyth, Franklin, Graham, Greene, Guilford, Halifax, Harnett,
9 Haywood, Hyde, Iredell, Jackson, Johnston, Jones, Lee, Macon, Madison, Martin,
10 Moore, Nash, New Hanover, Orange, Pasquotank, Pender, Person, Pitt, Randolph,
11 Richmond, Rockingham, Rowan, Sampson, Scotland, Stanly, Stokes, Surry, Union,
12 Vance, Wake, Wilson, and Watauga Counties."

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

EXPLANATION OF SENATE BILL 69
Stokes School Acquisition

TO: Senate Finance Committee
FROM: Sabra Faires, Committee Counsel
DATE: February 26, 1997
SPONSOR: Senators Foxx and East

Senate Bill 59 is a local bill that applies only to Stokes County and the local boards of education for school administrative units in that county. The substance of the bill is that same as that enacted in past legislative sessions for 52 other counties.

The bill makes the following changes concerning the acquisition and financing of public school facilities:

- (1) It authorizes Stokes County to acquire real or personal property for use by a school administrative unit located in the county when requested to do so by the unit. Under current law, only those counties listed in G.S. 153A-158.1(a), have this authority. Under general law, a county is authorized to acquire real or personal property only on behalf of the county or an agency of the county and a school administrative unit is not an agency of the county.
- (2) It authorizes the local boards of education to contract with Stokes county for the erection or repair of a public school building that is located on a site owned by the county. Under current general law, local boards of education are required to hold title to all school property and therefore have no authority to make contracts concerning the construction or repair of school buildings located on sites not owned by them.
- (3) It authorizes the local boards of education to transfer to the county property on which a school building in need of renovation or repair is located for any price agreed to by the board of education and the county. Current law requires transfers from a local board of education to a county to be at fair market value and allows a local board of education to transfer property to a county only if the board does not believe the property is necessary or desirable for a school.

The effect of these changes is to allow certain installment financing to be used for public school construction or renovation. The installment financing that can be used is an installment contract secured by a security interest in the building constructed or renovated. This type of financing is available to counties

but is not generally available to school administrative units. Under G.S. 160A-20, only a school administrative unit located in a county whose population exceeds 90,000 and whose local board of education can levy a school tax is authorized to use this type of financing.

One type of installment financing is the issuance of certificates of participation. A certificate of participation is a document setting out the share of a local unit's debt that is owed to that person. In practice, the holder of the certificate receives interest and principal payments in a manner similar to interest and principal payments on a bond issued by the borrowing unit. Unlike the issuance of a bond, however, the issuance of a certificate of participation is not subject to a vote of the people.

If a county builds and equips a school on behalf of a local school administrative unit, the county can receive a refund of sales and use taxes paid on the project. In contrast, the local school administrative unit could not receive a refund of these taxes if it built and equipped the school itself. This is because a local school administrative unit is not one of the governmental entities that are allowed refunds of sales and use taxes under G.S. 105-164.14(c).

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 106

Short Title: Sale of Property for Unpaid Taxes.

(Public)

Sponsors: Senators Cooper, Cochrane, Kerr, Shaw of Cumberland, and Soles.

Referred to: Finance.

February 13, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW REGIONAL SALES OF PERSONAL PROPERTY SEIZED
3 FOR UNPAID TAXES TO BE HELD IN ANY COUNTY.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 105-242(a) reads as rewritten:

6 "(a) Warrants for Collection of Taxes. -- If any tax levied by the State and payable
7 to the Secretary has not been paid within 30 days after the taxpayer was given a
8 notice of final assessment of the tax under G.S. 105-241.1(d1), the Secretary may take
9 either of the following actions to collect the tax:

10 (1) The Secretary may issue a warrant or an order under the
11 Secretary's hand and official seal, directed to the sheriff of any
12 county of the State, commanding him to levy upon and sell the
13 real and personal property of the taxpayer found within the county
14 for the payment of the tax, including penalties and interest, and the
15 cost of executing the warrant and to return to the Secretary the
16 money collected, within a time to be specified in the warrant, not
17 less than 60 days from the date of the warrant; the sheriff upon
18 receipt of the warrant shall proceed in all respects with like effect
19 and in the same manner prescribed by law in respect to executions
20 issued against property upon judgments of a court of record, and
21 shall be entitled to the same fees for his services in executing the
22 warrant, to be collected in the same manner.

23 (2) The Secretary may issue a warrant or order under the Secretary's
24 hand and seal to any revenue officer or other employee of the

1 Department of Revenue charged with the duty to collect taxes,
2 commanding the officer or employee to levy upon and sell the
3 taxpayer's personal property, including that described in G.S. 105-
4 366(d), found within the State for the payment of the tax, including
5 penalties and interest. Except as otherwise provided in this
6 subdivision, the levy upon the sale of personal property shall be
7 governed by the laws regulating levy and sale under execution. The
8 person to whom the warrant is directed shall proceed to levy upon
9 and sell the personal property subject to levy in the same manner
10 and with the same powers and authority normally exercised by
11 sheriffs in levying upon and selling personal property under
12 execution, except that the property may be sold in ~~Wake County~~
13 ~~or in the county in which it was seized;~~ any county, in the
14 discretion of the Secretary. In addition to the notice of sale
15 required by the laws governing sale of property levied upon under
16 execution, the Secretary may advertise the sale in any reasonable
17 manner and for any reasonable period of time to produce an
18 adequate bid for the property. Levy and sale fees, plus actual
19 advertising costs, shall be added to and collected in the same
20 manner as taxes."

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

EXPLANATION OF SENATE BILL 106
Sale of Property For Unpaid Taxes

TO: Senate Finance Committee
FROM: Sabra Faires, Committee Counsel
DATE: February 26, 1997
SPONSOR: Senator Roy Cooper

Senate Bill 106 is one of the bills recommended to the 1997 General Assembly by the Revenue Laws Study Committee. It gives the Department of Revenue the ability to sell in any county in this State personal property the Department has seized for payment of delinquent State taxes. Current law requires this property to be sold in Wake County or the county in which the property was seized. The bill becomes effective July 1, 1997, and applies to property sold on or after that date.

G.S. 105-242(a)(2) authorizes the Secretary of Revenue to levy on a taxpayer's personal property to collect delinquent unpaid taxes, and to sell the property either in Wake County or in the county in which it was seized. This statute is used almost exclusively by the Controlled Substance Tax Division, which collects the tax on illegal drugs. Vehicles and other property are often seized for these taxes pursuant to G.S. 105-113.111 and sold at auction. Seventy-five percent of the proceeds of these sales are distributed among the law enforcement agencies whose investigation led to the assessment and the remaining 25% is credited to the General Fund.

The Department of Revenue suggested that the Revenue Laws Study Committee consider proposing the change made in this bill. The Department estimates that it could reduce expenses incurred in selling seized property by as much as \$100,000 a year if the bill were enacted.

The current practice of the Department is to store and sell all seized property in Wake County. The Department does this because it is too costly to store and sell property in all 100 counties. The Department contracts to have seized property hauled from the counties in which it is seized to Wake County where it is stored until an auction site is available. Rental of auction sites in Wake County is expensive and, because of delays due to waiting for a site, the Department incurs extra costs for storing the property.

The Department plans to implement this bill, if it is enacted, by establishing regional sites in Eastern, Central, and Western North Carolina for the sale of seized property. Expanding the permissible locations for sales will reduce costs because the property will not have to be hauled as far and there will be less storage

time waiting for an auction site to become available. In addition, more companies will be able to compete for the transportation, storage, and sale business because they will no longer have to have Statewide operations in order to qualify, and this increase in competition could yield a lower contract price.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: Senate Bill 106 (First Edition)

SHORT TITLE: Sale of Property for Unpaid Taxes

SPONSOR(S): Senator Cooper

FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 1997-98</u>	<u>FY 1998-99</u>	<u>FY 1999-00</u>	<u>FY 2000-01</u>	<u>FY 2001-02</u>
REVENUES					
EXPENDITURES					
General Fund	(\$9,750)	(\$9,750)	(\$9,750)	(\$9,750)	(\$9,750)
State & Local Law Enforcement	(\$29,250)	(\$29,250)	(\$29,250)	(\$29,250)	(\$29,250)
PRINCIPAL DEPARTMENT(S) & Department of Revenue, Controlled Substance Tax Division PROGRAM(S) AFFECTED:					
EFFECTIVE DATE: July 1, 1997					

BILL SUMMARY: This act authorizes the Department of Revenue to sell in any county the personal property seized for non payment of taxes. The current law states that property may be sold in Wake county or in the county in which it was seized.

ASSUMPTIONS AND METHODOLOGY: The Director of the Department of Revenue's Controlled Substance Tax Division estimates this bill will save a minimum of \$39,000 each year. This savings is apportioned in the same ratio as the proceeds from seized property - 75% to state and local law enforcement agencies and 25% to the General Fund.

The savings comes from the storage of seized vehicles and from the rental of space in Wake county for the vehicle sales. The Department contracts to have the vehicles hauled from all over the State and then stored until an auction site is available. The vehicles seized for the nonpayment of the controlled substance tax are stored in Wayne County and brought to Wake County for sale. Rental of auction sites in Wake County is expensive and, because of delays due to overbooking of the sites, the Department incurs extra costs for storing the property.

With passage of the bill, the Department will save \$12,000 by not renting auction sites in Raleigh four times a year. Expanding the permissible locations for sales will allow the Department to auction property in each region of the State at sites provided by a contractor. The Department estimates storage cost will be reduced by \$27,000 because there will be less time waiting for an auction site to become available. This estimate is based on storage of 300 cars for 30 days at \$3 a day.

The Department believes opening the bidding process will yield a lower contract price for handling seized property and thus produce greater savings in the program. More companies will be able to compete for the transportation, storage, and sale business because they will no longer have to have Statewide operations in order to qualify.

FISCAL RESEARCH DIVISION

PREPARED BY: Richard Bostic

APPROVED BY: Tom Covington

DATE: February 24, 1997



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 147*

Short Title: Birth/Death Certificate Fee Increase.

(Public)

Sponsors: Senators Winner; Dannelly and Odom.

Referred to: Finance.

February 17, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO INCREASE THE UNIFORM FEE FOR A CERTIFIED BIRTH,
3 DEATH, OR MARRIAGE CERTIFICATE.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 161-10(a) reads as rewritten:

6 "(a) Except as provided in G.S. 161-11.1 or 161-11.2, all fees collected under this
7 section shall be deposited into the county general fund. In the performance of his
8 duties, the register of deeds shall collect the following fees which shall be uniform
9 throughout the State:

10 (1) Instruments in General. -- For registering or filing any instrument
11 for which no other provision is made by this section, whether
12 written, printed, or typewritten, the fee shall be six dollars (\$6.00)
13 for the first page, which page shall not exceed 8 1/2 inches by 14
14 inches, plus two dollars (\$2.00), for each additional page or
15 fraction thereof. A page exceeding 8 1/2 inches by 14 inches shall
16 be considered two pages.

17 When a document is presented for registration that consists
18 of multiple instruments, the fee shall be ten dollars (\$10.00) for
19 each additional instrument. A document consists of multiple
20 instruments when it contains two or more instruments with
21 different legal consequences or intent, each of which is separately
22 executed and acknowledged and could be recorded alone.

23 (1a) Deeds of Trust, Mortgages, and Cancellation of Deeds of Trust and
24 Mortgages. -- For registering or filing any deed of trust or

1 mortgage, whether written, printed, or typewritten, the fee shall be
2 ten dollars (\$10.00) for the first page, which page shall not exceed
3 8 1/2 inches by 14 inches, plus two dollars (\$2.00) for each
4 additional page or fraction thereof. A page exceeding 8 1/2 inches
5 by 14 inches shall be considered two pages.

6 When a deed of trust or mortgage is presented for
7 registration that contains one or more additional instruments, the
8 fee shall be ten dollars (\$10.00) for each additional instrument. A
9 deed of trust or mortgage contains one or more additional
10 instruments if such additional instrument or instruments has or
11 have different legal consequences or intent, each of which is
12 separately executed and acknowledged and could be recorded
13 alone.

14 For recording records of satisfaction, or the cancellation of
15 record by any other means, of deeds of trust or mortgages, there
16 shall be no fee.

- 17 (2) Marriage Licenses. -- For issuing a license forty dollars (\$40.00);
18 for issuing a delayed certificate with one certified copy five dollars
19 (\$5.00); and for a proceeding for correction of names in
20 application, license or certificate, with one certified copy five
21 dollars (\$5.00).
- 22 (3) Plats. -- For each original or revised plat recorded nineteen dollars
23 (\$19.00); for furnishing a certified copy of a plat three dollars
24 (\$3.00).
- 25 (4) Right-of-Way Plans. -- For each original or amended plan and
26 profile sheet recorded five dollars (\$5.00). This fee is to be
27 collected from the Board of Transportation.
- 28 (5) Registration of Birth Certificate One Year or More after Birth. --
29 For preparation of necessary papers when birth to be registered in
30 another county five dollars (\$5.00); for registration when necessary
31 papers prepared in another county, with one certified copy five
32 dollars (\$5.00); for preparation of necessary papers and registration
33 in the same county, with one certified copy ten dollars (\$10.00).
- 34 (6) Amendment of Birth or Death Record. -- For preparation of
35 amendment and affecting correction two dollars (\$2.00).
- 36 (7) Legitimations. -- For preparation of all documents concerned with
37 legitimations seven dollars (\$7.00).
- 38 (8) Certified Copies of Birth and Death Certificates and Marriage
39 Licenses. -- For furnishing a certified copy of a death or birth
40 certificate or marriage license ~~three dollars (\$3.00)~~ five dollars
41 (\$5.00). Provided however, a Register of Deeds may issue without
42 charge a certified Birth Certificate to any person over the age of 62
43 years.

- 1 (9) Certified Copies. -- For furnishing a certified copy of an
2 instrument for which no other provision is made by this section
3 three dollars (\$3.00) for the first page, plus one dollar (\$1.00) for
4 each additional page or fraction thereof.
- 5 (10) Comparing Copy for Certification. -- For comparing and certifying
6 a copy of any instrument filed for registration, when the copy is
7 furnished by the party filing the instrument for registration and at
8 the time of filing thereof two dollars (\$2.00).
- 9 (11) Uncertified Copies. -- When, as a convenience to the public, the
10 register of deeds supplies uncertified copies of instruments, or
11 index pages, he may charge fees that in his discretion bear a
12 reasonable relation to the quality of copies supplied and the cost of
13 purchasing and maintaining copying and/or computer equipment.
14 These fees may be changed from time to time, but the amount of
15 these fees shall at all times be prominently posted in his office.
- 16 (12) Notarial Acts. -- For taking an acknowledgment, oath, or
17 affirmation or performing any other notarial act the maximum fee
18 set in G.S. 10A-10. This fee shall not be charged if the act is
19 performed as a part of one of the services for which a fee is
20 provided by this subsection; except that this fee shall be charged in
21 addition to the fees for registering, filing, or recording instruments
22 or plats as provided by subdivisions (1) and (3) of this subsection.
- 23 (13) Uniform Commercial Code. -- Such fees as are provided for in
24 Chapter 25, Article 9, Part 4, of the General Statutes.
- 25 (14) Torrens Registration. -- Such fees as are provided in G.S. 43-5.
- 26 (15) Master Forms. -- Such fees as are provided for instruments in
27 general.
- 28 (16) Probate. -- For certification of instruments for registration as
29 provided in G.S. 47-14 two dollars (\$2.00).
- 30 (17) Qualification of Notary Public. -- For administering the oaths of
31 office to a notary public and making the appropriate record entries
32 as provided in G.S. 10A-8 five dollars (\$5.00).
- 33 (18) Reinstatement of Articles of Incorporation. -- For filing
34 reinstatements of Articles of Incorporation prepared pursuant to
35 G.S. 105-232; such fees as provided for instruments in general.
36 The fee shall be paid by the corporation affected."
37 Section 2. This act becomes effective July 1, 1997.

EXPLANATION OF SENATE BILL 147
Birth/Death Certificate Fee Increase

TO: Senate Finance Committee
FROM: Sabra Faires, Committee Counsel
DATE: February 26, 1997
SPONSOR: Senator Leslie Winner

Senate Bill 147 increases three local fees collected by either the register of deeds of a county or the health department of a county. The three fees affected are for those for issuing a certified copy of a birth certificate, a death certificate, or a marriage license. The bill increases these fees from \$3.00 for a certified copy to \$5.00 for a certified copy. The bill becomes effective July 1, 1997.

In four counties, Durham, Guilford, Mecklenburg, and Wake, the local health department issues copies of birth and death certificates. In the other counties, the Register of Deeds issues these copies. The Register of Deeds in all counties issue marriage licenses and certificates of marriage. The Vital Records Office of the State, which is part of the Department of Environment, Health, and Natural Resources, also issues copies of these documents.

Fees collected by a health department or a register of deeds of a county for giving a certified copy of a birth certificate, a death certificate, or a marriage license are deposited in the general fund of the county. The fee revenue is then available for appropriation by the county.

The local fees for a certified copy of a birth certificate, a death certificate, or a marriage license were last increased in 1981 when they were increased from \$1.00 to \$3.00. The State fee for copies of these records is \$10.00 and has been since 1991, when it was increased from \$5.00 to \$10.00.

Technical Considerations

To keep a difference between the fees in 161-10(a)(2) and (5) and the fees in 161-10(a)(8), the fees in those subdivisions need to be increased.

**NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE**

BILL NUMBER: Senate Bill 147 (Proposed Committee Substitute)
SHORT TITLE: Births/Death Certificates Fee Increase
SPONSOR(S): Senators Winner; Dannelly, and Odom

FISCAL IMPACT

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

FY 1997-98 FY 1998-99 FY 1999-00 FY 2000-01 FY 2001-02

REVENUES

Local Govern. Expected increase in revenues: \$2.9 m in a fiscal year.

**PRINCIPAL DEPARTMENT(S) &
PROGRAM(S) AFFECTED:** County Register of Deeds

EFFECTIVE DATE: July 1, 1997

BILL SUMMARY: The proposed act increases the fee for certified "copies" of birth, death, and marriage licenses from \$3.00 to \$10.00 per copy. The revenue from register of deeds fees is deposited into the county general fund.

ASSUMPTIONS AND METHODOLOGY: In 1996, the total number of births, deaths and marriages occurring in the State did not exceed 250,000. The estimates assume at least 3 copies, on average, are requested of a death certificate; one to be included with a federal income tax return, the second to be included with the State income tax return, and the third to accompany an inheritance or estate tax returns if applicable. Birth certificates, on average, are copied once in the year the birth takes place. Normally, two copies of a marriage certificate are requested in the year the marriage takes place. If a last name changes due to a marriage, one copy will be required when notifying the Social Security Administration and the other when applying for a new drivers license.

Growth in the estimate is not expected to exceed the growth in population Statewide or 1.1%.

FISCAL RESEARCH DIVISION

PREPARED BY: H. Warren Plonk

APPROVED BY:

DATE: February 26, 1997

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 34*

Short Title: Adjust City Receipts Tax Share.

(Public)

Sponsors: Senators Cochrane, Cooper, Kerr, Shaw of Cumberland, and Soles.

Referred to: Finance.

February 3, 1997

A BILL TO BE ENTITLED

AN ACT TO ADJUST THE SHARE THE CITIES RECEIVE FROM THE STATE
GROSS RECEIPTS TAX TO MAKE THE DISTRIBUTION MORE
EQUITABLE.

The General Assembly of North Carolina enacts:

Section 1. Article 3 of Chapter 105 of the General Statutes is amended
by adding a new section to read:

"§ 105-116.1. Distribution of gross receipts taxes to cities.

(a) Distribution. -- The Secretary shall distribute to the cities part of the taxes collected under this Article on electric power companies, natural gas companies, and telephone companies. Each city's share for a calendar quarter is the percentage distribution amount for that city minus one-fourth of the hold-back amount for that city. The Secretary shall make the distribution within 75 days after the end of each calendar quarter.

(b) Percentage Amount. -- The percentage distribution amount for a city is three and nine hundredths percent (3.09%) of the gross receipts derived during the preceding quarter by an electric power company, a natural gas company, or a telephone company from sales within the city that are taxable under G.S. 105-116 or G.S. 105-120.

(c) Hold-back Amount. -- The hold-back amount reflects the amount of growth in the gross receipts taxes that occurred during the 1991-92 through 1994-95 fiscal years, the 'freeze' years. The total amount distributed to cities during that period was fixed at the total amount that would have been distributed during the 1990-91 fiscal year if the Governor had not reduced the distribution for that year as part of the effort to

1 balance the State budget. During the freeze years, cities received a part of the fixed
2 amount based on taxable sales within the cities. For the 1995-96 fiscal year and
3 subsequent years, the limit on the amount distributed was removed and the
4 distribution reverted to its prior percentage basis with the added requirement of
5 deducting the growth that occurred in the freeze years.

6 The hold-back amount for a city is determined by comparing the amount each city
7 received from gross receipts taxes in the 1995-96 fiscal year and in the 1990-91 fiscal
8 year and then adjusting that amount, if required, in accordance with this subsection.
9 If, in the 1995-96 fiscal year, a city received at least ninety-five percent (95%) of the
10 amount it received in the 1990-91 fiscal year, the hold-back amount for that city is
11 the amount by which the city's 1995-96 percentage distribution amount was reduced.
12 If, in the 1995-96 fiscal year, a city received less than ninety-five percent (95%) of the
13 amount it received in the 1990-91 fiscal year, the hold-back amount for that city is
14 the amount determined by the following calculation:

- 15 (1) Increase the city's 1990-91 distribution by adding the amount by
16 which the city's 1995-96 percentage distribution amount was
17 reduced.
18 (2) Compare the increased 1990-91 amount with the city's 1995-96
19 distribution.
20 (3) If the increased 1990-91 distribution is less than or equal to the
21 city's 1995-96 distribution, the hold-back amount for the city is the
22 amount by which the city's 1995-96 distribution amount was
23 reduced.
24 (4) If the increased 1990-91 distribution is more than the city's 1995-96
25 distribution, the hold-back amount for the city is the difference
26 between the increased 1990-91 distribution and the 1995-96
27 distribution."

28 Section 2. G.S. 105-116 reads as rewritten:

29 **"§ 105-116. Franchise or privilege tax on electric power, natural gas, water, and**
30 **sewerage companies.**

31 (a) Tax. -- An annual franchise or privilege tax is imposed on a person, firm, or
32 corporation, other than a municipal corporation, that is:

- 33 (1) An electric power company engaged in the business of furnishing
34 electricity, electric lights, current, or power.
35 (2) A natural gas company engaged in the business of furnishing piped
36 natural gas.
37 (3) A water company engaged in owning or operating a water system
38 subject to regulation by the North Carolina Utilities Commission.
39 (4) A public sewerage company engaged in owning or operating a
40 public sewerage system.

41 The tax on an electric power company is three and twenty-two hundredths percent
42 (3.22%) of the company's taxable gross receipts from the business of furnishing
43 electricity, electric lights, current, or power. The tax on a natural gas company is
44 three and twenty-two hundredths percent (3.22%) of the company's taxable gross

1 receipts from the business of furnishing piped natural gas. The tax on a water
2 company is four percent (4%) of the company's taxable gross receipts from owning or
3 operating a water system subject to regulation by the North Carolina Utilities
4 Commission. The tax on a public sewerage company is six percent (6%) of the
5 company's taxable gross receipts from owning or operating a public sewerage
6 company. A company's taxable gross receipts are its gross receipts from business
7 inside the State less the amount of gross receipts from sales reported under
8 subdivision (b)(2). A company that engages in more than one business taxed under
9 this section shall pay tax on each business. A company is allowed a credit against the
10 tax imposed by this section for the company's investments in certain entities in
11 accordance with Division V of Article 4 of this Chapter.

12 (b) Report and Payment. -- The tax imposed by this section is payable monthly or
13 quarterly as specified in this subsection. A report is due quarterly. An electric power
14 company or a natural gas company shall pay tax monthly. A monthly tax payment is
15 due by the last day of the month that follows the month in which the tax accrues,
16 except the payment for tax that accrues in May. The payment for tax that accrues in
17 May is due by June 25. An electric power company or a natural gas company is not
18 subject to interest on or penalties for an underpayment of a monthly amount due if
19 the company timely pays at least ninety-five percent (95%) of the amount due and
20 includes the underpayment with the next report the company files. A water company
21 or a public sewerage company shall pay tax quarterly when filing a report.

22 A quarterly report covers a calendar quarter and is due by the last day of the
23 month that follows the quarter covered by the report. A company shall submit a
24 report on a form provided by the Secretary. The report shall include the company's
25 gross receipts from all property it owned or operated during the reporting period in
26 connection with its business taxed under this section and shall contain the following
27 information:

- 28 (1) The company's gross receipts for the reporting period from
29 business inside and outside this State, stated separately.
- 30 (2) The company's gross receipts from commodities or services
31 described in subsection (a) that are sold to a vendee subject to the
32 tax levied by this section or to a joint agency established under
33 G.S. Chapter 159B or a municipality city having an ownership
34 share in a project established under that Chapter.
- 35 (3) The amount of and price paid by the company for commodities or
36 services described in subsection (a) that are purchased from others
37 engaged in business in this State and the name of each vendor.
- 38 (4) For an electric power company or a natural gas company, the
39 company's gross receipts from the sale within each municipality
40 city of the commodities and services described in subsection (a).

41 A company shall report its gross receipts on an accrual basis. If a company's report
42 does not state the company's taxable gross receipts derived within a city, the
43 Secretary must determine a practical method of allocating part of the company's
44 taxable gross receipts to the city.

1 (c) Gas Special Charges. -- Gross receipts of a natural gas company do not
2 include the following:

3 (1) Special charges collected within this State by the company
4 pursuant to drilling and exploration surcharges approved by the
5 North Carolina Utilities Commission, if the surcharges are
6 segregated from the other receipts of the company and are devoted
7 to drilling, exploration, and other means to acquire additional
8 supplies of natural gas for the account of natural gas customers in
9 North Carolina and the beneficial interest in the surcharge
10 collections is preserved for the natural gas customers paying the
11 surcharges under rules established by the Commission.

12 (2) Natural gas expansion surcharges imposed under G.S. 62-158.

13 (d) Distribution. -- ~~For the purpose of this subsection, the term "distribution~~
14 ~~amount" means three and nine hundredths percent (3.09%) of the taxable gross~~
15 ~~receipts derived during a period by an electric power company and a natural gas~~
16 ~~company from sales within a municipality of the commodities and services described~~
17 ~~in subsection (a) of this section. The Secretary shall distribute to each municipality~~
18 ~~the distribution amount for that municipality for the preceding calendar quarter less~~
19 ~~an amount equal to one fourth of the excess of the distribution amount for that~~
20 ~~municipality for the period April 1, 1994, to March 31, 1995, over the distribution~~
21 ~~amount for that municipality for the period April 1, 1990, to March 31, 1991, as~~
22 ~~certified by the Secretary. The Secretary shall distribute the revenue within 75 days~~
23 ~~after the end of each quarter. If a company's report does not state the company's~~
24 ~~taxable gross receipts derived within a municipality, the Secretary shall determine a~~
25 ~~practical method of allocating part of the company's taxable gross receipts to the~~
26 ~~municipality.~~

27 ~~As used in this subsection, the term "municipality" includes an urban service~~
28 ~~district defined by the governing board of a consolidated city county. The amount~~
29 ~~due an urban service district shall be distributed to the governing board of the~~
30 ~~consolidated city county. Part of the taxes imposed by this section on electric power~~
31 ~~companies and natural gas companies is distributed to cities under G.S. 105-116.1.~~

32 (e) Local Tax. -- So long as there is a distribution to ~~municipalities of the amount~~
33 ~~herein provided~~ cities from the tax imposed by this section, no municipality city shall
34 impose or collect any greater franchise, privilege or license taxes, in the aggregate, on
35 the businesses taxed under this section, than was imposed and collected on or before
36 January 1, 1947. If any municipality shall have collected any privilege, license or
37 franchise tax between January 1, 1947, and April 1, 1949, in excess of the tax
38 collected by it prior to January 1, 1947, then upon distribution of the taxes imposed
39 by this section to municipalities, the amount distributable to any municipality shall
40 be credited with such excess payment."

41 Section 3. G.S. 105-120 reads as rewritten:

42 "§ 105-120. Franchise or privilege tax on telephone companies.

43 (a) Tax. -- An annual franchise or privilege tax is imposed on a person, firm, or
44 corporation, that owns or operates a business entity for the provision of local

1 telecommunications service. The tax is three and twenty-two hundredths percent
2 (3.22%) of the company's taxable gross receipts. A company's taxable gross receipts
3 are its receipts from providing local telecommunications service, including receipts
4 from rentals and other similar charges, less its receipts from telecommunications
5 access charges. A company is allowed a credit against the tax imposed by this section
6 for the company's investments in certain entities in accordance with Division V of
7 Article 4 of this Chapter.

8 (b) Report and Payment. -- The tax imposed by this section is payable monthly or
9 quarterly as specified in this subsection. A report is due quarterly. A company that
10 is liable for an average of less than three thousand dollars (\$3,000) a month in tax
11 imposed by this section may, with the approval of the Secretary of Revenue, pay tax
12 quarterly when filing a report. All other companies shall pay tax monthly. A
13 monthly tax payment is due by the last day of the month that follows the month in
14 which the tax accrues, except the payment for tax that accrues in May. The payment
15 for tax that accrues in May is due by June 25. A company is not subject to interest
16 on or penalties for an underpayment of a monthly amount due if the company timely
17 pays at least ninety-five percent (95%) of the amount due and includes the
18 underpayment with the next report the company files.

19 A quarterly report covers a calendar quarter and is due by the last day of the
20 month that follows the quarter covered by the report. A company shall submit a
21 report on a form provided by the Secretary. The report shall state the company's
22 gross receipts for the reporting period from providing local telecommunications
23 service and from providing local telecommunications service within each ~~municipality~~
24 city served. If a company's report does not state the company's taxable gross receipts
25 derived within a city, the Secretary must determine a practical method of allocating
26 part of the company's taxable gross receipts to the city. A company shall report its
27 gross receipts on an accrual basis.

28 (c) Distribution. -- ~~For the purpose of this subsection, the term "distribution~~
29 ~~amount" means three and nine hundredths percent (3.09%) of the taxable gross~~
30 ~~receipts derived during a period from local telecommunications service provided~~
31 ~~within a municipality. The Secretary shall distribute to each municipality the~~
32 ~~distribution amount for that municipality for the preceding calendar quarter less an~~
33 ~~amount equal to one-fourth of the excess of the distribution amount for that~~
34 ~~municipality for the period April 1, 1994, to March 31, 1995, over the distribution~~
35 ~~amount for that municipality for the period April 1, 1990, to March 31, 1991, as~~
36 ~~certified by the Secretary. The Secretary shall distribute the revenue within 75 days~~
37 ~~after the end of each quarter. If a company's report does not state the company's~~
38 ~~taxable gross receipts derived within a municipality, the Secretary shall determine a~~
39 ~~practical method of allocating part of the company's taxable gross receipts to the~~
40 ~~municipality.~~

41 ~~As used in this subsection, the term "municipality" includes an urban service~~
42 ~~district defined by the governing board of a consolidated city-county. The amount~~
43 ~~due an urban service district shall be distributed to the governing board of the~~

1 ~~consolidated city-county.~~ Part of the tax imposed by this section is distributed to
2 cities under G.S. 105-116.1.

3 (d) No Local Tax. -- Counties and cities may not impose a license, franchise, or
4 privilege tax on a company taxed under this section or under G.S. 105-164.4(a)(4c).

5 (e) Definitions. -- For purposes of this section:

6 (1) 'Local telecommunications service' means telecommunications
7 service provided wholly within a LATA entitling the user to access
8 to a local telephone exchange for the privilege of telephonic
9 quality communication with substantially all persons in the local
10 telephone exchange. Provided, however, local telecommunications
11 service does not include intraLATA or interLATA toll
12 telecommunications service, or private telecommunications service.

13 (2) 'LATA' is a Local Access and Transport Area representing a
14 geographical area comprising one or more telephone exchange
15 areas.

16 (3) 'InterLATA telecommunications' is telecommunications service
17 provided between two or more LATAs.

18 (4) 'Toll telecommunications service' means:

19 a. A telephonic quality communication for which:

20 1. There is a toll charge that varies in amount with the
21 distance and elapsed transmission time of each
22 individual communication; and

23 2. The charge is paid within the United States.

24 b. A service that entitles the subscriber, upon payment of a
25 periodic charge (determined as a flat amount or upon the
26 basis of total elapsed transmission time), to the privilege of
27 an unlimited number of telephonic communications to or
28 from all or a substantial portion of the persons having
29 telephone or radiotelephone stations in a specified area that
30 is outside the local telephone exchange.

31 (5) 'Private telecommunications service' means a service furnished to a
32 subscriber that entitles the subscriber to exclusive or priority use of
33 a communications channel or group of channels.

34 (6) 'Telecommunications access charges' means charges paid to a
35 provider of local telecommunications service for access to an
36 interconnection with the local telephone exchange."

37 Section 4. If the hold-back amount of a city is adjusted under G.S. 105-
38 116.1(c), as enacted by this act, the Secretary must distribute two times the amount of
39 the adjustment to the city by July 15, 1997. This distribution is made to restore to the
40 affected cities the amount by which their hold-back would have been reduced if the
41 adjustment had been in effect since the 1995-96 fiscal year. The amount needed to
42 make the distribution required by this section shall be drawn from the amount of
43 gross receipts taxes imposed by G.S. 105-116 and otherwise retained by the State.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

D

SENATE BILL 34*
Proposed Senate Finance Committee Substitute
S34-CSLJ-2/18

Short Title: Adjust City Receipts Tax Share.

(Public)

Sponsors:

Referred to: Finance.

February 3, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO ADJUST THE SHARE THE CITIES RECEIVE FROM THE STATE
3 GROSS RECEIPTS TAX TO MAKE THE DISTRIBUTION MORE EQUITABLE.
4 The General Assembly of North Carolina enacts:
5 Section 1. Article 3 of Chapter 105 of the General
6 Statutes is amended by adding a new section to read:
7 "§ 105-116.1. Distribution of gross receipts taxes to cities.
8 (a) Distribution. -- The Secretary shall distribute to the
9 cities part of the taxes collected under this Article on electric
10 power companies, natural gas companies, and telephone companies.
11 Each city's share for a calendar quarter is the percentage
12 distribution amount for that city minus one-fourth of the hold-
13 back amount for that city. The Secretary shall make the
14 distribution within 75 days after the end of each calendar
15 quarter.
16 (b) Percentage Amount. -- The percentage distribution amount
17 for a city for a calendar quarter is three and nine hundredths
18 percent (3.09%) of the gross receipts derived during the
19 preceding quarter by an electric power company, a natural gas
20 company, or a telephone company from sales within the city that
21 are taxable under G.S. 105-116 or G.S. 105-120.

1 (c) Hold-back Amount. -- The hold-back amount reflects the
2 amount of growth in the gross receipts taxes that occurred during
3 the 1991-92 through 1994-95 fiscal years, the 'freeze' years.
4 The total amount distributed to cities during that period was
5 fixed at the total amount that would have been distributed during
6 the 1990-91 fiscal year if the Governor had not reduced the
7 distribution for that year as part of the effort to balance the
8 State budget. During the freeze years, cities received a part of
9 the fixed amount based on taxable sales within the cities. For
10 the 1995-96 fiscal year and subsequent years, the limit on the
11 amount distributed was removed and the distribution reverted to
12 its prior percentage basis with the added requirement of
13 deducting the growth that occurred in the freeze years.

14 The hold-back amount for a city is determined by comparing the
15 amount each city received from gross receipts taxes in the 1995-
16 96 fiscal year and in the 1990-91 fiscal year and then adjusting
17 that amount, if required, in accordance with this subsection.
18 If, in the 1995-96 fiscal year, a city received at least ninety-
19 five percent (95%) of the amount it received in the 1990-91
20 fiscal year, the hold-back amount for that city is the amount by
21 which the city's 1995-96 percentage distribution amount was
22 reduced. If, in the 1995-96 fiscal year, a city received less
23 than ninety-five percent (95%) of the amount it received in the
24 1990-91 fiscal year, the hold-back amount for that city is the
25 amount determined by the following calculation:

- 26 (1) Adjust the city's 1995-96 distribution by adding
27 the amount by which the city's distribution for
28 that year was reduced because of the deduction for
29 freeze-year growth.
30 (2) Compare the adjusted 1995-96 amount with the city's
31 1990-91 distribution.
32 (3) If the adjusted 1995-96 amount is less than or
33 equal to the city's 1990-91 distribution, the hold-
34 back amount for the city is zero.
35 (4) If the adjusted 1995-96 amount is more than the
36 city's 1990-91 distribution, the hold-back amount
37 for the city is the amount of the city's 1995-96
38 deduction for freeze-year growth minus the
39 difference between the city's adjusted 1995-96
40 amount and the city's 1990-91 distribution."

41 Section 2. G.S. 105-116 reads as rewritten:
42 "§ 105-116. Franchise or privilege tax on electric power,
43 natural gas, water, and sewerage companies.

1 (a) Tax. -- An annual franchise or privilege tax is imposed on
2 a person, firm, or corporation, other than a municipal
3 corporation, that is:

4 (1) An electric power company engaged in the business
5 of furnishing electricity, electric lights,
6 current, or power.

7 (2) A natural gas company engaged in the business of
8 furnishing piped natural gas.

9 (3) A water company engaged in owning or operating a
10 water system subject to regulation by the North
11 Carolina Utilities Commission.

12 (4) A public sewerage company engaged in owning or
13 operating a public sewerage system.

14 The tax on an electric power company is three and twenty-two
15 hundredths percent (3.22%) of the company's taxable gross
16 receipts from the business of furnishing electricity, electric
17 lights, current, or power. The tax on a natural gas company is
18 three and twenty-two hundredths percent (3.22%) of the company's
19 taxable gross receipts from the business of furnishing piped
20 natural gas. The tax on a water company is four percent (4%) of
21 the company's taxable gross receipts from owning or operating a
22 water system subject to regulation by the North Carolina
23 Utilities Commission. The tax on a public sewerage company is six
24 percent (6%) of the company's taxable gross receipts from owning
25 or operating a public sewerage company. A company's taxable gross
26 receipts are its gross receipts from business inside the State
27 less the amount of gross receipts from sales reported under
28 subdivision (b)(2). A company that engages in more than one
29 business taxed under this section shall pay tax on each business.
30 A company is allowed a credit against the tax imposed by this
31 section for the company's investments in certain entities in
32 accordance with Division V of Article 4 of this Chapter.

33 (b) Report and Payment. -- The tax imposed by this section is
34 payable monthly or quarterly as specified in this subsection. A
35 report is due quarterly. An electric power company or a natural
36 gas company shall pay tax monthly. A monthly tax payment is due
37 by the last day of the month that follows the month in which the
38 tax accrues, except the payment for tax that accrues in May. The
39 payment for tax that accrues in May is due by June 25. An
40 electric power company or a natural gas company is not subject to
41 interest on or penalties for an underpayment of a monthly amount
42 due if the company timely pays at least ninety-five percent (95%)
43 of the amount due and includes the underpayment with the next

1 report the company files. A water company or a public sewerage
2 company shall pay tax quarterly when filing a report.

3 A quarterly report covers a calendar quarter and is due by the
4 last day of the month that follows the quarter covered by the
5 report. A company shall submit a report on a form provided by the
6 Secretary. The report shall include the company's gross receipts
7 from all property it owned or operated during the reporting
8 period in connection with its business taxed under this section
9 and shall contain the following information:

- 10 (1) The company's gross receipts for the reporting
11 period from business inside and outside this State,
12 stated separately.
- 13 (2) The company's gross receipts from commodities or
14 services described in subsection (a) that are sold
15 to a vendee subject to the tax levied by this
16 section or to a joint agency established under G.S.
17 Chapter 159B or a ~~municipality~~ city having an
18 ownership share in a project established under that
19 Chapter.
- 20 (3) The amount of and price paid by the company for
21 commodities or services described in subsection (a)
22 that are purchased from others engaged in business
23 in this State and the name of each vendor.
- 24 (4) For an electric power company or a natural gas
25 company, the company's gross receipts from the sale
26 within each ~~municipality~~ city of the commodities
27 and services described in subsection (a).

28 A company shall report its gross receipts on an accrual basis.
29 If a company's report does not state the company's taxable gross
30 receipts derived within a city, the Secretary must determine a
31 practical method of allocating part of the company's taxable
32 gross receipts to the city.

33 (c) Gas Special Charges. -- Gross receipts of a natural gas
34 company do not include the following:

- 35 (1) Special charges collected within this State by the
36 company pursuant to drilling and exploration
37 surcharges approved by the North Carolina Utilities
38 Commission, if the surcharges are segregated from
39 the other receipts of the company and are devoted
40 to drilling, exploration, and other means to
41 acquire additional supplies of natural gas for the
42 account of natural gas customers in North Carolina
43 and the beneficial interest in the surcharge
44 collections is preserved for the natural gas

1 customers paying the surcharges under rules
2 established by the Commission.

3 (2) Natural gas expansion surcharges imposed under G.S.
4 62-158.

5 (d) Distribution. -- ~~For the purpose of this subsection, the~~
6 ~~term "distribution amount" means three and nine hundredths~~
7 ~~percent (3.09%) of the taxable gross receipts derived during a~~
8 ~~period by an electric power company and a natural gas company~~
9 ~~from sales within a municipality of the commodities and services~~
10 ~~described in subsection (a) of this section. The Secretary shall~~
11 ~~distribute to each municipality the distribution amount for that~~
12 ~~municipality for the preceding calendar quarter less an amount~~
13 ~~equal to one-fourth of the excess of the distribution amount for~~
14 ~~that municipality for the period April 1, 1994, to March 31,~~
15 ~~1995, over the distribution amount for that municipality for the~~
16 ~~period April 1, 1990, to March 31, 1991, as certified by the~~
17 ~~Secretary. The Secretary shall distribute the revenue within 75~~
18 ~~days after the end of each quarter. If a company's report does~~
19 ~~not state the company's taxable gross receipts derived within a~~
20 ~~municipality, the Secretary shall determine a practical method of~~
21 ~~allocating part of the company's taxable gross receipts to the~~
22 ~~municipality.~~

23 ~~As used in this subsection, the term "municipality" includes an~~
24 ~~urban service district defined by the governing board of a~~
25 ~~consolidated city-county. The amount due an urban service~~
26 ~~district shall be distributed to the governing board of the~~
27 ~~consolidated city-county. Part of the taxes imposed by this~~
28 ~~section on electric power companies and natural gas companies is~~
29 ~~distributed to cities under G.S. 105-116.1.~~

30 (e) Local Tax. -- So long as there is a distribution to
31 ~~municipalities of the amount herein provided cities~~ from the tax
32 imposed by this section, no ~~municipality~~ city shall impose or
33 collect any greater franchise, privilege or license taxes, in the
34 aggregate, on the businesses taxed under this section, than was
35 imposed and collected on or before January 1, 1947. If any
36 municipality shall have collected any privilege, license or
37 franchise tax between January 1, 1947, and April 1, 1949, in
38 excess of the tax collected by it prior to January 1, 1947, then
39 upon distribution of the taxes imposed by this section to
40 municipalities, the amount distributable to any municipality
41 shall be credited with such excess payment."

42 Section 3. G.S. 105-120 reads as rewritten:

43 "§ 105-120. Franchise or privilege tax on telephone companies.

1 (a) Tax. -- An annual franchise or privilege tax is imposed on
2 a person, firm, or ~~corporation,~~ corporation that owns or operates
3 a business entity for the provision of local telecommunications
4 service. The tax is three and twenty-two hundredths percent
5 (3.22%) of the company's taxable gross receipts. A company's
6 taxable gross receipts are its receipts from providing local
7 telecommunications service, including receipts from rentals and
8 other similar charges, less its receipts from telecommunications
9 access charges. A company is allowed a credit against the tax
10 imposed by this section for the company's investments in certain
11 entities in accordance with Division V of Article 4 of this
12 Chapter.

13 (b) Report and Payment. -- The tax imposed by this section is
14 payable monthly or quarterly as specified in this subsection. A
15 report is due quarterly. A company that is liable for an average
16 of less than three thousand dollars (\$3,000) a month in tax
17 imposed by this section may, with the approval of the Secretary
18 of Revenue, pay tax quarterly when filing a report. All other
19 companies shall pay tax monthly. A monthly tax payment is due by
20 the last day of the month that follows the month in which the tax
21 accrues, except the payment for tax that accrues in May. The
22 payment for tax that accrues in May is due by June 25. A company
23 is not subject to interest on or penalties for an underpayment of
24 a monthly amount due if the company timely pays at least ninety-
25 five percent (95%) of the amount due and includes the
26 underpayment with the next report the company files.

27 A quarterly report covers a calendar quarter and is due by the
28 last day of the month that follows the quarter covered by the
29 report. A company shall submit a report on a form provided by
30 the Secretary. The report shall state the company's gross
31 receipts for the reporting period from providing local
32 telecommunications service and from providing local
33 telecommunications service within each ~~municipality~~ city served.
34 If a company's report does not state the company's taxable gross
35 receipts derived within a city, the Secretary must determine a
36 practical method of allocating part of the company's taxable
37 gross receipts to the city. A company shall report its gross
38 receipts on an accrual basis.

39 (c) Distribution. -- ~~For the purpose of this subsection, the~~
40 ~~term "distribution amount" means three and nine hundredths~~
41 ~~percent (3.09%) of the taxable gross receipts derived during a~~
42 ~~period from local telecommunications service provided within a~~
43 ~~municipality. The Secretary shall distribute to each~~
44 ~~municipality the distribution amount for that municipality for~~

~~1 the preceding calendar quarter less an amount equal to one-fourth
2 of the excess of the distribution amount for that municipality
3 for the period April 1, 1994, to March 31, 1995, over the
4 distribution amount for that municipality for the period April 1,
5 1990, to March 31, 1991, as certified by the Secretary. The
6 Secretary shall distribute the revenue within 75 days after the
7 end of each quarter. If a company's report does not state the
8 company's taxable gross receipts derived within a municipality,
9 the Secretary shall determine a practical method of allocating
10 part of the company's taxable gross receipts to the municipality.
11 As used in this subsection, the term "municipality" includes an
12 urban service district defined by the governing board of a
13 consolidated city-county. The amount due an urban service
14 district shall be distributed to the governing board of the
15 consolidated city-county. Part of the tax imposed by this
16 section is distributed to cities under G.S. 105-116.1.~~

17 (d) No Local Tax. -- Counties and cities may not impose a
18 license, franchise, or privilege tax on a company taxed under
19 this section or under G.S. 105-164.4(a)(4c).

20 (e) Definitions. -- For purposes of this section:

21 (1) 'Local telecommunications service' means
22 telecommunications service provided wholly within a
23 LATA entitling the user to access to a local
24 telephone exchange for the privilege of telephonic
25 quality communication with substantially all
26 persons in the local telephone exchange. Provided,
27 however, local telecommunications service does not
28 include intraLATA or interLATA toll
29 telecommunications service, or private
30 telecommunications service.

31 (2) 'LATA' is a Local Access and Transport Area
32 representing a geographical area comprising one or
33 more telephone exchange areas.

34 (3) 'InterLATA telecommunications' is
35 telecommunications service provided between two or
36 more LATAs.

37 (4) 'Toll telecommunications service' means:

- 38 a. A telephonic quality communication for which:
39 1. There is a toll charge that varies in
40 amount with the distance and elapsed
41 transmission time of each individual
42 communication; and
43 2. The charge is paid within the United
44 States.

1 b. A service that entitles the subscriber, upon
2 payment of a periodic charge (determined as a
3 flat amount or upon the basis of total elapsed
4 transmission time), to the privilege of an
5 unlimited number of telephonic communications
6 to or from all or a substantial portion of the
7 persons having telephone or radiotelephone
8 stations in a specified area that is outside
9 the local telephone exchange.

10 (5) 'Private telecommunications service' means a
11 service furnished to a subscriber that entitles the
12 subscriber to exclusive or priority use of a
13 communications channel or group of channels.

14 (6) 'Telecommunications access charges' means charges
15 paid to a provider of local telecommunications
16 service for access to an interconnection with the
17 local telephone exchange."

18 Section 4. G.S. 105-114(b) is amended by adding a new
19 subdivision in the appropriate alphabetical order to read:

20 "(01) City. -- Defined in G.S. 105-228.90."

21 Section 5. If a city's hold-back amount calculated
22 under G.S. 105-116.1(c), as enacted by this act, is less than the
23 amount deducted from the city's 1995-96 franchise tax
24 distribution, the Secretary must distribute two times the amount
25 of the difference to the city by July 15, 1997. This
26 distribution is made to adjust retroactively the city's 1995-96
27 and 1996-97 franchise tax distributions. The amount needed to
28 make the distribution required by this section shall be drawn
29 from the amount of gross receipts taxes imposed by G.S. 105-116
30 and otherwise retained by the State.

31 Section 6. This act is effective when it becomes law.

EXPLANATION OF SENATE BILL 34
Proposed Committee Substitute
Adjust City Receipts Tax Share

TO: Senate Finance Committee
FROM: Sabra Faires, Committee Counsel
DATE: February 26, 1997
SPONSOR: Senator Betsy Cochrane

Senate Bill 34 is one of the bills recommended to the 1997 General Assembly by the Revenue Laws Study Committee. It increases the amount of State franchise tax that is distributed to certain cities. The cities whose distributions are increased are those whose 1995-96 distributions were less than 95% of their 1990-91 distributions. The bill increases the distributions for these cities by reducing the "hold-back amount" that is deducted from a city's share. The bill is effective upon ratification and applies to distributions made for fiscal year 1995-96 and subsequent years. The bill increases the annual distribution to the affected cities by a total of \$194,841.

The specific cities affected by the bill, the counties in which these cities are located, and the increase in the distribution amounts for these cities are listed in the attachment to the revised fiscal note for the bill. Forty cities are affected.

The State distributes part of the State franchise tax imposed on utilities to the cities. The franchise taxes that are distributed are the taxes on electricity, piped natural gas, and telephone service. The State imposes a franchise tax on these utilities at the rate of 3.22%. The State distributes to cities the amount of tax collected from service provided inside the cities that equals a tax of 3.09%. Thus, the cities receive the majority of these taxes.

The amount to be distributed to a city is reduced by that city's "hold-back" amount. The "hold-back" amount is the amount by which the city's distribution of these franchise taxes increased from fiscal year 1990-91 to fiscal year 1994-95. During this period, the total amount distributed was frozen but the relative share of each city changed based on the proportion of that city's receipts compared to the total of all cities' receipts. When the freeze was lifted in 1995-96, a requirement was imposed to calculate and deduct a "hold-back" amount. The effect of the deduction of a hold-back amount from the cities' distribution is the retention by the State of the growth that occurred in the franchise tax base during the freeze years.

The "hold-back" amount reduced the amount distributed in fiscal year 1995-96 to some cities below the amount that was distributed in 1990-91. This occurred to cities that experienced a short-term growth in the freeze years (1990-91 through 1994-95) that ended in 1995-96. The hold-back deduction requires these cities to deduct receipts attributable to growth that is no longer in their tax base.

The bill adjusts for this loss of short-term growth by adjusting the hold-back amount. The amount distributed to a city in 1995-96 is compared to the amount distributed in 1990-91. If the 1995-96 amount is less than 95% of the 1990-91 amount, the hold-back is adjusted in accordance with the formula in the bill. If the hold-back results in the city receiving less than it received in 1990-91, the hold-back is adjusted so that the city receives the amount it received in 1990-91.

The changes made by each section of the bill are described below. The proposed committee substitute differs from the introduced bill in two respects. First, the proposed committee substitute corrects an error in the adjustment formula that was contained in the introduced bill. Second, the proposed committee substitute adds a cross-reference to the definition of city for ease of understanding.

Section 1: Combines the city franchise tax distribution provisions that are now in G.S. 105-116 and 105-120. It does this so that all city franchise receipts are combined when applying the adjustment formula.

Section 2: Removes from G.S. 105-116 the city franchise tax distribution provisions for electric power companies and piped gas companies that are moved to Section 1 and applies the term "city" rather than "municipality."

Section 3: Removes from G.S. 105-120 the city franchise tax distribution provisions for local telephone service receipts that are moved to Section 1 and applies the term "city" rather than "municipality."

Section 4: Adds a cross-reference in the franchise tax statutes to the definition of city.

Section 5: Makes the adjustment in the distribution amount apply to fiscal years 1995-96 and 1996-97.

Section 6: Makes the bill effective when it becomes law.

EXPLANATION OF SCS FOR SENATE BILL 34

- ✓ AS PART OF THE \$1.2 BILLION BUDGET FIX IN 1991, THE GENERAL ASSEMBLY FROZE THE DISTRIBUTION OF STATE UTILITY GROSS RECEIPTS TAX REVENUE TO CITIES AT THE 1990-91 LEVEL.
- ✓ THE 1993 GENERAL ASSEMBLY RESTORED GROWTH TO CITIES, EFFECTIVE BEGINNING WITH THE 1995-96 FISCAL YEAR. THE NEW FORMULA ALLOWS CITIES TO KEEP A STRAIGHT EARMARKING OF THE STATE TAX, LESS A "HOLDBACK" FOR THE GROWTH THAT OCCURRED BETWEEN 1990-91 AND 1994-95.
- ✓ THE NEW FORMULA HAS WORKED FOR 93% OF CITIES IN NORTH CAROLINA. FOR A HANDFUL OF CITIES, THE FORMULA PRODUCES AN UNINTENDED NEGATIVE IMPACT IN CASES WHERE THE SOURCE OF MAJOR UTILITY TAX GROWTH DURING THE FREEZE PERIOD HAS DISAPPEARED. AN EXAMPLE IS THE CASE WHERE A MAJOR MANUFACTURING PLANT WAS ANNEXED BY A CITY DURING THE FREEZE PERIOD AND THE PLANT CLOSED AFTER FREEZE PERIOD. IN THIS CASE, THE CITY IS PENALIZED THROUGH THE STATE HOLDBACK EVEN THOUGH THE SOURCE OF THE HOLDBACK NO LONGER EXISTS.

(OVER)

EXPLANATION OF SCS FOR SENATE BILL 34

(Continued)

- ✓ SENATE BILL 34 ADDRESSES THIS PROBLEM BY MODIFYING THE HOLDBACK FOR THOSE CITIES WHOSE 1995-96 DISTRIBUTION (AFTER FREEZE) WAS LESS THAN 95% OF THE 1990-91 DISTRIBUTION (BEFORE FREEZE) AND THE HOLDBACK IS THE SOURCE OF THE PROBLEM.
- ✓ IN SOME CITIES, THE HOLDBACK IS ELIMINATED COMPLETELY BECAUSE THE CITY STILL GETS FEWER DOLLARS THAN IN 1990-91. IN OTHERS, THE HOLDBACK IS REDUCED TO THE LEVEL THAT HOLDS THE CITY HARMLESS TO THE 1990-91 DISTRIBUTION LEVEL.
- ✓ THE ANNUALIZED COST TO THE STATE GENERAL FUND IS \$195,000. THE FIRST-YEAR COST IS \$390,000 (TO COVERS 1995-96 AND 1996-97 FISCAL YEARS). THE CHANGE HAS AN IMPACT OF MORE THAN \$5,000 ON 13 CITIES AND A SMALLER IMPACT ON 27 CITIES.

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL ESTIMATE

BILL NUMBER: SB 34 (SENATE COMMITTEE SUBSTITUTE)
SHORT TITLE: ADJUST CITY RECEIPTS TAX SHARE

FISCAL IMPACT: Expenditures: Increase () Decrease ()
Revenues: Increase (X) Decrease (X)
No Impact ()
No Estimate Available ()

FUNDS AFFECTED: General Fund (X) Highway Fund () Local Fund (X)
Other Fund ()

BILL SUMMARY: Prior to the 1989-90 fiscal year, the portion of the State Franchise tax on the gross receipts of utilities that was shared with municipalities was earmarked from taxes collected. In June, 1990 legislation was enacted to fund the State aid through an appropriation. During the 1991 budget crisis the General Assembly froze the statewide distribution for all future years at the 1990-91 level. Under this system, each city received a share of the statewide frozen amount based on utility taxes collected in the city, relative to the statewide total. The 1993 General Assembly enacted legislation, effective beginning with the 1995-96 fiscal year, that changed the funding system back to an earmarking of the State tax, less a holdback equal to the growth in actual collections for each city between 1990-91 and 1994-95. (The intent was to allow the State to keep the growth in collections during the freeze period as part of the local government contribution to the 1991 budget crisis).

The first-year implementation of the change has identified an issue that affects a handful of cities. The problem occurs in situations in which the utility gross receipts in a city increased between 1990-91 and 1994-95 as a result of the location or expansion of a large taxpayer (i.e., manufacturer) who was not part of the 1995-96 tax base (or at a much lower level). In this situation the city not only loses current revenues but is penalized by a holdback that includes the prior growth of a taxpayer who no longer is part of the city (or at a much lower level).

(OVER)

The bill corrects this problem by adjusting the holdback for any city whose 1995-96 distribution is at least 5% lower than the 1990-91 distribution. The revision is made by calculating an adjusted 1995-96 distribution that adds to the actual distribution the holdback amount. If the adjusted 1995-96 distribution is greater than the 1990-91 distribution, the holdback is reduced to the level necessary to make the 1995-96 distribution equal to the 1990-91 distribution. If the adjusted 1995-96 distribution is less than or equal to the city's 1990-91 distribution, the holdback amount is completely eliminated. Any adjustment to the holdback portion of the 1995-96 distribution will be carried forward to all future years.

EFFECTIVE DATE: When the act becomes law.

PRINCIPAL DEPARTMENT(S)/PROGRAM(S) AFFECTED: The distribution is administered by the Department of Revenue. It is not anticipated that the legislation will affect the Department's budget requirements.

FISCAL IMPACT

	<u>FY97</u>	<u>FY98</u>	<u>FY99</u>	<u>FY00</u>	<u>FY01</u>
REVENUES (\$Mill.)					
State	-\$.4	-\$.2	-\$.2	-\$.2	-\$.2
Cities*:	+\$.4	+\$.2	+\$.2	+\$.2	+\$.2

*Total for the cities impacted.

DATA, ASSUMPTIONS, METHODOLOGY: The cost estimate is based on an FRD computer simulation of the proposed system using actual data furnished by the Department of Revenue for the 1990-91 through 1995-96 fiscal year for all cities receiving a distribution.

FISCAL RESEARCH DIVISION

733-4910

PREPARED BY: Dave Crofts

APPROVED BY:

DATE: February 26, 1997

[FRD#003]

County	Municipality	Additional Distribution Under SB 34
Davidson	Denton	\$32,366
Rutherford	Spindale	19,240
Alamance	Haw River	15,530
Swain	Bryson City	13,617
Rockingham	Madison	12,901
Cabarrus	Mount Pleasant	11,124
Polk	Tryon	10,832
Haywood	Canton	10,620
Union	Stallings	8,888
Gaston	Ranlo	6,941
Cleveland	Polkville	6,316
Stokes	King	5,925
Clay	Hayesville	5,621
	13 Cities With Largest Gain	\$159,921
Graham	Robbinsville	4,745
Madison	Marshall	4,452
Ashe	West Jefferson	3,906
Rowan	Cleveland	3,335
Yadkin	Boonville	3,063
Franklin	Franklinton	2,646
Rutherford	Alexander Mills	2,535
Alamance	Alamance	1,668
Cumberland	Wade	1,399
Buncombe	Woodfin	963
Ashe	Jefferson	785
Caldwell	Rhodhiss	766
Avery	Newland	699
Brunswick	Bolivia	671
Wilkes	Ronda	550
Brunswick	Belville	535
Randolph	Staley	473
Moore	Robbins	457
Cumberland	Linden	384
Scotland	East Laurinburg	241
Vance	Middleburg	226
	Spencer Mountain	106
Jackson	Webster	88
Granville	Stem	79
Warren	Macon	55
Wayne	Seven Springs	55
Edgecombe	Leggett	38
	Remaining Cities	\$34,920
	Total for All Cities Affected	\$194,841

Municipality	Actual Distribution Fiscal Year 1990-91	Actual Distribution Fiscal Year 1995-96	Dollar Gain	1995-96 Amount Relative To 1990-91	Calculation:			Adjusted Distribution 1995-96	Adjusted Dollar Gain 1995-96	Add-Back Under SB 34
					Add Back Holdback Amount 1995-96	Adjusted Distribution 1995-96	Adjusted Dollar Gain 1995-96			
Aberdeen	\$185,767	\$185,040	(727)	99.6%	35,407	220,447	34,680			
Ahoskie	178,800	188,925	10,125	105.7%	27,565	216,490	37,690			
Alamance	17,604	12,118	(5,486)	68.8%	1,668	13,786	(3,818)		1,668	
Albemarle	709,739	725,777	16,038	102.3%	111,250	837,027	127,288			
Alexander Mills	37,993	35,458	(2,535)	93.3%	24,987	60,445	22,452			
Alliance	14,761	17,230	2,469	116.7%	2,117	19,347	4,586			
Andrews	55,023	61,423	6,400	111.6%	12,704	74,127	19,104			
Angier	64,977	68,159	3,182	104.9%	6,016	74,175	9,198			
Ansonville	14,643	15,077	434	103.0%	314	15,391	748			
Apex	228,265	270,287	42,022	118.4%	78,846	349,133	120,868			
Arapahoe	8,639	10,158	1,519	117.6%	337	10,495	1,856			
Archdale	178,487	196,131	17,644	109.9%	44,510	240,641	62,154			
Arlington	10,317	11,432	1,115	110.8%	2,130	13,562	3,245			
Asheboro	993,565	1,041,644	48,079	104.8%	91,705	1,133,349	139,784			
Asheville	2,786,478	3,036,408	249,930	109.0%	529,085	3,565,493	779,015			
Askewville	4,280	4,821	541	112.6%	930	5,751	1,471			
Atkinson	7,170	7,695	525	107.3%	2,277	9,972	2,802			
Atlantic Beach	148,931	159,187	10,256	106.9%	11,559	170,746	21,815			
Aulander	33,605	35,217	1,612	104.8%	1,510	36,727	3,122			
Aurora	16,851	18,091	1,240	107.4%	2,717	20,808	3,957			
Autryville	5,128	5,470	342	106.7%	409	5,879	751			
Ayden	151,511	152,628	1,117	100.7%	35,496	188,124	36,613			
Badin	41,532	76,010	34,478	183.0%	11,174	87,184	45,652			
Bailey	19,164	20,971	1,807	109.4%	1,093	22,064	2,900			
Bakersville	18,435	18,922	487	102.6%	0	18,922	487			
Bald Head Island	17,607	19,267	1,660	109.4%	5,349	24,616	7,009			
Banner Elk	21,679	23,164	1,485	106.9%	1,844	25,008	3,329			
Bath	275	548	273	199.2%	240	788	513			
Battleboro	8,094	8,274	180	102.2%	3,446	11,720	3,626			
Bayboro	22,787	23,081	294	101.3%	2,862	25,943	3,156			
Bear Grass	2,335	2,398	63	102.7%	693	3,091	756			
Beaufort	124,664	134,137	9,473	107.6%	10,091	144,228	19,564			
Beech Mountain	67,542	74,733	7,191	110.6%	3,106	77,839	10,297			
Belhaven	38,390	41,648	3,258	108.5%	12,075	53,723	15,333			

Municipality	Actual Distribution		1995-96	1995-96		1995-96	1995-96		1995-96		1995-96	1995-96	1995-96	1995-96	1995-96
	Fiscal Year	Fiscal Year		Dollar Gain	Amount Relative To		Add Back Holdback Amount	Adjusted Distribution	Adjusted Dollar Gain	Add-Back Under					
Belmont	570,608	609,625	39,017	106.8%	83,571	693,196	122,588								
Belville	4,321	3,628	(693)	84.0%	535	4,163	(158)								
Belwood	10,944	13,255	2,311	121.1%	2,802	16,057	5,113								
Benson	220,665	242,102	21,437	109.7%	24,009	266,111	45,446								
Bessemer City	214,112	204,472	(9,640)	95.5%	2,146	206,618	(7,494)								
Bethania	N/A	5,312	5,312	ERR	0	5,312	5,312								
Bethel	27,366	29,418	2,052	107.5%	5,107	34,525	7,159								
Beulaville	31,622	33,482	1,860	105.9%	1,699	35,181	3,559								
Biltmore Forest	44,475	58,481	14,006	131.5%	40,492	98,973	54,498								
Biscoe	200,561	190,670	(9,891)	95.1%	2,628	193,298	(7,263)								
Black Creek	825	1,284	459	155.6%	351	1,635	810								
Black Mountain	207,363	217,816	10,453	105.0%	43,882	261,698	54,335								
Bladenboro	92,017	92,858	841	100.9%	6,293	99,151	7,134								
Blowing Rock	66,837	65,605	(1,232)	98.2%	3,358	68,963	2,126								
Boardman			0	ERR	ERR	ERR	ERR								
Bogue	N/A	6,527	6,527	ERR	0	6,527	6,527								
Boiling Spring Lakes	32,697	35,971	3,274	110.0%	3,481	39,452	6,755								
Boiling Springs	56,682	60,064	3,382	106.0%	22,259	82,323	25,641								
Bolivia	6,478	5,452	(1,026)	84.2%	671	6,123	(355)								
Bolton	11,261	11,417	156	101.4%	431	11,848	587								
Boone	404,420	440,034	35,614	108.8%	43,535	483,569	79,149								
Boonville	54,609	51,546	(3,063)	94.4%	11,071	62,617	8,008								
Bostic	2,984	5,755	2,771	192.9%	1,078	6,833	3,849								
Brevard	161,971	172,859	10,888	106.7%	56,938	229,797	67,826								
Bridgeton	18,502	17,728	(774)	95.8%	579	18,307	(195)								
Broadway	26,122	27,981	1,859	107.1%	2,513	30,494	4,372								
Brookford	33,429	33,239	(190)	99.4%	12,893	46,132	12,703								
Brunswick	11,485	11,572	87	100.8%	738	12,310	825								
Bryson City	43,456	29,839	(13,617)	68.7%	20,854	50,693	7,237								
Bunn	10,821	11,395	574	105.3%	406	11,801	980								
Burgaw	74,596	87,887	13,291	117.8%	24,731	112,618	38,022								
Burlington	1,630,101	1,841,265	211,164	113.0%	742,824	2,584,089	953,988								
Burnsville	76,875	43,617	(33,258)	56.7%	0	43,617	(33,258)								
Cajah Mountain	28,395	33,837	5,442	119.2%	14,419	48,256	19,861								

Municipality	Actual Distribution		Actual Distribution		Dollar Gain	1995-96 Amount Relative To 1990-91	Add Back Holdback Amount		Adjusted Distribution 1995-96	Adjusted Dollar Gain 1995-96	Add-Back Under SB.34
	Fiscal Year 1990-91	Fiscal Year 1995-96	Fiscal Year 1995-96	Fiscal Year 1995-96			1995-96	1995-96			

Calabash	46,643	40,995	40,995	(5,648)	87.9%	0	40,995	(5,648)		
Calyпсо	10,282	10,247	10,247	(35)	99.7%	141	10,388	106		
Cameron	4,461	4,867	4,867	406	109.1%	255	5,122	661		
Candor	27,414	28,611	28,611	1,197	104.4%	2,514	31,125	3,711		
Canton	395,765	371,423	371,423	(24,342)	93.8%	10,620	382,043	(13,722)		
Cape Carteret	26,451	31,179	31,179	4,728	117.9%	7,988	39,167	12,716		10,620
Carolina Beach	157,461	169,914	169,914	12,453	107.9%	16,182	186,096	28,635		
Carboro	282,658	303,923	303,923	21,265	107.5%	70,583	374,506	91,848		
Carthage	34,748	39,762	39,762	5,014	114.4%	10,284	50,046	15,298		
Cary	1,516,533	1,803,814	1,803,814	287,281	118.9%	772,008	2,575,822	1,059,289		
Casar	5,633	7,493	7,493	1,860	133.0%	887	8,380	2,747		
Castalia	5,405	5,906	5,906	501	109.3%	249	6,155	750		
Caswell Beach	19,008	18,640	18,640	(368)	98.1%	4,847	23,487	4,479		
Catawba	15,654	21,503	21,503	5,849	137.4%	8,882	30,385	14,731		
Cedar Point	20,372	36,677	36,677	16,305	180.0%	2,429	39,106	18,734		
Centerville	2,974	3,133	3,133	159	105.3%	55	3,188	214		
Cerro Gordo	5,227	5,554	5,554	327	106.3%	529	6,083	856		
Chadbourn	55,060	56,536	56,536	1,476	102.7%	4,523	61,059	5,999		
Chapel Hill	1,306,329	1,389,461	1,389,461	83,132	106.4%	325,729	1,715,190	408,861		
Charlotte	14,608,516	17,657,034	17,657,034	3,048,518	120.9%	3,279,997	20,937,031	6,328,515		
Cherryville	217,783	219,299	219,299	1,516	100.7%	67,320	286,619	68,836		
Chimney Rock	N/A	7,560	7,560	7,560	ERR	0	7,560	7,560		
China Grove	82,557	96,006	96,006	13,449	116.3%	74,617	170,623	88,066		
Chocowinity	41,369	39,504	39,504	(1,865)	95.5%	7,748	47,252	5,883		
Claremont	80,196	99,162	99,162	18,966	123.6%	89,899	189,061	108,865		
Clarkton	42,024	44,121	44,121	2,097	105.0%	7,238	51,359	9,335		
Clayton	131,934	152,545	152,545	20,611	115.6%	26,103	178,648	46,714		
Clemmons	157,021	191,494	191,494	34,473	122.0%	38,938	230,432	73,411		
Cleveland	25,703	22,368	22,368	(3,335)	87.0%	4,318	26,686	983		
Clinton	478,042	582,713	582,713	104,671	121.9%	41,853	624,566	146,524		
Clyde	24,277	23,907	23,907	(370)	98.5%	3,928	27,835	3,558		
Coats	34,946	36,600	36,600	1,654	104.7%	1,606	38,206	3,260		
Cofield	26,663	28,529	28,529	1,866	107.0%	6,335	34,864	8,201		
Colerain	6,245	6,420	6,420	175	102.8%	751	7,171	926		

3,335

Municipality	Actual Distribution		Actual Distribution		Dollar Gain	1995-96 Amount Relative To 1990-91	Calculation:		Adjusted Distribution 1995-96	Adjusted Dollar Gain 1995-96	Add-Back Under SB 34
	Fiscal Year 1990-91	Fiscal Year 1995-96	Fiscal Year 1995-96	Fiscal Year 1995-96			Add Back Holdback Amount 1995-96	Add Back Holdback Amount 1995-96			
Columbia	16,910	19,683	2,773	116.4%	4,118	23,801	6,891				
Columbus	45,296	81,230	35,934	179.3%	82,215	163,445	118,149				
Como	2,156	2,370	214	109.9%	168	2,538	382				
Concord	1,074,467	1,225,031	150,564	114.0%	249,275	1,474,306	399,839				
Conetoe	5,184	5,427	243	104.7%	522	5,949	765				
Connelly Springs	19,909	23,117	3,208	116.1%	6,466	29,583	9,674				
Conover	408,079	439,146	31,067	107.6%	54,909	494,055	85,976				
Conway	77,918	87,393	9,475	112.2%	16,303	103,696	25,778				
Coolee	22,534	25,960	3,426	115.2%	0	25,960	3,426				
Cornelius	96,455	172,100	75,645	178.4%	71,147	243,247	146,792				
Cove City	10,188	10,989	801	107.9%	1,343	12,332	2,144				
Cramerton	87,295	87,125	(170)	99.8%	38,092	125,217	37,922				
Creedmoor	39,158	37,949	(1,209)	96.9%	66,775	104,724	65,566				
Creswell	7,331	7,734	403	105.5%	2,288	10,022	2,691				
Crossnore	11,324	11,766	442	103.9%	850	12,616	1,292				
Dallas	96,192	109,110	12,918	113.4%	16,842	125,952	29,760				
Danbury	6,727	6,820	93	101.4%	4,411	11,231	4,504				
Davidson	145,966	177,687	31,721	121.7%	35,548	213,235	67,269				
Denton	63,561	31,295	(32,266)	49.2%	64,305	95,600	32,039				
Dillsboro	3,867	3,846	(21)	99.5%	31	3,877	10				
Dobbin Heights	14,953	15,017	64	100.4%	135	15,152	199				
Dobson	48,259	53,821	5,562	111.5%	11,548	65,369	17,110				
Dortches	15,515	17,157	1,642	110.6%	1,021	18,178	2,663				
Dover	7,808	8,557	749	109.6%	1,461	10,018	2,210				
Drexel	49,726	55,318	5,592	111.2%	1,943	57,261	7,535				
Dublin	11,897	11,933	36	100.3%	1,291	13,224	1,327				
Dunn	344,545	362,848	18,303	105.3%	55,093	417,941	73,396				
Durham	4,347,162	4,641,365	294,203	106.8%	1,066,717	5,708,082	1,360,920				
Earl	3,777	6,009	2,232	159.1%	1,236	7,245	3,468				
East Arcadia	4,365	4,430	65	101.5%	511	4,941	576				
East Bend	11,839	12,853	1,014	108.6%	0	12,853	1,014				
East Laurinburg	55,781	42,148	(13,633)	75.6%	241	42,389	(13,392)				
East Spencer	60,684	62,943	2,259	103.7%	17,508	80,451	19,767				
Eden	559,123	579,886	20,763	103.7%	117,998	697,884	138,761				
										\$32,366	241

Municipality

	Actual Distribution Fiscal Year 1990-91	Actual Distribution Fiscal Year 1995-96	Dollar Gain	1995-96 Amount Relative To 1990-91	Calculation:		Adjusted Distribution 1995-96	Adjusted Dollar Gain 1995-96	Add-Back Under SB 34
					Add Back Holdback Amount 1995-96	Add Back Holdback Amount 1995-96			
Edenton	177,506	202,541	25,035	114.1%	66,713	269,254	91,748		
Elizabeth City	423,682	582,917	159,235	137.6%	223,709	806,626	382,944		
Elizabethtown	140,782	147,918	7,136	105.1%	13,575	161,493	20,711		
Elk Park	6,910	7,481	571	108.3%	754	8,235	1,325		
Elkin	189,206	191,511	2,305	101.2%	58,126	249,637	60,431		
Ellenboro	11,563	14,390	2,827	124.4%	8,017	22,407	10,844		
Ellerbe	34,095	34,756	661	101.9%	250	35,006	911		
Elm City	45,775	45,487	(288)	99.4%	1,257	46,744	969		
Elon College	79,964	100,196	20,232	125.3%	32,359	132,555	52,591		
Emerald Isle	130,970	156,228	25,258	119.3%	26,668	182,896	51,926		
Enfield	51,032	68,969	17,937	135.1%	14,191	83,160	32,128		
Erwin	267,733	277,464	9,731	103.6%	50,473	327,937	60,204		
Eureka	5,814	5,778	(36)	99.4%	154	5,932	118		
Everetts	3,702	3,861	159	104.3%	1,245	5,106	1,404		
Fair Bluff	20,839	28,207	7,368	135.4%	1,934	30,141	9,302		
Fairmont	72,064	101,631	29,567	141.0%	66,596	168,227	96,163		
Faison	29,174	30,831	1,657	105.7%	3,662	34,493	5,319		
Faith	17,122	17,356	234	101.4%	1,311	18,667	1,545		
Falcon	8,636	9,661	1,025	111.9%	1,313	10,974	2,338		
Falkland	494	505	11	102.2%	168	673	179		
Fallston	13,989	15,603	1,614	111.5%	2,360	17,963	3,974		
Farmville	261,466	272,618	11,152	104.3%	3,955	276,573	15,107		
Fayetteville	2,817,547	2,704,883	(112,664)	96.0%	455,690	3,160,573	343,026		
Flat Rock	N/A	39,203	39,203	ERR	0	39,203	39,203		
Fletcher	186,300	200,362	14,062	107.5%	19,116	219,478	33,178		
Forest City	311,311	314,486	3,175	101.0%	88,848	403,334	92,023		
Fountain	494	659	165	133.4%	106	765	271		
Four Oaks	32,809	34,940	2,131	106.5%	2,355	37,295	4,486		
Foxfire Village	13,184	14,449	1,265	109.6%	885	15,334	2,150		
Franklin	93,705	105,705	12,000	112.8%	50,120	155,825	62,120		
Franklinton	68,038	51,045	(16,993)	75.0%	2,646	53,691	(14,347)		
Franklinville	11,049	13,065	2,016	118.2%	1,021	14,086	3,037		
Fremont	32,889	35,463	2,574	107.8%	2,613	38,076	5,187		
Fuquay-Varina	209,923	219,153	9,230	104.4%	89,372	308,525	98,602		

2,646

Municipality	Actual Distribution		Actual Distribution		1995-96 Amount Relative To 1990-91	Add Back Holdback Amount 1995-96		Adjusted Distribution 1995-96	Adjusted Dollar Gain 1995-96	Add-Back Under SB 34
	1990-91	Fiscal Year	1995-96	Fiscal Year		Dollar Gain	1995-96			

Gamewell	32,513		38,273		5,760	117.7%	16,855	55,128	22,615	
Garland	19,246		20,593		1,347	107.0%	1,302	21,895	2,649	
Garner	398,259		455,638		57,379	114.4%	108,061	563,699	165,440	
Garysburg	9,859		10,922		1,063	110.8%	3,116	14,038	4,179	
Gaston	24,176		26,617		2,441	110.1%	5,870	32,487	8,311	
Gastonia	2,214,701		2,480,661		265,960	112.0%	464,717	2,945,378	730,677	
Gatesville	10,616		11,080		464	104.4%	293	11,373	757	
Gibson	11,223		12,267		1,044	109.3%	684	12,951	1,728	
Gibsonville	77,937		97,416		19,479	125.0%	52,595	150,011	72,074	
Glen Alpine	13,730		15,415		1,685	112.3%	2,137	17,552	3,822	
Godwin	2,571		2,979		408	115.9%	944	3,923	1,352	
Goldsboro	1,415,245		1,713,176		297,931	121.1%	155,391	1,868,567	453,322	
Goldston	10,627		12,075		1,448	113.6%	2,005	14,080	3,453	
Graham	390,218		422,368		32,150	108.2%	168,222	590,590	200,372	
Grandfather Village	18,778		13,276		(5,502)	70.7%	0	13,276	(5,502)	
Granite Falls	96,943		109,168		12,225	112.6%	61,461	170,629	73,686	
Granite Quarry	55,083		54,431		(652)	98.8%	11,019	65,450	10,367	
Green Level	N/A		25,193		25,193	ERR	0	25,193	25,193	
Greenevers	5,375		5,494		119	102.2%	950	6,444	1,069	
Greensboro	7,336,822		8,146,448		809,626	111.0%	1,614,096	9,760,544	2,423,722	
Greenville	2,212,484		2,654,277		441,793	120.0%	576,390	3,230,667	1,018,183	
Grifton	45,797		49,595		3,798	108.3%	3,112	52,707	6,910	
Grimesland	8,642		10,132		1,490	117.2%	585	10,717	2,075	
Grover	66,820		63,131		(3,689)	94.5%	10,999	74,130	7,310	
Halifax	8,727		9,680		953	110.9%	2,437	12,117	3,390	
Hamilton	7,235		7,595		360	105.0%	2,485	10,080	2,845	
Hamlet	168,166		186,603		18,437	111.0%	12,690	199,293	31,127	
Harmony	19,871		12,473		(7,398)	62.8%	0	12,473	(7,398)	
Harrells	6,085		5,500		(585)	90.4%	0	5,500	(585)	
Harrellsville	1,811		1,992		181	110.0%	1,141	3,133	1,322	
Harrisburg	81,234		114,100		32,866	140.5%	18,397	132,497	51,263	
Hassell	677		747		70	110.3%	146	893	216	
Havelock	565,017		605,306		40,289	107.1%	45,107	650,413	85,396	
Haw River	186,651		144,848		(41,803)	77.6%	15,530	160,378	(26,273)	
										15,530

Municipality	Actual Distribution		1995-96 Amount Relative To 1990-91	Calculation:		Adjusted Distribution 1995-96	Adjusted Dollar Gain 1995-96	Add-Back Under SB 34
	Fiscal Year 1990-91	Fiscal Year 1995-96		Dollar Gain	Add Back Holdback Amount 1995-96			
Hayesville	24,584	14,581	59.3%	5,621	20,202	(4,382)	5,621	
Hazelwood	38,891	0	0.0%	0	0	(38,891)		
Henderson	706,568	770,004	109.0%	78,286	848,290	141,722		
Hendersonville	361,380	426,390	118.0%	130,242	556,632	195,252		
Herrford	47,182	50,264	106.5%	17,229	67,493	20,311		
Hickory	1,518,287	1,618,536	106.6%	560,899	2,179,435	661,148		
High Point	2,195,697	2,538,249	115.6%	705,945	3,244,194	1,048,497		
High Shoals	10,119	10,858	107.3%	351	11,209	1,090		
Highlands	8,614	10,897	126.5%	1,959	12,856	4,242		
Hildebran	50,755	55,144	108.6%	11,130	66,274	15,519		
Hillsborough	156,642	159,561	101.9%	62,701	222,262	65,620		
Hobgood	8,157	9,105	111.6%	1,795	10,900	2,743		
Hoffman	6,306	6,939	110.0%	650	7,589	1,283		
Holden Beach	44,859	45,671	101.8%	7,771	53,442	8,583		
Holly Ridge	51,172	51,234	100.1%	12,537	63,771	12,599		
Holly Springs	14,945	31,109	208.2%	25,478	56,587	41,642		
Hookerton	11,985	13,194	110.1%	703	13,897	1,912		
Hope Mills	170,760	179,397	105.1%	14,024	193,421	22,661		
Hot Springs	17,451	22,517	129.0%	13,740	36,257	18,806		
Hudson	117,139	122,660	104.7%	45,555	168,215	51,076		
Huntersville	83,040	187,234	225.5%	61,309	248,543	165,503		
Indian Beach	26,147	28,720	109.8%	2,412	31,132	4,985		
Indian Trail	72,588	114,359	157.5%	73,837	188,196	115,608		
Jackson	14,403	15,206	105.6%	3,505	18,711	4,309		
Jacksonville	1,141,435	1,283,846	112.5%	896,764	2,180,610	1,039,175		
Jamestown	99,199	112,666	113.6%	41,859	154,525	55,326		
Jamesville	9,123	9,755	106.9%	2,901	12,656	3,533		
Jefferson	50,130	45,631	91.0%	785	46,416	(3,714)		
Jonesville	38,511	41,718	108.3%	10,366	52,084	13,573		
Kannapolis	934,762	999,115	106.9%	136,962	1,136,077	201,315		
Kelford	2,896	3,334	115.1%	1,071	4,405	1,509		
Kenansville	41,664	46,369	111.3%	7,056	53,425	11,761		
Kenly	37,243	40,389	108.4%	7,929	48,318	11,075		
Kernersville	358,264	394,912	110.2%	160,757	555,669	197,405		

Municipality	Actual Distribution Fiscal Year 1990-91	Actual Distribution Fiscal Year 1995-96	Dollar Gain	1995-96 Amount Relative To 1990-91	Calculation:			Adjusted Dollar Gain 1995-96	Add-Back Under SB 34
					Add Back Holdback Amount 1995-96	Adjusted Distribution 1995-96			
Kill Devil Hills	191,526	217,688	26,162	113.7%	62,512	280,200	88,674		
King	143,216	129,436	(13,780)	90.4%	5,925	135,361	(7,855)	5,925	
Kings Mountain	267,573	288,933	21,360	108.0%	42,209	331,142	63,569		
Kingstown	N/A	13,129	13,129	ERR	0	13,129	13,129		
Kinston	957,150	1,203,606	246,456	125.7%	275,612	1,479,218	522,068		
Kittrell	3,858	3,815	(43)	98.9%	112	3,927	69		
Kitty Hawk	83,929	94,510	10,581	112.6%	34,810	129,320	45,391		
Knightdale	57,500	66,542	9,042	115.7%	33,113	99,655	42,155		
Kure Beach	38,260	44,114	5,854	115.3%	4,973	49,087	10,827		
La Grange	49,543	55,670	6,127	112.4%	6,717	62,387	12,844		
Lake Lure	47,622	52,814	5,192	110.9%	9,553	62,367	14,745		
Lake Park	N/A	16,327	16,327	ERR	0	16,327	16,327		
Lake Waccamaw	35,276	36,407	1,131	103.2%	2,974	39,381	4,105		
Landis	164,293	167,649	3,356	102.0%	3,007	170,656	6,363		
Lansing	3,512	2,413	(1,099)	68.7%	0	2,413	(1,099)		
Lasker	2,327	2,685	358	115.4%	496	3,181	854		
Lattimore	4,334	4,870	536	112.4%	157	5,027	693		
Laurel Park	37,796	40,068	2,272	106.0%	5,320	45,388	7,592		
Laurinburg	328,618	755,978	427,360	230.0%	97,886	853,864	525,246		
Lawndale	42,712	40,797	(1,915)	95.5%	4,442	45,239	2,527		
Leggett	1,896	1,201	(695)	63.3%	38	1,239	(657)		
Leland	1,754	66,978	65,224	3817.9%	0	66,978	65,224		
Lenoir	867,977	874,869	6,892	100.8%	193,927	1,068,796	200,819		
Lewiston Woodville	19,444	19,366	(78)	99.6%	8,987	28,353	8,909		
Lewisville	N/A	173,137	173,137	ERR	0	173,137	173,137		
Lexington	831,947	901,176	69,229	108.3%	234,433	1,135,609	303,662		
Liberty	91,760	102,236	10,476	111.4%	5,951	108,187	16,427		
Liesville	16,436	16,793	357	102.2%	10	16,803	367		
Lilington	86,487	103,512	17,025	119.7%	9,968	113,480	26,993		
Lincolnton	381,782	441,951	60,169	115.8%	87,980	529,931	148,149		
Linden	3,889	3,505	(384)	90.1%	829	4,334	445		
Littleton	20,564	22,029	1,465	107.1%	653	22,682	2,118		
Locust	41,541	45,533	3,992	109.6%	4,137	49,670	8,129		
Long Beach	144,799	149,687	4,888	103.4%	7,245	156,932	12,133		

Municipality	Actual Distribution		1995-96		Dollar Gain	1995-96 Amount Relative To 1990-91	Add Back		Adjusted Distribution 1995-96	Adjusted Dollar Gain 1995-96	Add-Back Under SB 34
	1990-91	1995-96	Fiscal Year	Distribution			Amount	Holdback Amount 1995-96			

Long View	150,934	153,553		2,619	101.7%	17,699	171,252	20,318		
Louisburg	119,380	129,612		10,232	108.6%	5,306	134,918	15,538		
Love Valley	732	862		130	117.8%	203	1,065	333		
Lowell	116,745	122,126		5,381	104.6%	23,053	145,179	28,434		
Lucama	1,486	1,570		84	105.6%	719	2,289	803		
Lumber Bridge	3,408	3,956		548	116.1%	248	4,204	796		
Lumberton	778,351	859,586		81,235	110.4%	215,489	1,075,075	296,724		
Macclesfield	494	569		75	115.2%	168	737	243		
Macon	2,576	2,353		(223)	91.3%	55	2,408	(168)		55
Madison	221,035	208,134		(12,901)	94.2%	77,184	285,318	64,283		12,901
Maggie Valley	27,522	29,100		1,578	105.7%	9,666	38,766	11,244		
Magnolia	12,132	13,425		1,293	110.7%	1,260	14,685	2,553		
Maiden	190,924	213,420		22,496	111.8%	39,706	253,126	62,202		
Manteo	43,394	50,008		6,614	115.2%	14,660	64,668	21,274		
Marietta	1,440	1,589		149	110.3%	64	1,653	213		
Marion	298,416	308,121		9,705	103.3%	43,332	351,453	53,037		
Mars Hill	56,711	45,852		(10,859)	80.9%	0	45,852	(10,859)		
Marshall	34,569	30,117		(4,452)	87.1%	6,916	37,033	2,464		4,452
Marshville	67,005	115,965		48,960	173.1%	15,514	131,479	64,474		
Marvin	N/A	5,405		5,405	ERR	0	5,405	5,405		
Matthews	505,339	595,753		90,414	117.9%	128,223	723,976	218,637		
Maxton	71,855	70,327		(1,528)	97.9%	3,121	73,448	1,593		
Mayodan	288,779	289,985		1,206	100.4%	97,321	387,306	98,527		
Maysville	19,572	20,619		1,047	105.4%	2,150	22,769	3,197		
McAdenville	177,947	179,132		1,185	100.7%	151	179,283	1,336		
McDonald	1,411	1,420		9	100.7%	0	1,420	9		
McFarlan	1,375	1,660		285	120.7%	37	1,697	322		
Mebane	166,114	184,755		18,641	111.2%	91,806	276,561	110,447		
Mesic	4,688	4,825		137	102.9%	616	5,441	753		
Micro	9,254	9,674		420	104.5%	805	10,479	1,225		
Middleburg	4,830	4,393		(437)	91.0%	226	4,619	(211)		
Middlesex	15,222	15,731		509	103.3%	833	16,564	1,342		
Milton	3,665	4,177		512	114.0%	219	4,396	731		
Minnesott Beach	6,970	8,046		1,076	115.4%	808	8,854	1,884		

Municipality	Actual Distribution		Actual Distribution		1995-96 Amount Relative To 1990-91	Add Back		Adjusted Dollar Gain 1995-96	Adjusted Distribution 1995-96	Adjusted Dollar Gain 1995-96	Add-Back Under SB 34
	1990-91	Fiscal Year	1995-96	Fiscal Year		1995-96	Holdback Amount				

Mint Hill	261,547	292,139	30,592	111.7%	20,238	312,377	50,830	
Mocksville	179,034	202,773	23,739	113.3%	57,860	260,633	81,599	
Momery	N/A	6,208	6,208	ERR	0	6,208	6,208	
Monroe	809,207	1,004,595	195,388	124.1%	230,013	1,234,608	425,401	
Montreat	23,481	24,843	1,362	105.8%	556	25,399	1,918	
Moorsboro	5,867	7,987	2,120	136.1%	706	8,693	2,826	
Mooreville	463,605	515,802	52,197	111.3%	220,757	736,559	272,954	
Morehead City	258,674	326,858	68,184	126.4%	47,612	374,470	115,796	
Morganton	969,552	1,037,053	67,501	107.0%	222,618	1,259,671	290,119	
Morrisville	131,456	162,317	30,861	123.5%	97,008	259,325	127,869	
Morven	15,791	15,268	(523)	96.7%	0	15,268	(523)	
Mount Airy	423,387	454,339	30,952	107.3%	129,213	583,552	160,165	
Mount Gilead	36,885	35,831	(1,054)	97.1%	20,798	56,629	19,744	
Mount Holly	355,863	376,512	20,649	105.8%	108,185	484,697	128,834	
Mount Olive	129,895	136,262	6,367	104.9%	12,914	149,176	19,281	
Mount Pleasant	65,767	54,643	(11,124)	83.1%	19,102	73,745	7,978	11,124
Murfreesboro	67,562	73,129	5,567	108.2%	7,213	80,342	12,780	
Murphy	37,585	22,614	(14,971)	60.2%	0	22,614	(14,971)	
Nags Head	158,850	179,144	20,294	112.8%	45,138	224,282	65,432	
Nashville	95,228	103,513	8,285	108.7%	11,956	115,469	20,241	
Navassa	6,574	6,562	(12)	99.8%	245	6,807	233	
New Bern	866,901	1,052,003	185,103	121.4%	273,644	1,325,647	458,747	
New London	8,916	9,713	797	108.9%	959	10,672	1,756	
Newland	51,882	36,469	(15,413)	70.3%	699	37,168	(14,714)	
Newport	50,419	56,879	6,460	112.8%	8,152	65,031	14,612	
Newton	583,846	641,941	58,095	110.0%	49,954	691,895	108,049	
Newton Grove	21,261	20,696	(565)	97.3%	5,952	26,648	5,387	
Norlina	17,899	19,229	1,331	107.4%	1,425	20,654	2,756	
Norman	3,570	3,746	176	104.9%	0	3,746	176	
North Topsail Beach	143	77,991	77,848	54646.2%	0	77,991	77,848	
North Wilkesboro	232,385	239,991	7,606	103.3%	64,200	304,191	71,806	
Northwest	N/A	8,824	8,824	ERR	0	8,824	8,824	
Norwood	77,406	78,523	1,117	101.4%	35,878	114,401	36,995	
Oak City	7,410	7,678	268	103.6%	1,225	8,903	1,493	

Municipality	Actual Distribution Fiscal Year 1990-91	Actual Distribution Fiscal Year 1995-96	Dollar Gain	1995-96 Amount Relative To 1990-91	Calculation:			Adjusted Distribution 1995-96	Adjusted Dollar Gain 1995-96	Add-Back Under SB 34
					Add Back Holdback Amount 1995-96	1995-96	1995-96			
Oakboro	37,588	38,760	1,172	103.1%	13,856	52,616	15,028			
Ocean Isle Beach	67,686	72,069	4,383	106.5%	4,906	76,975	9,289			
Old Fort	83,755	85,223	1,468	101.8%	28,469	113,692	29,937			
Oriental	22,211	23,984	1,774	108.0%	2,341	26,325	4,115			
Orrum	3,662	3,154	(508)	86.1%	0	3,154	(508)			
Oxford	285,517	361,301	75,784	126.5%	132,788	494,089	208,572			
Pantego	4,928	5,675	747	115.2%	1,093	6,768	1,840			
Parkton	10,907	11,661	754	106.9%	520	12,181	1,274			
Parrale	2,694	2,996	302	111.2%	751	3,747	1,053			
Patterson Springs	7,843	9,136	1,293	116.5%	1,534	10,670	2,827			
Peachland	12,363	12,905	542	104.4%	228	13,133	770			
Pembroke	61,240	66,551	5,311	108.7%	24,439	90,990	29,750			
Pikeville	18,795	20,498	1,703	109.1%	1,541	22,039	3,244			
Pilot Mountain	95,242	93,620	(1,622)	98.3%	23,790	117,410	22,168			
Pine Knoll Shores	84,296	94,127	9,831	111.7%	9,246	103,373	19,077			
Pine Level	19,320	20,361	1,041	105.4%	6,095	26,456	7,136			
Pinebluff	25,799	29,792	3,993	115.5%	5,395	35,187	9,388			
Pinehurst	249,866	286,821	36,955	114.8%	57,772	344,593	94,727			
Pinetops	2,299	2,588	289	112.6%	897	3,485	1,186			
Pineville	236,849	278,083	41,234	117.4%	35,955	314,038	77,189			
Pink Hill	16,623	79,904	63,281	480.7%	900	80,804	64,181			
Pittsboro	59,879	72,188	12,309	120.6%	31,988	104,176	44,297			
Plymouth	84,954	87,518	2,564	103.0%	20,113	107,631	22,677			
Polkton	20,251	25,645	5,394	126.6%	1,356	27,001	6,750			
Polkville	29,649	23,333	(6,316)	78.7%	9,965	33,298	3,649			
Pollocksville	6,714	7,184	470	107.0%	261	7,445	731			
Powellsville	4,270	4,653	383	109.0%	802	5,455	1,185			
Princeton	26,189	26,632	443	101.7%	1,741	28,373	2,184			
Princeville	15,945	16,251	306	101.9%	4,786	21,037	5,092			
Proctorville	2,633	2,566	(67)	97.5%	60	2,626	(7)			
Raeford	236,818	244,027	7,209	103.0%	5,073	249,100	12,282			
Raleigh	8,944,548	9,904,875	960,327	110.7%	2,618,515	12,523,390	3,578,842			
Ramseur	35,992	38,570	2,578	107.2%	175,409	213,979	177,987			
Randleman	110,553	121,744	11,191	110.1%	20,858	142,602	32,049			

6,316

Municipality	Actual Distribution Fiscal Year 1990-91	Actual Distribution Fiscal Year 1995-96	Dollar Gain	1995-96 Amount Relative To 1990-91	Calculation:			Adjusted Dollar Gain 1995-96	Add-Back Under SB.34
					Add Back Holdback Amount 1995-96	Adjusted Distribution 1995-96			
Ranlo	187,035	171,311	(15,724)	91.6%	6,941	178,252	(8,783)	6,941	
Raynham	1,400	1,560	160	111.4%	231	1,791	391		
Red Oak	6,144	7,637	1,493	124.3%	1,280	8,917	2,773		
Red Springs	80,464	78,174	(2,290)	97.2%	43,196	121,370	40,906		
Reidsville	643,491	825,108	181,617	128.2%	310,083	1,135,191	491,699		
Rennett	2,819	2,968	149	105.3%	475	3,443	624		
Rhodhiss	10,798	9,810	(988)	90.9%	766	10,576	(222)	766	
Rich Square	26,091	28,069	1,979	107.6%	5,970	34,039	7,949		
Richfield	15,903	17,712	1,809	111.4%	1,964	19,676	3,773		
Richlands	35,177	37,325	2,148	106.1%	3,762	41,087	5,910		
River Bend	55,340	62,095	6,755	112.2%	6,526	68,621	13,281		
Roanoke Rapids	784,707	846,096	61,389	107.8%	135,054	981,150	196,443		
Robbins	44,639	40,464	(4,175)	90.6%	457	40,921	(3,718)	457	
Robbinsville	35,928	27,815	(8,113)	77.4%	4,745	32,560	(3,368)	4,745	
Robersonville	73,999	79,489	5,490	107.4%	25,726	105,215	31,216		
Rockingham	411,852	465,635	53,783	113.1%	6,463	472,098	60,246		
Rockwell	79,295	84,971	5,676	107.2%	24,677	109,648	30,353		
Rocky Mount	1,894,789	2,309,150	414,361	121.9%	406,050	2,715,200	820,411		
Rolesville	15,561	16,766	1,205	107.7%	3,290	20,056	4,495		
Ronda	8,632	6,153	(2,479)	71.3%	550	6,703	(1,929)	550	
Roper	10,841	11,685	844	107.8%	2,545	14,230	3,389		
Rose Hill	32,487	32,365	(122)	99.6%	1,448	33,813	1,326		
Roseboro	37,669	38,764	1,095	102.9%	4,223	42,987	5,318		
Rosman	9,563	10,118	555	105.8%	693	10,811	1,248		
Rowland	32,251	31,586	(665)	97.9%	1,033	32,619	368		
Roxboro	395,034	474,641	79,607	120.2%	60,542	535,183	140,149		
Roxobel	6,227	6,513	286	104.6%	1,124	7,637	1,410		
Rural Hall	54,696	56,262	1,566	102.9%	27,811	84,073	29,377		
Ruth	5,482	5,923	441	108.0%	147	6,070	588		
Rutherford College	22,799	27,367	4,568	120.0%	18,912	46,279	23,480		
Rutherfordton	156,577	175,003	18,426	111.8%	29,929	204,932	48,355		
Saint Helena	2,205	2,565	360	116.3%	4,893	7,458	5,253		
Saint Pauls	145,179	164,797	19,618	113.5%	23,076	187,873	42,694		
Salemberg	14,447	15,574	1,127	107.8%	3,356	18,930	4,483		

Municipality	Actual Distribution		1995-96 Amount Relative To 1990-91	Calculation:		Adjusted Distribution 1995-96	Adjusted Dollar Gain 1995-96	Add-Back Under SB 34
	Fiscal Year 1990-91	Fiscal Year 1995-96		Add Back Holdback Amount 1995-96	Dollar Gain 1990-91			
Salisbury	1,229,335	1,332,107	108.4%	102,772	140,645	1,472,752	243,417	
Saluda	10,510	15,842	150.7%	5,332	2,224	18,066	7,556	
Sandy Creek	3,768	4,260	113.1%	492	222	4,482	714	
Sandyfield	N/A	1,519	ERR	1,519	0	1,519	1,519	
Sanford	761,293	828,807	108.9%	67,514	443,049	1,271,856	510,563	
Santeeelah	1,191	2,237	187.9%	1,046	230	2,467	1,276	
Saratoga	275	324	117.8%	49	166	490	215	
Sawmills	46,273	44,794	96.8%	(1,479)	15,788	60,582	14,309	
Scotland Neck	60,722	63,946	105.3%	3,224	18,027	81,973	21,251	
Seaboard	12,137	13,437	110.7%	1,300	2,459	15,896	3,759	
Seagrove	10,379	10,761	103.7%	382	575	11,336	957	
Selma	146,017	155,563	106.5%	9,546	44,450	200,013	53,996	
Seven Devils	4,466	4,576	102.5%	110	1,785	6,361	1,895	
Seven Springs	3,434	3,149	91.7%	(285)	55	3,204	(230)	55
Severn	8,792	8,831	100.4%	39	2,564	11,395	2,603	
Shallotte	69,227	70,010	101.1%	783	13,813	83,823	14,596	
Sharpsburg	5,370	6,364	118.5%	995	1,810	8,174	2,805	
Shelby	328,973	437,872	133.1%	108,899	159,521	597,393	268,420	
Siler City	301,313	313,908	104.2%	12,595	19,818	333,726	32,413	
Simpson	1,156	1,324	114.5%	168	350	1,674	518	
Sims	3,919	3,845	98.1%	(74)	41	3,886	(33)	
Smithfield	325,371	400,455	123.1%	75,084	105,027	505,482	180,111	
Snow Hill	51,159	58,409	114.2%	7,250	7,747	66,156	14,997	
Southern Pines	378,449	446,528	118.0%	68,079	85,700	532,228	153,779	
Southern Shores	63,364	73,836	116.5%	10,472	18,886	92,722	29,358	
Southport	84,811	95,115	112.1%	10,304	18,814	113,929	29,118	
Sparta	54,288	47,925	88.3%	(6,363)	0	47,925	(6,363)	
Speed	348	4,380	1258.3%	4,032	97	4,477	4,129	
Spencer	76,104	93,680	123.1%	17,576	13,090	106,770	30,666	
Spencer Mountain	16,134	11,560	71.7%	(4,574)	106	11,666	(4,468)	
Spindale	333,102	313,862	94.2%	(19,240)	23,112	336,974	3,872	
Spring Hope	53,501	58,750	109.8%	5,249	8,497	67,247	13,746	
Spring Lake	167,803	179,610	107.0%	11,807	21,284	200,894	33,091	
Spruce Pine	188,110	193,655	102.9%	5,545	1,370	195,025	6,915	

Municipality	Actual Distribution Fiscal Year 1990-91	Actual Distribution Fiscal Year 1995-96	Dollar Gain	1995-96 Amount Relative To 1990-91	Calculation:			Adjusted Dollar Gain 1995-96	Add-Back Under SB 34
					Add Back Holdback Amount 1995-96	Adjusted Distribution 1995-96			
Staley	7,011	6,538	(473)	93.3%	519	7,057	46	473	
Stallings	90,106	81,218	(8,888)	90.1%	40,040	121,258	31,152	8,888	
Stanfield	11,843	15,749	3,906	133.0%	2,563	18,312	6,469		
Stanley	121,552	136,022	14,470	111.9%	38,029	174,051	52,499		
Stantonsburg	1,816	1,859	43	102.3%	756	2,615	799		
Star	42,470	41,070	(1,400)	96.7%	12,870	53,940	11,470		
Statesville	896,663	1,012,532	115,869	112.9%	324,165	1,336,697	440,034		
Stedman	17,275	18,783	1,508	108.7%	8,817	27,600	10,325		
Stern	6,804	6,322	(482)	92.9%	79	6,401	(403)		
Stokesdale	29,180	54,171	24,991	185.6%	8,497	62,668	33,488		
Stoneville	29,362	31,245	1,883	106.4%	66,190	97,435	68,073		
Stonewall	6,889	7,373	484	107.0%	602	7,975	1,086		
Stovall	6,136	6,789	653	110.7%	165	6,954	818		
Sugar Mountain	49,599	53,823	4,224	108.5%	2,761	56,584	6,985		
Sunset Beach	39,465	42,934	3,469	108.8%	9,884	52,818	13,353		
Surf City	36,959	46,262	9,303	125.2%	45,353	91,615	54,656		
Swansboro	35,309	38,534	3,225	109.1%	4,216	42,750	7,441		
Sylva	85,963	93,301	7,338	108.5%	27,558	120,859	34,896		
Tabor City	72,545	74,614	2,069	102.9%	3,679	78,293	5,748		
Tar Heel	2,585	2,466	(119)	95.4%	236	2,702	117		
Tarboro	587,680	654,169	66,489	111.3%	174,402	828,571	240,891		
Taylorsville	69,866	88,984	19,118	127.4%	36,094	125,078	55,212		
Taylorstown	9,116	9,476	360	104.0%	535	10,011	895		
Teachey	4,074	4,822	748	118.4%	346	5,168	1,094		
Thomasville	615,469	617,313	1,844	100.3%	75,551	692,864	77,395		
Tobaccoville	N/A	20,077	20,077	ERR	0	20,077	20,077		
Topsail Beach	19,481	20,122	641	103.3%	24,332	44,454	24,973		
Trent Woods	21,795	25,478	3,683	116.9%	9,896	35,374	13,579		
Trenton	10,087	10,434	347	103.4%	1,580	12,014	1,927		
Troutman	53,133	66,862	13,729	125.8%	27,250	94,112	40,979		
Troy	140,920	143,032	2,112	101.5%	12,591	155,623	14,703		
Tryon	78,388	67,556	(10,832)	86.2%	11,489	79,045	657	10,832	
Turkey	5,276	5,791	515	109.8%	618	6,409	1,133		
Valdese	313,136	309,723	(3,413)	98.9%	74,615	384,338	71,202		

Municipality	Actual Distribution Fiscal Year 1990-91	Actual Distribution Fiscal Year 1995-96	Dollar Gain	1995-96 Amount Relative To 1990-91	Calculation:		Adjusted Dollar Gain 1995-96	Add-Back Under SB 34
					Add Back Holdback Amount 1995-96	Adjusted Distribution 1995-96		
Vanceboro	21,457	25,565	4,108	119.1%	517	26,082	4,625	
Vandemere	7,289	7,442	153	102.1%	129	7,571	282	
Varnamtown	7,062	7,932	870	112.3%	1,069	9,001	1,939	
Vass	19,005	20,487	1,482	107.8%	2,339	22,826	3,821	
Waco	5,394	5,838	444	108.2%	1,208	7,046	1,652	
Wade	19,050	15,914	(3,136)	83.5%	1,399	17,313	(1,737)	1,399
Wadesboro	223,939	191,514	(32,425)	85.5%	0	191,514	(32,425)	
Wagram	12,137	14,205	2,068	117.0%	1,008	15,213	3,076	
Wake Forest	142,516	172,409	29,893	121.0%	61,246	233,655	91,139	
Walkertown	43,008	64,604	21,596	150.2%	11,288	75,892	32,884	
Wallace	98,942	111,629	12,687	112.8%	7,095	118,724	19,782	
Walnut Cove	29,806	40,063	10,257	134.4%	14,790	54,853	25,047	
Walnut Creek	16,015	16,702	687	104.3%	1,117	17,819	1,804	
Walstonburg	165	248	83	150.3%	83	331	166	
Warrenton	32,963	34,592	1,629	104.9%	2,085	36,677	3,714	
Warsaw	64,721	80,055	15,334	123.7%	4,536	84,591	19,870	
Washington	514,247	563,068	48,821	109.5%	70,497	633,565	119,318	
Washington Park	3,220	3,624	404	112.6%	724	4,348	1,128	
Watha	1,109	1,502	393	135.4%	393	1,895	786	
Waxhaw	58,303	72,705	14,402	124.7%	7,989	80,694	22,391	
Waynesville	236,433	268,523	32,090	113.6%	28,649	297,172	60,739	
Weaverville	84,095	113,133	29,038	134.5%	23,399	136,532	52,437	
Webster	3,330	2,762	(568)	82.9%	88	2,850	(480)	88
Weddington	104,644	114,093	9,449	109.0%	26,055	140,148	35,504	
Weldon	51,528	56,382	4,854	109.4%	9,182	65,564	14,036	
Wendell	74,604	78,801	4,197	105.6%	21,563	100,364	25,760	
West Jefferson	60,995	53,186	(7,809)	87.2%	3,906	57,092	(3,903)	
Whispering Pines	43,862	47,784	3,922	108.9%	2,021	49,805	5,943	
Whitakers	18,901	19,848	947	105.0%	4,079	23,927	5,026	
White Lake	33,012	37,076	4,064	112.3%	4,039	41,115	8,103	
Whiteville	223,287	236,435	13,148	105.9%	36,907	273,342	50,055	
Whitsett	N/A	15,341	15,341	ERR	0	15,341	15,341	
Wilkesboro	293,432	297,676	4,244	101.4%	52,068	349,744	56,312	
Williamston	136,982	150,808	13,826	110.1%	44,019	194,827	57,845	

Municipality	Actual Distribution Fiscal Year 1990-91	Actual Distribution Fiscal Year 1995-96	Dollar Gain	1995-96 Amount Relative To 1990-91	Calculation:			Adjusted Dollar Gain 1995-96	Add-Back Under SB 34
					Add Back Holdback Amount 1995-96	Adjusted Distribution 1995-96	Adjusted Dollar Gain 1995-96		
Wilmington	2,351,226	2,647,388	296,162	112.6%	689,710	3,337,098	985,872		
Wilson	1,930,230	2,261,937	331,707	117.2%	422,620	2,684,557	754,327		
Windsor	54,177	56,260	2,083	103.8%	7,775	64,035	9,858		
Winfall	9,835	11,179	1,344	113.7%	1,910	13,089	3,254		
Wingate	45,583	46,174	591	101.3%	8,427	54,601	9,018		
Winston-Salem	6,011,876	6,683,650	671,774	111.2%	1,129,055	7,812,705	1,800,829		
Winterville	3,634	5,735	2,101	157.8%	1,056	6,791	3,157		
Winton	38,385	39,541	1,156	103.0%	10,721	50,262	11,877		
Woodfin	171,584	108,699	(62,885)	63.4%	963	109,662	(61,922)	963	
Woodland	15,188	16,476	1,288	108.5%	2,584	19,060	3,872		
Wrightsville Beach	174,970	180,488	5,518	103.2%	8,754	189,242	14,272		
Yadkinville	297,097	341,763	44,666	115.0%	105,253	447,016	149,919		
Yanceyville	60,642	62,175	1,533	102.5%	7,315	69,490	8,848		
Yaupon Beach	29,937	28,318	(1,619)	94.6%	4,831	33,149	3,212		
Youngsville	12,469	24,977	12,508	200.3%	6,892	31,869	19,400		
Zebulon	183,369	186,443	3,074	101.7%	43,090	229,533	46,164		
Total	\$121,500,279	\$136,685,859	\$15,185,580	11.1%	\$30,049,079	\$166,734,938	\$45,234,659	\$194,841	

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

2-26-97

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Mary Carnilio	Mecklenburg County
Helen Lopez	" "
Chantrel Scott	NC AFL-CIO
Rich Riddick	N.C.D.O.R.
Willie Riddick	DOR
Howard Kramer	N.C. Bd of Nursing
Lennie Collins	Revenue
J. L. By	DOR
William	DOR
Cam Cross	BPMHL
Andy Romanst	N.C. League of Municipalities

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

2-26-97

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

NAME	FIRM OR AGENCY AND ADDRESS
Ron Aycock	County Comm. Assor
Alie Garland	Electricities
<i>[Signature]</i>	ACEITA
Nancy Bradley	ACCBS
Heinrich	QTH
Jim Ritchey	TTA
Jane Stewart	AFT/NC

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

FINANCE COMMITTEE REPORT

John H. Kerr, III, Co-Chair
David W. Hoyle, Co-Chair

Wednesday, February 26, 1997

SENATOR JOHN KERR,

submits the following with recommendations as to passage:

FAVORABLE

H.B. **34** Catawba Annexations
 Sequential Referral: None
 Recommended Referral: None

S.B. **106** Sale of Property for Unpaid Taxes
 Sequential Referral: None
 Recommended Referral: None

TOTAL REPORTED: 2

Committee Clerk Comment: None

SENATE FINANCE COMMITTEE

WEDNESDAY, MARCH 5, 1997

12:00 NOON - ROOM 544 LOB

The Senate Finance Committee met. There were 24 members present. Senator David Hoyle, Co-Chairman of Committee presided.

Senator Hoyle introduced the Pages for today's meeting. They are Brooke Clemmer and Lea Randall both from Bessemer City, North Carolina and sponsored by Senator Hoyle.

Senate Bill 97 - Interstate Auditors/Regulatory Fund:

Senator Hoyle called on Senator John Kerr, Sponsor of Bill to explain this bill. Senator Kerr called on Ms. Kay Honeycutt, Director of Interstate Auditors Division, Department of Revenue, to speak on this Bill. She stated the need for the additional seven (7) audit positions and two (2) tax technician positions and one (1) professional position in Tax Administration. Senator Larry Shaw made a motion for "Favorable" report on this bill. Mr. Richard Bostic, Staff, spoke on the need of bill and explained position needs. Ms. Sabre Faires, Staff, spoke to the premium tax part of bill. At the request of Senator Mark McDaniel, Ms. Honeycutt will get information from other states on the need for interstate commerce. Motion passed.

House Bill 15 - Conform Tax on Restored Income

Senator Hoyle called on Representative Lanier Cansler, Sponsor of this Bill, to explain the Bill. Senator Anthony Rand made a motion for a "Favorable" report. Motion passed. **NOTE:** After meeting, it was found that bill needed a technical change, therefore, bill was held for this correction.

Senate Bill 41 - No Sales Tax on Prescription Drugs

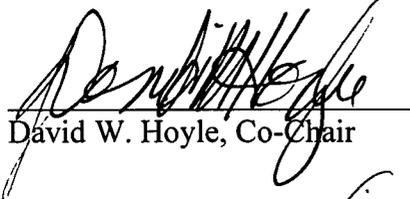
Senator Hoyle called on Senator Hugh Webster, Sponsor of this Bill, to come and explain the bill. Senator Hoyle stated that a Fiscal Note will be needed on this bill. Senator Hoyle called on Warren Plonk, Staff to explain the fiscal impact of this bill. Senator Hoyle stated that this bill would not be voted on today as these types of bills will be brought up later in the Session to be looked as to the fiscal impact. Mr. George Long with the Department of Revenue, Division of Sales and Use Tax, spoke to the bill.

There being no further business the meeting was adjourned.

SENATE FINANCE MEETING

Wednesday, March 5, 1997

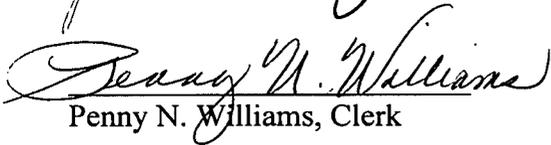
Page -2-



David W. Hoyle, Co-Chair



John H. Kerr, III Co-Chair



Penny N. Williams, Clerk



Evelyn S. Hartsell, Clerk

NOTE:

Agenda is Attachment #1

Visitor's Registration is Attachment #2

Committee Report is Attachment #3

SENATE FINANCE COMMITTEE

AGENDA

WEDNESDAY, MARCH 5, 1997

Welcome - Senator David Hoyle, Presiding

BILLS TO BE CONSIDERED:

Senate Bill 41 - No Sales Tax on Prescription Drugs	Senator Webster
Senate Bill 97 - Interstate Auditors/Regulatory Fund	Senator Kerr
House Bill 15 - Conform Tax on Restored Income	Rep. Cansler

MEETING ADJOURNMENT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 97*

Short Title: Interstate Auditors/Regulatory Fund.

(Public)

Sponsors: Senators Kerr, Cochrane, Cooper, Shaw of Cumberland, and Soles.

Referred to: Appropriations.

February 12, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO ENHANCE COMPLIANCE AND ENFORCEMENT OF EXISTING
3 TAX LAWS BY APPROPRIATING FUNDS TO EXPAND THE NUMBER OF
4 AUDITORS AND SUPPORT PERSONNEL IN THE INTERSTATE AUDIT
5 DIVISION OF THE DEPARTMENT OF REVENUE, AND TO PROVIDE
6 THAT PERSONNEL WHO ADMINISTER THE INSURANCE GROSS
7 PREMIUMS TAX SHALL CONTINUE TO BE FUNDED FROM THE
8 INSURANCE REGULATORY CHARGE.
9 The General Assembly of North Carolina enacts:
10 Section 1. G.S. 58-6-25(d) reads as rewritten:
11 "(d) Use of Proceeds. -- The Insurance Regulatory Fund is created in the State
12 treasury, under the control of the Office of State Budget and Management. The
13 proceeds of the charge levied in this section and all fees collected under Articles 69
14 through 71 of this Chapter and under Articles 9 and 9C of Chapter 143 of the
15 General Statutes shall be credited to the Fund. The Fund shall be placed in an
16 interest-bearing account and any interest or other income derived from the Fund
17 shall be credited to the Fund. Moneys in the Fund may be spent only pursuant to
18 appropriation by the General Assembly and in accordance with the line item budget
19 enacted by the General Assembly. The Fund is subject to the provisions of the
20 Executive Budget Act, except that no unexpended surplus of the Fund shall revert to
21 the General Fund. All money credited to the Fund shall be used to reimburse the
22 General Fund for the following:

1 (1) Money appropriated to the Department of Insurance to pay its
2 expenses incurred in regulating the insurance industry and other
3 industries in this State.

4 (2) Money appropriated to State agencies to pay the expenses incurred
5 in regulating the insurance industry, in certifying statewide data
6 processors under Article 11A of Chapter 131E of the General
7 Statutes, and in purchasing reports of patient data from statewide
8 data processors certified under that Article.

9 (3) Money appropriated to the Department of Revenue to pay the
10 expenses incurred in collecting and administering the taxes on
11 insurance companies levied in Article 8B of Chapter 105 of the
12 General Statutes."

13 Section 2. The two positions transferred from the Department of
14 Insurance to the Department of Revenue for the 1995-96 fiscal year to collect the
15 taxes on insurance companies levied in Article 8B of Chapter 105 of the General
16 Statutes shall be funded from the Insurance Regulatory Fund established in G.S. 58-6-
17 25, as they were before their transfer. The portion of the Department of Revenue's
18 budget formerly dedicated to supporting these two positions, ninety-nine thousand
19 two hundred seventy dollars (\$99,270), shall be used to support additional positions
20 in the Interstate Audit Division.

21 Section 3. There is appropriated from the General Fund to the
22 Department of Revenue the sum of four hundred twenty-one thousand four hundred
23 ninety-seven dollars (\$421,497) for the 1997-98 fiscal year and the sum of seven
24 hundred ten thousand four hundred fifty-one dollars (\$710,451) for the 1998-99 fiscal
25 year for seven additional auditors in the Interstate Audit Division, two tax technicians
26 as support personnel in the Interstate Audit Division, and a tax administrator III in
27 the Tax Administration Division, and for other costs resulting from the additional tax
28 enforcement personnel.

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

EXPLANATION OF SENATE BILL 97
Interstate Auditors/Regulatory Fund

TO: Senate Finance Committee
FROM: Sabra Faires, Committee Counsel
DATE: March 5, 1997
SPONSOR: Senator John Kerr

Senate Bill 97 is one of the bills recommended to the 1997 General Assembly by the Revenue Laws Study Committee. It is identical to House Bill 106, sponsored by Representative Chuck Neely. House Bill 106 received a favorable report from the House Finance Committee and was re-referred to the House Appropriations Committee.

Senate Bill 97 makes the following changes effective July 1, 1997:

- (1) Allows revenue in the Insurance Regulatory Fund to be used to reimburse the General Fund for amounts appropriated to the Department of Revenue for the Department's expenses in collecting the insurance gross premiums tax.
- (2) Makes the Insurance Regulatory Fund, rather than the General Fund, the source of funding for the two positions transferred from the Department of Insurance to the Department of Revenue for the 1995-96 fiscal year to collect the insurance gross premiums tax. The position transferred from Insurance to Revenue in 1996 is already supported from the Fund.
- (3) Requires the amount in the Department of Revenue's budget that has been used to fund the two positions to be used for additional staff in the Department's Interstate Audit Division. The amount of funds currently supporting the two positions is \$99,270.
- (4) Appropriates additional funds to the Department of Revenue for the following new personnel in the Department; the same request is included in the Governor's proposed budget and is the only expansion request of the Department for the 1997-98 fiscal year:
 - Seven auditors in the Interstate Audit Division
 - Two tax technicians as support personnel to the auditors
 - One tax administrator III in the Tax Administration Division

By increasing the number of auditors in the Interstate Audit Division, the State can increase its General Fund tax collections without raising taxes. Although there is a point of diminishing returns in adding new auditors, that

point has not been reached in North Carolina. As additional audits are performed, revenues will increase due to improved compliance with and enforcement of existing laws. The 1996 Revenue Laws Study Committee recommended the hiring of fifteen auditors and two support personnel. Eight auditors, one tax technician, and one clerical position were added during the 1996 Session. In 1996, the General Assembly also directed the State Budget Office's Management and Productivity Unit to work with the Department of Revenue to assess the Department's staff requirements and report to the House and Senate Appropriations Subcommittees on General Government by March 1, 1997. That report is not yet complete but will be soon. The General Government Appropriations Subcommittees plan to hear the report on March 20, 1997.

The 1995 General Assembly transferred from the Department of Insurance to the Department of Revenue the responsibility for collecting gross premiums taxes. The transfer was completed in two stages, the first effective January 1, 1996, and the second a year later. Two positions were transferred from Insurance to Revenue for the first stage and a third position was transferred for the second stage. The transfer of the third position included explicit instructions that the position would continue to be funded from the Insurance Regulatory Fund. The two positions transferred earlier did not retain their funding support from that Fund.

This bill reinstates the Insurance Regulatory Fund as the source of funding for the first two positions transferred from Insurance to Revenue. This funding change will free up \$99,270 in the Department of Revenue's budget, to help offset the cost of the new auditors for the Interstate Audit Division.

The Insurance Regulatory Fund receives its revenue from the insurance regulatory charge, which is a percentage of an insurance company's gross premiums tax liability. This charge was imposed on insurance companies in 1991 in order to make the Department of Insurance receipt-supported and thereby eliminate General Fund support of that department. For taxable year, 1991, the charge was 6.5% of gross premiums tax liability. The charge was increased to 7.25% for taxable year 1992 and has remained the same since then.

The insurance gross premiums taxes are annual taxes based on the amount of insurance premiums that are paid or, for certain self-insurers, would have been paid during the year. They consist of a 1.9% premiums tax on for-profit insurance companies, a 0.5% tax on nonprofit companies, such as Blue Cross/Blue Shield and Delta Dental, that provide hospital, medical, and dental coverage, a 2.5% tax on workers' compensation premiums and workers'

compensation self-insurers, a 1.33% additional fire and lightning tax on property insurance premiums for coverage of property other than motor vehicles and boats, and another 0.5% fire and lightning tax on all property insurance premiums on property inside a municipality.

Proposal to Increase the Size of the Interstate Audit Division and the Departmental Support Staff

This brief denotes our proposal to increase the number of personnel in the Interstate Audit Division of the North Carolina Department of Revenue and the resulting need for support staff within the Department. This would help to offset the loss in field auditor positions that has occurred during the past six years.

Current Personnel Situation

- Since 1990, 31 field audit positions have been lost; from 181 to 150.
- Of these 150 auditors, 128 are located in 14 field offices within N.C.
- Interstate Audit currently consists of 22 auditors: 12 located in Raleigh and 10 in satellite offices around the country (attachment 1).
- Effective January 1, 1997, Interstate Audit is allocated 8 new audit positions and 1 tax technician position. Of these, 4 auditors will be located in Raleigh and 4 in satellite offices: Atlanta, Cleveland, Dallas and New Jersey.

Auditor Yield Data

- Yield is defined as net assessments divided by expenses which include salary, benefits, and travel. Yield is calculated on average for the 1995 calendar year (attachment 2).
- Interstate provides a yield of \$36.61 per auditor, exclusive of a single audit which increases the yield to \$59.54. (By comparison, in-state audit offices provide an average yield of \$10.53 per auditor.)
- Interstate typically provides a much greater yield as their focus is on Industrial, Global, and Service Fortune 500 companies while in-state offices are more concerned with territorial coverage for compliance purposes which often renders less lucrative assessments.

Proposal

- We propose to increase the size of Interstate Audit by 7 audit positions and 2 tax technician positions.
- We further propose to add 1 professional position in Tax Administration.

Reasons for Recommendation

- In comparison with surrounding states in the Southeastern Association of Tax Administrators, of which N.C. is a member, our Interstate Audit Division is significantly smaller (attachment 1).
- Interstate averages annual assessments of \$2 million with average annual expenses of \$64,000. After an initial training period of approximately one year, we can expect 15 new Interstate auditors to produce approximately \$30 million annually in additional assessments.
- The 2 Interstate tax technician positions will allow the new auditors, as well as current staff, to concentrate more on conducting audits, and less time on research, refund claims, and other administrative duties.
- The professional position in Tax Administration is needed to offset the increased workload resulting from the new audit positions.

INTERSTATE AUDIT POSITIONS
COMPARISON OF SOUTHEASTERN STATES

TOTAL INTERSTATE AUDIT POSITIONS	N. Carolina	Alabama	Florida	Georgia	Kentucky*	S. Carolina	Tennessee	Virginia
22	36	213	52	0	19	30	43	

Locations of Out-Of-State Based Auditors	N. Carolina	Alabama	Florida	Georgia	Kentucky*	S. Carolina	Tennessee	Virginia
ATLANTA	1	3	42			1	6	3
BOSTON								2
CHARLOTTE, NC								1
CINCINNATI, COLUMBUS, TOLEDO, OH	1							2
CONNECTICUT	1							1
CHICAGO	2		34			1	6	1
DALLAS, HOUSTON TX	1	3	28			1	4	3
KENTUCKY		1						
LA, SAN FRANCISCO, CA			28				4	6
MEMPHIS, NASHVILLE, TN	2					1		1
MIAMI, FL		1						1
MINNEAPOLIS								1
PHOENIX, AZ						1		
NEW JERSEY	1							3
NEW YORK		1	54				10	3
PHILADELPHIA, PITTSBURGH, ST. LOUIS	1	1	27					4
TOTAL OUT-OF-STATE BASED INTERSTATE AUDITORS	10	10	213	0	0	8	30	30
TOTAL IN-STATE BASED INTERSTATE AUDITORS	12	26	0	52	0	11	0	13
TOTAL INTERSTATE AUDIT POSITIONS	22	36	213	52	0	19	30	43

*Kentucky makes no distinction between interstate and intrastate audit positions.

Totals are current as of 2-7-96

AUDITOR YIELD DATA

Positions	Net Assessments	Salaries	Expense	Benefits	Total Expense	Yield
In-state Total (128)	75,644,783	5,503,083	305,104	1,375,771	7,183,958	10.53
Interstate Raleigh (12) Satellite Offices (10) Interstate Total (22)	71,747,294 12,157,055 83,904,349	473,704 465,417 939,121	153,603 81,723 235,326	118,426 116,354 234,780	745,733 663,494 1,409,227	96.21 18.32 59.54
Grand Totals (150)	159,549,132	6,442,204	540,430	1,610,551	8,593,185	18.57

NC DEPARTMENT OF REVENUE
Position Analysis Summary

SUMMARY OF COSTS PER POSITION

Effective January 1, 1998

FY 1997-1998	FY 1998-1999
--------------	--------------

INTERSTATE AUDIT DIVISION

REVENUE FIELD AUDITORS - 7

Total Cost - 7 @ 48,654 (Eff. 1/1/98)	\$340,578	
Total Cost - 7 @ 80,107		560,749

TAX TECHNICIANS - 2

Total Cost - 2 @ 25,807 (Eff. 1/1/98)	56,614	
Total Cost - 2 @ 34,614		69,228

TAX ADMINISTRATION

REVENUE ADMINISTRATIVE OFFICER III

Total Cost - 1 @ 39,805 (Eff. 1/1/98)	39,805	
Total Cost - 1 @ 62,609		62,609

GRAND TOTALS	431,997	692,586
---------------------	----------------	----------------

(10)

(10)

Interstate Auditor Position Analysis

Cost per Position - Revenue Field Auditor II

Effective January 1, 1998

	FY 1997-1998	FY 1998-1999
Revenue Field Auditor II Grade 75 (Midpoint)		
\$46,481		
Social Security		
3556		
Retirement		
5034		
Hospitalization		
1736		
Total Salary Cost	28404	56807
Travel		
	(a)9000	(b)22800
Laptop Computer / Software		
	6000	
Office Supplies		
	250	500
Workstation Configuration/Office Equipment		
	5000	
TOTAL	\$48,654	\$80,107

(a) \$1500 A MONTH PER AUDITOR

(b) \$1500 A MONTH PER AUDITOR FOR THE FIRST SIX MONTHS

\$2300 A MONTH PER AUDITOR FOR THE SECOND SIX MONTHS

Interstate Support Staff Position Analysis

Cost per Position Effective January 1, 1998

	FY 1997-1998	FY 1998-1999
INTERSTATE AUDIT DIVISION		
TAX TECHNICIAN - GRADE 63 (Midpoint)	27,327	
Social Security	2,091	
Retirement	2,960	
Hospitalization	1,736	
Total Salary Cost	34,114	34,114
Desktop / Computer Software	3,500	
Office Supplies	250	500
Workstation Configuration/Office Equipment	5,000	
Total Position Cost	25,807	34,614
TAX ADMINISTRATION		
REVENUE ADMINISTRATIVE OFFICER - Grade 77 (Midpoint)	50,956	
Social Security	3,898	
Retirement	5,519	
Hospitalization	1,736	
Total Salary Cost	62,109	62,109
Desktop Computer / Software	3,500	
Office Supplies	250	500
Workstation Configuration/Office Equipment	5,000	
Total Position Cost	\$39,805	\$62,609

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 15

Short Title: Conform Tax on Restored Income.

(Public)

Sponsors: Representatives Cansler, Blue, Capps, Church, Neely, Shubert;
Aldridge, Creech, Davis, Hall, Hardy, Ives, McComas, and McMahan.

Referred to: Finance.

February 3, 1997

A BILL TO BE ENTITLED

AN ACT TO CONFORM TO FEDERAL TAX TREATMENT OF INCOME
RESTORED UNDER A CLAIM OF RIGHT.

The General Assembly of North Carolina enacts:

Section 1. Article 9 of Chapter 105 of the General Statutes is amended
by adding a new section to read:

"§ 105-266.2. Refund of tax paid on substantial income later restored.

This section applies to a taxpayer who is subject to the alternative tax under § 1341(a)(5) of the Code for the current taxable year because the taxpayer restored an item of income that had been included in the taxpayer's gross income for an earlier taxable year. For the purpose of Article 4 of this Chapter, the taxpayer is considered to have made a payment of tax for the current taxable year on the later of the date the return for the current taxable year was filed or the date the return was due to be filed. The amount of this payment of tax is (i) the amount the taxpayer's tax under Article 4 for the earlier taxable year was increased because the item of income was included in gross income for that year minus (ii) the amount the taxpayer's tax under Article 4 for the current taxable year was decreased because the item was deductible for that year. To the extent this payment of tax creates an overpayment, the overpayment is refundable in accordance with G.S. 105-266."

Section 2. This act is effective for taxable years beginning on or after
January 1, 1995.

**NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE**

BILL NUMBER: House Bill 15 (First Edition)

SHORT TITLE: Conform Tax on Restored Income

SPONSOR(S): Representative Lanier M. Cansler

FISCAL IMPACT

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

FY 1997-98 FY 1998-99 FY 1999-00 FY 2000-01 FY 2001-02

REVENUES

GENERAL FUND Minimal revenue loss of \$50,000 or less each year.

**PRINCIPAL DEPARTMENT(S) &
PROGRAM(S) AFFECTED:** Department of Revenue

EFFECTIVE DATE: Effective for taxable years beginning on or after January 1, 1995.

BILL SUMMARY: This act will conform North Carolina's income tax law to the Internal Revenue Code (IRC 1341(a)(5)) with respect to the tax treatment of a substantial amount of income that a taxpayer receives one year, but refunds the next.

ASSUMPTIONS AND METHODOLOGY:

This bill will produce a small annual revenue loss to the General Fund, but no data exists to calculate the exact fiscal impact. A spokesman for the Department of Revenue stated to the Revenue Laws Study Committee that only a handful of cases each year would benefit from the law. Since the act is retroactive to 1995, there is a definite revenue loss of \$25,000 in FY 97-98 for a refund to one taxpayer.

FISCAL RESEARCH DIVISION

733-4910

PREPARED BY: Richard Bostic

APPROVED BY: Tom Covington

DATE: February 14, 1997

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 41

Short Title: No Sales Tax on Prescription Drugs.

(Public)

Sponsors: Senators Webster; Allran, Ballantine, Blust, Carpenter, Carrington, Clark, Cochrane, East, Forrester, Foxx, Garwood, Hartsell, Horton, Ledbetter, McDaniel, Page, Rucho, and Shaw of Guilford.

Referred to: Finance.

February 3, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO EXEMPT ALL PRESCRIPTION DRUGS FROM SALES AND USE
3 TAX.
4 The General Assembly of North Carolina enacts:
5 Section 1. G.S. 105-164.13(13b) reads as rewritten:
6 "(13b) Prescription ~~drugs distributed free of charge by the manufacturer,~~
7 drugs, including the constituent elements and ingredients used to
8 produce the drugs, the packaging materials, and any instructions or
9 information about the product included in the package with the
10 drugs."
11 Section 2. This act becomes effective July 1, 1997, and applies to sales
12 made on or after that date.

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

3/5/97

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Evelyn Hawthorne	NC Hospital Assn.
Amy Thindur	Huntton: WMS
Patricia Yancey	SCSL
Roshlyn Smith	Indyist
Howard Kramer	N.C. Bd. of Nursing
Davis L. Boston	visitor
Sally Houston	"
Willie Riddick	Don
Paul Zarin	OSBM
Alan Mills	Barley & Dixon LLP
Stuart Dixon	N.C. Natural Gas Corp.

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

3/5/97
Date

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Key in Honeycutt	Revenue
George Long	"
Nancy Pomeroy	"
Rev Aycock	NC ASSOC. of County Com
Helen Lipine	Meck Co
Astie Bevacqua	NCCBT
John McMillan	Manning, Fecton & Skinner PA.
John Bowditch	Zeb Alley P.A.
John Rustin	Horton & Williams
VN McBride	NOTA
Paym M Aquarino	

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

FINANCE COMMITTEE REPORT

Senator David Hoyle, Co-Chair
Senator John Kerr, Co-Chair

Wednesday, March 05, 1997

SENATOR HOYLE,

submits the following with recommendations as to passage:

FAVORABLE

S.B. 97 Interstate Auditors/Regulatory Fund
Sequential Referral: None
Recommended Referral: Appropriations

TOTAL REPORTED: 1

Committee Clerk Comment: None

SENATE FINANCE COMMITTEE
(Joint Meeting with House Finance)

THURSDAY, MARCH 6, 1997

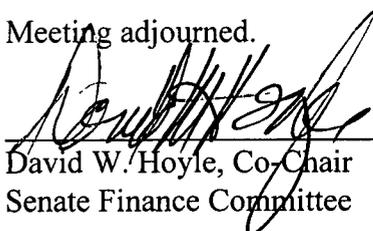
9 A.M. - ROOM 544 LOB

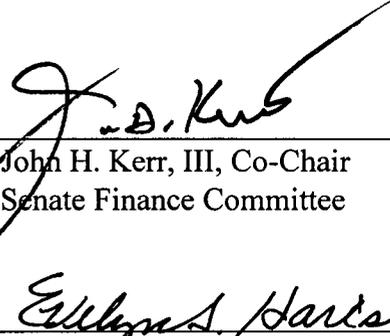
The Senate Finance Committee met jointly with the House Finance Committee on Thursday, March 6, 1997. Representative Wilson presided over the meeting and introduced the Department of Commerce Secretary, Norris Tolson.

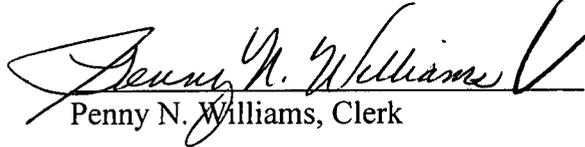
Secretary Tolson addressed some of the issues that the Department has concerning the need for improvements. He expressed the desire to expand on the international level in order to help promote business marketing in North Carolina and also the need to retain current marketing, recruit industry, and the need for venture capital. He also commented on the department's support for improved education.

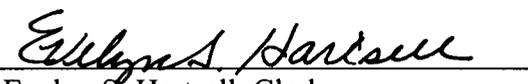
At the conclusion of Secretary Tolson's presentation, there was a general discussion of the Department's objectives and future goals. Included in the minutes is a statement from the Department outlining the goals and also copy of Representative Wilson's handout.

Meeting adjourned.


David W. Hoyle, Co-Chair
Senate Finance Committee


John H. Kerr, III, Co-Chair
Senate Finance Committee


Penny N. Williams, Clerk


Evelyn S. Hartsell, Clerk



North Carolina Department of Commerce

The Department of Commerce is the state's lead agency for economic and community development. The department promotes a wide variety of opportunities to improve the economy of the entire Tar Heel State, rural and urban areas alike. Promoting tourism, exporting, film production, downtown revitalization and industry recruitment are some of the areas for which the Commerce Department is responsible. The department's goal is to create new jobs and more diverse employment opportunities for all North Carolinians.

Business/Industry Development Division: This division leads North Carolina's business and industrial recruitment efforts. Based in Raleigh, its staff works closely with other public and private development organizations to attract new industries to the state. In addition, the division's retention and expansion program -- designed to encourage existing North Carolina companies to stay and grow here -- operates out of nine regional offices to ensure better service and equal access to companies throughout the state.

Division of Community Assistance: This division has a threefold mission. First, it administers the federally funded Small Cities Community Development Block Grant program, which assists low- and moderate-income North Carolinians through the creation of jobs, housing and improved infrastructure. CDBGs are awarded to local governments on a competitive basis. The division also administers the state's Main Street program, which helps communities revitalize their downtown areas. Finally, planners in the division's seven regional offices assist local governments with other planning needs, such as annexations and zoning regulations.

Division of Employment and Training: This division administers North Carolina's share of federal Job Training Partnership Act funds. Economically disadvantaged people, people laid off from work, and people with serious barriers to employment are trained for jobs, or retrained for a different kind of job, through JTPA programs. Also designated as the state's Dislocated Worker Unit, this division receives notice of all plant closings

and mass layoffs in the state to ensure timely assistance to affected workers.

Energy Division: This division is the state's official source for energy planning and management, energy information and energy technical assistance. The division's key responsibilities include promoting renewable energy and energy efficiency in every sector of the economy, preparing energy forecasts and updating and developing North Carolina's energy emergency plans.

Film Office: The Film Office promotes North Carolina as a site for motion picture, television and commercial production. The Film Office staff works closely with film producers and others to keep movie making in North Carolina practical, pleasant and profitable.

Finance Center: To help businesses that want to locate or expand operations in the Tar Heel State, the Commerce Finance Center administers a variety of economic development financing programs: the Industrial Building Renovation Fund, the Basic Building Fund and the Community Development Block Grant program for economic development projects. The agency also administers Industrial Revenue Bonds and the William S. Lee Quality Jobs and Business Expansion Act. This Act provides tax credits to companies that invest in jobs, equipment, research and development and worker training.

International Trade Division: Responsible for the state's foreign trade activities, this division's primary goal is to help small and mid-sized firms market their products overseas through its Export Outreach Program, Trade Events Program and the Shared Foreign Sales Corporation Program.

Sports Development Office: The Sports Development Office works with local groups, other state agencies and sports organizations to attract amateur and professional sporting events to North Carolina.

Division of Travel and Tourism: The Division of Travel and Tourism promotes North Carolina as a vacation destination to travelers worldwide in an effort to increase travel expenditures, create additional employment and strengthen the overall economy of the state.

North Carolina Department of Commerce
301 N. Wilmington St.
Raleigh, North Carolina 27626
(919) 733-4962 Fax: (919) 733-8356

UNITED WE STAND, DIVIDED WE FALL?

*The state doesn't think so. But some say regionalism
has diminished North Carolina's value as a brand name.*

By Terrance Noland

In August, after the General Assembly passed a slate of tax credits to entice new industry, the state Commerce Department sent 320 footballs plastered with North Carolina's name to site-selection consultants and companies around the country. "We're back in the game," read the accompanying letter from Commerce Secretary Dave Phillips.

The game, of course, is tackling new industry. North Carolina was once the champ. No more. As the late Bill Lee put it last July, "We're getting our clock cleaned." The lack of reliable numbers makes score-keeping tough (see page 11), but North Carolina has clearly slipped in recruiting, particularly of big projects. (Remember how those M&Ms — Motorola and Mercedes — melted in our hands.) There's more at stake than wall trophies. Bringing in new companies — along with expanding existing businesses — is at the heart of job creation and economic development.

So what's the problem? The easy answer, the one Commerce officials like to trot out, is incentives — the state's relative lack of them. That's played a role. As other states upped the ante, North Carolina could no longer rely solely on its business climate, ranked tops in the nation by *Site Selection* magazine four years running.

Now that the incentive package has been sweetened, Commerce officials say the

state is back on track. "It's already paying off, paying off big-time," Gov. Jim Hunt told members of the North Carolina Economic Developers Association in late October. "We've already announced seven new companies — 1,600 jobs." One of those is a 600-employee Corning Inc. optical-fiber plant in Cabarrus County, which Phillips attributes directly to the new tax credits.

Though they will help, the incentives won't be a panacea. There are other problems, problems that run much deeper, that won't disappear with a few tax credits. Just ask the consultants who specialize in helping companies relocate. For starters, they say the state's shortage of qualified labor is a bigger factor than incentives (see page 26). Furthermore, some of the tax credits are heavily weighted toward distressed counties and offer little to companies that want to be near metro areas.

Perhaps most unnerving, though, is that some neighboring states have become much more aggressive in their recruiting — and not just in terms of incentives. They're simply doing a better job selling their states. "We're getting the hell beat out of us by Virginia and by South Carolina and others on our sales efforts," says a large private developer in North Carolina. "They are much better organized at the state level."

They're doing this at the same time North Carolina is shifting much of its

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 59

Short Title: Gates School Acquisition.

(Local)

Sponsors: Senator Ballance.

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

February 6, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW GATES COUNTY TO ACQUIRE PROPERTY FOR USE
3 BY ITS COUNTY BOARD OF EDUCATION.
4 The General Assembly of North Carolina enacts:
5 Section 1. G.S. 153A-158.1 reads as rewritten:
6 "**§ 153A-158.1. Acquisition and improvement of school property in certain counties.**
7 (a) Acquisition by County. -- A county may acquire, by any lawful method, any
8 interest in real or personal property for use by a school administrative unit within the
9 county. In exercising the power of eminent domain a county shall use the procedures
10 of Chapter 40A. The county shall use its authority under this subsection to acquire
11 property for use by a school administrative unit within the county only upon the
12 request of the board of education of that school administrative unit and after a public
13 hearing.
14 (b) Construction or Improvement by County. -- A county may construct, equip,
15 expand, improve, renovate, or otherwise make available property for use by a school
16 administrative unit within the county. The local board of education shall be involved
17 in the design, construction, equipping, expansion, improvement, or renovation of the
18 property to the same extent as if the local board owned the property.
19 (c) Lease or Sale by Board of Education. -- Notwithstanding the provisions of G.S.
20 115C-518 and G.S. 160A-274, a local board of education may, in connection with
21 additions, improvements, renovations, or repairs to all or part of any of its property,
22 lease or sell the property to the board of commissioners of the county in which the
23 property is located for any price negotiated between the two boards.

1 (d) Board of Education May Contract for Construction. -- Notwithstanding the
2 provisions of G.S. 115C-40 and G.S. 115C-521, a local board of education may enter
3 into contracts for the erection or repair of school buildings upon sites owned in fee
4 simple by one or more counties in which the local school administrative unit is
5 located.

6 (e) Scope. -- This section applies to Alleghany, Ashe, Avery, Bladen, Brunswick,
7 Cabarrus, Carteret, Cherokee, Chowan, Columbus, Currituck, Dare, Duplin,
8 Edgecombe, Forsyth, Franklin, Gates, Graham, Greene, Guilford, Halifax, Harnett,
9 Haywood, Hyde, Iredell, Jackson, Johnston, Jones, Lee, Macon, Madison, Martin,
10 Moore, Nash, New Hanover, Orange, Pasquotank, Pender, Person, Pitt, Randolph,
11 Richmond, Rockingham, Rowan, Sampson, Scotland, Stanly, Surry, Union, Vance,
12 Wake, Wilson, and Watauga Counties."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1997

S

1

SENATE BILL 69

Short Title: Stokes School Acquisition.

(Local)

Sponsors: Senators Foxx; and East.

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

February 10, 1997

A BILL TO BE ENTITLED

1 AN ACT TO ALLOW STOKES COUNTY TO ACQUIRE PROPERTY FOR USE
2 BY ITS COUNTY BOARD OF EDUCATION.

3 The General Assembly of North Carolina enacts:

4 Section 1. G.S. 153A-158.1 reads as rewritten:

5 **"§ 153A-158.1. Acquisition and improvement of school property in certain counties.**

6 (a) Acquisition by County. -- A county may acquire, by any lawful method, any
7 interest in real or personal property for use by a school administrative unit within the
8 county. In exercising the power of eminent domain a county shall use the procedures
9 of Chapter 40A. The county shall use its authority under this subsection to acquire
10 property for use by a school administrative unit within the county only upon the
11 request of the board of education of that school administrative unit and after a public
12 hearing.

13 (b) Construction or Improvement by County. -- A county may construct, equip,
14 expand, improve, renovate, or otherwise make available property for use by a school
15 administrative unit within the county. The local board of education shall be involved
16 in the design, construction, equipping, expansion, improvement, or renovation of the
17 property to the same extent as if the local board owned the property.

18 (c) Lease or Sale by Board of Education. -- Notwithstanding the provisions of G.S.
19 115C-518 and G.S. 160A-274, a local board of education may, in connection with
20 additions, improvements, renovations, or repairs to all or part of any of its property,
21 lease or sell the property to the board of commissioners of the county in which the
22 property is located for any price negotiated between the two boards.
23

1 (d) Board of Education May Contract for Construction. -- Notwithstanding the
2 provisions of G.S. 115C-40 and G.S. 115C-521, a local board of education may enter
3 into contracts for the erection or repair of school buildings upon sites owned in fee
4 simple by one or more counties in which the local school administrative unit is
5 located.

6 (e) Scope. -- This section applies to Alleghany, Ashe, Avery, Bladen, Brunswick,
7 Cabarrus, Carteret, Cherokee, Chowan, Columbus, Currituck, Dare, Duplin,
8 Edgecombe, Forsyth, Franklin, Graham, Greene, Guilford, Halifax, Harnett,
9 Haywood, Hyde, Iredell, Jackson, Johnston, Jones, Lee, Macon, Madison, Martin,
10 Moore, Nash, New Hanover, Orange, Pasquotank, Pender, Person, Pitt, Randolph,
11 Richmond, Rockingham, Rowan, Sampson, Scotland, Stanly, Stokes, Surry, Union,
12 Vance, Wake, Wilson, and Watauga Counties."

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

Ken

HOUSE BILL 235
SENATE BILL 147

SHORT TITLE: BIRTH/DEATH CERTIFICATE FEE UPPED
(ALSO MARRIAGE LICENSE CERT)

SURVEY

NUMBER OF COUNTIES RESPONDED

64

AVERAGE COST TO COUNTY

3.12

FAVOR INCREASE IN FEES

26

*most of our
oppose did
not do cost
any*

AVERAGE FEE FOR ALL 50 STATES

9.66

ALL FEES ARE SUBJECT TO CHANGE WITHOUT NOTICE

STATE	ADDRESS	FEE	PHONE #
ALABAMA	Center for Health Statistics., P.O. Box 5625, Montgomery 36103-5625	\$12.00	(334) 613-5113
ALASKA	Dept. of Health, Bureau of Vital Statistics, P.O. Box 110675, Juneau 99811-0675	\$10.00	(907) 461-1111
AMERICAN SAMOA	Registrar of Vital Statistics, LBJ Tropical Medical Center, Pago Pago 96799	\$ 2.00	(684) 633-1111
ARIZONA	State Dept. of Health, Vital Records Section, P.O. Box 3887, Phoenix 85030-3887	\$ 9.00	(602) 255-3260
ARKANSAS	State Dept. of Health, Vital Records Div., 4815 W. Markham, Slot 44, Little Rock 72205-3867	\$ 5.00	(501) 661-2726
CALIFORNIA	State Dept. of Health, Vital Records 304 S Street (P.O. Box 730241) Sacramento 94244 (LA county \$19/some counties-\$16)	\$13.00	(916) 445-2684
CANAL ZONE	For births before 10/1/79 - Panama Canal Commission, Vital Statistics Unit 2300 APO AA 34011-2300	\$ 2.00	(800) 622-2625
COLORADO	Dept. of Health, 4300 Cherry Creek Dr. South, A-1, Denver 80222-1530	\$12.00	(970) 692-2224
CONNECTICUT	Department of Health Services, 150 Washington St., Hartford, 06106	\$15.00	(203) 566-1124
DELAWARE	Division of Public Health, P.O. Box 637, Dover 19903	\$ 5.00	(302) 739-4721
DIST. OF COLUMBIA	Research Division, Vital Rec. Sect., 613 G St., NW, Washington, DC 20001	(short form \$12) \$18.00	(202) 727-9281
FLORIDA	Dept. of Health and Rehab. Services, Vital Statistics, P.O. Box 210 Jacksonville, 32231-0042	\$ 9.00	(904) 359-6911
GEORGIA	Dept. of Human Resources, Vital Rec. Services, 47 Trinity Ave., SW, Rm 217-H, Atlanta 30334	\$10.00	(404) 656-7456
GUAM	Dept. of Public Health & Soc. Services, P.O. Box 2816, Agana, Guam 96910	\$ 5.00	(671) 734-7399
HAWAII	Dept. of Health Research & Statistics Office P.O. Box 3378, Honolulu 96801	\$ 2.00	(808) 586-4542
IDAHO	Dept. of Health Research & Statistics Office P.O. Box 3378, Honolulu 96801	\$ 8.00	(208) 334-5988
ILLINOIS	Bureau of Vital Statistics, Dept. of Health & Welfare, 450 W. State Street, Boise 83720	\$ 8.00	(208) 334-5988
INDIANA	Office of Vital Records, 605 W. Jefferson Street, Springfield 62702-5097	(\$10 for short form;) \$15.00	(217) 782-6553
IOWA	State Board of Health, P.O. Box 1964, Indianapolis 46206-1964	\$ 6.00	(317) 383-6274
KANSAS	Dept. of Health, Vital Record Section, Lucas State Office Bldg., Des Moines 50319-0075	\$10.00	(515) 281-4944
KENTUCKY	Dept. of Health, Office of Vital Statistics, 900 SW Jackson, Topeka 66620-1290	\$10.00	(913) 296-1400
LOUISIANA	Dept. of Human Resources- Vital Statistics, 275 E. Main Street, Frankfort 40621-0001	\$ 7.00	(502) 564-4212
MAINE	Vital Records Registry, P.O. Box 60630, New Orleans 70160	\$10.00	(504) 568-5152
MARYLAND	Office of Vital Records, Human Services Bldg., Station 11, 221 State St., Augusta 04333	\$10.00	(207) 289-3181
MASSACHUSETTS	Division of Vital Records, P.O. Box 68760, Baltimore 21215-0020	\$ 4.00	(410) 764-3038
MICHIGAN	Registrar of Vital Statistics, 470 Atlantic Ave., Boston 02210-2224	\$11.00	(617) 753-8650
MINNESOTA	Office of Vital & Health Statistics., P.O. Box 30195 (3423 N. MLK Blvd.), Lansing 48909	\$13.00	(517) 335-8666
MISSISSIPPI	State Dept. of Health, Sect. of Vital Recs., PO Box 9411, Minneapolis 55440	\$11.00	(612) 623-5121
MISSOURI	State Department of Health, P.O. Box 1700, Jackson 39215-1700	\$12.00	(601) 960-7988
MONTANA	Division of Health, Bureau of Vital Records, P.O. Box 570, Jefferson City 65102-0570	\$10.00	(314) 751-6387
NEBRASKA	State Dept. of Health, PO Box 200901, Vital Statistics, Helena 59620	\$10.00	(406) 441-1111
NEVADA	Dept. of Health, Bureau of Vital Statistics, P.O. Box 95007, Lincoln 68509-5007	\$ 8.00	(402) 441-1111
NEW HAMPSHIRE	Section of Vital Statistics, 505 E. King Street, Rm 102, Carson City 89710	\$11.00	(702) 687-1111
NEW JERSEY	Dept. of Public Health Services, Health & Welfare Bldg., 6 Hazen Drive, Concord 03301	\$10.00	(603) 271-4650
NEW MEXICO	Dept. of Health, Bureau of Vital Statistics, John Fitch Plaza, CN 370, Trenton 08625	\$ 4.00	(609) 633-2860
NEW YORK	Vital Records Bureau, 1190 St. Francis Dr. (PO Box 26110), Santa Fe 87502	\$10.00	(505) 827-2316
NEW YORK CITY	New York Dept. of Health, ESP Tower Bldg, Rm 244, Albany 12237-0023	\$15.00	(518) 474-3077
NORTH CAROLINA	Dept. of Health of New York City, Vital Records, PO Box 3776, Church St. Station, NYC 10007-3776	\$15.00	(212) 788-4505
NORTH DAKOTA	Division of Health Services, Vital Records, P.O. Box 29537, Raleigh 27626-0537	\$10.00	(919) 733-3526
NO. MARIANA ISLANDS	Dept. of Health, Division of Vital Records, 600 East Blvd., Bismarck 58505-0200	\$ 7.00	(701) 328-2360
OHIO	Vital Records, P.O. Box 307, Saipan, Mariana Islands MP 96950 (Payable to Sup. CT)	\$ 3.00	(670) 234-6401
OKLAHOMA	Dept. of Health, Bureau of Vital Statistics, PO Box 15098, Columbus 43215-0098	\$ 7.00	(614) 466-2531
OREGON	Dept. of Health, Vital Records Section, P.O. Box 53551, Oklahoma City 73152	\$ 5.00	(405) 271-4040
PENNSYLVANIA	Vital Statistics, PO Box 14050, Portland 97214-0050	\$15.00	(503) 731-4108
PUERTO RICO	Dept. of Health, Division of Vital Records, P.O. Box 1528, New Castle 16103	\$ 4.00	(412) 656-3100
RHODE ISLAND	Department of Vital Records, Demographic Registry, P.O. Box 9342, San Juan 00908	\$ 2.00	(809) 728-7980
SOUTH CAROLINA	Vital Records Office, Cannon Building, Rm 101, Three Capitol Hill, Providence 02908-0597	\$15.00	(401) 277-2812
SOUTH DAKOTA	Office of Vital Records & Public Health Statistics, 2600 Bull Street, Columbia 29201	\$ 8.00	(803) 734-4877
TENNESSEE	State Department of Health, Vital Records, 445 E. Capitol, Pierre 57501-3185	\$ 5.00	(605) 773-4961
TEXAS	Vital Records Department, Cordell Hull Building, C-3-324, Nashville 37247-0350	\$10.00	(615) 741-0778
UTAH	Department of Health, Bureau of Vital Statistics, 1100 W. 49th Street, Austin 78756-3191	\$11.00	(512) 458-7111
VERMONT	Dept. of Health, Bureau of Health Statistics, P.O. Box 16700, Salt Lake City 84116-0700	\$12.00	(801) 538-6380
VIRGINIA	For births prior to 1980: Gen. Services Ctr, Ref. & Research Sec., Drawer 33, Montpelier 05633-7601	\$ 5.00	(802) 828-3286
VIRGIN ISLANDS	For births 1980 to present: Dept. of Vital Records, P.O. Box 70, Burlington 05402	\$ 5.00	(802) 863-7275
WASHINGTON	Bureau of Vital Records, P.O. Box 1000, Richmond 23208-1000	\$ 5.00	(804) 644-2723
WEST VIRGINIA	St. Croix- Registrar of Vital Statistics, P.O. Box 520, Christiansted, St. Croix 00820	\$10.00	(809) 773-4050
WISCONSIN	St. Thomas - Registrar of Vital Statistics, P.O. Box 7309, Charlotte Amalie, St. Thomas 00801	\$10.00	(809) 776-7899
WYOMING	Office of Vital Records, P.O. Box 9709, ET-11, Olympia 98507-9709	\$11.00	(206) 753-5842
	Vital Records, Building 3, Room 516, Capital Complex, Charleston 25305	\$ 5.00	(304) 558-2931
	Section of Vital Statistics, P.O. Box 309 (1 W. Wilson St.), Madison 53701-0309	\$12.00	(608) 255-1111
	Vital Records Services, Hathaway Building, Cheyenne 82002	\$11.00	(307) 633-1111

ALL FEES ARE SUBJECT TO CHANGE WITHOUT NOTICE

AV 9.25

AV 30 states

9.66

COUNTY	COST	FAVOR INCREASE
ALAMANCE	<u>3.00</u>	<u>yes</u>
ALEXANDER	_____	_____
ALLEGHANY	_____	_____
ANSON	<u>2.60</u>	<u>yes</u>
ASHE	_____	_____
AVERY	_____	<u>No</u>
BEAUFORT	<u>1.32</u> 10 m.d	<u>yes</u>
BERTIE	<u>3.98</u>	<u>yes</u>
BLADEN	<u>?</u>	<u>No</u>
BRUNSWICK	_____	_____
BUNCOMBE	_____	<u>No</u>
BURKE	_____	_____
CABARRUS	<u>4.18</u>	<u>yes</u> 35
CALDWELL	_____	_____
CAMDEN	<u>2.39</u>	<u>?</u>
CARTERET	_____	_____
CASWELL	<u>3.54</u>	<u>yes</u>
CATAWBA	_____	_____
CHATHAM	<u>?</u>	<u>yes</u> 35
CHEROKEE	_____	<u>No</u>
CHOWAN	_____	<u>yes</u>
CLAY	<u>?</u>	<u>No</u>
CLEVELAND	_____	_____

IREDELL	<u> </u>	<u> </u>
JACKSON	<u>?</u>	<u>No</u>
JOHNSTON	<u>3.41</u>	<u>yes in season</u>
JONES	<u> </u>	<u> </u>
LEE	<u>3.43 - 15 min</u>	<u>yes \$5</u>
LENOIR	<u>4.04</u>	<u>yes \$5</u>
LINCOLN	<u>3.90</u>	<u>No</u>
MACON	<u>?</u>	<u>No</u>
MADISON	<u>?</u>	<u>No</u>
MARTIN	<u> </u>	<u>yes</u>
MCDOWELL	<u>?</u>	<u>No</u>
MECKLENBURG	<u>6.83</u>	<u> </u>
MITCHELL	<u>?</u>	<u>No</u>
MONTGOMERY	<u>2.00</u>	<u>No</u>
MOORE	<u>4.05</u>	<u>yes</u>
NASH	<u>3.00?</u>	<u>yes</u>
NEW HANOVER	<u> </u>	<u> </u>
NORTHAMPTON	<u>?</u>	<u>No</u>
ONSLow	<u> </u>	<u> </u>
ORANGE	<u> </u>	<u> </u>
PAMLICO	<u> </u>	<u> </u>
PASQUOTANK	<u>?</u>	<u>No</u>
PENDER	<u>4.65</u>	<u>Not At this time</u>
PERQUIMANS	<u>?</u>	<u>No</u>
PERSON	<u>3.60</u>	<u>yes</u>

COLUMBUS
CRAVEN
CUMBERLAND
CURRITUCK
DARE
DAVIDSON
DAVIE
DUPLIN
DURHAM
EDGEcombe
FORSYTH
FRANKLIN
GASTON
GATES
GRAHAM
GRANVILLE
GREENE
GUILFORD
HALIFAX
HARNETT
HAYWOOD
HENDERSON
HERTFORD
HOKE
HYDE

?
?
2.29

1.90
1.87 = 15 mid
 60
3.88 15 mid
1.30 3 mid
2.52

?
?
2.83

3.17
.78 3 mid 15 mid 2.34
?
?

2.70

yes - Counties in need
yes - Counties in need
No

Not At This time
yes

yes
?

No
No
No

Ats yes \$5
No
No
No

yes \$5

PITT	<u>3.97</u>	<u>Yes</u>
POLK	<u>?</u>	<u>No</u>
RANDOLPH	<u>3.80</u>	<u>Yes</u>
RICHMOND	<u> </u>	<u> </u>
ROBESON	<u> </u>	<u> </u>
ROCKINGHAM	<u> </u>	<u> </u>
ROWAN	<u>1.36 (4.68 incl)</u>	<u>No - rather Comwd</u>
RUTHERFORD	<u>?</u>	<u>No</u>
SAMPSON	<u>.89 501 not incl.</u>	<u>No</u>
SCOTLAND	<u>?</u>	<u>Support majority</u>
STANLY	<u> </u>	<u> </u>
STOKES	<u>?</u>	<u>No</u>
SURRY	<u> </u>	<u> </u>
SWAIN	<u>?</u>	<u>No</u>
TRANSYLVANIA	<u>?</u>	<u>No</u>
TYRRELL	<u>?</u>	<u>No</u>
UNION	<u> </u>	<u> </u>
VANCE	<u>2.60</u>	<u>Yes</u>
WAKE	<u> </u>	<u> </u>
WARREN	<u>?</u>	<u>Reasonable</u>
WASHINGTON	<u> </u>	<u>?</u>
WATAUGA	<u>4.64</u>	<u>No</u>
WAYNE	<u>?</u>	<u>No</u>
WILKES	<u> </u>	<u> </u>
WILSON	<u> </u>	<u> </u>

YADKIN

YANCEY

?

No

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

March 12, 1997

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Leslie Zebagan	NCCBT
Jim Lohr	NC AFI
Ed Reyon	N.C. A.C.C.
Jim Blackburn	Association of County Commissioners
Judy Gibson	North Carolina Register of Deeds Assn. Mecklenburg Co. Register of Deeds
Dwight Rouse	North Carolina Register of Deeds Lexington Co Register of Deeds
Frank Colebongh	City of Winston-Salem Director of Finance
Mary Nash Rusher	Henton, Williams
Bob High	Dept. of State Treas
Amy Tinderson	Henton & Williams
Leekin Street	PPAA

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

March 12, 1997

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Alic Garland	Electronics
Andy Romanet	N.C.L.M.
Joyce Peters	elect.
Stewart Dickinson	Commerce Finance
Angie Harris	Commerce Dept.
Nick Corbize	"
DAVID LAWRENCE	Inst. of Gov't
Nancy Pomeroy	DOR
Paul J. King	DOR
Patti Stawell	DOR
Lori Ann Harris	SHGRB

SENATE FINANCE COMMITTEE

WEDNESDAY, MARCH 12, 1997

12 NOON - ROOM 544 - LOB

The Senate Finance Committee met on Wednesday, March 12, 1997, with Senator Kerr presiding and 23 committee members present. Ms. Gwyn Rouse, Lenoir County Register of Deeds, and Ms. Judy Gibson, Mecklenburg County Register of Deeds, were introduced as special guests.

The following bills were discussed:

S.B. 59 - Gates School Acquisition

This bill had been discussed at a previous meeting and on motion by Senator Weinstein was given a "favorable" report by the committee.

S.B. 69 - Stokes School Acquisition

This bill had been discussed at a previous meeting and on motion by Senator Dannelly was given a "favorable" report by the committee.

S.B. 147 - Increase Fee Birth/Death Certificate.

Ms. Rouse from Lenoir County, representing the North Carolina Association of Register of Deeds, was recognized to speak on S.B. 147 - Increase Fee Birth/Death Certificate. Ms. Rouse informed the Committee that all 100 counties had been polled on this bill and 64 counties had responded. Of the 64 counties who responded, 26 are in favor of a fee increase and 38 counties were opposed. The majority of the 38 who opposed a fee increase did not do a cost analysis. The average cost to issue a certificate is \$4 to \$5. Copy of Survey included in the minutes. There was a general discussion of this bill by the committee members with several of the members giving reports of conversations with their Registers of Deeds.

Ms. Judy Gibson, from Mecklenburg County, and also representing the Association spoke briefly in support of this cost increase and stated that the cost to issue a certificate in her county was \$6.83.

This bill was not on the Agenda and no vote was taken. Senator Kerr turned the meeting over to Senator Hoyle.

S.B. 316 - Amend Bill Lee Act/AB.

Senator Kerr was recognized to explain S.B. 316 and on motion by Senator Kerr a Committee Substitute was adopted by the committee. At the conclusion of Senator Kerr's explanation, Dave Crofts, Fiscal Research, briefly explained the impact of the Fiscal Note and answered several questions from the committee members. Martha Harris, Bill Drafting, was recognized for a further explanation of the procedure for claiming tax credit.

Mr. Rick Carlisle, Department of Commerce, spoke in support of this bill and stated that no county would lose anything as a result of this bill. At the conclusion of Mr. Carlisle's presentation, he answered questions from the committee members. Senator Gulley moved that the committee substitute for S.B. 316 be given a "favorable" report and the motion carried. S.B. 316 will be reported out as "unfavorable as to bill, but favorable as to committee substitute bill." Included with the minutes is copy of bill, copy of committee substitute, explanation of committee substitute, information on results of the legislation enacted last year, and the fiscal note.

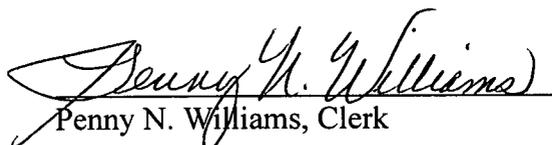
Meeting adjourned.



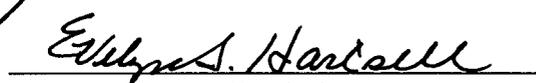
David W. Hoyle, Co-Chair
Senate Finance Committee



John H. Kerr, III, Co-Chair
Senate Finance Committee



Penny N. Williams, Clerk



Evelyn S. Hartsell, Clerk

NOTE:

Agenda is Attachment # 1
Visitors' Sign Up Sheet is Attachment # 2
Committee Report is Attachment # 3

AGENDA

SENATE FINANCE COMMITTEE

March 12, 1997

12 Noon - Room 544

S.B. 249 - Bond Payment Change - Sen. Carpenter

S.B. 316 - Amend Bill Lee Act/AB - Sen. Kerr

S.B. 317 - Local Government Debt Changes - Sen. Winner

H.B. 149 - Accounting for 911 Surcharges - Rep. Shubert

EXPLANATION OF SENATE BILL 316
Proposed Committee Substitute
Amend Bill Lee Act

TO: Senate Finance Committee
FROM: Sabra Faires, Committee Counsel
DATE: March 12, 1997
SPONSOR: Senator John Kerr

Senate Bill 316 is an agency bill requested by the Department of Commerce. Its companion bill, House Bill 368 introduced by Representative Bill Owens, was discussed in the House Commerce committee this morning and held over for further discussion.

The bill amends several of the business tax credits that were expanded or enacted by the 1996 General Assembly. As part of the 1996 William S. Lee Quality Jobs and Business Expansion Act, the General Assembly extended the jobs tax credit to all 100 counties, enacted a new tax credit for worker training expenses, enacted a new tax credit for increasing research activities, and enacted two new tax credits for investing in machinery and equipment. To be eligible for the jobs credit, the worker training expense credit, the credit for research activities, and one of the investment credits, the taxpayer must be engaged in manufacturing or processing, warehousing or distributing, or data processing and the wages of the jobs affected must be at least 10% above the average weekly wage in the county where the job is created or the business claiming the credit is located, as appropriate.

The bill changes these credits as follows:

1. It expands the two credits for investing in machinery and equipment to include leased machinery and equipment. This change is effective for taxable years beginning on or after January 1, 1997.
2. It changes the formula for determining a county's ranking and tier designation for the jobs tax credit in two ways. First, it changes the factors in the formula. Under current law, the Secretary of Commerce assigns an enterprise factor to each county each year based on the county's rank in a ranking of counties by unemployment (from lowest to highest), by per capita income (from highest to lowest), and by population growth (from highest to lowest). The bill changes the unemployment and per capita income components from a one-year standing to a standing based on the average of the most recent three years. Second, the bill guarantees that a county that obtains Tier 1 status cannot lose that status for two years regardless of what

the annual rankings would otherwise require. The first of these changes is effective for taxable years beginning on or after January 1, 1997. The guarantee of at least a two-year Tier 1 status applies to counties designated as Tier 1 for the 1997 year and all future years.

3. It changes the wage standard that applies to all but one of the investment credits in two ways. First, it removes the wage standard for jobs in Tier 1 areas. Second it replaces the existing wage standard for the other tier areas, which is at least 10% of the average wage in the county, with a standard of 10% above the lower of three figures: the average private sector wage in the county; the average private sector wage in the State; and the average private sector wage in the county multiplied by county per capita income ratio. These changes are effective for the 1997 tax year and later years.
4. It allows a taxpayer to specify the tax (income or franchise) against which the credit is claimed when filing a return rather than when applying for the credit. This change is effective retroactively to the 1996 tax year and applies to all future years.

**NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL ESTIMATE**

BILL NUMBER: SB 316 (WITH PROPOSED AMENDMENT)
SHORT TITLE: AMEND BILL LEE ACT/AB
SPONSOR(S): SEN. KERR

FISCAL IMPACT

Yes () No () No Estimate Available ()

FY 1997-98 FY 1998-99 FY 1999-00 FY 2000-01 FY 2001-02

REVENUES

State General Fund	*	-226,500	-449,000	-746,000
--------------------	---	----------	----------	----------

EXPENDITURES

POSITIONS:

PRINCIPAL DEPARTMENT(S) &

PROGRAM(S) AFFECTED: Department of Revenue and Department of Commerce

EFFECTIVE DATE: See "Bill Summary".

*Less than \$100,000

BILL SUMMARY: Amends business tax incentives package adopted by the 1996 General Assembly as follows:

- (1) Modifies the wage test that applies to taxpayers seeking to use the various tax credits. The 1996 bill required such taxpayers to pay at least 110% of the average weekly wage in the county in which the jobs or investment will be located and that positions that pay \$100,000 or more per year shall be excluded from the calculation. The bill requires the 110% test to apply to the lesser of average county private insured wages, average state private insured wages, or the average county private insured wages multiplied by the "county income/wage adjustment factor. This last factor compares relationship of county per capita income to annualized private sector wages in a county to the same measure for the state as a whole. In addition, the exclusion from the calculation for jobs paying \$100,000 or more would be eliminated (effective for tax years beginning on or after January 1, 1997)
- (2) Extends the investment tax credit to leased machinery and equipment (effective for tax years beginning on or after January 1, 1997).

(OVER)

- (3) Removes the requirement that corporate taxpayers elect whether to apply the credit against the franchise tax or the income tax at the time of applying for the credit with the Department of Commerce (effective beginning with 1996 tax year)
- (4) Modifies the formula for determining which tier of economic conditions a county is in by using a 3-year average of the per capita income and unemployment rate factors instead of the most recent year for which data is available (effective beginning with 1998 designations)
- (5) Allows a county in the most-distressed tier (Tier 1) to keep the status for a minimum of two years (effective with designations for 1997 and future calendar years) and eliminates wage test (effective beginning with 1997 tax year)

ASSUMPTIONS AND METHODOLOGY: The primary new impact under the bill come from the provision "grandfathering" Tier 1 counties for an additional year. The Governor's Economic Policy Advisor analyzed the Tier 1 grandfathering by reviewing actual economic data for the Tier 1 counties. This analysis indicated that 4 counties would fit this category. For these counties the impact on the jobs tax credit resulting from maintaining the \$12,500 credit in lieu of \$4,000 was calculated by applying the difference to the actual number of jobs created in the relevant counties. Next, a high and low estimate was calculated by using different assumptions about how many of the companies would claim the credit each year. These assumptions were the same as those used in developing the consensus executive/legislative estimates used for the William S. Lee Act in 1996. For this estimate the high end of an estimating range was used.

The impact of the extension of the targeted investment tax credit to leased equipment was embedded in the cost estimates developed for the 1996 bill because the sources of data that provided U.S. and North Carolina data on investments in machinery and equipment did not provide a breakdown by different purchase arrangements. For this reason the 1996 estimates of the cost of the credit were very conservative.

TECHNICAL CONSIDERATIONS:

FISCAL RESEARCH DIVISION (733-4910)

PREPARED BY: Dave Crotts

APPROVED BY:

DATE: March 12, 1997

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

D

SENATE BILL 316*
Proposed Committee Substitute S316-PCS7601

Short Title: Amend Bill Lee Act/AB.

(Public)

Sponsors:

Referred to:

March 5, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE WILLIAM S. LEE QUALITY JOBS AND BUSINESS
3 EXPANSION ACT.

4 The General Assembly of North Carolina enacts:

5 Section 1. Article 3A of Chapter 105 of the General Statutes reads as
6 rewritten:

7 "ARTICLE 3A.

8 "Tax Incentives for New and Expanding Businesses.

9 "§ 105-129.2. (Repealed effective January 1, 2002 -- see note) Definitions.

10 The following definitions apply in this Article:

- 11 ~~(1) Cost. -- Defined in section 179 of the Code.~~
12 (2) Data processing. -- Defined in the Standard Industrial
13 Classification Manual issued by the United States Bureau of the
14 Census.
15 (3) Enterprise tier. -- The classification assigned to an area pursuant to
16 G.S. 105-129.3.
17 (4) Full-time job. -- A position that requires at least 1,600 hours of
18 work per year and is intended to be held by one employee during
19 the entire year. A full-time employee is an employee who holds a
20 full-time job.
21 (5) Machinery and equipment. -- Engines, machinery, tools, and
22 implements that are capitalized by the taxpayer for tax purposes
23 under the Code and are used or designed to be used in

1 manufacturing or processing, warehousing and distribution, or data
2 processing. The term does not include real property as defined in
3 G.S. 105-273 or rolling stock as defined in G.S. 105-333.

4 (6) Manufacturing and processing. -- Defined in the Standard
5 Industrial Classification Manual issued by the United States Bureau
6 of the Census.

7 ~~(7) Purchase. -- Defined in section 179 of the Code.~~

8 (8) Warehousing and distribution. -- Defined in the Standard Industrial
9 Classification Manual issued by the United States Bureau of the
10 Census.

11 **"§ 105-129.3. (Repealed effective January 1, 2002) Enterprise tier designation.**

12 (a) Tiers Defined. -- An enterprise tier one area is a county whose enterprise
13 factor is one of the 10 highest in the State. An enterprise tier two area is a county
14 whose enterprise factor is one of the next 15 highest in the State. An enterprise tier
15 three area is a county whose enterprise factor is one of the next 25 highest in the
16 State. An enterprise tier four area is a county whose enterprise factor is one of the
17 next 25 highest in the State. An enterprise tier five area is any area that is not in a
18 lower-numbered enterprise tier.

19 (b) Annual Designation. -- Each year, on or before December 31, the Secretary of
20 Commerce shall assign to each county in the State an enterprise factor that is the sum
21 of the following:

22 (1) The county's rank in a ranking of counties by average rate of
23 unemployment from lowest to ~~highest.~~ highest, for the preceding
24 three years.

25 (2) The county's rank in a ranking of counties by average per capita
26 income from highest to ~~lowest.~~ lowest, for the preceding three
27 years.

28 (3) The county's rank in a ranking of counties by percentage growth in
29 population from highest to lowest.

30 The Secretary of Commerce shall then rank all the counties within the State
31 according to their enterprise factor from highest to lowest, identify all the areas of the
32 State by enterprise tier, and provide this information to the Secretary of Revenue. An
33 enterprise tier designation is effective only for the calendar year following the
34 designation.

35 In measuring rates of unemployment and per capita income, the Secretary shall use
36 the latest available data published by a State or federal agency generally recognized
37 as having expertise concerning the data. In measuring population growth, the
38 Secretary shall use the most recent estimates of population certified by the State
39 Planning Officer.

40 (c) Exception for Enterprise Tier One Areas. -- Notwithstanding the provisions of
41 this section, an enterprise tier one area may not be redesignated as a
42 higher-numbered enterprise tier area until it has been an enterprise tier one area for
43 at least two consecutive years.

44 **"§ 105-129.4. (Repealed effective January 1, 2002) Eligibility; forfeiture.**

1 (a) Type of Business. -- A taxpayer is eligible for a credit allowed by this Article if
2 the taxpayer engages in manufacturing or processing, warehousing or distributing, or
3 data processing, and the jobs with respect to which a credit is claimed are created in
4 that business, the machinery and equipment with respect to which a credit is claimed
5 are used in that business, and the research and development for which a credit is
6 claimed are carried out as part of that business.

7 (b) Wage Standard. -- A taxpayer is eligible for the credit for creating jobs or the
8 credit for worker training if the jobs for which the credit is claimed are located in an
9 enterprise tier one area or meet the wage standard at the time the taxpayer applies
10 for the credit. A taxpayer is eligible for the credit for investing in machinery and
11 equipment or the credit for research and development if the jobs at the location with
12 respect to which the credit is claimed are located in an enterprise tier one area or
13 meet the wage standard at the time the taxpayer applies for the credit. Jobs meet the
14 wage standard if they pay an average weekly wage that is at least ten percent (10%)
15 above the ~~average weekly wage paid in the county in which the jobs will be located.~~
16 ~~In calculating the average weekly wage of jobs, positions that pay a wage or salary at~~
17 ~~a rate that exceeds one hundred thousand dollars (\$100,000) a year shall be excluded.~~
18 ~~For the purpose of this subsection, the average wage in a county is the average wage~~
19 ~~for all insured industries in the county as computed by the Employment Security~~
20 ~~Commission for the most recent period for which data are available.~~ applicable
21 average weekly wage for the county in which the jobs will be located, as computed by
22 the Secretary of Commerce from data compiled by the Employment Security
23 Commission for the most recent period for which data are available. The applicable
24 average weekly wage is the lowest of the following: (i) the average wage for all
25 insured private employers in the county, (ii) the average wage for all insured private
26 employers in the State, and (iii) the average wage for all insured private employers in
27 the county multiplied by the county income/wage adjustment factor. The county
28 income/wage adjustment factor is the county income/wage ratio divided by the State
29 income/wage ratio. The county income/wage ratio is average per capita income in
30 the county divided by the annualized average wage for all insured private employers
31 in the county. The State income/wage ratio is the average per capita income in the
32 State divided by the annualized average wage for all insured private employers in the
33 State.

34 (c) Worker Training. -- A taxpayer is eligible for the tax credit for worker training
35 only for training workers who occupy jobs for which the taxpayer is eligible to claim
36 an installment of the credit for creating jobs or which are full-time positions at a
37 location with respect to which the taxpayer is eligible to claim an installment of the
38 credit for investing in machinery and equipment for the taxable year.

39 The credit for worker training is allowed only with respect to employees in
40 positions not classified as exempt under the Fair Labor Standards Act, 29 U.S.C. §
41 213(a)(1) and for expenditures for training that would be eligible for expenditure or
42 reimbursement under the Department of Community Colleges' New and Expanding
43 Industry Program, as determined by guidelines adopted by the State Board of
44 Community Colleges. To establish eligibility, the taxpayer must obtain as part of the

1 application process under G.S. 105-129.6 the certification of the Department of
2 Community Colleges that the taxpayer's planned worker training would satisfy the
3 requirements of this paragraph. A taxpayer shall apply to the Department of
4 Community Colleges for this certification. The application must be on a form
5 provided by the Department of Community Colleges, must provide a detailed plan of
6 the worker training to be provided, and must contain any information required by the
7 Department of Community Colleges to determine whether the requirements of this
8 paragraph will be satisfied. If the Department of Community Colleges determines that
9 the planned worker training meets the requirements of this paragraph, the
10 Department of Community Colleges shall issue a certificate describing the location
11 with respect to which the credit is claimed and stating that the planned worker
12 training meets the requirements of this paragraph. The State Board of Community
13 Colleges may adopt rules in accordance with Chapter 150B of the General Statutes
14 that are needed to carry out its responsibilities under this paragraph.

15 (d) Forfeiture. -- A taxpayer forfeits a credit allowed under this Article if the
16 taxpayer was not eligible for the credit at the time the taxpayer applied for the credit.
17 A taxpayer that forfeits a credit under this Article is liable for all past taxes avoided
18 as a result of the credit plus interest at the rate established under G.S. 105-241.1(i),
19 computed from the date the taxes would have been due if the credit had not been
20 allowed. The past taxes and interest are due 30 days after the date the credit is
21 forfeited; a taxpayer that fails to pay the past taxes and interest by the due date is
22 subject to the penalties provided in G.S. 105-236. If a taxpayer forfeits the credit for
23 creating jobs or the credit for investing in machinery and equipment, the taxpayer
24 also forfeits any credit for worker training claimed for the jobs for which the credit
25 for creating jobs was claimed or the jobs at the location with respect to which the
26 credit for investing in machinery and equipment was claimed.

27 (e) Change in Ownership of Business. -- The sale, merger, acquisition, or
28 bankruptcy of a business, or any other transaction by which an existing business
29 reformulates itself as another business, does not create new eligibility in a succeeding
30 business with respect to credits for which the predecessor was not eligible under this
31 Article. A successor business may, however, take any installment of or carried-over
32 portion of a credit that its predecessor could have taken if it had a tax liability.

33 **"§ 105-129.5. (Repealed effective January 1, 2002) Tax election; cap.**

34 (a) Tax Election. -- The credits provided in this Article are allowed against the
35 franchise tax levied in Article 3 of this Chapter and the income taxes levied in
36 Article 4 of this Chapter. The taxpayer shall elect the tax against which a credit will
37 be claimed when ~~filing the application for the credit.~~ filing the return on which the
38 first installment of the credit is claimed. This election is binding. Any carryforwards
39 of the credit must be claimed against the same ~~tax elected in the application.~~ tax.

40 (b) Cap. -- The credits allowed under this Article may not exceed fifty percent
41 (50%) of the tax against which they are claimed for the taxable year, reduced by the
42 sum of all other credits allowed against that tax, except tax payments made by or on
43 behalf of the taxpayer. This limitation applies to the cumulative amount of credit,
44 including carryforwards, claimed by the taxpayer under this Article against each tax

1 for the taxable year. Any unused portion of the credit may be carried forward for the
2 succeeding five years.

3 **"§ 105-129.6. (Repealed effective January 1, 2002) Application; reports.**

4 (a) Application. -- To claim the credits allowed by this Article, the taxpayer must
5 provide with the tax return the certification of the Secretary of Commerce that the
6 taxpayer meets all of the eligibility requirements of G.S. 105-129.4 with respect to
7 each credit. A taxpayer shall apply to the Secretary of Commerce for certification of
8 eligibility. The application must be on a form provided by the Secretary of
9 ~~Commerce, must specify the credit and the tax against which it will be claimed,~~
10 Commerce and must contain any information necessary for the Secretary of
11 Commerce to determine whether the taxpayer meets the eligibility requirements. If
12 the Secretary determines that the taxpayer meets all of the eligibility requirements of
13 G.S. 105-129.4 with respect to a credit, the Secretary shall issue a certificate
14 describing the location with respect to which the credit is claimed, ~~specifying the tax~~
15 ~~against which the credit will be claimed,~~ outlining the eligibility requirements for the
16 credit, and stating that the taxpayer meets the eligibility requirements. If the Secretary
17 determines that the taxpayer does not meet all of the eligibility requirements of G.S.
18 105-129.4 with respect to a credit, the Secretary must advise the taxpayer in writing of
19 the eligibility requirements the taxpayer fails to meet. The Secretary of Commerce
20 may adopt rules in accordance with Chapter 150B of the General Statutes that are
21 needed to carry out the Secretary of Commerce's responsibilities under this section.

22 (b) Reports. -- The Department of Commerce shall report to the Department of
23 Revenue and to the Fiscal Research Division of the General Assembly by May 1 of
24 each year the following information for the 12-month period ending the preceding
25 April 1:

- 26 (1) The number of applications for each credit allowed in this Article.
- 27 (2) The number and enterprise tier area of new jobs with respect to
28 which credits were applied for.
- 29 (3) The cost of machinery and equipment with respect to which credits
30 were applied for.

31 **"§ 105-129.7. (Repealed effective January 1, 2002) Substantiation.**

32 To claim a credit allowed by this Article, the taxpayer must provide any
33 information required by the Secretary of Revenue. Every taxpayer claiming a credit
34 under this Article shall maintain and make available for inspection by the Secretary
35 of Revenue any records the Secretary considers necessary to determine and verify the
36 amount of the credit to which the taxpayer is entitled. The burden of proving
37 eligibility for the credit and the amount of the credit shall rest upon the taxpayer, and
38 no credit shall be allowed to a taxpayer that fails to maintain adequate records or to
39 make them available for inspection.

40 **"§ 105-129.8. (Repealed effective January 1, 2002) Credit for creating jobs.**

41 (a) Credit. -- A taxpayer that meets the eligibility requirements set out in G.S.
42 105-129.4, has five or more employees for at least 40 weeks during the taxable year,
43 and hires an additional full-time employee during that year to fill a position located
44 in this State is allowed a credit for creating a new full-time job. The amount of the

1 credit for each new full-time job created is set out in the table below and is based on
2 the enterprise tier of the area in which the position is located:

3 Area Enterprise Tier	Amount of Credit
4 Tier One	\$12,500
5 Tier Two	4,000
6 Tier Three	3,000
7 Tier Four	1,000
8 Tier Five	500

9 A position is located in an area if more than fifty percent (50%) of the employee's
10 duties are performed in the area. The credit may not be taken in the taxable year in
11 which the additional employee is hired. Instead, the credit shall be taken in equal
12 installments over the four years following the taxable year in which the additional
13 employee was hired and shall be conditioned on the continued employment by the
14 taxpayer of the number of full-time employees the taxpayer had upon hiring the
15 employee that caused the taxpayer to qualify for the credit.

16 If, in one of the four years in which the installment of a credit accrues, the number
17 of the taxpayer's full-time employees falls below the number of full-time employees
18 the taxpayer had in the year in which the taxpayer qualified for the credit, the credit
19 expires and the taxpayer may not take any remaining installment of the credit. The
20 taxpayer may, however, take the portion of an installment that accrued in a previous
21 year and was carried forward to the extent permitted under G.S. 105-129.5.

22 Jobs transferred from one area in the State to another area in the State shall not be
23 considered new jobs for purposes of this section. If, in one of the four years in which
24 the installment of a credit accrues, the position filled by the employee is moved to an
25 area in a higher- or lower-numbered enterprise tier, the remaining installments of the
26 credit shall be calculated as if the position had been created initially in the area to
27 which it was moved.

28 (b) Repealed by Session Laws 1989, c. 111, s. 1.

29 (b1), (c) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.3.

30 (d) Planned Expansion. -- A taxpayer that signs a letter of commitment with the
31 Department of Commerce to create at least twenty new full-time jobs in a specific
32 area within two years of the date the letter is signed qualifies for the credit in the
33 amount allowed by this section based on the area's enterprise tier for that year even
34 though the employees are not hired that year. The credit shall be available in the
35 taxable year after at least twenty employees have been hired if the hirings are within
36 the two-year commitment period. The conditions outlined in subsection (a) apply to a
37 credit taken under this subsection except that if the area is redesignated to a higher-
38 numbered enterprise tier after the year the letter of commitment was signed, the
39 credit is allowed based on the area's enterprise tier for the year the letter was signed.
40 If the taxpayer does not hire the employees within the two-year period, the taxpayer
41 does not qualify for the credit. However, if the taxpayer qualifies for a credit under
42 subsection (a) in the year any new employees are hired, the taxpayer may take the
43 credit under that subsection.

1 (e), (f) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.3 for
2 taxable years beginning on or after January 1, 1996.

3 **"§ 105-129.9. (Repealed effective January 1, 2002) Credit for investing in machinery
4 and equipment.**

5 (a) Credit. -- ~~A~~ If a taxpayer that has purchased or leased machinery and
6 equipment ~~and~~ places it in service in this State during the taxable ~~year~~ year, the
7 taxpayer is allowed a credit equal to seven percent (7%) of the excess of the eligible
8 investment amount over the applicable threshold. The credit may not be taken for the
9 taxable year in which the equipment is placed in service but shall be taken in equal
10 installments over the seven years following the taxable year in which the equipment is
11 placed in service.

12 (b) Eligible Investment Amount. -- The eligible investment amount is the lesser of
13 (i) the cost of the machinery and equipment and (ii) the amount by which the cost of
14 all of the taxpayer's machinery and equipment that is in service in this State on the
15 last day of the taxable year exceeds the cost of all of the taxpayer's machinery and
16 equipment that was in service in this State on the last day of the base year. The base
17 year is that year, of the three immediately preceding taxable years, in which the
18 taxpayer had the most machinery and equipment in service in this State.

19 (c) Threshold. -- The applicable threshold is the appropriate amount set out in the
20 following table based on the enterprise tier of the area where the machinery and
21 equipment are placed in service during the taxable year. If the taxpayer places
22 machinery and equipment in service in more than one area during the taxable year,
23 the threshold applies separately to the machinery and equipment placed in service in
24 each area.

25 Area Enterprise Tier	Threshold
26 Tier One	\$ -0-
27 Tier Two	100,000
28 Tier Three	200,000
29 Tier Four	500,000
30 Tier Five	1,000,000

31 (d) Expiration. -- If, in one of the seven years in which the installment of a credit
32 accrues, the machinery and equipment with respect to which the credit was claimed
33 are ~~sold~~ disposed of, taken out of service, or moved out of State, the credit expires
34 and the taxpayer may not take any remaining installment of the credit. The taxpayer
35 may, however, take the portion of an installment that accrued in a previous year and
36 was carried forward to the extent permitted under G.S. 105-129.5.

37 If, in one of the seven years in which the installment of a credit accrues, the
38 machinery and equipment with respect to which the credit was claimed are moved to
39 an area in a higher-numbered enterprise tier, the remaining installments of the credit
40 are allowed only to the extent they would have been allowed if the machinery and
41 equipment had been placed in service initially in the area to which they were moved.

42 **"§ 105-129.10. (Repealed effective January 1, 2002) Credit for research and
43 development.**

1 A taxpayer that claims for the taxable year a federal income tax credit under
2 section 41 of the Code for increasing research activities is allowed a credit equal to
3 five percent (5%) of the State's apportioned share of the taxpayer's expenditures for
4 increasing research activities. The State's apportioned share of a taxpayer's
5 expenditures for increasing research activities is the excess of the taxpayer's qualified
6 research expenses for the taxable year over the base amount, as determined under
7 section 41 of the Code, multiplied by a percentage equal to the ratio of the taxpayer's
8 qualified research expenses in this State for the taxable year to the taxpayer's total
9 qualified research expenses for the taxable year. As used in this section, the terms
10 "qualified research expenses" and "base amount" have the meaning provided in
11 section 41 of the Code.

12 **"§ 105-129.11. (Repealed effective January 1, 2002) Credit for worker training.**

13 (a) Credit. -- A taxpayer that provides worker training for five or more of its
14 eligible employees during the taxable year is allowed a credit equal to fifty percent
15 (50%) of its eligible expenditures for the training. For positions located in an
16 enterprise tier one area, the credit may not exceed one thousand dollars (\$1,000) per
17 employee trained during the taxable year. For other positions, the credit may not
18 exceed five hundred dollars (\$500.00) per employee trained during the taxable year.
19 A position is located in an area if more than fifty percent (50%) of the employee's
20 duties are performed in the area.

21 (b) Eligibility. -- The eligibility of a taxpayer's expenditures and employees is
22 determined as provided in G.S. 105-129.4."

23 Section 2. Article 3B of Chapter 105 of the General Statutes reads as
24 rewritten:

25 "ARTICLE 3B.

26 "Business Tax Credit.

27 **"§ 105-129.15. (Repealed effective January 1, 2002) Definitions.**

28 The following definitions apply in this Article:

29 (1) Business property. -- Tangible personal property that is used by the
30 taxpayer in connection with a business or for the production of
31 income and is capitalized by the taxpayer for tax purposes under
32 the Code. The term does not include, however, a luxury passenger
33 automobile taxable under section 4001 of the Code or a watercraft
34 used principally for entertainment and pleasure outings for which
35 no admission is charged.

36 (2) ~~Cost. -- Defined in section 179 of the Code.~~

37 (3) ~~Purchase. -- Defined in section 179 of the Code.~~

38 **"§ 105-129.16. (Repealed effective January 1, 2002) Credit for investing in business
39 property.**

40 (a) Credit. -- ~~A~~ If a taxpayer that has purchased or leased business property ~~and~~
41 places it in service in this State during the taxable ~~year~~ year, the taxpayer is allowed a
42 credit equal to four and one-half percent (4.5%) of the cost of the property. The
43 maximum credit allowed a taxpayer for property placed in service during a taxable
44 year is four thousand five hundred dollars (\$4,500). The entire credit may not be

1 taken for the taxable year in which the property is placed in service but must be
2 taken in five equal installments beginning with the taxable year in which the property
3 is placed in service.

4 (b) Expiration. -- If, in one of the five years in which the installment of a credit
5 accrues, the business property with respect to which the credit was claimed is ~~sold~~
6 disposed of, taken out of service, or moved out of State, the credit expires and the
7 taxpayer may not take any remaining installment of the credit. The taxpayer may,
8 however, take the portion of an installment that accrued in a previous year and was
9 carried forward to the extent permitted under G.S. 105-129.17.

10 (c) No Double Credit. -- A taxpayer that claims the credit allowed under Article
11 3A of this Chapter with respect to business property may not take the credit allowed
12 in this section with respect to the same property.

13 **"§ 105-129.17. (Repealed effective January 1, 2002) Tax election; cap.**

14 (a) Tax Election. -- The credit allowed in this Article is allowed against the
15 franchise tax levied in Article 3 of this Chapter or the income taxes levied in Article
16 4 of this Chapter. The taxpayer must elect the tax against which the credit will be
17 claimed when filing the return on which the first installment of the credit is claimed.
18 This election is binding. Any carryforwards of the credit must be claimed against the
19 same tax.

20 (b) Cap. -- The credit allowed in this Article may not exceed fifty percent (50%)
21 of the tax against which it is claimed for the taxable year, reduced by the sum of all
22 other credits allowed against that tax, except tax payments made by or on behalf of
23 the taxpayer. This limitation applies to the cumulative amount of credit, including
24 carryforwards, claimed by the taxpayer under this Article against each tax for the
25 taxable year. Any unused portion of the credit may be carried forward for the
26 succeeding five years.

27 **"§ 105-129.18. (Repealed effective January 1, 2002) Substantiation.**

28 To claim the credit allowed by this Article, the taxpayer must provide any
29 information required by the Secretary of Revenue. Every taxpayer claiming a credit
30 under this Article must maintain and make available for inspection by the Secretary
31 of Revenue any records the Secretary considers necessary to determine and verify the
32 amount of the credit to which the taxpayer is entitled. The burden of proving
33 eligibility for the credit and the amount of the credit rests upon the taxpayer, and no
34 credit may be allowed to a taxpayer that fails to maintain adequate records or to
35 make them available for inspection.

36 **"§ 105-129.19. (Repealed effective January 1, 2002) Reports.**

37 The Department of Revenue shall report to the Legislative Research Commission
38 and to the Fiscal Research Division of the General Assembly by May 1 of each year
39 the following information for the 12-month period ending the preceding April 1:

- 40 (1) The number of taxpayers that claimed the credit allowed in this
41 Article.
- 42 (2) The cost of business property with respect to which credits were
43 claimed.
- 44 (3) The total cost to the General Fund of the credits claimed."

1 Section 3. G.S. 105-129.3(c), as enacted by this act, is effective when this
2 act becomes law and, notwithstanding G.S. 105-129.3(b), applies retroactively to
3 designations for the 1997 and later calendar years; the other amendments to G.S. 105-
4 129.3 made by this act are effective when this act becomes law and apply to
5 designations for the 1998 and later calendar years. The amendments to G.S. 105-
6 129.5 and G.S. 105-129.6 made by this act are effective for taxable years beginning on
7 or after January 1, 1996. The remainder of this act is effective for taxable years
8 beginning on or after January 1, 1997.

NEW TAX LEGISLATION PAYS OFF FOR NORTH CAROLINA

North Carolina already is reaping significant dividends as a result of the William S. Lee Quality Jobs And Business Expansion Act: a commitment of more than 2,220 new jobs and hundreds of millions of dollars in investment.

The tax credit package has been a factor in at least 14 companies' decisions to make North Carolina home for their new operations or expansions since the Act became law Aug. 2, 1996.

Here are results of the William S. Lee Act:

- **Corning Inc.** will build a new optical fiber manufacturing facility in Cabarrus County, creating 600 new jobs and a multimillion dollar investment. Corning developed the first commercially viable optical fiber more than two decades ago.
- **Polar Plastics** will open a plant in Iredell County that will create 300 new jobs and a \$25 million investment. The company manufactures more than 1,000 different plastic products including plates, cutlery and medical service products.
- **RF Micro Devices**, a semiconductor company headquartered in Greensboro, will move its manufacturing operation from Redondo Beach, Ca., to Greensboro. The expansion will bring 125 new jobs and an initial investment of \$35 million to the state.
- **Uchiyama Manufacturing Corp.** will locate its first U.S. manufacturing facility in Wayne County, creating 20 new jobs and investing \$10 million. The company will make gaskets for the automotive industry.
- **American Fiber and Finishing** will create 250 new jobs in Albemarle at its corporate headquarters and textile operation. The company manufactures non-apparel textiles for the aerospace and medical industries.
- **M.A.I.D.** will move its corporate headquarters from New York City to Cary creating 175 new jobs. M.A.I.D. is a leading on-line/Internet supplier of business intelligence services to business professionals worldwide.
- **The Clinipad Corp.** will expand its manufacturing operations in Charlotte. The company will manufacture a broad range of products for the health care industry.
- **Manual Woodworkers and Weavers** will expand its manufacturing operations to Marion, creating 100 new jobs. The facility will produce pillows, table runners and other woven products.
- **The Timken Company** will expand its operations in Polk County, investing \$15 million and creating 35 new jobs. The new facility will produce a wide variety of shaped rings for the bearing industry.
- **Morton Metalcraft** will open a new plant in Apex, investing \$6.7 million and creating 250 jobs. The company will produce sheet metal.

ITT Automotive will invest \$65 million in the company's third North Carolina facility. The company will manufacture automotive brake systems in its Hendersonville plant and will create 200 new jobs.

- PGI Nonwovens, a division of Polymer Group Inc. will invest \$25 million in an expansion of its Mooresville operations, creating 35 new jobs.
- Delta Products Corp. will invest \$5 million for the construction of a research and development facility in Research Triangle Park, creating 30 jobs. The Taiwanese company develops, designs, manufactures and markets electronic components and equipment for computer manufacturers and the telecommunications industry.
- Kennedy Die Castings Inc. manufactures aluminum die cast products for many industries, including lighting, electrical, power tools, computers and telecommunications. They will invest \$6 million and create 100 jobs at the Marion plant.

WHAT THE ACT MEANS FOR NORTH CAROLINA

- A 7 percent investment tax credit for companies that purchase machinery and equipment over certain thresholds.
- Expansion of the state's Jobs Tax Credit program to all 100 counties. The amount of the credit a company receives for each job it creates will depend on where the company locates. The credits, higher in the state's most disadvantaged counties, will be available to companies in the following amounts:
 - the state's 10 most disadvantaged counties \$12,500 per job created
 - next 15 counties -- \$4,000 per job created
 - next 25 counties -- \$3,000 per job created
 - next 25 counties -- \$1,000 per job created
 - the state's 25 most prosperous counties -- \$500 per job created.
- A 5 percent tax credit for companies that invest in research and development.
- A worker training tax credit for companies, up to \$500 per employee in all counties, except the 10 most disadvantaged counties, where companies will receive a tax credit of up to \$1,000 per employee.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 316*

Short Title: Amend Bill Lee Act/AB.

(Public)

Sponsors: Senators Kerr; Gulley, Hartsell, Hoyle, and Lucas.

Referred to: Finance.

March 5, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE WILLIAM S. LEE QUALITY JOBS AND BUSINESS
3 EXPANSION ACT.

4 The General Assembly of North Carolina enacts:

5 Section 1. Article 3A of Chapter 105 of the General Statutes reads as
6 rewritten:

7 "ARTICLE 3A.

8 Tax Incentives for New and Expanding Businesses.

9 "§ 105-129.2. (Repealed effective January 1, 2002 -- see note) Definitions.

10 The following definitions apply in this Article:

- 11 (1) ~~Cost. -- Defined in section 179 of the Code.~~
- 12 (2) Data processing. -- Defined in the Standard Industrial
13 Classification Manual issued by the United States Bureau of the
14 Census.
- 15 (3) Enterprise tier. -- The classification assigned to an area pursuant to
16 G.S. 105-129.3.
- 17 (4) Full-time job. -- A position that requires at least 1,600 hours of
18 work per year and is intended to be held by one employee during
19 the entire year. A full-time employee is an employee who holds a
20 full-time job.
- 21 (5) Machinery and equipment. -- Engines, machinery, tools, and
22 implements that are capitalized by the taxpayer ~~for tax purposes~~
23 ~~under the Code~~ and are used or designed to be used in
24 manufacturing or processing, warehousing and distribution, or data

1 processing. Machinery and equipment purchased by the taxpayer
2 must be capitalized for tax purposes under the Code; machinery
3 and equipment leased by the taxpayer must be capitalized on the
4 taxpayer's books and records in accordance with generally
5 accepted accounting principles. The term does not include real
6 property as defined in G.S. 105-273 or rolling stock as defined in
7 G.S. 105-333.

8 (6) Manufacturing and processing. -- Defined in the Standard
9 Industrial Classification Manual issued by the United States Bureau
10 of the Census.

11 ~~(7) Purchase. -- Defined in section 179 of the Code.~~

12 (8) Warehousing and distribution. -- Defined in the Standard Industrial
13 Classification Manual issued by the United States Bureau of the
14 Census.

15 **"§ 105-129.3. (Repealed effective January 1, 2002) Enterprise tier designation.**

16 (a) Tiers Defined. -- An enterprise tier one area is a county whose enterprise
17 factor is one of the 10 highest in the State. An enterprise tier two area is a county
18 whose enterprise factor is one of the next 15 highest in the State. An enterprise tier
19 three area is a county whose enterprise factor is one of the next 25 highest in the
20 State. An enterprise tier four area is a county whose enterprise factor is one of the
21 next 25 highest in the State. An enterprise tier five area is any area that is not in a
22 lower-numbered enterprise tier.

23 (b) Annual Designation. -- Each year, on or before December 31, the Secretary of
24 Commerce shall assign to each county in the State an enterprise factor that is the sum
25 of the following:

26 (1) The county's rank in a ranking of counties by average rate of
27 unemployment from lowest to ~~highest.~~ highest, for the preceding
28 three years.

29 (2) The county's rank in a ranking of counties by average per capita
30 income from highest to ~~lowest.~~ lowest, for the preceding three
31 years.

32 (3) The county's rank in a ranking of counties by percentage growth in
33 population from highest to lowest.

34 The Secretary of Commerce shall then rank all the counties within the State
35 according to their enterprise factor from highest to lowest, identify all the areas of the
36 State by enterprise tier, and provide this information to the Secretary of Revenue. An
37 enterprise tier designation is effective only for the calendar year following the
38 designation.

39 In measuring rates of unemployment and per capita income, the Secretary shall use
40 the latest available data published by a State or federal agency generally recognized
41 as having expertise concerning the data. In measuring population growth, the
42 Secretary shall use the most recent estimates of population certified by the State
43 Planning Officer.

1 (c) Exception for Enterprise Tier One Areas. -- Notwithstanding the provisions of
2 this section, an enterprise tier one area may not be redesignated as a
3 higher-numbered enterprise tier area until it has been an enterprise tier one area for
4 at least two consecutive years.

5 "**§ 105-129.4. (Repealed effective January 1, 2002) Eligibility; forfeiture.**

6 (a) Type of Business. -- A taxpayer is eligible for a credit allowed by this Article if
7 the taxpayer engages in manufacturing or processing, warehousing or distributing, or
8 data processing, and the jobs with respect to which a credit is claimed are created in
9 that business, the machinery and equipment with respect to which a credit is claimed
10 are used in that business, and the research and development for which a credit is
11 claimed are carried out as part of that business.

12 (b) Wage Standard. -- A taxpayer is eligible for the credit for creating jobs or the
13 credit for worker training if the jobs for which the credit is claimed are located in an
14 enterprise tier one area or meet the wage standard at the time the taxpayer applies
15 for the credit. A taxpayer is eligible for the credit for investing in machinery and
16 equipment or the credit for research and development if the jobs at the location with
17 respect to which the credit is claimed are located in an enterprise tier one area or
18 meet the wage standard at the time the taxpayer applies for the credit. Jobs meet the
19 wage standard if they pay an average weekly wage that is at least ten percent (10%)
20 above the average weekly wage paid in the county in which the jobs will be located.
21 ~~In calculating the average weekly wage of jobs, positions that pay a wage or salary at~~
22 ~~a rate that exceeds one hundred thousand dollars (\$100,000) a year shall be excluded.~~
23 ~~For the purpose of this subsection, the average wage in a county is the average wage~~
24 ~~for all insured industries in the county as computed by the Employment Security~~
25 ~~Commission for the most recent period for which data are available. applicable~~
26 average weekly wage for the county in which the jobs will be located, as computed by
27 the Secretary of Commerce from data compiled by the Employment Security
28 Commission for the most recent period for which data are available. The applicable
29 average weekly wage is the lowest of the following: (i) the average wage for all
30 insured private employers in the county, (ii) the average wage for all insured private
31 employers in the State, and (iii) the average wage for all insured private employers in
32 the county multiplied by the county per capita income ratio. The county per capita
33 income ratio is average per capita income in the county for the preceding three years
34 divided by average per capita income in the State for the preceding three years.

35 (c) Worker Training. -- A taxpayer is eligible for the tax credit for worker training
36 only for training workers who occupy jobs for which the taxpayer is eligible to claim
37 an installment of the credit for creating jobs or which are full-time positions at a
38 location with respect to which the taxpayer is eligible to claim an installment of the
39 credit for investing in machinery and equipment for the taxable year.

40 The credit for worker training is allowed only with respect to employees in
41 positions not classified as exempt under the Fair Labor Standards Act, 29 U.S.C. §
42 213(a)(1) and for expenditures for training that would be eligible for expenditure or
43 reimbursement under the Department of Community Colleges' New and Expanding
44 Industry Program, as determined by guidelines adopted by the State Board of

1 Community Colleges. To establish eligibility, the taxpayer must obtain as part of the
2 application process under G.S. 105-129.6 the certification of the Department of
3 Community Colleges that the taxpayer's planned worker training would satisfy the
4 requirements of this paragraph. A taxpayer shall apply to the Department of
5 Community Colleges for this certification. The application must be on a form
6 provided by the Department of Community Colleges, must provide a detailed plan of
7 the worker training to be provided, and must contain any information required by the
8 Department of Community Colleges to determine whether the requirements of this
9 paragraph will be satisfied. If the Department of Community Colleges determines that
10 the planned worker training meets the requirements of this paragraph, the
11 Department of Community Colleges shall issue a certificate describing the location
12 with respect to which the credit is claimed and stating that the planned worker
13 training meets the requirements of this paragraph. The State Board of Community
14 Colleges may adopt rules in accordance with Chapter 150B of the General Statutes
15 that are needed to carry out its responsibilities under this paragraph.

16 (d) Forfeiture. -- A taxpayer forfeits a credit allowed under this Article if the
17 taxpayer was not eligible for the credit at the time the taxpayer applied for the credit.
18 A taxpayer that forfeits a credit under this Article is liable for all past taxes avoided
19 as a result of the credit plus interest at the rate established under G.S. 105-241.1(i),
20 computed from the date the taxes would have been due if the credit had not been
21 allowed. The past taxes and interest are due 30 days after the date the credit is
22 forfeited; a taxpayer that fails to pay the past taxes and interest by the due date is
23 subject to the penalties provided in G.S. 105-236. If a taxpayer forfeits the credit for
24 creating jobs or the credit for investing in machinery and equipment, the taxpayer
25 also forfeits any credit for worker training claimed for the jobs for which the credit
26 for creating jobs was claimed or the jobs at the location with respect to which the
27 credit for investing in machinery and equipment was claimed.

28 (e) Change in Ownership of Business. -- The sale, merger, acquisition, or
29 bankruptcy of a business, or any other transaction by which an existing business
30 reformulates itself as another business, does not create new eligibility in a succeeding
31 business with respect to credits for which the predecessor was not eligible under this
32 Article. A successor business may, however, take any installment of or carried-over
33 portion of a credit that its predecessor could have taken if it had a tax liability.

34 **"§ 105-129.5. (Repealed effective January 1, 2002) Tax election; cap.**

35 (a) Tax Election. -- The credits provided in this Article are allowed against the
36 franchise tax levied in Article 3 of this Chapter and the income taxes levied in
37 Article 4 of this Chapter. The taxpayer shall elect the tax against which a credit will
38 be claimed when ~~filing the application for the credit.~~ filing the return on which the
39 first installment of the credit is claimed. This election is binding. Any carryforwards
40 of the credit must be claimed against the same tax elected in the application.

41 (b) Cap. -- The credits allowed under this Article may not exceed fifty percent
42 (50%) of the tax against which they are claimed for the taxable year, reduced by the
43 sum of all other credits allowed against that tax, except tax payments made by or on
44 behalf of the taxpayer. This limitation applies to the cumulative amount of credit,

1 including carryforwards, claimed by the taxpayer under this Article against each tax
2 for the taxable year. Any unused portion of the credit may be carried forward for the
3 succeeding five years.

4 **"§ 105-129.6. (Repealed effective January 1, 2002) Application; reports.**

5 (a) Application. -- To claim the credits allowed by this Article, the taxpayer must
6 provide with the tax return the certification of the Secretary of Commerce that the
7 taxpayer meets all of the eligibility requirements of G.S. 105-129.4 with respect to
8 each credit. A taxpayer shall apply to the Secretary of Commerce for certification of
9 eligibility. The application must be on a form provided by the Secretary of
10 ~~Commerce, must specify the credit and the tax against which it will be claimed,~~
11 Commerce and must contain any information necessary for the Secretary of
12 Commerce to determine whether the taxpayer meets the eligibility requirements. If
13 the Secretary determines that the taxpayer meets all of the eligibility requirements of
14 G.S. 105-129.4 with respect to a credit, the Secretary shall issue a certificate
15 describing the location with respect to which the credit is claimed, ~~specifying the tax~~
16 ~~against which the credit will be claimed,~~ outlining the eligibility requirements for the
17 credit, and stating that the taxpayer meets the eligibility requirements. If the Secretary
18 determines that the taxpayer does not meet all of the eligibility requirements of G.S.
19 105-129.4 with respect to a credit, the Secretary must advise the taxpayer in writing of
20 the eligibility requirements the taxpayer fails to meet. The Secretary of Commerce
21 may adopt rules in accordance with Chapter 150B of the General Statutes that are
22 needed to carry out the Secretary of Commerce's responsibilities under this section.

23 (b) Reports. -- The Department of Commerce shall report to the Department of
24 Revenue and to the Fiscal Research Division of the General Assembly by May 1 of
25 each year the following information for the 12-month period ending the preceding
26 April 1:

- 27 (1) The number of applications for each credit allowed in this Article.
- 28 (2) The number and enterprise tier area of new jobs with respect to
29 which credits were applied for.
- 30 (3) The cost of machinery and equipment with respect to which credits
31 were applied for.

32 **"§ 105-129.7. (Repealed effective January 1, 2002) Substantiation.**

33 To claim a credit allowed by this Article, the taxpayer must provide any
34 information required by the Secretary of Revenue. Every taxpayer claiming a credit
35 under this Article shall maintain and make available for inspection by the Secretary
36 of Revenue any records the Secretary considers necessary to determine and verify the
37 amount of the credit to which the taxpayer is entitled. The burden of proving
38 eligibility for the credit and the amount of the credit shall rest upon the taxpayer, and
39 no credit shall be allowed to a taxpayer that fails to maintain adequate records or to
40 make them available for inspection.

41 **"§ 105-129.8. (Repealed effective January 1, 2002) Credit for creating jobs.**

42 (a) Credit. -- A taxpayer that meets the eligibility requirements set out in G.S.
43 105-129.4, has five or more employees for at least 40 weeks during the taxable year,
44 and hires an additional full-time employee during that year to fill a position located

1 in this State is allowed a credit for creating a new full-time job. The amount of the
2 credit for each new full-time job created is set out in the table below and is based on
3 the enterprise tier of the area in which the position is located:

4 Area Enterprise Tier	Amount of Credit
5 Tier One	\$12,500
6 Tier Two	4,000
7 Tier Three	3,000
8 Tier Four	1,000
9 Tier Five	500

10 A position is located in an area if more than fifty percent (50%) of the employee's
11 duties are performed in the area. The credit may not be taken in the taxable year in
12 which the additional employee is hired. Instead, the credit shall be taken in equal
13 installments over the four years following the taxable year in which the additional
14 employee was hired and shall be conditioned on the continued employment by the
15 taxpayer of the number of full-time employees the taxpayer had upon hiring the
16 employee that caused the taxpayer to qualify for the credit.

17 If, in one of the four years in which the installment of a credit accrues, the number
18 of the taxpayer's full-time employees falls below the number of full-time employees
19 the taxpayer had in the year in which the taxpayer qualified for the credit, the credit
20 expires and the taxpayer may not take any remaining installment of the credit. The
21 taxpayer may, however, take the portion of an installment that accrued in a previous
22 year and was carried forward to the extent permitted under G.S. 105-129.5.

23 Jobs transferred from one area in the State to another area in the State shall not be
24 considered new jobs for purposes of this section. If, in one of the four years in which
25 the installment of a credit accrues, the position filled by the employee is moved to an
26 area in a higher- or lower-numbered enterprise tier, the remaining installments of the
27 credit shall be calculated as if the position had been created initially in the area to
28 which it was moved.

29 (b) Repealed by Session Laws 1989, c. 111, s. 1.

30 (b1), (c) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.3.

31 (d) Planned Expansion. -- A taxpayer that signs a letter of commitment with the
32 Department of Commerce to create at least twenty new full-time jobs in a specific
33 area within two years of the date the letter is signed qualifies for the credit in the
34 amount allowed by this section based on the area's enterprise tier for that year even
35 though the employees are not hired that year. The credit shall be available in the
36 taxable year after at least twenty employees have been hired if the hirings are within
37 the two-year commitment period. The conditions outlined in subsection (a) apply to a
38 credit taken under this subsection except that if the area is redesignated to a higher-
39 numbered enterprise tier after the year the letter of commitment was signed, the
40 credit is allowed based on the area's enterprise tier for the year the letter was signed.
41 If the taxpayer does not hire the employees within the two-year period, the taxpayer
42 does not qualify for the credit. However, if the taxpayer qualifies for a credit under
43 subsection (a) in the year any new employees are hired, the taxpayer may take the
44 credit under that subsection.

1 (e), (f) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.3 for
2 taxable years beginning on or after January 1, 1996.

3 **"§ 105-129.9. (Repealed effective January 1, 2002) Credit for investing in machinery
4 and equipment.**

5 (a) Credit. -- ~~A~~ If a taxpayer that has purchased or leased machinery and
6 equipment and places it in service in this State during the taxable year, the
7 taxpayer is allowed a credit equal to seven percent (7%) of the excess of the eligible
8 investment amount over the applicable threshold. The credit may not be taken for the
9 taxable year in which the equipment is placed in service but shall be taken in equal
10 installments over the seven years following the taxable year in which the equipment is
11 placed in service.

12 (b) Eligible Investment Amount. -- The eligible investment amount is the lesser of
13 (i) the cost of the machinery and equipment and (ii) the amount by which the cost of
14 all of the taxpayer's machinery and equipment that is in service in this State on the
15 last day of the taxable year exceeds the cost of all of the taxpayer's machinery and
16 equipment that was in service in this State on the last day of the base year. The base
17 year is that year, of the three immediately preceding taxable years, in which the
18 taxpayer had the most machinery and equipment in service in this State.

19 (c) Threshold. -- The applicable threshold is the appropriate amount set out in the
20 following table based on the enterprise tier of the area where the machinery and
21 equipment are placed in service during the taxable year. If the taxpayer places
22 machinery and equipment in service in more than one area during the taxable year,
23 the threshold applies separately to the machinery and equipment placed in service in
24 each area.

25 Area Enterprise Tier	Threshold
26 Tier One	\$ -0-
27 Tier Two	100,000
28 Tier Three	200,000
29 Tier Four	500,000
30 Tier Five	1,000,000

31 (d) Expiration. -- If, in one of the seven years in which the installment of a credit
32 accrues, the machinery and equipment with respect to which the credit was claimed
33 are ~~sold~~ disposed of, taken out of service, or moved out of State, the credit expires
34 and the taxpayer may not take any remaining installment of the credit. The taxpayer
35 may, however, take the portion of an installment that accrued in a previous year and
36 was carried forward to the extent permitted under G.S. 105-129.5.

37 If, in one of the seven years in which the installment of a credit accrues, the
38 machinery and equipment with respect to which the credit was claimed are moved to
39 an area in a higher-numbered enterprise tier, the remaining installments of the credit
40 are allowed only to the extent they would have been allowed if the machinery and
41 equipment had been placed in service initially in the area to which they were moved.

42 **"§ 105-129.10. (Repealed effective January 1, 2002) Credit for research and
43 development.**

1 A taxpayer that claims for the taxable year a federal income tax credit under
2 section 41 of the Code for increasing research activities is allowed a credit equal to
3 five percent (5%) of the State's apportioned share of the taxpayer's expenditures for
4 increasing research activities. The State's apportioned share of a taxpayer's
5 expenditures for increasing research activities is the excess of the taxpayer's qualified
6 research expenses for the taxable year over the base amount, as determined under
7 section 41 of the Code, multiplied by a percentage equal to the ratio of the taxpayer's
8 qualified research expenses in this State for the taxable year to the taxpayer's total
9 qualified research expenses for the taxable year. As used in this section, the terms
10 "qualified research expenses" and "base amount" have the meaning provided in
11 section 41 of the Code.

12 **"§ 105-129.11. (Repealed effective January 1, 2002) Credit for worker training.**

13 (a) Credit. -- A taxpayer that provides worker training for five or more of its
14 eligible employees during the taxable year is allowed a credit equal to fifty percent
15 (50%) of its eligible expenditures for the training. For positions located in an
16 enterprise tier one area, the credit may not exceed one thousand dollars (\$1,000) per
17 employee trained during the taxable year. For other positions, the credit may not
18 exceed five hundred dollars (\$500.00) per employee trained during the taxable year.
19 A position is located in an area if more than fifty percent (50%) of the employee's
20 duties are performed in the area.

21 (b) Eligibility. -- The eligibility of a taxpayer's expenditures and employees is
22 determined as provided in G.S. 105-129.4."

23 Section 2. Article 3B of Chapter 105 of the General Statutes reads as
24 rewritten:

25 "ARTICLE 3B.

26 Business Tax Credit.

27 **"§ 105-129.15. (Repealed effective January 1, 2002) Definitions.**

28 The following definitions apply in this Article:

29 (1) Business property. -- Tangible personal property that is used by the
30 taxpayer in connection with a business or for the production of
31 income and is capitalized by the ~~taxpayer for tax purposes under~~
32 ~~the Code; taxpayer.~~ Property purchased by the taxpayer must be
33 capitalized for tax purposes under the Code; property leased by the
34 taxpayer must be capitalized on the taxpayer's books and records
35 in accordance with generally accepted accounting principles. The
36 term does not include, however, a luxury passenger automobile
37 taxable under section 4001 of the Code or a watercraft used
38 principally for entertainment and pleasure outings for which no
39 admission is charged.

40 (2) ~~Cost. Defined in section 179 of the Code.~~

41 (3) ~~Purchase. Defined in section 179 of the Code.~~

42 **"§ 105-129.16. (Repealed effective January 1, 2002) Credit for investing in business**
43 **property.**

1 (a) Credit. -- ~~A~~ If a taxpayer that has purchased or leased business property and
2 places it in service in this State during the taxable year, the taxpayer is allowed a
3 credit equal to four and one-half percent (4.5%) of the cost of the property. The
4 maximum credit allowed a taxpayer for property placed in service during a taxable
5 year is four thousand five hundred dollars (\$4,500). The entire credit may not be
6 taken for the taxable year in which the property is placed in service but must be
7 taken in five equal installments beginning with the taxable year in which the property
8 is placed in service.

9 (b) Expiration. -- If, in one of the five years in which the installment of a credit
10 accrues, the business property with respect to which the credit was claimed is ~~sold~~
11 disposed of, taken out of service, or moved out of State, the credit expires and the
12 taxpayer may not take any remaining installment of the credit. The taxpayer may,
13 however, take the portion of an installment that accrued in a previous year and was
14 carried forward to the extent permitted under G.S. 105-129.17.

15 (c) No Double Credit. -- A taxpayer that claims the credit allowed under Article
16 3A of this Chapter with respect to business property may not take the credit allowed
17 in this section with respect to the same property.

18 **"§ 105-129.17. (Repealed effective January 1, 2002) Tax election; cap.**

19 (a) Tax Election. -- The credit allowed in this Article is allowed against the
20 franchise tax levied in Article 3 of this Chapter or the income taxes levied in Article
21 4 of this Chapter. The taxpayer must elect the tax against which the credit will be
22 claimed when filing the return on which the first installment of the credit is claimed.
23 This election is binding. Any carryforwards of the credit must be claimed against the
24 same tax.

25 (b) Cap. -- The credit allowed in this Article may not exceed fifty percent (50%)
26 of the tax against which it is claimed for the taxable year, reduced by the sum of all
27 other credits allowed against that tax, except tax payments made by or on behalf of
28 the taxpayer. This limitation applies to the cumulative amount of credit, including
29 carryforwards, claimed by the taxpayer under this Article against each tax for the
30 taxable year. Any unused portion of the credit may be carried forward for the
31 succeeding five years.

32 **"§ 105-129.18. (Repealed effective January 1, 2002) Substantiation.**

33 To claim the credit allowed by this Article, the taxpayer must provide any
34 information required by the Secretary of Revenue. Every taxpayer claiming a credit
35 under this Article must maintain and make available for inspection by the Secretary
36 of Revenue any records the Secretary considers necessary to determine and verify the
37 amount of the credit to which the taxpayer is entitled. The burden of proving
38 eligibility for the credit and the amount of the credit rests upon the taxpayer, and no
39 credit may be allowed to a taxpayer that fails to maintain adequate records or to
40 make them available for inspection.

41 **"§ 105-129.19. (Repealed effective January 1, 2002) Reports.**

42 The Department of Revenue shall report to the Legislative Research Commission
43 and to the Fiscal Research Division of the General Assembly by May 1 of each year
44 the following information for the 12-month period ending the preceding April 1:

1 (1) The number of taxpayers that claimed the credit allowed in this
2 Article.

3 (2) The cost of business property with respect to which credits were
4 claimed.

5 (3) The total cost to the General Fund of the credits claimed."

6 Section 3. G.S. 105-129.3(c), as enacted by this act, is effective when this
7 act becomes law and, notwithstanding G.S. 105-129.3(b), applies retroactively to
8 designations for the 1997 and later calendar years; the other amendments to G.S. 105-
9 129.3 made by this act are effective when this act becomes law and apply to
10 designations for the 1998 and later calendar years. The amendments to G.S. 105-
11 129.5 and G.S. 105-129.6 made by this act are effective for taxable years beginning on
12 or after January 1, 1996. The remainder of this act is effective for taxable years
13 beginning on or after January 1, 1997.

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

FINANCE COMMITTEE REPORT

John H. Kerr, III, Co-Chair
David W. Hoyle, Co-Chair

Wednesday, March 12, 1997

SENATOR JOHN KERR,

submits the following with recommendations as to passage:

FAVORABLE

H.B. 15 Conform Tax on Restored Income
Sequential Referral: None
Recommended Referral: None

S.B. 59 Gates School Acquisition
Sequential Referral: None
Recommended Referral: None

S.B. 69 Stokes School Acquisition
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B. 316 Amend Bill Lee Act/AB
Draft Number: PCS7601
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 4

Committee Clerk Comment: None

SENATE FINANCE COMMITTEE

TUESDAY, MARCH 18, 1997

12:00 NOON - ROOM 504 LOB

The Senate Finance Committee met. There were twenty two members of the Committee present. Senator David Hoyle, Co-chairman of the Committee, presided.

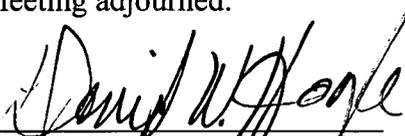
S.B. 249 - Bond Payment Change

Senator Robert Carpenter came to explain this bill. Senator Lee made a motion for acceptance of a committee substitute for this Bill, motion passed. After Senator Carpenter's explanation on this bill and questions from the members of the committee, Senator Austin Allran made a motion for a "favorable" report for the committee substitute, motion passed. Bill to be reported out as "unfavorable as to bill, but favorable as to committee substitute".

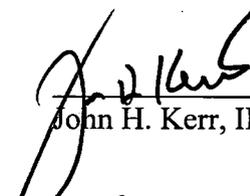
H.B. 149 - Account for 911 Surcharge

Senator John Kerr came to explain this Bill for Representative Fern Shubert. After the explanation, the members were given an opportunity to ask questions relative to this Bill. Senator Virginia Foxx made a motion for a "favorable" report, motion passed.

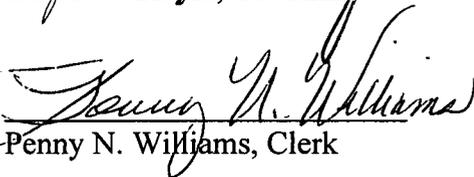
Meeting adjourned.



David W. Hoyle, Co-Chair



John H. Kerr, III Co-Chair



Penny N. Williams, Clerk



Evelyn S. Hartsell, Clerk

NOTE:

Agenda is Attachment #1
Visitor's Registration is Attachment #2
Committee Report is Attachment #3

AGENDA

SENATE FINANCE COMMITTEE

Tuesday, March 18, 1997

12 Noon - Room 544

S.B. 388 - No Back Intangibles Tax Assessment - Sen. Hoyle

S.B. 249 - Bond Payment Change - Sen. Carpenter

S.B. 158 - Administrative Dissolution/Report - Sen. Hartsell

H.B. 149 - Account For 911 Surcharge - Rep. Shubert

1 "§ 159I-30. Additional powers of units of local government; issuance of special
2 obligation bonds and notes.

3 (a) Any unit of local government may borrow money for the purpose of financing
4 or refinancing its cost of the acquisition or construction of a project and may issue
5 special obligation bonds and notes, including bond anticipation notes and renewal
6 notes, pursuant to the provisions of this section and the applicable provisions of this
7 Chapter for ~~such~~ this purpose.

8 (b) Each unit of local government may ~~agree to apply to~~ pledge for the payment
9 of a special obligation bond or note any available source or sources of revenues of
10 the unit and, to the extent the generation of the revenues is within the power of the
11 unit, ~~to~~ may enter into covenants to take action in order to generate the revenues,
12 ~~provided the agreement to use such~~ as long as the pledge of these sources to make for
13 payments or such the covenant to generate revenues does not constitute a pledge of
14 the unit's taxing power.

15 No agreement or covenant shall contain a nonsubstitution clause which restricts
16 the right of a unit of local government to replace or provide a substitute for any
17 project financed pursuant to this section.

18 ~~The obligation sources of payment pledged by~~ of a unit of local government ~~with~~
19 ~~respect to the sources of payment~~ shall be specifically identified in the proceedings of
20 the governing body authorizing the unit to issue the special obligation bonds or notes.

21 After the issuance of special obligation bonds or notes, the governing body of the
22 issuing unit may identify one or more additional sources of payment for the bonds or
23 notes and pledge these sources, as long as the pledge of the sources does not
24 constitute a pledge of the taxing power of the unit. Each source of additional
25 payment pledged shall be specifically identified in the proceedings of the governing
26 body of the unit pledging the source. The governing body of the unit may not pledge
27 an additional source of revenue pursuant to this paragraph unless the pledge is first
28 approved by the Local Government Commission pursuant to the procedures provided
29 in subsection (i) of this section.

30 The sources of payment so ~~specifically identified~~ pledged and then held or
31 thereafter received by a unit or any fiduciary thereof shall immediately be subject to
32 the lien of the ~~proceedings~~ pledge without any physical delivery of the sources or
33 further act. The lien shall be valid and binding as against all parties having claims of
34 any kind in tort, contract, or otherwise against a unit without regard to whether the
35 parties have notice thereof. The proceedings or any other document or action by
36 which the lien on a source of payment is created need not be filed or recorded in any
37 manner other than as provided in this Chapter.

38 ~~Any special obligation bonds or notes may provide additional security by the~~
39 ~~granting of a security interest in the project financed to secure payment of the~~
40 ~~purchase money provided by such bonds or notes, including a deed of trust on any~~
41 ~~real property so acquired.~~

42 (b1) In connection with issuing its special obligation bonds or special obligation
43 bond anticipation notes under this Chapter, a unit of local government may grant a
44 security interest in the project financed, or in all or some portion of the property on

1 which the project is located, or in both. If a unit of local government determines to
2 provide additional security as authorized by this subsection, the following conditions
3 apply:

4 (1) No bond order may contain a nonsubstitution clause that restricts
5 the right of a unit of local government to:

6 a. Continue to provide a service or activity; or

7 b. Replace or provide a substitute for any municipal purpose
8 financed pursuant to the bond order.

9 (2) A bond order is subject to approval by the Commission under
10 Article 8 of Chapter 159 of the General Statutes if it:

11 a. Meets the standards set out in G.S. 159-148(a)(1), 159-
12 148(a)(2), and 159-148(a)(3), or involves the construction or
13 repair of fixtures or improvements on real property; and

14 b. Is not exempted from the provisions of that Article by one
15 of the exemptions contained in G.S. 159-148(b)(1) and (2).

16 The Commission approval required by this subdivision is in
17 addition to the Commission approval required by subsection (i) of
18 this section.

19 (3) No deficiency judgment may be rendered against any unit of local
20 government in any action for breach of a bond order authorized by
21 this section, and the taxing power of a unit of local government is
22 not and may not be pledged directly or indirectly to secure any
23 moneys due under a bond order authorized by this section. This
24 prohibition does not impair the right of the holder of a bond or
25 note to exercise a remedy with respect to the revenues pledged to
26 secure the bond or note, as provided in the bond order, resolution,
27 or trust agreement under which the bond or note is authorized and
28 secured. A unit of local government may, in its sole discretion, use
29 tax proceeds to pay the principal of or interest or premium on
30 bonds or notes, but shall not pledge or agree to do so.

31 (4) Before granting a security interest under this subsection, a unit of
32 local government shall hold a public hearing on the proposed
33 security interest. A notice of the public hearing shall be published
34 once at least 10 days before the date fixed for the hearing.

35 (c) Any bond anticipation notes may be made payable from the proceeds of bonds
36 or renewal notes or, in the event bond or renewal note proceeds are not available,
37 the notes may be paid from any sources available under G.S. 159I-30(b). Bonds or
38 notes may also be paid from the proceeds of any credit facility. The bonds and notes
39 of each issue shall be dated and may be made redeemable prior to maturity at the
40 option of the unit of local government or otherwise, at such price or prices, on such
41 date or dates, and upon such terms and conditions as may be determined by the unit.
42 The bonds or notes may also be made payable from time to time on demand or
43 tender for purchase by the owner, upon terms and conditions determined by the unit.

1 (d) The interest payable by a unit on any special obligation bonds or notes may be
2 at such rate or rates, including variable rates as authorized in this section, as may be
3 determined by the Local Government Commission with the approval of the
4 governing body of the unit. ~~Such~~ This approval may be given as the governing body
5 of the unit may direct, including, without limitation, a certificate signed by a
6 representative of the unit designated by the governing body of the unit.

7 (e) Special obligation bonds and notes shall be special obligations of the unit of
8 local government issuing them. The principal of, and interest and any premium on,
9 special obligation bonds and notes shall be ~~payable~~ secured ~~solely from~~ solely by any one or
10 more of the sources of payment authorized by this section as may be ~~specified~~
11 pledged in the proceedings, resolution, or trust agreement under which they are
12 authorized or secured. Neither the faith and credit nor the taxing power of the unit
13 of local government are pledged for the payment of the principal of, or interest or
14 any premium on, any special obligation bonds or notes, and no owner of special
15 obligation bonds or notes has the right to compel the exercise of the taxing power by
16 the unit in connection with any default thereon. Every special obligation bond and
17 note shall recite in substance that the principal and interest and any premium on
18 ~~such the~~ bond or note are ~~payable~~ secured ~~solely from~~ solely by the sources of payment
19 ~~specified~~ pledged in the bond ~~order or trust,~~ order, resolution, or trust agreement
20 under which it is authorized or secured, ~~provided that:~~ as long as:

21 (1) Any such use of ~~such~~ these sources will not constitute a pledge of
22 the unit's taxing power; and

23 (2) The ~~municipality~~ unit is not obligated to pay ~~such the~~ principal or
24 interest or premium except from ~~such~~ these sources.

25 (f) In fixing the details of bonds or notes, the unit of local government may
26 provide that any of the bonds or notes may:

27 (1) Be made payable from time to time on demand or tender for
28 purchase by the owner thereof ~~provided~~ as long as a credit facility
29 supports ~~such the~~ bonds or notes, unless the Local Government
30 Commission specifically determines that a credit facility is not
31 required upon a finding and determination by the Local
32 Government Commission that the absence of a credit facility will
33 not materially and adversely affect the financial position of the unit
34 and the marketing of the bonds or notes at a reasonable interest
35 cost to the unit;

36 (2) Be additionally supported by a credit facility;

37 (3) Be made subject to redemption or a mandatory tender for
38 purchase prior to maturity;

39 (4) Bear interest at a rate or rates that may vary for such period or
40 periods of time, all as may be provided in the proceedings
41 providing for the issuance of ~~such the~~ bonds or notes including,
42 without limitation, such variations as may be permitted pursuant to
43 a par formula; and

1 (5) Be made the subject of a remarketing agreement whereby an
2 attempt is made to remarket the bonds or notes to new purchasers
3 prior to their presentment for payment to the provider of the credit
4 facility or to the unit.

5 (g) As used in this section:

6 (1) 'Credit facility' means an agreement entered into by the unit with
7 a bank, savings and loan association or other banking institution,
8 an insurance company, reinsurance company, surety company or
9 other insurance institution, a corporation, investment banking firm
10 or other investment institution, or any financial institution ~~proving~~
11 providing for prompt payment of all or any part of the principal,
12 or purchase price (whether at maturity, presentment, or tender for
13 purchase, redemption, or acceleration), redemption premium, if
14 any, and interest on any bonds or notes payable on demand or
15 tender by the owner, in consideration of the unit agreeing to repay
16 the provider of ~~such~~ the credit facility in accordance with the
17 terms and provisions of ~~such~~ the agreement; the provider of any
18 credit facility may be located either within or without the United
19 States of America.

20 (2) 'Par formula' means any provision or formula adopted by the unit
21 to provide for the adjustment, from time to time of the interest rate
22 or rates borne by any bonds or notes including:

- 23 a. A provision providing for such adjustment so that the
24 purchase price of such bonds or notes in the open market
25 would be as close to par as possible;
- 26 b. A provision providing for such adjustment based upon a
27 percentage or percentages of a prime rate or base rate,
28 which percentage or percentages may vary or be applied for
29 different periods of time; or
- 30 c. ~~Such~~ Any other provision as the unit may determine to be
31 consistent with this section and the applicable provisions of
32 this Chapter and does not materially and adversely affect the
33 financial position of the unit and the marketing of the bonds
34 or notes at a reasonable interest cost to the unit.

35 The obligation of a unit of local government under a credit facility to repay any
36 drawing thereunder may be made payable and otherwise secured, to the extent
37 applicable, as provided in this section.

38 (h) Notes shall mature at such time or times and bonds shall mature, not
39 exceeding 40 years from their date or dates, as may be determined by the unit of
40 local government, ~~provided~~ except that no such maturity dates may exceed the
41 maximum maturity periods prescribed by the Local Government Commission
42 pursuant to G.S. 159-122, as it may be amended from time to time. The unit shall
43 determine the form and manner of execution of the bonds or notes, including any
44 interest coupons to be attached thereto, and shall fix the denomination or

1 denominations and the place or places of payment of principal and interest, which
2 may be any bank or trust company within or without the United States. In case any
3 officer of ~~such~~ the unit whose signature, or a facsimile of whose signature, ~~shall~~
4 ~~appear~~ appears on any bonds or notes or coupons, if any, ~~shall cease to be such~~
5 ~~ceases to be the~~ officer before delivery thereof, ~~such signature or such~~ the signature
6 or facsimile shall nevertheless be valid and sufficient for all purposes the same as if
7 ~~such~~ the officer had remained in office until ~~such~~ the delivery. Any bond or note or
8 coupon may bear the facsimile signatures of such persons who at the actual time or
9 the execution thereof ~~shall be~~ were the proper officers to sign although at the date of
10 ~~such~~ the bond or note or coupon ~~such~~ these persons may not have been ~~such officer.~~
11 the proper officers. The unit may also provide for the authentication of the bonds or
12 notes by a trustee or other authenticating agent. The bonds or notes may be issued as
13 certificated or uncertificated obligations or both, and in coupon or in registered form,
14 or both, as the unit may determine, and provision may be made for the registration of
15 any coupon bonds or notes as to principal alone and also as to both principal and
16 interest, and for the reconversion into coupon bonds or notes of any bonds or notes
17 registered as to both principal and interest, and for the interchange of registered and
18 coupon bonds or notes. Any system for registration may be established as the unit
19 may determine.

20 (i) No bonds or notes may be issued by a unit of local government under this
21 section unless the issuance is approved and the bonds or notes are sold by the Local
22 Government Commission as provided in this section and the applicable provisions of
23 this Chapter. The unit shall file with the Secretary of the Local Government
24 Commission an application requesting approval of the issuance of ~~such~~ the bonds or
25 notes, which application shall contain such information and shall have attached to it
26 such documents concerning the proposed financing as the Secretary of the Local
27 Government Commission may require. The Commission may prescribe the form of
28 the application. Before the Secretary accepts the application, the Secretary may
29 require the governing body of the unit or its representatives to attend a preliminary
30 conference, at which time the Secretary or the deputies of the Secretary may
31 informally discuss the proposed issue and the timing of the steps taken in issuing the
32 special obligation bonds or notes.

33 In determining whether a proposed bond or note issue should be approved, the
34 Local Government Commission may consider, to the extent applicable as shall be
35 determined by the Local Government Commission, the criteria set forth in G.S. 159-
36 52 and G.S. 159-86, as either may be amended from time to time, as well as the effect
37 of the proposed financing upon any scheduled or proposed sale of obligations by the
38 State or by any of its agencies or departments or by any unit of local government in
39 the State. The Local Government Commission shall approve the issuance of ~~such~~ the
40 bonds or notes if, upon the information and evidence it receives, it finds and
41 determines that the proposed financing will satisfy such criteria and will effect the
42 purposes of this section and the applicable provisions of this Chapter. An approval
43 of an issue shall not be regarded as an approval of the legality of the issue in any

1 respect. A decision by the Local Government Commission denying an application is
2 final.

3 Upon the filing with the Local Government Commission of a written request of the
4 unit requesting that its bonds or notes be sold, ~~such~~ the bonds or notes may be sold
5 by the Local Government Commission in such manner, either at public or private
6 sale, and for such price or prices as the Local Government Commission shall
7 determine to be in the best interests of the unit and to effect the purposes of this
8 section and the applicable provisions of this Chapter, ~~provided that such sale shall be~~
9 if the sale is approved by the unit.

10 (j) The proceeds of any bonds or notes shall be used solely for the purposes for
11 which the bonds or notes were issued and shall be disbursed in such manner and
12 under such restrictions, if any, as the unit may provide in the resolution authorizing
13 the issuance of, or in any trust agreement securing, the bonds or notes.

14 (k) Prior to the preparation of definitive bonds, the unit may issue interim receipts
15 or temporary bonds, with or without coupons, exchangeable for definitive bonds
16 when ~~such~~ definitive bonds have been executed and are available for delivery. The
17 unit may also provide for the replacement of any bonds or notes which shall become
18 mutilated or shall be destroyed or lost.

19 (l) Bonds or notes may be issued under the provisions of this section and the
20 applicable provisions of this Chapter without obtaining, except as otherwise expressly
21 provided in this section and the applicable provisions of this Chapter, the consent of
22 any department, division, commission, board, body, bureau, or agency of the State
23 and without any other proceedings or the happening of any conditions or things other
24 than those proceedings, conditions, or things that are specifically required by this
25 section, the applicable provisions of this Chapter, and the provisions of the resolution
26 authorizing the issuance of, or any trust agreement securing, ~~such~~ the bonds or notes.

27 (m) In the discretion of the unit of local government, any bonds and notes issued
28 under the provisions of this section may be secured by a trust agreement by and
29 between the unit and a corporate trustee or by a resolution providing for the
30 appointment of a corporate trustee. Bonds and notes may also be issued under an
31 order or resolution without a corporate trustee. The corporate trustee may be, in
32 either case any trust company or bank having the powers of a trust company within
33 or without the State. ~~Such~~ The trust agreement or resolution may pledge or assign
34 such sources of revenue as may be permitted under this section. The trust agreement
35 or resolution may contain such provisions for protecting and enforcing the rights and
36 remedies of the owners of any bonds or notes issued thereunder as may be reasonable
37 and proper and not in violation of law, including covenants setting forth the duties of
38 the unit in respect of the purposes to which bond or note proceeds may be applied,
39 the disposition and application of the revenues of the unit, the duties of the unit with
40 respect to the project, the disposition of any charges and collection of any revenues
41 and administrative charges, the terms and conditions of the issuance of additional
42 bonds and notes, and the custody, safeguarding, investment, and application of all
43 moneys. All bonds and notes issued under this section shall be equally and ratably
44 secured by a lien upon the revenues ~~provided in such~~ pledged in the trust agreement

1 or resolution, without priority by reasons of number, or dates of bonds or notes,
2 execution, or delivery, in accordance with the provision of this section and of ~~such~~
3 the trust agreement or ~~resolution, provided, however, resolution, except~~ that the unit
4 may provide in ~~such the~~ trust agreement or resolution that bonds or notes issued
5 pursuant thereto shall, to the extent and in the manner prescribed in ~~such the~~ trust
6 agreement or resolution, be subordinated and junior in standing, with respect to the
7 payment of principal and interest and to the security thereof, to any other bonds or
8 notes. It shall be lawful for any bank or trust company that may act as ~~depository~~
9 depository of the proceeds of bonds or notes, revenues, or any other money
10 hereunder to furnish such indemnifying bonds or to pledge such securities as may be
11 required by the unit. Any trust agreement or resolution may set out the rights and
12 remedies of the owners of any bonds or notes and of any trustee, and may restrict the
13 individual rights of action by the owners. In addition to the foregoing, any trust
14 agreement or resolution may contain such other provisions as the unit may deem
15 reasonable and proper for the security of the owners of any bonds or notes. Expenses
16 incurred in carrying out the provisions of any trust agreement or resolution may be
17 treated as a part of the cost of any project or as an administrative charge and may be
18 paid from the revenues or from any other funds available.

19 The State does pledge to, and agree with, the holders of any bonds or notes issued
20 by any unit that so long as any of ~~such the~~ bonds or notes are outstanding and unpaid
21 the State will not limit or alter the rights vested in the unit at the time of issuance of
22 the bonds or notes to set the terms and conditions of the bonds or notes and to fulfill
23 the terms of any agreements made with the bondholders or noteholders. The State
24 shall in no way impair the rights and remedies of the bondholders or noteholders
25 until the bonds or notes and all costs and expenses in connection with any action or
26 proceedings by or on behalf of the bondholders or noteholders, are fully paid, met,
27 and discharged.

28 (n) The provisions of G.S. 159I-15(a), (d), and (e) relating to the Agency and its
29 bonds and notes shall apply to a unit of local government and its bonds and notes
30 issued under this section and the applicable provisions of this Chapter, ~~provided~~
31 except that the source or sources of revenue ~~available~~ pledged to pay bonds and
32 notes of a unit of local government shall be limited as provided in this section.

33 (o) The provisions of G.S. 159I-17 relating to the Agency and its trust funds and
34 investments shall apply to a unit of local government and its trust funds and
35 investments, ~~provided~~ except that any such moneys of a unit shall be deposited and
36 invested only as provided in G.S. 159-30, as it may be amended from time to time.

37 (p) The provisions of G.S. 159I-18, 159I-19, 159I-20, and 159I-23 relating to
38 remedies, the Uniform Commercial Code, investment ~~eligibility and tax exemption as~~
39 such eligibility, and tax exemption, as they relate to the Agency's bonds and ~~notes~~
40 notes, shall apply to a unit of local government and its bonds and notes."

41 Section 3. G.S. 159-86(b) reads as rewritten:

42 "(b) The Commission shall approve the application if, upon the information and
43 evidence it receives, it finds and ~~determines~~ determines all of the following:

44 (1) That the proposed revenue bond issue is necessary or expedient.

- 1 (2) That the amount proposed is adequate and not
2 excessive for the proposed purpose of the issue.
3 (3) That the proposed project is feasible.
4 (4) That the State's or the municipality's, as the case may be, debt
5 management procedures and policies are good, or that reasonable
6 assurances have been given that its debt will henceforth be
7 managed in strict compliance with law.
8 (5) That the proposed revenue bonds can be marketed at reasonable
9 interest cost to the State or the municipality, as the case may be.
10 (6) That the probable net revenues of the project to be financed will
11 be sufficient, when combined with other available funds, to service
12 the proposed revenue bonds."

13 Section 4. G.S. 159-83(a) reads as rewritten:

14 "(a) In addition to the powers they may now or hereafter have, the State and each
15 municipality shall have the ~~following powers~~, powers listed in this subsection. These
16 powers are subject to the provisions of this Article and of any revenue bond order or
17 trust agreement securing revenue bonds: bonds. The trustee of a trust agreement
18 securing revenue bonds issued under this Article shall be a trust company or a bank
19 that has the powers of a trust company and may be located inside or outside the
20 State. The powers granted are:

- 21 (1) To acquire by gift, purchase, or exercise of the power of eminent
22 domain or to construct, reconstruct, improve, maintain, better,
23 extend, and operate, one or more revenue bond projects or any
24 portion thereof without regard to location within or without its
25 boundaries, upon determination (i) in the case of the State, by the
26 Council of State and (ii) in the case of a municipality, by
27 resolution of the governing board that a location wholly or
28 partially outside its boundaries is necessary and in the public
29 interest.
30 (2) To sell, exchange, transfer, assign or otherwise dispose of any
31 revenue bond project or portion thereof or interest therein
32 determined (i) in the case of the State, by the Council of State and
33 (ii) in the case of a municipality, by resolution of the governing
34 board not to be required for any public purpose.
35 (3) To sell, furnish, and distribute the services, facilities, or
36 commodities of revenue bond projects.
37 (4) To enter into contracts with any person, firm, or corporation,
38 public or private, on such terms (i) in the case of the State, as the
39 Council of State and (ii) in the case of a municipality, as the
40 governing board may determine, with respect to the acquisition,
41 construction, reconstruction, extension, betterment, improvement,
42 maintenance, or operation of revenue bond projects, or the sale,
43 furnishing, or distribution of the services, facilities or commodities
44 thereof.

- 1 (5) To borrow money for the purpose of acquiring, constructing,
2 reconstructing, extending, bettering, improving, or otherwise
3 paying the cost of revenue bond projects, and to issue its revenue
4 bonds or bond anticipation notes therefor, in the name of the State
5 or a municipality, as the case may be, but no encumbrance,
6 mortgage, or other pledge or real property of the State or a
7 municipality may be created in any manner. Notwithstanding the
8 foregoing, the North Carolina Low-Level Radioactive Waste
9 Management Authority may create an encumbrance, mortgage, or
10 other pledge of real property of the Authority in connection with
11 its financing of a low-level radioactive waste facility and the North
12 Carolina Hazardous Waste Management Commission may create
13 an encumbrance, mortgage, or other pledge of real property of the
14 Commission in connection with its financing of a hazardous waste
15 facility.
- 16 (6) To establish, maintain, revise, charge, and collect such rates, fees,
17 rentals, tolls, or other charges, free of any control or regulation by
18 the North Carolina Utilities Commission or any other regulatory
19 body except as provided in G.S. 159-95 for the use, services,
20 facilities, and commodities of or furnished by any revenue bond
21 project, and to provide methods of collection of and penalties for
22 nonpayment of such rates, fees, rentals, tolls, or other charges. The
23 rates, fees, rentals, tolls and charges so fixed and charged shall be
24 such as will produce revenues at least sufficient with any other
25 available funds to meet the expense and maintenance and
26 operation of and renewals and replacements to the revenue bond
27 project, including reserves therefor, to pay when due the principal,
28 interest, and redemption premiums (if any) on all revenue bonds
29 or bond anticipation notes secured thereby, and to fulfill the terms
30 of any agreements made by the State or the issuing municipality
31 with the holders of revenue bonds issued to finance all or any
32 portion of the cost of the project.
- 33 (7) To pledge all or part of any proceeds derived from the use of
34 on-street parking meters to the payment of the cost of operating,
35 maintaining, and improving parking facilities whether on-street or
36 off-street, and the principal of and the interest on revenue bonds
37 or bond anticipation notes issued for on-street or off-street parking
38 facilities.
- 39 (8) To pledge to the payment of its revenue bonds or bond
40 anticipation notes and interest thereon revenues from one or more
41 revenue bond projects and any leases or agreements to secure such
42 payment, including revenues from improvements, betterments, or
43 extensions to such projects thereafter constructed or acquired as
44 well as the revenues from existing systems, plants, works,

- 1 instrumentalities, and properties of the projects to be improved,
2 bettered, or extended.
- 3 (8a) In the case of any county, city, town, or incorporated village, to
4 make loans or advances to a municipality to provide funds to the
5 municipality to pay any costs of any revenue bond project. Funds
6 received by a municipality in reimbursement of a loan or advance
7 shall be distributed and restricted as provided in G.S. 159-27.1.
- 8 (9) To appropriate, apply, or expend for the following purposes the
9 proceeds of its revenue bonds, notes issued in anticipation thereof,
10 and revenues pledged under any resolution or order authorizing or
11 securing the bonds: (i) to pay interest on the bonds or notes and
12 the principal or redemption price thereof when due; (ii) to meet
13 reserves and other requirements set forth in the bond order or trust
14 agreement; (iii) to pay the costs of the revenue bond projects
15 authorized in the bond order, reimburse funds loaned or advanced
16 for the costs of these revenue bond projects in accordance with the
17 bond order, and provide working capital for initial maintenance
18 and operation until funds are available from revenues; (iv) to pay
19 and discharge revenue bonds and notes issued in anticipation
20 thereof; (v) to pay and discharge general obligation bonds issued
21 under Article 4 of this Chapter or under any act of the General
22 Assembly, when the revenues of the project financed in whole or
23 in part by the general obligation bonds will be pledged to the
24 payment of the revenue bonds or notes.
- 25 (10) To make and enforce rules and regulations governing the use,
26 maintenance, and operation of revenue bond projects.
- 27 (11) To accept gifts or grants of real or personal property, money,
28 material, labor, or supplies for the acquisition, construction,
29 reconstruction, extension, improvement, betterment, maintenance,
30 or operation of any revenue bond project and to make and
31 perform such agreements or contracts as may be necessary or
32 convenient in connection with the procuring or acceptance of such
33 gifts or grants.
- 34 (12) To accept loans, grants, or contributions from, and to enter into
35 contracts and cooperate with the United States of America, the
36 State of North Carolina, or any agency thereof, with respect to any
37 revenue bond project.
- 38 (13) To enter on any lands, waters, and premises for the purpose of
39 making surveys, borings, soundings, examinations, and other
40 preliminary studies for constructing and operating any revenue
41 bond project.
- 42 (14) To retain and employ consultants and other persons on a contract
43 basis for rendering professional, financial, or technical assistance
44 and advice and to select and retain subject to approval of the

1 Local Government Commission the financial consultants,
2 underwriters and bond attorneys to be associated with the issuance
3 of any bonds and to pay for services rendered by underwriters,
4 financial consultants or bond attorneys out of the proceeds of any
5 such issue with regard to which the services were performed.

6 (15) Subject to any provisions of law requiring voter approval for the
7 sale or lease of utility or enterprise systems, to lease to or from any
8 person, firm, or corporation, public or private, all or part of any
9 revenue bond project, upon such terms and conditions as and for
10 such term of years, not in excess of 40 years, (i) in the case of the
11 State, as the Council of State and (ii) in the case of a municipality,
12 as the governing board may deem advisable to carry out the
13 provisions of this Article, and to provide in such lease for the
14 extension or renewal thereof and, if deemed advisable, for an
15 option to purchase or otherwise lawfully acquire the project upon
16 terms and conditions therein specified.

17 (16) To execute such instruments and agreements and to do all things
18 necessary or therein in the exercise of the powers herein granted,
19 or in the performance of the covenants or duties of the State or a
20 municipality, as the case may be, or to secure the payment of its
21 revenue bonds."

22 Section 5. Section 3 of this act becomes effective October 1, 1997, and
23 applies to applications filed on or after that date. The remainder of this act is
24 effective when it becomes law.

EXPLANATION OF SENATE BILL 249
Proposed Committee Substitute
Bond Payment Change

TO: Senate Finance Committee
FROM: Sabra Faires, Committee Counsel
DATE: March 17, 1997
SPONSOR: Senator Bob Carpenter

Senate Bill 249 changes the laws on two types of bonds. One type is a revenue bond issued by the State or a unit of local government. The other type is a special obligation bond issued by a unit of local government for a solid waste project, such as a landfill or an incinerator. The changes made by the bill are effective when the bill becomes law, except the change that adds a new requirement for approval of a revenue bond.

Revenue Bonds

The bill makes the following changes concerning State and local revenue bonds:

1. It clarifies that State and local revenue bonds can be paid from revenues other than those generated by the asset financed with the issuance of the revenue bonds. Current law states that these bonds "shall not be payable from the general funds" of the State or issuing municipality. This language has been interpreted to mean that only revenues generated by the asset can be pledged as security for the bonds but that other funds, including general funds, can be used to pay for the bonds. (Section 1)
2. It imposes a new requirement that must be met for a proposed revenue bond to be approved by the Local Government Commission. The new requirement is a finding by the Commission that the probable net revenues of the project to be financed with the bonds, including other available funds, is sufficient to pay for the bonds. (Section 3). Current law requires the Local Government Commission to consider the stream of income to be generated by the project when deciding whether to approve the bond issue.
3. It authorizes out-of-state banks to serve as corporate trustees on revenue bond issues. (Section 4). Current law allows revenue bonds to be secured by a trust agreement but does not authorize the trustee to be located outside the State. Authorization for an out-of-state trustee is typical in bond authorizing statutes and is authorized for other bonds such as industrial development bonds and solid waste special obligation bonds.

Local Solid Waste Special Obligation Bonds

The bill makes the following changes concerning local solid waste special obligation bonds:

1. It allows a local unit that has issued a solid waste special obligation bond to pledge additional non-tax revenue in payment of the bond after the bond has been issued. (Section 2; proposed G.S. 159I-30(b)) Current law does not allow this.
2. It applies the terms and conditions that apply to security interests granted in installment financing agreements to security interests in property to be financed by a local solid waste special obligation bond. (Section 2; proposed G.S. 159I-30(b1)). Applying these criteria makes it clear that the security interest may extend to land already owned as well as the building to be financed, requires the local government to hold a public hearing before granting the security interest, and requires approval by the Local Government Commission before granting the security interest.
3. Clarifies that local solid waste special obligation bonds are secured by the non-tax funds that are pledged for their payment but can be paid from other funds.

Revenue bonds are bonds that are secured by a pledge of the revenues that will be generated by the facility to be financed. Revenue bonds may be issued without a public referendum.

In 1989, the General Assembly authorized local governments to issue special obligation bonds to finance solid waste management projects. Like a revenue bond, these special obligation bonds do not require a public referendum. A solid waste special obligation bond is secured by a pledge of designated revenues that are not derived from taxes levied by the issuing local unit, such as the amount of State franchise tax or property tax reimbursements distributed to the local unit.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 149

Short Title: Accounting for 911 Surcharges.

(Public)

Sponsors: Representatives Shubert, Blue, Cansler, Capps, Church, Neely;
Aldridge, Allred, Clary, Culp, Eddins, and Reynolds.

Referred to: Finance.

February 13, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO REQUIRE LOCAL GOVERNMENTS TO ACCOUNT FOR 911
3 SURCHARGES IN THEIR ANNUAL FINANCIAL STATEMENTS.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 62A-7 reads as rewritten:

6 "**§ 62A-7. Emergency Telephone System Fund.**

7 The fiscal officer to whom 911 charges are remitted under G.S. 62A-6 shall deposit
8 the charges in a ~~separate, restricted fund~~; special revenue fund pursuant to G.S. 159-
9 26(b)(2). The Fund shall be known as the Emergency Telephone System Fund. The
10 fiscal officer may invest money in the Fund in the same manner that other money of
11 the local government may be invested. The fiscal officer shall deposit any income
12 earned from such an investment in the Emergency Telephone System Fund."

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

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

March 18, 1997

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Nancy Pomeroy	DOT
Alan Miles	Barley & Dixon LLP
John Wilson	WPA
W McBride	HOVA
Floyd M. Lewis	General Statutes Commission
P. Bay Neel	ditto
William L	DOR
DAVE CROSS	FISCAL RESEARCH
Patricia Rensen	NCAC
Patti Jewell	DOR

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

March 18, 1997

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
David Simmons	Zels Alley, PA
Jane B. Gray	DOJ
Russ Hinkley	Wachovia Bank
Jim Felt	NC AFI
Nancy Bradley	NCCBI
Leslie Bueger	NCCBI
Alice Garland	Electric City
John Bowditch	Zels Alley PA.
Bob Hilt	State Trans.
Ed Regan	NC A. C. C.
John H.	JOR

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

FINANCE COMMITTEE REPORT

Senator David Hoyle, Co-Chair
Senator John Kerr, Co-Chair

Tuesday, March 18, 1997

SENATOR HOYLE,
submits the following with recommendations as to passage:

FAVORABLE

H.B. 149 Account For 911 Surcharge
 Sequential Referral: None
 Recommended Referral: None

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B. 249 Bond Payment Change
 Draft Number: PCS2596
 Sequential Referral: None
 Recommended Referral: None
 Long Title Amended: Yes

TOTAL REPORTED: 2

Committee Clerk Comment:

SENATE FINANCE COMMITTEE

WEDNESDAY, MARCH 19, 1997

12 NOON - ROOM 544 LOB

The Senate Finance Committee met on March 19, 1997, with Senator Kerr presiding. There were 23 committee members present.

The following bills were heard:

S.B. 262 - Huntersville Annexation Agreement

Senator Odom was recognized to explain S.B. 262. Copy of Bill and Fiscal Note included in the minutes. Senator Ballantine moved for a "favorable" report for this bill and the motion carried.

S.B. 198 - Henderson County Annexation Agreements

Senator Jenkins was recognized to explain S.B. 198. Copy of Bill included in the minutes. Senator McDaniel moved for a "favorable" report for this bill and the motion carried.

S.B. 388 - No Back Intangible Tax Assessment

Senator Hoyle was recognized to explain S.B. 388. Copy of Bill, Explanation and Fiscal Note included in the minutes. Senator Dannelly moved for a "favorable" report. This motion was held until after discussion of the bill by the committee members. Senator Webster offered an amendment to the bill and on vote, the amendment failed to pass. At the conclusion of the discussion, Senator Dannelly's motion for a "favorable" report was approved by the committee.

H.B. 248 - Graduated Drivers License

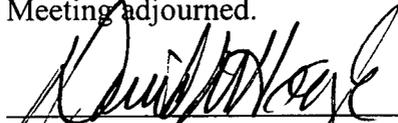
This bill is identical to S.B.149 and Representative Clary was recognized to explain her H.B. 248. Copy of Bill, Senate Committee Substitute, Explanation, Information on the Bill, S.B.149 and Fiscal Note for S.B. 149 included in the minutes. Senator Cooper was recognized for a motion that the senate substitute for H.B. 248 be adopted and the motion carried. Senator Cooper was then recognized to explain the differences in the two bills. At the conclusion of Senator Cooper's explanation, there was a general discussion of this bill with questions from the committee members to both bill sponsors and staff.

Ms. Ruth Sappie, Legislative Liaison for DOT, and Mr. Tony Spence, Assistant Director of the Drivers License Section of DMV, were recognized to answer questions from the committee members. At the conclusion of this general discussion, Senator Kerr announced that this bill would not be voted on today as there were several concerns that needed to be addressed.

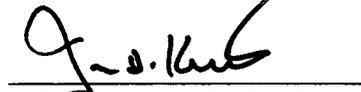
Senator Kerr introduced Jeremiah Newman, page, who had asked to speak to the committee. Mr. Newman voiced his support of this bill and stated that he had been involved in a wreck only 5 days after he had received his license in the State of Texas. He told the committee that he felt that 17 would be an adequate age for teenagers to receive licenses.

Senator Cooper told the committee that he had recently addressed a youth group at church who had suggested that he pick on somebody who could vote.

Meeting adjourned.



David W. Hoyle, Co-Chair
Senate Finance Committee



John H. Kerr, III, Co-Chair
Senate Finance Committee



Penny N. Williams, Clerk



Evelyn S. Hartsell, Clerk

NOTE:

Agenda is Attachment # 1
Visitors' Sign Up Sheet is Attachment # 2
Committee Report is Attachment # 3

AGENDA

SENATE FINANCE COMMITTEE

Wednesday, March 19, 1997

12 Noon - Room 544

S.B. 198 - Henderson County Annexation Agreements - Sen. Jenkins

S.B. 262 - Huntersville Annexation Agreement - Sen. Odom

S.B. 149 - Graduated Drivers License - Sen. Cooper

H.B. 248 - Graduated Drivers License - Rep. Clary

S.B. 388 - No Back Intangibles Tax Assessment - Sen. Hoyle

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 262*

Short Title: Huntersville Annexation Agreement.

(Local)

Sponsors: Senator Odom.

Referred to: Finance.

February 27, 1997

- 1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE THE TOWN OF HUNTERSVILLE TO ENTER INTO
3 AN AGREEMENT FOR PAYMENTS IN LIEU OF ANNEXATION.
4 The General Assembly of North Carolina enacts:
5 Section 1. Notwithstanding any applicable provision of the General
6 Statutes or any other public or local law, the Town of Huntersville is granted certain
7 contract powers as follows:
8 (1) The Town of Huntersville may, by agreement, provide that certain
9 property described in the agreement as the "McGuire Nuclear
10 Station Property" may not be involuntarily annexed by the Town
11 prior to December 31, 2027, under the General Statutes as they
12 now exist or may be subsequently amended. The Town of
13 Huntersville shall not seek to repeal this act upon its approval by
14 the General Assembly. Nothing in this act impairs the right of the
15 General Assembly to annex any such property by special local act.
16 (2) Any agreement entered into as provided in subdivision (1) of this
17 section is specifically determined to be consistent with the public
18 policy of the State of North Carolina.
19 (3) Any agreement entered into as provided in subdivision (1) of this
20 section is a continuing agreement and is binding on and
21 enforceable against the current and future members of the Board
22 of Commissioners of the Town of Huntersville during the full term
23 of such agreement and any extension thereof.

1 87-51 W-341.6 feet to a stake; thence S72-56'W-662.7 feet to a stake; thence N13-
2 47'W-363.2 feet to an iron pin; thence S 62-54 W-375.0 feet to an iron pin; thence S
3 59-08 W-797.9 feet to an iron pipe; thence S 17-17 W-1048.5 feet to an iron pin in an
4 old road bed; thence following the old road bed S-81-46 E-232.6 feet to an iron pin;
5 thence S 88-02 E-614.5 feet to the centerline of Cashion Road; thence with Cashion
6 Road S 41-23 W-42.5 feet to an iron pin; thence S 58-52 W-317.6 feet to an iron pin;
7 thence S 55-13 W-212.0 feet to an iron pin; thence S 52-39 W-136.4 feet to an iron
8 pin; thence S 39-21 W-115.4 feet to an iron pin; thence S 27-28 W-374.7 feet to an
9 iron pin; thence S 33-29 W-191.2 feet to an iron pipe in the centerline of road; thence
10 leaving Cashion Road S 79-04 W-1003.2 feet to a bolt; thence S 52-29'E-499.0 feet to
11 a hickory; thence S 24-27 W-369.0 feet to a hickory; thence N 88-34 W 2484.4 feet to
12 a point; thence S 4-24 E 488.0 feet to a hickory; thence N 88-34 W 2484.4 feet to a
13 point; thence S 4-24 E 488.0 feet to an iron pipe; thence S 31-08 W 33.5 feet to an
14 iron pipe; thence S 26-31-50 E 81.29 feet to a point; thence S 11-18-01 E 140.80 feet
15 to a point; thence S 36-40-59 E 85.20 feet to a point; thence S 54-46-13 E 99.3 feet to
16 a point; thence S 48-26-06 E 165.1 feet to a point; thence S 78-47-39 W 44.3 feet to a
17 point; thence N 70-23-55 W 64.0 feet to a point; thence N 62-38-07 W 119.2 feet to a
18 point; thence N 46-16-58 W 115.6 feet to a point; thence S 20-53-48 W 64.2 feet to a
19 point; thence S 72-56-18 W 69.8 feet to a point; thence N 17-25-07 W 60.8 feet to a
20 point; thence N 41-16-04 90. feet to a point; thence S 31-08 W 117.0 feet to a point;
21 thence S 6-57-15 E 121.0 feet to a point; thence S 38-21-58 E 154.8 feet to a point;
22 thence S 31-49-57 E 128.6 feet to a point; thence S 21-44-01 E 150.1 feet to a point;
23 thence S 24-46-05 E 163.0 feet to a point; thence S 20-00-04 E 152.5 feet to a point;
24 thence S 13-33-03 E 115.1 feet to a point; thence S 10-37-00 E 135.7 feet to a point;
25 thence S 3-15-45 W 80.3 feet to a point; thence S 1-48-59 E 87.7 feet to a point;
26 thence S 81-29-08 E 141.3 feet to a point; thence S 86-05-51 E 126.8 feet to a point;
27 thence N 35-45-45 E 77.0 feet to a point; thence N 4-18-05 W 95.6 feet to a point;
28 thence N 28-03-50 W 120.2 feet to a point; thence N 34-32-57 W 142.6 feet to a point;
29 thence N 7-27-12 W 208.3 feet to a point; thence S 74-55-06 E 128.4 feet to a point;
30 thence N 70-39-55 E 214.3 feet to a point; thence S 34-57-12 E 85.2 feet to a point;
31 thence S 14-09-08 W 120.9 feet to a point; thence S 36-38-57 W 142.8 feet to a point;
32 thence S 43-56-01 E 90.8 feet to a point; thence S 09-24-14 E 135.5 feet to a point;
33 thence S 05-20-06 E 81.2 feet to a point; thence S 26-38-06 W 102.7 feet to a point;
34 thence S 6-48-38 E 40.9 feet to a point; thence S 58-54-04 E 211.7 feet to a point;
35 thence S 88-34 13 E 102.0 feet to a point; thence S 38-39-48 E 73.8 feet to a point;
36 thence S 1-21-43 E 85.0 feet to a point; thence S 62-52-04 E 149.1 feet to a point;
37 thence S 4-42-28 E 27.3 feet to a point; thence S 87-41-57 W 2089.2 feet to a point in
38 the Catawba River (Mecklenburg/Lincoln County Line); thence with the
39 Mecklenburg/Lincoln County line 12,055 feet to the point of BEGINNING.

40 Section 4. No portion of the McGuire Nuclear Station Property shall be
41 subject to involuntary annexation, or designation as an urban tax district or otherwise
42 subjected to the power of a municipal taxing authority by Huntersville or any other
43 town or municipality or consolidated government during the term of the agreement
44 referenced in Section 1 of this act.

1

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

FISCAL ANALYSIS MEMORANDUM

DATE: March 18, 1997
TO: Senate Finance Committee
FROM: Warren Plonk
Fiscal Research Division
RE: Senate Bill 262

FISCAL IMPACT

	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 1997-98</u>	<u>FY 1998-99</u>	<u>FY 1999-00</u>	<u>FY 2000-01</u>	<u>FY 2001-02</u>
REVENUES					
Huntersville GF	\$333,333	\$333,333	\$333,333	\$333,333	\$333,333

**PRINCIPAL DEPARTMENT(S) &
PROGRAM(S) AFFECTED:** Huntersville Property Tax Collections

EFFECTIVE DATE: Upon Ratification

BILL SUMMARY: Through local act the town of Huntersville and Duke Power, the owner of the McGuire Nuclear Station, agree that the nuclear station property may not be involuntarily annexed by Huntersville before December 31, 2027. The town is allowed to accept certain payments in lieu of taxes.

ASSUMPTIONS AND METHODOLOGY:

According to the Agreement for Payment in Lieu of Taxes dated the third day of October 1996; both parties agreed that the tax equivalent payments made by Duke Power to the town of Huntersville shall be made on or before the 30th day of June, beginning in 1996 and extending for thirty consecutive calendar year. The payment is a fixed amount equal to \$333,333.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 198

Short Title: Henderson Co. Annexation Agreements.

(Local)

Sponsors: Senators Jenkins; and Carpenter.

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

February 20, 1997

- 1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE THE CITY OF HENDERSONVILLE AND THE
3 TOWN OF LAUREL PARK TO ENTER INTO ANNEXATION AND
4 PAYMENT IN LIEU OF TAX AGREEMENTS WITH THE OWNERS OF
5 CERTAIN CLASSES OF MANUFACTURING PROPERTIES.
6 The General Assembly of North Carolina enacts:
7 Section 1. A city may, by written agreement approved by the governing
8 board, provide that certain manufacturing industrial property described in the
9 agreement may not be annexed by the city under Part 2 or 3 of Article 4A of Chapter
10 160A of the General Statutes for a period not to exceed 20 years from the effective
11 date of the agreement.
12 Section 2. The consideration flowing to the city under an agreement
13 authorized by Section 1 of this act shall be annual payments in lieu of taxes. The
14 payments shall be negotiated by the city and the industry involved. Consideration
15 may be given to the economic benefits to the city that are derived from said industry,
16 the number of employees, and the potential for future growth and expansion.
17 Section 3. Nothing in this act impairs the right of the General Assembly
18 to annex any property by specific local act.
19 Section 4. This act applies only to the City of Hendersonville and the
20 Town of Laurel Park.
21 Section 5. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 388

Short Title: No Back Intangibles Tax Assessment.

(Public)

Sponsors: Senators Hoyle, Kerr; and Foxx.

Referred to: Finance.

March 13, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO PROHIBIT THE ASSESSMENT OF INTANGIBLES TAX FROM
3 TAXPAYERS WHO BENEFITED FROM THE TAXABLE PERCENTAGE
4 DEDUCTION IN THE FORMER INTANGIBLES TAX STATUTE.

5 Whereas, former G.S. 105-203 (repealed) imposed an intangibles tax on
6 shares of stock and provided a taxable percentage deduction reducing a taxpayer's
7 liability for this tax in proportion to the issuing company's income taxed in North
8 Carolina; and

9 Whereas, the United States Supreme Court in "Fulton Corporation v.
10 Faulkner" held the taxable percentage deduction to discriminate against interstate
11 commerce in violation of the United States Constitution and remanded the case to
12 the Supreme Court of North Carolina to address the remedy appropriate to redress
13 the constitutional violation; and

14 Whereas, the Supreme Court of North Carolina in "Fulton Corporation
15 v. Faulkner" (on remand) held that the taxable percentage deduction was severable
16 from former G.S. 105-203, thereby exposing all taxpayers to liability for taxation
17 under G.S. 105-203, including those who were not required to pay the tax on shares
18 of stock, in whole or in part, by virtue of the taxable percentage deduction; and

19 Whereas, the Secretary of Revenue has been advised by the Attorney
20 General that the Supreme Court of North Carolina's decision requires assessment and
21 collection of intangibles tax from taxpayers who received the benefit of the taxable
22 percentage deductions in former G.S. 105-203, unless the General Assembly directs
23 otherwise; and

1 Whereas, the Supreme Court of North Carolina provided in "Fulton
2 Corporation v. Faulkner" (on remand) that "[w]hether to enforce the tax as to all
3 shareholders is within the province of the General Assembly"; Now, therefore,

4 The General Assembly of North Carolina enacts:

5 Section 1. The Secretary of Revenue shall take no action to assess or
6 collect intangibles tax from any taxpayer for liability arising solely from the taxpayer's
7 use of the taxable percentage deductions in former G.S. 105-203 (repealed) for one or
8 more of the tax years from 1990 through 1994.

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

EXPLANATION OF SENATE BILL 388
No Back Intangibles Tax Assessment

TO: Senate Finance Committee
FROM: Sabra Faires, Committee Counsel
DATE: March 19, 1997
SPONSOR: Senator John Kerr

Senate Bill 388 directs the Secretary of Revenue to take no action to collect or assess back intangibles tax for tax years 1990 through 1994. The Secretary is preparing to take this action upon the advice of the Attorney General's Office on the effect of the decision of the North Carolina Supreme Court in the Fulton case.

The Fulton case held that the taxable percentage deduction in the North Carolina intangible tax on stock violated the commerce clause by discriminating against out-of-state companies. The deduction reduced a taxpayer's liability for the tax in proportion to the amount of business the corporation did in North Carolina.

The court decision did not order refunds. Instead, it allowed the possibility of curing the past discrimination by the assessment of intangibles tax on those who did not pay in reliance on the unconstitutional taxable percentage deduction. This bill forecloses the possibility of assessments on those who relied on the taxable percentage deduction.

The Fulton case is still active. A petition for rehearing at the North Carolina Supreme Court was filed last Friday, March 15.

**NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE**

BILL NUMBER: SB 388
SHORT TITLE: NO BACK INTANGIBLES TAX ASSESSMENT
SPONSOR(S): SEN. HOYLE AND KERR

FISCAL IMPACT

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

FY 1997-98 FY 1998-99 FY 1999-00 FY 2000-01 FY 2001-02

REVENUES

EXPENDITURES

POSITIONS:

**PRINCIPAL DEPARTMENT(S) &
PROGRAM(S) AFFECTED:** Department of Revenue.

EFFECTIVE DATE: When the bill becomes law.

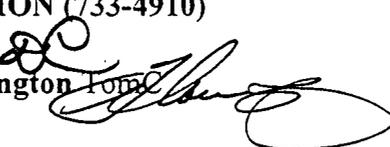
BILL SUMMARY: Directs the Secretary of Revenue to not assess or collect intangibles tax from any taxpayer for liability arising solely from the taxpayer's use of the exemption for North Carolina shares of stock during the 1990-94 tax years.

ASSUMPTIONS AND METHODOLOGY:

The potential for the Department to assess and collect the tax resulted from the recent **Fulton** case. A couple of years ago the Department of Revenue estimated that eliminating the exemption for N.C. shares of stock would generate \$55-75 million annually, assuming that the Department could collect all of the tax. The 1995 General Assembly repealed the tax so the issue was moot until the **Fulton** decision. As a practical matter it would be difficult for the Department of Revenue to discover and value taxable shares in closely-held corporations because there is no public information on these holdings. Therefore, we are unable to develop a reliable estimate of the fiscal impact of this bill.

FISCAL RESEARCH DIVISION (733-4910)

PREPARED BY: Dave Crofts

APPROVED BY: Tom Covington 

DATE: March 20, 1997

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

4

HOUSE BILL 248*
Committee Substitute Favorable 2/19/97
Committee Substitute #2 Favorable 2/27/97
Fourth Edition Engrossed 3/10/97

Short Title: Graduated Drivers Licenses.

(Public)

Sponsors:

Referred to:

February 17, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO IMPLEMENT GRADUATED DRIVERS LICENSES.

3 The General Assembly of North Carolina enacts:

4 Section 1. G.S. 20-11 reads as rewritten:

5 "§ 20-11. Application of minors. Issuance of limited learner's permit and provisional
6 drivers license to person who is less than 18 years old.

7 ~~(a) The Division shall not grant the application of any minor between the ages of~~
8 ~~16 and 18 years for a driver's license or a learner's permit unless such application is~~
9 ~~signed both by the applicant and by the parent, guardian, husband, wife or employer~~
10 ~~of the applicant, or, if the applicant has no parent, guardian, husband, wife or~~
11 ~~employer residing in this State, by some other responsible adult person. It shall be~~
12 ~~unlawful for any person to sign the application of a minor under the provisions of~~
13 ~~this section when such application misstates the age of the minor and any person~~
14 ~~knowingly violating this provision shall be guilty of a Class 2 misdemeanor.~~

15 ~~The Division shall not grant the application of any minor between the ages of 16~~
16 ~~and 18 years for a driver's license unless such minor presents evidence of having~~
17 ~~satisfactorily completed the driver training and safety education courses offered at the~~
18 ~~public high schools as provided in G.S. 20-88.1 or upon having satisfactorily~~
19 ~~completed a course of driving instruction offered at a licensed commercial driver~~
20 ~~training school or an approved nonpublic secondary school, provided instruction~~
21 ~~offered in such schools shall be approved by the State Commissioner of Motor~~

~~1 Vehicles and the State Superintendent of Public Instruction and all expenses for such
2 instruction shall be paid by the persons enrolling in such courses and/or by the
3 schools offering them.~~

~~4 (b) The Division may issue a limited learner's permit to a minor who is at least 15
5 years old but is less than 16 years old and who otherwise meets the requirements of
6 this section. An application for a limited learner's permit must be signed by both the
7 applicant and the applicant's parent or guardian or some other responsible adult with
8 whom the applicant resides and who is approved by the Division. A limited learner's
9 permit authorizes the permit holder to drive a specified type or class of motor vehicle
10 while in possession of the permit and accompanied by a parent, guardian, or other
11 person approved by the Division who is licensed to operate the motor vehicle being
12 driven and is seated beside the permit holder. A limited learner's permit is valid for
13 a period of 18 months. The fee for a limited learner's permit is ten dollars (\$10.00).
14 In the event a minor who holds a limited learner's permit drives a motor vehicle in
15 violation of law, the permit shall be canceled.~~

~~16 A driver who holds a limited learner's permit only shall not be deemed a licensed
17 driver for the purpose of determining the inexperienced operator premium surcharge
18 under automobile insurance policies.~~

~~19 (e) The Division may, upon satisfactory proof that a minor between the ages of 16
20 and 18 years has become a resident of North Carolina and holds a valid motor
21 vehicle driver's drivers license from his prior state of residence but has not completed
22 a course in driver education which meets the requirements of this State, grant to such
23 minor a temporary driver's permit under such terms and conditions as shall be
24 deemed necessary by the Division to allow the minor to operate a motor vehicle of a
25 specified type or class in this State in order to obtain the driver education courses
26 necessary for license in North Carolina. Every application for a temporary driver's
27 permit shall be made upon the approved form furnished by the Division. A
28 temporary driver's permit issued pursuant to this section shall be subject to all
29 provisions of law relating to a driver's license.~~

~~30 (a) Process. -- Safe driving requires instruction in driving and experience. To
31 ensure that a person who is less than 18 years old has both instruction and experience
32 before obtaining a drivers license, driving privileges are granted first on a limited
33 basis and are then expanded in accordance with the following process:~~

- ~~34 (1) Level 1: Driving with a limited learner's permit.
35 (2) Level 2: Driving with a limited provisional license.
36 (3) Level 3: Driving with a full provisional license.~~

~~37 The permits and licenses will bear a distinctive color photographic background or
38 border indicating the level of driving experience of the permit holder or licensee.~~

~~39 (b) Level 1. -- A person who is at least 15 years old but less than 18 years old may
40 obtain a limited learner's permit if the person meets all of the following
41 requirements:~~

- ~~42 (1) Passes a course of driver education prescribed in G.S. 20-88.1 or a
43 course of driver instruction at a licensed commercial driver
44 training school.~~

- 1 (2) Passes a written test administered by the Division.
- 2 (c) Level 1 Restrictions. -- A limited learner's permit authorizes the permit holder
3 to drive a specified type or class of motor vehicle only under the following
4 conditions:
- 5 (1) The holder of the permit must be in possession of the permit.
6 (2) A supervising driver must be seated beside the permit holder in
7 the front seat of the vehicle when it is in motion. No person other
8 than the supervising driver can be in the front seat.
9 (3) For the first six months after issuance, the permit holder may drive
10 only between the hours of 5:00 a.m. and 10:00 p.m.
11 (4) After the first six months after issuance, the permit holder may
12 drive at any time.
13 (5) Every person occupying the vehicle being driven by the permit
14 holder must have a safety belt properly fastened about his or her
15 body, or be restrained by a child passenger restraint system as
16 provided in G.S. 20-137.1(a), when the vehicle is in motion.
- 17 (d) Level 2. -- A person who is at least 16 years old but less than 18 years old may
18 obtain a limited provisional license if the person meets all of the following
19 requirements:
- 20 (1) Has held a limited learner's permit issued by the Division for at
21 least 12 months.
22 (2) Has not been convicted of a motor vehicle moving violation or seat
23 belt infraction during the preceding 12 months.
24 (3) Passes a road test administered by the Division.
- 25 (e) Level 2 Restrictions. -- A limited provisional license authorizes the license
26 holder to drive a specified type or class of motor vehicle only under the following
27 conditions:
- 28 (1) The license holder must be in possession of the license.
29 (2) The license holder may drive without supervision from 5:00 a.m. to
30 10:00 p.m. and when driving to or from work.
31 (3) The license holder may drive with supervision at any time. When
32 the license holder is driving with supervision, the supervising
33 driver must be seated beside the license holder in the front seat of
34 the vehicle when it is in motion. The supervising driver need not
35 be the only other occupant of the front seat, but must be the
36 person seated next to the license holder.
37 (4) Every person occupying the vehicle being driven by the license
38 holder must have a safety belt properly fastened about his or her
39 body, or be restrained by a child passenger restraint system as
40 provided in G.S. 20-137.1(a), when the vehicle is in motion.
- 41 (f) Level 3. -- A person who is at least 16 years old but less than 18 years old may
42 obtain a full provisional license if the person meets all of the following requirements:
43 (1) Has held a limited provisional license issued by the Division for at
44 least six months.

1 (2) Has not been convicted of a motor vehicle moving violation or seat
2 belt infraction during the preceding six months.

3 A person who meets these requirements may obtain a full provisional license by mail.

4 (g) Level 3 Restrictions. -- The restrictions on Level 1 and Level 2 drivers
5 concerning time of driving, supervision, and passenger limitations do not apply to a
6 full provisional license.

7 (h) Out-of-State Exceptions. -- A person who is at least 16 years old but less than
8 18 years old, who was a resident of another state and has an unrestricted drivers
9 license issued by that state, and who becomes a resident of this State may obtain one
10 of the following:

11 (1) A temporary permit, if the person has not completed a drivers
12 education program that meets the requirements of the State
13 Superintendent of Public Instruction but is currently enrolled in a
14 drivers education program that meets these requirements. A
15 temporary permit is valid for the period specified in the permit.
16 The period must end within 10 days after the expected completion
17 date of the drivers education program in which the applicant is
18 enrolled.

19 (2) A full provisional license, if the person has completed a drivers
20 education program that meets the requirements of the State
21 Superintendent of Public Instruction, has held the license issued by
22 the other state for at least 12 months, and has not been convicted
23 of an offense for which points are assessed under G.S. 20-16 during
24 the preceding 12 months.

25 (3) A limited provisional license, if the person has completed a drivers
26 education program that meets the requirements of the State
27 Superintendent of Public Instruction, but either did not hold the
28 license issued by the other state for at least 12 months or was
29 convicted of an offense for which points are assessed under G.S.
30 20-16 during the preceding 12 months.

31 (i) Application. -- An application for a permit or license authorized by this section
32 must be signed by both the applicant and by the applicant's parent or guardian or, if
33 a parent or guardian is not available, by an adult approved by the Division.

34 (j) Duration and Fee. -- A limited learner's permit expires on the eighteenth
35 birthday of the permit holder. A limited provisional license expires on the eighteenth
36 birthday of the license holder. A full provisional license expires on the date set under
37 G.S. 20-7(f). The fee for a permit or license issued under this section is ten dollars
38 (\$10.00).

39 (k) Supervising Driver. -- The supervising driver must be the parent or guardian
40 of the permit holder or the license holder or, if a parent or guardian is not available,
41 an adult approved by the Division. The supervising driver must be a licensed driver
42 who has been licensed to drive for at least five years.

1 (1) Insurance Status. -- The holder of a limited learner's permit is not considered a
2 licensed driver for the purpose of determining the inexperienced operator premium
3 surcharge under automobile insurance policies."

4 Section 2. G.S. 20-135.2A(a) reads as rewritten:

5 "(a) Each front seat occupant who is 16 years of age or older and each driver of a
6 passenger motor vehicle manufactured with seat safety belts in compliance with
7 Federal Motor Vehicle Safety Standard No. 208 shall have such a safety belt properly
8 fastened about his body at all times when the vehicle is in forward motion on a street
9 or highway in this State. Each driver of a passenger motor vehicle manufactured with
10 seat safety belts in compliance with Federal Motor Vehicle Safety Standard No. 208,
11 who is transporting in the front seat a person who is (1) under 16 years of age and (2)
12 not required to be restrained in accordance with G.S. 20-137.1, shall have the person
13 secured by such a safety belt at all times when the vehicle is operated in forward
14 motion on a street or highway in this State. Persons required to be restrained in
15 accordance with ~~G.S. 20-137.1~~ G.S. 20-11 and G.S. 20-137.1 shall be secured as
16 required by ~~that section.~~ those sections."

17 Section 3. G.S. 20-88.1(a) reads as rewritten:

18 "(a) In accordance with criteria and standards approved by the State Board of
19 Education, the State Superintendent of Public Instruction shall organize and
20 administer a program of driver education to be offered at the public high schools of
21 this State for all physically and mentally qualified persons who (i) are older than 14
22 years and six months, (ii) are approved by the principal of the school, pursuant to
23 rules adopted by the State Board of Education, (iii) are enrolled in a public or
24 private high school within the State, and (iv) have not previously enrolled in the
25 program. The State Board of Education shall use for such purpose all funds
26 appropriated to it for said purpose, and may use all other funds that become available
27 for its use for said purpose. ~~The~~

28 The driver education program established pursuant to this section shall include
29 instructions the following:

30 (1) Instruction on the rights and privileges of the handicapped and the
31 signs and symbols used to assist the handicapped relative to motor
32 vehicles, including the "international symbol of accessibility" and
33 other symbols and devices as provided in Article 2A of this
34 Chapter. ~~In addition, this program shall include at~~

35 (2) At least six hours of instruction on the offense of driving while
36 impaired and related subjects.

37 (3) At least six hours of actual driving experience."

38 Section 4. G.S. 20-322(b) reads as rewritten:

39 "(b) Regulations adopted by the Commissioner shall state the requirements for a
40 school license, including requirements concerning location, equipment, courses of
41 instruction, instructors, financial statements, schedule of fees and charges, character
42 and reputation of the operators, insurance, bond or other security in such sum and
43 with such provisions as the Commissioner deems necessary to protect adequately the
44 interests of the public, and such other matters as the Commissioner may prescribe.

1 All driver training and safety education courses and courses of driving instruction
2 must include at least six hours of actual driving experience."

3 Section 5. G.S. 20-7(a1) reads as rewritten:

4 "(a1) Motorcycles and Mopeds. -- To drive a motorcycle, a person must have a
5 either a full provisional license issued under G.S. 20-11 or a regular drivers license
6 issued under this section and a motorcycle endorsement. To obtain a motorcycle
7 endorsement, a person must demonstrate competence to drive a motorcycle by
8 passing a road test and a written or oral test concerning a motorcycle and must pay
9 the fee for a motorcycle endorsement. Neither a drivers license nor a motorcycle
10 endorsement is required to drive a moped."

11 Section 6. This act does not appropriate funds to the Division to
12 implement this act nor does it obligate the General Assembly to appropriate funds to
13 implement this act.

14 Section 7. This act becomes effective December 1, 1997, if the General
15 Assembly appropriates the necessary funds from the Highway Fund to the
16 Department of Transportation, Division of Motor Vehicles, to administer the
17 provisional license program. The act does not apply to any person who holds a valid
18 North Carolina limited learner's permit issued before the effective date of this act, a
19 valid North Carolina learner's permit issued before the effective date of this act, or
20 who is a provisional licensee holding a valid North Carolina drivers license issued
21 before the effective date of this act.

EXPLANATION OF HOUSE BILL 248:
Graduated Drivers Licenses
Proposed Senate Finance Committee Substitute

TO: Senate Finance Committee
FROM: Sabra Faires, Committee Counsel
DATE: March 19, 1997
SPONSOR: Representative Clary

House Bill 248 is a companion to Senate Bill 149, introduced by Senator Cooper. It changes the way in which drivers licenses are issued to persons under 18 years of age. The bill is a recommendation of the Child Fatality Task Force. The Task Force found that safe driving requires instruction in driving and experience. To ensure that a person who is less than 18 years of age has both instruction and experience before obtaining a drivers license, the bill provides that driving privileges would be granted on a graduated basis as follows:

- 1) Driving for at least 12 months with a limited learners permit.
- 2) Driving for at least 6 months with a limited provisional license.
- 3) Driving until the age of 18 with a provisional license.

The act becomes effective December 1, 1997, but will not apply to persons who have a valid limited learner's permit, learner's permit, or provisional drivers license (16-18 years old) prior to the effective date.

Under present law, a person who is at least 15 years of age may be granted a limited learner's permit if the person has completed a driver's education program. A person who is at least 16 years of age may be granted a learner's permit without the necessity of completing a driver's education program. The holder of a limited learner's permit and a learner's permit may only drive when accompanied by a parent, guardian, or other person approved by the Division of Motor Vehicles who is licensed to operate the motor vehicle. That person must be seated beside the permit holder. A person who is at least 16 years of age, but less than 18 years of age, may obtain a drivers license if the person has completed a driver's education program. A person between the ages of 16 and 18 years old who holds a driver's license (known as a provisional licensee), is not subject to any supervision restrictions.

House Bill 248 would change the current law in the following ways:

- 1) It would require driver education programs to include at least six hours of actual driving experience.
- 2) It would require all licensed drivers under the age of 18 to drive under a limited learner's permit for at least 12 months.
- 3) It would place the following restrictions on a driver with a limited learner's permit:
 - Supervised driving between the hours of 5:00 am and 9:00 pm for the first six months.
 - Supervised driving at any time following the first six months.

- The supervisor must be a parent, guardian, or other person approved by the Division has been licensed to drive for at least five years.
 - The supervisor may be the only other person in the front seat of the vehicle.
 - All passengers must be wearing a seat belt.
- 4) It would provide a new level of license known as a limited provisional license. To obtain a limited provisional license, a person must have possessed a Level 1 limited learner's permit for at least 12 months with no moving violations or seat belt violations. It would place the following restrictions on a driver with a limited provisional license:
- May drive unsupervised from 5:00 am until 9:00 pm, when going to and coming from work, and when going to and from volunteer fire and rescue activities.
 - May drive under supervision at any time. The supervisor must sit next to the driver, but the supervisor need not be the only other occupant of the front seat.
 - All passengers must be wearing a seat belt.
- 5) The third level, known as a full provisional license, would be comparable to a provisional license under current law. To obtain a full provisional license, a person must have possessed a Level 2 limited provisional license for a period of at least 6 months with no moving violations or seat belt infractions. A full provisional licensee may drive unsupervised at any time.
- 6) It would give the Division of Motor Vehicles three choices when a person between the ages of 16 and 18 years of age, who becomes a resident of North Carolina and holds a valid unrestricted drivers license from the prior state of residence, applies for a North Carolina drivers license. Under current law, if that driver has not completed a course in driver education which meets the requirements of this State, the Division may grant a temporary driver's permit under terms and conditions deemed necessary to allow the minor to operate a motor vehicle in order to obtain the driver education courses necessary for a North Carolina provisional license. Under the changes made by this bill, DMV would be able to do one of three things:
- It may issue a temporary driver's permit to allow the driver to obtain the driver education. This option is the same as the current law.
 - It may issue a graduated license appropriate to the driver's age and experience as provided by G.S. 20-11.
 - It may issue an unrestricted drivers license if the person has possessed a valid unrestricted drivers license in his previous state for the 12 month period immediately preceding the date of application and has not been convicted of a traffic violation for which points might be assessed under the Uniform Driver's License Act.
- 7) The fee for obtaining a limited provisional license is \$10.00. The fee for obtaining a full provisional license is the same as current law. Under current law, there is only one license to obtain and the cost for obtaining it is \$2.50 for each year.
- 8) It authorizes the Division of Motor Vehicles to issue a motorcycle learner's permit and restricts those who have this permit from driving a motorcycle with passengers.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

HOUSE BILL 248*
Committee Substitute Favorable 2/19/97
Committee Substitute #2 Favorable 2/27/97
Fourth Edition Engrossed 3/10/97
Proposed Senate Finance Committee Substitute
H248-PCS-LJX-3/19

Short Title: Graduated Drivers License.

(Public)

Sponsors:

Referred to:

February 17, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO IMPLEMENT GRADUATED DRIVERS LICENSES AND MOTORCYCLE
3 LEARNERS' PERMITS.
4 The General Assembly of North Carolina enacts:
5 Section 1. G.S. 20-11 reads as rewritten:
6 "§ 20-11. Application of minors. Issuance of limited learner's
7 permit and provisional drivers license to person who is less than
8 18 years old.
9 ~~(a) The Division shall not grant the application of any minor~~
10 ~~between the ages of 16 and 18 years for a driver's license or a~~
11 ~~learner's permit unless such application is signed both by the~~
12 ~~applicant and by the parent, guardian, husband, wife or employer~~
13 ~~of the applicant, or, if the applicant has no parent, guardian,~~
14 ~~husband, wife or employer residing in this State, by some other~~
15 ~~responsible adult person. It shall be unlawful for any person to~~
16 ~~sign the application of a minor under the provisions of this~~
17 ~~section when such application misstates the age of the minor and~~
18 ~~any person knowingly violating this provision shall be guilty of~~
19 ~~a Class 2 misdemeanor.~~

~~1 The Division shall not grant the application of any minor
2 between the ages of 16 and 18 years for a driver's license unless
3 such minor presents evidence of having satisfactorily completed
4 the driver training and safety education courses offered at the
5 public high schools as provided in G.S. 20-88.1 or upon having
6 satisfactorily completed a course of driving instruction offered
7 at a licensed commercial driver training school or an approved
8 nonpublic secondary school, provided instruction offered in such
9 schools shall be approved by the State Commissioner of Motor
10 Vehicles and the State Superintendent of Public Instruction and
11 all expenses for such instruction shall be paid by the persons
12 enrolling in such courses and/or by the schools offering them.~~

~~13 (b) The Division may issue a limited learner's permit to a
14 minor who is at least 15 years old but is less than 16 years old
15 and who otherwise meets the requirements of this section. An
16 application for a limited learner's permit must be signed by both
17 the applicant and the applicant's parent or guardian or some
18 other responsible adult with whom the applicant resides and who
19 is approved by the Division. A limited learner's permit
20 authorizes the permit holder to drive a specified type or class
21 of motor vehicle while in possession of the permit and
22 accompanied by a parent, guardian, or other person approved by
23 the Division who is licensed to operate the motor vehicle being
24 driven and is seated beside the permit holder. A limited
25 learner's permit is valid for a period of 18 months. The fee for
26 a limited learner's permit is ten dollars (\$10.00). In the event
27 a minor who holds a limited learner's permit drives a motor
28 vehicle in violation of law, the permit shall be canceled. A
29 driver who holds a limited learner's permit only shall not be
30 deemed a licensed driver for the purpose of determining the
31 inexperienced operator premium surcharge under automobile
32 insurance policies.~~

~~33 (c) The Division may, upon satisfactory proof that a minor
34 between the ages of 16 and 18 years has become a resident of
35 North Carolina and holds a valid motor vehicle driver's drivers
36 license from his prior state of residence but has not completed a
37 course in driver education which meets the requirements of this
38 State, grant to such minor a temporary driver's permit under such
39 terms and conditions as shall be deemed necessary by the Division
40 to allow the minor to operate a motor vehicle of a specified type
41 or class in this State in order to obtain the driver education
42 courses necessary for license in North Carolina. Every
43 application for a temporary driver's permit shall be made upon
44 the approved form furnished by the Division. A temporary~~

~~1 driver's permit issued pursuant to this section shall be subject
2 to all provisions of law relating to a driver's license.~~

3 (a) Process. -- Safe driving requires instruction in driving
4 and experience. To ensure that a person who is less than 18
5 years old has both instruction and experience before obtaining a
6 drivers license, driving privileges are granted first on a
7 limited basis and are then expanded in accordance with the
8 following process:

9 (1) Level 1. -- Driving with a limited learner's
10 permit.

11 (2) Level 2. -- Driving with a limited provisional
12 license.

13 (3) Level 3. -- Driving with a full provisional
14 license.

15 The permits and licenses must bear a distinctive color
16 photographic background or border indicating the level of
17 driving experience of the permit holder or license holder.

18 (b) Level 1. -- A person who is at least 15 years old but less
19 than 18 years old may obtain a limited learner's permit if the
20 person meets all of the following requirements:

21 (1) Passes a course of driver education prescribed in
22 G.S. 20-88.1 or a course of driver instruction at a
23 licensed commercial driver training school.

24 (2) Passes a written test administered by the Division.

25 (c) Level 1 Restrictions. -- A limited learner's permit
26 authorizes the permit holder to drive a specified type or class
27 of motor vehicle only under the following conditions:

28 (1) The permit holder must be in possession of the
29 permit.

30 (2) A supervising driver must be seated beside the
31 permit holder in the front seat of the vehicle when
32 it is in motion. No person other than the
33 supervising driver can be in the front seat.

34 (3) For the first six months after issuance, the permit
35 holder may drive only between the hours of 5:00
36 a.m. and 9:00 p.m.

37 (4) After the first six months after issuance, the
38 permit holder may drive at any time.

39 (5) Every person occupying the vehicle being driven by
40 the permit holder must have a safety belt properly
41 fastened about his or her body, or be restrained by
42 a child passenger restraint system as provided in
43 G.S. 20-137.1(a), when the vehicle is in motion.

1 (d) Level 2. -- A person who is at least 16 years old but less
2 than 18 years old may obtain a limited provisional license if the
3 person meets all of the following requirements:

4 (1) Has held a limited learner's permit issued by the
5 Division for at least 12 months.

6 (2) Has not been convicted of a motor vehicle moving
7 violation or seat belt infraction during the
8 preceding 12 months.

9 (3) Passes a road test administered by the Division.

10 (e) Level 2 Restrictions. -- A limited provisional license
11 authorizes the license holder to drive a specified type or class
12 of motor vehicle only under the following conditions:

13 (1) The license holder must be in possession of the
14 license.

15 (2) The license holder may drive without supervision in
16 any of the following circumstances:

17 a. From 5:00 a.m. to 9:00 p.m.

18 b. When driving to or from work.

19 c. When driving to or from an activity of a
20 volunteer fire department, rescue squad, or
21 emergency medical service, if the driver is a
22 member of the organization ~~and is driving in~~
23 ~~the course and scope of duty.~~

24 (3) The license holder may drive with supervision at
25 any time. When the license holder is driving with
26 supervision, the supervising driver must be seated
27 beside the license holder in the front seat of the
28 vehicle when it is in motion. The supervising
29 driver need not be the only other occupant of the
30 front seat, but must be the person seated next to
31 the license holder.

32 (4) Every person occupying the vehicle being driven by
33 the license holder must have a safety belt properly
34 fastened about his or her body, or be restrained by
35 a child passenger restraint system as provided in
36 G.S. 20-137.1(a), when the vehicle is in motion.

37 (f) Level 3. -- A person who is at least 16 years old but less
38 than 18 years old may obtain a full provisional license if the
39 person meets all of the following requirements:

40 (1) Has held a limited provisional license issued by
41 the Division for at least six months.

42 (2) Has not been convicted of a motor vehicle moving
43 violation or seat belt infraction during the
44 preceding six months.

1 A person who meets these requirements may obtain a full
2 provisional license by mail.

3 (g) Level 3 Restrictions. -- The restrictions on Level 1 and
4 Level 2 drivers concerning time of driving, supervision, and
5 passenger limitations do not apply to a full provisional license.

6 (h) Out-of-State Exceptions. -- A person who is at least 16
7 years old but less than 18 years old, who was a resident of
8 another state and has an unrestricted drivers license issued by
9 that state, and who becomes a resident of this State may obtain
10 one of the following:

11 (1) A temporary permit, if the person has not completed
12 a drivers education program that meets the
13 requirements of the Superintendent of Public
14 Instruction but is currently enrolled in a drivers
15 education program that meets these requirements. A
16 temporary permit is valid for the period specified
17 in the permit and authorizes the holder of the
18 permit to drive a specified type or class of motor
19 vehicle when in possession of the permit, subject
20 to any restrictions imposed by the Division
21 concerning time of driving, supervision, and
22 passenger limitations. The period must end within
23 10 days after the expected completion date of the
24 drivers education program in which the applicant is
25 enrolled.

26 (2) A full provisional license, if the person has
27 completed a drivers education program that meets
28 the requirements of the Superintendent of Public
29 Instruction, has held the license issued by the
30 other state for at least 12 months, and has not
31 been convicted during the preceding 12 months of a
32 motor vehicle moving violation, a seat belt
33 infraction, or an offense committed in another
34 jurisdiction that would be a motor vehicle moving
35 violation or seat belt infraction if committed in
36 this State.

37 (3) A limited provisional license, if the person has
38 completed a drivers education program that meets
39 the requirements of the Superintendent of Public
40 Instruction but either did not hold the license
41 issued by the other state for at least 12 months or
42 was convicted during the preceding 12 months of a
43 motor vehicle moving violation, a seat belt
44 infraction, or an offense committed in another

1 jurisdiction that would be a motor vehicle moving
2 violation or seat belt infraction if committed in
3 this State.

4 (i) Application. -- An application for a permit or license
5 authorized by this section must be signed by both the applicant
6 and another person. That person must be the applicant's parent
7 or guardian if the parent or guardian is available. If the
8 applicant's parent or guardian is not available, that person must
9 be an adult approved by the Division.

10 (j) Duration and Fee. -- A limited learner's permit expires on
11 the eighteenth birthday of the permit holder. A limited
12 provisional license expires on the eighteenth birthday of the
13 license holder. A full provisional license expires on the date
14 set under G.S. 20-7(f). The fee for a limited learner's permit
15 or a limited provisional license is ten dollars (\$10.00). The
16 fee for a full provisional license is the amount set under G.S.
17 20-7(i).

18 (k) Supervising Driver. -- A supervising driver must be a
19 parent or guardian of the permit holder or license holder if a
20 parent or guardian signed the application for the permit or
21 license. If a parent or guardian did not sign the application,
22 the supervising driver must be the adult who signed the
23 application. A supervising driver must be a licensed driver who
24 has been licensed to drive for at least five years.

25 (l) Violations. -- It is unlawful for the holder of a limited
26 learner's permit, a temporary permit, or a limited provisional
27 license to drive a motor vehicle in violation of the restrictions
28 that apply to the permit or license. Failure to comply with a
29 restriction concerning the time of driving or the presence of a
30 supervising driver in the vehicle constitutes operating a motor
31 vehicle without a license. Failure to comply with any other
32 restriction, including seating and passenger limitations, is an
33 infraction punishable by a monetary penalty as provided in G.S.
34 20-176.

35 (m) Insurance Status. -- The holder of a limited learner's
36 permit is not considered a licensed driver for the purpose of
37 determining the inexperienced operator premium surcharge under
38 automobile insurance policies."

39 Section 2. G.S. 20-135.2A(a) reads as rewritten:

40 "(a) Each front seat occupant who is 16 years of age or older
41 and each driver of a passenger motor vehicle manufactured with
42 seat safety belts in compliance with Federal Motor Vehicle Safety
43 Standard No. 208 shall have such a safety belt properly fastened
44 about his body at all times when the vehicle is in forward motion

1 on a street or highway in this State. Each driver of a passenger
2 motor vehicle manufactured with seat safety belts in compliance
3 with Federal Motor Vehicle Safety Standard No. 208, who is
4 transporting in the front seat a person who is (1) under 16 years
5 of age and (2) not required to be restrained in accordance with
6 G.S. 20-137.1, shall have the person secured by such a safety
7 belt at all times when the vehicle is operated in forward motion
8 on a street or highway in this State. Persons required to be
9 restrained in accordance with ~~G.S. 20-137.1~~ G.S. 20-11 and G.S.
10 20-137.1 shall be secured as required by ~~that section,~~ those
11 sections."

12 Section 3. G.S. 20-88.1(a) reads as rewritten:

13 "(a) In accordance with criteria and standards approved by the
14 State Board of Education, the State Superintendent of Public
15 Instruction shall organize and administer a program of driver
16 education to be offered at the public high schools of this State
17 for all physically and mentally qualified persons who (i) are
18 older than 14 years and six months, (ii) are approved by the
19 principal of the school, pursuant to rules adopted by the State
20 Board of Education, (iii) are enrolled in a public or private
21 high school within the State, and (iv) have not previously
22 enrolled in the program. The State Board of Education shall use
23 for such purpose all funds appropriated to it for said purpose,
24 and may use all other funds that become available for its use for
25 said purpose. ~~The~~

26 The driver education program established pursuant to this
27 section shall include instructions the following:

28 (1) Instruction on the rights and privileges of the
29 handicapped and the signs and symbols used to
30 assist the handicapped relative to motor vehicles,
31 including the 'international symbol of
32 accessibility' and other symbols and devices as
33 provided in Article 2A of this Chapter. ~~In~~
34 addition, this program shall include at

35 (2) At least six hours of instruction on the offense of
36 driving while impaired and related subjects.

37 (3) At least six hours of actual driving experience."

38 Section 4. G.S. 20-322(b) reads as rewritten:

39 "(b) Regulations adopted by the Commissioner shall state the
40 requirements for a school license, including requirements
41 concerning location, equipment, courses of instruction,
42 instructors, financial statements, schedule of fees and charges,
43 character and reputation of the operators, insurance, bond or
44 other security in such sum and with such provisions as the

1 Commissioner deems necessary to protect adequately the interests
2 of the public, and such other matters as the Commissioner may
3 prescribe. All driver training and safety education courses and
4 courses of driving instruction must include at least six hours of
5 actual driving experience."

6 Section 5. G.S. 20-7(a1) reads as rewritten:

7 "(a1) Motorcycles and Mopeds. -- To drive a motorcycle, a
8 person must have a motorcycle learner's permit, a full provisional
9 license with a motorcycle endorsement, or a regular drivers
10 license and a motorcycle endorsement. Subsection (a2) of this
11 section sets the requirements for a motorcycle learner's permit.
12 To obtain a motorcycle endorsement, a person must demonstrate
13 competence to drive a motorcycle by passing a road test and a
14 written or oral test concerning a motorcycle and must pay the fee
15 for a motorcycle endorsement. Neither a drivers license nor a
16 motorcycle endorsement is required to drive a moped."

17 Section 6. G.S. 20-7 is amended by adding a new
18 subsection to read:

19 (a2) Motorcycle Learner's Permit. -- The following persons are
20 eligible for a motorcycle learner's permit:

21 (1) A person who is at least 16 years old but less than
22 18 years old and has a limited provisional license
23 or a full provisional license issued by the
24 Division.

25 (2) A person who is at least 18 years old and has a
26 license issued by the Division.

27 To obtain a motorcycle learner's permit, an applicant must pass
28 a vision test, a road sign test, and a written test specified by
29 the Division. A motorcycle learner's permit expires eighteen
30 months after it is issued. The holder of a motorcycle learner's
31 permit may not drive a motorcycle with a passenger. The holder
32 of a motorcycle learner's permit who has a limited provisional
33 license may drive the motorcycle only at a time when the license
34 holder could drive a motor vehicle without supervision under G.S.
35 20-11. The fee for a motorcycle learner's permit is the amount
36 set in G.S. 20-7(1) for a learner's permit.

37 Section 7. This act does not appropriate funds to the
38 Division to implement this act nor does it obligate the General
39 Assembly to appropriate funds to implement this act.

40 Section 8. This act becomes effective December 1, 1997,
41 if the General Assembly appropriates the necessary funds from the
42 Highway Fund to the Department of Transportation, Division of
43 Motor Vehicles, to administer the provisional license program.
44 Sections 1 through 5 of this act do not apply to any person who

1 holds a valid North Carolina limited learner's permit issued
2 before the effective date of this act, who holds a valid North
3 Carolina learner's permit issued before the effective date of
4 this act, or who is a provisional licensee and holds a valid
5 North Carolina drivers license issued before the effective date
6 of this act.

**HOUSE BILL 248
GRADUATED DRIVERS LICENSE
PROPOSED SENATE FINANCE COMMITTEE SUBSTITUTE**

Current Law

Before or after 15 years old:
Take Drivers Ed

15 years old
Get learner's permit

16 years old
Get provisional license

Proposed Law

Before or after 15 years old:
Take Drivers Ed with 6 hours
driving experience

Level 1

15 years old
Complete Drivers Ed,
get limited learner's
permit

Level 2

16 years old
Get limited provisional
license if has had Level
1 permit for 6 months
and no violations

Level 3

16 ½ years old
Get full provisional license
if has had Level 2 license
for six months and no
violations

Graduated Driver Licensing Summary

What is Graduated Driver Licensing?

Graduated Driver Licensing (GDL) is a proposal that recommends all drivers less than age 18 be required to pass through three provisional driving levels demonstrating competency before they achieve full licensure.

It is designed to reduce crash risks for young new drivers by systematically providing them with more practical experience, gained under the safest possible conditions, before allowing them to drive on their own. In a series of three steps, the new driver is permitted to drive in more dangerous situations. With just a few alterations in the present licensing system, GDL will help reduce the number of young driver crashes.

- **Level 1 is a limited learner's permit at age 15 or older.** The novice driver must complete one year of violation-free driving with approved adult supervision to progress to the next level. All must wear seat belts.
- **Level 2 is a limited provisional license.** The young driver must complete six months of violation-free driving to progress to the next level. Unsupervised driving is allowed between 5 a.m. and 9 p.m. (An exemption would allow driving to or from work after 9 p.m.) All people in the vehicle must wear seat belts. Supervised driving allowed at any time.
- **Level 3 is a full provisional license.** Unsupervised driving is allowed at any time, but all people in the vehicle must wear seat belts.

If the driver starts the GDL process at age 15, a full provisional license can be obtained by age 16½.

What is the problem?

- Every year in North Carolina, one out of four 16-year-old drivers is involved in a car crash. The situation is worse than it appears because younger drivers do less driving; their actual risk of crashing per mile driven is greater.

An average of 70 people die every year in North Carolina as result of crashes caused by 16- and 17-year-old drivers. Another 10,650 are injured in these crashes. The yearly cost of these crashes is at least \$175 million.

- Sixteen-year-old drivers are more likely than older drivers to be killed in a crash between 9 p.m. and midnight.
- Nearly one-third of new drivers in North Carolina do not get a learner's permit prior to their 16th birthday. One-quarter get their license within the first month after they turn 16. Young drivers haven't had the time to develop a sense of what kinds of situations are more or less dangerous.

Who supports GDL?

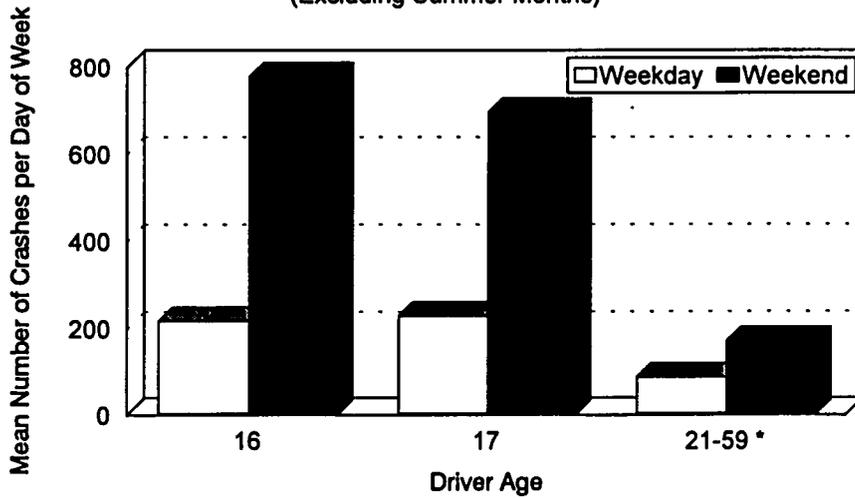
A long list of health agencies, highway safety advocates, law enforcement and parent groups supports GDL. *Seventy-four percent of 500 North Carolina residents surveyed by telephone said they believed North Carolina should change to the GDL system.* There is no known opposition to the proposal.

The Governor's Highway Safety Commission has made GDL the top recommendation in its annual report to the Governor. The Commission, along with the Child Fatality Task Force, the North Carolina Passenger Safety Association and the Governor's Council for Young Adult Drivers, sponsored eight community forums on GDL across the state in December 1996 and January 1997. Not only were North Carolinians educated on the issue, the public—including parents, teenagers and law enforcement—provided valuable input and support for GDL. Most of the parents and teenagers favored GDL once the proposal was explained to them. A handful of teens complained that GDL was "not fair," but most agreed that they had friends who had been in a car wreck. Members of the Governor's Council for Young Adult Drivers made statements at each forum in favor of GDL.

Where does GDL stand now?

Many states are adopting GDL legislation. Florida has GDL in place, and Michigan recently has adopted GDL legislation to take effect this year. The North Carolina House and Senate Bills were introduced in February 1997. The chief House co-sponsors are Rep. Debbie Clary, Rep. Martha Alexander and Rep. Ruth Easterling. The chief Senate co-sponsors are Sen. Roy Cooper and Sen. Austin Allran.

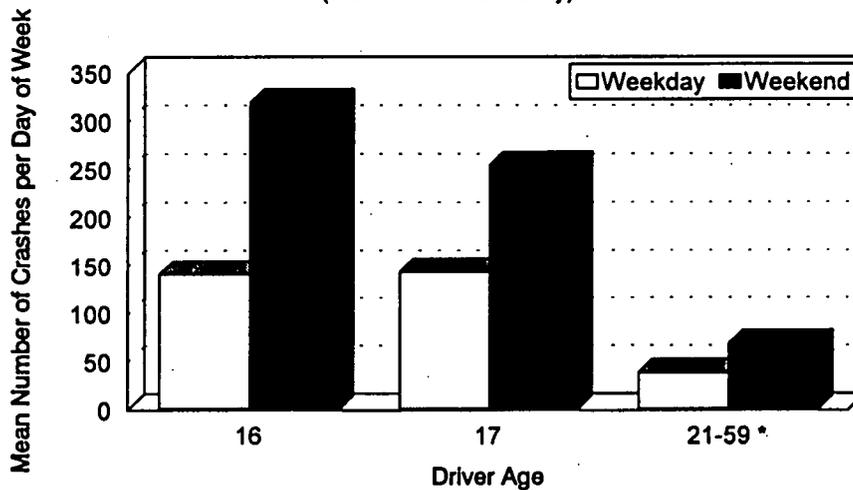
Distribution of Nighttime Crashes (9 - midnight) by Driver Age: Weekend vs. Week night (Excluding Summer Months)



Note: 21-59 Age group is average for all included years of age, to be comparable with 16 & 17 yr. olds

Source: NC Traffic Crash Data, 1993-1995

Distribution of Nighttime Crashes (9 - midnight) by Driver Age: Weekend vs. Week night (Summer Months Only)



Note: 21-59 Age group is average for all included years of age, to be comparable with 16 & 17 yr. olds

Source: NC Traffic Crash Data, 1993-1995

Myths and Facts About Graduated Driver Licensing

Graduated Driver Licensing (GDL) is a different way of introducing young drivers to the complex and potentially deadly task of driving. It is designed to reduce crash risks for young new drivers by systematically providing them with more practical experience, gained under the safest possible conditions, before allowing them to drive completely on their own. Several misunderstandings or Myths about GDL have developed. These are addressed below.

Myth: GDL requires teens to graduate from High School before they can obtain a Driver License.

- Fact.** GDL refers to the fact that new drivers progress or 'graduate' from one licensing stage to the next after they have successfully achieved the goals at each level.

Myth: GDL would mean teenagers can't get their license until they are 18 years old.

- Fact.** Under GDL, new drivers could obtain their license at the same age as with the present system. There would be only one noteworthy difference: for the *first six months* in order to legally drive between 9 pm and 5 am they would have to be accompanied by an adult driver.

Myth: GDL would prevent teenagers from working at night.

- Fact.** GDL would only prevent beginning drivers, mainly those who have just turned 16, from *recreational driving* between 9 pm and 5 am, and this would last *only six months*. And, teens could drive at any time of night when accompanied by an adult driver. Driving to or from work without an adult in the car would also be permitted.

Myth: GDL would punish everybody for mistakes that only some young drivers make.

- Fact.** GDL is designed to support and protect new drivers, not to punish them. It extends the driving privilege in steps, as new drivers demonstrate their competence and responsibility, rather than simply throwing inexperienced, emotionally immature beginners into the complex risky driving environment as is presently done – with all too frequent tragic consequences.

Myth: Alcohol is the main problem for young drivers. How would GDL affect that?

- Fact.** Although alcohol does contribute to teen driver crashes, it is only a minor factor among 16- and 17-year-old drivers. A much greater problem is impulsive, risky driving actions: the failure to make good judgments and decisions.

Myth: GDL is just another government attempt to protect people from themselves.

- Fact.** In fact, young beginning drivers commonly cause crashes in which both their passengers and occupants of other vehicles are hurt or killed. GDL is designed to protect everybody who uses the roadways, not just young drivers.

Myth: Simply improving Driver Education programs would solve the problem of young driver crashes. It isn't necessary to change the licensing system.

- Fact.** Although it can help teach persons how to drive, there is no research evidence to suggest that Driver Education reduces crashes. A drastically revised approach might have some benefit, but such a program would be far more costly than the public seems willing to pay for at present.

Find out more: Visit the UNC-HSRC Web site at <http://www.hsrb.unc.edu>

SUPPORT FOR GRADUATED DRIVER LICENSING

AAA Carolinas
Adolescent Pregnancy Prevention Coalition of NC
American Association of Motor Vehicle Administrators
American Driver Training and Safety Education Association
Association of NC Boards of Health
Covenant with North Carolina's Children
Governor's Advocacy Council on Children and Youth
Governor's Council for Young Adult Drivers
Governor's Highway Safety Commission
Governor's Highway Safety Program
Independent Insurance Agents of NC Inc.
Insurance Institute for Highway Safety
Justice for Children Task Force
Montgomery Insurance Companies
Mothers Against Drunk Driving (MADD)
National Association of Independent Insurers
National Association of County Directors of Social Services
National Association of Social Workers - North Carolina Chapter
National Highway Traffic Safety Administration
National Association of Governor's Highway Safety Representatives
National Safety Council
National Transportation Safety Board
Nationwide Insurance
NC Association of Local Health Directors
NC Association of Local Nutrition Directors
NC Child Advocacy Institute
NC Child Fatality Task Force
NC Congress of Parents and Teachers, Inc. (PTA)
NC Department of Insurance
NC Equity
NC Law Enforcement Officers Association
NC Medical Society
NC Nurses Association
NC Passenger Safety Association
NC Pediatric Society
NC Primary Healthcare Association
NC Professional Driving Schools
NC Retail Merchants Association
NC State Association of Black Social Workers
NC State Fire and Rescue Commission
NC State Highway Patrol
NC Trucking Association
Prevent Child Abuse North Carolina
Safety and Health Council of NC
School Nurses Association of NC
Society for Public Health Education, Inc. - North Carolina Chapter
State Board of Education
UNC Highway Safety Research Center

Recommended Structure for Graduated Driver Licensing in North Carolina

Level 1 (Limited Learner's Permit)

- Novice driver must be age 15 or older, complete Driver's Education, and obtain Limited Learner's permit.
- For at least 12 months the novice must be supervised when driving by an adult, guardian or other approved, licensed adult.
- All persons in a vehicle driven by a novice must wear a seat belt, and only the supervisor may ride in the front seat with the novice driver.
- The novice must complete 12 consecutive months of violation-free driving in order to progress to the next level of licensure.

Level 2 (Limited Provisional License)

- Unsupervised driving is allowed between 5 a.m. and 9 p.m. (Driving to or from work after 9 p.m. is permitted).
- Supervised driving is allowed at any time.
- Driver must complete six consecutive months of violation-free driving in order to progress to the next level of licensure.
- All persons in vehicle must wear seat belts.
- Driver is subject to all other conditions of Provisional License.

Level 3 (Full Provisional License)

- Unsupervised driving is allowed at any time.
- All persons in vehicle must wear seat belts.
- Driver is subject to all other conditions of Provisional License.

Find out more: Visit the UNC-HSRC Web site at <http://www.unc.edu/depts/hsrc>

**COMPARISON OF PROPOSED GRADUATED DRIVER LICENSING SYSTEM
WITH CURRENT LICENSING SYSTEM FOR YOUNG DRIVERS IN NORTH CAROLINA**

ISSUE	PROPOSED SYSTEM	CURRENT SYSTEM
Seat belt Use	All occupants of vehicle	All front seat occupants and rear seat occupants under age 12 required to wear belt
Number of Levels	Three	One (plus an <i>optional</i> learner's permit level)
Learner's Permit	Mandatory	Optional
Required period of supervised driving	One year	None (Up to 1 year <i>optional</i>)
New driver required to demonstrate safe driving prior to full licensure?	Yes, for 6 months	No
Period during which late night recreational driving is prohibited	Six months	None

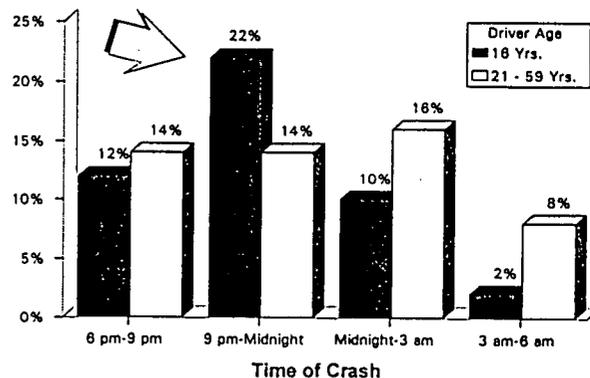
Why Young Drivers Have Such a High Crash Rate

It is important to keep in mind that not all young drivers are poor drivers. However, as a group young drivers are much worse than older drivers, as the figures showing crash experience by driver age clearly show. There are several reasons for young drivers' higher crash rate:

Greater Exposure to Crashing:

Young drivers do more of their driving during more dangerous times and in more dangerous situations. Nighttime driving, driving on local roads rather than highways, and driving with several occupants in the vehicle all are more likely to result in a crash. Teen drivers do more of their driving than older drivers in all these situations.

16-year-old Drivers are Much More Likely Than Older Drivers to be Killed in a Crash Between 9 pm and Midnight



Insufficient Experience:

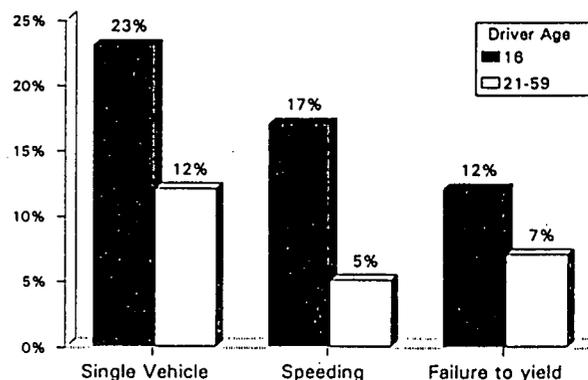
Young drivers lack experience and the only way to become a good driver is through experience. Nearly one third of new drivers in North Carolina do not obtain a Learner's Permit which allows them to begin to get driving practice before their 16th birthday, and half of all young drivers obtain their license within four months of their 16th birthday. One-quarter get their license within the first month after they turn sixteen.

Although a few months driving practice is enough to become familiar and comfortable with the physical tasks involved in driving, the equally important judgment abilities develop more slowly. Over time, drivers develop a wisdom about driving that allows them to anticipate and avoid numerous potentially dangerous situations. Young drivers haven't had the time to develop this sense of what kinds of situations are more or less dangerous.

Impulsive and Risky Behaviors:

Partly as a function of maturity and partly because of inexperience, young drivers are much more likely than more experienced drivers to engage in behaviors that increase the chances of crashing: speeding, ignoring traffic control signals, making sudden lane changes, driving in an overly aggressive fashion, etc.

Characteristics of Crashes by Driver Age, 1993-95
Indicators of Driver Fault



Find out more: Visit the UNC-HSRC Web site at <http://www.unc.edu/depts/hsrc>

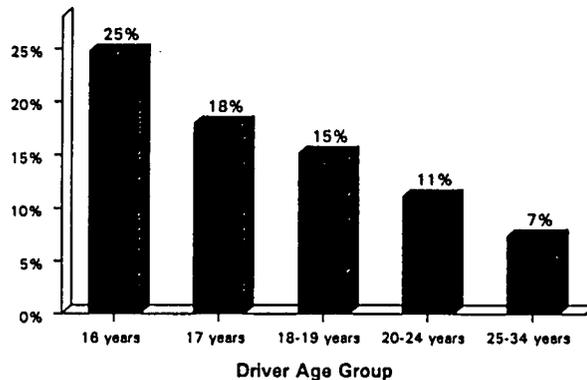
The Young Driver Problem in North Carolina

Young novice drivers are a serious threat to themselves, their passengers, and other drivers on the road. Analysis of 16- and 17-year-old drivers' crashes in NC for 1993 through 1995 provides a graphic picture of this problem.

❑ Far Too Many Crashes

First, drivers in this age group are much more likely to cause a crash than are drivers just a few years older. The figure to the right shows the large difference in crash rates for drivers of different ages.

Percent of Licensed North Carolina Drivers Involved in a Crash by Age Group, 1993



❑ More Crashes in Fewer Miles

The situation is even worse than it appears from the figure at right because younger drivers do less driving. So their actual risk of crashing per mile driven is greater.

The figure below shows that when amount of driving is taken into consideration, 16- and 17-year-old drivers are far worse drivers than even 18-year-olds.

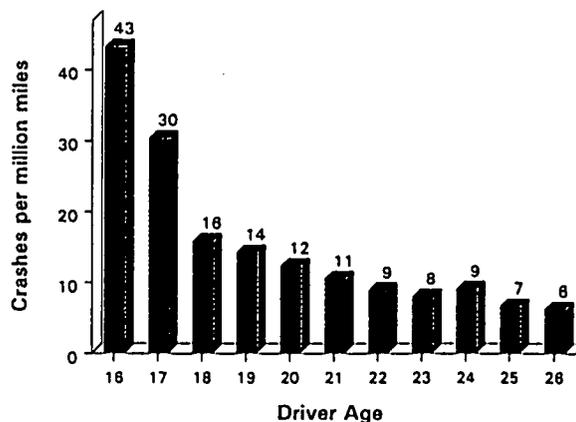
❑ Many Serious Crashes

An average of 70 people die every year in North Carolina as a result of crashes caused by 16- and 17-year-old drivers.

Another 10,650 are injured in these crashes.

The yearly cost of these crashes is at least \$175 million dollars.

Rate of Involvement in Police-Reported Crashes by Driver Age, U.S., 1990

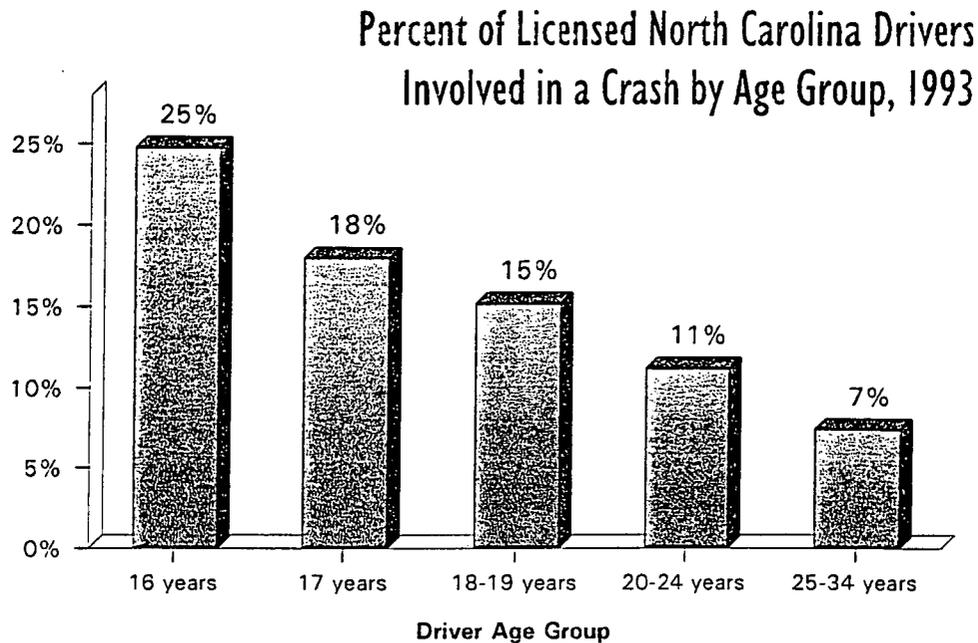


❑ It's Not Just Males

Although males generally have more crashes than females, this is not because they are worse drivers. It's because they drive more. When amount of driving is taken into account males and females have nearly equal crash rates.

Find out more. Visit the UNC-HSRC Web site at <http://www.unc.edu/depts/hsrc>

Young Driver Crashes: Is there really a problem?



Source: NC Accident Facts, 1994

CH-3

- During 1993, one out of four licensed 16-year old drivers in North Carolina was involved in a crash.
- After the teenage years, crash involvement remains relatively low. Crash involvement begins to rise again when drivers grow older and problems associated with poor vision and slow reaction time begin to surface.
- What portion of 16-year old crashes resulted in injury or death?

What can we do about the problem?

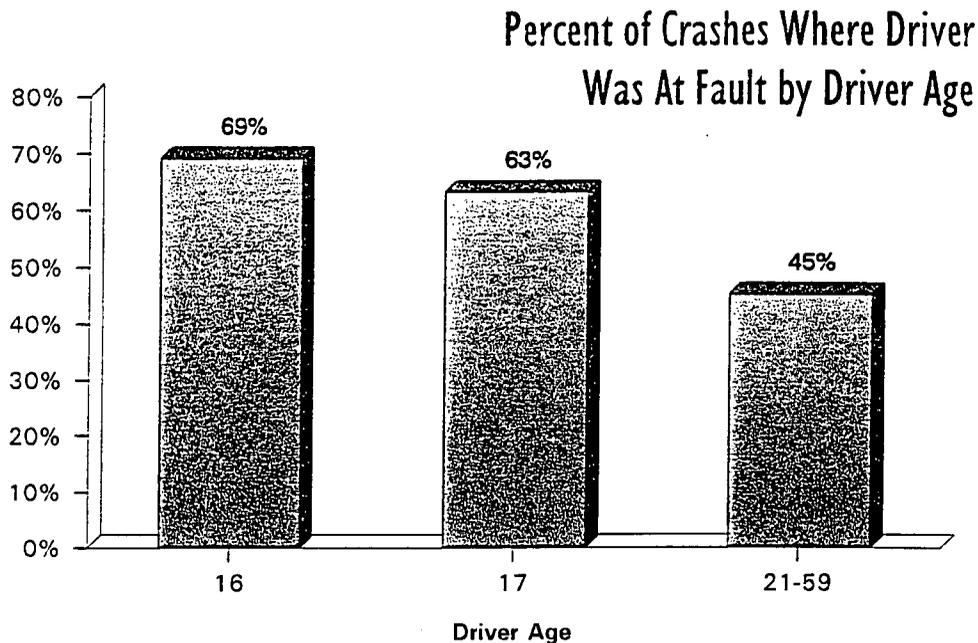
- Existing Approaches
 - ◆ Education
 - ◆ Enforcement

- Alternative Approaches
 - ◆ Raise the licensing age
 - ◆ Graduated Driver Licensing (GDL)

CH-12

- There is virtually no scientific evidence that education alone is an effective way to reduce crashes. That is because crashes rarely occur due to lack of knowledge.
- Similarly, enforcement alone cannot adequately address the young driver crash problem.
- NC traditionally has had excellent traffic enforcement, and young drivers are still required to pass Driver Education. Yet the young driver crash problem remains very serious.
- Because a substantial part of the young driver crash problem is lack of maturity, raising the licensing age to 17 (as it is in New Jersey) or 18 (as in most of Europe) would reduce crashes. However, this is probably not politically feasible in the U.S.

Why is it a problem? Impulsiveness & poor decision making



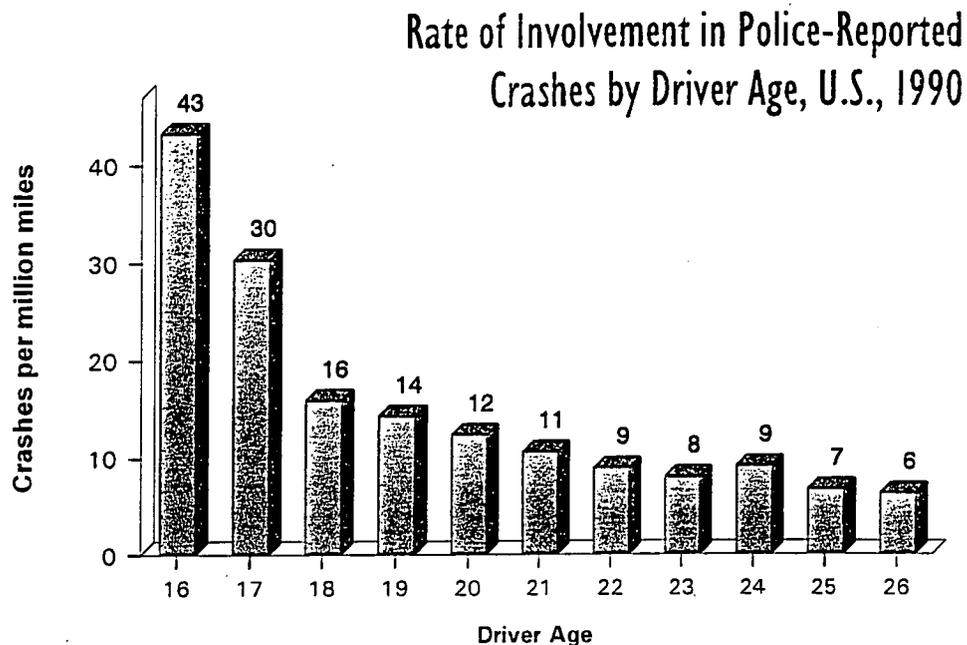
North Carolina, 1993-95

CH-7

- As a group, young drivers are much more likely to be at fault in a crash than older drivers.
- This chart shows that 69% of North Carolina 16-year old drivers were at fault in crashes between 1993 and 1995.*
- Drivers between 21 and 59 were at fault in 45% of their crashes.
- This is compelling evidence that teens are more likely to engage in impulsive and dangerous driving than older, more experienced drivers.

** This doesn't mean that these young drivers were solely to blame in the crash. In crashes involving two vehicles, fault is sometimes assigned to both drivers.*

Why is it a problem? Inexperience

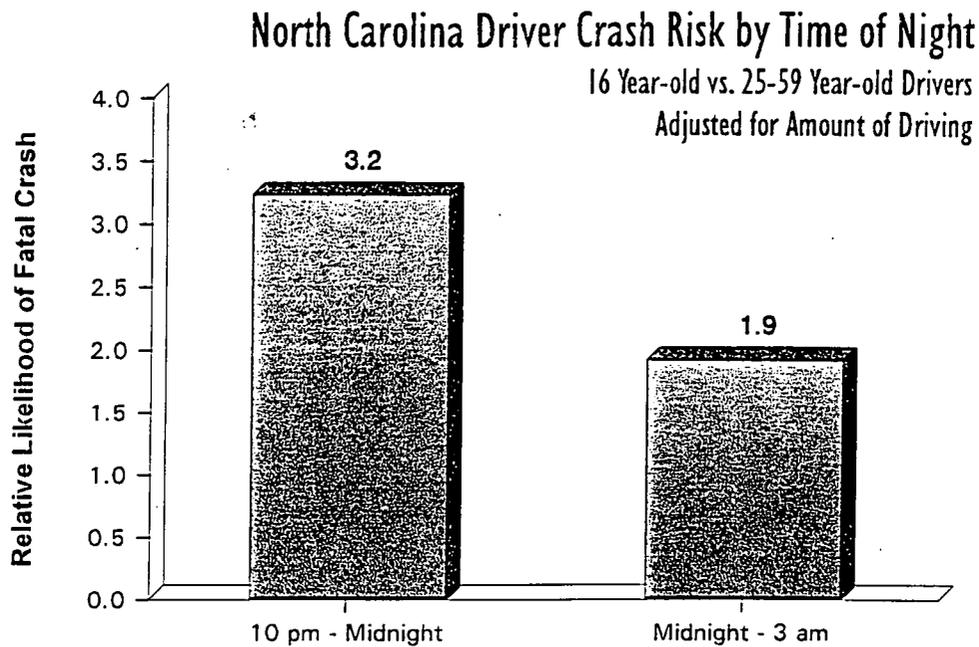


Source: Insurance Institute for Highway Safety

OH-5

- This chart, based on national driving data, takes into account the number of miles driven for a particular age group.
- When we add up all the miles that 16-year olds drive and the number of crashes they have, we can calculate a crash rate that is based on miles driven.
- If 16-year olds are driving more than older drivers and drive just as well as older drivers, their crash rates per mile should be comparable to that of older drivers.
- However, when amount of driving is taken into account, 16-year old drivers are seven times more likely to be involved in a crash than 26-year old drivers (43 vs 6).

Why is it a problem? High risk exposure



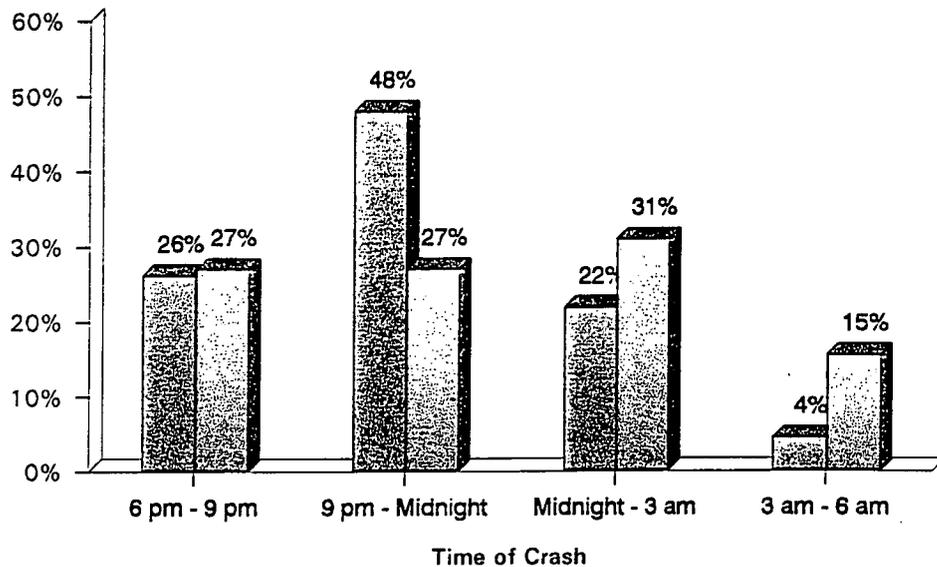
Source: NC Roadside Surveys, 1994

CH-10

- The previous slide showed that the late evening hours are very high risk for 16- and 17-year old drivers.
- Because young drivers do less driving than older drivers, their risk of crashing, given the amount they drive, is higher than the earlier chart suggests.
- This figure takes into account the amount of driving done by NC drivers of all ages late at night. It shows that 16-year old drivers are more than three times as likely to crash than older drivers when their amount of driving is taken into account.

Why is it a problem? High risk exposure

Distribution of Nighttime Crashes by Driver Age



North Carolina, 1993-95

OH-9

- The hours from 9 pm to midnight are very high risk for 16- and 17-year old drivers.
- Among older drivers, nighttime crashes are spread fairly evenly. But between 9 pm and midnight, a 16-year old driver is almost 60% more likely than an older driver to be in a crash.
- This high risk is because these are the hours when teens tend to engage in recreational driving with many peers in the vehicle. This causes distractions that inexperienced drivers are not very good at handling.

Important considerations in GDL

- *Fairness*

Is it fair to penalize new drivers before they make a mistake behind the wheel?

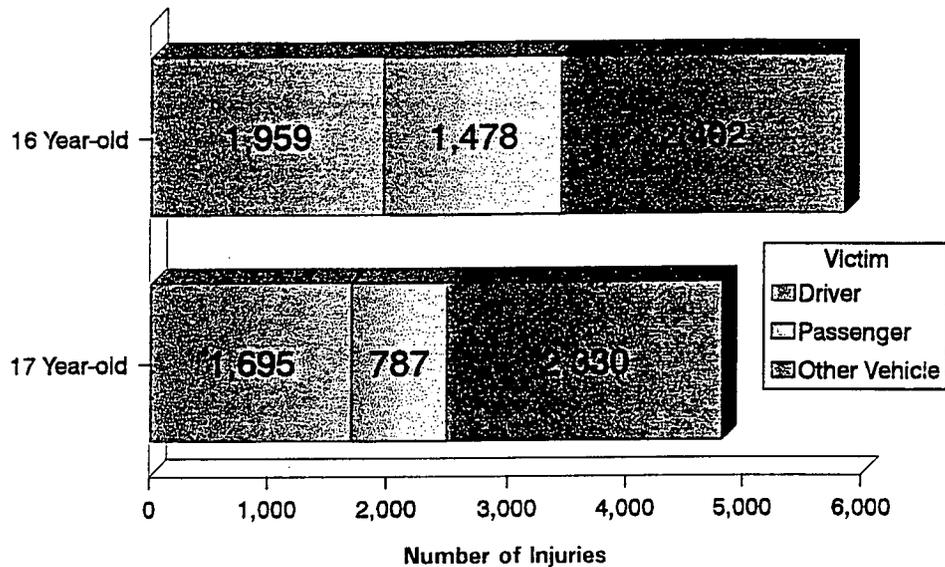
- ◆ GDL does not penalize, it protects
- ◆ GDL protects others as well
- ◆ GDL is a relatively minor change from the current system
- ◆ Given what we know, is it fair to not do anything?
 - ▶ The stakes are so high, it is much better to intervene before someone is seriously injured or killed

CH-18

- GDL is sometimes viewed as an unfair attempt to take something away from young drivers.
- The main thing it 'takes away,' however, is the disturbingly high likelihood of a young driver having a crash.
- Although it would be nice to be able only to single out those who will be careless drivers and subject them to stiffer requirements, there is no way to predict who will be a poor driver until it is too late.
- Waiting until a young driver has crashed before trying to help them drive better seems kind of harsh.

Important considerations in GDL

Yearly Injuries Caused by Young NC Drivers



Source: NC Traffic Crash Files, 1993-95

OH-19

- This chart shows that young drivers cause more injuries to others than to themselves. They are a very real threat to their own passengers and to others on the road as well.
- For this reason it is important to recognize that GDL is a method to prevent injuries and deaths among all age groups, not just young drivers.

Important considerations in GDL

- Fairness
- Public Acceptance
- Enforcement
- Cost

OH-17

- These issues are important.
- When GDL is clearly understood it is apparent that none of these issues is a problem.
- The following slides address each point.

Current NC Licensing System versus Proposed GDL System

Issue	Current System	GDL System
Levels	One (plus optional Learner Permit)	Three
Supervised Driving Required	None (optional)	One Year
Late Night Driving Prohibited	None	6 months
Demonstrate Safe Driving	None	18 months
Seat Belt Use	Front seat and children under 12 in rear seat	Required - all occupants

CH-16

- GDL is sometimes thought of as a radical departure from the present licensing system. In fact, it is mainly just fine tuning of the present system to make it more effective in producing safe drivers.
- The only really new element in GDL is the short-term restriction on recreational nighttime driving.

Structure of a Graduated Driver Licensing System

■ Level One

- ◆Adult supervisor in car at all times
- ◆Everyone in car must wear a seat belt
- ◆Should last at least 6 months, preferably a year
- ◆Driver must have a clean driving record for 12 months and be at least 16 years old before moving to next level

OH-13

- The first level of a GDL system provides a new driver with plenty of time to gain real driving experience in a relatively safe environment: The adult supervisor can provide the benefit of years of experience, and strongly discourages impulsive, foolish behaviors.
- In addition, Level I provides a strong motivation for young drivers to drive carefully and responsibly, since they cannot advance until they achieve 12 continuous months of driving without receiving a traffic citation.
- Because crashes are more likely with a young driver, it is important for everyone in the vehicle to wear a seat belt.

Structure of a Graduated Driver Licensing System

- Level Two
 - ◆ New driver may drive unsupervised except during high risk hours
 - ◆ Late-night driving is permitted when accompanied by adult supervisor
 - ◆ Exception allowed for work-related driving
 - ◆ Should last at least 6 months
 - ◆ Driver must have a clean driving record for 6 months and be at least 16 years old before moving to next level
 - ◆ Everyone in car must wear a seat belt

OH-14

- This level distinguishes GDL from other licensing systems.
- The nighttime driving restriction is extremely important. It produces two benefits:
- Young inexperienced drivers are protected from the most dangerous driving situation until they have several months experience driving without a supervisor, and
- New drivers are motivated to drive carefully (to receive no citations) during the time they are least capable, in order to be released from the night restriction.

Structure of a Graduated Driver Licensing System

- Level Three
 - ◆ Unsupervised driving allowed at all times
 - ◆ Until age 18, driver is subject to conditions of existing provisional license
 - ◆ Everyone in car must wear a seat belt

OH-15

- This level corresponds to the typical provisional license that is issued to beginning drivers, with the exception that all occupants are required to wear a seat belt.

Summary

- A Graduated Driver Licensing System:
 - ◆ Provides needed experience for new drivers.
 - ◆ Protects new drivers from the greatest risks while they are getting the experience they need.
 - ◆ Motivates young drivers to be especially careful during the time when they are at greatest risk -- when they are just learning.
 - ◆ Will reduce young driver crashes.

OH-25

- This is GDL in a nutshell.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

2

SENATE BILL 149*
Judiciary Committee Substitute Adopted 3/5/97

Short Title: Graduated Drivers Licenses.

(Public)

Sponsors:

Referred to: Finance.

February 17, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO IMPLEMENT GRADUATED DRIVERS LICENSES.

3 The General Assembly of North Carolina enacts:

4 Section 1. G.S. 20-11 reads as rewritten:

5 **"§ 20-11. Application of minors. Issuance of limited learner's permit and provisional**
6 **drivers license to person who is less than 18 years old.**

7 ~~(a) The Division shall not grant the application of any minor between the ages of~~
8 ~~16 and 18 years for a driver's license or a learner's permit unless such application is~~
9 ~~signed both by the applicant and by the parent, guardian, husband, wife or employer~~
10 ~~of the applicant, or, if the applicant has no parent, guardian, husband, wife or~~
11 ~~employer residing in this State, by some other responsible adult person. It shall be~~
12 ~~unlawful for any person to sign the application of a minor under the provisions of~~
13 ~~this section when such application misstates the age of the minor and any person~~
14 ~~knowingly violating this provision shall be guilty of a Class 2 misdemeanor.~~

15 ~~The Division shall not grant the application of any minor between the ages of 16~~
16 ~~and 18 years for a driver's license unless such minor presents evidence of having~~
17 ~~satisfactorily completed the driver training and safety education courses offered at the~~
18 ~~public high schools as provided in G.S. 20-88.1 or upon having satisfactorily~~
19 ~~completed a course of driving instruction offered at a licensed commercial driver~~
20 ~~training school or an approved nonpublic secondary school, provided instruction~~
21 ~~offered in such schools shall be approved by the State Commissioner of Motor~~
22 ~~Vehicles and the State Superintendent of Public Instruction and all expenses for such~~

1 ~~instruction shall be paid by the persons enrolling in such courses and/or by the~~
2 ~~schools offering them.~~

3 ~~(b) The Division may issue a limited learner's permit to a minor who is at least 15~~
4 ~~years old but is less than 16 years old and who otherwise meets the requirements of~~
5 ~~this section. An application for a limited learner's permit must be signed by both the~~
6 ~~applicant and the applicant's parent or guardian or some other responsible adult with~~
7 ~~whom the applicant resides and who is approved by the Division. A limited learner's~~
8 ~~permit authorizes the permit holder to drive a specified type or class of motor vehicle~~
9 ~~while in possession of the permit and accompanied by a parent, guardian, or other~~
10 ~~person approved by the Division who is licensed to operate the motor vehicle being~~
11 ~~driven and is seated beside the permit holder. A limited learner's permit is valid for~~
12 ~~a period of 18 months. The fee for a limited learner's permit is ten dollars (\$10.00).~~
13 ~~In the event a minor who holds a limited learner's permit drives a motor vehicle in~~
14 ~~violation of law, the permit shall be canceled. A driver who holds a limited learner's~~
15 ~~permit only shall not be deemed a licensed driver for the purpose of determining the~~
16 ~~inexperienced operator premium surcharge under automobile insurance policies.~~

17 ~~(c) The Division may, upon satisfactory proof that a minor between the ages of 16~~
18 ~~and 18 years has become a resident of North Carolina and holds a valid motor~~
19 ~~vehicle driver's drivers license from his prior state of residence but has not completed~~
20 ~~a course in driver education which meets the requirements of this State, grant to such~~
21 ~~minor a temporary driver's permit under such terms and conditions as shall be~~
22 ~~deemed necessary by the Division to allow the minor to operate a motor vehicle of a~~
23 ~~specified type or class in this State in order to obtain the driver education courses~~
24 ~~necessary for license in North Carolina. Every application for a temporary driver's~~
25 ~~permit shall be made upon the approved form furnished by the Division. A~~
26 ~~temporary driver's permit issued pursuant to this section shall be subject to all~~
27 ~~provisions of law relating to a driver's license.~~

28 (a) Process. -- Safe driving requires instruction in driving and experience. To
29 ensure that a person who is less than 18 years old has both instruction and experience
30 before obtaining a drivers license, driving privileges are granted first on a limited
31 basis and are then expanded in accordance with the following process:

- 32 (1) Level 1: Driving with a limited learner's permit.
33 (2) Level 2: Driving with a limited provisional license.
34 (3) Level 3: Driving with a full provisional license.

35 The permits and licenses will bear a distinctive color photographic background or
36 border indicating the level of driving experience of the permit holder or licensee.

37 (b) Level 1. -- A person who is at least 15 years old but less than 18 years old may
38 obtain a limited learner's permit if the person meets all of the following
39 requirements:

- 40 (1) Passes a course of driver education prescribed in G.S. 20-88.1 or a
41 course of driver instruction at a licensed commercial driver
42 training school.
43 (2) Passes a written test administered by the Division.

1 (c) Level 1 Restrictions. -- A limited learner's permit authorizes the permit holder
2 to drive a specified type or class of motor vehicle only under the following
3 conditions:

- 4 (1) The holder of the permit must be in possession of the permit.
5 (2) A supervising driver must be seated beside the permit holder in
6 the front seat of the vehicle when it is in motion. No person other
7 than the supervising driver can be in the front seat.
8 (3) For the first six months after issuance, the permit holder may drive
9 only between the hours of 5:00 a.m. and 9:00 p.m.
10 (4) After the first six months after issuance, the permit holder may
11 drive at any time.
12 (5) Every person occupying the vehicle being driven by the permit
13 holder must have a safety belt properly fastened about his or her
14 body, or be restrained by a child passenger restraint system as
15 provided in G.S. 20-137.1(a), when the vehicle is in motion.

16 (d) Level 2. -- A person who is at least 16 years old but less than 18 years old may
17 obtain a limited provisional license if the person meets all of the following
18 requirements:

- 19 (1) Has held a limited learner's permit issued by the Division for at
20 least 12 months.
21 (2) Has not been convicted of a motor vehicle moving violation or seat
22 belt infraction during the preceding 12 months.
23 (3) Passes a road test administered by the Division.

24 (e) Level 2 Restrictions. -- A limited provisional license authorizes the license
25 holder to drive a specified type or class of motor vehicle only under the following
26 conditions:

- 27 (1) The license holder must be in possession of the license.
28 (2) The license holder may drive without supervision from 5:00 a.m. to
29 9:00 p.m. and when driving to or from work.
30 (3) The license holder may drive with supervision at any time. When
31 the license holder is driving with supervision, the supervising
32 driver must be seated beside the license holder in the front seat of
33 the vehicle when it is in motion. The supervising driver need not
34 be the only other occupant of the front seat, but must be the
35 person seated next to the license holder.
36 (4) Every person occupying the vehicle being driven by the license
37 holder must have a safety belt properly fastened about his or her
38 body, or be restrained by a child passenger restraint system as
39 provided in G.S. 20-137.1(a), when the vehicle is in motion.

40 (f) Level 3. -- A person who is at least 16 years old but less than 18 years old may
41 obtain a full provisional license if the person meets all of the following requirements:

- 42 (1) Has held a limited provisional license issued by the Division for at
43 least six months.

1 (2) Has not been convicted of a motor vehicle moving violation or seat
2 belt infraction during the preceding six months.

3 A person who meets these requirements may obtain a full provisional license by mail.

4 (g) Level 3 Restrictions. -- The restrictions on Level 1 and Level 2 drivers
5 concerning time of driving, supervision, and passenger limitations do not apply to a
6 full provisional license.

7 (h) Out-of-State Exceptions. -- A person who is at least 16 years old but less than
8 18 years old, who was a resident of another state and has an unrestricted drivers
9 license issued by that state and who becomes a resident of this State, may obtain one
10 of the following:

11 (1) A temporary permit, if the person has not completed a drivers
12 education program that meets the requirements of the
13 Superintendent of Public Instruction but is currently enrolled in a
14 drivers education program that meets these requirements. A
15 temporary permit is valid for the period specified in the permit
16 and authorizes the holder of the permit to drive a specified type or
17 class of motor vehicle when in possession of the permit, subject to
18 any restrictions imposed by the Division concerning time of
19 driving, supervision, and passenger limitations. The period must
20 end within 10 days after the expected completion date of the
21 drivers education program in which the applicant is enrolled.

22 (2) A full provisional license, if the person has completed a drivers
23 education program that meets the requirements of the
24 Superintendent of Public Instruction, has held the license issued by
25 the other state for at least 12 months, and has not been convicted
26 during the preceding 12 months of a motor vehicle moving
27 violation or seat belt infraction or of any offense committed in
28 another jurisdiction that would be a motor vehicle moving
29 violation or seat belt infraction if committed in this State.

30 (3) A limited provisional license, if the person has completed a drivers
31 education program that meets the requirements of the
32 Superintendent of Public Instruction but either did not hold the
33 license issued by the other state for at least 12 months or was
34 convicted during the preceding 12 months of a motor vehicle
35 moving violation or seat belt infraction or of any offense
36 committed in another jurisdiction that would be a motor vehicle
37 moving violation or seat belt infraction if committed in this State.

38 (i) Application. -- An application for a permit or license authorized by this section
39 must be signed by both the applicant and by the applicant's parent or guardian or, if
40 a parent or guardian is not available, by an adult approved by the Division.

41 (j) Duration and Fee. -- A limited learner's permit expires on the eighteenth
42 birthday of the permit holder. A limited provisional license expires on the eighteenth
43 birthday of the license holder. A full provisional license expires on the date set under

1 G.S. 20-7(f). The fee for a permit or license issued under this section is ten dollars
2 (\$10.00).

3 (k) Supervising Driver. -- The supervising driver must be the parent or guardian of
4 the permit holder or the license holder or, if a parent or guardian is not available, by
5 an adult approved by the Division. The supervising driver must be a licensed driver
6 who has been licensed to drive for at least five years.

7 (l) Violations. -- It is unlawful for the holder of a limited learner's permit,
8 temporary permit, or a limited provisional license to operate a motor vehicle without
9 complying with applicable restrictions. Failure to comply with restrictions
10 concerning the time of driving or the presence of a supervising driver in the vehicle
11 constitutes operating a motor vehicle without a license. Failure to comply with other
12 restrictions, including seating and passenger limitations, is an infraction punishable by
13 a fine as provided in G.S. 20-176.

14 (m) Insurance Status. -- The holder of a limited learner's permit is not considered
15 a licensed driver for the purpose of determining the inexperienced operator premium
16 surcharge under automobile insurance policies."

17 Section 2. G.S. 20-135.2A(a) reads as rewritten:

18 "(a) Each front seat occupant who is 16 years of age or older and each driver of a
19 passenger motor vehicle manufactured with seat safety belts in compliance with
20 Federal Motor Vehicle Safety Standard No. 208 shall have such a safety belt properly
21 fastened about his body at all times when the vehicle is in forward motion on a street
22 or highway in this State. Each driver of a passenger motor vehicle manufactured with
23 seat safety belts in compliance with Federal Motor Vehicle Safety Standard No. 208,
24 who is transporting in the front seat a person who is (1) under 16 years of age and (2)
25 not required to be restrained in accordance with G.S. 20-137.1, shall have the person
26 secured by such a safety belt at all times when the vehicle is operated in forward
27 motion on a street or highway in this State. Persons required to be restrained in
28 accordance with ~~G.S. 20-137.1~~ G.S. 20-11 and G.S. 20-137.1 shall be secured as
29 required by ~~that section.~~ those sections."

30 Section 3. G.S. 20-88.1(a) reads as rewritten:

31 "(a) In accordance with criteria and standards approved by the State Board of
32 Education, the State Superintendent of Public Instruction shall organize and
33 administer a program of driver education to be offered at the public high schools of
34 this State for all physically and mentally qualified persons who (i) are older than 14
35 years and six months, (ii) are approved by the principal of the school, pursuant to
36 rules adopted by the State Board of Education, (iii) are enrolled in a public or
37 private high school within the State, and (iv) have not previously enrolled in the
38 program. The State Board of Education shall use for such purpose all funds
39 appropriated to it for said purpose, and may use all other funds that become available
40 for its use for said purpose. ~~The~~

41 The driver education program established pursuant to this section shall include
42 instructions the following:

43 (1) Instruction on the rights and privileges of the handicapped and the
44 signs and symbols used to assist the handicapped relative to motor

1 vehicles, including the 'international symbol of accessibility' and
2 other symbols and devices as provided in Article 2A of this
3 Chapter. ~~In addition, this program shall include at~~

4 (2) At least six hours of instruction on the offense of driving while
5 impaired and related subjects.

6 (3) At least six hours of actual driving experience."

7 Section 4. G.S. 20-322(b) reads as rewritten:

8 "(b) Regulations adopted by the Commissioner shall state the requirements for a
9 school license, including requirements concerning location, equipment, courses of
10 instruction, instructors, financial statements, schedule of fees and charges, character
11 and reputation of the operators, insurance, bond or other security in such sum and
12 with such provisions as the Commissioner deems necessary to protect adequately the
13 interests of the public, and such other matters as the Commissioner may prescribe.
14 All driver training and safety education courses and courses of driving instruction
15 must include at least six hours of actual driving experience."

16 Section 5. G.S. 20-7(a1) reads as rewritten:

17 "(a1) Motorcycles and Mopeds. -- To drive a motorcycle, a person must have a
18 either a full provisional license issued under G.S. 20-11 or a regular drivers license
19 issued under this section and a motorcycle endorsement. To obtain a motorcycle
20 endorsement, a person must demonstrate competence to drive a motorcycle by
21 passing a road test and a written or oral test concerning a motorcycle and must pay
22 the fee for a motorcycle endorsement. Neither a drivers license nor a motorcycle
23 endorsement is required to drive a moped."

24 Section 6. This act does not appropriate funds to the Division to
25 implement this act nor does it obligate the General Assembly to appropriate funds to
26 implement this act.

27 Section 7. This act becomes effective December 1, 1997, if the General
28 Assembly appropriates the necessary funds from the Highway Fund to the
29 Department of Transportation, Division of Motor Vehicles, to administer the
30 provisional license program. The act does not apply to any person who holds a valid
31 North Carolina limited learner's permit issued before the effective date of this act, a
32 valid North Carolina learner's permit issued before the effective date of this act, or
33 who is a provisional licensee holding a valid North Carolina drivers license issued
34 before the effective date of this act.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 149 (2nd Edition)
SHORT TITLE: Graduated Drivers Licenses
SPONSOR(S): Senators Cooper and Allran

FISCAL IMPACT

	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 1997-98</u>	<u>FY 1998-99</u>	<u>FY 1999-00</u>	<u>FY 2000-01</u>	<u>FY 2001-02</u>
HIGHWAY FUND					
Expenditures					
Examiners - Recurring	\$84,279	\$174,322	\$630,332	\$652,166	\$674,758
Examiners - Nonrecurring	20,865	21,446	110,333	0	0
Clerical Staff	0	496	6,126	6,309	6,509
Postage	0	136	1,632	1,632	1,632
Printing	0	8,161	8,161	8,161	8,161
Digitized Licenses	15,516	39,866	138,243	138,243	138,243
MIS Programming	<u>84,000</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Total, Expenditures	\$204,660	\$245,047	\$894,826	\$806,510	\$829,303
Revenues					
Learner's Permit Fees	\$147,770	\$253,320	\$253,320	\$253,320	\$253,320
Full Provisional License Fees	<u>0</u>	<u>85,010</u>	<u>1,020,150</u>	<u>1,020,150</u>	<u>1,020,150</u>
Total, Revenues	\$147,770	\$338,330	\$1,273,470	\$1,273,470	\$1,273,470
Highway Fund Availability	(\$56,890)	\$93,256	\$378,644	\$466,960	\$444,167
Positions:	3	6.02	21.24	21.24	21.24

**PRINCIPAL DEPARTMENT(S) &
PROGRAM(S) AFFECTED:** Division of Motor Vehicles

NOTE: As discussed in the Assumptions and Methodology section, the proposed act will have no impact on expenditure requirements of public schools or the Department of Public Instruction.

EFFECTIVE DATE: December 1, 1997, if the funds necessary to administer the provisional license program are appropriated from the Highway Fund to the Department of Transportation, Division of Motor Vehicles. Figure shown above show the amounts that would need to be appropriated and expected revenues.

BILL SUMMARY:

The proposed act establishes a graduated process by which minor would acquire a driver's license. Two provisions of the proposed act differ from current law in a manner that will have fiscal impact:

- 1) The proposed act requires a minor to hold a learner's permit for one year without moving violations or seatbelt infractions before a limited provisional license can be issued, as opposed to current law which does not require applicants for a license to have a learner's permit. Minors who would otherwise have skipped getting a learner's permit would now be required to get one at a cost of \$10.00. As under current law, minors would be required to pass a driver's education course before acquiring a learner's permit.
- 2) The proposed act requires that all minors acquire a limited provisional license before being acquiring a full provisional license. Current law allows minors age 16 and older to acquire a full provisional license without any intermediate steps. The limited provisional license restricts the hours during which a minor may drive unsupervised and requires that all occupants of the vehicle wear seatbelts. After holding a limited provisional license for six months without moving violations or seatbelt infractions, a minor can receive a full provisional license. The additional license would cost \$10.00. The full provisional license could be obtained at a DMV office or through a mail-in application. As under current law, minors would be required to pass a driver's education course before acquiring a license.

The proposed act also contains a provision that makes the effective date of the legislation conditional upon the availability of the appropriations necessary to carry out the provisions of the proposed act.

ASSUMPTIONS AND METHODOLOGY:

Division of Motor Vehicles

Workload

Additional workload is generated for DMV because all minors will be required to acquire a learner's permit before acquiring a limited provisional license. The total number of additional learner's permits issued is as a result of the mandatory learner's permit provision is based on the number of 16 and 17 year olds acquiring driver's licenses in 1996 minus the number of permits issued in 1996. Because the proposed act is not effective until December 1, 1997, the first year figures represent 7/12 of the permit figure.

Additional workload is also generated for DMV because minors are required to acquire an additional provisional license. While the additional step is at the limited provisional license level, the workload for this step is the same as the current workload for issuing provisional licenses because this is the step at which the license examination would be given. The additional workload for DMV is generated by applications for full provisional licenses, which are issued without an examination if the applicant has held the limited license for six months and has no violations. The additional applications are equal to the number of current license applications for minors. The total number of 16 and 17 year olds

requiring full provisional licenses during each fiscal year is based on the number of 16 and 17 year olds acquiring driver's licenses in 1996. It is assumed that 95 percent of full provisional license applicants will apply at DMV offices in order to acquire the license more quickly than would occur through a mail-in application.

Because the proposed act contains a grandfather clause that applies its provisions only to those minors seeking a license or permit after the proposed act becomes effective, no applications for full provisional licenses are assumed to be processed until 18 months after the implementation date. As a result, only one month of provisional license workload occurs during the second fiscal year. The following workload assumptions are used for each year:

Number of 16 and 17 year olds acquiring full provisional licenses during fiscal year					
Walk-in at field offices (95%)	0	8,176	96,914	96,914	96,914
Mail-in to headquarters (5%)	0	425	5,101	5,101	5,101
Additional learners permits applied for at field offices	14,777	25,332	25,332	25,332	25,332

Expenditures

Examiners - Additional examiners are required at field offices to process the additional application workload generated by additional applicants for learner's permits and applicants for full provisional licenses. A 1996 study by the Department of Transportation's Productivity Management Section concluded that each driver license examiner could perform an average of 5,760 transactions per year (accounting for leave and other factors that limit time available). The number of transactions required for the year is divided by the number of field transactions per examiner to determine the number of examiners required (1998-99 - 33,408/5760 = 5.6). This number is rounded and multiplied by the salary and benefits cost of an examiner (\$28,093 in 1997-98 and adjusted for inflation in other years) to determine the recurring cost of examiners. The nonrecurring cost is based on the number of new examiners in each year multiplied by the cost of providing uniforms, equipment, and training for each new examiner (\$6,955 in 1997-98 and adjusted for inflation in other years).

Clerical Staff - Clerical staff are required to process full provisional license applications sent by mail. Clerical staff open the application, query the driver's license system to determine if the applicant is eligible for the license, generate the license from the digitized system, and mail the license to the applicant. The total number of headquarters transactions is divided by the number of non-holiday workdays per year (1999-00 - 5,101/250 = 20.4) to arrive at the number of transactions per day. DMV estimates that each transaction requires five minutes to process. The total number of minutes required to process transactions each day is divided by the number of minutes each day to determine the number of clerical staff required. The number of staff required is multiplied by the average salary and benefit cost of \$24,134.

Postage - The number of mail-in transactions is multiplied by \$0.32 to determine the amount of postage needed to mail full provisional licenses to applicants.

Printing - The number of full provisional license transactions is multiplied by \$0.08 to determine the cost of printing information brochures for limited provisional license applicants to inform them how to acquire their full provisional license.

Digitized Transaction Costs - DMV leases digitized license equipment to produce driver's licenses. The lease cost is based upon the total number of transactions processed by the machines multiplied by a set rate. The current rate is \$1.05. For 1997-98, each additional learner's permit transaction adds \$1.05 in costs. Each new machine acquired by DMV causes the rate to increase by \$0.002. DMV will require one new machine starting in 1998-99 to implement the provisions of the bill option. As a result, each new license or permit issuance caused by the provisions of the proposed act costs DMV an additional \$1.052 (1998-99 - 33,933 X \$1.052 = \$39,866). In addition, the extra \$0.002 applies to each of the 2,136,891 transactions not related to the additional workload created by the proposed act (2,136,891 X \$0.002 = \$4,274)

MIS Programming - The DMV computer system must be reprogrammed to accept the additional license level and restrictions placed on provisional licensees. Reprogramming will require 1,200 hours of work at \$60.00 per hour, the rental of two personal computers for four months at \$1,000 per month, and \$2,000 per month in additional SIPS charges for the four month period.

Revenues

Each additional learner's permit transaction and each limited provisional license transaction produce \$10.00 in revenue.

Public Schools/Department of Public Instruction

Driver Education

The provisions of the proposed act will not affect expenditures and revenues of public schools or the Department of Public Instruction on driver education. While the proposed act does contain a requirement that all driver education courses include six hours of actual driving experience, this amount of time is already required by Department of Public Instruction. As such, public schools would not incur additional costs to meet the requirement. Because the proposed act does not add require any more minors to take driver education than under current law, it will not add to the number of students taking driver education courses at public schools.

Student Transportation

The proposed act will have no effect on the costs of transporting students on school buses. The proposed act does not increase the age at which a minor can acquire a driver's license, so it does not reduce the number of students who can drive to school rather than ride a school bus. In addition, while the proposed act's restricts the hours during which holders of limited provisional licenses can drive alone to 5:00 a.m. through 9:00 p.m., this restriction is in effect hours during which students would drive to school. As such, the hour restrictions do not add to the number of students riding buses. Finally, although the proposed act does change the number of violations that could cause minors to lose their learner's permits, the number of students affected is very small. The Department

Public Instruction indicates that any resulting additional school bus ridership can be accommodated within current bus capacity.

TECHNICAL CONSIDERATIONS: None.

FISCAL RESEARCH DIVISION

733-4910

PREPARED BY: Karl Knapp

APPROVED BY: Tom Covington

DATE: March 18, 1997

Handwritten signatures of Karl Knapp and Tom Covington. The signature of Karl Knapp is written over the text 'PREPARED BY: Karl Knapp' and the signature of Tom Covington is written over the text 'APPROVED BY: Tom Covington'.

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

March 19, 1997

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Rob Foss	UNC Highway Safety Res. Ctr.
----------	------------------------------

Ann Ducean	Womble Car Life - Good Hwy Safety B.
------------	--------------------------------------

Shannon Bullock	Governor's Highway Safety Program
-----------------	-----------------------------------

John McMillan	Maning, Fecton & Steiner P.A.
---------------	-------------------------------

Megan Carney	BSW Student - Meredith College
--------------	--------------------------------

Danny Messay	Dept of Revenue
--------------	-----------------

B.W. Thomas	" " "
-------------	-------

Nancy Pomeroy	DOR
---------------	-----

[Signature]	DOR
-------------	-----

[Signature]	DOR
-------------	-----

Howard KRAMER	N.C. Bd of Nursing
---------------	--------------------

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

March 19, 1997

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Easter Maynard

Prevent Child Abuse NC

Julie Rehder

NC Child Advocacy Institute

Pat Jancey

SCSL

PETER GILGHEIST

District Attorney - Wake County

Tony Spence

DOT / Law

Narriett M. Shepherd

DOA / PA/O

WORTH McDONALD

Safety and Health Council of NC

Bob Musser

Safety and Health Council of North Carolina

SON M. CLARK

Safety / Health Council of NC - Real

Lawrence Davis

NC Passenger Safety Assoc

Bill Stout

GHSP

Rich Whitcomb

AAA Carolinas.

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

FINANCE COMMITTEE REPORT

John H. Kerr, III, Co-Chair

David W. Hoyle, Co-Chair

Wednesday, March 19, 1997

SENATOR JOHN KERR,

submits the following with recommendations as to passage:

FAVORABLE

S.B.	198	Henderson Co. Annexation Agreement
		Sequential Referral: None
		Recommended Referral: None
S.B.	262	Huntersville Annexation Agreement
		Sequential Referral: None
		Recommended Referral: None
S.B.	388	No Back Intangibles Tax Assessment
		Sequential Referral: None
		Recommended Referral: None

TOTAL REPORTED: 3

Committee Clerk Comment: None

SENATE FINANCE COMMITTEE

TUESDAY, MARCH 25, 1997

12:00 NOON - ROOM 544 LOB

The Senate Finance Committee met. There were 25 members of the committee present. Senator David Hoyle, Co-Chairman, presided.

The following bills were taken up:

S. B. 149 (H. B. 248-CS #2) - Graduated Drivers Licenses

Senator Roy Cooper, sponsor of S. B. 149, made a motion for adoption of proposed committee substitute to H. B. 248-CS #2, which was identical to S. B. 149, motion passed. Senator Cooper explained the changes in the committee substitute. Karl Knapp, Staff, explained the fiscal analyst on H. B. 248. Senator Kerr introduced an amendment to the bill, (attachment # 4). Senator Cooper moved for adoption of amendment, motion passed. Senator Cooper moved for a "favorable" report for committee substitute with amendment rolled into a new committee substitute, motion carried. Bill will be reported out as "unfavorable as to Committee Substitute Bill No. 2, but favorable as to Senate Committee Substitute Bill".

S. B. 289 - Raising Housing Bond Limit

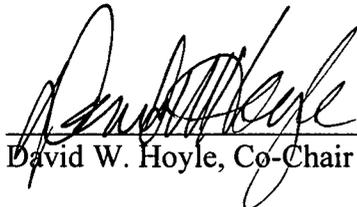
Senator David Hoyle explained this bill. Senator Ballantine moved for a "favorable" report.

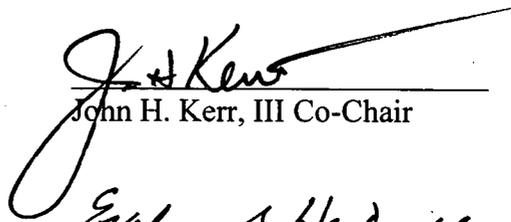
There be no further business, the meeting was adjourned.

SENATE FINANCE MEETING

Tuesday, March 25, 1997

Page -2-


David W. Hoyle, Co-Chair


John H. Kerr, III Co-Chair


Penny N. Williams, Clerk


Evelyn S. Hartsell, Clerk

NOTE:

Agenda is Attachment # 1

Visitor's Registration Sheet is Attachment # 2

Committee Report is Attachment # 3

Amendment to S.B. 149 (H.B. 248-cs#2) is Attachment # 4

AGENDA

SENATE FINANCE COMMITTEE

MEETING

TUESDAY, MARCH 25, 1997

12:00 NOON-ROOM 544

S.B. 149 - GRADUATED DRIVERS LICENSE - SENATOR COOPER

S.B. 289 - RAISING HOUSING BOND LIMIT - SENATOR HOYLE

~~1 Vehicles and the State Superintendent of Public Instruction and all expenses for such
2 instruction shall be paid by the persons enrolling in such courses and/or by the
3 schools offering them.~~

~~4 (b) The Division may issue a limited learner's permit to a minor who is at least 15
5 years old but is less than 16 years old and who otherwise meets the requirements of
6 this section. An application for a limited learner's permit must be signed by both the
7 applicant and the applicant's parent or guardian or some other responsible adult with
8 whom the applicant resides and who is approved by the Division. A limited learner's
9 permit authorizes the permit holder to drive a specified type or class of motor vehicle
10 while in possession of the permit and accompanied by a parent, guardian, or other
11 person approved by the Division who is licensed to operate the motor vehicle being
12 driven and is seated beside the permit holder. A limited learner's permit is valid for
13 a period of 18 months. The fee for a limited learner's permit is ten dollars (\$10.00).
14 In the event a minor who holds a limited learner's permit drives a motor vehicle in
15 violation of law, the permit shall be canceled.~~

~~16 A driver who holds a limited learner's permit only shall not be deemed a licensed
17 driver for the purpose of determining the inexperienced operator premium surcharge
18 under automobile insurance policies.~~

~~19 (c) The Division may, upon satisfactory proof that a minor between the ages of 16
20 and 18 years has become a resident of North Carolina and holds a valid motor
21 vehicle driver's license from his prior state of residence but has not completed
22 a course in driver education which meets the requirements of this State, grant to such
23 minor a temporary driver's permit under such terms and conditions as shall be
24 deemed necessary by the Division to allow the minor to operate a motor vehicle of a
25 specified type or class in this State in order to obtain the driver education courses
26 necessary for license in North Carolina. Every application for a temporary driver's
27 permit shall be made upon the approved form furnished by the Division. A
28 temporary driver's permit issued pursuant to this section shall be subject to all
29 provisions of law relating to a driver's license.~~

~~30 (a) Process. -- Safe driving requires instruction in driving and experience. To
31 ensure that a person who is less than 18 years old has both instruction and experience
32 before obtaining a drivers license, driving privileges are granted first on a limited
33 basis and are then expanded in accordance with the following process:~~

- ~~34 (1) Level 1: Driving with a limited learner's permit.~~
~~35 (2) Level 2: Driving with a limited provisional license.~~
~~36 (3) Level 3: Driving with a full provisional license.~~

~~37 The permits and licenses will bear a distinctive color photographic background or
38 border indicating the level of driving experience of the permit holder or licensee.~~

~~39 (b) Level 1. -- A person who is at least 15 years old but less than 18 years old may
40 obtain a limited learner's permit if the person meets all of the following
41 requirements:~~

- ~~42 (1) Passes a course of driver education prescribed in G.S. 20-88.1 or a
43 course of driver instruction at a licensed commercial driver
44 training school.~~

- 1 (2) Passes a written test administered by the Division.
- 2 (c) Level 1 Restrictions. -- A limited learner's permit authorizes the permit holder
3 to drive a specified type or class of motor vehicle only under the following
4 conditions:
- 5 (1) The holder of the permit must be in possession of the permit.
- 6 (2) A supervising driver must be seated beside the permit holder in
7 the front seat of the vehicle when it is in motion. No person other
8 than the supervising driver can be in the front seat.
- 9 (3) For the first six months after issuance, the permit holder may drive
10 only between the hours of 5:00 a.m. and 10:00 p.m.
- 11 (4) After the first six months after issuance, the permit holder may
12 drive at any time.
- 13 (5) Every person occupying the vehicle being driven by the permit
14 holder must have a safety belt properly fastened about his or her
15 body, or be restrained by a child passenger restraint system as
16 provided in G.S. 20-137.1(a), when the vehicle is in motion.
- 17 (d) Level 2. -- A person who is at least 16 years old but less than 18 years old may
18 obtain a limited provisional license if the person meets all of the following
19 requirements:
- 20 (1) Has held a limited learner's permit issued by the Division for at
21 least 12 months.
- 22 (2) Has not been convicted of a motor vehicle moving violation or seat
23 belt infraction during the preceding 12 months.
- 24 (3) Passes a road test administered by the Division.
- 25 (e) Level 2 Restrictions. -- A limited provisional license authorizes the license
26 holder to drive a specified type or class of motor vehicle only under the following
27 conditions:
- 28 (1) The license holder must be in possession of the license.
- 29 (2) The license holder may drive without supervision from 5:00 a.m. to
30 10:00 p.m. and when driving to or from work.
- 31 (3) The license holder may drive with supervision at any time. When
32 the license holder is driving with supervision, the supervising
33 driver must be seated beside the license holder in the front seat of
34 the vehicle when it is in motion. The supervising driver need not
35 be the only other occupant of the front seat, but must be the
36 person seated next to the license holder.
- 37 (4) Every person occupying the vehicle being driven by the license
38 holder must have a safety belt properly fastened about his or her
39 body, or be restrained by a child passenger restraint system as
40 provided in G.S. 20-137.1(a), when the vehicle is in motion.
- 41 (f) Level 3. -- A person who is at least 16 years old but less than 18 years old may
42 obtain a full provisional license if the person meets all of the following requirements:
- 43 (1) Has held a limited provisional license issued by the Division for at
44 least six months.

1 (2) Has not been convicted of a motor vehicle moving violation or seat
2 belt infraction during the preceding six months.

3 A person who meets these requirements may obtain a full provisional license by mail.

4 (g) Level 3 Restrictions. -- The restrictions on Level 1 and Level 2 drivers
5 concerning time of driving, supervision, and passenger limitations do not apply to a
6 full provisional license.

7 (h) Out-of-State Exceptions. -- A person who is at least 16 years old but less than
8 18 years old, who was a resident of another state and has an unrestricted drivers
9 license issued by that state, and who becomes a resident of this State may obtain one
10 of the following:

11 (1) A temporary permit, if the person has not completed a drivers
12 education program that meets the requirements of the State
13 Superintendent of Public Instruction but is currently enrolled in a
14 drivers education program that meets these requirements. A
15 temporary permit is valid for the period specified in the permit.
16 The period must end within 10 days after the expected completion
17 date of the drivers education program in which the applicant is
18 enrolled.

19 (2) A full provisional license, if the person has completed a drivers
20 education program that meets the requirements of the State
21 Superintendent of Public Instruction, has held the license issued by
22 the other state for at least 12 months, and has not been convicted
23 of an offense for which points are assessed under G.S. 20-16 during
24 the preceding 12 months.

25 (3) A limited provisional license, if the person has completed a drivers
26 education program that meets the requirements of the State
27 Superintendent of Public Instruction, but either did not hold the
28 license issued by the other state for at least 12 months or was
29 convicted of an offense for which points are assessed under G.S.
30 20-16 during the preceding 12 months.

31 (i) Application. -- An application for a permit or license authorized by this section
32 must be signed by both the applicant and by the applicant's parent or guardian or, if
33 a parent or guardian is not available, by an adult approved by the Division.

34 (j) Duration and Fee. -- A limited learner's permit expires on the eighteenth
35 birthday of the permit holder. A limited provisional license expires on the eighteenth
36 birthday of the license holder. A full provisional license expires on the date set under
37 G.S. 20-7(f). The fee for a permit or license issued under this section is ten dollars
38 (\$10.00).

39 (k) Supervising Driver. -- The supervising driver must be the parent or guardian
40 of the permit holder or the license holder or, if a parent or guardian is not available,
41 an adult approved by the Division. The supervising driver must be a licensed driver
42 who has been licensed to drive for at least five years.

1 (1) Insurance Status. -- The holder of a limited learner's permit is not considered a
2 licensed driver for the purpose of determining the inexperienced operator premium
3 surcharge under automobile insurance policies."

4 Section 2. G.S. 20-135.2A(a) reads as rewritten:

5 "(a) Each front seat occupant who is 16 years of age or older and each driver of a
6 passenger motor vehicle manufactured with seat safety belts in compliance with
7 Federal Motor Vehicle Safety Standard No. 208 shall have such a safety belt properly
8 fastened about his body at all times when the vehicle is in forward motion on a street
9 or highway in this State. Each driver of a passenger motor vehicle manufactured with
10 seat safety belts in compliance with Federal Motor Vehicle Safety Standard No. 208,
11 who is transporting in the front seat a person who is (1) under 16 years of age and (2)
12 not required to be restrained in accordance with G.S. 20-137.1, shall have the person
13 secured by such a safety belt at all times when the vehicle is operated in forward
14 motion on a street or highway in this State. Persons required to be restrained in
15 accordance with ~~G.S. 20-137.1~~ G.S. 20-11 and G.S. 20-137.1 shall be secured as
16 required by ~~that section,~~ those sections."

17 Section 3. G.S. 20-88.1(a) reads as rewritten:

18 "(a) In accordance with criteria and standards approved by the State Board of
19 Education, the State Superintendent of Public Instruction shall organize and
20 administer a program of driver education to be offered at the public high schools of
21 this State for all physically and mentally qualified persons who (i) are older than 14
22 years and six months, (ii) are approved by the principal of the school, pursuant to
23 rules adopted by the State Board of Education, (iii) are enrolled in a public or
24 private high school within the State, and (iv) have not previously enrolled in the
25 program. The State Board of Education shall use for such purpose all funds
26 appropriated to it for said purpose, and may use all other funds that become available
27 for its use for said purpose. ~~The~~

28 The driver education program established pursuant to this section shall include
29 instructions the following:

30 (1) Instruction on the rights and privileges of the handicapped and the
31 signs and symbols used to assist the handicapped relative to motor
32 vehicles, including the "international symbol of accessibility" and
33 other symbols and devices as provided in Article 2A of this
34 Chapter. ~~In addition, this program shall include at~~

35 (2) At least six hours of instruction on the offense of driving while
36 impaired and related subjects.

37 (3) At least six hours of actual driving experience."

38 Section 4. G.S. 20-322(b) reads as rewritten:

39 "(b) Regulations adopted by the Commissioner shall state the requirements for a
40 school license, including requirements concerning location, equipment, courses of
41 instruction, instructors, financial statements, schedule of fees and charges, character
42 and reputation of the operators, insurance, bond or other security in such sum and
43 with such provisions as the Commissioner deems necessary to protect adequately the
44 interests of the public, and such other matters as the Commissioner may prescribe.

1 All driver training and safety education courses and courses of driving instruction
2 must include at least six hours of actual driving experience."

3 Section 5. G.S. 20-7(a1) reads as rewritten:

4 "(a1) Motorcycles and Mopeds. -- To drive a motorcycle, a person must have a
5 either a full provisional license issued under G.S. 20-11 or a regular drivers license
6 issued under this section and a motorcycle endorsement. To obtain a motorcycle
7 endorsement, a person must demonstrate competence to drive a motorcycle by
8 passing a road test and a written or oral test concerning a motorcycle and must pay
9 the fee for a motorcycle endorsement. Neither a drivers license nor a motorcycle
10 endorsement is required to drive a moped."

11 Section 6. This act does not appropriate funds to the Division to
12 implement this act nor does it obligate the General Assembly to appropriate funds to
13 implement this act.

14 Section 7. This act becomes effective December 1, 1997, if the General
15 Assembly appropriates the necessary funds from the Highway Fund to the
16 Department of Transportation, Division of Motor Vehicles, to administer the
17 provisional license program. The act does not apply to any person who holds a valid
18 North Carolina limited learner's permit issued before the effective date of this act, a
19 valid North Carolina learner's permit issued before the effective date of this act, or
20 who is a provisional licensee holding a valid North Carolina drivers license issued
21 before the effective date of this act.

Graduated Driver Licensing Summary

What is Graduated Driver Licensing?

Graduated Driver Licensing (GDL) is a proposal that recommends all drivers less than age 18 be required to pass through three provisional driving levels demonstrating competency before they achieve full licensure.

It is designed to reduce crash risks for young new drivers by systematically providing them with more practical experience, gained under the safest possible conditions, before allowing them to drive on their own. In a series of three steps, the new driver is permitted to drive in more dangerous situations. With just a few alterations in the present licensing system, GDL will help reduce the number of young driver crashes.

- **Level 1 is a limited learner's permit at age 15 or older.** The novice driver must complete one year of violation-free driving with approved adult supervision to progress to the next level. All must wear seat belts.
- **Level 2 is a limited provisional license.** The young driver must complete six months of violation-free driving to progress to the next level. Unsupervised driving is allowed between 5 a.m. and 9 p.m. (An exemption would allow driving to or from work after 9 p.m.) All people in the vehicle must wear seat belts. Supervised driving allowed at any time.
- **Level 3 is a full provisional license.** Unsupervised driving is allowed at any time, but all people in the vehicle must wear seat belts.

If the driver starts the GDL process at age 15, a full provisional license can be obtained by age 16½.

What is the problem?

- Every year in North Carolina, one out of four 16-year-old drivers is involved in a car crash. The situation is worse than it appears because younger drivers do less driving; their actual risk of crashing per mile driven is greater.
- An average of 70 people die every year in North Carolina as result of crashes caused by 16- and 17-year-old drivers. Another 10,650 are injured in these crashes. The yearly cost of these crashes is at least \$175 million.
- Sixteen-year-old drivers are more likely than older drivers to be killed in a crash between 9 p.m. and midnight.
- Nearly one-third of new drivers in North Carolina do not get a learner's permit prior to their 16th birthday. One-quarter get their license within the first month after they turn 16. Young drivers haven't had the time to develop a sense of what kinds of situations are more or less dangerous.

Who supports GDL?

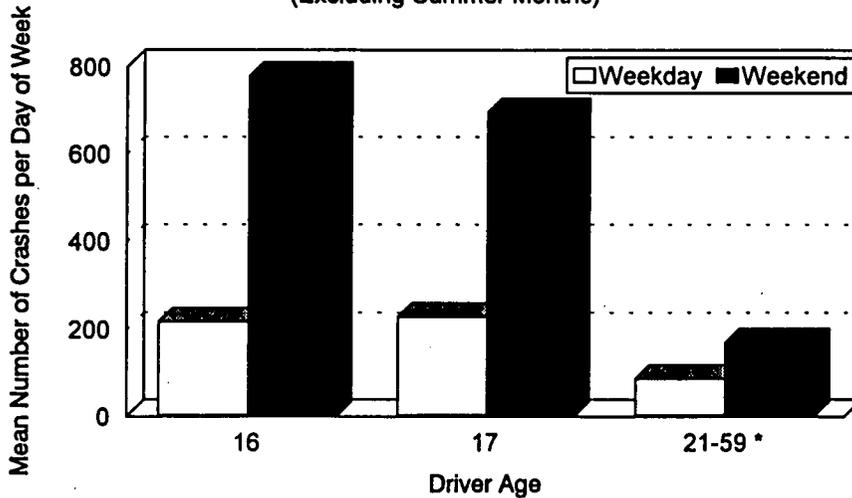
A long list of health agencies, highway safety advocates, law enforcement and parent groups supports GDL. *Seventy-four percent of 500 North Carolina residents surveyed by telephone said they believed North Carolina should change to the GDL system.* There is no known opposition to the proposal.

The Governor's Highway Safety Commission has made GDL the top recommendation in its annual report to the Governor. The Commission, along with the Child Fatality Task Force, the North Carolina Passenger Safety Association and the Governor's Council for Young Adult Drivers, sponsored eight community forums on GDL across the state in December 1996 and January 1997. Not only were North Carolinians educated on the issue, the public—including parents, teenagers and law enforcement—provided valuable input and support for GDL. Most of the parents and teenagers favored GDL once the proposal was explained to them. A handful of teens complained that GDL was "not fair," but most agreed that they had friends who had been in a car wreck. Members of the Governor's Council for Young Adult Drivers made statements at each forum in favor of GDL.

Where does GDL stand now?

Many states are adopting GDL legislation. Florida has GDL in place, and Michigan recently has adopted GDL legislation to take effect this year. The North Carolina House and Senate Bills were introduced in February 1997. The chief House co-sponsors are Rep. Debbie Clary, Rep. Martha Alexander and Rep. Ruth Easterling. The chief Senate co-sponsors are Sen. Roy Cooper and Sen. Austin Allran.

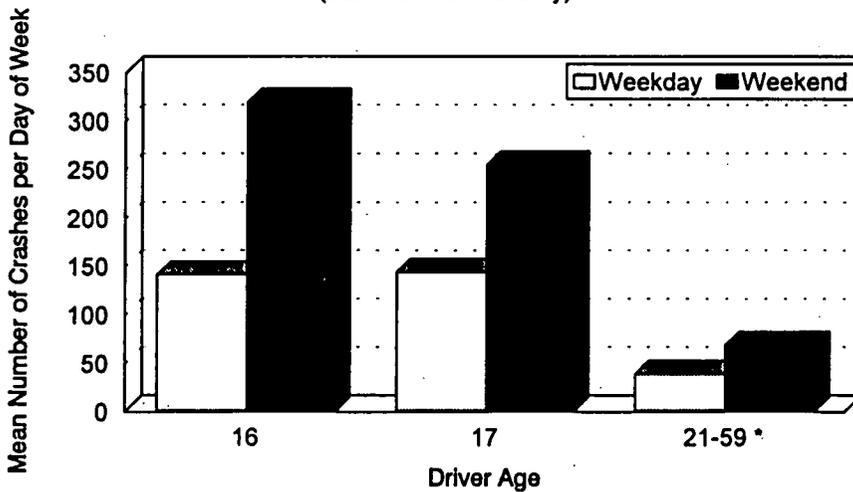
Distribution of Nighttime Crashes (9 - midnight) by Driver Age: Weekend vs. Week night (Excluding Summer Months)



Note: 21-59 Age group is average for all included years of age, to be comparable with 16 & 17 yr. olds

Source: NC Traffic Crash Data, 1993-1995

Distribution of Nighttime Crashes (9 - midnight) by Driver Age: Weekend vs. Week night (Summer Months Only)



Note: 21-59 Age group is average for all included years of age, to be comparable with 16 & 17 yr. olds

Source: NC Traffic Crash Data, 1993-1995

Why Young Drivers Have Such a High Crash Rate

It is important to keep in mind that not all young drivers are poor drivers. However, as a group young drivers are much worse than older drivers, as the figures showing crash experience by driver age clearly show. There are several reasons for young drivers' higher crash rate:

□ Greater Exposure to Crashing:

Young drivers do more of their driving during more dangerous times and in more dangerous situations. Nighttime driving, driving on local roads rather than highways, and driving with several occupants in the vehicle all are more likely to result in a crash. Teen drivers do more of their driving than older drivers in all these situations.

□ Insufficient Experience:

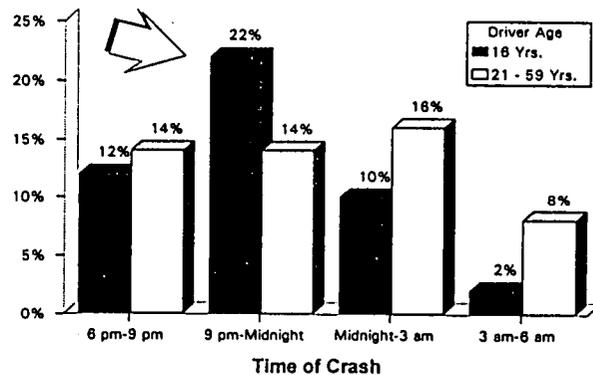
Young drivers lack experience and the only way to become a good driver is through experience. Nearly one third of new drivers in North Carolina do not obtain a Learner's Permit which allows them to begin to get driving practice before their 16th birthday, and half of all young drivers obtain their license within four months of their 16th birthday. One-quarter get their license within the first month after they turn sixteen.

Although a few months driving practice is enough to become familiar and comfortable with the physical tasks involved in driving, the equally important judgment abilities develop more slowly. Over time, drivers develop a wisdom about driving that allows them to anticipate and avoid numerous potentially dangerous situations. Young drivers haven't had the time to develop this sense of what kinds of situations are more or less dangerous.

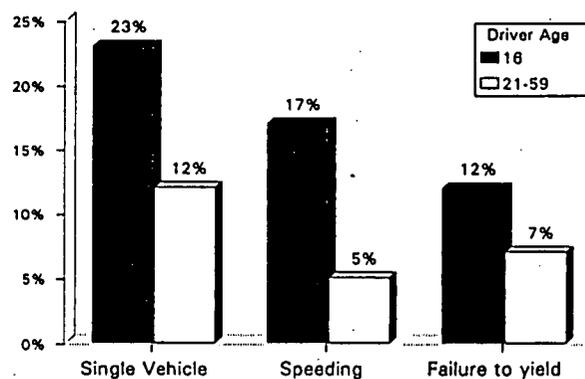
□ Impulsive and Risky Behaviors:

Partly as a function of maturity and partly because of inexperience, young drivers are much more likely than more experienced drivers to engage in behaviors that increase the chances of crashing: speeding, ignoring traffic control signals, making sudden lane changes, driving in an overly aggressive fashion, etc.

16-year-old Drivers are Much More Likely Than Older Drivers to be Killed in a Crash Between 9 pm and Midnight



Characteristics of Crashes by Driver Age, 1993-95
Indicators of Driver Fault



Find out more. Visit the UNC-HSRC Web site at <http://www.unc.edu/depts/hsrc>

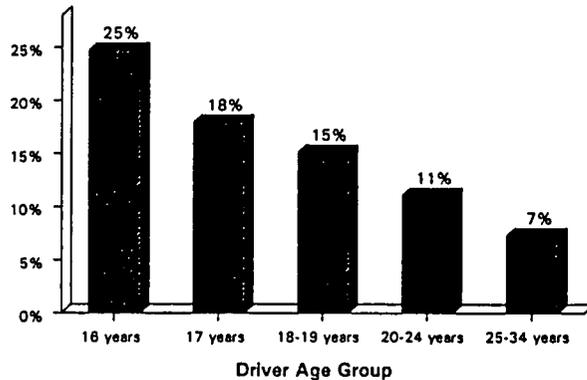
The Young Driver Problem in North Carolina

Young novice drivers are a serious threat to themselves, their passengers, and other drivers on the road. Analysis of 16- and 17-year-old drivers' crashes in NC for 1993 through 1995 provides a graphic picture of this problem.

❑ Far Too Many Crashes

First, drivers in this age group are much more likely to cause a crash than are drivers just a few years older. The figure to the right shows the large difference in crash rates for drivers of different ages.

Percent of Licensed North Carolina Drivers Involved in a Crash by Age Group, 1993



❑ More Crashes in Fewer Miles

The situation is even worse than it appears from the figure at right because younger drivers do less driving. So their actual risk of crashing per mile driven is greater.

The figure below shows that when amount of driving is taken into consideration, 16- and 17-year-old drivers are far worse drivers than even 18-year-olds.

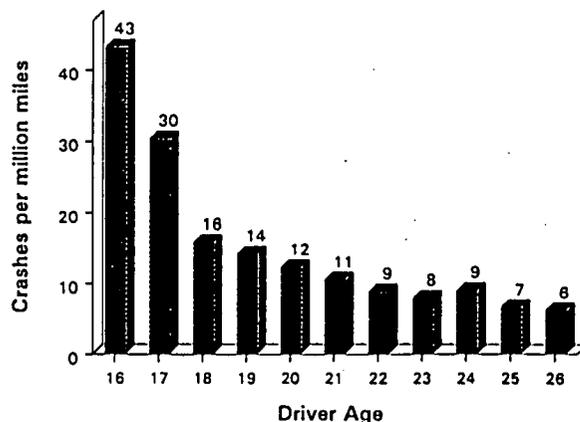
❑ Many Serious Crashes

An average of 70 people die every year in North Carolina as a result of crashes caused by 16- and 17-year-old drivers.

Another 10,650 are injured in these crashes.

The yearly cost of these crashes is at least \$175 million dollars.

Rate of Involvement in Police-Reported Crashes by Driver Age, U.S., 1990



❑ It's Not Just Males

Although males generally have more crashes than females, this is not because they are worse drivers. It's because they drive more. When amount of driving is taken into account males and females have nearly equal crash rates.

Find out more. Visit the UNC-HSRC Web site at <http://www.unc.edu/depts/hsrc>

Myths and Facts About Graduated Driver Licensing

Graduated Driver Licensing (GDL) is a different way of introducing young drivers to the complex and potentially deadly task of driving. It is designed to reduce crash risks for young new drivers by systematically providing them with more practical experience, gained under the safest possible conditions, before allowing them to drive completely on their own. Several misunderstandings or Myths about GDL have developed. These are addressed below.

Myth: GDL requires teens to graduate from High School before they can obtain a Driver License.

- Fact.** GDL refers to the fact that new drivers progress or 'graduate' from one licensing stage to the next after they have successfully achieved the goals at each level.

Myth: GDL would mean teenagers can't get their license until they are 18 years old.

- Fact.** Under GDL, new drivers could obtain their license at the same age as with the present system. There would be only one noteworthy difference: for the *first six months* in order to legally drive between 9 pm and 5 am they would have to be accompanied by an adult driver.

Myth: GDL would prevent teenagers from working at night.

- Fact.** GDL would only prevent beginning drivers, mainly those who have just turned 16, from *recreational driving* between 9 pm and 5 am, and this would last *only six months*. And, teens could drive at any time of night when accompanied by an adult driver. Driving to or from work without an adult in the car would also be permitted.

Myth: GDL would punish everybody for mistakes that only some young drivers make.

- Fact.** GDL is designed to support and protect new drivers, not to punish them. It extends the driving privilege in steps, as new drivers demonstrate their competence and responsibility, rather than simply throwing inexperienced, emotionally immature beginners into the complex risky driving environment as is presently done – with all too frequent tragic consequences.

Myth: Alcohol is the main problem for young drivers. How would GDL affect that?

- Fact.** Although alcohol does contribute to teen driver crashes, it is only a minor factor among 16- and 17-year-old drivers. A much greater problem is impulsive, risky driving actions: the failure to make good judgments and decisions.

Myth: GDL is just another government attempt to protect people from themselves.

- Fact.** In fact, young beginning drivers commonly cause crashes in which both their passengers and occupants of other vehicles are hurt or killed. GDL is designed to protect everybody who uses the roadways, not just young drivers.

Myth: Simply improving Driver Education programs would solve the problem of young driver crashes. It isn't necessary to change the licensing system.

- Fact.** Although it can help teach persons how to drive, there is no research evidence to suggest that Driver Education reduces crashes. A drastically revised approach might have some benefit, but such a program would be far more costly than the public seems willing to pay for at present.

Find out more: Visit the UNC-HSRC Web site at <http://www.hsrb.unc.edu>

SUPPORT FOR GRADUATED DRIVER LICENSING

AAA Carolinas
Adolescent Pregnancy Prevention Coalition of NC
American Association of Motor Vehicle Administrators
American Driver Training and Safety Education Association
Association of NC Boards of Health
Covenant with North Carolina's Children
Governor's Advocacy Council on Children and Youth
Governor's Council for Young Adult Drivers
Governor's Highway Safety Commission
Governor's Highway Safety Program
Independent Insurance Agents of NC Inc.
Insurance Institute for Highway Safety
Justice for Children Task Force
Montgomery Insurance Companies
Mothers Against Drunk Driving (MADD)
National Association of Independent Insurers
National Association of County Directors of Social Services
National Association of Social Workers - North Carolina Chapter
National Highway Traffic Safety Administration
National Association of Governor's Highway Safety Representatives
National Safety Council
National Transportation Safety Board
Nationwide Insurance
NC Association of Local Health Directors
NC Association of Local Nutrition Directors
NC Child Advocacy Institute
NC Child Fatality Task Force
NC Congress of Parents and Teachers, Inc. (PTA)
NC Department of Insurance
NC Equity
NC Law Enforcement Officers Association
NC Medical Society
NC Nurses Association
NC Passenger Safety Association
NC Pediatric Society
NC Primary Healthcare Association
NC Professional Driving Schools
NC Retail Merchants Association
NC State Association of Black Social Workers
NC State Fire and Rescue Commission
NC State Highway Patrol
NC Trucking Association
Prevent Child Abuse North Carolina
Safety and Health Council of NC
School Nurses Association of NC
Society for Public Health Education, Inc. - North Carolina Chapter
State Board of Education
UNC Highway Safety Research Center

FISCAL ANALYSIS MEMORANDUM

DATE: March 25, 1997
TO: Members of the Senate Finance Committee
FROM: Karl Knapp
Fiscal Research Division
RE: Proposed Committee Substitute for HB 248

FISCAL IMPACT

	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 1997-98</u>	<u>FY 1998-99</u>	<u>FY 1999-00</u>	<u>FY 2000-01</u>	<u>FY 2001-02</u>
HIGHWAY FUND					
Expenditures					
Examiners - Recurring	\$84,279	\$203,376	\$660,348	\$683,222	\$706,889
Examiners - Nonrecurring	20,865	28,595	110,333	0	0
Clerical Staff	0	496	6,126	6,309	6,509
Postage	0	136	1,632	1,632	1,632
Printing	0	8,161	8,161	8,161	8,161
Digitized Licenses	17,510	43,438	141,925	141,925	141,925
MIS Programming	<u>84,000</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Total, Expenditures	\$206,654	\$284,202	\$928,524	\$841,248	\$865,116
Revenues					
Learner's Permit Fees	\$147,770	\$253,320	\$253,320	\$253,320	\$253,320
Motorcycle Learner's Permit Fees	18,960	33,950	35,000	35,000	35,000
Provisional License Fees	<u>0</u>	<u>85,010</u>	<u>1,020,150</u>	<u>1,020,150</u>	<u>1,020,150</u>
Total, Revenues	\$166,730	\$372,280	\$1,308,470	\$1,308,470	\$1,308,470
Highway Fund Availability	\$39,924	\$88,078	\$379,946	\$467,222	\$443,354
Positions:	3	7.02	22.24	22.24	22.24

**PRINCIPAL DEPARTMENT(S) &
PROGRAM(S) AFFECTED:** Division of Motor Vehicles

EFFECTIVE DATE: December 1, 1997, if the funds necessary to administer the provisional license program are appropriated from the Highway Fund to the Department of Transportation, Division of Motor Vehicles.

BILL SUMMARY: The proposed act establishes a graduated process by which minor would acquire a driver's license. Three provisions of the proposed act differ from current law in a manner that will have fiscal impact:

- 1) The proposed act requires a minor to hold a learner's permit for one year without moving violations or seatbelt infractions before a limited provisional license can be issued, as opposed to current law which does not require applicants for a license to have a learner's permit. Minors who would otherwise have skipped getting a learner's permit would now be required to get one at a cost of \$10.00.
- 2) The proposed act requires that all minors acquire a limited provisional license before being acquiring a full provisional license. Current law allows minors age 16 and older to acquire a full provisional license without any intermediate steps. The limited provisional license restricts the hours during which a minor may drive unsupervised and requires that all occupants of the vehicle wear seatbelts. After holding a limited provisional license for six months without moving violations or seatbelt infractions, a minor can receive a full provisional license. The additional license transaction caused by the proposed act would have a fee of \$10.00. The full provisional license could be obtained at a DMV office or through a mail-in application.
- 3) The proposed act creates an new class of learner's permit for motorcycles. The permit is available to persons holding a limited or full provisional license or a regular driver license. It allows the holder to ride a motorcycle, but does not allow a passenger to be carried. Limited provisional license holders can not use the permit during hours when they are restricted from driving without supervision. The fee for the permit is set at \$10.

The proposed act also contains a provision that makes the effective date of the legislation conditional upon the availability of the appropriations necessary to carry out the provisions of the proposed act.

ASSUMPTIONS AND METHODOLOGY:

Workload

Additional workload is generated for DMV because all minors will be required to acquire a learner's permit before acquiring a limited provisional license. The total number of additional learner's permits issued is as a result of the mandatory learner's permit provision is based on the number of 16 and 17 year olds acquiring driver's licenses in 1996 minus the number of permits issued in 1996. Because the proposed act is not effective until December 1, 1997, the first year figures represent 7/12 of the permit figure.

Additional workload is also generated for DMV because minors are required to acquire an additional provisional license. While the additional step is at the limited provisional license level, the workload for this step is the same as the current workload for issuing provisional licenses because this is the step at which the license examination would be given. The additional workload for DMV is generated by applications for full provisional licenses, which are issued without an examination if the applicant has held the limited license for six months and has no violations. The additional applications are equal to

the number of current license applications for minors. The total number of 16 and 17 year olds acquiring full provisional licenses during each fiscal year is based on the number of 16 and 17 year olds acquiring driver's licenses in 1996. It is assumed that 95 percent of full provisional license applicants will apply at DMV offices in order to acquire the license more quickly than would occur through a mail-in application.

Because the proposed act contains a grandfather clause that applies its provisions only to those minors seeking a license or permit after the proposed act becomes effective, no applications for full provisional licenses are assumed to be processed until 18 months after the implementation date. As a result, only one month of provisional license workload occurs during the second fiscal year.

The proposed act also adds workload related to the issuance of motorcycle learner's permits. There are currently 254 minors with motorcycle endorsements on their license. It is expected that a similar number of minors would seek a motorcycle learner's permit each year under the graduated license provisions of the proposed act. Applications by minors for motorcycle learner's permits begin during the second fiscal year of enactment when minors begin to apply for limited provisional licenses.

In addition, it is expected that some adult drivers will acquire the motorcycle learner's permit. The adult demand for permits is generated by persons seeking to purchase a motorcycle who do not wish to acquire a motorcycle endorsement until after a purchase is made. DMV issues approximately 33,000 new motorcycle plates each year. DMV cannot determine which of these plates are for sales of vehicles to persons who do not possess a motorcycle endorsement. For the purposes of this note, it is assumed that ten percent of the plates are sold to persons in this category, and that these persons may choose to acquire a motorcycle learner's permit at the time they purchase a motorcycle. Applications for adult learner's permits begins during the first year of enactment of the bill.

The following workload assumptions are used for each year:

Number of 16 and 17 year olds acquiring full provisional licenses during fiscal year					
Walk-in at field offices (95%)	0	8,176	96,914	96,914	96,914
Mail-in to headquarters (5%)	0	425	5,101	5,101	5,101
Additional vehicle learner's permits applied for at field offices	14,777	25,332	25,332	25,332	25,332
Motorcycle learner's permits applied for at field offices	1,896	3,395	3,500	3,500	3,500

Expenditures

Examiners - Additional examiners are required at field offices to process the additional application workload generated by additional applicants for learner's permits and applicants for full provisional licenses. A 1996 study by the Department of Transportation's Productivity Management Section

concluded that each driver license examiner could perform an average of 5,760 transactions per year (accounting for leave and other factors that limit time available). The number of transactions required for the year is divided by the number of field transactions per examiner to determine the number of examiners required (1998-99 - $37,228/5760 = 6.5$). This number is rounded and multiplied by the salary and benefits cost of an examiner (\$28,093 in 1997-98 and adjusted for inflation in other years) to determine the recurring cost of examiners. The nonrecurring cost is based on the number of new examiners in each year multiplied by the cost of providing uniforms, equipment, and training for each new examiner (\$6,955 in 1997-98 and adjusted for inflation in other years).

Clerical Staff - Clerical staff are required to process full provisional license applications sent by mail. Clerical staff open the application, query the driver's license system to determine if the applicant is eligible for the license, generate the license from the digitized system, and mail the license to the applicant. The total number of headquarters transactions is divided by the number of non-holiday workdays per year (1999-00 - $5,101/250 = 20.4$) to arrive at the number of transactions per day. DMV estimates that each transaction requires five minutes to process. The total number of minutes required to process transactions each day is divided by the number of minutes each day to determine the number of clerical staff required. The number of staff required is multiplied by the average salary and benefit cost of \$24,134.

Postage - The number of mail-in transactions is multiplied by \$0.32 to determine the amount of postage needed to mail full provisional licenses to applicants.

Printing - The number of full provisional license transactions is multiplied by \$0.08 to determine the cost of printing information brochures for limited provisional license applicants to inform them how to acquire their full provisional license.

Digitized Transaction Costs - DMV leases digitized license equipment to produce driver's licenses. The lease cost is based upon the total number of transactions processed by the machines multiplied by a set rate. The current rate is \$1.05. For 1997-98, each additional learner's permit transaction adds \$1.05 in costs. Each new machine acquired by DMV causes the rate to increase by \$0.002. DMV will require one new machine starting in 1998-99 to implement the provisions of the bill option. As a result, each new license or permit issuance caused by the provisions of the proposed act costs DMV an additional \$1.052 (1998-99 - $37,228 \times \$1.052 = \$39,164$). In addition, the extra \$0.002 applies to each of the 2,136,891 transactions not related to the additional workload created by the proposed act ($2,136,891 \times \$0.002 = \$4,274$).

MIS Programming - The DMV computer system must be reprogrammed to accept the additional license and permit levels, and the restrictions placed on provisional licensees. Reprogramming will require 1,200 hours of work at \$60.00 per hour, the rental of two personal computers for four months at \$1,000 per month, and \$2,000 per month in additional SIPS charges for the four month period.

Revenues

Each additional learner's permit transaction and each limited provisional license transaction produces \$10.00 in revenue.

TECHNICAL CONSIDERATIONS: None

EXPLANATION OF HOUSE BILL 248
Graduated Drivers Licenses
Proposed Senate Finance Committee Substitute

TO: Senate Finance Committee
FROM: Sabra Faires, Committee Counsel
DATE: March 25, 1997
SPONSOR: Representative Clary

House Bill 248 is a companion to Senate Bill 149, introduced by Senator Cooper. It changes the way in which drivers licenses are issued to persons under 18 years of age and authorizes motorcycle learners' permits. The provisions on licenses issued to persons under 18 are a recommendation of the Child Fatality Task Force. The Task Force found that safe driving requires instruction in driving and experience. To ensure that a person who is less than 18 years of age has both instruction and experience before obtaining a drivers license, the bill provides that driving privileges would be granted on a graduated basis as follows:

- 1) Driving for at least 12 months with a limited learners permit.
- 2) Driving for at least 6 months with a limited provisional license.
- 3) Driving until the age of 18 with a provisional license.

The act becomes effective December 1, 1997, but will not apply to persons who have a valid limited learner's permit, learner's permit, or provisional drivers license (15-18 years old) prior to the effective date.

Under present law, a person who is at least 15 years of age may be granted a limited learner's permit if the person has completed a driver's education program. A person who is at least 16 years of age may be granted a learner's permit without the necessity of completing a driver's education program. The holder of a limited learner's permit and a learner's permit may only drive when accompanied by a parent, guardian, or other person approved by the Division of Motor Vehicles who is licensed to operate the motor vehicle. That person must be seated beside the permit holder. A person who is at least 16 years of age, but less than 18 years of age, may obtain a drivers license if the person has completed a driver's education program. A person between the ages of 16 and 18 years old who holds a driver's license, known as a provisional licensee, is not subject to any supervision restrictions.

House Bill 248 would change the current law in the following ways:

- 1) It would require driver education programs for young drivers to include at least six hours of actual driving experience.
- 2) It would require all licensed drivers under the age of 18 to drive under a limited learner's permit for at least 12 months.
- 3) It would place the following restrictions on a driver with a limited learner's permit:
 - Supervised driving between the hours of 5:00 am and 9:00 pm for the first six months.
 - Supervised driving at any time following the first six months.

- The supervisor must be a parent, guardian, or other person approved by the Division who has been licensed to drive for at least five years.
 - The supervisor may be the only other person in the front seat of the vehicle.
 - All passengers must be wearing a seat belt.
- 4) It would provide a new level of license known as a limited provisional license. To obtain a limited provisional license, a person must have possessed a Level 1 limited learner's permit for at least 12 months with no moving violations or seat belt violations. It would place the following restrictions on a driver with a limited provisional license:
- May drive unsupervised from 5:00 am until 9:00 pm, when going to and coming from work, and when going to and from volunteer fire and rescue activities.
 - May drive under supervision at any time. The supervisor must sit next to the driver, but the supervisor need not be the only other occupant of the front seat.
 - All passengers must be wearing a seat belt.
- 5) The third level, known as a full provisional license, would be comparable to a provisional license under current law. To obtain a full provisional license, a person must have possessed a Level 2 limited provisional license for a period of at least 6 months with no moving violations or seat belt infractions. A full provisional licensee may drive unsupervised at any time.
- 6) It would give the Division of Motor Vehicles three choices when a person between the ages of 16 and 18 years of age, who becomes a resident of North Carolina and holds a valid unrestricted drivers license from the prior state of residence, applies for a North Carolina drivers license. Under current law, if that driver has not completed a course in driver education which meets the requirements of this State, the Division may grant a temporary driver's permit under terms and conditions deemed necessary to allow the minor to operate a motor vehicle in order to obtain the driver education courses necessary for a North Carolina provisional license. Under the changes made by this bill, DMV would be able to do one of three things:
- It may issue a temporary driver's permit to allow the driver to obtain the driver education. This option is the same as the current law.
 - It may issue a graduated license appropriate to the driver's age and experience as provided by G.S. 20-11.
 - It may issue an unrestricted drivers license if the person has possessed a valid unrestricted drivers license in his previous state for the 12 month period immediately preceding the date of application and has not been convicted of a traffic violation for which points might be assessed under the Uniform Driver's License Act.
- 7) The fee for obtaining a limited provisional license is \$10.00. The fee for obtaining a full provisional license is the same as current law. Under current law, there is only one license to obtain and the cost for obtaining it is \$2.50 for each year.
- 8) It authorizes the Division of Motor Vehicles to issue a motorcycle learner's permit and restricts those who have this permit from driving a motorcycle with passengers.

HOUSE BILL 248
 GRADUATED DRIVERS LICENSE
 PROPOSED SENATE FINANCE COMMITTEE SUBSTITUTE

Type of License

Current Law

Proposed Law

Limited Learner's Permit

Age	15 years old	15, 16, or 17 years old
Requirements	Completed Drivers Ed	Completed Drivers Ed Passed written DMV test
Restrictions	Carry permit Drive with supervising adult seated beside driver	Carry permit Drive with supervising adult seated beside driver No passengers in front seat except supervising driver For first six months, drive only between 5:00 a.m. and 9:00 p.m. All passengers must be in seat belts or child restraints
Fee	\$10.00	\$10.00
When It Expires	18 months after issued	At age 18

<u>Type of License</u>	<u>Current Law</u>	<u>Proposed Law</u>
<u>Limited Provisional License</u>	Not required	
Age	--	16 or 17 years old
Requirements	--	Have limited learner's permit for 12 months No violations in preceding 12 months Passed DMV road test
Restrictions	--	Carry permit Drive without supervision only from 5:00 a.m. to 9:00 p.m., to or from work, or to or from fire or rescue activity When driving with supervision, have supervising adult seated beside driver All passengers must be in seat belts or child restraints
Fee	--	\$10.00
When it Expires	--	At age 18

<u>Type of License</u>	<u>Current Law</u>	<u>Proposed Law</u>
<u>Full Provisional License</u>		
Age	16 or 17 years old	16 or 17 years old
Requirements	Completed Drivers Ed	Had Limited Provisional License for 6 months No violations in preceding 6 months
Restrictions	None	None
Fee	\$10.00 for 16 year old \$7.50 for 17 year old	\$10.00 \$7.50 for 17 year old
When it Expires	At age 20	At age 20

Recommended Structure for Graduated Driver Licensing in North Carolina

Level 1 (Limited Learner's Permit)

- Novice driver must be age 15 or older, complete Driver's Education, and obtain Limited Learner's permit.
- For at least 12 months the novice must be supervised when driving by an adult, guardian or other approved, licensed adult.
- All persons in a vehicle driven by a novice must wear a seat belt, and only the supervisor may ride in the front seat with the novice driver.
- The novice must complete 12 consecutive months of violation-free driving in order to progress to the next level of licensure.

Level 2 (Limited Provisional License)

- Unsupervised driving is allowed between 5 a.m. and 9 p.m. (Driving to or from work after 9 p.m. is permitted).
- Supervised driving is allowed at any time.
- Driver must complete six consecutive months of violation-free driving in order to progress to the next level of licensure.
- All persons in vehicle must wear seat belts.
- Driver is subject to all other conditions of Provisional License.

Level 3 (Full Provisional License)

- Unsupervised driving is allowed at any time.
- All persons in vehicle must wear seat belts.
- Driver is subject to all other conditions of Provisional License.

Find out more: Visit the UNC-HSRC Web site at <http://www.unc.edu/depts/hsrc>

**COMPARISON OF PROPOSED GRADUATED DRIVER LICENSING SYSTEM
WITH CURRENT LICENSING SYSTEM FOR YOUNG DRIVERS IN NORTH CAROLINA**

ISSUE	PROPOSED SYSTEM	CURRENT SYSTEM
Seat belt Use	All occupants of vehicle	All front seat occupants and rear seat occupants under age 12 required to wear belt
Number of Levels	Three	One (plus an <i>optional</i> learner's permit level)
Learner's Permit	Mandatory	Optional
Required period of supervised driving	One year	None (Up to 1 year <i>optional</i>)
New driver required to demonstrate safe driving prior to full licensure?	Yes, for 6 months	No
Period during which late night recreational driving is prohibited	Six months	None

(Please type or use ballpoint pen)

H. B. No. _____

DATE _____

S. B. No. _____

Amendment No. _____

(to be filled in by
Principal Clerk)

Rep.) _____
Sen.) _____

moves to amend the bill on page 6, line 16 ~~and 17~~

by add; the following at the end of that line to read.
~~inserting a new subdivision between those~~
~~lines to read:~~

" ~~To the extent practicable, this experience~~
~~may~~ ~~not~~ include ~~one~~ ~~hour~~ ^{at least one hour} of instruction on the
techniques of defensive driving. "

and on page 6, lines 25 and 26, by
rewriting these lines to read:

" permit or another provisional license must
meet the requirements set under G.S.
20-88.01 ^{for the program of} ~~for~~ the driver's education program ^{offered}
the public schools. "

SIGNED J. Ken

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1997

S

1

SENATE BILL 289*

Short Title: Raise HFA Bond Limit/AB.

(Public)

Sponsors: Senator Hoyle.

Referred to: Finance.

March 4, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO RAISE THE CAP ON THE AMOUNT OF BONDS THAT MAY BE
3 ISSUED BY THE NORTH CAROLINA HOUSING FINANCE AGENCY.
4 The General Assembly of North Carolina enacts:
5 Section 1. G.S. 122A-8 reads as rewritten:
6 "**§ 122A-8. Bonds and notes.**
7 The Agency is hereby authorized to provide for the issuance, at one time or from
8 time to time, ~~of not exceeding one billion five hundred million dollars~~
9 ~~(\$1,500,000,000) bonds of the Agency to carry out and effectuate its corporate~~
10 ~~purposes, provided, however, that not more than fifty million dollars (\$50,000,000)~~
11 ~~bonds shall be issued prior to June 30, 1971.~~ of bonds and notes of the Agency to
12 carry out and effectuate its corporate purposes. The Agency also is hereby authorized
13 to provide for the issuance, at one time or from time to time of (i) bond anticipation
14 notes in anticipation of the issuance of such bonds and (ii) construction loan notes to
15 finance the making or purchase of mortgage loans to sponsors of residential housing
16 for the construction, rehabilitation or improvement of residential ~~housing, provided,~~
17 ~~however, that the~~ housing. The total amount of bonds, bond anticipation ~~notes~~ notes,
18 and construction loan notes outstanding at any one time shall not exceed one billion
19 five hundred million dollars (\$1,500,000,000) excluding therefrom any bond
20 anticipation notes for the payment of which bonds ~~shall~~ have been issued. The
21 principal of and the interest on such bonds or notes shall be payable solely from the
22 funds herein provided for such payment. Any such notes may be made payable from
23 the proceeds of bonds or renewal notes or, in the event bond or renewal note
24 proceeds are not available, such notes may be paid from any available revenues or

1 assets of the Agency. The bonds or notes of each issue shall be dated and may be
2 made redeemable before maturity at the option of the Agency at such price or prices
3 and under such terms and conditions as may be determined by the Agency. Any such
4 bonds or notes shall bear interest at such rate or rates as may be determined by the
5 Local Government Commission of North Carolina with the approval of the Agency.
6 Notes shall mature at such time or times not exceeding 10 years from their date or
7 dates and bonds shall mature at such time or times not exceeding 43 years from their
8 date or dates, as may be determined by the Agency. The Agency shall determine the
9 form and manner of execution of the bonds or notes, including any interest coupons
10 to be attached thereto, and shall fix the denomination or denominations and the
11 place or places of payment of principal and interest, which may be any bank or trust
12 company within or without the State. In case any officer whose signature or a
13 facsimile of whose signature shall appear on any bonds or notes or coupons attached
14 thereto shall cease to be such officer before the delivery thereof, such signature or
15 such facsimile shall nevertheless be valid and sufficient for all purposes the same as if
16 he had remained in office until such delivery. The Agency may also provide for the
17 authentication of the bonds or notes by a trustee or fiscal agent. The bonds or notes
18 may be issued in coupon or in registered form, or both, as the Agency may
19 determine, and provision may be made for the registration of any coupon bonds or
20 notes as to principal alone and also as to both principal and interest, and for the
21 reconversion into coupon bonds or notes of any bonds or notes registered as to both
22 principal and interest, and for the interchange of registered and coupon bonds or
23 notes. Upon the filing with the Local Government Commission of North Carolina of
24 a resolution of the Agency requesting that its bonds and notes be sold, such bonds or
25 notes may be sold in such manner, either at public or private sale, and for such price
26 as ~~said~~ the Commission shall determine to be for the best interest of the Agency and
27 best effectuate the purposes of this ~~Chapter provided that such sale shall be Chapter,~~
28 as long as the sale is approved by the Agency.

29 The proceeds of any bonds or notes shall be used solely for the purposes for which
30 issued and shall be disbursed in such manner and under such restrictions, if any, as
31 the Agency may provide in the resolution authorizing the issuance of such bonds or
32 notes or in the trust agreement hereinafter mentioned securing the same.

33 Prior to the preparation of definitive bonds, the Agency may, under like
34 restrictions, issue interim receipts or temporary bonds, with or without coupons,
35 exchangeable for definitive bonds when such bonds shall have been executed and are
36 available for delivery. The Agency may also provide for the replacement of any
37 bonds or notes which shall become mutilated or shall be destroyed or lost.

38 Bonds or notes may be issued under the provisions of this Chapter without
39 obtaining, except as otherwise expressly provided in this Chapter, the consent of any
40 department, division, commission, board, body, bureau or agency of the State, and
41 without any other proceedings or the happening of any conditions or things other
42 than those proceedings, conditions or things which are specifically required by this
43 Chapter and the provisions of the resolution authorizing the issuance of such bonds
44 or notes or the trust agreement securing the same."

1 Section 2. G.S. 122A-11 reads as rewritten:

2 "§ 122A-11. Trust funds.

3 Notwithstanding any other provisions of law to the contrary, all moneys received
4 pursuant to the authority of this Chapter shall be deemed to be trust funds to be held
5 and applied solely as provided in this Chapter. The resolution authorizing any
6 obligations or the trust agreement securing the same may provide that any of such
7 moneys may be temporarily invested pending the disbursement thereof and shall
8 provide that any officer with whom, or any bank or trust company with which, such
9 moneys shall be deposited shall act as trustee of such moneys and shall hold and
10 apply the same for the purposes hereof, subject to such regulations as this Chapter
11 and such resolution or trust agreement may provide.

12 Any moneys received pursuant to the authority of this Chapter and any other
13 moneys available to the Agency for investment may be invested:

- 14 (1) As provided in G.S. 159-30, except that for purposes of G.S.
15 159-30(b) the Agency may deposit moneys at interest in banks or
16 trust companies outside as well as in this State, ~~provided any such~~
17 as long as any moneys at deposit outside this State are
18 collateralized to the same extent and manner as if at deposit in this
19 State;
- 20 (2) In evidences of ownership of, or fractional undivided interests in,
21 future interest and principal payments on either direct obligations
22 of the United States government or obligations the principal of and
23 the interest on which are guaranteed by the United States
24 government, which obligations are held by a bank or trust
25 company organized and existing under the laws of the United
26 States of America or any state in the capacity of custodian;
- 27 (3) In obligations which are collateralized by mortgage pass-through
28 securities guaranteed by the Government National Mortgage
29 Association, the Federal Home Loan Mortgage Corporation, or the
30 Federal National Mortgage Association;
- 31 (4) In a trust certificate or similar instrument evidencing an equity
32 investment in a trust or other similar arrangement which is formed
33 for the purpose of issuing obligations which are collateralized by
34 mortgage pass-through or participation certificates guaranteed by
35 the Government National Mortgage Association, the Federal Home
36 Loan Mortgage Corporation or the Federal National Mortgage
37 Association; and
- 38 (5) In repurchase agreements with respect to either direct obligations
39 of the United States government or obligations the principal of and
40 the interest on which are guaranteed by the United States
41 government if all of the following conditions are met: entered into
42 ~~with a broker or dealer, as defined by the Securities Exchange Act~~
43 ~~of 1934, which is a dealer recognized as a primary dealer by a~~
44 ~~Federal Reserve Bank, or any commercial bank, trust company or~~

1 ~~national banking association, the deposits of which are insured by~~
2 ~~the Federal Deposit Insurance Corporation or any successor~~
3 ~~thereof if~~

4 a. The repurchase agreement is entered into with an institution
5 whose ability to pay its unsecured long-term obligations
6 (including, if the institution is an insurance company, its
7 claims paying ability) is rated in one of the two highest
8 ratings categories by a nationally recognized securities rating
9 agency. If the term of the repurchase agreement is for a
10 period of one year or less, however, the repurchase
11 agreement may be entered into with an institution that does
12 not have such a long-term rating if its ability to pay its
13 unsecured short-term obligations is rated in one of the two
14 highest ratings categories by a nationally recognized
15 securities rating agency. If the institution with which the
16 agreement is to be entered does not meet the ratings
17 requirement of this subparagraph, the repurchase agreement
18 may nevertheless be entered into with the institution if the
19 obligations of the institution under the repurchase
20 agreement are fully guaranteed by another institution that
21 does meet the ratings requirement of this subparagraph.

22 b. The repurchase agreement provides that it shall be
23 terminated, without penalty, if the institution with which the
24 repurchase agreement is entered or by whom the
25 institution's obligations are guaranteed fails to maintain (i)
26 in the event that the repurchase agreement was entered into
27 in reliance upon the rating of the institution's long-term
28 obligations, a rating of its long-term obligations in one of the
29 three highest ratings categories by at least one nationally
30 recognized securities rating agency, or (ii) in the event that
31 the repurchase agreement was entered into in reliance upon
32 the rating of the institution's short-term obligations, a rating
33 of its short-term obligations in one of the two highest ratings
34 categories by at least one nationally recognized securities
35 rating agency. The repurchase agreement does not have to
36 be terminated, however, if a new guarantor meeting the
37 rating requirement set forth in subparagraph a. as the
38 requirement necessary for the Agency to enter the
39 repurchase agreement agrees to fully guarantee the
40 obligations of the institution under the repurchase
41 agreement.

42 a. c. ~~such~~ The obligations that are subject to ~~such~~ the repurchase
43 agreement are delivered (in physical or in book entry form)
44 to the Agency, or any financial institution serving either as

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

trustee for obligations issued by the Agency or as fiscal agent for the Agency or the State Treasurer or are supported by a safekeeping receipt issued by a depository satisfactory to the ~~Agency, provided that such~~ Agency. The repurchase agreement must provide that the value of the underlying obligations shall be maintained at a current market value, calculated at least daily, of not less than one hundred percent (100%) of the repurchase ~~price; price.~~ The financial institution serving either as trustee or as fiscal agent for the Agency holding the obligations subject to the repurchase agreement hereunder or the depository issuing the safekeeping receipt shall not be the provider of the repurchase agreement.

- b. d. ~~a~~ A valid and perfected first security interest in the obligations which are the subject of ~~such~~ the repurchase agreement has been granted to the Agency or its assignee or book entry procedures, conforming, to the extent practicable, with federal regulations and satisfactory to the agency have been established for the benefit of the Agency or its ~~assignee; assignee.~~
- e. e. ~~such~~ The securities are free and clear of any adverse ~~third party claims; and third-party claims.~~
- f. f. ~~such~~ The repurchase agreement is in a form satisfactory to the Agency."

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

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

3-25-97

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Tom Durkin	GLH (Womble Carlyle)
Shannon Bullock	GHSP
E. Lawrence Davis	NC Passenger Safety Ass'n
Joe Parker	GHSP
Thomas V. Bennett	NCCFTF
Auda Slaw	NC Low Income Housing Coalition
Jim F/L	NCAFD
Steve Keene	NCMS
Bob Jackson	citizen
Art Williams	Governor's office

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

3-25-97

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

NAME	FIRM OR AGENCY AND ADDRESS
Stuart Dixon	N.C. Natural Gas Corp. Fayetteville
John McMullen	Manning, Feltner + Skarman PA
Pad Young	SCSL/APPC/NC
Andy Lombrinet	N.C.L.M.
Jonathan Brecken	Green
Annette Ethridge	Office of the Governor
George Reel	NC Council of Churches
Tony Spence	DOT/DMV
Lucia Peel	NC Medical Society
Nancy Bradley	NCRCBS
Amy Jo Bair	Smith Andersson
Alvin Parlone	Electricals

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

3-25-97

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

J. P. Penacchia	P. account National Cross
Don Thomas	"
Martha Livengood	YAT/O/DOA
Paula A. Hoel	Covenant with NC's Children
A. R. KUCAP	NC HOUSING FINANCE AGENCY
Sandra Long	Porter & Steel
Travis Porter	" "
Don Miller	Bank & Tax Center
Fred Allen	NC Aggregates Ass'n.
John Long	Martin Marietta Agg.
Stella H. McKenney	N. C. Dept. of Insurance

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

FINANCE COMMITTEE REPORT

Senator David Hoyle, Co-Chair

Senator John Kerr, Co-Chair

Tuesday, March 25, 1997

SENATOR HOYLE,

submits the following with recommendations as to passage:

**UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL**

H.B.(CS #2)248

Graduated Drivers Licenses

Draft Number:	PCS2185
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comment: none

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

FINANCE COMMITTEE REPORT

Senator David Hoyle, Co-Chair
Senator John Kerr, Co-Chair

Tuesday, March 25, 1997

SENATOR HOYLE,

submits the following with recommendations as to passage:

FAVORABLE

S.B.	289	Raising Housing Bond Limit	
		Sequential Referral:	none

TOTAL REPORTED: 1

Committee Clerk Comment: none

SENATE FINANCE COMMITTEE

WEDNESDAY, MARCH 26, 1997

12 NOON - 544 LOB

The Senate Finance Committee met on March 26, 1997 with Senator Kerr presiding. There were 26 committee members present.

The following bills were on the agenda:

S.B. 317 - LOCAL GOVERNMENT DEBT CHANGES

Senator Winner was recognized to explain S.B. 317. Copy of Bill, Explanation and Fiscal Note included in the minutes. Mr. David Lawrence with the Institute of Government was recognized and available to answer questions. There was a general discussion on this bill which will be continued tomorrow and a vote will be taken at a later date.

Senator Kerr turned the meeting over to Senator Hoyle.

S.B. 36 - UNIFORM TAX ON PIPED NATURAL GAS

Senator Kerr was recognized to explain S.B. 36. Copy of Bill, Explanation, Fiscal Note, Revenue Analysis Summary, and Statement from Sam J. Ervin, IV included in the minutes. This bill was before the committee for discussion only and no vote will be taken today.

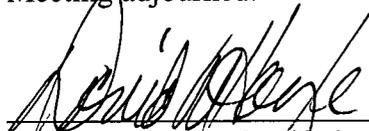
Senator Hoyle recognized Mr. Sam J. Ervin, IV, representing Carolina Utility Customers Association, who addressed the committee on behalf of his client and pointed out some of the concerns they have with this bill.

Mr. Dennis Roberts, Director of Public Utilities for the City of Lexington, was recognized and spoke in opposition to this bill.

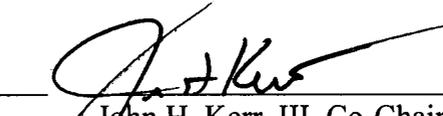
Mr. Don Harrow, representing Piedmont Natural Gas, spoke in support of this bill.

There was a general discussion on this bill with questions from the members to staff and to the speakers. This bill will be discussed further at a later meeting.

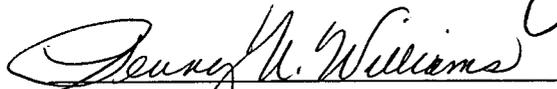
Meeting adjourned.



David W. Hoyle, Co-Chair
Senate Finance Committee



John H. Kerr, III, Co-Chair
Senate Finance Committee



Penny N. Williams, Clerk



Evelyn S. Hartsell, Clerk

NOTE:

Agenda is Attachment # 1
Visitors' Sign Up Sheet is Attachment # 2

Attachment #1

AGENDA

SENATE FINANCE COMMITTEE

Wednesday, March 26, 1997

12 Noon - Room 544

S.B. 36 - Uniform Tax on Piped Natural Gas - Sen. Kerr

S.B. 317 - Local Government Debt Changes - Sen. Winner

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 317

Short Title: Local Government Debt Changes.

(Public)

Sponsors: Senators Winner, Hartsell; Cooper, Hoyle, Kerr, and Odom.

Referred to: Finance.

March 5, 1997

A BILL TO BE ENTITLED

1
2 AN ACT TO ALLOW ALL COUNTIES TO ACQUIRE PROPERTY FOR USE BY
3 THEIR LOCAL BOARDS OF EDUCATION, TO PROVIDE THAT EXISTING
4 LOCAL GOVERNMENT DEBT STATEMENT REQUIREMENTS AND DEBT
5 LIMITATIONS APPLY TO INSTALLMENT PURCHASE AND LEASE DEBTS,
6 TO REQUIRE LOCAL GOVERNMENT COMMISSION APPROVAL OF
7 MORE NONVOTED DEBTS, AND TO CAP THE AMOUNT OF
8 INSTALLMENT PURCHASE AND LEASE DEBT COUNTIES AND CITIES
9 MAY INCUR.

10 The General Assembly of North Carolina enacts:

11 Section 1. (a) G.S. 153A-158.1 reads as rewritten:

12 "**§ 153A-158.1. Acquisition and improvement of school ~~property in certain counties.~~**
13 **property.**

14 (a) Acquisition by County. -- A county may acquire, by any lawful method, any
15 interest in real or personal property for use by a school administrative unit within the
16 county. In exercising the power of eminent domain a county shall use the procedures
17 of Chapter 40A. The county shall use its authority under this subsection to acquire
18 property for use by a school administrative unit within the county only upon the
19 request of the board of education of that school administrative unit and after a public
20 hearing.

21 (b) Construction or Improvement by County. -- A county may construct, equip,
22 expand, improve, renovate, or otherwise make available property for use by a school
23 administrative unit within the county. The local board of education shall be involved

1 in the design, construction, equipping, expansion, improvement, or renovation of the
2 property to the same extent as if the local board owned the property.

3 (c) Lease or Sale by Board of Education. -- Notwithstanding the provisions of G.S.
4 115C-518 and G.S. 160A-274, a local board of education may, in connection with
5 additions, improvements, renovations, or repairs to all or part of any of its property,
6 lease or sell the property to the board of commissioners of the county in which the
7 property is located for any price negotiated between the two boards.

8 (d) Board of Education May Contract for Construction. -- Notwithstanding the
9 provisions of G.S. 115C-40 and G.S. 115C-521, a local board of education may enter
10 into contracts for the erection or repair of school buildings upon sites owned in fee
11 simple by one or more counties in which the local school administrative unit is
12 located.

13 ~~(e) Scope. -- This section applies to Alleghany, Ashe, Avery, Bladen, Brunswick,~~
14 ~~Cabarrus, Carteret, Cherokee, Chowan, Columbus, Currituck, Dare, Duplin,~~
15 ~~Edgecombe, Forsyth, Franklin, Graham, Greene, Guilford, Halifax, Harnett,~~
16 ~~Haywood, Hyde, Iredell, Jackson, Johnston, Jones, Lee, Macon, Madison, Martin,~~
17 ~~Moore, Nash, New Hanover, Orange, Pasquotank, Pender, Person, Pitt, Randolph,~~
18 ~~Richmond, Rockingham, Rowan, Sampson, Scotland, Stanly, Surry, Union, Vance,~~
19 ~~Wake, Wilson, and Watauga Counties."~~

20 (b) The repeal of G.S. 153A-158.1(e) gives to all counties in the State the
21 authority that was previously limited to the counties listed in that subsection.

22 Section 2. G.S. 159-55 reads as rewritten:

23 "**§ 159-55. Sworn statement of debt; debt limitation.**

24 (a) Sworn Statement of Debt. -- After the bond order has been introduced and
25 before the public hearing thereon, the finance officer (or some other officer
26 designated by the governing board for this purpose) shall file with the clerk a
27 statement showing the following:

28 (1) Gross debt. -- The gross debt of the unit, excluding therefrom debt
29 incurred or to be incurred in anticipation of the collection of taxes
30 or other revenues or in anticipation of the sale of bonds other than
31 funding and refunding bonds. The gross debt (after exclusions) is
32 the sum of (i) outstanding debt evidenced by bonds, (ii) bonds
33 authorized by orders introduced but not yet adopted, (iii) unissued
34 bonds authorized by adopted orders, and (iv) outstanding debt not
35 evidenced by ~~bonds.~~ bonds, as determined in subsection (d) of this
36 section. However, for purposes of the sworn statement of debt and
37 the debt limitation, revenue bonds shall not be considered debt
38 and ~~such bonds~~ shall not be included in gross debt nor deducted
39 from gross debt.

40 (2) Deductions in computing net debt. -- The deductions to be made
41 from gross debt in computing net debt. The following deductions
42 are allowed:

43 a. Funding and refunding bonds authorized by orders
44 introduced but not yet adopted.

- 1 b. Funding and refunding bonds authorized but not yet issued.
2 c. The amount of money held in sinking funds or otherwise for
3 the payment of any part of the principal of gross debt other
4 than debt incurred for water, gas, electric light or power
5 purposes, or sanitary sewer purposes (to the extent that the
6 bonds are deductible under subsection (b) of this section), or
7 two or more of these purposes.
8 d. The amount of bonded debt included in gross debt and
9 incurred, or to be incurred, for water, gas, or electric light
10 or power purposes, or any two or more of these purposes.
11 e. The amount of bonded debt included in the gross debt and
12 incurred, or to be incurred, for sanitary sewer system
13 purposes to the extent that the debt is made deductible by
14 subsection (b) of this section.
15 f. The amount of uncollected special assessments theretofore
16 levied for local improvements for which any part of the
17 gross debt (that is not otherwise deducted) was or is to be
18 incurred, to the extent that the assessments will be applied,
19 when collected, to the payment of any part of the gross debt.
20 g. The amount, as estimated by the governing board of the
21 issuing unit or an officer designated by the board for this
22 purpose, of special assessments to be levied for local
23 improvements for which any part of the gross debt (that is
24 not otherwise deducted) was or is to be incurred, to the
25 extent that the special assessments, when collected, will be
26 applied to the payment of any part of the gross debt.
27 (3) Net debt. -- The net debt of the issuing unit, being the difference
28 between the gross debt and deductions.
29 (4) Assessed value of property. -- The assessed value of property
30 subject to taxation by the issuing unit, as revealed by the tax
31 records and certified to the issuing unit by the assessor.
32 (5) Net debt percentage. -- The percentage that the net debt bears to
33 the assessed value of property subject to taxation by the issuing
34 unit.
35 (b) Sewer System Debt Deductible. -- Debt incurred or to be incurred for sanitary
36 sewer system purposes is deductible from gross debt when the combined revenues of
37 the water system and the sanitary sewer system (whether or not the water and sewer
38 system are operated separately or as a consolidated system) were sufficient to pay all
39 operating, capital outlay, and debt service expenditures attributable to both systems in
40 each of the three complete fiscal years immediately preceding the date on which the
41 sworn statement of debt is filed. For the purposes of this subsection, the 'revenues'
42 of a water system and a sanitary sewer system include:
43 (1) Rates, fees, rentals, charges, and other receipts and income derived
44 from or in connection with the system.

1 (2) Fees, rents, or other charges collected from other offices, agencies,
2 institutions, and departments of the issuing unit at rates not in
3 excess of those charged to other consumers, customers, or users.

4 (3) Appropriations from the fund balance of the prior fiscal year from
5 the fund or funds established to account for the revenues and
6 expenditures of the water system or sewer system pursuant to G.S.
7 159-13(a) of the Local Government Budget and Fiscal Control Act.

8 Before the sworn statement of debt is filed, the secretary shall determine to what
9 extent debt incurred or to be incurred for sanitary sewer system purposes qualifies for
10 deduction from gross debt pursuant to this subsection, and shall give ~~his~~ a certificate
11 to that effect. The secretary's certificate shall be filed with and deemed a part of the
12 sworn statement of debt. The secretary's certificate shall be conclusive in the absence
13 of fraud.

14 (c) Debt Limitation. -- No bond order shall be adopted unless it appears from the
15 sworn statement of debt filed in connection therewith that the net debt of the unit
16 does not exceed eight percent (8%) of the assessed value of property subject to
17 taxation by the issuing unit. This limitation shall not apply to:

18 (1) Funding and refunding bonds.

19 (2) Bonds issued for water, gas, or electric power purposes, or two or
20 more of these purposes.

21 (3) Bonds issued for sanitary sewer system purposes when the bonds
22 are deductible pursuant to subsection (b) of this section.

23 (4) Bonds issued for sanitary sewers, sewage disposal, or sewage
24 purification plants when the construction of these facilities has
25 been ordered by the Environmental Management ~~Commission;~~
26 ~~which Commission is hereby authorized to make such an order;~~
27 Commission or by a court of competent jurisdiction.

28 (5) Bonds or notes issued for erosion control purposes.

29 (6) Bonds or notes issued for the purpose of erecting jetties or other
30 protective works to prevent encroachment by the ocean, sounds, or
31 other bodies of water.

32 (d) Determination of Outstanding Debt Not Evidenced by Bonds. -- For the
33 purpose of this section, outstanding debt not evidenced by bonds includes the
34 principal component of outstanding installment contracts and capital leases and the
35 total lease payments due under outstanding operating leases. Outstanding debt not
36 evidenced by bonds is includable in gross debt and deductible in determining net
37 debt to the same extent as if it were bonded debt.

38 If an installment contract, a capital lease, or an operating lease provides funds for
39 more than one purpose within the meaning of this section, the amount of funds
40 borrowed for each purpose shall be the amounts set forth in the installment contract,
41 capital lease, or operating lease. If the installment contract, capital lease, or operating
42 lease does not set forth the amount borrowed for each purpose, the finance officer
43 shall file a certificate with the clerk determining the purposes and amounts, and the

1 determination shall be conclusive and binding for purposes of complying with this
2 section.

3 The following definitions apply in this subsection:

- 4 (1) Capital lease. -- An agreement entered into under G.S. 153A-165
5 or G.S. 160A-19 that constitutes a capital lease under generally
6 accepted accounting principles and that is subject to approval by
7 the Local Government Commission under Article 8 of Chapter 159
8 of the General Statutes.
- 9 (2) Installment contract. -- An agreement entered into under G.S.
10 160A-20 that is subject to approval by the Local Government
11 Commission under Article 8 of Chapter 159 of the General
12 Statutes.
- 13 (3) Operating lease. -- An agreement entered into under G.S. 153A-
14 165 or G.S. 160A-19 that constitutes an operating lease under
15 generally accepted accounting principles and that is subject to
16 approval by the Local Government Commission under Article 8 of
17 Chapter 159 of the General Statutes.
- 18 (4) Principal component. -- The aggregate amount payable under an
19 installment contract or a capital lease over its term in respect of
20 principal only, as set forth in the installment contract or capital
21 lease or in a principal component certificate.
- 22 (5) Principal component certificate. -- A certificate of the finance
23 officer, or some other officer designated by the governing body for
24 this purpose, filed with the clerk setting forth the principal
25 component of an installment contract or capital lease when the
26 installment contract or capital lease does not expressly designate a
27 principal component."

28 Section 3. G.S. 159-148 reads as rewritten:

29 "**§ 159-148. Contracts subject to Article; exceptions.**

30 (a) Except as provided in subsection (b) of this section, this Article applies to any
31 contract, agreement, memorandum of understanding, and any other transaction
32 having the force and effect of a contract (other than agreements made in connection
33 with the issuance of revenue bonds, special obligation bonds issued pursuant to
34 Chapter 159I of the General Statutes, or of general obligation bonds additionally
35 secured by a pledge of revenues) made or entered into by a unit of local government
36 (as defined by G.S. 159-7(b) or, in the case of a special obligation bond, as defined in
37 Chapter 159I of the General Statutes), relating to the lease, acquisition, or
38 construction of capital assets, which contract

- 39 (1) Extends for five or more years from the date of the contract,
40 including periods that may be added to the original term through
41 the exercise of options to renew or extend, and
- 42 (2) Obligates the unit to pay sums of money to another, without regard
43 to whether the payee is a party to the contract, and

1 (3) Obligates the unit over the full term of the contract, including
 2 periods that may be added to the original term through the
 3 exercise of options to renew or extend, to the extent of five
 4 hundred thousand dollars (\$500,000) or a sum equal to one tenth
 5 of one percent (1/10 of 1%) of the assessed value of property
 6 subject to taxation by the contracting unit, whichever is less, and
 7 less.

8 ~~(4) Obligates the unit, expressly or by implication, to exercise its~~
 9 ~~power to levy taxes either to make payments falling due under the~~
 10 ~~contract, or to pay any judgment entered against the unit as a~~
 11 ~~result of the unit's breach of the contract.~~

12 Contingent obligation obligations shall be included in calculating the value of the
 13 contract. Several contracts that are all related to the same undertaking shall be
 14 deemed a single contract for the purposes of this Article. When several contracts are
 15 considered as a single contract, the term shall be that of the contract having the
 16 longest term, and the sums to fall due shall be the total of all sums to fall due under
 17 all single contracts in the group.

18 (b) This Article shall not apply to:

- 19 (1) Contracts between a unit of local government and the State of
 20 North Carolina or the United States of America (or any agency of
 21 either) entered into as a condition to the making of grants or loans
 22 to the unit of local government.
 23 (2) Contracts for the purchase, lease, or lease with option to purchase
 24 of motor vehicles or voting machines.
 25 (3) Loan agreements entered into by a unit of local government
 26 pursuant to the North Carolina Solid Waste Management Loan
 27 Program, Chapter 159I of the General Statutes."

28 Section 4. G.S. 159-150 reads as rewritten:

29 "**§ 159-150. Sworn statement of debt; debt limitation.**

30 (a) Sworn Statement of Debt. -- After or at the time an application is filed under
 31 G.S. 159-149, the finance officer, or some other officer designated by the board, shall
 32 prepare, swear to, and file with the secretary and for public inspection in the office of
 33 the clerk to the board a statement of debt in the same form prescribed in G.S. 159-55
 34 for statements of debt filed in connection with general obligation bond issues. The
 35 sums to be included in gross debt and the deductions therefrom to arrive at net debt
 36 shall be the same as prescribed in G.S. 159-55, ~~except that sums to fall due under~~
 37 ~~contracts subject to this Article shall be treated as if they were evidenced by general~~
 38 ~~obligation bonds of the unit except that the contract to be entered into under this~~
 39 Article shall be treated as outstanding debt not evidenced by bonds as determined
 40 under G.S. 159-55(d).

41 (b) Overall Debt Limitation. -- No contract subject to this Article may be
 42 executed if the net debt of the contracting unit, after execution of the contract, would
 43 exceed eight percent (8%) of the assessed value of property subject to taxation by the

1 contracting unit. This subsection does not apply to contracts executed by units that
2 do not have the power to levy taxes.

3 (c) Limitation on Debt Not Evidenced by Bonds. -- Unless the contract has been
4 approved by the voters of the contracting county or city as provided in subsection (e)
5 of this section, a county or city may not execute a contract subject to this Article if
6 the net outstanding debt not evidenced by bonds issued by the county or city on or
7 after July 1, 1997, would, after execution of the contract, exceed one percent (1%) of
8 the assessed value of property subject to taxation by the county or city.

9 (d) Exceptions to Limitations. -- Subsections (b) and (c) of this section shall not
10 apply to:

- 11 (1) Funding and refunding contracts.
- 12 (2) Contracts entered into for water, gas, or electric power purposes,
13 or two or more of these purposes.
- 14 (3) Contracts entered into for sanitary sewer system purposes when the
15 amounts payable under the contracts are deductible pursuant to
16 G.S. 159-55(d)(2) or G.S. 159-55(d)(3).
- 17 (4) Contracts entered into for sanitary sewers, sewage disposal, or
18 sewage purification plants when the construction of these facilities
19 has been ordered by the Environmental Management Commission
20 or by a court of competent jurisdiction.
- 21 (5) Contracts entered into for erosion control purposes.
- 22 (6) Contracts entered into for the purpose of erecting jetties or other
23 protective works to prevent encroachment by the ocean, sounds, or
24 other bodies of water.

25 (e) Voter Approval of Certain Contracts. -- If a county or city would be
26 prohibited from executing a contract subject to this Article because the net
27 outstanding debt not evidenced by bonds issued by the county or city on or after July
28 1, 1997, would, after execution of the contract, exceed the debt limit set by subsection
29 (c) of this section, then the governing board of the county or city may, in its
30 discretion, submit the question of whether to execute the contract for approval by the
31 qualified voters of the county or city. A referendum held pursuant to this subsection
32 shall be conducted according to the standards, procedures, and limitations set out in
33 G.S. 159-60 through G.S. 159-62."

34 Section 5. This act is effective when it becomes law. This act does not
35 affect contracts and obligations entered into before July 1, 1997, or for which an
36 application for Local Government Commission approval was filed before July 1,
37 1997.

EXPLANATION OF SENATE BILL 317
Proposed Committee Substitute
Local Government Debt Changes

TO: Senate Finance Committee
FROM: Sabra Faires, Committee Counsel
DATE: March 12, 1997
SPONSOR: Senator Leslie Winner

Senate Bill 317 makes the following changes concerning local government debt:

1. It gives all counties the same authority that 52 counties now have to acquire and improve property to be used by their local boards of education (Section 1) G.S. 153A-158.1(e) lists the 52 counties that currently have this authority.
2. It requires certain nonvoted local debt to be included in determining whether the net debt of the local unit meets the statutory debt limitation of 8% of the assessed value of property in the local unit. (Sections 2 and 4).
3. It establishes a new 1% debt limit for nonvoted debt and allows the limit to be exceeded only by a vote of the people. (Section 4)
4. It deletes one of the current conditions a local financing agreement must meet in order to be subject to approval by the Local Government Commission. The condition that is deleted is an obligation to levy taxes to pay either the debt incurred under the contract or a judgment entered against the unit for breach of the contract. (Section 3)
5. It adds a new exemption from the debt limitations on financing agreements and the procedures for entering into financing agreements. The new exemption is for agreements between units of local government if utility revenues will be used to support the payments under the agreement.

Nonvoted Local Debt To Be Included In Determining 8% Debt Limitations

Current law (G.S. 159-55) prohibits the issuance of a general obligation bond if the net debt of the issuing unit, when combined with the proposed bond, would exceed 8% of the assessed value of property in the unit. Similarly, current law (G.S. 159-150) prohibits a local unit from entering into certain financing agreements if the net debt of the unit, when combined with the proposed agreement, would exceed the 8% limit.

Current law requires outstanding debt not evidenced by bonds to be included in determining the net debt of the unit but does not specify what debt is included in this group. The decision on whether or not to include nonvoted debt rests with the bond attorneys. There is disagreement among these attorneys over

what needs to be included. Some bond counsel do not require installment financings under G.S. 160A-20 to be included.

The bill specifies that certain local, nonvoted debt must be included in determining the unit's net debt. The debt the bill requires to be included consists of all capital leases, operating leases, and installment contracts that must be submitted to the Local Government Commission for approval. The types of financing agreements that must be submitted for approval under the bill are those that meet the following criteria and are not exempt: (i) extend for at least five years and obligate payment of \$500,000 or 1/10th of 1% of the assessed value of property, whichever is less, or (ii) give a security interest and involve the construction or repair of fixtures or improvements to real property. Current law exempts agreements between a local unit and the State or federal government, contracts to purchase or lease motor vehicles or voting machines, and solid waste loan agreements.

New 1% Limit on Nonvoted Debt

The bill limits the amount of nonvoted debt a unit of local government can incur. The limit is 1% of the assessed value of taxable property in the unit. Under the bill, a unit cannot enter a financing agreement that requires the approval of the Local Government Commission if the net, nonvoted debt of the unit, when combined with the proposed debt, would exceed 1% of the assessed value of taxable property. In calculating whether the 1% threshold has been reached, only nonvoted debt incurred after July 1, 1997, is counted. Therefore, all the existing nonvoted debt does not count towards this 1% limit.

The same deductions apply in determining net debt that apply in determining net debt for purposes of the 8% limitation. The bill creates exceptions to the 1% limit that mirror the exceptions to the 8% limit and add two new exceptions for purposes of the 1% limit. The exceptions for contracts entered to comply with a court order and contracts entered into by units that do not have any power to tax.

The bill authorizes a local unit to exceed the 1% limit if it has voter approval of the proposed financing agreement. The bill gives the governing board of the unit the discretion to submit a proposed financing agreement to a vote if the unit is otherwise prohibited from entering into the agreement because of the 1% limit.

Acquisition of Property For Use By Local Boards of Education

The bill makes the following changes concerning the acquisition and financing of public school facilities in the 48 counties that do not currently have this authority:

- (1) It authorizes the counties to acquire real or personal property for use by a school administrative unit located in the county when requested to do so by the unit. Under current law, only those counties listed in G.S. 153A-

158.1(a), have this authority. Under general law, a county is authorized to acquire real or personal property only on behalf of the county or an agency of the county and a school administrative unit is not an agency of the county.

- (2) It authorizes the local boards of education to contract with their county for the erection or repair of a public school building that is located on a site owned by the county. Under current general law, local boards of education are required to hold title to all school property and therefore have no authority to make contracts concerning the construction or repair of school buildings located on sites not owned by them.
- (3) It authorizes the local boards of education to transfer to the county property on which a school building in need of renovation or repair is located for any price agreed to by the board of education and the county. Current law requires transfers from a local board of education to a county to be at fair market value and allows a local board of education to transfer property to a county only if the board does not believe the property is necessary or desirable for a school.

**NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL ESTIMATE**

BILL NUMBER: SB 317 (Proposed Committee Substitute)
SHORT TITLE: Local Government Debt Changes
SPONSOR(S):

FISCAL IMPACT

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

FY 1997-98 FY 1998-99 FY 1999-00 FY 2000-01 FY 2001-02

REVENUES

EXPENDITURES (See "Assumptions and Methodology")

POSITIONS:

**PRINCIPAL DEPARTMENT(S) &
PROGRAM(S) AFFECTED:**

EFFECTIVE DATE: The bill is effective when it becomes law. However, it does not affect contracts and obligations entered into before July 1, 1997, or for which an application for Local Government Commission was filed prior to July 1, 1997.

BILL SUMMARY: Presently 52 counties have the authority to acquire property for use by their local boards of Education providing counties with the ability to finance school capital outlay through installment purchases and certificates of participation. The bill amends county government and local finance law as follows:

- (1) Extends authority to all 100 counties to acquire property for use by local boards of education.
- (2) Provides that existing local government debt statement requirements and debt limitations apply to "debt not evidenced by bonds" (primarily installment purchases and certificates of participation).
- (3) Requires Local Government Commission approval of more nonvoted debts.
- (4) Requires certain nonvoted local debt to be included in determining whether the net debt of a local unit exceeds the limit of 8% of assessed property value and caps the amount of nonvoted debt that counties and cities may incur without a vote of the people.

(over)

ASSUMPTIONS AND METHODOLOGY: An indirect impact of the bill is that to the extent the additional authority to use installment financing or certificates of participation is used by counties as a result of the bill, the financing cost of projects will rise by .25-.50% due to the increased risk. It is not clear at this point what impact the \$1.8 billion state school bond issue will have on the use of these financing vehicles. Most counties have already met their match for the state bond proceeds but many counties with a backlog of facility needs will continue going to the market in tandem with the state dollars to maximize their ability to meet the address the backlog. For other counties the state funds will take the pressure off local financing. Another factor is that during the last couple of years local school bond issues have had a high success rate with the voters. This may relieve the pressure for the type of financing addressed under this bill. In fact, so far this year

Another potential indirect impact is that the greater use of installment purchases and certificates of participation could increase the refund of state and local sales taxes to local units because the county owns the facility. Unless the sales tax law is changed this year school boards will continue to not have the right to receive refunds. Some counties are now receiving refunds by working out agreements in which the county makes the taxable purchases or uses their lease purchase authority. The type of financing under this bill will make the refunds automatic. Again, it is impossible to predict how many counties will actually use this avenue.

TECHNICAL CONSIDERATIONS:

FISCAL RESEARCH DIVISION (733-4910)

PREPARED BY: David Crotts

APPROVED BY:

DATE: March 12, 1997

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 36

Short Title: Uniform Tax on Piped Natural Gas.

(Public)

Sponsors: Senators Kerr, Cochrane, Cooper, Shaw of Cumberland, Soles; Foxx and Hoyle.

Referred to: Finance.

February 3, 1997

A BILL TO BE ENTITLED

1
2 AN ACT TO ESTABLISH A UNIFORM TAX ON PIPED NATURAL GAS BY
3 CONVERTING THE SALES TAX AND GROSS RECEIPTS TAX ON PIPED
4 NATURAL GAS INTO A TAX BASED ON VOLUME OF THERMS.

5 The General Assembly of North Carolina enacts:

6 Section 1. G.S. 105-116 reads as rewritten:

7 "**§ 105-116. Franchise or privilege tax on electric power, ~~natural gas~~, water, and**
8 **sewerage companies.**

9 (a) Tax. -- An annual franchise or privilege tax is imposed on a person, firm, or
10 corporation, other than a municipal corporation, that is:

11 (1) An electric power company engaged in the business of furnishing
12 electricity, electric lights, current, or power.

13 ~~(2) A natural gas company engaged in the business of furnishing piped~~
14 ~~natural gas.~~

15 (3) A water company engaged in owning or operating a water system
16 subject to regulation by the North Carolina Utilities Commission.

17 (4) A public sewerage company engaged in owning or operating a
18 public sewerage system.

19 The tax on an electric power company is three and twenty-two hundredths percent
20 (3.22%) of the company's taxable gross receipts from the business of furnishing
21 electricity, electric lights, current, or power. ~~The tax on a natural gas company is~~
22 ~~three and twenty-two hundredths percent (3.22%) of the company's taxable gross~~
23 ~~receipts from the business of furnishing piped natural gas.~~ The tax on a water

1 company is four percent (4%) of the company's taxable gross receipts from owning or
2 operating a water system subject to regulation by the North Carolina Utilities
3 Commission. The tax on a public sewerage company is six percent (6%) of the
4 company's taxable gross receipts from owning or operating a public sewerage
5 company. A company's taxable gross receipts are its gross receipts from business
6 inside the State less the amount of gross receipts from sales reported under
7 subdivision (b)(2). A company that engages in more than one business taxed under
8 this section shall pay tax on each business. A company is allowed a credit against the
9 tax imposed by this section for the company's investments in certain entities in
10 accordance with Division V of Article 4 of this Chapter.

11 (b) Report and Payment. -- The tax imposed by this section is payable monthly or
12 quarterly as specified in this subsection. A report is due quarterly. An electric power
13 company ~~or a natural gas company~~ shall pay tax monthly. A monthly tax payment is
14 due by the last day of the month that follows the month in which the tax accrues,
15 except the payment for tax that accrues in May. The payment for tax that accrues in
16 May is due by June 25. An electric power company ~~or a natural gas company~~ is not
17 subject to interest on or penalties for an underpayment of a monthly amount due if
18 the company timely pays at least ninety-five percent (95%) of the amount due and
19 includes the underpayment with the next report the company files. A water company
20 or a public sewerage company shall pay tax quarterly when filing a report.

21 A quarterly report covers a calendar quarter and is due by the last day of the
22 month that follows the quarter covered by the report. A company shall submit a
23 report on a form provided by the Secretary. The report shall include the company's
24 gross receipts from all property it owned or operated during the reporting period in
25 connection with its business taxed under this section and shall contain the following
26 information:

- 27 (1) The company's gross receipts for the reporting period from
28 business inside and outside this State, stated separately.
- 29 (2) The company's gross receipts from commodities or services
30 described in subsection (a) that are sold to a vendee subject to the
31 tax levied by this section or to a joint agency established under
32 ~~G.S. Chapter 159B~~ Chapter 159B of the General Statutes or a
33 municipality having an ownership share in a project established
34 under that Chapter.
- 35 (3) The amount of and price paid by the company for commodities or
36 services described in subsection (a) that are purchased from others
37 engaged in business in this State and the name of each vendor.
- 38 (4) For an electric power ~~company or a natural gas~~ company, the
39 company's gross receipts from the sale within each municipality of
40 the commodities and services described in subsection (a).

41 A company shall report its gross receipts on an accrual basis.

42 ~~(e) Gas Special Charges. Gross receipts of a natural gas company do not~~
43 ~~include the following:~~

1 (1) ~~Special charges collected within this State by the company~~
2 ~~pursuant to drilling and exploration surcharges approved by the~~
3 ~~North Carolina Utilities Commission, if the surcharges are~~
4 ~~segregated from the other receipts of the company and are devoted~~
5 ~~to drilling, exploration, and other means to acquire additional~~
6 ~~supplies of natural gas for the account of natural gas customers in~~
7 ~~North Carolina and the beneficial interest in the surcharge~~
8 ~~collections is preserved for the natural gas customers paying the~~
9 ~~surcharges under rules established by the Commission.~~

10 (2) ~~Natural gas expansion surcharges imposed under G.S. 62-158.~~

11 (d) Distribution. -- For the purpose of this subsection, the term 'distribution
12 amount' means three and nine hundredths percent (3.09%) of the taxable gross
13 receipts derived during a period by an electric power company ~~and a natural gas~~
14 ~~company~~ from sales within a municipality of the commodities and services described
15 in subsection (a) of this section. The Secretary shall distribute to each municipality
16 the distribution amount for that municipality for the preceding calendar quarter less
17 ~~an amount equal to the 'holdback amount' for the municipality. The 'holdback~~
18 ~~amount' for a municipality equals~~ one-fourth of the excess of the electric power
19 distribution amount for that municipality for the period April 1, 1994, to March 31,
20 1995, over the electric power distribution amount for that municipality for the period
21 April 1, 1990, to March 31, 1991, as certified by the Secretary. The Secretary shall
22 distribute the revenue within 75 days after the end of each quarter. If a company's
23 report does not state the company's taxable gross receipts derived within a
24 municipality, the Secretary shall determine a practical method of allocating part of
25 the company's taxable gross receipts to the municipality.

26 As used in this subsection, the term 'municipality' includes an urban service
27 district defined by the governing board of a consolidated city-county. The amount
28 due an urban service district shall be distributed to the governing board of the
29 consolidated city-county.

30 (e) Local Tax. -- So long as there is a distribution to municipalities of the amount
31 herein provided from the tax imposed by this section, no municipality shall impose or
32 collect any greater franchise, privilege or license taxes, in the aggregate, on the
33 businesses taxed under this section, than was imposed and collected on or before
34 January 1, 1947. If any municipality shall have collected any privilege, license or
35 franchise tax between January 1, 1947, and April 1, 1949, in excess of the tax
36 collected by it prior to January 1, 1947, then upon distribution of the taxes imposed
37 by this section to municipalities, the amount distributable to any municipality shall be
38 credited with such excess payment."

39 Section 2. G.S. 105-164.3(25) reads as rewritten:

40 "(25) 'Utility' means an electric power ~~company, a gas company,~~
41 company or a telephone company that is subject to a privilege tax
42 based on gross receipts under G.S. 105-116 or 105-120, a business
43 entity that provides local, toll, or private telecommunications
44 service as defined by G.S. ~~105-120(e)~~ 105-120(e), or a

1 municipality that sells electric power, other than a municipality
2 whose only wholesale supplier of electric power is a federal
3 agency and who is required by a contract with that federal agency
4 to make payments in lieu of taxes."

5 Section 3. G.S. 105-164.4(a) reads as rewritten:

6 "(a) A privilege tax is imposed on a retailer at the following percentage rates of
7 the retailer's net taxable sales or gross receipts, as appropriate. The general rate of
8 tax is four percent (4%).

9 (1) The general rate of tax applies to the sales price of each item or
10 article of tangible personal property that is sold at retail and is
11 not subject to tax under another subdivision in this section.

12 (1a) The rate of two percent (2%) applies to the sales price of each
13 manufactured home sold at retail, including all accessories
14 attached to the manufactured home when it is delivered to the
15 purchaser. The maximum tax is three hundred dollars (\$300.00)
16 per article. Each section of a manufactured home that is
17 transported separately to the site where it is to be erected is a
18 separate article.

19 (1b) The rate of three percent (3%) applies to the sales price of each
20 aircraft, boat, railway car, or locomotive sold at retail, including
21 all accessories attached to the item when it is delivered to the
22 purchaser. The maximum tax is one thousand five hundred
23 dollars (\$1,500) per article.

24 (1c) The rate of one percent (1%) applies to the sales price of the
25 following articles:

26 a. Horses or mules by whomsoever sold.

27 b. Semen to be used in the artificial insemination of animals.

28 c. Sales of fuel, other than ~~electricity or piped natural gas,~~
29 electricity, to farmers to be used by them for any farm
30 purposes other than preparing food, heating ~~dwelling~~
31 dwellings, and other household purposes. The quantity of
32 fuel purchased or used at any one time shall not in any
33 manner be a determinative factor as to whether any sale or
34 use of fuel is or is not subject to the one percent (1%) rate
35 of tax imposed ~~herein~~ by this subdivision.

36 d. Sales of fuel, other than ~~electricity or piped natural gas,~~
37 electricity, to manufacturing industries and manufacturing
38 plants for use in connection with the operation of such
39 industries and plants other than sales of fuels to be used for
40 residential heating purposes. The quantity of fuel purchased
41 or used at any one time shall not in any manner be a
42 determinative factor as to whether any sale or use of fuel is
43 or is not subject to the rate of tax provided in this
44 subdivision.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44

- e. Sales of fuel, other than ~~electricity or piped natural gas, electricity,~~ to commercial laundries or to pressing and dry-cleaning establishments for use in machinery used in the direct performance of the laundering or the pressing and cleaning service.
- f. Sales to freezer locker plants of wrapping paper, cartons and supplies consumed directly in the operation of such plant.

(1d) The rate of one percent (1%) applies to the sales price of the following articles. The maximum tax is eighty dollars (\$80.00) per article.

- a. Sales to a farmer of machines and machinery, and parts and accessories for these machines and machinery, for use by the farmer in the planting, cultivating, harvesting, or curing of farm crops or in the production of dairy products, eggs, or animals. A 'farmer' includes a dairy operator, a poultry farmer, an egg producer, a livestock farmer, a farmer of crops, and a farmer of an aquatic species, as defined in G.S. 106-758. Items that are exempt from tax under G.S. 105-164.13(4c) are not subject to tax under this section.

The term 'machines and machinery' as used in this subdivision is defined as follows:

The term shall include all vehicular implements, designed and sold for any use defined in this subdivision, which are operated, drawn or propelled by motor or animal power, but shall not include vehicular implements which are operated wholly by hand, and shall not include any motor vehicles required to be registered under Chapter 20 of the General Statutes.

The term shall include all nonvehicular implements and mechanical devices designed and sold for any use defined in this subdivision, which have moving parts, or which require the use of any motor or animal power, fuel, or electricity in their operation but shall not include nonvehicular implements which have no moving parts and are operated wholly by hand.

The term shall also include metal flues sold for use in curing tobacco, whether such flues are attached to handfired furnaces or used in connection with mechanical burners.

- b. Sales of mill machinery or mill machinery parts and accessories to manufacturing industries and plants, and sales to contractors and subcontractors purchasing mill machinery or mill machinery parts and accessories for use by them in the performance of contracts with manufacturing industries and plants, and sales to subcontractors purchasing mill

1 machinery or mill machinery parts and accessories for use
2 by them in the performance of contracts with general
3 contractors who have contracts with manufacturing
4 industries and plants. As used in this paragraph, the term
5 'manufacturing industries and plants' does not include
6 delicatessens, cafes, cafeterias, restaurants, and other similar
7 retailers that are principally engaged in the retail sale of
8 foods prepared by them for consumption on or off their
9 premises.

- 10 c. Sales of central office equipment and switchboard and
11 private branch exchange equipment to telephone companies
12 regularly engaged in providing telephone service to
13 subscribers on a commercial basis, and sales to these
14 companies of prewritten computer programs used in
15 providing telephone service to their subscribers.
- 16 d. Sales to commercial laundries or to pressing and dry
17 cleaning establishments of machinery used in the direct
18 performance of the laundering or the pressing and cleaning
19 service and of parts and accessories thereto.
- 20 e. Sales to freezer locker plants of machinery used in the direct
21 operation of said freezer locker plant and of parts and
22 accessories thereto.
- 23 f. Sales of broadcasting equipment and parts and accessories
24 thereto and towers to commercial radio and television
25 companies which are under the regulation and supervision
26 of the Federal Communications Commission.
- 27 g. Sales to farmers of bulk tobacco barns and racks and all
28 parts and accessories thereto and similar apparatus used for
29 the curing and drying of any farm produce.
- 30 h. Sales to farmers of grain, feed or soybean storage facilities
31 and accessories thereto, whether or not dryers are attached,
32 and all similar apparatus and accessories thereto for the
33 storage of grain, feed or soybeans.
- 34 i. Sales of containers to farmers or producers for use in the
35 planting, producing, harvesting, curing, marketing,
36 packaging, sale, or transporting or delivery of their products
37 when such containers do not go with and become part of the
38 sale of their products at wholesale or retail.

- 39 (1e) The rate of three percent (3%) applies to the sales price of each
40 mobile classroom or mobile office sold at retail, including all
41 accessories attached to the mobile classroom or mobile office
42 when it is delivered to the purchaser. The maximum tax is one
43 thousand five hundred dollars (\$1,500) per article. Each section

- 1 of a mobile classroom or mobile office that is transported
2 separately to the site where it is to be placed is a separate article.
- 3 (1f) The rate of two and eighty-three-hundredths percent (2.83%)
4 applies to the sales price of electricity ~~and piped natural gas~~
5 described in this subdivision and measured by a separate meter or
6 another separate device:
- 7 a. Sales of electricity ~~and piped natural gas~~ to farmers to be
8 used by them for any farm purposes other than preparing
9 food, heating dwellings, and other household purposes. The
10 quantity of electricity or gas purchased or used at any one
11 time shall not be a determinative factor as to whether its
12 sale or use is or is not subject to the rate of tax provided in
13 this subdivision.
- 14 b. Sales of electricity ~~and piped natural gas~~ to manufacturing
15 industries and manufacturing plants for use in connection
16 with the operation of the industries and plants other than
17 sales of electricity ~~and gas~~ to be used for residential heating
18 purposes. The quantity of electricity ~~or gas~~ purchased or
19 used at any one time shall not be a determinative factor as
20 to whether its sale or use is or is not subject to the rate of
21 tax provided in this subdivision.
- 22 c. Sales of electricity ~~and piped natural gas~~ to commercial
23 laundries or to pressing and dry-cleaning establishments for
24 use in machinery used in the direct performance of the
25 laundering or the pressing and cleaning service.
- 26 (2) The applicable percentage rate applies to the gross receipts
27 derived from the lease or rental of tangible personal property by
28 a person who is engaged in the business of leasing or renting
29 tangible personal property, or is a retailer and leases or rents
30 property of the type sold by the retailer. The applicable
31 percentage rate is the rate and the maximum tax, if any, that
32 applies to a sale of the property that is leased or rented. A person
33 who leases or rents property shall also collect the tax imposed by
34 this section on the separate retail sale of the property.
- 35 (3) Operators of hotels, motels, tourist homes, tourist camps, and
36 similar type businesses and persons who rent private residences
37 and cottages to transients are considered retailers under this
38 Article. A tax at the general rate of tax is levied on the gross
39 receipts derived by these retailers from the rental of any rooms,
40 lodgings, or accommodations furnished to transients for a
41 consideration. This tax does not apply to any private residence or
42 cottage that is rented for less than 15 days in a calendar year or to
43 any room, lodging, or accommodation supplied to the same
44 person for a period of 90 or more continuous days.

1 As used in this subdivision, the term 'persons who rent to
2 transients' means (i) owners of private residences and cottages
3 who rent to transients and (ii) rental agents, including 'real estate
4 brokers' as defined in G.S. 93A-2, who rent private residences
5 and cottages to transients on behalf of the owners. If a rental
6 agent is liable for the tax imposed by this subdivision, the owner
7 is not liable.

8 (4) Every person engaged in the business of operating a dry cleaning,
9 pressing, or hat-blocking establishment, a laundry, or any similar
10 business, engaged in the business of renting clean linen or towels
11 or wearing apparel, or any similar business, or engaged in the
12 business of soliciting cleaning, pressing, hat blocking, laundering
13 or linen rental business for any of these businesses, is considered
14 a retailer under this Article. A tax at the general rate of tax is
15 levied on the gross receipts derived by these retailers from
16 services rendered in engaging in any of the occupations or
17 businesses named in this subdivision. The tax imposed by this
18 subdivision does not apply to receipts derived from coin or token-
19 operated washing machines, extractors, and dryers. The tax
20 imposed by this subdivision does not apply to gross receipts
21 derived from services performed for resale by a retailer that pays
22 the tax on the total gross receipts derived from the services.

23 (4a) The rate of three percent (3%) applies to the gross receipts
24 derived by a utility from sales of ~~electricity, piped natural gas,~~
25 electricity or local telecommunications service as defined by G.S.
26 105-120(e), other than sales of electricity ~~or piped natural gas~~
27 subject to tax under another subdivision in this section. ~~Gross~~
28 ~~receipts from sales of piped natural gas shall not include natural~~
29 ~~gas expansion surcharges imposed under G.S. 62-158.~~ A person
30 who operates a utility is considered a retailer under this Article.

31 (4b) A person who sells tangible personal property at a flea market,
32 other than the person's own household personal property, is
33 considered a retailer under this Article. A tax at the general rate
34 of tax is levied on the sales price of each article sold by the
35 retailer at the flea market. A person who leases or rents space to
36 others at a flea market may not lease or rent this space unless the
37 retailer requesting to rent or lease the space shows the license or
38 a copy of the license required by this Article or other evidence of
39 compliance. A person who leases or rents space at a flea market
40 shall keep records of retailers who have leased or rented space at
41 the flea market. As used in this subdivision, the term 'flea
42 market' means a place where space is rented to a person for the
43 purpose of selling tangible personal property.

1 (4c) The rate of six and one-half percent (6 1/2%) applies to the gross
2 receipts derived from providing toll telecommunications services
3 or private telecommunications services as defined by G.S. 105-
4 120(e) that both originate from and terminate in the State and are
5 not subject to the privilege tax under G.S. 105-120. Any business
6 entity that provides these services is considered a retailer under
7 this Article. This subdivision does not apply to telephone
8 membership corporations as described in Chapter 117 of the
9 General Statutes.

10 (5) (Effective July 1, 1997) The rate of three percent (3%) applies to
11 the sales price of food that is not otherwise exempt pursuant to
12 G.S. 105-164.13 but would be exempt pursuant to G.S. 105-164.13
13 if it were purchased with coupons issued under the Food Stamp
14 Program, 7 U.S.C. § 51."

15 Section 4. G.S. 105-164.13 is amended by adding a new subdivision to
16 read:

17 "(43) Piped natural gas. This item is exempt because it is taxed under
18 Article 5D of this Chapter."

19 Section 5. G.S. 105-164.20 reads as rewritten:

20 "**§ 105-164.20. Cash or accrual basis of reporting.**

21 Any retailer, except a utility, ~~taxable under this Article having both cash and credit~~
22 ~~sales~~ may report such sales on either the cash or accrual basis of accounting upon
23 making application to the Secretary for permission to use ~~such~~ the basis of reporting
24 ~~under such rules and regulations as shall be promulgated from time to time by the~~
25 ~~Secretary. Such permission shall continue in force and effect unless revoked by the~~
26 ~~Secretary but he may grant written permission to any such taxpayer upon application~~
27 ~~therefor to change from one basis to another under such rules and regulations. A~~
28 ~~utility shall~~ selected. Permission granted by the Secretary to report on a selected
29 basis continues in effect until revoked by the Secretary or the taxpayer receives
30 permission from the Secretary to change the basis selected. A utility must report its
31 sales on an accrual basis. A sale by a utility of ~~electricity, piped natural gas,~~ electricity
32 or intrastate telephone service is considered to accrue when the utility bills its
33 customer for the sale."

34 Section 6. Chapter 105 of the General Statutes is amended by adding a
35 new Article to read:

36 "ARTICLE 5D.

37 "Piped Natural Gas Tax.

38 "**§ 105-187.30. Definitions.**

39 The definitions in G.S. 105-228.90 and the following definitions apply in this
40 Article:

41 (1) Local distribution company. -- A natural gas company to whom
42 the North Carolina Utilities Commission has issued a franchise
43 under Chapter 62 of the General Statutes to serve an area of this
44 State.

(2) Sales customer. -- An end-user whose piped natural gas is delivered by the seller of the gas.

(3) Transportation customer. -- An end-user whose piped natural gas is delivered by a person who is not the seller of the gas.

"§ 105-187.32. Tax imposed on piped natural gas.

(a) Scope. -- An excise tax is imposed on piped natural gas consumed in this State. This tax is imposed in lieu of a sales and use tax and a percentage gross receipts tax on piped natural gas.

(b) Rate. -- The tax rate is set in the table below and is based on monthly therm volumes of piped natural gas received by the consumer of the gas:

<u>Volume of Therms Received</u>	<u>Rate per Therm</u>
<u>During the Month</u>	
<u>First 200</u>	<u>\$.047</u>
<u>201 to 15,000</u>	<u>.027</u>
<u>Over 15,000</u>	<u>.022</u>

"§ 105-187.34. Liability for the tax.

The excise tax imposed by this section on piped natural gas is payable as follows:

(1) For piped natural gas delivered by a local distribution company to a sales customer or a transportation customer, the tax is payable by the local distribution company.

(2) For piped natural gas delivered to a sales customer by a city, the tax is payable by the city.

(3) For piped natural gas received by a person directly from an interstate pipeline for consumption by that person, the tax is payable by that person.

"§ 105-187.36. Payment of the tax.

(a) Monthly Return. -- The tax imposed by this Article is payable monthly to the Secretary. A monthly tax payment is due by the last day of the month that follows the month in which the tax accrues. The tax payable on piped natural gas delivered to a customer by a local distribution company or a city accrues when the gas is delivered. The tax payable on piped natural gas to be consumed by a person who received the gas directly from an interstate pipeline accrues when the person receives the gas.

(b) Small Underpayments. -- A person is not subject to interest on or penalties for an underpayment of a monthly amount due if the person timely pays at least ninety-five percent (95%) of the amount due and includes the underpayment with the next return the person files.

"§ 105-187.38. Distribution of part of tax proceeds to cities.

(a) City Information. -- A return filed under this Article must indicate the amount of tax attributable to the following:

(1) Piped natural gas delivered during that month to sales or transportation customers in each city in the State.

(2) Piped natural gas consumed during the month in each city in the State by the pipeline recipient of the gas.

1 If a tax return does not state this information, the Secretary must determine how
2 much of the tax proceeds are to be attributed to each city.

3 (b) Distribution. -- Within 75 days after the end of each calendar quarter, the
4 Secretary must distribute to the cities part of the tax proceeds collected under this
5 Article during that quarter. The amount to be distributed to a city is one-half of the
6 amount of tax attributable to that city for that quarter under subsection (a) of this
7 section, less the 'holdback amount' for that city. The 'holdback amount' for a city is
8 one-fourth of the amount certified by the Secretary as the increase in the amount of
9 pipled natural gas tax proceeds distributed to the city during the 12-month period
10 beginning April 1, 1994, compared to the amount distributed during the 12-month
11 period beginning April 1, 1990.

12 **"§ 105-187.40. Information exchange and information returns.**

13 (a) Utilities Information. -- The North Carolina Utilities Commission or the Public
14 Staff of that Commission must give the Secretary a list of the entities that receive
15 pipled natural gas from an interstate pipeline and any other information available to
16 the Commission that the Secretary asks for in administering the tax imposed by this
17 Article.

18 (b) Information Return. -- The Secretary may require the operator of an interstate
19 pipeline to report the amount of pipled natural gas taken from the pipeline in this
20 State, the persons that received the gas, and the volume received by each person.

21 **"§ 105-187.42. Records and audits.**

22 (a) Records. -- A person who is required to file a return under this Article must
23 keep a record of all documents used to determine information provided in the return.
24 The records must be kept for three years after the due date of the return to which the
25 records apply.

26 (b) Audits. -- The Secretary may audit a person who is required to file a return
27 under this Article."

28 Section 7. G.S. 105-259(b) is amended by adding a new subdivision to
29 read:

30 "(20) To exchange information concerning the tax on pipled natural gas
31 imposed by Article 5D of this Chapter with the North Carolina
32 Utilities Commission or the Public Staff of that Commission."

33 Section 8. G.S. 160A-211 is amended by adding a new subsection to
34 read:

35 "(c) Pipled Gas Restriction. -- A city may not levy a privilege license tax on a
36 person who is engaged in the business of supplying pipled natural gas and is subject to
37 tax under Article 5D of Chapter 105 of the General Statutes."

38 Section 9. This act becomes effective January 1, 1998.

EXPLANATION OF SENATE BILL 36
Uniform Tax on Piped Natural Gas

TO: Senate Finance Committee
FROM: Sabra Faires, Committee Counsel
DATE: March 26, 1997
SPONSOR: Senator John Kerr

Senate Bill 36 is one of the bills recommended to the 1997 General Assembly by the Revenue Laws Study Committee. It combines the current taxes on piped natural gas into a single, per therm tax and applies the combined tax uniformly to all sales of piped natural gas, effective January 1, 1998. The bill is revenue neutral to the State; preserves the current local distribution of piped gas revenue, and reduces taxes on those currently subject to the tax. The following chart sets out the tax treatment of piped natural gas under the current law:

Type of Seller	Sales Tax 105-164.3(25); 105-164.4(a)(4a)	Gross Receipts Tax 105-116
North Carolina Utility Public Service Co. Piedmont Natural Gas Co. N.C. Natural Gas Co. N.C. Gas Service Frontier Utilities of N.C.	3% or 2.83%	3.22%
Natural Gas Marketer	0%	3.22% on transportation charge, as opposed to commodity price, if the gas is delivered through a pipeline of a North Carolina utility. If the gas is sold to a customer with direct access,* no gross receipts tax is payable
Gas City supplied directly from Transco pipeline Bessemer City, Kings Mountain Lexington, Shelby	0%	0%
Gas City supplied by North Carolina Utility: Greenville, Monroe Rocky Mount, Wilson	0%	0%, but 3.22% was paid on gas bought from the North Carolina utility for resale to city customers

*Four cities and one company have direct access to a transcontinental pipeline. The four cities are Bessemer City, Kings Mountain, Lexington, and Shelby. The one company is Panda Energy.

As the chart indicates, two taxes now apply to piped natural gas and both of them apply only to sales by a utility. One of these is a gross receipts tax equal to 3.22% of the gross receipts derived by the utility from the business of furnishing piped natural gas. The other tax is a State sales and use tax on retail sales by the utility of piped natural gas. The sales and use tax rate is 2.83% for certain sales of piped natural gas to industrial users, farmers, and laundries and is 3% for all other sales.

The proposed tax in the bill eliminates the distinction between sales by utilities and sales by others and applies a uniform tax to all piped natural gas consumed in this State. The uniform tax is an excise tax on the gas. The tax rate is structured as a "declining block" that decreases as the amount of therms of piped gas consumed in a month increases. A declining block tax rate is used to preserve the current distribution of the tax burden between the three classes of piped gas customers. These three classes are residential, business, and industrial. The current taxes are a percentage of price. The rates for the three classes are also based on price; residential rates are the highest, business rates are in the middle, and industrial rates are the lowest. The current combination of rate and tax therefore results in a higher effective rate of tax on residential customers and a lower rate on business and industrial customers.

By making the tax on piped natural gas uniform, several sales of piped gas that are not now subject to the tax would become subject to the tax. The sales that are not currently subject to the tax are sales by gas marketers, sales by the eight gas cities, and sales by the producer of the gas.

A gas marketer is a person who sells piped natural gas but is not a regulated utility. Sales by gas marketers are not subject to the taxes because of the way the statutes are written; the statutes specifically apply only to sales by a utility. The reason the statutes apply only to sales by a utility is that when they were written in 1925, only regulated utilities could sell piped natural gas. Federal and state regulation of the piped natural gas industry has changed, however. For some time, these regulations have allowed persons who are not utilities to sell piped natural gas. The current "exclusion" for gas marketers is therefore the result of a change in the marketplace rather than a decision by the General Assembly to exempt these sales from the tax. Sellers who are not utilities use the pipeline infrastructure of the utilities to deliver the gas they sell and they pay a transportation charge to the utilities for this service. Piped natural gas is increasingly sold by persons who are not utilities and are not subject to the same taxes as the utilities.

A gas city is a city that operates its own piped gas system. Eight cities in the State do this and have since at least the 1950's. The chart lists these cities.

Sales by these cities are not subject to the taxes because of the origin and nature of the current taxes on piped gas. The 3.22% gross receipts tax on utilities is a kind of franchise tax. The State franchise taxes were first levied in 1901 and apply only to business corporations. Because a city is not a business corporation, it is not subject to the gross receipts tax.

The sales tax on piped gas is the result of a change made by the General Assembly in 1986. That year, the existing utility franchise tax was split into a sales tax and a gross receipts tax to make the sales tax portion deductible by individuals on their federal income tax returns. When the split occurred, the existing scope of the taxes was preserved. The sales tax portion was written to apply on to sales that had been subject to the gross receipts tax. Cities had not been subject to the piped gas gross receipts tax so they were not subject to the piped gas sales tax.

The tax treatment of the gas cities differs from the tax treatment of the electric cities. Cities that operate electric distribution systems pay both the gross receipts tax (G.S. 159B-27(c)) and the sales tax on their sales. The electric cities were made subject to the gross receipts tax in 1977 and were, consequently, made subject to the sales tax in 1986 when the gross receipts tax was split into a gross receipts tax and a sales tax.

Sales of piped gas by the producer of the gas are exempt from the sales tax on piped gas because of a sales tax exemption that applies to sales of "products of forests and mines in their original or unmanufactured state" when the sales are made by the "producer in the capacity of producer" (G.S. 105-164.13(3)). This exemption has been in the sales tax law for many years and was a part of the sales tax law when piped gas was made subject to sales tax in 1986. The application of the exemption to piped gas is an unforeseen result of the conversion of part of the gross receipts tax into a sales tax.

The Revenue Laws Study Committee found that the current tax structure on piped gas has several unintended consequences. One consequence is an erosion of the State tax base. A second consequence is that local revenues are reduced. Most of the gross receipts tax on piped natural gas is distributed to the cities. The distribution amount is a tax equal to 3.09% of the gross receipts derived by a utility from sales within the city. A third consequence is that the tax structure violates the tax principles of fairness and neutrality.

The tax structure violates the principle of fairness by applying only to sales by one type of seller. The tax structure violates the principle of neutrality by encouraging customers to buy piped natural gas from marketers rather than from utilities. Customers are encouraged to buy from marketers because the tax

structure enables marketers to sell gas more cheaply than utilities. Marketers can sell the gas more cheaply because gas sold by them is not subject to the same taxes that apply to gas sold by the utilities. This produces the anomalous result that the tax structure favors out-of-state marketers over in-state North Carolina utilities.

Section -by Section Explanation

Section 1 of the bill repeals the special gross receipts tax on regulated utilities that sell piped natural gas.

Sections 2 through 5 of the bill amend the sales and use tax laws to remove piped natural gas companies from the definition of "utility" and to exempt sales of piped natural gas from the tax. These changes are made because Section 6 of this act levies a new tax on piped natural gas that replaces the sales and use tax and the gross receipts tax on this product.

Section 6 imposes a new tax on piped natural gas that replaces the current gross receipts tax and the sales and use tax on piped natural gas provided by utilities.

Section 7 makes a conforming change to the tax "secrecy" restrictions so that the Department of Revenue and the Utilities Commission can exchange information needed to administer the tax.

Section 8 makes a conforming change to the city privilege license tax restrictions to preserve the current prohibition in 105-116 on the levy of a privilege license tax by cities on gas companies.

Section 9 makes the bill effective January 1, 1998.

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE

BILL NUMBER: Senate Bill 36 (First Edition)
SHORT TITLE: Uniform Tax on Piped Natural Gas
SPONSOR(S): Senator Kerr, et. al

FISCAL IMPACT

Yes () No () No Estimate Available ()

FY 1997-98 FY 1998-99 FY 1999-00 FY 2000-01 FY 2001-02

REVENUES

See section on assumptions and methodology

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Sales and Use Tax Division, Department of Revenue
Corporate Franchise Tax Division, Department of Revenue
Municipal Units of Government serviced by a gas LDC

EFFECTIVE DATE: January 1, 1998

BILL SUMMARY:

The proposed act combines the franchise tax and the sales and use tax on piped natural gas sold in this State into a single excise tax.

The current sale tax rate is 2.83% on sales of piped natural gas sold to farmers, laundries and industrial users and 3% on all other sales. The franchise tax is 3.22% of the gross receipts derived by a utility from the business of furnishing piped natural gas. The total tax applied to the sale of natural gas is 6.22%.

Senate Bill 36 combines the current taxes on piped natural gas into a single tax and applies the combined tax uniformly to all sales of piped natural gas. The excise tax is based on a rate per therm. [A therm is a unit of measure used to define the quantity of heat derived from burning a fossil fuel such as natural gas, propane, and coal.] The act sets-out a declining rate block that decreases as the amount of therms consumed in a month increases. Customers using up to 200 therms a month are taxed at \$.047 cents a therm. Customers using 201 but no more than 15,000 therms a month are taxed at \$.027 cents a therm and customers using more than 15,000 therms a month are taxed at \$.022 cents a therm. The tax is payable to the State by a local distributing company, a municipal unit of government engaged in the business of selling and using piped natural gas, and by any person that receives natural gas directly from an interstate pipeline. The tax is due by the last day of the month following the month in which the tax was collected.

Municipal units of government receive most of the gross receipts tax paid by a natural gas utility from sales and services provided within the city limits. The municipal share is 3.09% of the 3.22% franchise tax. This act changes the distribution rate from 3.09% of the gross receipts to one half of the excise tax collected on all sales of piped natural gas and services provided within a municipal district.

BACKGROUND SUMMARY: As a result of regulatory changes in the natural gas industry persons other than a utility, such as a marketer, are allowed to sell piped natural gas. The State's sales tax and franchise tax laws are designed to be applied to only one type of seller a natural gas utility. The State does not collect a sales tax or a gross receipts tax on sales of natural gas by marketers, industrial users with direct access to the interstate pipeline, and some cities in the State. The 1997 Revenue Law Study Commission studied this issue and recommended in it's report a revenue neutral bill on the principal of tax fairness. This act eliminates the distinction between sales by utilities and sales by a marketer and applies a uniform tax to all piped natural gas consumed in this State.

ASSUMPTIONS AND METHODOLOGY:

The revenue impact, to the State and municipal units of government, from a single excise tax on piped natural gas is minimal. The gain in General Fund revenue for fiscal year 1997-98 is expected to be \$845,000. This assumes economic growth in the utilization of piped natural gas by all three user groups; residential, commercial, and industrial as well as some gain from broadening the tax base. The total affect of expanding the tax base is not netted out. The gain to municipal units of government is largely a result of a change in the distribution of the utility franchise tax rather than an expansion of the tax base. The rate structure, developed by the Public Staff of the North Carolina Utility Commission, found on page 10 of the bill, incorporates the revenue gain from broadening the tax base into lower affective tax rates for all three user groups. A residential customer pays a total tax rate of 6.22% under current law. Under this act the same customer using 85 dekatherms a year will pay an effective tax rate of 5.39%. {The "new" rate is based on the average residential rate of the four natural gas utilities in the State.}

General Fund Revenue: See Summary I Attachment

To prepare a revenue neutral tax structure the amount of revenue (lost), due to regulatory changes in the industry, had to be estimated and the expected gain, from broadening the tax base, incorporated into lower rates. The estimated revenue (loss), under the current tax structure on the sale and transportation of delivered natural gas in this State, is \$17.5 million for fiscal year 1996-97.

The estimate is based on data supplied by the Public Staff for 1995. The annual growth in the computed loss for tax years 1995 through 2000 is 4%. The growth rate for years 2001 through 2003 is 5.8%. All growth rates and revenue estimates on natural gas sales and franchise tax collections are the same as those used in the current General Fund Financial Model. {Please see revenue analysis on page 4.}

The Public Staff of the North Carolina Utilities Commission estimates that 32% of the gas delivered to residential, commercial, and industrial customers in the State is not taxed. For 1995, this percentage represents 62,030,731 delivered dekatherms (DT). In preparing the fiscal impact of this bill, an average price per (DT) charged by the four gas utilities operating in the State was calculated to be \$6.61 for residential customers, \$5.06 for commercial customers, and \$ 3.67 for industrial customers. { Price data for 1996 will not be available until May of 1997. }

To allocate the share of residential, commercial, and industrial sales to the 62,030,731 (DT) the estimate assumes 25%, 17%, and 58%; respectively. By multiplying the (\$/DT) to the (DT) delivered, gross taxable sales by consumer group are determined. In determining the revenue estimate, a combined tax rate of 6.22% is applied to taxable sales less an allocation of \$400,000 for the franchise tax collected on transportation charges. The 62,030,731 dekatherms are delivered into this State via the Transco Interstate Pipeline. Local Distributing Companies charge marketers and municipals a fee for delivering the gas from out-of-state refineries to customers within the State. This transportation charge is part of the local distributing company's gross receipts taxed at 3.22%. The transportation charge used in the estimate is \$.20 per (DT); the Henry Hub "spot" price reported on the New York Mercantile Exchange.

Municipal Revenue; See Summary II Attachment

Municipal units of government will gain revenue for two reasons. First, additional revenue will be received because the act changes the municipal share of the tax proceeds from 3.09% of the current franchise tax to one half of the total excise tax. Consider an example of giving the cities one half of the sales and gross receipts tax under the current tax structure instead of 3.09% of the franchise tax on sales and services provided within municipal limits. In fiscal year 1996-97 the State expects to receive \$56.9 million in total sales and franchise taxes on piped natural; \$28.0 million in sale tax and \$28.9 million in franchise tax. The Statewide municipal share (3.09%) is estimated to be \$27.8 million. One half of the expected \$56.9 million in total revenue is \$28.5 million. A 2.5% increase over the expected \$27.8 million to be shared with local governments in fiscal year 1996-97.

The second way municipal units of government will gain is from broadening the tax base. Additional revenue will be received from taxing natural gas customers located within cities that are consuming natural gas for which taxes are not currently being paid. At this time information on these consumers is not available.

FISCAL RESEARCH DIVISION

733-4910

PREPARED BY: Warren Plonk

APPROVED BY:

DATE: March 26, 1997

**Revenue Analysis Senate Bill 36
Uniform Tax on Piped Natural Gas**

Summary I

	(\$/DT) \$ Price Per Dekatherm	(DT) Delivered Dekatherm	Taxable Gross Sales Dekatherm	6.22% Tax Revenue Est.
Residential Consumer	\$6.61	15,507,683	\$102,505,783	(\$6,375,860)
Commercial Consumer	\$5.06	10,545,224	\$53,358,835	(\$3,318,920)
Industrial Consumer	\$3.67	35,977,824	\$132,038,614	(\$8,212,802)
Total		62,030,731	\$287,903,232	(\$17,907,581)

(Less) Gross Receipts - Trans. Chgs. \$399,478
 Estimated Lost Revenue (\$17,508,103)

Summary II

REVENUES:

	\$ ESTIMATE FY 96-97 Collections	\$ ESTIMATE FY 97/98 Collections	\$ ESTIMATE FY 98/99 Collections	\$ ESTIMATE FY 99/00 Collections	\$ ESTIMATE FY 00/01 Collections	\$ ESTIMATE FY 01/02 Collections
<i>Current Tax Structure</i>						
Utility Gas - 3% Sales and Use Tax	\$28,019,072	\$29,171,340	\$30,351,633	\$31,579,682	\$32,752,819	\$34,056,296
Utility Gas - 3.22% Franchise Tax	\$28,971,239	\$30,162,664	\$31,383,067	\$32,652,847	\$33,865,851	\$35,213,624
Total General Fund	\$56,990,311	\$59,334,004	\$61,734,700	\$64,232,529	\$66,618,670	\$69,269,920
Municipal Franchise Share 3.09%	\$27,801,593	\$28,944,917	\$30,116,049	\$31,334,564	\$32,498,596	\$33,791,956
General Fund Share	\$29,188,718	\$30,389,087	\$31,618,651	\$32,897,965	\$34,120,074	\$35,477,964

SB 36 Proposed Tax Structure

Utility Gas Sales - Excise Tax	\$60,007,383	\$62,467,686	\$65,028,861	\$67,695,044	\$71,621,357	\$75,847,017
Municipal Share - 1/2 Tax Collection	\$30,003,692	\$31,233,843	\$32,514,430	\$33,847,522	\$35,810,678	\$37,923,508
State General Fund Share	\$30,003,692	\$31,233,843	\$32,514,430	\$33,847,522	\$35,810,678	\$37,923,508
Municipal Revenue Share	\$2,202,099	\$2,288,926	\$2,398,382	\$2,512,958	\$3,312,082	\$4,131,552
State General Fund Share	\$814,973	\$844,756	\$895,779	\$949,557	\$1,690,604	\$2,445,544

SENATE BILL 36 SUMMARY UNIFORM TAX ON PIPED NATURAL GAS

ISSUE: STATE TAX POLICY HAS NOT KEPT PACE WITH DEREGULATION AND DOES NOT APPLY UNIFORMLY

Two taxes now apply to piped natural gas. One of these is a gross receipts tax equal to 3.22% of the gross receipts derived by a utility from the business of furnishing piped natural gas. The other tax is 3% or 2.83% State sales and use tax on sales by a utility of piped natural gas. The current taxes on piped natural gas apply only to sales by a regulated utility.

Federal and State regulation of the piped natural gas industry has changed to make it possible for persons (gas marketers) who are not regulated utilities to sell piped natural gas. Consequently, the State does not collect a gross receipts tax or a sales tax on sales by the gas marketers. The State also does not collect a sales tax or gross receipts tax on sales by any of the eight gas cities. The cities are: Bessemer City, Kings Mountain, Lexington, Shelby, Greenville, Monroe, Rocky Mount, and Wilson.

IMPACTS: LOST STATE AND LOCAL TAX REVENUE

The impacts of this issue are:

- erosion of the State tax base - estimated lost tax revenue on marketer sales in 1996 was over \$10 million
- local revenues are reduced - utility gross receipts tax is a local revenue source
- current tax structure violates the tax principles of fairness and neutrality

The tax structure violates the principle of fairness by applying only to sales by one type of seller. The tax structure violates the principle of neutrality by encouraging customers to buy untaxed piped natural gas from marketers rather than from utilities.

SOLUTION: VOLUMETRIC TAX ON PIPED NATURAL GAS

Senate Bill 36 eliminates the distinction between sales by utilities and sales by others and applies a uniform tax to all volumes of piped natural gas consumed in this state. The effect is that sales by persons who are not utilities will become subject to tax. Specifically, the legislation repeals the gross receipts tax on regulated natural gas utilities and amends the sales and use tax law to exempt sales of natural gas from the tax and imposes a new tax on piped natural gas.

The new tax is based on volumes of gas consumed and the tax rate decreases as volume increases. The tax rates developed are designed to make the new tax on piped natural gas revenue neutral with prior gross receipts and sales tax collections. However, since the new tax structure would close a loophole and require all users of natural gas to pay the tax, the tax rates developed will result in a tax decrease for the group of gas users currently paying the current gross receipts and sales taxes.

**Revenue Analysis Estimate Bill 36
Uniform Tax on Piped Natural Gas**

Summary I

	(\$/DT)	(DT)	Taxable
\$ Price Per Dekatherm	Delivered Dekatherm	Gross Sales Dekatherm	6.22% Tax Revenue Est.
\$3.67	62,030,731	\$227,652,783	(\$14,160,003)
	58,657,480		(\$1,759,724)
			(\$15,919,727)

* Industrial Consumer
* Transportation Charges

Estimated Lost Revenue

Summary II

	\$ ESTIMATE FY 96-97 Collections	\$ ESTIMATE FY 97/98 Collections	\$ ESTIMATE FY 98/99 Collections	\$ ESTIMATE FY 99/00 Collections	\$ ESTIMATE FY 00/01 Collections	\$ ESTIMATE FY 01/02 Collections
Utility Gas - 3% Sales and Use Tax	\$28,019,072	\$29,171,340	\$30,351,633	\$31,579,682	\$32,752,819	\$34,056,296
Utility Gas - 3.22% Franchise Tax	\$28,971,239	\$30,162,664	\$31,383,067	\$32,652,847	\$33,865,851	\$35,213,624
Total General Fund	\$56,990,311	\$59,334,004	\$61,734,700	\$64,232,529	\$66,618,670	\$69,269,920
Municipal Franchise Share 3.09%	\$27,801,593	\$28,944,917	\$30,116,049	\$31,334,564	\$32,498,596	\$33,791,956
General Fund Share	\$29,188,718	\$30,389,087	\$31,618,651	\$32,897,965	\$34,120,074	\$35,477,964

REVENUES:

Current Tax Structure
 Utility Gas - 3% Sales and Use Tax
 Utility Gas - 3.22% Franchise Tax
 Total General Fund
 Municipal Franchise Share 3.09%
 General Fund Share

SB 36 Proposed Tax Structure

Utility Gas Sales - Excise Tax	\$60,007,383	\$62,467,686	\$65,028,861	\$67,695,044	\$71,621,357	\$75,847,017
Municipal Share - 1/2 Tax Collections	\$30,003,692	\$31,233,843	\$32,514,430	\$33,847,522	\$35,810,678	\$37,923,508
State General Fund Share	\$30,003,692	\$31,233,843	\$32,514,430	\$33,847,522	\$35,810,678	\$37,923,508
Municipal Revenue Share	\$2,202,099	\$2,288,926	\$2,398,382	\$2,512,958	\$3,312,082	\$4,131,552
State General Fund Share	\$814,973	\$844,756	\$895,779	\$949,557	\$1,690,604	\$2,445,544

STATEMENT OF SAM J. ERVIN, IV

My name is Sam J. Ervin, IV. I am an attorney who practices in Morganton, North Carolina. I represent the Carolina Utility Customers Association, Inc., a non-profit corporation whose membership includes approximately 60 North Carolina manufacturers involved in many different lines of business who have banded together for the purpose of attempting to control the cost of utility services. Among the utility services purchased by CUCA's member companies are both sales rate and transportation gas, which is used in various industrial processes and for the purpose of operating boilers and other similar equipment. The cost of the natural gas services which CUCA's member companies purchase from all four of North Carolina's major natural gas local distribution companies and independent sellers has a significant impact upon our members' "bottom lines."

At the present time, a manufacturer wishing to obtain natural gas for use in its manufacturing plants has two options, both of which involving purchasing services provided by local distribution companies. First, the manufacturer can purchase bundled sales service from a local distribution company. In the event that the manufacturer purchases such bundled sales service, it must pay a rate which covers the cost of buying natural gas in the field, obtaining the delivery of that gas supply to the local distribution company which provides service in the area in which that manufacturer's plant is located using transmission lines owned by an interstate pipeline, and obtaining the delivery of that gas supply across the local distribution company's transmission and distribution system to its own plant. The rate which is charged for such bundled sales service contains a component intended to compensate the local distribution company for the cost of performing or procuring the performance of all of these services.

Secondly, the manufacturer has the option of purchasing gas from an entity other than the local distribution company and having that customer-owned gas delivered to its system. Customers electing the transportation option attempt to take advantage of market-priced gas supplies which have

become available through deregulation of gas production and open access transportation at the federal level. Although the same services must be performed regardless of whether a manufacturer purchases bundled sales service or transports customer-owned gas, a manufacturer choosing to transport customer-owned gas must purchase each of these procurement, interstate transmission, and local distribution company services separately by paying a producer or marketer for actual gas volumes, paying an interstate pipeline to transport these customer-owned gas volumes to the local distribution company's citygate, and paying the local distribution company to transport this customer-owned gas from its citygate to the manufacturer's plants. The transportation of natural gas is a complex process involving several different entities and the payment of a number of different rates or charges.

The clear import of the legislation which you are considering at the present time is to impose a new tax upon certain types of transportation gas. In other words, the effect of passing this legislation will be to increase the tax burden imposed upon North Carolina manufacturers who have previously opted to purchase competitively-priced natural gas and have that gas transported to their manufacturing plants. The advocates of this legislation have probably not discussed its impact with any affected consumers; our members are certainly concerned about its impact. At a time when the General Assembly has been attempting to reduce the tax burden imposed upon all North Carolinians, including the businesses who are responsible for employing our fellow citizens, the passage of such a tax increase for North Carolina manufacturers will impair their ability to compete effectively in national and world markets.

The adverse impact of this legislation upon North Carolina manufacturers is not limited to this increase in the industrial tax burden. Instead, there are two other facts which the Committee should consider in determining whether to increase customer gas costs in this manner. First, a study

performed by Kevin O'Donnell, a utility consultant who has studied gas transportation costs in North Carolina and other states, indicates that the cost of gas transportation in North Carolina is among the highest of any state in the country. These high transportation costs result from the fact that local distribution company gas transportation rates in North Carolina are designed on a "full margin" basis. The effect of utilizing "full margin" transportation rates is to require any entity transporting gas to pay interstate pipeline delivery costs twice, once to the interstate pipeline and again as a component of the local distribution company's transportation rate. Although the Utilities Commission, the Public Staff, and many of North Carolina's local distribution companies will defend the appropriateness of "full margin" transportation rates, none of them can seriously dispute the fact that transportation customers are "double charged" for interstate pipeline transmission costs by the existing transportation rate structure. The enactment of this legislation will only serve to increase the cost of gas transportation even further.

In addition, the rates paid by North Carolina manufacturers for gas service (whether purchased under local distribution company sales rates or through transportation service) include a substantial subsidy which manufacturers pay for the benefit of other customer classes. Although the size of this subsidy is subject to serious dispute in natural gas general rate cases conducted before the Utilities Commission, almost all cost-of-service studies presented during natural gas general rate cases over the course of the past decade have indicated that industrial customers pay materially higher rates of return than would exist in a competitive environment. Approval of this legislation will only worsen this situation, enhancing the likelihood that North Carolina manufacturers will shift production and jobs to other states.

The principal argument which has been advanced by the proponents of this legislation is the claim that its adoption will restore equity to industrial gas markets by placing sales from independent

entities such as marketers and brokers and sales by local distribution companies on an even plane. This equity argument is, at best, incomplete. This equity argument ignores the fact that the competitive conditions faced by independent sellers and local distribution companies do not vary solely because of the difference in tax treatment which this legislation is intended to change. Instead, the use of the "full margin" method for designing transportation rates operates to place a substantial burden upon those gas sellers who attempt to compete with local distribution companies for gas sales. As I have previously indicated, a manufacturer who chooses to transport customer-owned gas is required to pay interstate pipeline charges twice, once to the interstate pipeline and secondly in the local distribution company transportation rate. On the other hand, a manufacturer who decides to purchase bundled sales service from a local distribution company is only required to pay these interstate pipeline charges once. Adoption of the legislation which you are currently considering will eliminate a condition which tends to favor independent gas sellers while leaving the condition which favors natural gas local distribution companies in place. As a result, instead of "leveling" the playing field, the adoption of this legislation will actually "tilt" the playing field in favor of local distribution companies and create a significant barrier to the development of competitive gas markets in North Carolina.

Moreover, the enactment of this legislation will run counter to the principal trend in natural gas regulation throughout the United States. All across the country, state legislatures and regulatory commissions are doing everything within their power to foster the introduction of even greater degrees of competition into the natural gas business by making gas transportation available to more categories of customers and by requiring local distribution companies to offer non-discriminatory access to all potential gas sellers. The enactment of this legislation, which will "tilt" the "playing field" against competition by selectively altering the competitive balance in a manner favorable to

traditional monopoly suppliers, runs directly counter to this trend. In the event that the General Assembly enacts this legislation, the process of introducing competition into natural gas markets will be retarded, rather than enhanced. At a time when almost all recognized experts in the field of utility regulation have taken a clear stand in favor of replacing regulation with competition, the enactment of this legislation will "prop up" the traditional monopoly natural gas supply system to the detriment of all of our citizens.

The issues which must be addressed in connection with your consideration of this legislation are complex. The effect of any decision to enact this proposed legislation will be to increase the cost of doing business in North Carolina at a time when North Carolina manufacturers are struggling to control costs in ever more competitive national and international markets. The enactment of this legislation will tilt the natural gas "playing field" in North Carolina natural gas markets in favor of existing local distribution companies by eliminating a difference in tax treatment which admittedly favors the transportation of customer-owned gas while leaving existing rate design techniques which inhibit gas transportation in place. Although CUCA would gladly support legislation truly "leveling" the "playing field" by requiring cost-based transportation rates; allowing all customers, including the residential and commercial customers who do not now have the opportunity to buy transportation gas; and establishing a uniform tax structure for all gas sales, the Association believes that the enactment of this legislation in its current form would be unwise. As a result, CUCA urges you to reject this proposed legislation.

VISITOR REGISTRATION SHEET

Finance

3-26-97

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

AW Turner	Public Staff
GENE CURTIS	"
Jim Hoard	"
Polly Johnson	NC Board of Nursing
Dennis Roberts	City of Lexington
Bill Gilmore	N.C.U.C.
DAVID LAWRENCE	INSE OF GOVT
Bob High	State Treas.
Bill Dool	DOR
Jay Hare	"
Jim Bamwell	NCPMA

VISITOR REGISTRATION SHEET

Finance

3-26-97

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

<i>Ed Perkins</i>	<i>Huffman Air Co.</i>
<i>Com Cover</i>	<i>BPMHL</i>
<i>Smith Wingerfelt</i>	<i>E-CITIES OF NC</i>
<i>Alvin Darland</i>	"
<i>Bill McAulay</i>	<i>PSNC</i>
<i>Natalie Haskins</i>	<i>Charlotte Chamber</i>
<i>RW Kaylor</i>	<i>Kaylor Law Firm</i>
<i>Gene Upchurch</i>	<i>CPHL</i>
<i>L. Cobb</i>	<i>NCUC</i>
<i>Sharon Miller</i>	<i>C. U. C. A.</i>
<i>Jerry Roberts</i>	<i>C. U. C. A.</i>

VISITOR REGISTRATION SHEET

Finance

3-26-97

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

<i>Jimmy Ervin</i>	<i>C.U.C.A. - Atty.</i>
<i>Charles Francis</i>	<i>ALCOA - Atty, Woods, FRANCIS P. O. Box 164, Raleigh NC 27602</i>
<i>JMPearlman</i>	<i>Piedmont Natural Gas</i>
<i>Don Arrow</i>	<i>" " "</i>
<i>Stuart Dixon</i>	<i>N.C. NATURAL GAS Corp. Fayetteville</i>
<i>John Bowditch</i>	<i>Zeb Alley PA.</i>
<i>Ann Duncan</i>	<i>Wanda Carlyle,</i>

SENATE FINANCE COMMITTEE

THURSDAY, MARCH 27, 1997

12:00 NOON - ROOM 544 LOB

The Senate Finance Committee met. There were 22 members of the Committee present. Senator David W. Hoyle, Co-Chairman, presided.

The following bill was taken up:

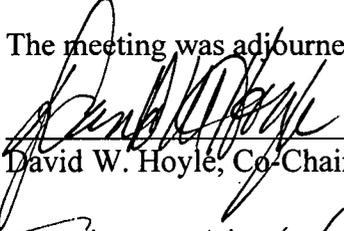
H. B. 295 - No Tax On Intangible Property

Representative Lanier Cansler came to explain this bill. Senator Soles moved for adoption of a proposed committee substitute to this bill, motion passed. Senator Hoyle stated that he had an amendment to the committee substitute. Senator Kerr called on Mr. Warren Plonk, Fiscal Staff, to speak to the bill. The floor was opened for questions from the members of the committee. Mr. Ron Aycock with the County Commissioners Association spoke to the bill. Senator Ballantine moved for adoption of an amendment (attachment # 3) to make technical changes to this bill, motion passed. Senator Hoyle stated that he would not offer his amendment at this time. Senator Hoyle made a motion to adopt the committee substitute as amended and the bill be rolled into a new committee substitute, motion passed.

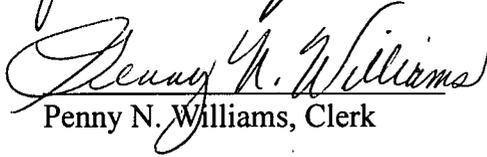
S. B. 317 - Local Government Debt Changes

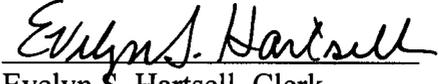
Information was provided by staff (attachment # 5 and # 6) on this but due to the late hour it was decided that this bill would not be discussed at this time.

The meeting was adjourned.


David W. Hoyle, Co-Chair


John H. Kerr, III Co-Chair


Penny N. Williams, Clerk


Evelyn S. Hartsell, Clerk

SENATE FINANCE COMMITTEE

Thursday, March 27, 1997

Page -2-

NOTE:

Agenda is Attachment # 1

Sen. Ballantine's Amendment is Attachment # 2

Visitor's Registration is Attachment # 3

Committee Report is Attachment # 4

Information on SB 317 is Attachments # 5 and # 6

AGENDA

SENATE FINANCE COMMITTEE

THURSDAY, MARCH 27, 1997

AT

12:00 NOON, ROOM 544 LOB

H. B. 295 - NO TAX ON INTANGIBLE PROPERTY - REP. CANSLER

S. B. 317 - LOCAL GOVERNMENT DEBT CHANGES - SEN. WINNER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

2

HOUSE BILL 295*
Committee Substitute Favorable 3/12/97

Short Title: No Tax on Intangible Property.

(Public)

Sponsors:

Referred to:

February 24, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO EXEMPT MOST INTANGIBLE PERSONAL PROPERTY FROM
3 PROPERTY TAX.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 105-275(31) reads as rewritten:

6 "(31) ~~Money, whether on hand or on deposit at a bank, a credit union,~~
7 ~~a savings and loan association, or an insurance company.~~

8 Intangible personal property other than:

9 a. Leasehold interests in exempted real property.

10 b. Software not otherwise excluded by subdivision (40) of this
11 section."

12 Section 2. G.S. 105-276 reads as rewritten:

13 "**§ 105-276. Taxation of intangible personal property.**

14 Intangible personal property that is not excluded from taxation under G.S. 105-275
15 is subject to this Subchapter. The exclusion of a class of intangible personal property
16 from taxation under G.S. 105-275 does not affect its consideration in the appraisal or
17 assessment of real property, personal property, or public service company property."

18 Section 3. G.S. 105-275(31a), (31b), (31c), and (31d) are repealed.

19 Section 4. G.S. 105-282.1(a)(2) reads as rewritten:

20 "(2) Owners of the special classes of property excluded from taxation
21 under G.S. 105-275(5), (15), (16), (26), (31), ~~(31a), (31b), (31e),~~
22 ~~(31d),~~ (32a), (33), (34), or (40), or exempted under G.S. 105-278.2

1 are not required to file applications for the exclusion or
2 exemption of that property."

3 Section 5. G.S. 105-294(b)(3) reads as rewritten:

4 "(3) Within two years of the date of appointment, achieve a passing
5 score in courses of instruction approved by the Department of
6 Revenue covering the following topics:

7 a. The laws of North Carolina governing the listing, appraisal,
8 and assessment of property for taxation;

9 b. The theory and practice of estimating the fair market value
10 of real property for ad valorem tax purposes;

11 c. The theory and practice of estimating the fair market value
12 of ~~tangible and intangible~~ personal property for ad valorem
13 tax purposes; and

14 d. Property assessment administration."

15 Section 6. G.S. 105-275.2 is amended by adding a new subsection to
16 read:

17 "(e) Reduction. -- Each year, on or before July 15, the governing body of each
18 county and each municipality shall notify the Secretary of the amount of taxes it
19 collected in the preceding fiscal year from taxes on intangible personal property
20 discovered on or after January 1, 1997, for taxable years beginning on or after July 1,
21 1991. The Secretary shall reduce the amount allocated to each county and
22 municipality for distribution the following August by the amount the county or
23 municipality reports pursuant to this subsection. If the Secretary discovers that a
24 county or municipality failed to report any taxes as required by this subsection, the
25 Secretary shall reduce the county or municipality's next distribution under this
26 section by ten percent (10%)."

27 Section 7. G.S. 105-275(40) reads as rewritten:

28 "(40) Computer software and any documentation related to the
29 computer software. As used in this subdivision, the term
30 'computer software' means any program or routine used to cause
31 a computer to perform a specific task or set of tasks. The term
32 includes system and application programs and database storage
33 and management programs.

34 The exclusion established by this subdivision does not apply
35 to computer software and its related documentation if the
36 computer software meets one or more of the following
37 descriptions:

38 a. It is embedded software. 'Embedded software' means
39 computer instructions, known as microcode, that reside
40 permanently in the internal memory of a computer system
41 or other equipment and are not intended to be removed
42 without terminating the operation of the computer system or
43 equipment and removing a computer chip, a circuit, or
44 another mechanical device.

1 b. It is purchased or licensed from a person who is unrelated to
2 the taxpayer and it is capitalized on the books of the
3 taxpayer in accordance with generally accepted accounting
4 principles, including financial accounting standards issued
5 by the Financial Accounting Standards Board. A person is
6 unrelated to a taxpayer if (i) the taxpayer and the person are
7 not subject to any common ownership, either directly or
8 indirectly, and (ii) neither the taxpayer nor the person has
9 any ownership interest, either directly or indirectly, in the
10 other.

11 This subdivision does not affect the value or taxable status
12 of any property that is otherwise subject to taxation under this
13 Subchapter.

14 The provisions of the exclusion established by this
15 subdivision are not severable. If any provision of this subdivision
16 or its application is held invalid, the entire subdivision is
17 repealed."

18 Section 8. Section 6 of this act becomes effective July 1, 1997, and
19 expires September 1, 2002. The remainder of this act is effective for taxes imposed
20 for taxable years beginning on or after July 1, 1997.

1 are not required to file applications for the exclusion or
2 exemption of that property."

3 Section 5. G.S. 105-294(b)(3) reads as rewritten:

4 "(3) Within two years of the date of appointment, achieve a passing
5 score in courses of instruction approved by the Department of
6 Revenue covering the following topics:

- 7 a. The laws of North Carolina governing the listing, appraisal,
8 and assessment of property for taxation;
9 b. The theory and practice of estimating the fair market value
10 of real property for ad valorem tax purposes;
11 c. The theory and practice of estimating the fair market value
12 of ~~tangible and intangible~~ personal property for ad valorem
13 tax purposes; and
14 d. Property assessment administration."

15 Section 6. G.S. 105-333(3) reads as rewritten:

16 "(3) Distributable system property. -- All real property and ~~tangible~~
17 ~~and intangible~~ personal property owned or used by a railroad
18 company other than nondistributable system property."

19 Section 7. G.S. 105-333(17) reads as rewritten:

20 "(17) System property. -- The real property and ~~tangible and intangible~~
21 personal property used by a public service company in its public
22 service activities. The term also includes public service company
23 property under construction on the day as of which property is
24 assessed which when completed will be used by the owner in its
25 public service activities."

26 Section 8. G.S. 105-275.2 is amended by adding a new subsection to
27 read:

28 "(e) Reduction. -- Each year, on or before July 15, the governing body of each
29 county and each municipality shall notify the Secretary of the amount of taxes it
30 collected in the preceding fiscal year from taxes on intangible personal property
31 discovered on or after January 1, 1997, for taxable years beginning on or after July 1,
32 1991. The Secretary shall reduce the amount allocated to each county and
33 municipality for distribution the following August by the amount the county or
34 municipality reports pursuant to this subsection. If the Secretary discovers that a
35 county or municipality failed to report any taxes as required by this subsection, the
36 Secretary shall reduce the county or municipality's next distribution under this
37 section by ten percent (10%)."

38 Section 9. G.S. 105-275(40) reads as rewritten:

39 "(40) Computer software and any documentation related to the
40 computer software. As used in this subdivision, the term
41 'computer software' means any program or routine used to cause
42 a computer to perform a specific task or set of tasks. The term
43 includes system and application programs and database storage
44 and management programs.

1 The exclusion established by this subdivision does not apply
2 to computer software and its related documentation if the
3 computer software meets one or more of the following
4 descriptions:

- 5 a. It is embedded software. 'Embedded software' means
6 computer instructions, known as microcode, that reside
7 permanently in the internal memory of a computer system
8 or other equipment and are not intended to be removed
9 without terminating the operation of the computer system or
10 equipment and removing a computer chip, a circuit, or
11 another mechanical device.
- 12 b. It is purchased or licensed from a person who is unrelated to
13 the taxpayer and it is capitalized on the books of the
14 taxpayer in accordance with generally accepted accounting
15 principles, including financial accounting standards issued
16 by the Financial Accounting Standards Board. A person is
17 unrelated to a taxpayer if (i) the taxpayer and the person are
18 not subject to any common ownership, either directly or
19 indirectly, and (ii) neither the taxpayer nor the person has
20 any ownership interest, either directly or indirectly, in the
21 other.

22 This subdivision does not affect the value or taxable
23 status of any property that is otherwise subject to taxation
24 under this Subchapter.

25 The provisions of the exclusion established by this
26 subdivision are not severable. If any provision of this
27 subdivision or its application is held invalid, the entire
28 subdivision is repealed."

29 Section 10. Section 8 of this act becomes effective July 1, 1997, and
30 expires September 1, 2002. The remainder of this act is effective for taxes imposed
31 for taxable years beginning on or after July 1, 1997.

**NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE**

BILL NUMBER House Bill 295 (Second Edition)
SHORT TITLE: No Tax on Intangible Property
SPONSOR(S): Proposed Committee Substitute

\$ ESTIMATE FISCAL IMPACT					
	Yes ()	No ()	No Estimate Available (X)		
	<u>FY 1997-98</u>	<u>FY 1998-99</u>	<u>FY 1999-00</u>	<u>FY 2000-01</u>	<u>FY 2001-02</u>
REVENUES					
Local					
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:					
EFFECTIVE DATE: July 1, 1997					

BILL SUMMARY:

The proposed act exempts intangible property such as patents, copyrights, secret processes, formulae, goodwill, trademarks, trade brands, and franchises from the property tax when such property is separately listed. The act does not prevent intrinsic intangible variables from being considered when determining the value of taxable property under one of the accepted valuation techniques recognized by the International Association of Assessing Officers.

BACKGROUND SUMMARY

In 1985, the General Assembly repealed the intangibles tax on the following types of personal property: cash on deposit in banks, cash on deposit with insurance companies, cash on hand, and certain accounts receivable. Ten years later, effective for tax year 1995, the General Assembly repealed the tax on intangible personal property such as stocks, bonds, mutual funds, and accounts receivable. Under current law a property tax could still be levied upon the value of such assets as patents, copyrights, secret processes, formulae, good will, trademarks, trade brands and franchises. At the beginning of tax year 1997, twenty three counties asked taxpayers to list these intangible assets on their 1997 business personal property tax form. Prior to this date, only several counties were listing this type of property.

ASSUMPTIONS AND METHODOLOGY:

The act is not expected to significantly reduce the current value of real, personal, and public service property statewide, for two reasons. First, before January 1, 1997 most county tax assessors were not asking for this type of property to be listed. The property tax is not due before September of 1997 and the effective date for this act is July 1, 1997. If this act becomes law, the tax on this type of intangible property will be exempt before the September 1997 due date.

Secondly, the act does not prevent the inherent element of intangible property from consideration in determining true market value of both real and personal property. General Statute 105-283, requires that all real and personal property be valued at its true market value. In order to carry out this statutory requirement, assessors use three recognized methods to appraise property: the income approach, the cost approach, and the market approach. Each method may reflect the intrinsic intangible values, if evident, in the valuation of property.

Some examples of values that are considered intangibles under the income approach are gross rental income, leasehold interest, return on investment, the net income a property is capable of generating, and the economic life of an asset. Intangible cost used in calculating value by the cost approach can be architectural, labor, shipping, and installation costs. Under the market approach, it is unlikely that two exact properties can be compared. Property appraisers must consider comparable intangible values such as the value of a location, and the value of similar equipment that has recently sold.

To try to gauge a revenue impact from the bill the County Commissioners Association sent a questionnaire to the five largest counties in the State. The five counties were Forsyth, Guilford, Wake, Mecklenburg, and Durham. Each county was asked to report the 1996 value of property that would be exempt under this act. Wake County reported for tax year 1996 a listing of \$32.1 million in value for patents, copyrights, trademarks, trade brands, and franchises. Wake County's tax rate for 1996 was \$.63 per \$100 in value. The revenue loss associated with this rate is \$202,230. Durham County indicated values had been listed in 1996 for franchises but did not give a value. The remaining three counties did not report a loss in value from exempting the intangible property under this act.

SOURCES:

Business Personal Property Manual; North Carolina Department of Revenue.

Valuation of Intellectual Property and Intangible Property, Second Edition; Smith and Parr.

The N. C. Association of County Commissioners

FISCAL RESEARCH DIVISION

733-4910

PREPARED BY: H. Warren Plonk

APPROVED BY: Tom L. Covington

DATE: March 11, 1997

EXPLANATION OF HOUSE BILL 295:
No Tax on Intangible Property (2nd Edition)

TO: Senate Finance Committee
FROM: Sabra Faires, Committee Counsel
DATE: March 27, 1997
SPONSOR: Representative Cansler

Several counties have been considering the taxation of intangible personal property such as trademarks, franchises, and good will as a way of broadening the property tax base. These intangibles, by definition, have always been subject to property taxation. **House Bill 295** provides that counties may continue taxing the types of intangible property they have traditionally taxed, namely leasehold interests of exempt property and computer software. It exempts all other intangibles from property tax, thus stopping counties from pursuing the taxation of franchises, trademarks, good will, etc. The bill is effective for taxes imposed for taxable years beginning on or after July 1, 1997.

Intangible personal property has been subject to taxation since at least 1939. Intangible personal property is defined as "patents, copyrights, secret processes, formulae, good will, trademarks, trade marks, franchises, stocks, bonds, cash, bank deposits, notes, evidences of debt, leasehold interests in exempted real property, bills and accounts receivable, and other like property." Although cash and bank deposits have been exempt from property tax since 1985, it was not until 1995 that the General Assembly exempted other forms of financial intangibles, such as stocks and accounts receivable, from the property tax.

Section 1 of the bill exempts all intangible personal property from property taxation except for leasehold interests in exempted real property and computer software. Counties and cities have traditionally taxed these two types of intangible property. An example of a leasehold interest in exempted real property is a commercial airline terminal at Raleigh-Durham International Airport.

One of the most commonly used methods of valuing commercial property is the income approach to value. Under the income approach, the contribution of intangible assets to a business' income is an inherent part of the valuation process. Section 2 of the bill allows counties and cities to continue considering intangible personal property, such as trade marks and good will, when it assesses other real property, personal property, or public service company property. McDonald's is an example of when a county may consider a trade mark in its valuation of real property.

Sections 3, 4, 5, and 6 of the bill make conforming changes in other statutes. Section 7 discourages counties and cities from discovering taxes on intangible personal property that is repealed by this bill on or after January 1, 1997. It does so by reducing the distribution allocated to the local government in August of each year by an amount equal to the amount of property tax on intangibles collected through discovery. Within

the past few years, one or two counties have begun aggressively pursuing the property taxation of intangibles such as good will, secret processes, and formulae.

Section 8 of the bill seeks to preserve the legislature's authority to classify property for taxation by providing a non-severability clause in the current software property tax exemption. If any part of the exemption is ever ruled unconstitutional, then the entire exemption will be defeated. Consequently, all computer software will be subject to property tax unless the General Assembly acts to re-classify it for exemption. In 1994, the General Assembly carefully crafted an across-the-board property tax exemption for all computer software other than embedded software and software that is required by generally accepted accounting principles to be treated as a capital asset. This exemption was the result of a compromise between the North Carolina Association of County Commissioners and a taxpayer group called the North Carolina Software Coalition.

The issue of taxing this type of intangible property received a lot of attention after the North Carolina Court of Appeals and Supreme Court ruled that Wake County's methodology for taxing self-created intangible property was unconstitutional. (Edward Valves, Inc. v. Wake County, 117 N.C. App. 484 and 343 N.C. 426) Under the assessment method used by Wake County, a business' intangible personal property and self-created intellectual property were taxed only if they were capitalized on the business' books. If an asset was not reflected on a business' books, it was not taxed. Typically, a business capitalizes intangible personal property only when it sells its assets. In practice, the county's methodology distinguished between intangible self-created property that was sold and similar property that was not sold, thus giving different tax treatment to taxpayers owning identical classes of property.

The case highlights the difficulty of listing, valuing, and assessing intangible property in a uniform and accurate manner. The case alluded to the fact that the counties did not have much guidance in the area of assessing intangibles. This year, the Property Tax Division of the Department of Revenue sent a memo to counties giving some guidance in this area to help achieve uniformity and equity across the State, as required by the State Constitution. Also, in revising the uniform state abstract, the Department included a section for intangible personal property. These recent developments have brought the issue of taxing intangible personal property to the attention of both taxpayers and counties.

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 295

DATE _____

S. B. No. _____

Amendment No. _____

(to be filled in by
Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)

Sen.)

1 moves to amend the bill on page 1, lines 8-11

2 () WHICH CHANGES THE TITLE

3 by rewriting the lines to read: ~~On insurance com~~

4 "Intangible personal property other than leasehold
5 interests in exempted real property. This subdivision
6 does not affect the taxation of software not otherwise
7 excluded by subdivision (40) of this section."

8 and on page 1, lines 16-17

9 by rewriting the ~~underlined sentence that~~
10 ~~begin with~~ lines to read

11 " from taxation under G.S. 105-275 does
12 not affect the appraisal or assessment
13 of real property and tangible personal
14 property."

15
16
17
18
19

SIGNED

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 317

Short Title: Local Government Debt Changes.

(Public)

Sponsors: Senators Winner, Hartsell; Cooper, Hoyle, Kerr, and Odom.

Referred to: Finance.

March 5, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW ALL COUNTIES TO ACQUIRE PROPERTY FOR USE BY
3 THEIR LOCAL BOARDS OF EDUCATION, TO PROVIDE THAT EXISTING
4 LOCAL GOVERNMENT DEBT STATEMENT REQUIREMENTS AND DEBT
5 LIMITATIONS APPLY TO INSTALLMENT PURCHASE AND LEASE DEBTS,
6 TO REQUIRE LOCAL GOVERNMENT COMMISSION APPROVAL OF
7 MORE NONVOTED DEBTS, AND TO CAP THE AMOUNT OF
8 INSTALLMENT PURCHASE AND LEASE DEBT COUNTIES AND CITIES
9 MAY INCUR.

10 The General Assembly of North Carolina enacts:

11 Section 1. (a) G.S. 153A-158.1 reads as rewritten:

12 "§ 153A-158.1. Acquisition and improvement of school ~~property in certain counties.~~
13 property.

14 (a) Acquisition by County. -- A county may acquire, by any lawful method, any
15 interest in real or personal property for use by a school administrative unit within the
16 county. In exercising the power of eminent domain a county shall use the procedures
17 of Chapter 40A. The county shall use its authority under this subsection to acquire
18 property for use by a school administrative unit within the county only upon the
19 request of the board of education of that school administrative unit and after a public
20 hearing.

21 (b) Construction or Improvement by County. -- A county may construct, equip,
22 expand, improve, renovate, or otherwise make available property for use by a school
23 administrative unit within the county. The local board of education shall be involved

1 in the design, construction, equipping, expansion, improvement, or renovation of the
2 property to the same extent as if the local board owned the property.

3 (c) Lease or Sale by Board of Education. -- Notwithstanding the provisions of G.S.
4 115C-518 and G.S. 160A-274, a local board of education may, in connection with
5 additions, improvements, renovations, or repairs to all or part of any of its property,
6 lease or sell the property to the board of commissioners of the county in which the
7 property is located for any price negotiated between the two boards.

8 (d) Board of Education May Contract for Construction. -- Notwithstanding the
9 provisions of G.S. 115C-40 and G.S. 115C-521, a local board of education may enter
10 into contracts for the erection or repair of school buildings upon sites owned in fee
11 simple by one or more counties in which the local school administrative unit is
12 located.

13 ~~(e) Scope. -- This section applies to Alleghany, Ashe, Avery, Bladen, Brunswick,~~
14 ~~Cabarrus, Carteret, Cherokee, Chowan, Columbus, Currituck, Dare, Duplin,~~
15 ~~Edgecombe, Forsyth, Franklin, Graham, Greene, Guilford, Halifax, Harnett,~~
16 ~~Haywood, Hyde, Iredell, Jackson, Johnston, Jones, Lee, Macon, Madison, Martin,~~
17 ~~Moore, Nash, New Hanover, Orange, Pasquotank, Pender, Person, Pitt, Randolph,~~
18 ~~Richmond, Rockingham, Rowan, Sampson, Scotland, Stanly, Surry, Union, Vance,~~
19 ~~Wake, Wilson, and Watauga Counties."~~

20 (b) The repeal of G.S. 153A-158.1(e) gives to all counties in the State the
21 authority that was previously limited to the counties listed in that subsection.

22 Section 2. G.S. 159-55 reads as rewritten:

23 "§ 159-55. Sworn statement of debt; debt limitation.

24 (a) Sworn Statement of Debt. -- After the bond order has been introduced and
25 before the public hearing thereon, the finance officer (or some other officer
26 designated by the governing board for this purpose) shall file with the clerk a
27 statement showing the following:

28 (1) Gross debt. -- The gross debt of the unit, excluding therefrom debt
29 incurred or to be incurred in anticipation of the collection of taxes
30 or other revenues or in anticipation of the sale of bonds other than
31 funding and refunding bonds. The gross debt (after exclusions) is
32 the sum of (i) outstanding debt evidenced by bonds, (ii) bonds
33 authorized by orders introduced but not yet adopted, (iii) unissued
34 bonds authorized by adopted orders, and (iv) outstanding debt not
35 evidenced by ~~bonds~~ bonds, as determined in subsection (d) of this
36 section. However, for purposes of the sworn statement of debt and
37 the debt limitation, revenue bonds shall not be considered debt
38 and ~~such bonds~~ shall not be included in gross debt nor deducted
39 from gross debt.

40 (2) Deductions in computing net debt. -- The deductions to be made
41 from gross debt in computing net debt. The following deductions
42 are allowed:

43 a. Funding and refunding bonds authorized by orders
44 introduced but not yet adopted.

- 1 b. Funding and refunding bonds authorized but not yet issued.
- 2 c. The amount of money held in sinking funds or otherwise for
- 3 the payment of any part of the principal of gross debt other
- 4 than debt incurred for water, gas, electric light or power
- 5 purposes, or sanitary sewer purposes (to the extent that the
- 6 bonds are deductible under subsection (b) of this section), or
- 7 two or more of these purposes.
- 8 d. The amount of bonded debt included in gross debt and
- 9 incurred, or to be incurred, for water, gas, or electric light
- 10 or power purposes, or any two or more of these purposes.
- 11 e. The amount of bonded debt included in the gross debt and
- 12 incurred, or to be incurred, for sanitary sewer system
- 13 purposes to the extent that the debt is made deductible by
- 14 subsection (b) of this section.
- 15 f. The amount of uncollected special assessments theretofore
- 16 levied for local improvements for which any part of the
- 17 gross debt (that is not otherwise deducted) was or is to be
- 18 incurred, to the extent that the assessments will be applied,
- 19 when collected, to the payment of any part of the gross debt.
- 20 g. The amount, as estimated by the governing board of the
- 21 issuing unit or an officer designated by the board for this
- 22 purpose, of special assessments to be levied for local
- 23 improvements for which any part of the gross debt (that is
- 24 not otherwise deducted) was or is to be incurred, to the
- 25 extent that the special assessments, when collected, will be
- 26 applied to the payment of any part of the gross debt.
- 27 (3) Net debt. -- The net debt of the issuing unit, being the difference
- 28 between the gross debt and deductions.
- 29 (4) Assessed value of property. -- The assessed value of property
- 30 subject to taxation by the issuing unit, as revealed by the tax
- 31 records and certified to the issuing unit by the assessor.
- 32 (5) Net debt percentage. -- The percentage that the net debt bears to
- 33 the assessed value of property subject to taxation by the issuing
- 34 unit.
- 35 (b) Sewer System Debt Deductible. -- Debt incurred or to be incurred for sanitary
- 36 sewer system purposes is deductible from gross debt when the combined revenues of
- 37 the water system and the sanitary sewer system (whether or not the water and sewer
- 38 system are operated separately or as a consolidated system) were sufficient to pay all
- 39 operating, capital outlay, and debt service expenditures attributable to both systems in
- 40 each of the three complete fiscal years immediately preceding the date on which the
- 41 sworn statement of debt is filed. For the purposes of this subsection, the 'revenues'
- 42 of a water system and a sanitary sewer system include:
- 43 (1) Rates, fees, rentals, charges, and other receipts and income derived
- 44 from or in connection with the system.

1 (2) Fees, rents, or other charges collected from other offices, agencies,
2 institutions, and departments of the issuing unit at rates not in
3 excess of those charged to other consumers, customers, or users.
4 (3) Appropriations from the fund balance of the prior fiscal year from
5 the fund or funds established to account for the revenues and
6 expenditures of the water system or sewer system pursuant to G.S.
7 159-13(a) of the Local Government Budget and Fiscal Control Act.
8 Before the sworn statement of debt is filed, the secretary shall determine to what
9 extent debt incurred or to be incurred for sanitary sewer system purposes qualifies for
10 deduction from gross debt pursuant to this subsection, and shall give ~~his~~ a certificate
11 to that effect. The secretary's certificate shall be filed with and deemed a part of the
12 sworn statement of debt. The secretary's certificate shall be conclusive in the absence
13 of fraud.

14 (c) Debt Limitation. -- No bond order shall be adopted unless it appears from the
15 sworn statement of debt filed in connection therewith that the net debt of the unit
16 does not exceed eight percent (8%) of the assessed value of property subject to
17 taxation by the issuing unit. This limitation shall not apply to:

- 18 (1) Funding and refunding bonds.
19 (2) Bonds issued for water, gas, or electric power purposes, or two or
20 more of these purposes.
21 (3) Bonds issued for sanitary sewer system purposes when the bonds
22 are deductible pursuant to subsection (b) of this section.
23 (4) Bonds issued for sanitary sewers, sewage disposal, or sewage
24 purification plants when the construction of these facilities has
25 been ordered by the Environmental Management ~~Commission,~~
26 ~~which Commission is hereby authorized to make such an order,~~
27 Commission or by a court of competent jurisdiction.
28 (5) Bonds or notes issued for erosion control purposes.
29 (6) Bonds or notes issued for the purpose of erecting jetties or other
30 protective works to prevent encroachment by the ocean, sounds, or
31 other bodies of water.

32 (d) Determination of Outstanding Debt Not Evidenced by Bonds. -- For the
33 purpose of this section, outstanding debt not evidenced by bonds includes the
34 principal component of outstanding installment contracts and capital leases and the
35 total lease payments due under outstanding operating leases. Outstanding debt not
36 evidenced by bonds is includable in gross debt and deductible in determining net
37 debt to the same extent as if it were bonded debt.

38 If an installment contract, a capital lease, or an operating lease provides funds for
39 more than one purpose within the meaning of this section, the amount of funds
40 borrowed for each purpose shall be the amounts set forth in the installment contract,
41 capital lease, or operating lease. If the installment contract, capital lease, or operating
42 lease does not set forth the amount borrowed for each purpose, the finance officer
43 shall file a certificate with the clerk determining the purposes and amounts, and the

1 determination shall be conclusive and binding for purposes of complying with this
2 section.

3 The following definitions apply in this subsection:

- 4 (1) Capital lease. -- An agreement entered into under G.S. 153A-165
5 or G.S. 160A-19 that constitutes a capital lease under generally
6 accepted accounting principles and that is subject to approval by
7 the Local Government Commission under Article 8 of Chapter 159
8 of the General Statutes.
- 9 (2) Installment contract. -- An agreement entered into under G.S.
10 160A-20 that is subject to approval by the Local Government
11 Commission under Article 8 of Chapter 159 of the General
12 Statutes.
- 13 (3) Operating lease. -- An agreement entered into under G.S. 153A-
14 165 or G.S. 160A-19 that constitutes an operating lease under
15 generally accepted accounting principles and that is subject to
16 approval by the Local Government Commission under Article 8 of
17 Chapter 159 of the General Statutes.
- 18 (4) Principal component. -- The aggregate amount payable under an
19 installment contract or a capital lease over its term in respect of
20 principal only, as set forth in the installment contract or capital
21 lease or in a principal component certificate.
- 22 (5) Principal component certificate. -- A certificate of the finance
23 officer, or some other officer designated by the governing body for
24 this purpose, filed with the clerk setting forth the principal
25 component of an installment contract or capital lease when the
26 installment contract or capital lease does not expressly designate a
27 principal component."

28 Section 3. G.S. 159-148 reads as rewritten:

29 "**§ 159-148. Contracts subject to Article; exceptions.**

30 (a) Except as provided in subsection (b) of this section, this Article applies to any
31 contract, agreement, memorandum of understanding, and any other transaction
32 having the force and effect of a contract (other than agreements made in connection
33 with the issuance of revenue bonds, special obligation bonds issued pursuant to
34 Chapter 159I of the General Statutes, or of general obligation bonds additionally
35 secured by a pledge of revenues) made or entered into by a unit of local government
36 (as defined by G.S. 159-7(b) or, in the case of a special obligation bond, as defined in
37 Chapter 159I of the General Statutes), relating to the lease, acquisition, or
38 construction of capital assets, which contract

- 39 (1) Extends for five or more years from the date of the contract,
40 including periods that may be added to the original term through
41 the exercise of options to renew or extend, and
- 42 (2) Obligates the unit to pay sums of money to another, without regard
43 to whether the payee is a party to the contract, and

1 (3) Obligates the unit over the full term of the contract, including
 2 periods that may be added to the original term through the
 3 exercise of options to renew or extend, to the extent of five
 4 hundred thousand dollars (\$500,000) or a sum equal to one tenth
 5 of one percent (1/10 of 1%) of the assessed value of property
 6 subject to taxation by the contracting unit, whichever is less, and
 7 less.

8 ~~(4) Obligates the unit, expressly or by implication, to exercise its~~
 9 ~~power to levy taxes either to make payments falling due under the~~
 10 ~~contract, or to pay any judgment entered against the unit as a~~
 11 ~~result of the unit's breach of the contract.~~

12 Contingent ~~obligation~~ obligations shall be included in calculating the value of the
 13 contract. Several contracts that are all related to the same undertaking shall be
 14 deemed a single contract for the purposes of this Article. When several contracts are
 15 considered as a single contract, the term shall be that of the contract having the
 16 longest term, and the sums to fall due shall be the total of all sums to fall due under
 17 all single contracts in the group.

18 (b) This Article shall not apply to:

- 19 (1) Contracts between a unit of local government and the State of
 20 North Carolina or the United States of America (or any agency of
 21 either) entered into as a condition to the making of grants or loans
 22 to the unit of local government.
 23 (2) Contracts for the purchase, lease, or lease with option to purchase
 24 of motor vehicles or voting machines.
 25 (3) Loan agreements entered into by a unit of local government
 26 pursuant to the North Carolina Solid Waste Management Loan
 27 Program, Chapter 159I of the General Statutes."

28 Section 4. G.S. 159-150 reads as rewritten:

29 "**§ 159-150. Sworn statement of debt; debt limitation.**

30 (a) Sworn Statement of Debt. -- After or at the time an application is filed under
 31 G.S. 159-149, the finance officer, or some other officer designated by the board, shall
 32 prepare, swear to, and file with the secretary and for public inspection in the office of
 33 the clerk to the board a statement of debt in the same form prescribed in G.S. 159-55
 34 for statements of debt filed in connection with general obligation bond issues. The
 35 sums to be included in gross debt and the deductions therefrom to arrive at net debt
 36 shall be the same as prescribed in G.S. 159-55, ~~except that sums to fall due under~~
 37 ~~contracts subject to this Article shall be treated as if they were evidenced by general~~
 38 ~~obligation bonds of the unit~~ except that the contract to be entered into under this
 39 Article shall be treated as outstanding debt not evidenced by bonds as determined
 40 under G.S. 159-55(d).

41 (b) Overall Debt Limitation. -- No contract subject to this Article may be
 42 executed if the net debt of the contracting unit, after execution of the contract, would
 43 exceed eight percent (8%) of the assessed value of property subject to taxation by the

1 contracting unit. This subsection does not apply to contracts executed by units that
2 do not have the power to levy taxes.

3 (c) Limitation on Debt Not Evidenced by Bonds. -- Unless the contract has been
4 approved by the voters of the contracting county or city as provided in subsection (e)
5 of this section, a county or city may not execute a contract subject to this Article if
6 the net outstanding debt not evidenced by bonds issued by the county or city on or
7 after July 1, 1997, would, after execution of the contract, exceed one percent (1%) of
8 the assessed value of property subject to taxation by the county or city.

9 (d) Exceptions to Limitations. -- Subsections (b) and (c) of this section shall not
10 apply to:

- 11 (1) Funding and refunding contracts.
- 12 (2) Contracts entered into for water, gas, or electric power purposes,
13 or two or more of these purposes.
- 14 (3) Contracts entered into for sanitary sewer system purposes when the
15 amounts payable under the contracts are deductible pursuant to
16 G.S. 159-55(d)(2) or G.S. 159-55(d)(3).
- 17 (4) Contracts entered into for sanitary sewers, sewage disposal, or
18 sewage purification plants when the construction of these facilities
19 has been ordered by the Environmental Management Commission
20 or by a court of competent jurisdiction.
- 21 (5) Contracts entered into for erosion control purposes.
- 22 (6) Contracts entered into for the purpose of erecting jetties or other
23 protective works to prevent encroachment by the ocean, sounds, or
24 other bodies of water.

25 (e) Voter Approval of Certain Contracts. -- If a county or city would be
26 prohibited from executing a contract subject to this Article because the net
27 outstanding debt not evidenced by bonds issued by the county or city on or after July
28 1, 1997, would, after execution of the contract, exceed the debt limit set by subsection
29 (c) of this section, then the governing board of the county or city may, in its
30 discretion, submit the question of whether to execute the contract for approval by the
31 qualified voters of the county or city. A referendum held pursuant to this subsection
32 shall be conducted according to the standards, procedures, and limitations set out in
33 G.S. 159-60 through G.S. 159-62."

34 Section 5. This act is effective when it becomes law. This act does not
35 affect contracts and obligations entered into before July 1, 1997, or for which an
36 application for Local Government Commission approval was filed before July 1,
37 1997.

NC STATE TREASURER
FINANCING AGREEMENT FEBRUARY 13, 1976 - FEBRUARY 4, 1997

TYPE	UNIT	AMOUNT	ASSESSED VALUATION	1% X ASSESSED VALUATION	TOTAL IP/ASSESSED VALUATION
m	Aberdeen	362,956			
		362,956	259,371,483	2,593,715	0.0014
m	Ahoskie	625,000			
		625,000	149,413,731	1,494,137	0.0042
c	Alamance	5,406,000			
		5,406,000	5,245,012,593	52,450,126	0.0010
a	Alamance-Caswell Mental Health	850,000			
		850,000	Not found.	#VALUE!	
a	Albemarle Mental Health Center	175,000			
a	Albemarle Mental Health Center	300,000			
		475,000	Not found.	#VALUE!	
c	Alexander	500,000			
c	Alexander	1,500,000			
c	Alexander	500,000			
c	Alexander	500,000			
		3,000,000	1,121,026,380	11,210,264	0.0027
m	Alexander Mills	220,000			
		220,000	38,092,805	380,928	0.0058
c	Alleghany	3,850,000			
		3,850,000	595,085,550	5,950,856	0.0065
m	Angier	750,000			
		750,000	71,714,455	717,145	0.0105
c	Anson	3,200,000			
		3,200,000	807,013,804	8,070,138	0.0040
m	Apex	300,000			
m	Apex	2,500,000			
		2,800,000	424,670,237	4,246,702	0.0066
c	Ashe	9,900,000			
		9,900,000	1,032,813,021	10,328,130	0.0096
m	Asheboro	887,694			
m	Asheboro	1,500,000			
		2,387,694	1,057,852,891	10,578,529	0.0023
m	Asheville	2,552,000			
m	Asheville	1,600,000			
m	Asheville	4,900,000			
m	Asheville	6,000,000			
m	Asheville	14,000,000			
		29,052,000	3,529,219,344	35,292,193	0.0082
m	Atlantic Beach	630,000			
m	Atlantic Beach	790,000			
m	Atlantic Beach	850,000			
m	Atlantic Beach	750,000			
		3,020,000	392,856,274	3,928,563	0.0077
c	Avery	418,315			
c	Avery	762,805			
c	Avery	7,500,000			
		8,681,120	1,242,330,510	12,423,305	0.0070
m	Badin	50,000			
		50,000	93,720,612	937,206	0.0005
m	Bailey	84,850			
		84,850	19,240,080	192,401	0.0044
m	Bald Head Island	250,000			
m	Bald Head Island	155,000			
m	Bald Head Island	2,000,000			
m	Bald Head Island	500,000			
		2,905,000	200,925,248	2,009,252	0.0145
c	Bladen	2,800,000			
		2,800,000	1,289,190,136	12,891,901	0.0022

Key:
a = authority
c = county
d = district
m = municipality

NC STATE TREASURER
FINANCING AGREEMENT FEBRUARY 13, 1976 - FEBRUARY 4, 1997

TYPE	UNIT	AMOUNT	ASSESSED VALUATION	1% X ASSESSED VALUATION	TOTAL IP/ASSESSED VALUATION
c	Beaufort	1,700,000			
c	Beaufort	2,000,000			
c	Beaufort	2,172,238			
		6,872,238	Not found.	#VALUE!	Needs Valuation
m	Beech Mountain	135,200			
		135,200	175,720,630	1,757,206	0.0008
m	Belmont	1,000,000			
		1,000,000	362,650,604	3,626,506	0.0028
m	Benson	490,550			
		490,550	135,060,710	1,350,607	0.0036
c	Bertie	1,225,000			
c	Bertie	735,750			
c	Bertie	150,750			
		2,111,500	579,888,011	5,798,880	0.0036
m	Bessemer City	500,000			
		500,000	213,624,271	2,136,243	0.0023
m	Bethel	150,000			
		150,000	38,868,558	388,886	0.0039
m	Black Creek	24,932			
		24,932	12,602,971	126,030	0.0020
m	Black Mountain	100,000			
m	Black Mountain	142,847			
		242,847	316,672,025	3,166,720	0.0008
c	Bladen	525,000			
c	Bladen	1,100,000			
		1,625,000	1,289,190,136	12,891,901	0.0013
m	Blowing Rock	200,000			
		200,000	307,702,626	3,077,026	0.0006
m	Boiling Spring Lakes	600,000			
		600,000	86,717,460	867,175	0.0069
m	Boonville	122,268			
		122,268	51,225,255	512,253	0.0024
m	Brevard	615,000			
m	Brevard	900,000			
		1,515,000	274,108,208	2,741,082	0.0055
c	Brunswick	3,750,000			
c	Brunswick	10,000,000			
c	Brunswick	2,400,000			
c	Brunswick	8,000,000			
		24,150,000	5,915,742,330	59,157,423	0.0041
c	Buncombe	4,325,000			
c	Buncombe	29,500,000			
c	Buncombe	2,082,875			
c	Buncombe	3,868,188			
		39,776,063	9,036,826,826	90,368,268	0.0044
m	Bunn	79,850			
		79,850	8,220,115	82,201	0.0097
m	Burgaw	300,000			
m	Burgaw	600,000			
m	Burgaw	350,000			
		1,250,000	100,697,475	1,006,975	0.0124
c	Burke	7,000,000			
		7,000,000	3,026,303,651	30,263,037	0.0023
m	Burlington	3,400,000			
		3,400,000	2,093,354,685	20,933,547	0.0016
c	Cabarrus	1,000,000			
c	Cabarrus	9,900,000			
c	Cabarrus	9,900,000			
c	Cabarrus	1,600,000			
c	Cabarrus	1,900,000			
		24,300,000	5,551,037,900	55,510,379	0.0044

Key:
a = authority
c = county
d = district
m = municipality

**NC STATE TREASURER
FINANCING AGREEMENT FEBRUARY 13, 1976 - FEBRUARY 4, 1997**

	UNIT	AMOUNT	ASSESSED VALUATION	1% X ASSESSED VALUATION	TOTAL IP/ASSESSED VALUATION
	Caldwell	1,250,000			
c	Caldwell	650,000			
c	Caldwell	1,900,000			
		3,800,000	2,339,294,796	23,392,948	0.0016
c	Camden	659,000			
		659,000	263,561,108	2,635,611	0.0025
m	Canton	125,000			
m	Canton	625,000			
		750,000	293,641,430	2,936,414	0.0026
m	Carolina Beach	3,700,000			
		3,700,000	374,008,237	3,740,082	0.0099
c	Carteret	700,000			
c	Carteret	300,000			
c	Carteret	300,000			
c	Carteret	7,040,000			
c	Carteret	4,500,000			
c	Carteret	9,500,000			
c	Carteret	1,500,000			
		23,840,000	3,740,926,214	37,409,262	0.0064
m	Cary	1,544,400			
m	Cary	3,611,071			
		5,155,471	4,669,925,172	46,699,252	0.0011
c	Catawba	3,250,000			
		3,250,000	6,899,822,206	68,998,222	0.0005
m	Chapel Hill	8,100,000			
		8,100,000	2,172,018,294	21,720,183	0.0037
m	Charlotte	8,500,000			
m	Charlotte	14,000,000			
m	Charlotte	150,000,000			
	Charlotte	6,000,000			
	Charlotte	12,500,000			
	Charlotte	11,000,000			
		202,000,000	29,339,389,357	293,393,894	0.0069
a	Charlotte-Meck Hosp Auth	115,000,000			
a	Charlotte-Meck Hosp Auth	11,040,000			
		126,040,000	Not found.	#VALUE!	
c	Chatham	9,534,400			
		9,534,400	2,232,114,125	22,321,141	0.0043
c	Cherokee	9,800,000			
c	Cherokee	765,000			
		10,565,000	827,567,490	8,275,675	0.0128
m	Cherryville	600,000			
		600,000	214,994,607	2,149,946	0.0028
c	Chowan	485,040			
c	Chowan	921,448			
c	Chowan	630,000			
c	Chowan	806,000			
c	Chowan	579,885			
c	Chowan	3,000,000			
c	Chowan	1,500,000			
		7,922,373	537,469,564	5,374,696	0.0147
o	Clay County Schools	309,297			
		309,297	Not found.	#VALUE!	Needs Valuation
m	Clayton	154,650			
m	Clayton	1,700,000			
m	Clayton	600,000			
m	Clayton	1,150,000			
m	Clayton	325,000			
m	Clayton	500,000			
m	Clayton	520,000			
		4,949,650	215,631,578	2,156,316	0.0230
m	Clinton	206,000			
		206,000	361,326,445	3,613,264	0.0006

Key:
a = authority
c = county
d = district
m = municipality

**NC STATE TREASURER
FINANCING AGREEMENT FEBRUARY 13, 1976 - FEBRUARY 4, 1997**

TYPE	UNIT	AMOUNT	ASSESSED VALUATION	1% X ASSESSED VALUATION	TOTAL IP/ASSESSED VALUATION
m	Clyde	150,000			
		150,000	33,185,872	331,859	0.0045
c	Columbus	2,500,000			
c	Columbus	12,000,000			
c	Columbus	1,400,000			
c	Columbus	2,400,000			
		18,300,000	1,849,094,897	18,490,949	0.0099
m	Concord	3,500,000			
		3,500,000	2,091,445,537	20,914,455	0.0017
m	Connelly Springs	60,000			
		60,000	32,003,769	320,038	0.0019
m	Conover	800,000			
m	Conover	800,000			
		1,600,000	543,445,391	5,434,454	0.0029
m	Cornelius	450,000			
		450,000	742,731,552	7,427,316	0.0006
c	Craven	7,300,000			
c	Craven	950,000			
c	Craven	4,000,000			
c	Craven	617,910			
c	Craven	3,900,000			
c	Craven	3,750,000			
c	Craven	1,000,000			
		21,517,910	3,417,008,500	34,170,085	0.0063
c	Cumberland	4,950,000			
c	Cumberland	1,187,500			
c	Cumberland	220,000			
c	Cumberland	4,250,000			
c	Cumberland	57,750,000			
		68,357,500	9,084,955,911	90,849,559	0.0075
d	Cumberland Co Schools	822,097			
		822,097	Not found.	#VALUE!	
c	Currituck	3,600,000			
c	Currituck	5,750,000			
		9,350,000	1,596,381,465	15,963,815	0.0059
c	Dare	11,000,000			
c	Dare	1,100,000			
		12,100,000	4,308,504,157	43,085,042	0.0028
c	Davidson	900,000			
c	Davidson	4,480,000			
		5,380,000	4,953,853,913	49,538,539	0.0011
m	Davidson	729,300			
		729,300	321,121,811	3,211,218	0.0023
c	Davie	650,000			
c	Davie	2,000,000			
		2,650,000	1,550,845,540	15,508,455	0.0017
m	Dunn	300,000			
m	Dunn	445,645			
m	Dunn	360,185			
m	Dunn	2,000,000			
m	Dunn	190,000			
		3,295,830	337,918,263	3,379,183	0.0098
c	Duplin	215,000			
c	Duplin	5,800,000			
c	Duplin	16,000,000			
c	Duplin	250,000			
c	Duplin	362,360			
c	Duplin	798,000			
		23,425,360	1,606,083,738	16,060,837	0.0146

Key:
 a = authority
 c = county
 d = district
 m = municipality

**NC STATE TREASURER
FINANCING AGREEMENT FEBRUARY 13, 1976 - FEBRUARY 4, 1997**

TYPE	UNIT	AMOUNT	ASSESSED VALUATION	1% X ASSESSED VALUATION	TOTAL IP/ASSESSED VALUATION
c	Durham	1,050,000			
c	Durham	90,095,670			
c	Durham	95,670			
c	Durham	8,000,000			
c	Durham	7,300,000			
		106,541,340	11,082,275,774	110,822,758	0.0096
m	Durham	6,045,000			
m	Durham	12,000,000			
m	Durham	5,945,000			
m	Durham	12,500,000			
m	Durham	12,525,000			
		49,015,000	6,961,773,399	69,617,734	0.0070
m	Edenton	77,000			
m	Edenton	55,000			
		132,000	190,600,555	1,906,006	0.0007
c	Edgecombe	1,621,270			
c	Edgecombe	2,100,000			
c	Edgecombe	4,000,000			
		7,721,270	1,805,721,684	18,057,217	0.0043
m	Elizabeth City	1,100,000			
		1,100,000	446,560,204	4,465,602	0.0025
m	Elizabethtown	1,300,000			
		1,300,000	143,127,304	1,431,273	0.0091
m	Elkin	1,700,000			
		1,700,000	267,245,305	2,672,453	0.0064
m	Emerald Isle	250,000			
		250,000	695,259,533	6,952,595	0.0004
m	Erwin	1,336,928			
		1,336,928	142,825,109	1,428,251	0.0094
m	Fallston	150,710			
		150,710	18,991,745	189,917	0.0079
m	Fayetteville	7,450,000			
m	Fayetteville	18,000,000			
		25,450,000	3,822,318,465	38,223,185	0.0067
c	Forsyth	699,356			
c	Forsyth	925,088			
c	Forsyth	5,500,000			
c	Forsyth	2,082,815			
c	Forsyth	1,834,380			
c	Forsyth	1,623,024			
c	Forsyth	8,500,000			
c	Forsyth	2,616,400			
		23,781,063	16,112,678,134	161,126,781	0.0015
a	Forsyth-Tourism Dev. Authority	616,860			
		616,860	Not found.	#VALUE!	
c	Franklin	2,500,000			
c	Franklin	202,500			
c	Franklin	10,320,000			
c	Franklin	347,000			
c	Franklin	1,500,000			
c	Franklin	9,630,000			
		24,499,500	1,316,537,529	13,165,375	0.0186
m	Franklin	3,225,000			
m	Franklin	1,972,000			
		5,197,000	211,874,184	2,118,742	0.0245
a	Franklin W&S Auth	2,500,000			
		2,500,000	Not found.	#VALUE!	
m	Franklinton	65,000			
m	Franklinton	200,000			
		265,000	41,053,674	410,537	0.0065
m	Fremont	180,000			
		180,000	35,567,506	355,675	0.0051

Key:
a = authority
c = county
d = district
m = municipality

**NC STATE TREASURER
FINANCING AGREEMENT FEBRUARY 13, 1976 - FEBRUARY 4, 1997**

TYPE	UNIT	AMOUNT	ASSESSED VALUATION	1% X ASSESSED VALUATION	TOTAL IP/ASSESSED VALUATION
m	Fuquay-Varina	4,000,000			
		4,000,000	313,031,961	3,130,320	0.0128
m	Garner	658,882			
		658,882	797,246,281	7,972,463	0.0008
c	Gaston	19,965,000			
		19,965,000	7,316,773,424	73,167,734	0.0027
m	Gastonia	9,000,000			
m	Gastonia	745,000			
		9,745,000	2,539,765,294	25,397,653	0.0038
m	Glen Alpine	176,000			
		176,000	20,654,004	206,540	0.0085
m	Graham	2,000,000			
		2,000,000	487,856,376	4,878,564	0.0041
m	Granite Falls	1,400,000			
		1,400,000	140,530,673	1,405,307	0.0100
c	Granville	1,800,000			
c	Granville	500,000			
c	Granville	1,200,000			
c	Granville	1,700,000			
		5,200,000	1,409,287,579	14,092,876	0.0037
c	Greene	800,000			
c	Greene	2,700,000			
c	Greene	2,165,000			
		5,665,000	430,351,733	4,303,517	0.0132
m	Greensboro	22,000,000			
m	Greensboro	22,000,000			
m	Greensboro	3,808,550			
m	Greensboro	5,700,000			
m	Greensboro	27,000,000			
		80,508,550	10,931,930,659	109,319,307	0.0074
m	Greenville	2,681,990			
		2,681,990	1,760,733,020	17,607,330	0.0015
m	Griton	413,500			
		413,500	49,090,613	490,906	0.0084
c	Halifax	100,000			
c	Halifax	8,200,000			
		8,300,000	1,994,275,454	19,942,755	0.0042
c	Harnett	235,000			
c	Harnett	3,100,000			
c	Harnett	9,000,000			
c	Harnett	42,815,000			
		55,150,000	2,073,283,625	20,732,836	0.0266
m	Havelock	182,850			
		182,850	309,247,723	3,092,477	0.0006
c	Haywood	550,000			
c	Haywood	6,300,000			
		6,850,000	2,171,538,323	21,715,383	0.0032
c	Henderson	6,725,805			
c	Henderson	550,000			
c	Henderson	736,000			
c	Henderson	300,000			
		8,311,805	4,516,950,035	45,169,500	0.0018
m	Hendersonville	397,000			
m	Hendersonville	460,000			
		857,000	591,568,834	5,915,688	0.0014
c	Hertford	2,700,000			
		2,700,000	659,897,584	6,598,976	0.0041

Key:
a = authority
c = county
d = district
m = municipality

**NC STATE TREASURER
FINANCING AGREEMENT FEBRUARY 13, 1976 - FEBRUARY 4, 1997**

TYPE	UNIT	AMOUNT	ASSESSED VALUATION	1% X ASSESSED VALUATION	TOTAL IP/ASSESSED VALUATION
m	Hickory	3,500,000			
m	Hickory	4,301,525			
m	Hickory	1,347,000			
m	Hickory	4,385,954			
		13,534,479	2,167,064,014	21,670,640	0.0062
m	High Point	2,823,131			
		2,823,131	3,858,134,853	38,581,349	0.0007
m	Highlands	1,500,000			
		1,500,000	358,250,168	3,582,502	0.0042
m	Hillsborough	573,000			
m	Hillsborough	315,000			
m	Hillsborough	2,220,000			
		3,108,000	212,226,330	2,122,263	0.0146
c	Hoke	330,000			
c	Hoke	450,000			
c	Hoke	312,000			
c	Hoke	750,000			
		1,842,000	644,608,565	6,446,086	0.0029
m	Holden Beach	175,000			
		175,000	308,600,198	3,086,002	0.0006
m	Holly Ridge	50,000			
		50,000	25,335,991	253,360	0.0020
m	Holly Springs	1,400,000			
m	Holly Springs	1,250,000			
m	Holly Springs	750,000			
m	Holly Springs	150,000			
		3,550,000	163,932,500	1,639,325	0.0217
a	Housing Auth Kinston	400,000			
a	Housing Auth Kinston	569,000			
a	Housing Auth Kinston	205,000			
		1,174,000	Not found.	#VALUE!	
m	Huntersville	500,000			
m	Huntersville	4,500,000			
m	Huntersville	985,000			
		5,985,000	609,231,341	6,092,313	0.0098
c	Hyde	180,000			
		180,000	363,644,064	3,636,441	0.0005
m	Indian Trail	100,000			
		100,000	313,792,515	3,137,925	0.0003
c	Iredell	3,730,000			
c	Iredell	3,500,000			
c	Iredell	16,000,000			
c	Iredell	1,065,600			
		24,295,600	5,771,788,463	57,717,885	0.0042
c	Jackson	3,956,793			
c	Jackson	8,000,000			
c	Jackson	2,879,800			
		14,836,593	1,788,363,171	17,883,632	0.0083
m	Jacksonville	421,960			
m	Jacksonville	1,400,000			
m	Jacksonville	8,000,000			
		9,821,960	1,103,975,179	11,039,752	0.0089
c	Johnston	1,700,000			
c	Johnston	750,000			
c	Johnston	1,100,000			
c	Johnston	4,995,000			
c	Johnston	9,500,000			
c	Johnston	3,100,000			
c	Johnston	28,000,000			
		49,145,000	3,626,807,576	36,268,076	0.0136
a	Johnston County Airport Auth.	1,900,000			
		1,900,000	Not found.	#VALUE!	

Key:
a = authority
c = county
d = district
m = municipality

**NC STATE TREASURER
FINANCING AGREEMENT FEBRUARY 13, 1976 - FEBRUARY 4, 1997**

TYPE	UNIT	AMOUNT	ASSESSED VALUATION	1% X ASSESSED VALUATION	TOTAL IP/ASSESSED VALUATION
m	Jonesville	125,000			
		125,000	56,192,653	561,927	0.0022
m	Kannapolis	9,110,000			
m	Kannapolis	5,814,000			
m	Kannapolis	1,048,200			
m	Kannapolis	300,000			
m	Kannapolis	1,050,000			
m	Kannapolis	1,860,000			
m	Kannapolis	5,000,000			
m	Kannapolis	3,000,000			
		27,182,200	1,196,353,397	11,963,534	0.0227
m	Kernersville	1,000,000			
m	Kernersville	425,000			
m	Kernersville	625,000			
m	Kernersville	1,100,000			
		3,150,000	825,419,917	8,254,199	0.0038
m	Kill Devil Hills	1,072,250			
		1,072,250	717,446,976	7,174,470	0.0015
m	King	250,000			
m	King	175,000			
m	King	600,000			
		1,025,000	295,968,355	2,959,684	0.0035
m	Kings Mountain	2,000,000			
		2,000,000	343,362,556	3,433,626	0.0058
m	Kinston	652,000			
		652,000	813,411,242	8,134,112	0.0008
m	Knightdale	227,469			
m	Knightdale	1,435,567			
		1,663,036	187,065,632	1,870,656	0.0089
m	Lake Lure	1,253,150			
		1,253,150	250,023,994	2,500,240	0.0050
m	Lake Waccamaw	282,000			
		282,000	47,529,770	475,298	0.0059
m	Lansing	32,000			
		32,000	3,496,807	34,968	0.0092
c	Lee	2,000,000			
c	Lee	1,620,000			
c	Lee	493,000			
		4,113,000	2,227,089,687	22,270,897	0.0018
m	Leland	200,000			
		200,000	54,160,718	541,607	0.0037
c	Lenoir	5,180,045			
c	Lenoir	1,825,000			
c	Lenoir	1,825,000			
		8,830,045	2,275,736,524	22,757,365	0.0039
m	Lenoir	800,000			
m	Lenoir	1,300,000			
m	Lenoir	1,805,000			
m	Lenoir	8,360,000			
		12,265,000	740,764,205	7,407,642	0.0166
m	Lewiston-Woodville	269,000			
m	Lewiston-Woodville	35,000			
		304,000	13,014,968	130,150	0.0234
m	Lexington	1,143,946			
m	Lexington	1,060,000			
m	Lexington	1,000,000			
		3,203,946	711,490,158	7,114,902	0.0045
m	Lillington	320,000			
		320,000	74,782,726	747,827	0.0043

Key:
a = authority
c = county
d = district
m = municipality

NC STATE TREASURER
FINANCING AGREEMENT FEBRUARY 13, 1976 - FEBRUARY 4, 1997

TYPE	UNIT	AMOUNT	ASSESSED VALUATION	1% X ASSESSED VALUATION	TOTAL IP/ASSESSED VALUATION
c	Lincoln	1,000,000			
c	Lincoln	375,000			
c	Lincoln	817,500			
c	Lincoln	1,110,000			
c	Lincoln	400,000			
c	Lincoln	10,000,000			
		13,702,500	2,546,727,982	25,467,280	0.0054
m	Locust	3,185,275			
		3,185,275	75,148,122	751,481	0.0424
m	Long Beach	971,500			
m	Long Beach	137,200			
		1,108,700	481,819,562	4,818,196	0.0023
m	Long View	1,500,000			
m	Long View	435,000			
		1,935,000	168,186,358	1,681,864	0.0115
m	Louisburg	400,000			
		400,000	120,459,235	1,204,592	0.0033
m	Lowell	85,280			
m	Lowell	400,000			
		485,280	123,990,795	1,239,908	0.0039
c	Macon	1,250,000			
c	Macon	1,600,000			
c	Macon	1,900,000			
		4,750,000	2,201,219,082	22,012,191	0.0022
c	Madison	495,000			
		495,000	484,434,392	4,844,344	0.0010
m	Marion	400,000			
m	Marion	3,004,900			
m	Marion	3,271,495			
		6,676,395	221,233,504	2,212,335	0.0302
c	Martin	899,250			
c	Martin	184,250			
c	Martin	500,000			
c	Martin	500,000			
		2,083,500	1,214,840,521	12,148,405	0.0017
d	Martin Co Schools	1,013,348			
		1,013,348	Not found.	#VALUE!	
m	Matthews	331,650			
m	Matthews	800,000			
m	Matthews	650,000			
		1,781,650	1,310,242,849	13,102,428	0.0014
m	Mayodan	2,000,000			
		2,000,000	165,629,324	1,656,293	0.0121
c	McDowell	365,323			
c	McDowell	3,700,000			
c	McDowell	476,500			
		4,541,823	1,433,204,791	14,332,048	0.0032
m	Mebane	2,250,000			
m	Mebane	2,300,000			
		4,550,000	233,783,557	2,337,836	0.0195
c	Mecklenburg	6,750,000			
		6,750,000	41,665,425,514	416,654,255	0.0002
m	Middlesex	27,000			
		27,000	30,394,023	303,940	0.0009
m	Mint Hill	800,000			
		800,000	815,016,386	8,150,164	0.0010
m	Monroe	1,027,000			
m	Monroe	4,800,000			
		5,827,000	1,155,007,209	11,550,072	0.0050
c	Montgomery	2,592,709			
		2,592,709	983,210,150	9,832,102	0.0026

Key:
a = authority
c = county
d = district
m = municipality

**NC STATE TREASURER
FINANCING AGREEMENT FEBRUARY 13, 1976 - FEBRUARY 4, 1997**

TYPE	UNIT	AMOUNT	ASSESSED VALUATION	1% X ASSESSED VALUATION	TOTAL IP/ASSESSED VALUATION
c	New Hanover	4,473,000			
c	New Hanover	6,332,972			
c	New Hanover	1,360,000			
c	New Hanover	700,000			
c	New Hanover	720,000			
c	New Hanover	753,872			
c	New Hanover	438,362			
c	New Hanover	405,000			
c	New Hanover	1,580,504			
		16,763,710	8,594,091,035	85,940,910	0.0020
m	North Topsail Beach	220,000			
m	North Topsail Beach	800,000			
		1,020,000	249,200,266	2,492,003	0.0041
m	North Wilkesboro	1,900,000			
		1,900,000	276,644,243	2,766,442	0.0069
c	Northampton	561,000			
		561,000	643,095,621	6,430,956	0.0009
m	Oakboro	2,211,000			
		2,211,000	45,560,478	455,605	0.0485
a	Onslow Co Hospital Auth	1,000,000			
a	Onslow Co Hospital Auth	6,000,000			
		7,000,000	Not found.	#VALUE!	
c	Orange	302,500			
c	Orange	1,200,000			
c	Orange	14,000,000			
c	Orange	9,600,000			
c	Orange	2,000,000			
		27,102,500	4,839,142,783	48,391,428	0.0056
m	Oriental	46,000			
		46,000	73,490,540	734,905	0.0006
m	Oxford	225,000			
m	Oxford	2,600,000			
m	Oxford	674,000			
		3,499,000	246,984,610	2,469,846	0.0142
c	Pamlico	650,000			
c	Pamlico	1,310,000			
c	Pamlico	2,434,873			
c	Pamlico	4,000,000			
c	Pamlico	500,000			
		8,894,873	532,105,798	5,321,058	0.0167
c	Pasquotank	160,000			
c	Pasquotank	982,328			
c	Pasquotank	660,000			
c	Pasquotank	2,000,000			
c	Pasquotank	25,500,000			
		29,302,328	1,031,749,080	10,317,491	0.0284
c	Pender	6,000,000			
		6,000,000	1,889,707,322	18,897,073	0.0032
c	Perquimans	4,250,000			
c	Perquimans	400,000			
c	Perquimans	850,000			
		5,500,000	437,797,300	4,377,973	0.0126
c	Person	6,700,000			
c	Person	6,300,000			
		13,000,000	2,032,427,022	20,324,270	0.0064
m	Pinehurst	409,000			
m	Pinehurst	1,750,000			
m	Pinehurst	637,500			
m	Pinehurst	4,000,000			
		6,796,500	1,028,307,218	10,283,072	0.0066

Key:
a = authority
c = county
d = district
m = municipality

FINANCING AGREEMENT REPORT

LGCA APPROVAL	UNIT	PURPOSE	TYPE OF FINANCING	AMOUNT APPROVED	LENDER	APPROVAL RATE (MAX)	EXPECTED RATE	MATURITY
10/04/94 11/01/94	Yancey County Atlantic Beach	Construction of an Annex to the Existing Yancey Co. DSS Reutilize the "Circle" area	I.P. I.P.	103,682 750,000	First Commercial Bank Branch Banking & Trust Company	Rate Cap 15% Var (Taxable) 4.9275% Fixed Fixed yrs (1-3) at 5.29%; Yrs (4-7) at 5.62%; and 5.89% years (8-10); Var. Yrs (11-15) at 69% Prime floor 5.0% cap 9.0%		1999 2009
11/01/94 11/01/94 11/01/94	Clayton Clayton Knightsdale	Expansion of the Electrical Distribution System Expansion of the Hocutt Ellington Memorial Library Construction of a New Town Hall	I.P. I.P. I.P.	900,000 250,000 1,435,567	Branch Banking & Trust Company First Citizens Bank Southern National Leasing Corporation	Fixed yrs (1-8) at 4.73%; 4.89%; 5.16%; 5.32%; 5.41%; 5.47%; 5.53%; and 5.70% res. Var years (9-15) at 68% Prime floor 5.35% cap 8.16%		2004 1999 2009
11/01/94	Lake Lure	Construction of Municipal Building	I.P.	1,253,150	Southern National Leasing Corporation	Fixed yrs (1-10) at 4.41%; 4.98%; 5.54%; 5.66%; 5.75%; 5.80%; 5.54%; 5.69%; 8.80% and 8.80%, resp.		*2004
11/01/94	Morehead City	Construction/Installation of Water & Sewer Lines	I.P.	4,000,000	Branch Banking and Trust Company	Fixed yrs (1-3) at 5.18%; Yrs (4-7) at 5.74%; Yrs (8-11) at 5.99%; Var. yrs (12-20) at 68% Prime floor 5.0% cap 10.5%		2014
11/01/94	Morehead City	Street/Sidewalk/Bulkhead Repairs on Waterfront Bus.	I.P.	1,000,000	Branch Banking and Trust Company	Fixed yrs (1-8) 5.59%; Var. yrs (9-12) 68% Prime floor 5.0% cap 9.5%		2006
11/01/94	Mount Airy	Extension of Sanitary Sewer Lines	I.P.	1,000,000	Branch Banking and Trust Company	Fixed yrs (1-3) 5.06%; Yrs (4-7) 5.53%; Yrs (8-10) 5.74%; Var. Yrs (11-15) 68% Prime floor 4.90% cap 9.25%		2009
11/01/94 11/01/94 * Note: 12/8/94 Authorization replaces this Auth.	Smithfield Franklin County* Appr. for 13,100,000	Construction of a new Rescue Squad Facility School/Courthouse	I.P. I.P.	265,000	First Citizens Bank Southern National Leasing Corporation	4.56% Fixed Interim 90 days 4.70%; Yrs (1-10) 5.81%; 6.17%; 6.37%; 6.50%; 6.59%; 6.64%; 6.74%; 6.79%; 6.83%; Var. (11-20) 85% Prime floor 6.59% cap 10.63%		1998 2014
11/01/94	Hammet County	Construct. of a Health, Social Ser., Dept. of Aging Facility	I.P.	9,000,000	Southern National Leasing Corporation	Fixed yrs (1-10) 5.81%; 6.17%; 6.37%; 6.5%; 6.59%; 6.64%; 6.64%; 6.74%; 6.79%; 6.83.		2004

**NC STATE TREASURER
FINANCING AGREEMENT FEBRUARY 13, 1976 - FEBRUARY 4, 1997**

TYPE	UNIT	AMOUNT	ASSESSED VALUATION	1% X ASSESSED VALUATION	TOTAL IP/ASSESSED VALUATION
c	Pitt	14,500,000			
c	Pitt	8,500,000			
c	Pitt	1,200,000			
c	Pitt	15,000,000			
		39,200,000	4,248,109,410	42,481,094	0.0092
m	Raleigh	750,000			
m	Raleigh	1,296,000			
m	Raleigh	8,250,000			
m	Raleigh	981,200			
m	Raleigh	558,840			
m	Raleigh	11,500,000			
		23,336,040	12,894,094,909	128,940,949	0.0018
m	Ramseur	805,000			
		805,000	118,552,193	1,185,522	0.0068
c	Randolph	3,488,500			
c	Randolph	7,898,589			
c	Randolph	35,000,000			
		46,387,089	4,813,181,474	48,131,815	0.0096
m	Ranlo	2,079,538			
		2,079,538	84,038,863	840,389	0.0247
c	Richmond	7,750,000			
c	Richmond	4,750,000			
		12,500,000	1,216,983,407	12,169,834	0.0103
m	River Bend	105,000			
		105,000	186,140,905	1,861,409	0.0006
d	Roanoke Rapids Sanitary Dist.	476,000			
		476,000	Not found.	#VALUE!	
a	Roanoke-Chowan Human Serv. Ctr.	100,000			
		100,000	Not found.	#VALUE!	
m	Robbinsville	149,700			
		149,700	33,784,478	337,845	0.0044
c	Rockingham	2,300,000			
		2,300,000	3,685,443,781	36,854,438	0.0006
m	Rockingham	3,550,000			
		3,550,000	317,246,947	3,172,469	0.0112
m	Rocky Mount	5,950,000			
		5,950,000	2,243,624,897	22,436,249	0.0027
c	Rowan	600,000			
c	Rowan	770,000			
c	Rowan	12,000,000			
c	Rowan	6,800,000			
c	Rowan	3,300,000			
		23,470,000	5,072,426,374	50,724,264	0.0046
m	Roxboro	1,000,000			
		1,000,000	269,941,597	2,699,416	0.0037
c	Rutherford	1,500,000			
c	Rutherford	10,000,000			
		11,500,000	2,686,557,456	26,865,575	0.0043
m	Salisbury	1,468,000			
m	Salisbury	1,096,000			
m	Salisbury	1,750,000			
		4,314,000	1,272,475,068	12,724,751	0.0034
c	Sampson	1,043,145			
c	Sampson	750,000			
c	Sampson	9,700,000			
c	Sampson	2,298,008			
c	Sampson	2,580,000			
c	Sampson	320,000			
c	Sampson	2,200,000			
c	Sampson	500,000			
		19,391,153	1,879,497,225	18,794,972	0.0103

Key:
a = authority
c = county
d = district
m = municipality

NC STATE TREASURER
FINANCING AGREEMENT FEBRUARY 13, 1976 - FEBRUARY 4, 1997

TYPE	UNIT	AMOUNT	ASSESSED VALUATION	1% X ASSESSED VALUATION	TOTAL IP/ASSESSED VALUATION
d	Sandhills Mh/Dd/Sas	336,300			
		336,300	Not found.	#VALUE!	
m	Sandyfield	52,000			
		52,000	3,849,730	38,497	0.0135
m	Sanford	568,000			
m	Sanford	550,000			
m	Sanford	1,200,000			
m	Sanford	2,500,000			
		4,818,000	1,089,783,854	10,897,839	0.0044
c	Scotland	5,750,000			
c	Scotland	500,000			
		6,250,000	1,197,950,884	11,979,509	0.0052
m	Selma	150,000			
m	Selma	500,000			
		650,000	174,265,187	1,742,652	0.0037
m	Seven Devils	85,000			
		85,000	39,982,580	399,826	0.0021
m	Shalotte	315,000			
		315,000	111,910,462	1,119,105	0.0028
m	Shelby	1,500,000			
m	Shelby	500,000			
m	Shelby	550,000			
		2,550,000	660,425,970	6,604,260	0.0039
m	Smithfield	400,000			
m	Smithfield	265,000			
m	Smithfield	850,000			
m	Smithfield	1,000,000			
		2,515,000	459,660,488	4,596,605	0.0055
a	Southeastern MH/MR/SA Center	600,000			
		600,000	Not found.	#VALUE!	
m	Southern Pines	800,000			
		800,000	682,299,884	6,822,999	0.0012
m	Spindale	1,175,000			
		1,175,000	187,334,054	1,873,341	0.0063
c	Stanly	1,254,507			
c	Stanly	275,000			
c	Stanly	150,000			
c	Stanly	1,000,000			
c	Stanly	5,834,350			
		8,513,857	2,078,017,407	20,780,174	0.0041
m	Stedman	50,000			
		50,000	20,679,207	206,792	0.0024
c	Stokes	5,900,000			
		5,900,000	1,713,847,139	17,138,471	0.0034
m	Sugar Mountain	606,000			
		606,000	90,589,089	905,891	0.0067
c	Surry	1,545,351			
		1,545,351	2,771,543,270	27,715,433	0.0006
c	Swain	450,000			
		450,000	304,862,353	3,048,624	0.0015
m	Tabor City	200,000			
		200,000	67,716,092	677,161	0.0030
m	Thomasville	375,000			
m	Thomasville	6,600,000			
m	Thomasville	242,746			
m	Thomasville	1,138,915			
m	Thomasville	3,700,000			
		12,056,661	629,224,031	6,292,240	0.0192
m	Topsail Beach	150,000			
		150,000	191,993,981	1,919,940	0.0008

Key:
a = authority
c = county
d = district
m = municipality

NC STATE TREASURER
FINANCING AGREEMENT FEBRUARY 13, 1976 - FEBRUARY 4, 1997

TYPE	UNIT	AMOUNT	ASSESSED VALUATION	1% X ASSESSED VALUATION	TOTAL IP/ASSESSED VALUATION
c	Transylvania	390,000			
c	Transylvania	1,900,000			
c	Transylvania	1,431,788			
		3,721,788	2,067,182,873	20,671,829	0.0018
m	Troutman	1,500,000			
		1,500,000	95,011,550	950,116	0.0158
m	Troy	700,000			
		700,000	108,069,805	1,080,698	0.0065
m	Tryon	236,010			
m	Tryon	109,000			
		345,010	95,005,278	950,053	0.0036
c	Tyrrell	476,500			
		476,500	156,638,046	1,566,380	0.0030
c	Union	8,500,000			
c	Union	6,550,000			
		15,050,000	4,778,866,665	47,788,667	0.0031
c	Vance	386,000			
c	Vance	3,000,000			
		3,386,000	1,350,485,839	13,504,858	0.0025
m	Vanceboro	750,000			
		750,000	23,038,354	230,384	0.0326
c	Wake	3,033,795			
		3,033,795	31,990,994,479	319,909,945	0.0001
m	Wake Forest	720,750			
m	Wake Forest	6,158,000			
m	Wake Forest	341,750			
		7,220,500	319,790,465	3,197,905	0.0226
m	Wallace	235,000			
		235,000	100,034,159	1,000,342	0.0023
m	Walnut Cove	400,000			
		400,000	41,500,274	415,003	0.0096
c	Washington	475,000			
		475,000	431,451,994	4,314,520	0.0011
c	Watauga	3,500,000			
		3,500,000	2,471,148,517	24,711,485	0.0014
c	Wayne	7,500,000			
c	Wayne	8,000,000			
		15,500,000	3,307,454,591	33,074,546	0.0047
m	Weaverville	400,000			
		400,000	153,760,997	1,537,610	0.0026
m	Whiteville	600,000			
		600,000	229,671,578	2,296,716	0.0026
c	Wilkes	135,000			
c	Wilkes	275,000			
		410,000	2,249,745,860	22,497,459	0.0002
m	Wilkesboro	511,245			
		511,245	292,447,402	2,924,474	0.0017
m	Williamston	500,000			
m	Williamston	1,830,000			
		2,330,000	178,381,644	1,783,816	0.0131
m	Wilmington	543,156			
m	Wilmington	302,001			
m	Wilmington	1,000,000			
m	Wilmington	600,000			
m	Wilmington	2,500,000			
m	Wilmington	3,190,000			
		8,135,157	2,593,496,232	25,934,962	0.0031
c	Wilson	13,800,000			
c	Wilson	3,500,000			
c	Wilson	800,000			
c	Wilson	17,000,000			
		35,100,000	2,845,084,463	28,450,845	0.0123

Key:
a = authority
c = county
d = district
m = municipality

**NC STATE TREASURER
FINANCING AGREEMENT FEBRUARY 13, 1976 - FEBRUARY 4, 1997**

TYPE	UNIT	AMOUNT	ASSESSED VALUATION	1% X ASSESSED VALUATION	TOTAL IP/ASSESSED VALUATION
m	Wilson	800,000			
m	Wilson	2,000,000			
		2,800,000	1,635,581,820	16,355,818	0.0017
m	Winston-Salem	1,250,000			
m	Winston-Salem	25,000,000			
m	Winston-Salem	10,300,000			
		36,550,000	9,816,681,412	98,166,814	0.0037
c	Yancey	360,000			
c	Yancey	103,682			
		463,682	838,132,338	8,381,323	0.0006
m	Zebulon	2,000,000			
		2,000,000	274,903,548	2,749,035	0.0073
		2,129,506,403			

Key:
a = authority
c = county
d = district
m = municipality

FINANCING AGREEMENT REPORT

LGCA APPROVAL	UNIT	PURPOSE	TYPE OF FINANCING	AMOUNT APPROVED	LENDER	APPROVAL RATE (MAX)	EXPECTED RATE	MATURITY
02/13/76	Winston-Salem	Additional parking deck	L.P.	1,250,000	Wachovia Bank & Trust Co.	6.25%		1991
				\$1,250,000	Total Fiscal Year June 30, 1977			
12/09/86	Apex	Property for Parks & Recreation	L.P.	300,000				2001
				\$300,000	Total Fiscal Year June 30, 1986			
05/05/87	Pamlico County	Purchase Building for DSS	L.P.	650,000	Associated Builders Corp.			1993
06/02/87	Lowell	Construction of water line		85,280				1997
06/02/87	New Hanover County	Building to be used by DSS	L.P.	4,473,000				1997 or 2007
				\$ 5,208,280	Total Fiscal Year June 30, 1987			
10/06/87	King	Purchase building for city offices	L.P.	250,000	King Volunteer Fire Dist	5%		1999
11/02/87	Chowan County	Renovate auditorium		485,040	E.A. Swain Associates	8.5%		1992
12/01/87	Cary	Acquisition of water/sewer lines	L.P.	1,544,000	HAB Associates, Inc.	7%		1997
12/01/87	Nash General Hospital	Lease equipment	L.P.	912,278	Bell Atlantic-Tricon Medical Finance Co.	8%		1992
12/01/87	Vance County	Purchase Building for DSS	L.P.	386,000	L.G. Frazier, Jr.			1998
02/02/88	Alamance-Caswell Mental Health	Purchase building	L.P.	850,000	MED Realty			1998
04/05/88	Lewisston-Woodville	Acquire water & sewer system	L.P.	269,000	Lewisston-Woodville Utilities Assoc. Inc.			2002
06/07/88	Fallston	Acquisition of water system	L.P.	150,710				?
				\$ 4,847,026	Total Fiscal Year June 30, 1988			
08/02/88	Ashville	Purchase energy systems equipment, installations/ren.	L.P.	2,552,000	First Municipal Leasing Corporation	7.78%		2004
08/02/88	Southeastern MH/MR/SA Center	Housing for independent living program	L.P.	600,000	Vincent Ramano, Sherwood Rest Home, Inc.	?		1993
09/06/88	Hoke County	Purchase building for district courtrooms & offices	L.P.	330,000	Davidson & Jones Corp.	7.50%		1993
09/06/88	Lenoir County	Purchase land for industrial park	L.P.	5,180,045	"Hodges Heirs"	10%		1998
09/06/88	Lenoir County	Purchase Building for DSS	L.P.	1,825,000	Ford Motor Credit Company	7.84%		1998
09/30/88	Bertie County	Administrative Office Building Project	COP	1,225,000	Bertie County Finance Corporation	6.9% - 7.7%		1994
11/01/88	Lenoir County	Purchase land & building for expansion of Pullen Park	L.P.	750,000	William T. Wilson, AAA Electrical Co.	5.5%		1996
12/06/88	Avery County	Purchase Land & Buildings/DSS	L.P.	1,825,000	Lenoir County Community Development Corp	7.79% - 1st 6 months		1998
12/06/88	Cary/Approved changes on 6/4/89	Purchase communication system	L.P.	418,315	First Wachovia Leasing Corp.	7.0158%		1993
12/06/88	Randolph County	Purchase water & sewer lines	L.P.	1,544,400	Shell Oil Co. & other developers	?		1998
01/03/89	Forsyth-Tourism Dev. Authority	Purchase equipment for sanitary landfill	L.P.	900,000	FUNB	7.50%		1993
02/07/89	Edgecombe County	Purchase bldg. for add. office space for county ser.	L.P.	3,488,500	FUNB & KPS Associates	7.72%		2003
04/04/89	Lexington	Lease space for DSS	L.P.	618,860	City Market Partners	?		1994
04/04/89	Black Mountain/7/3/91 approved extension to 12 years	Office space for visitor reception ctr	L.P.	1,921,270	James E. Rabull/Norman Y. Chambliss, III	7.37%		1999 or 2009
04/04/89	Black Mountain/7/3/91 approved extension to 12 years	Purchase building for Dept. of Recreation	L.P.	1,143,946	Southern National Leasing Corp.	8.00%		2001
04/04/89	Paquotank County	Acquire land & improvement to county property	L.P.	180,000	First Citizens Bank	10%		1993
05/02/89	Craven County	Purchase building for DSS & Dept. of Health	L.P.	7,300,000		4.79% 7/93-6/98 5.49%		2009
05/02/89	Roanoke Rapids Sanitary Dist	Lease water & sewer system	L.P.	478,000	Town of Gaston	7/98-6/03 6.03% 7/03-6/08 6.34% to mat.		2019
06/06/89	Craven County	Purchase land, buildings, furniture & computer system	L.P.	950,000				1996
				\$33,006,336	Total Fiscal Year June 30, 1989			

Attachment #6

FINANCING AGREEMENT REPORT

APPROVAL	UNIT	PURPOSE	TYPE OF FINANCING	AMOUNT APPROVED	LENDER	APPROVAL RATE (MAX)	EXPECTED RATE	MATURITY
07/05/89	Fayetteville	Purchase administrative office bldg./finance	COP	7,450,000	Prudential-Bache (Underwriter)	8.25%		2009
08/01/89	New Hanover County	Acquisition of building occupied by DSS	I.P.	6,332,972	First Union National Bank	7.75%		2004
09/05/89	Asheboro	Acquire bldg. for Police Dept.	I.P.	887,994	BB&T	7.11%		1999
09/05/89	Carteret County	Construct sheltered workshop for adult handicapped.	I.P.	700,000	BB&T	8.73%		1993
09/05/89	New Hanover County	Acquisition of 2 existing sewer utility systems	I.P.	1,360,000	Cape Fear Utilities Co.	8.00%		1999
09/05/89	Raleigh	Finance purchase of vehicles, equipment & fixtures	I.P.	1,296,000	Banc One Leasing Corp.	6.45%		1994
09/05/89	Stanly County	Refinance Agri-Civic Center/Construct Animal Shelter	I.P.	1,254,507	FUNB	6.67%		1994
09/05/89	Wilmington	Construct decks/walkways on City Riverwalk	I.P.	543,156	Edger & Jeanette Sims	12.00%		1994
10/10/89	Carteret County	Acquire property for Carteret Community College	I.P.	300,000	BB&T	8.50%		1993
10/10/89	Garner	Acquisition of park land	I.P.	658,982	Dudley & Sarah Buffalo	8.25%		1989
10/10/89	Oxford	Renovation of City's public works fac.	I.P.	225,000	Southern National Leasing Corp.	8.98%		1994
11/14/89	Avery County	Construct office facility for DSS & ESC	I.P.	762,805	FUNB	7.06%		1994
11/14/89	Cumberland County	Construct Cr. for Applied Technology at Comm. College	I.P.	4,950,000	FUNB			2004
		Revised Interest Rate on 11/2/93						
11/14/89	Forsyth County	Lease building for visitor reception center	L.P.	699,356	Wachovia Bank & Trust Co.	7.28%		1986
11/14/89	Kannapolis	Construct Water Treatment & Distribution System	L.P.	9,110,000	Wachovia Bank & Trust Co.	7.12%		2011
11/14/89	Kannapolis	Lease of land for Water Treatment & Dist. System	L.P.	5,814,000	Southern National Leasing Corp.	6.78%		1984
11/14/89	Lee County	Construct Community Resource Cr. for Comm. College	I.P.	2,000,000	FUNB via Citicorp	6.96%		2004
12/05/89	Buncombe County	Construct psychiatric care facility at hospital	COP	4,325,000	PacificCorp	8.12%		1994
12/05/89	Forsyth County	Purchase Digital Telephone & Voice Mail System	I.P.	921,448	FUNB	7.55%		1996
12/05/89	High Point	Construct Solid Waste Compacting & Material Rec. Cr.	I.P.	825,088	Eastan Capital of Atlanta, Inc.	7.75%		1999
12/05/89	Wayne County	Construct Court Fac./Law Enforcement Fac.	COP	2,823,131	First Union Securities, Inc.	7.75%		2009
12/05/89	Wilkes County	Purchase bldg. for day care ctr.	I.P.	7,500,000	FUNB	6.98%		2009
01/20/90	Mathews	Purchase of land for park, recreational & open space	I.P.	135,000	FUNB	9.07%		1999
02/06/90	Greenville	Water Treatment/Plant Improvements	I.P.	331,650	UCB	7.69%		2005
				2,681,990	Planters National Bank	6.50% (F)		2000
02/06/90	Indian Trail	Purchase property for Town Hall	I.P.	100,000	UCB	7.16% (V)		1995
02/06/90	Seven Devils	Construction of Fire Dept.	I.P.	85,000	Southern National Leasing Corp.	7.60%		1996
02/06/90	Durham County	Purchase Parking Lot & Easement for Emergency Jail	I.P.	1,050,000	Durham County	6.80%		2000
02/06/90	Rowan County/Adoption	Construction of Airport terminal & 4 Hangars	I.P.	600,000	FUNB	8.30%		1995
		\$150,000 on 7/2/91						
02/06/90	Vance County	Construction of jail	I.P.	3,000,000	FUNB	7.31%		2000
03/06/90	Edenton	Construction of parking lots	I.P.	77,000	Peoples Bank & Trust Co.	7.11%		2000
03/06/90	Hendersonville	Construction of Multi-Purpose Activity Bldg.	I.P.	397,000	First-Citizens Bank	6.80%		1995
03/06/90	Carteret County	Purchase property for library	I.P.	300,000	BB&T	8.50%		1997
03/06/90	Duplin County	Construction of 2 Airport Hangars	I.P.	215,000	FUNB			1994
03/06/90	Franklin County-Revised I/R	Purchase & renovate Human Resource bldg.	I.P.	1,500,000	First Citizens Bank	4.50%	7.20%	2005
03/06/90	Harnett County (Addition of	Purchase operating equipment for Water Fac.	I.P.	235,000	First Citizens Bank	8.00%		2005
		\$35,000 approved 5/1/90						2000
03/06/90	Johnston County (Addition of	Construction of social services bldg.	I.P.	1,700,000	First Citizens Bank	6.94%		2005
		\$200,000 on 2/5/91						
04/03/90	Holden Beach	Purchase property for Town Hall expansion	I.P.	175,000	Southern National Leasing Corp.	7.30%		1995
04/03/90	Pinehurst	Purchase property & construct fire dept.	I.P.	409,000	Southern National Leasing Corp.	7.04%		1995
04/03/90	Johnston County	Construction ASCS Building	I.P.	750,000	First Citizens Bank	9.94%		2005
05/01/90	Sampson County	Purchase medical equipment for Nuclear Dept. at hosp.	I.P.	1,043,145	Southern National Leasing Corp.	6.78%		1995
05/01/90	New Bern	Purchase River Bend Water & Sewer System	I.P.	2,420,000	Carolina Water Service, Inc.	8.0%		2002
06/05/90	Hendersonville	Purchase property to construct new administration bldg	I.P.	460,000	First Citizens Bank	6.83%		2002
06/05/90	Salisbury	Purchase Motorola Telecommunication equipment	I.P.	1,468,000	Motorola Communications & Equipment, Inc.	6.70%		1997

Yr. (1-7) 5.60% Fixed
 Yr. (8-9) Var. at 67% of Prime
 Floor 4% Ceiling 12%

FINANCING AGREEMENT REPORT

LGIC APPROVAL	UNIT	PURPOSE	TYPE OF FINANCING	AMOUNT APPROVED	LENDER	APPROVAL RATE (MAX)	EXPECTED RATE	MATURITY
06/05/90	Carteret County-Modified 2/5/91	Construct Jail & Law Enforcement Facility	COP	7,040,000	Donaldson, Lufkin & Jenrette-Underwriter	8.00%	6.75%	2000
06/05/90	Wake County	Lease building for library	L.P.	3,033,795	Raleigh/Radnor Partnership III			2000
				<u>\$ 90,045,619</u>	Total Fiscal Year June 30, 1990			
07/03/90	Elizabethtown	Construct building for administrative office	L.P.	1,300,000	UCB	8.50%	7.05% (NIC)	1998
07/03/90	River Bend	Construction of Town Hall Annex & Rec. Fac.	L.P.	105,000	First Citizens Bank	7.00%		1995
07/03/90	Wake Forest/Additional \$80,000 approved 11/7/90	Construct Police Station.	L.P.	720,750	UCB	7.285%		2005
07/03/90	Hertford County	Construct Jail & Detention Center	L.P.	2,700,000	Southern Bank	7.80%		2005
07/03/90	Craven County	Construction of Havelock Elementary School	COP	4,000,000	NCNB	7.14%		2010
08/07/90	Ashville	Purchase Radio Communication System	L.P.	1,800,000	Wachovia Leasing Corp.	6.99%		1987
08/07/90	Durham	Renovation of bldg. for police head qtrs. & vehicles.	COP	6,045,000	First Union Securities, Inc.	7.25%		2010
08/07/90	King	Purchase bldg. for Police Dept.	L.P.	175,000	First Citizens Bank	7.75%		1995
09/04/90	Clyde	Renovate bldg. for Town Hall expansion	L.P.	150,000	First Citizens Bank	10.25%		2000
09/04/90	Pender County/Additional in 7/2/91	Construct Government Center Complex	COP	6,000,000	First Union Securities, Inc.	8.5%	7.05%	2010
09/04/90	Roanoke-Chowan Human Serv. Ctr.	Construct Psychiatric Care Facility	L.P.	100,000	Planters National Bank	6.70%		1995
10/03/90	Erwin	Construct Water Treatment Plant	L.P.	1,336,928	CCB	7.75%		2005
10/03/90	Raleigh	Construct Amphitheatre	COPS	11,500,000	First Charlotte Corporation	10.50%	(1-5) 7.44%	2015
10/03/90	Raleigh	Construct parking deck	COPS	8,250,000	Morgan Stanley & Co., Inc.	8.25%	10.16%	2010
10/03/90	Johnston County Airport Auth.	Construct Airport Hangar & Water Line at Airport	L.P.	1,900,000	First Citizens Bank	10.50%	7.75%	2005
11/07/90	Charlotte	Construct Convention Center	COPS	185,000,000	First Citizens Bank	8.00%	6.78%	2020
11/07/90	Louisburg	Construction of Fire Station	L.P.	400,000	First Citizens Bank	7.34%		2000
11/07/90	Alexander County	Construction of Social Services Bldg.	L.P.	500,000	SNB	7.09%		2000
11/07/90	Brunswick County	Construct Emergency Operations Ctr./DSS Bldg.	COPS	3,750,000	Underwriter/Merrill Lynch Capital Mkts.	8.50%	Insured-6.77 Rated-6.91	2002
11/07/90	Granville County	Construction of Nursing Facility	L.P.	1,800,000	SNB	8.47%	7.00%	2010
11/07/90	Moore County Water & Sewer Auth.	Purchase existing Water System	L.P.	1,550,000	BB&T	5.29%		2010
Revised Interest rate 4/2/96								
12/04/90	Sanford	Construction of fire station	L.P.	588,000	Southern National Leasing Corp.	7.09%		2000
01/11/91	Craven County	Installation of Water System	L.P.	617,910		9.00% (C)	7.20%	2000
01/11/91	Pasquotank County- Approved Oct 1991 to \$982,327.50	Purchase property for Industrial Park	L.P.	982,328		8.00%		2001
02/05/91	Alexander County	Additions to School Building	L.P.	1,500,000		6.49%		1998
02/05/91	Madison County	Acquire land for landfill	L.P.	485,000		7.50%		2005
02/05/91	Moore County	Land & Hospital Equipment	L.P.	796,000		6.85%		1996
02/05/91	Sampson County- Revised I/R 1/4/94	Public Buildings FHA & ASCS	L.P.	750,000	First-Citizens Bank	Var. .50% above Prime Floor 6% Ceiling 9%		2007
02/05/91	Wilmington	Golf Course Irrigation System	L.P.	302,001		7.10%		1996
03/05/91	Emerald Isle	Municipal Complex	L.P.	250,000	Wachovia Bank & Trust Co.	7.00%		1995
03/05/91	Edgecombe Co./Nash Co.	Mental Health Facility	L.P.	2,100,000		7.07%		2001
03/05/91	Pitt County	Jail Facility, Agricultural Ctr., Auditorium	COPS	14,500,000	Wheat, First Securities	7.75%		2008
04/02/91	Bessemer City	Construction of City Hall & Police Station	L.P.	500,000	First Union National	7.41%		2006
04/02/91	City of Durham	Purchase Morgan Street Parking Garage	COPS	12,000,000	Alex. Brown/J. Lee Peeler & Co. (U)	7.80%		2011
04/02/91	Holly Ridge	Construction of Town Hall	L.P.	50,000	First Citizens Bank	7.35%		1996
04/02/91	Thomasville	Construction of Fire Station	L.P.	375,000	Wachovia Bank & Trust Co.	7.25%		1998
04/02/91	Chowan County	Construction of Mental Health Facility	L.P.	630,000	Branch Banking & Trust Co.	6.59%		1996
04/02/91	Durham County	Construction of Jail Fac. & Purchase Computer System	COPS	55,000,000	Wheat, First Securities/J. Lee Peeler (U)	7.64%		2014
05/07/91	Mathews	Construction of a Connector Road	L.P.	800,000	United Carolina Bank	6.375%		1996
05/07/91	Williamston	Extension of Water & Sewer Lines	L.P.	500,000	Branch Banking & Trust Co.	6.59%		1996

FINANCING AGREEMENT REPORT

LGIC	UNIT	PURPOSE	TYPE OF FINANCING	AMOUNT APPROVED	LENDER	APPROVAL RATE (MAX)	EXPECTED RATE	MATURITY
05/07/91	Dare County	Construction of Jail Facility	COPS	11,000,000	Alex. Brown/First Union Sec./J. Lee Peeler	7.22%	8.72%	2006
05/07/91	Duplin County	Social Serv. Bldg./Purchase Equipment for Solid Waste	COPS	5,800,000	Donaldson Lufkin & Jenette	7.90%	7.20%	2011
08/04/91	Ashville	Construction of Public Works Facility	COPS	4,900,000	A.G. Edwards & Sons	7.43%	8.73%	2011
08/04/91	Wilmington	Purchase property for parks/recreation fac.	I.P.	1,000,000	Southern National Leasing Corp.	6.59%		1998
06/04/91	Johnston County	Purchase hospital equipment	I.P.	1,100,000	First Citizens Bank & Trust Co.	6.28%		1996
06/04/91	Person County	Construction of Jail and Law Enforcement Center	COPS	6,700,000	First Union Securities, Inc.	7.25%	6.77%	2011
06/04/91	Stokes County	Construction of Jail/Social Services Bldg.	COPS	5,900,000	First Union Securities, Inc.	7.25%	6.51%	2006
				\$ 367,968,917	Total Fiscal Year June 30, 1991			
07/02/91	Greensboro	Expansion of Greensboro Coliseum	COPS	22,000,000	Alex. Brown & Sons, Inc.	7.13%	8.83%	2011
07/02/91	Stedman	Construction of Town Hall	I.P.	50,000	Donaldson Lufkin & Jenette Securities	6.73%		1996
07/02/91	Mecklenburg County	Construction of Satellite Jail	COPS	6,750,000	First Charlotte Corporation	6.85%	6.55%	1998
07/02/91	New Hanover County	Construction Branch Library	I.P.	700,000	Wachovia Bank of North Carolina	6.75%		1996
08/06/91	Belmont	Water & Sewer Improvements	I.P.	1,000,000	First Union National Bank	6.38%		1996
08/06/91	Black Creek	Purchase existing water system	I.P.	24,932	Farmers Home Administration	5.0%		2005
08/06/91	Brevard *Revised Int. Rate on 7/5/94	Water & Sewer extensions	I.P.	615,000	First Union National Bank	3.50%		1996
08/06/91	Mathews	Purchase property for recreation development	I.P.	650,000	Branch Banking & Trust Co.	6.59%		2001
08/06/91	Forsyth County	Purchase/renovate building for Town Hall	I.P.	2,600,000	Southern National Leasing Corporation	6.59%		2001
08/06/91	Stany County	Purchase Allied Health Fac. for Forsyth Tech. College	COPS	5,500,000	Alex. Brown & Sons/Wachovia Bank	7.29%	7.043%	2011
09/03/91	Blowing Rock	Construct animal shelter	I.P.	275,000	First-Citizens Bank & Trust Co.	7.59%		1998
09/03/91	Orange County	Purchase real property for recreational fac.	I.P.	302,500	Suzanne Coffey	6.6%		2001
09/03/91	Pasquotank County (Interest rate increase approved 10/1/91)	Acquire real property for Human Serv. Fac.	I.P.	660,000	Vinton and Martha Hoyle	7.0%		1996
09/03/91	Rockingham County	Construction of Social Services bldg.	I.P.	2,300,000	First-Citizens Bank & Trust Co.	Taxable: 8% with 9.5% cap Tax-exempt: 5.69% with 6.68% cap		2011
09/03/91	Swain County	Construct Recycling Ctr./Purchase computer equipment	I.P.	450,000	First-Citizens Bank & Trust Co.	6.81%		1996
10/01/91	Atlantic Beach	Construct & install water softening equipment	I.P.	630,000	First-Citizens Bank & Trust Co.	6.17%		1997
10/01/91	Craven County	Construct an addition to courthouse	I.P.	3,900,000	First-Citizens Bank & Trust Co.	4.79% 6/93-6/98 5.48% 6/98-6/03 6.03% 6/03 to maturity		2006
Revised Interest Rates on 09/07/93	Nags Head	Construct municipal complex	I.P.	2,600,000	Southern National Leasing Corp.	Yr. (1-10) 6.57% Fixed Yr. (11-15) Var. Floor: 6.16% CAP: 11.55%		2006
10/01/91	Pamlico County	Construct bank, wells, & treatment plant for	I.P.	1,310,000	First-Citizens Bank & Trust Co.	Yr. (6-15) Var. Floor: 7.25%/CAP: 8.25%		2006
10/01/91	Scotland Co./Changes approved 11/5/91	Renovate courthouse & jail facility	COPS	5,750,000	First Union Securities, Inc.	7.49%	6.11%	2011
10/01/91	Yancey County	Purchase Building for Primary Health Care Fac.	I.P.	380,000	First-Citizens Bank & Trust Co.	6.12%		1998
11/05/91	Aberdeen	Construct Police Headquarters.	COPS	382,956	Southern National Leasing Corp.	6.64% Fixed		1998
11/05/91	Greensboro	Parking Facilities/Refund 1988 issue 160A-19	COPS	22,000,000	Alex. Brown & Sons/J. Lee Peeler & Co.	7.00% Fixed		2008
11/05/91	Lenoir	Construct Water & Sewer Lines	I.P.	800,000	Southern National Leasing Corp.	6.47% Fixed		2001
11/05/91	Pinelhurst	Purchase property for recreational preservation.	I.P.	1,750,000	Southern National Leasing Corp.	6.37% Fixed		2001
11/05/91	Mcdowell County - Revised rate/Int. 4/2/96	Renovate building for health dept.	I.P.	3,730,000	First Union National Bank	4.49% Fixed		2003
11/05/91	McDowell County - Revised rate 6/7/94	Refinance I.P. of S. S. building & add. renovations	I.P.	365,323	First Union National Bank	5.10% Fixed		1996
12/03/91	Dunn	Construct sludge holding facility	I.P.	300,000	United Carolina Bank	5.86% Fixed		1996
12/03/91	City of Durham	Construct Public Works Center/Renovate Fire Station	COPS	5,945,000	First Union Securities, Inc.	6.84%	6.44%	2011
12/03/91	Burnswick County	Installation of water lines.	COPS	10,000,000	Wachovia Bank of N.C.	7.31%	6.91%	2003
12/03/91	Curtuck County	Purchase historic whalehead club/Construct S.S. Cr.	I.P.	4,100,000	First Citizens Bank	6.02% Fixed		1998
12/03/91	Sampson County	Construct new middle school & elementary school	COPS	8,700,000	First Union Securities/Alex. Brown & Sons	6.20%	5.82%	1998
01/07/92	Badin	Renovation of Town Hall & additional working space.	I.P.	50,000	Southern National Leasing Corporation	6.79% Fixed		1997

FINANCING AGREEMENT REPORT

APPROVAL	UNIT	PURPOSE	TYPE OF FINANCING	AMOUNT APPROVED	LENDER	APPROVAL RATE (MAX)	EXPECTED RATE	MATURITY
01/07/92	Clayton	Installation of water lines	I.P.	154,850	Southern National Leasing Corporation	6.37% Fixed		1986
01/07/92	Nashville	Installation of sewer lines.	I.P.	150,000	Centura Bank	6.29% Fixed		1997
01/07/92	Zebulon	Purchase Five County Baseball Stadium	I.P.	2,600,000	Placement Agent: First Union Securities	12.5%	11.40%	2012
01/07/92	Nash General Hospital, Inc./Behalf of Nash Health Care Systems	Purchase computer hardware for Nash General Hospital	L.P.	2,184,690	Centura Bank	6.10% Fixed		1996
02/06/92	Ashville	Refund 1987 Lease Purchase on Parking Facilities	COPS	6,000,000	Underwriter: Alex. Brown & Sons, Inc.	8.6% TIC	6.45% TIC	2007
02/06/92	Bald Head Island	Construct Town Hall & equipment/furnishings	I.P.	250,000	United Carolina Bank	6.15% Fixed		2002
03/03/92	Marion	Construction of fire station	I.P.	400,000	Southern National Leasing Corporation	8.47% Fixed		2002
03/03/92	Sugar Mountain	Purchase 18-Hole Golf Course	I.P.	606,034.15	Southern National Leasing Corporation	Yr. (1-7) 5.73% Fixed		2002
		Revised Amount and Interest Rate on 6/07/93				Yr. (8-10) Var. at 87% Prime		
						Floor 5.22% Ceiling 10.44%		
						Floor 5%, Ceiling 8.5%		
03/03/92	Rowan County	Refund previous lease contract/renovate terminals	I.P.	770,000	First Union National Bank	Variable		1997
04/07/92	Hickory	Construct Outdoor stadium & develop Winkler Park	I.P.	3,500,000	NationsBank of N.C.	9.25% Fixed		2002
04/07/92	Jacksonville	Purchase 218 acres of land for future projects.	I.P.	421,960	Southern National Leasing Corporation	5.28% Fixed		1997
04/07/92	Alexander County	Install water lines	I.P.	500,000	Southern National Leasing Corporation	5.86% Fixed		1999
04/07/92	Haywood County	Construct satellite jail facility.	I.P.	550,000	First Citizens Bank	4.85%		1995
04/07/92	Lincoln County	Construct intermediate jail facility.	I.P.	1,000,000	First Citizens Bank	5.35%		1997
04/07/92	Moore County	Purchase leasehold rights/assets from Air Moore, Inc. to operate Moore Co. Regional Airport + construct 20 airport hangars.	I.P.	750,000	Branch Banking & Trust Co.	Yr. (1-5) 4.97% Fixed		2007
						Yr. (6-10) 6.85% Fixed		
						Yr. (11-15) 7.2.75% of Prime		
						Ceiling 8.75%, Floor 5.50%		
05/12/92	New Bern	Purchase & Renovate building for Electrical Serv.	I.P.	375,000	First Citizens Bank	5.04% Fixed		1997
05/12/92	Morganton	Construct Public Television System	I.P.	4,200,000	First Citizens Bank	Yr. (1-5) 4.55% Fixed		2005
		Revised Amount & Maturity on 06/01/93 Revised Amount, Approval Rate, Maturity again on June 7, 1994				Yr. (6-10) Var. 70% of Prime + 35 basis pts.		
						Ceiling 7.0%, Floor 4.20%		
						7.07% TIC		
05/12/92	Buncombe County	Construct Detention Fac./imp. building & parking/Construct replacement stadium	COPS	29,500,000	Alex. Brown & Sons Donaldson, Lufkin & Jenrette Wheat, First Securities			2012
05/12/92	New Hanover County	Expand & renovate Law Enf. Fac.	I.P.	720,000	First Union National Bank	5.80% Fixed		1989
05/12/92	Transylvania County	Establish Co. Communications Center	I.P.	390,000	First Citizens Bank	5.49% Fixed		1999
05/12/92	Washington County	Purchase & Renovate Building/DSS	I.P.	475,000	Centura Bank	5.80% Fixed		2007
06/02/92	Connelly Springs	Construction of water lines	I.P.	60,000	The Rensselaerville Institute	3.00% Fixed		1995
06/02/92	Jackson County	Construction of Justice/Adm. Center	I.P.	3,956,793	Southern National Leasing Corporation	Yr. (1-7) 5.59% Fixed		2002
						Yr. (8-10) Var. 85% of Prime, Floor-6.5%, cap-15%		
						7.18% (TIC)		
						8.16% (TIC)		
						5.99% Fixed		
06/02/92	Wilson County	Construct DSS Bldg. & Detention Fac.	COPS	13,800,000	Robinson-Humphrey Company			2012
06/19/92	Granite Falls	Expand water treatment facilities	I.P.	1,400,000	Bank of Granite			2007
06/19/92	Onslow County Hospital Authority	Construction of an addition to hospital facility	I.P.	6,000,000	Wachovia Bank of North Carolina			2002
						Total Fiscal Year June 30, 1992		
						198,444,838		
07/07/92	Kill Devil Hills	Improvements to water system	I.P.	1,072,250	Southern National Leasing Corporation	Yr. (1-7) 5.63% Fixed		2002
						Yr. (8-10) Var. 87% of Prime, Floor-6.5%, ceiling 15%		
						6.49% Fixed		
07/07/92	North Wilkesboro	Improvements to water treatment plant	I.P.	1,900,000	Southern National Leasing Corporation	Yr. (1-7) 5.93% Fixed		2002
07/07/92	Sanford	Construction of composting facility	I.P.	550,000	Southern National Leasing Corporation	Yr. (8-15) Var. 89% of Prime, Floor-6.5%, ceiling 15%		2007
07/07/92	New Hanover County	Acquisition of 2 sewage collection systems	I.P.	753,872	Cape Fear Utilities, Inc./Masonboro	6.50% Fixed		2002

FINANCING AGREEMENT REPORT

LGCA APPROVAL	UNIT	PURPOSE	TYPE OF FINANCING	AMOUNT APPROVED	LENDER	APPROVAL RATE (MAX)	EXPECTED RATE	MATURITY
07/07/92	Pitt County	Construction of Mental Health Ctr./Public Health Ctr.	COPS	8,500,000	Utilities, Inc. Underwriter: Wheat, First Securities Placement Agent: Wachovia Bank Southern National Leasing Corporation	7.04% (TIC)		2012
07/07/92	Stanly County	Construction of an animal shelter	I.P.	150,000		Yr. (1-5) 5.59% Fixed Yr. (6-7) Var. 87% of Prime; Floor-6.5%; ceiling-11% 90 days - 3.68% Fixed 91 - 180 days: 3.77% Fixed 180 - 365 days - 4.38% Fixed 1 - 5 yr. 6.23% Fixed		1999
07/07/92	Mooreville Graded School District	Expansion & renovation of elementary schools	I.P.	1,400,000	Bank of Iredell			1997
08/04/92	Atlantic Beach	Improvements to Circle area.	I.P.	780,000	Centura Bank	5.88% Fixed		2006
08/04/92	City of Durham	Baseball Park/Renovation to water treatment plant.	COPS	12,500,000	First Union National Bank (U)	6.48% (TIC)		2012
08/04/92	Glen Alpine	Construction of municipal office building.	I.P.	176,000	Southern National Leasing Corporation	5.92% Fixed		1999
08/04/92	Nags Head	Purchase Fire Station	I.P.	893,000	Southern National Leasing Corporation	Yr. (1) 4.485% Fixed; Yr. (2-20) Var. Floor-6.5%, Ceiling - 15%		2012
08/04/92	Sanford	Repair streets	I.P.	1,200,000	Southern National Leasing Corporation	Yr. (1-7) 5.69% Fixed; Yr. (8-10) Var. at 89% of Prime Floor-6.5%, ceiling 15%		2002
08/04/92	Carteret County	Addition to hospital wing.	I.P.	4,500,000	First Citizens Bank	5.80% Fixed		2002
08/04/92	Nash Health Care Systems G.S. 131E-32	Radiation Therapy Equipment for Nash Day Hospital	I.P.	1,180,132	First Citizens Bank	5.84% Fixed		1997
09/01/92	Alexander Mills	Renovation of Town Hall	I.P.	220,000	Branch Banking & Trust Company	5.90% Fixed		2004
09/01/92	Lenoir	Construction of water and sewer lines.	I.P.	1,300,000	First Union National Bank	Yr. (1-7) 5.06% Fixed; Yr. (8-10) Var. at 70% of Prime Floor-3%, Ceiling-18%		2002
09/01/92	New Bern	Renovation of City Hall	I.P.	500,000	First Citizens Bank	4.53% Fixed		1997
09/01/92	Salisbury	Relocation of water & sewer lines	I.P.	1,096,000	First Union National Bank	3.89% Fixed		1995
09/01/92	Wilmington	Construction of stormwater retention pond.	I.P.	600,000	Southern National Leasing Corporation	6.24% Fixed		1998
09/01/92	Zebulon	Purchase Five County Stadium	COPS	2,000,000	First Citizens Bank	Var. of Prime plus 1.5%		2002
09/01/92	Hamett County	Purchase Northeast Metropolitan Water District	COPS	3,100,000	J. Lee Peeler & Co. (U)	Floor-7.5%, ceiling-12.5%		2008
09/01/92	Iredell County	Renovation of 2 middle school facilities	I.P.	3,500,000	Southern National Leasing Corporation	6.60% (TIC)		6 months
09/01/92	Rowan County	Jail/Court Facilities	COPS	12,000,000	The Robinson-Humphrey Co.	6.72% (TIC)		2012
09/01/92	Surry County	Purchase 911 equipment	I.P.	1,545,351	Southern National Leasing Corporation	Yr. (1-5) 5.69% Fixed; Yr. (6-10) Var. at 92% of Prime Floor-6%, Ceiling-1%		2014
09/01/92	Mooreville Graded School District	Improvements to elementary schools	COPS	12,000,000	First Union Securities (U)	6.75% (TIC)		2014
10/06/92	Oxford	Construction of fire station	I.P.	874,000	Southern National Leasing Corporation	4.69% Fixed		1997
10/06/92	Burke County	Construction of detention facility/acq. bulldozer	COPS	7,000,000	Alex. Brown & Son, Inc. (U)	6.75% (TIC-Insured)		2013
10/06/92	Carteret County	Construction of schools/equipment	COPS	9,500,000	Donaldson, Lufkin & Jenrette(U)	7.30% (TIC-Uninsured) 6.6% (TIC-Insured)		2012
10/06/92	Chowan County	Lease building for College of Albemarle(G.S. 153A-165)	LEASE	806,000	P & G Development Co.	7.13% (TIC-Uninsured)		2002
10/06/92	Union County	Construct of detention fac./acq. voting/landfill eq.	COPS	8,500,000	The Robinson-Humphrey Co.	6.85% (TIC)		2002
11/04/92	Clayton	Construct Public Works/Police Fac.	I.P.	1,700,000	First-Citizens Bank & Trust Co.	Yr. (1-5) Fixed 4.39%; Yr. (6-10) Var. 75% of Prime Floor: 4.93% Cap: 6.39%		2002
11/04/92	Thomasville	Renovation of public building/acq. motor vehicles	COPS	6,600,000	Donaldson, Lufkin & Jenrette(U)	6.97% (TIC)		2018
11/04/92	Winston-Salem	Fund the unfunded accrued liability of retirement ben.	COPS	25,000,000	Donaldson, Lufkin & Jenrette(U)	Var. Rate 4.15%; cap: 15%		2012
11/04/92	Alexander County	Construct water system	I.P.	500,000	Southern National Leasing Corporation	Yr. (1-5) Fixed 4.21%		2012

FINANCING AGREEMENT REPORT

APPROVAL	UNIT	PURPOSE	TYPE OF FINANCING	AMOUNT APPROVED	LENDER	APPROVAL RATE (MAX)	EXPECTED RATE	MATURITY
11/04/92	Currituck County* Modification of LGC approval on 12/31/91 for 4,100,000	Purchase Whalehead Club/prop. Const. SSI/Senior Citizen	I.P.	3,600,000	Wachovia Bank of N.C.	Var. Yr. (6-7) at 70% of Prime Floor: 4.2%; Cap: 9.1%		1999
11/04/92	Iredell County	Construction/Renovation of Schools	COPS	18,000,000	Alex. Brown & Sons, Inc. (U)	6.70% (TTC)		2007
11/04/92	Pamlico County	Construction/Renovation of Schools	I.P.	2,434,873	First-Citizens Bank & Trust Co.	Yr. (1-5) Fixed 4.55% Yr. (6-10) Var. at 70% of Prime Floor: 4.9%; cap: 6.4%		2002
11/04/92	Stanly County	Acquisition of Human Serv. Fac./Construct water lines	I.P.	4,780,539	Southern National Leasing Corporation	Yr. (1-7) Fixed 5.07% Yr. (8-15) Var. at 72% of Prime Floor: 4.32%; cap: 7.92%		2007
12/01/92	Kannapolis	Construction of water & sewer lines.	I.P.	1,048,200	Southern National Leasing Corporation	Yr. (1-7) Fixed 5.48% Yr. (8-12) Var. at 87% of Prime Floor: 5.22%; ceiling: 10.44%		2004
12/01/92	Smithfield	Construction of warehouse/office complex.	I.P.	400,000	First-Citizens Bank & Trust Company	4.16% Fixed		1996
12/01/92	New Hanover County	Construction of library.	I.P.	438,362	First Union National Bank	5.15% Fixed		1999
12/16/92	Wilson County	Construction of Social Services Facility	I.P.	3,500,000	Southern National Leasing Corporation	Yr. (1-7) 5.37% Fixed Yr. (8-15) Var. at 84% of Prime Floor: 5.04%; Ceiling: 10.08%		2003
01/05/93	Atlantic Beach	Construction of Water storage/water lines.	I.P.	850,000	First Citizens Bank	Yr. (1-5) 4.89% Fixed Yr. (6-10) at 72% of Prime Floor: 5.22%; Ceiling 6.54%		1998
01/05/93	Charlotte	Acquisition of Municipal Buildings	COPS	8,500,000	Interstate/Johnson Lane (Senior) First Charlotte Company	4.57% (TTC)		
01/05/93	Conover	Construction Public Works Facility	I.P.	800,000	First Union Securities NationsBanc Capital Markets	Yr. (1-7) 5.18% Fixed Yr. (8-15) Var. 89% of Prime Floor: 5.34%; Ceiling 10.68%		2008
01/05/93	Greensboro	Acquisition of Refuse Containers/Retractable seating	I.P.	3,808,550	NationsBank of N.C.	4.56% Fixed		2000
01/05/93	Lexington	Renovation of swimming pool/utility complex	I.P.	1,060,000	Southern National Leasing Corporation	Yr. (1-7) 4.69% Fixed Yr. (8-10) Var. 78% of Prime Floor: 4.68%; Ceiling: 9.36%		2018
01/05/93	Carteret County	Purchase Sea Level Extended Care Facility	I.P.	1,500,000	Duke University (Seller)	7.08% Fixed		2003
02/02/93	Iredell County	Lease Building for DSS	LEASE	1,065,600	James A. Jennings (Lessor)	Yr. (1-5) 5.85% Fixed Yr. (6-20) Var. 89% of Prime Floor: 5.34%; Ceiling: 8.9%		2013
02/02/93	Asson County	Construction of a 20 Inch Water Main	I.P.	3,200,000	Southern National Leasing Corporation	Yr. (1-7) 5.37% Fixed Yr. (8-12) Var. 87% of Prime Floor: 5.22% Ceiling: 10.44%		2005
02/02/93	Lee County	Purchase of the Water Plant in Curmeck	I.P.	1,620,000	Southern National Leasing Corporation	Yr. (1-5) 4.84% Fixed Yr. (6-7) Var. 79% of Prime Floor: 4.74% Ceiling: 9.48%		2000
02/02/93	Lee County	Construction Public Works Facility	I.P.	483,000	Southern National Leasing Corporation	4.87% Fixed Yr. (1-7) 5.10% Fixed		1998
02/02/93	Stanly County	Renovation County Courthouse/Acquisition E-911 Equip.	I.P.	1,000,000	Southern National Leasing Corporation	Replice option at end of 7th yr. at 82% of Prime Floor: 4.92% Ceiling: 9.84%		1994
03/02/93	Bald Head Island	Repair Secondary Roads	I.P.	155,000	United Carolina Bank	Yr. (1-7) 5.28% Fixed		2008
03/02/93	Marion	Improvements/Construction/Repair Water System	I.P.	3,004,900	Southern National Leasing Corporation			
03/02/93	Mebane	Construction Multi-Purpose Arts/Community Center	I.P.	2,250,000	Southern National Leasing Corporation			2008

FINANCING AGREEMENT REPORT

LGCA APPROVAL	UNIT	PURPOSE	TYPE OF FINANCING	AMOUNT APPROVED	LENDER	APPROVAL RATE (MAX)	EXPECTED RATE	MATURITY
03/02/93 Revised interest rate to 4.97% on 4/5/94	Moore County	Construction of Airport Hangars	I.P.	270,000	Branch Banking and Trust Company	Repurchase option at end of 7th Yr. at 83% of Prime Floor: 4.98% Ceiling: 10.79%		2008
04/06/93	Dunn	Acquisition & Installation of an E-911 Commun. System	I.P.	445,645.45	First-Citizens Bank & Trust Company	Yr. (1-5) 4.97% Fixed Yr. (6-10) 7.15% Fixed Yr. (11-15) Var. 72.75 of Prime Floor 5% Ceiling: 12%		2000
04/06/93	Mint Hill	Construction of a Public Safety Facility	I.P.	800,000	NationsBank of North Carolina, N.A.	Yr. (1-5) 4.94% Fixed Yr. (6-7) Var. 80% Prime Floor: 5.25% Ceiling: 7.0%		2008
04/06/93	North Topsail Beach	Construction of a New Fire Station	I.P.	220,000	First-Citizens Bank & Trust Company	4.84% Fixed		1998
04/06/93	Cabarrus County	Installation of Heating & Air Conditioning Equipment	I.P.	1,000,000	Wachovia Bank of North Carolina, N.A.	4.89% Fixed		2000
05/04/93	Franklin	Renovation to Wastewater Plant/Install. of Sewer Lines & Construction of Community Center Building	I.P.	3,225,000	NationsBank of North Carolina, N.A.	4.72% Fixed		2003
05/04/93	Kannapolis	Construction & Installation of Sanitary Sewer Lines	I.P.	300,000	EMRO Marketing Company	4.78% Fixed		2003
05/04/93	Knightsdale	Purchase of Aprox. 12 Acres of Land for Town Hall	I.P.	227,469	Booneville Construction Company, Inc.	5.0% Fixed Town has option to repay debt without interest on or before July 31, 1994, or pay 5.0 Fixed on the outstanding balance beg. July 31, 1994 until repaid		1995
05/04/93	Lenoir	Construction of Clearwell and Purchase of Building	I.P.	1,805,000	First-Citizens Bank & Trust Company	Yr. (1-5) 4.73% Fixed Yr. (6-10) Var. at 75% Prime Floor: 4.93% Ceiling: 6.68%		2003
06/01/93	Charlotte	Construction of a New Law Enforcement Center	COPS	14,000,000	NationsBanc Capital Markets, Incorporated First Charlotte Co. Div. J.C. Bradford First Union Securities, Incorporated Interstate/Johnson Lane Corporation First-Citizens Bank & Trust Company	Yr. (1-5) 4.96% Fixed Yr. (6-10) at 74% Prime Floor: 5.12% Ceiling: 6.77%		2013
06/01/93	Dunn	Construction of a 500,000 Gallon Elevated Storage Tank	I.P.	380,185	First-Citizens Bank & Trust Company	Yr. (1-5) 4.96% Fixed Yr. (6-10) at 74% Prime Floor: 5.12% Ceiling: 6.77%		2013
06/01/93	Thomasville	Refunding of a 1991 Fire Station Installment Contract	I.P.	242,746	NationsBank of North Carolina, N.A.	3.72% Fixed		1997
06/01/93	Lincoln County	Purchase of Land & the Construction of Convenience Site Facilities	I.P.	375,000	Southern National Leasing Corporation	3.79% Fixed		1996
06/01/93	Richmond County	Schools Human Services	COPS	7,750,000 4,750,000	First Union Securities, Incorporated	5.82% (TTC)		2003
				<u>\$ 230,966,674</u>	Total Fiscal Year June 30, 1993			
07/06/93	Kernersville	Construction of a Central Maintenance Facility	I.P.	1,000,000	Southern National Leasing Corporation	Yr. (1-7) 4.84% Fixed Yr. (8-14) Var. 79% Prime Floor: 6% Ceiling 9.85%		2007
07/06/93	Mooreville	Construction of Community Center, the Renovation of a Fire Station, and the Purchase of a Fire Engine	I.P.	2,500,000	NationsBank of North Carolina, N.A.	Comm. Cen. 5.20% Fixed Sta. & Eng. 4.85% Fixed 1% Fixed		2008
07/06/93	Robbinsville	The Extension of Sanitary Sewer Lines	I.P.	149,700	Rennselaerville Institute	4.69% Fixed		1996
07/06/93	Whiteville	The Extension of Water & Sanitary Sewer Lines	I.P.	600,000	United Carolina Bank	Yr. (1-5) 5.48% Fixed		2003
07/06/93	Catawba County	The Construction of a Public Health Facility	I.P.	3,250,000	First-Citizens Bank	Yr. (6-10) at 84% of Prime Floor 5.99% Ceiling 7.48%		2003
07/06/93	Davidson County	The purchase of the Lexington Mental Health Center	I.P.	4,480,000	First Union National Bank	Floor 5.10% Fixed		

FINANCING AGREEMENT REPORT

APPROVAL	UNIT	PURPOSE	TYPE OF FINANCING	AMOUNT APPROVED	LENDER	APPROVAL RATE (MAX)	EXPECTED RATE	MATURITY
07/06/93	Duplin County	School Law Enforcement Refunding of a Portion of the 1991 New Convention Cen.	COPS	15,040,000 960,000 150,000,000	Donaldson, Lufkin & Jenrette Securities	6.08% (TTC)		2014
08/03/93	Charlotte		COPS		PaineWebber Incorporated (Senior) First Charlotte, Div of J.C. Bradford & Co Interstate/Johnson Lane Corporation NationsBanc Capital Markets, Inc. Donaldson, Lufkin & Jenrette Securities Prudential Securities, Inc. Smith Barney, Harris Upham & Co., Inc. Wheat, First Securities, Inc. Grigsby Bradford & Co., Inc. Southern National Leasing Corporation	6.10% (TTC)		2021
08/03/93	Clayton	Extension of Sanitary Sewer Lines	I.P.	600,000			Yr1 3.20% Yr2 3.76% Yr3 4.14% Yr4 4.49% Yr5 4.89 Yr6 4.98% Yr7 5.16 Yr. (8-10) Var. at 77% of Prime Floor 4.82% Ceiling 8.085% Yr. (1-5) 4.929% Fixed Yr. (8-15) Var. at 64.72% of Prime Floor 4.0% Ceiling 8.392%	2003
08/03/93	Chowan County	Expansion of the Valhalla Water Plant	I.P.	3,000,000	Branch Banking & Trust Company		3.97% Fixed Yr. (1-7) 4.69% Fixed Yr. (8-15) Var. at 79% of Prime Floor 4.74% Ceiling 7.4892%	2008
08/03/93	Henderson County	Construction of a New County Courthouse and Site Dev. Construction of a Multi-Purpose Recreation Bldg.	I.P.	6,725,805 206,000	Southern National Leasing Corporation Southern National Leasing Corporation		Yr. (1-7) 5.23% Fixed Yr. (8-13) Var. at Prime with a Ceiling of 9% 7.5% Fixed Taxable Loan	2000
09/07/93	Mount Holly Troulman	Purchase of a Building to Serve as Police Station Repavement and Repair of Streets and Sidewalks	I.P.	365,000 1,500,000	Branch Banking & Trust Company NationsBank of North Carolina, N.A.		3.93 Fixed	2008 2006
09/07/93	Cumberland County	Repair of the McFayden Lake Dam	I.P.	1,187,500	Southern National Leasing Corporation		3.772% Fixed 4.17% Fixed 3.90% Fixed Yr. (1-5) 4.92% Fixed Yr. (6-10) 6.80% Fixed Yr. (11-20) Var. at 72.75% of Prime Floor 5% Ceiling 12%	2000
09/07/93	Lincoln County	Purchase of Land and Building for Admin. Office space for Lincoln County Schools Construction of Public Works & Utility Oper. Center Construction of a New Police Station Expansion of the Existing Jail Facilities Acquisition of the Pinhurst Water & Sewer System	I.P.	817,500 3,611,071 2,000,000 500,000 7,900,000	Southern National Leasing Corporation NationsBank of North Carolina, N.A. NationsBank of North Carolina, N.A. Granville United Bank Branch Banking & Trust Company		4.5422% Fixed Yr. (1-7) 4.27% Fixed Yr. (8-10) Var. at 71% of Prime Floor 4.26% Ceiling 7.81%	1998 1998 2003 1998 2013
11/02/93	Ahoskie Tryon	Resurfacing of Streets throughout the Town Construction of a New Six Bay Fire Station	I.P.	825,000 236,010	Centura Bank Southern National Leasing Corporation		4.38% Fixed 5.68% (TTC) 4.4916% Fixed Yr. (1-7) 3.92% Fixed Yr. (8-10) Var. at 65% Prime Floor 3.92% Ceiling 7.28% Yr. (1-7) 4.11% Fixed Yr. (8-15) Var. at 71% Prime	2003 2003
11/02/93	Davie County	Construction of a Solid Waste Transfer Station	I.P.	850,000	Wachovia Bank of North Carolina, N.A.			2003
11/02/93	Wayne County	Advance Refunding of portion of 1989 COPS	COPS	8,000,000	First Union Securities, Incorporated			2010
12/07/93	Hickory	Construction of a New Police Headquarters Facility	I.P.	4,301,525	Wachovia Bank of North Carolina, N.A.			2008
12/07/93	Hillsborough	Construction of a New Law Enforcement Facility	I.P.	573,000	Southern National Leasing Corporation			2006
12/07/93	Holly Springs	Expansion of Existing Waste Water Treatment Plant	I.P.	1,400,000	Southern National Leasing Corporation			2008

FINANCING AGREEMENT REPORT

LGC APPROVAL	UNIT	PURPOSE	TYPE OF FINANCING	AMOUNT APPROVED	LENDER	APPROVAL RATE (MAX)	EXPECTED RATE	MATURITY
12/07/93	Huntersville	Construction of a New Fire Station	I.P.	500,000	First Charter National Bank	Floor 4.11% Ceiling 7.41%	4.89% Fixed	2008
12/07/93	Southern Pines	Construction of a New Public Library	I.P.	800,000	Southern National Leasing Corporation	Yr. (1-7) 3.89% Fixed	Yr. (8-10) Var. at 73% Prime	2003
12/07/93	Caldwell County	Purchase of Land for Potential use as Landfill	I.P.	650,000	Southern National Leasing Corporation	Floor 3.89% Ceiling 7.48%	Yr. (1-7) 4.38% Fixed	2003
12/07/93	Chatham County	Construction of Water Mains, Convenience Centers, Health and Social Services Buildings, Animal Shelter, Emergency Operations Center, and Acquisition of Land	I.P.	9,534,400	Southern National Leasing Corporation	Yr. (8-10) Var. at 70% Prime	Floor 4.38% Ceiling 7.35%	2003
12/07/93	Columbus County	Acquisition of E-911 Communications System	I.P.	1,400,000	United Carolina Bank	Yr. (1-7) 3.82% Fixed	Yr. (8-10) Var. at 70% Prime	2000
12/07/93	Henderson County	Purchase/Renovation of a Building	I.P.	550,000	Wachovia Bank of North Carolina, N.A.	4.5422% Fixed	Floor 4.20% Ceiling 7.35%	2003
12/07/93	Johnston County	Construction of a New K-5 Elementary School	I.P.	4,895,000	First-Citizens Bank	3.85% Fixed	Yr. (1-5) 3.89% Fixed	2003
12/07/93	Marin County	Construction of a New Northeast Regional Education Cen.	I.P.	500,000	First-Citizens Bank	Yr. (1-5) 3.89% Fixed	Yr. (6-10) Var. at 75% Prime	2003
Revised amount on 04/05/94	Increase of 50,000							
12/07/93	Moore County	Construction of Additional Jail Facilities	COPS	5,000,000	NationsBanc Capital Markets, Inc.	Floor 4.86% Ceiling 6.36%	5.82% (TIC)	2010
12/07/93	Randolph County	Construction of Detention Fac., Refund I/P Contract	I.P.	7,898,589	Southern National Leasing Corporation	Fixed Yr. 1 3.00% Fixed	Yr. 2, 3.92%, Yr. 3, 3.82%	2005
01/04/94	Boiling Spring Lakes	Pave Streets Throughout the City	I.P.	600,000	Southern National Leasing Corporation	Yr. 4 3.82% Yr. 5 3.98%	Yr. 6 4.06% Yr. 7 4.17%	2005
01/04/94	Long View	Construction of a New Town Hall/Police&Fire Dept.	I.P.	1,500,000	Southern National Leasing Corporation	Yr. (8-12) Var. at 70% Prime	Yr. (1-5) 4.59% Fixed	2009
01/04/94	Beaufort County	Expansion/Renovation of the Dept. of Social Services	I.P.	2,172,238	Southern Bank	Yr. (6-10) Var. at 77% Prime	Floor 4.62% Ceiling 8.47%	2001
01/04/94	Sampson County	Refund I/P, Renovation of Existing Warehouse	I.P.	320,000	First-Citizens Bank	Yr. (1-7) 4.09% Fixed	Yr. (8-10) Var. at 70% Prime	2004
02/01/94	Kannapolis	Construction and Installation of Water Lines	I.P.	1,050,000	Southern National Leasing Corporation	Floor 4.09% Ceiling 7.35%	3.88% Fixed	2004
02/01/94	Raleigh	Refund/Restructure Outstanding 1990 Walnut Creek Amphitheater COPS	COPS	11,500,000	J. Lee Peeler & Company, Inc.	Yr. (1-5) 4.01% Fixed	Yr. (6-10) Var. at 88% Prime	2015
02/01/94	Wilmington	Refund/Restructure Outstanding 1989 Lease-Purchase	I.P.	2,500,000	Wheat First Securities, Inc.	Floor 4.26% Ceiling 7.43%	7.48% (Taxable) (TIC)	2009
02/01/94	Franklin County	Renovation of an Existing Building	I.P.	202,500	Seaboard Stores, Inc.	Yr. 1 3.0% Fixed Yr. 2 3.33%	Yr. 3 3.53% Yr. 4 3.73%	2006
03/01/94	Concord	Construction of Four Hangars, Airport Maintenance Building and Fuel Depot	I.P.	3,500,000	Wachovia Bank of North Carolina, N.A.	Yr. 5 3.89% Yr. 6 4.12%	Yr. 7 4.32% Yr. 8 4.49% Var.	2003
03/01/94	Kinston	Construction of New Facilities and Various Renovations to Granger Stadium	I.P.	652,000	First-Citizens Bank	Years (9-15) at 72% Prime	Floor 4.32% Ceiling 7.47%	2006
						BANK QUALIFIED - 4.45%	Fixed NON - 5.92% Fixed	2004
						Yr. (1-5) 6.20% Fixed	Yr. (6-10) Var. at Prime	
						Floor 5.5% Ceiling 9.5%		

FINANCING AGREEMENT REPORT

LGCA APPROVAL	UNIT	PURPOSE	TYPE OF FINANCING	AMOUNT APPROVED	LENDER	APPROVAL RATE (MAX)	EXPECTED RATE	MATURITY
03/01/94	Caldwell County	Construction of Water Distribution Lines	I.P.	1,900,000	Southern National Leasing Corporation	Yr 1 2.98% Fixed Yr 2 3.31% Yr 3 3.53% Yr 4 3.73% Yr 5 3.94% Yr 6 4.13% Yr 7 4.23% Yr 8 4.39%; Var. Yrs (11-15) at 69% Prime Floor 4.14% Ceiling 7.05%	Yr. (1-10) 4.5% Fixed Yr. (11-15) Var. at 70% Prime Floor 4.5% Ceiling 6.0% 5.932% Fixed	2009
03/01/94	Greene County	Construction of a New Human Services Building	I.P.	2,700,000	First-Citizens Bank	Yr. (1-10) 4.05% Fixed Yr. (11-15) Var. at 70% Prime Floor 4.05% Ceiling 5.75%	Yr. (1-10) 4.05% Fixed Yr. (11-15) Var. at 70% Prime Floor 4.05% Ceiling 5.75%	2009
04/05/94 Revised amount, approval rate, term on 6/7/94 04/05/94	Lake Waccamaw Santford	Construction of a New Fire Station & Renovation of Existing Fire Station Construction and Installation of Water Lines	I.P.	282,000	United Carolina Bank	Yr. (1-10) 4.5% Fixed Yr. (11-15) Var. at 70% Prime Floor 4.5% Ceiling 6.0%	Yr. (1-10) 4.5% Fixed Yr. (11-15) Var. at 70% Prime Floor 4.5% Ceiling 6.0%	1998
04/05/94 Revised interest rate Water/Sewer/Elec. on 05/03/94	Wake Forest	Street/Sidewalk, Public Building, Electric, Water & Sewer	I.P.	6,158,000	Southern National Leasing Corporation	Yr. (1-10) 4.05% Fixed Yr. (11-15) Var. at 70% Prime Floor 4.05% Ceiling 5.75%	Yr. (1-10) 4.05% Fixed Yr. (11-15) Var. at 70% Prime Floor 4.05% Ceiling 5.75%	2009
04/05/94	Bladen County	Public Buildings	COPS	1,100,000	First-Citizens Bank & Trust Company	Yr. (1-8) Fixed at 4.36% Yr. (9-10) 79% Prime floor 5.33% ceiling 8.69%	Yr. (1-8) Fixed at 4.36% Yr. (9-10) 79% Prime floor 5.33% ceiling 8.69%	2009
04/05/94	Rutherford County	Acquisition of School Building/Renovation and Repairs	I.P.	2,200,000	Southern National Leasing Corporation	Yr. (1-8) Fixed at 4.36% Yr. (9-10) 79% Prime floor 5.33% ceiling 8.69%	Yr. (1-8) Fixed at 4.36% Yr. (9-10) 79% Prime floor 5.33% ceiling 8.69%	2004
04/05/94 Revised rate on 6/7/94	Sampson County	Construction of Two Electrical Substations and the Reconduction of Distribution Lines	I.P.	1,000,000	Southern National Leasing Corporation	Yr. (1-8) Fixed at 4.36% Yr. (9-10) 79% Prime floor 5.33% ceiling 8.69%	Yr. (1-8) Fixed at 4.36% Yr. (9-10) 79% Prime floor 5.33% ceiling 8.69%	2001
05/03/94	Lexington	Construction of Wastewater Force Mains and Related Appurtenances	I.P.	3,550,000	Southern National Leasing Corporation	Yr. (1-8) Fixed at 4.36% Yr. (9-10) 79% Prime floor 5.33% ceiling 8.69%	Yr. (1-8) Fixed at 4.36% Yr. (9-10) 79% Prime floor 5.33% ceiling 8.69%	2009
05/03/94	Rockingham	Replacement of Existing Swimming Pool	I.P.	1,500,000	Southern National Leasing Corporation	Yr. (1-8) Fixed at 4.36% Yr. (9-10) 79% Prime floor 5.33% ceiling 8.69%	Yr. (1-8) Fixed at 4.36% Yr. (9-10) 79% Prime floor 5.33% ceiling 8.69%	2009
05/03/94	Shelby	Refinancing of an outstanding Installment Contract	I.P.	606,000	Southern National Leasing Corporation	Yr. (1-8) Fixed at 4.36% Yr. (9-10) 79% Prime floor 5.33% ceiling 8.69%	Yr. (1-8) Fixed at 4.36% Yr. (9-10) 79% Prime floor 5.33% ceiling 8.69%	2009

FINANCING AGREEMENT REPORT

LGCA APPROVAL	UNIT	PURPOSE	TYPE OF FINANCING	AMOUNT APPROVED	LENDER	APPROVAL RATE (MAX)	EXPECTED RATE	MATURITY
05/03/94 05/03/94	Chowan County Columbus County	Construction of a Medical Building Construction of New Department of Social Services Fac.	I.P. I.P.	579,885 2,400,000	Southern Bank United Carolina Bank	Var. (8-15) at 82% Prime floor 5.14% ceiling 8.54% (Taxable) 6.75% Fixed (Non-Bank Qualified) Var. at Prime ceiling 15%	4.66% Fixed (Taxable) 6.50% Fixed Yr. (1-5) Var. (6-10) at Prime Less .25 floor 6.5% ceiling 8.50% var (11-15) at Prime Less .25 floor 6.5% ceiling 9.75%	1999 2009
05/03/94 05/03/94 Revised amount on 6/7/94	Scotland County Wilson	Courthouse/Jail Industrial Park	I.P. I.P.	500,000 800,000	Southern National Leasing Corporation First-Citizens Bank	TIC not to exceed 7.50% Fixed years (1-8) 3.75%; 4.21%; 4.53%; 4.86%; 4.98%; 5.04%; 5.14%; and 5.31%; Var. (8-10) 82% Prime floor 5.13% ceiling 8.54% (Taxable) 6.50% Fixed years (1-5) Var. (6-10) at Prime less .25% floor 6.50% ceiling 8.50%; Var. (11-15) at Prime less .25% floor 6.5% ceiling 9.75%	2023 2004	
06/07/94 06/07/94	Chapel Hill Thomasville	Refund Outstanding Parking Revenue Bonds Construc. of a Radio Center/Acquisition of Radio Sys.	COPS I.P.	8,100,000 1,136,915	Interstate/Johnson Lane Corporation Southern National Leasing Corporation	Refund: 6.47% Minimum NPV Savings 2%; Hospital/Vis. 6.75% MH years (1-8) Fixed 4.56%; 5.01%; 5.32%; 5.60%; 5.77%; 5.87%; 6.0%; 6.11%; Conv. Sites: 5.32% Fixed 4.54% Fixed	2009	
06/07/94	Wilson	Industrial Building	I.P.	800,000	First-Citizens Bank	2% Fixed	2008	
06/07/94	Durham County	Refund 1991 Jail COPS, Hospital, Visitors Center	COPS	90,095,670	Donaldson, Lurkin & Jenrette Secur., Inc. J. Lee Peeler & Company, Inc. The Chapman Company Wheat, First Securities, Inc. Southern National Leasing Corporation	3,700,000 420,723,308 Total Fiscal Year June 30, 1994	Ref: 2014 Hos:vs: 2020	
06/07/94	Lincoln County	Renovation of Building for Mental/Public Health Offices & the Construction of 2 Convenience Sites.	I.P.	1,110,000	First Union National Bank	Fixed Yr(1-2) 4.60% Yr(3-7) 5.10%; var. Yr(8-11) 72% Prime NO Floor Ceiling 7.80% (TIC) SeriesA - 6.50% SeriesB - 8% (Taxable)	MH: 2002 Site: 1997	
06/07/94	McDowell County	Construction of New Jail Facility	I.P.	122,288	The Rensselaerville Institute	Fixed Yr(1-4) 5.26% Yr(5-7) 6.03% Yr(8-10) 6.57% var. Yr(11-15) 68% Prime Floor 4.31%	2006	
07/05/94	Boonville	Construction and Installation of Sewer Mains	I.P.	3,700,000	Branch Banking & Trust Company	2005	1997	
07/05/94	Carolina Beach	Expansion of Wastewater Treatment Plant/Installation of Water Lines.	I.P.	6,000,000	First Union Capital Markets Corporation First Charlotte Company Interstate/Johnson Lane Corporation Nationsbanc Capital Markets, Inc. Branch Banking & Trust Company	2014		
07/05/94	Charlotte	Refund Parking Revenue Bonds	COPS	600,000				
07/05/94	Cherryville	Public Buildings	I.P.					

FINANCING AGREEMENT REPORT

APPROVAL	UNIT	PURPOSE	TYPE OF FINANCING	AMOUNT APPROVED	LENDER	APPROVAL RATE (MAX)	EXPECTED RATE	MATURITY
07/05/94 07/05/94 07/05/94 07/05/94	Cabarrus County Cabarrus County Hoke County Perquimans County	Complete the Construction of Coddle Creek Reservoir Construction of Wastewater Treatment Plant Construction of Solid Waste Transfer Station Acquisition of a Solid Waste Transfer Station	I.P. I.P. I.P. I.P.	1,800,000 1,900,000 312,000 400,000	First-Citizens Bank First-Citizens Bank Southern National Leasing Corporation Branch Banking & Trust Company	Ceiling 8.82% 4.58% Fixed 4.58% Fixed 5.38% Fixed Yr(1-4) 5.00% Fixed Yr(5-7) 5.54%; var. Yr(8-12) 70% Prime Floor 4.77% Ceiling 7.77%	TIC not to exceed 7.50%	2001 2001 2001 2006
07/28/94	Charlotte	Construction of the New Stadium Parking Garage	COPS	12,500,000	Interstate/Johnson Lane Corp. NationsBanc Capital Markets, Inc. First Charlotte Company			2014
07/28/94	Mayodan	The Expansion of the Exlet. Wastewater Treatment Plant	I.P.	2,000,000	First Union Capital Markets Corp. First-Citizens Bank & Trust Company			2009
07/28/94 07/28/94	Topsail Beach Duplin County	The Construction of a New Water Well & Related Appur. Construction of an Airport Hangar & Refinancing	I.P. I.P.	150,000 382,360	Southern National Leasing Corporation United Carolina Bank	5.35% Fixed Yr(1-10) Var. Yr(11-15) 70% Prime Floor 5.35% Ceiling 6.85% 5.09% Fixed (Taxable) Var. Floating w/Prime Floor 6.084% Ceiling 11.16%		2001
07/28/94 07/28/94 07/28/94 09/06/94	Henderson County Johnston County Macon County Holly Springs	Construction of a Youth Development Emergency Shelter Construction of a K-5 Clayton Elementary School Expansion of Macon Middle Schools Construction and Repair Street and Sidewalks and Acquis. and Improve. of Real Prop. for New Town Hall	I.P. I.P. I.P. I.P.	300,000 9,500,000 1,900,000 1,250,000	First Southern Savings Bank, Inc. First-Citizens Bank & Trust Company First-Citizens Bank & Trust Company Southern National Leasing Corporation	5.63% Fixed 4.98% Fixed 4.36% Fixed Fixed Yrs (1-10) at 3.95%; 4.59%; 4.79%; 5.01%; 5.21%; 5.27%; 5.5%; 5.7%; 6.25%; and 6.25%, respec. Var. Yrs (11-15) 69% Prime floor 5% ceiling 7.94%		1999 2004 2004 2009
09/06/94	Pinehurst	The Acquisition of 73.7 Acres of Land for Future Recreational purposes	I.P.	637,500	Southern National Leasing Corporation	Fixed Yrs (1-8) at 5.43%; 4.48%; 4.65%; 4.85; 4.89; 5.07%; 5.28%; and 5.60%; respec. Var. Yrs (9-10) 64% Prime floor 4.64% ceiling 7.68%		*2004
09/06/94	Wilkesboro	The Acquisition of a 12,720 sq. ft. Building to Serve as the New Twn. Hall	I.P.	511,245	First-Citizens Bank & Trust Company	5.81% Fixed		2004
09/06/94 09/06/94	Avery County Martin County	The Construction of New Cranberry Elem./Middle Sch. The Acquisition of 32,254 sq. ft. Building for Martin Enterprises	I.P. I.P.	7,500,000 500,000	Wachovia Bank of North Carolina Branch Banking & Trust Company	Fixed Yr (1) 4.36%; Yrs (2-4) 4.85%; Yrs (5-7) 5.37%; Yrs (8-10) 5.65%		2009 2004
09/06/94	Pasquotank County	Additions to Northwestern High Sch and Renovations to Elizabeth City Jr. High Sch	I.P.	2,000,000	Southern National Leasing Corporation	Fixed Yrs (1-5) 3.95%; 4.59%; 4.79%; 5.01%; & 5.21%;, respec.		1999
09/06/94 09/06/94 09/06/94 10/04/94	Sampson County Sampson County Tyrrell County Asheville	Construct of a New Pump Station Ext. of San. Sew. Lines Construction of Livestock Arena Land/Water Fund Pension Liability	I.P. I.P. I.P. COPS	300,000 200,000 476,500 14,000,000	Southern National Leasing Corporation Southern National Leasing Corporation The East Carolina Bank Donaldson, Lurkin & Jenrette	4.89% Fixed 4.89% Fixed 4.98% Fixed 6.2% Initial Interest		1997 1997 2004 2003

FINANCING AGREEMENT REPORT

LGCA APPROVAL	UNIT	PURPOSE	TYPE OF FINANCING	AMOUNT APPROVED	LENDER	APPROVAL RATE (MAX)	EXPECTED RATE	MATURITY
11/01/94	Rowan County	Renovation of Courthouse/Post Office and Construction of a new Baseball Stadium and Sports Complex	I.P.	4,500,000	Southern National Leasing Corporation	resp. Fixed yrs (1-10) 5.43%; 5.81%; 6.0%; 6.13%; 6.20%; 6.26%; 6.45%; 6.67%; 8.91%; 8.91%;	2004	
11/01/94	Rowan County	Extension of Water Lines to Freightliner Corp.	I.P.	2,300,000	Southern National Leasing Corporation	resp. Fixed yrs (1-10) 5.26%; 5.68%; 5.88%; 6.07%; 6.16%; 6.27%; 6.29%; 6.43%; 8.71% and 6.86%;	2004	
12/06/94	Jonesville	Upgrade of Instrumentation Controls	I.P.	125,000	First Citizens Bank & Trust Company	resp. Fixed yrs (1-5) at 5.86%; var yrs (6-10) at 75% Prime floor	2004	
12/06/94	Selma	Expansion and renovation of Town Hall	I.P.	150,000	First Citizens Bank & Trust Company	5.03% Fixed	2004	
12/06/94	Craven County	Advance Refunding of Outstanding 1990 COPS	LEASE COPS	3,750,000	First Citizens Bank & Trust Company	5.59% Fixed	2004	
12/06/94	Cumberland County	Construction of Coliseum	COPS	55,600,000	Smith Barney, Harris Upham & Co. The Robinson-Humphrey Company	TTC 8%	2014	
12/06/94	Cumberland County	Purchase of Land for Parking Facilities	I.P.	2,150,000	Two Adam, Inc.	7.25% Fixed	2025	
12/06/94	Forsyth County	Fund the Accrued Liability for Retirement System	COPS	8,500,000	Donaldson, Lurkin & Jenrette	Var. (Taxable) 7.0%	2008	
12/06/94	Franklin County*	School	COPS	11,180,000	Alex. Brown & Sons, Inc.	TTC 7.75% EIC 6.8%	2014	
12/06/94	Franklin County*	Courthouse	COPS	1,720,000				
12/06/94	Franklin County*	Jail	COPS	8,600,000				
12/06/94	Hamett County	Construction School, Health & SS Bldg., Water Plant	COPS	42,815,000	Craigie Inc. J. Lee Peeler & Co.	TTC 7.75% EIC 6.75%	2014	
12/06/94	Moore County	Construction of a Elections Bldg.	I.P.	300,000	First Union Capital Market Corp.	4.83% Fixed	1999	
12/06/94	Orange County	Construction of a Elementary School	I.P.	9,600,000	First-Citizens Bank & Trust Company	5.71% Fixed	2009	
01/03/95	Hickory	Acquisition and Installation of a new 800 MHz System	I.P.	1,347,000	NationsBank of North Carolina, N.A.	5.54% Fixed	2002	
01/03/95	Raleigh	Acquisition of the Artspace Building	I.P.	981,200	Southern National Leasing Corporation	8.44% Fixed yrs (1-7); var yrs (8-10) 7.8% Prime floor 4.56% cap 9.86%	2005	
01/03/95	Thomasville	Additional Land Preparation Costs for Golf Course	I.P.	250,000	Branch Banking & Trust Company	5.98% Fixed	2000	
01/03/95	Thomasville	Construction of a Municipal Golf Course	I.P.	3,450,000	Branch Banking & Trust Company	Fixed yrs (1-5) 6.15%; var (6-20) 7.0% Prime floor 5.25% cap 10.5%	2015	
01/03/95	Vanceboro	Construction of Various Water and Sewer Lines	I.P.	750,000	Wachovia Bank of North Carolina	6.13% Fixed	2005	
01/03/95	Bertie County	Construction of 40 Bed Addition to Bertie-Martin Jail	I.P.	735,750	Branch Banking & Trust Company	Yr 1 5.15%; yrs (2-4) 5.71%; yrs (5-7) 6.12%; Yrs (8-10) 6.32%	2005	
01/03/95	Bertie County	Construction of 40 Bed Addition to Bertie-Martin Jail	I.P.	899,250	Branch Banking & Trust Company	Yr 1 5.15%; yrs (2-4) 5.71%; yrs (5-7) 6.12%; Yrs (8-10) 6.32%	2005	
Increase approved on 7/6/95	Martin County	Construction of 40 Bed Addition to Bertie-Martin Jail	I.P.	899,250	Branch Banking & Trust Company	Yr 1 5.15%; yrs (2-4) 5.71%; yrs (5-7) 6.12%; Yrs (8-10) 6.32%	2005	
02/07/95	Apex	The Construction of a new Public Works Facility	I.P.	2,500,000	Southern National Leasing Corporation	Fixed yrs (1-10) at 5.80%; 6.01%; 6.09%; 6.11%; 6.11%; 6.11%; 6.09%; 6.12%; 6.13%; 6.13%; resp.	2005	
02/07/95	Hillsborough	The Acquisition and Renovation of a New Building	I.P.	315,000	Southern National Leasing Corporation	Fixed yrs (1-10) at 5.80%; 6.01%; 6.09%; 6.11%; 6.11%; 6.11%; 6.09%; 6.12%; 6.13%; 6.13%; resp.	2005	

*Note: This authorization replaces auth. on 11/1/94

FINANCING AGREEMENT REPORT

LGCA APPROVAL	UNIT	PURPOSE	TYPE OF FINANCING	AMOUNT APPROVED	LENDER	APPROVAL RATE (MAX)	EXPECTED RATE	MATURITY
02/07/95	Bunswick County	The Construction of a new Elementary School	I.P.	8,000,000	NationsBank of North Carolina	Lower of (a) 55% of Prime or (b) 78% of the LIBOR Rate; Inter. rate 7.0%		*2002
02/07/95	Davie County	The Construction of a new Law Enforcement Center	I.P.	2,000,000	Branch Banking & Trust Company	Yrs (1-3) at 5.55%; (4-7) at 5.81%; (8-10) at 6.32%; var (11-20) at 88% Prime floor of 5.15% cap 10.75%		2015
02/07/95	Forsyth County	The Construction of a new Sheriff's Admin. Fac.	I.P.	2,082,815	Southern National Leasing Corporation	Fixed yrs (1-8) at 5.66%; 5.96%; 6.13%; 6.18%; 6.20%; 6.25%; 6.37%; 6.48%, respec. var yrs (9-15) at 77% of Prime floor 8.93% cap 8.27%		2010
02/07/95	Johnston County	The Construction of 4mgd Water Treatment Plant	I.P.	3,100,000	First-Citizens Bank & Trust Company	Yrs (1-5) 5.28%; var (6-10) 68% Prime floor 5.26% cap 6.6%		2005
02/07/95	Lincoln County	The Construction of a Maintenance & Office Bldg.	I.P.	400,000	Southern National Leasing Corporation	5.26% cap 6.6%		1999
03/07/95	Charlotte	Expansion of Parking Facilities at Law Enforcement Center, Construction of Police Bureau Station, Acquisition of Communications Equip.	COPs	11,000,000	First-Charlotte Co. (a division of J.C. Bradford & Co.) First Union Capital Markets Corp. Interstate/Johnson Lane Corp. NationsBanc Capital Markets, Inc. Robinson Humphrey & Co., Inc.	6.41% Fixed Expec. TIC: 6.09%		2015
03/07/95	Greensboro	Improvements to the Greensboro Coliseum	COPs	5,700,000		Var. (initially 7-day) not to exceed 6%; 8%		2015 tax 2010 non-tax
03/07/95	Kannapolis	Acquisition of land and the Const. of a Fire Station	I.P.	1,860,000	Southern National Leasing Corporation	Taxable Years (1-7) 5.47%, years (8-10) reset at 64% Prime, years (11-15) reset at 64% of Prime Ceiling 8.64% floor 4.16%		2010
03/07/95	Long Beach	Construction of a Fire Station & Elevated Water Tank	I.P.	871,500	Southern National Leasing Corporation	Year (1) 5.01%, years (2-5) 5.40%, year (6) 5.79%, year (7) 5.82%, year (8) 5.85%, year (9) 5.84%, year (10) 6.18%		2005
03/07/95	Murphy	Distribution Lines to Provide Water to East Murphy	I.P.	200,000	Citizens Bank	5.95% Fixed		2000
03/07/95	Oriental	Emergency Shoreline Erosion Control	I.P.	48,000	First-Citizens Bank & Trust Company	6.95% Fixed		2000
03/07/95	Tryon	Renovations to the Old Fire Department	I.P.	109,000	First-Citizens Bank & Trust Company	6.29% Fixed		2005
03/07/95	Wallace	Purchase and Installation of Water Chlorination Equip.	I.P.	235,000	Southern National Leasing Corporation	Years (1-7) 5.82%, years (8-10) reset at 68% Prime Ceiling 8.96% floor 4.42%		2005
03/07/95	Williamston	Installation of 11,340 Linear Feet to Sewer Lines	I.P.	1,830,000	Wachovia Bank of North Carolina, N.A.	5.3% Fixed		2005
03/07/95	New Hanover County	Acquisition of Water & Sewer System	I.P.	405,000	Seller - Coastal Carolina Utilities, Inc. & TIA G & F Utilities, Inc.	6%		2010

FINANCING AGREEMENT REPORT

LGCA APPROVAL	UNIT	PURPOSE	TYPE OF FINANCING	AMOUNT APPROVED	LENDER	APPROVAL RATE (MAX)	EXPECTED RATE	MATURITY
03/07/95	Franklin W & S Auth.	Expansion to Existing Wastewater Treatment Plant	I.P.	2,500,000	First-Citizens Bank	Years (1-7) 5.91% years (8-15) 7.2% Prime floor 5.91% cap 7.41%	1st 18 yrs at time of closing 10 yr Treasury + 1.9% years (19-30) will be reset ceiling equal to initial index (1-18) + 4% floor 8.0%	2010
03/07/95	Housing Auth. of Kinston	Construction of Affordable Housing	I.P.	400,000	Construction Financing: (Tax-exempt) Centura Bank/ Permanent Fin. (Taxable) Community Inv. Corp. of N.C.	5.202% for years (1-5), 5.77% for year (6), 5.98% for year (7), 6.21% for year (8), 6.56% for year (9), 6.72% for year (10); reset at year (11) 6.8% Prime for years (11-15) cap is 10.29%.		2025
04/04/95	Canton	Construction of a Downtown Public Park	I.P.	125,000	Southern National Leasing Corporation	5.2% Fixed		2000
04/04/95	Elkin	Expansion of Wastewater Treatment Plant	I.P.	1,700,000	Southern National Leasing Corporation	5.202% for years (1-5), 5.77% for year (6), 5.98% for year (7), 6.21% for year (8), 6.56% for year (9), 6.72% for year (10); reset at year (11) 6.8% Prime for years (11-15) cap is 10.29%.		2010
04/04/95	Highlands	Construction of Water Treatment Plant	I.P.	1,500,000	Southern National Leasing Corporation	5.03% Fixed		2000
04/04/95	Jacksonville	Construction of a Multi-Purpose Recreation Complex	I.P.	1,400,000	Southern National Leasing Corporation	5.75% Fixed		2010
04/04/95	Kernersville	Road Construction of Master Drive & Whicker Rd.	I.P.	425,000	Southern National Leasing Corporation	5.76% Fixed		2002
04/04/95	Leland	Purchase and Renovation of a Modular Building	I.P.	200,000	First Citizens Bank	6.12% Fixed for years (1-5), 7.2% Prime for year (6) and year (7) Cap 7.11% floor 5.32%		2015
04/04/95	Lenoir	Improvements to Water and Wastewater System and Refin.	I.P.	8,360,000	First Union National Bank	5.53% Fixed		2010
04/04/95	Ramseur	Acquisition and Installations of Sewer Lines & Construction of three Pumping Stations	I.P.	805,000	Centura Bank	Var. 64.25% of Prime Cap 7.85%; No Floor		2010
04/04/95	Buncombe County	Construction and Renovation of Swimming Pools, Tennis Courts, Soccer Fields and Ball Fields	I.P.	3,868,188	First Union National Bank	5.30% Fixed		2010
04/04/95	Camden County	Construction of Social Service Bldg; Courthouse	I.P.	659,000	Wachovia Bank and Trust Company	5.68% Fixed years (1-10), Var. 66% Prime for years (11-15), Ceiling 9.85% and Floor 5.5%		2010
04/04/95	Dare County	Construction of Multi-Purpose Facility on Hatteras Is.	I.P.	1,100,000	The East Carolina Bank	5.46% Fixed		2005
04/04/95	Pitt County	Hospital Acquisition (Loan Agreement)	I.P.	15,000,000	Lender: NCMCC	Var. (7-Day) Initial Rate < 7%		2005
04/04/95	Transylvania County	Construction of Landfill Cells; Ren. of Transfer Station and Purchase of Equipment	I.P.	1,900,000	Southern National Leasing Corporation	5.45% Fixed		2002
04/04/95	Charlotte-Mecklenburg Hosp. Auth.	Hospital Acquisition (Note)	I.P.	115,000,000	First Union National Bank of N.C.	Var. .77 (LIBOR) (1 mth.) Tax-exempt payable quarterly.		1996
04/04/95	Housing Auth. of the City of Kinston	Purchase of Kinston Apartments	I.P.	569,000	Branch Banking & Trust Company & Thomas Spencer & Mary B. Rouse	6.49% Fixed (years 1-7) Var. (years 8-20) 69% Prime Floor 8% Ceiling 10.5%		2015
05/02/95	Davidson	Construction of a Public Library Building	I.P.	729,300	First Union National Bank	5.55% Fixed		2010
05/02/95	Fauquier-Vanma	Construct a New Wastewater Treatment Plant & Install Interceptor Sewer Lines	I.P.	4,000,000	Southern National Leasing Corporation	4.65% for year (1); 5.03% for year (2);		2010

FINANCING AGREEMENT REPORT

LGCA APPROVAL	UNIT	PURPOSE	TYPE OF FINANCING	AMOUNT APPROVED	LENDER	APPROVAL RATE (MAX)	EXPECTED RATE	MATURITY
05/02/95	King	The Construction of a Public Library	I.P.	600,000	Southern National Leasing Corporation	5.25% for year (3); 5.31% for year (4); 5.4% for year (5); 5.49% for year (6); 5.64% for year (7); 5.8% for year (8); 8.0% for year (9); 8.49% for year (10); reset at year (11) at 69% Prime for years (11-15) cap 9.98%	5.07% for year (1-5); 5.38% for year (6); 5.48% for year (7); and 8.91% for years (8-10) Assumed 9% 5 years; variable thereafter = to rate of one-years U.S. Oblig. plus 3%, Floor 8% Cap 16.50, no interest 1st 6 months	2005
05/02/95	Raleigh	Purchase of 60 Unit Apartment Complex (Martin DePorres Property) (Taxable)	I.P.	558,840	Raleigh Federal Savings and Loan Assoc.			2015
05/02/95	Hoke County	Construction of Additional Office Space for Hoke County Department of Social Services and Capital Improvements at the Landfill	I.P.	450,000	Southern National Leasing Corporation			2005
05/02/95	Perquimans County	The Acquisition of a 401 Acre Tract of Land for an Industrial/Commercial Park.	I.P.	850,000	Centura Bank			2010
08/06/95	City of Durham	GIS, EIS, Fleet Vehicles, Radio Communications System, and Fire Station Renovations	COPs	12,525,000	The Robinson-Humphrey Company J. Lee Peeler & Company Division of Morgan Keegan & Company Jackson Securities Wachovia Bank of North Carolina, N.A. AG Edwards & Sons, Inc. The Rensselaerville Institute BB&T Leasing Corporation	TTC: 6.60%		2115
08/06/95	Gastonia	Police Station, Evidence Bldg, Motor Court, Law Enforcement	COPs	9,000,000		TTC: 6.70%		2115
08/06/95	Middlesex	Install Additional Water Lines	I.P.	27,000		2.0% Fixed		1999
08/06/95	New Bern	Water & Sewer	I.P.	5,000,000		Yr(1) 4.6% Yr(2) 4.89% Yr(3) 5.03% Yr(4) 5.13% Yr(5) 5.22% Yr(6) 5.31% Yr(7) 5.33% Yr(8) 5.45% reset at 87% Prime Floor 6.03% ceiling 7.58%		2009
08/06/95	Shelby	Completion of Construction and Renovation of Swimming Pool and Recreation Facilities due to cost overruns	I.P.	500,000	Southern National Leasing Corporation	3.73% for Yr(1) 4.04% Yr(2) 4.24% Yr(3) 4.39% Yr(4) 4.57% Yr(5) 4.74% Yr(6) 4.95% Yr(7) reset at Yr(8) 76% Prime		

FINANCING AGREEMENT REPORT

LGCA APPROVAL	UNIT	PURPOSE	TYPE OF FINANCING	AMOUNT APPROVED	LENDER	APPROVAL RATE (MAX)	EXPECTED RATE	MATURITY
06/06/95	Greene County	Water	I.P.	800,000	Wachovia Bank of North Carolina, N.A.	Yr(8-14) cap 6.94%		2005
06/06/95	Sampson County	Water Lines: Public Building	I.P.	300,000	Southern National Leasing Corporation	4.89% Fixed		1997
				<u>479,988,115</u>	Total Fiscal Year June 30, 1995			
07/06/95	Angier Canton	Water (1)Water (2)Sanitary Sewer	I.P. I.P.	750,000 425,000 200,000	Southern Bank and Trust Company BB & T Leasing Corporation	5.85% Fixed 4.68% Fixed		2010 2002
07/06/95	Holly Springs	Sanitary Sewer	I.P.	750,000	BB & T Leasing Corporation	5.12% for years (1-7); 6.79% for years (8-10)		2005
07/06/95	Selma	Water	I.P.	500,000	Wachovia Bank of North Carolina, N.A.	4.79% Fixed		2005
07/06/95	Spindale	Public Building	I.P.	1,175,000	BB & T Leasing Corporation	5.10% for years (1-5); 5.24% for year (6); 5.38% for year (7); reset at year (8) at 65% Prime for 8yrs/8-7 year Treasury		2005
07/06/95	Buncombe County	Law Enforcement	I.P.	2,082,875	Signal Leasing and Financial Corporation	4.71% Fixed		2002
07/06/95	Cabarrus County	School	I.P.	9,800,000	First Union National Bank	4.79% Fixed		2005
07/06/95	Wilkes County	Public Buildings (Animal Shelter, Maintenance)	I.P.	275,000	First Union National Bank	5.49% Fixed		1999
09/05/95	Franklin	Public Buildings (Utility Building)	I.P.	65,000	First-Citizens Bank & Trust Company			1999
09/05/95	Holly Springs	(1)Public Building (Town Hall Renovations) (2)Parking Facility	I.P.	36,000 114,000	BB&T Leasing Corporation	Yr (1) 3.95%, Yr (2) 4.59%, Yr (3) 4.79%, Yr (4) 5.01%, Yr (5) 5.21%, Yr (6) 5.27%, Yr (7) 5.5%, Yr (8) 5.7%, Yr (9) & (10) 6.25%, Yrs (11-15) = 69% Prime Floor 5% cap 7.94%		2010
09/05/95	Mount Airy	(1)Law Enforcement (2)Public Building (City Hall Renovations)	I.P.	1,200,000 100,000	BB&T Leasing Corporation	Yr (1) 4.31%, Yr (2) 4.43%, Yr (3) 4.53%, Yr (4) 4.95%, Yr (5) 5.08%		2002

FINANCING AGREEMENT REPORT

LGCA APPROVAL	UNIT	PURPOSE	TYPE OF FINANCING	AMOUNT APPROVED	LENDER	APPROVAL RATE (MAX)	EXPECTED RATE	MATURITY
09/05/95	Rocky Mount	(1) Equipment	I.P.	750,000	First Union National Bank of North Carolina	Yr (6) 5.10%, Yr (7) 4.02% Fixed		1998
09/05/95	Alleghany County	(2) Sanitary Sewer (3) Equipment School	I.P. I.P. I.P.	1,500,000 3,700,000 3,850,000	First Union National Bank of North Carolina	4.06% Fixed 4.27% Fixed 4.68% Fixed		1999 2005 2010
09/05/95	Cherokee County	Land	I.P.	765,000	Owner Financed by the West Family	6% Fixed		2005
09/05/95	Chowan County	Hospital	I.P.	1,500,000	NationsBank, N.A. (Carolinas)	60% of Bank's Prime with no floor and cap of 9% or fixed rate not to exceed 6.5%		2016
09/05/95	Montgomery County	Public Building - Community College	I.P.	2,592,709	First Union National Bank of North Carolina	5.02 Fixed		2015
09/05/95	Onslow County Hospital	Hospital	I.P.	1,000,000	Wachovia Bank of North Carolina, N.A.	4.82% (7.52% if taxable)		2005
09/05/95	Transylvania County Board of Educa.	Equipment (Guaranteed Energy Savings Contract)	I.P.	1,431,788	ChicCorp Financial Services, Inc.	6.3%		2003
10/03/95	Burlington	Parks & Recreation	I.P.	3,400,000	Vender, Johnson Controls, Inc. First Union National Bank	4.91% Fixed		2010
10/03/95	Conover	Fire Station	I.P.	800,000	Southern Bank and Trust Company	4.90% Fixed		2010
10/03/95	Kemersville	(1) Parking Facility	I.P.	165,000	BB&T Leasing Corporation	4.92% Fixed		2002
10/03/95	Walnut Creek	(2) Road Construction Water	I.P.	480,000 400,000	BB&T Leasing Corporation	5.15% Fixed Yrs (1-5) at 4.87% Yrs (6-7) at 4.91% Yrs (8-12) reset at 67% Prime with tax-exempt floor 6.80% ceiling 9.78%		2002 2007
10/03/95	Randolph County	(1) Schools (2) Public Building	COPs	34,100,000 800,000	Alex Brown & Sons, Inc. and Wachovia Bank of North Carolina, N.A.	TIC = 6.91%		2016
11/07/95	Bald Head Island****	Erosion Control (approved for 1,000,000)	I.P.		United Carolina Bank	5.0% Fixed		Dec. 31, 1996
11/07/95	Clayton	Library	I.P.	325,000	BB&T Leasing Corporation	4.55% Fixed		2002
11/07/95	Dunn	Water	I.P.	2,000,000	Southern Bank and Trust Company	4.83% Fixed		2010
11/07/95	Grifton	Water	I.P.	413,500	Southern Bank and Trust Company	6.13% Fixed		2010
11/07/95	Huntersville	(1) Public Building (Administration) (2) Law Enforcement Facilities	I.P.	1,191,478 1,019,604	First Union National Bank of N.C.	5.09% Fixed		2015

**** Special Note: December 19, 1995 approval replaces this approval.

FINANCING AGREEMENT REPORT

LGCA APPROVAL	UNIT	PURPOSE	TYPE OF FINANCING	AMOUNT APPROVED	LENDER	APPROVAL RATE (MAX)	EXPECTED RATE	MATURITY
11/07/95	Lowell	(3) Park & Recreation Sanitary Sewer	I.P.	2,288,918 400,000	BB&T Leasing Corporation	4.61% yrs (1-5) and		2005
11/07/95	Monroe	Public Buildings (Administration)	I.P.	1,027,000	BB&T Leasing Corporation	5.29% yrs (6-10)		2005
11/07/95	Craven County	Sanitary Sewer	I.P.	1,000,000	Financier: Global TransPark Commission	4.77% Fixed		2015
11/07/95	McDowell County	Public Building (Health Department)	I.P.	476,500	BB&T Leasing Corporation	4.375% Fixed		2001
11/07/95	New Hanover County	(1) Public Building (Administration)	I.P.	890,000	First Union National Bank	4.87% Fixed		3 yrs 10 months
11/07/95	Pamlico County	(2) Law Enforcement Center (3) Library Sanitary Sewer	I.P.	422,640 287,864 500,000	First Citizens Bank & Trust Company	5.35% Fixed		2010
11/07/95	Pasquotank County	Schools	COPs	25,500,000	Alex. Brown & Sons, Inc.	TTC = 6.83%		2021
11/07/95	Martin County Board of Education	Guaranteed Energy Savings Contract	I.P.	1,013,348	Wachovia Leasing Corporation Vendor: Johnson Controls, Inc.	5.62% Fixed		2003
11/07/95	Moore Water and Sewer Authority, Inc.	Sanitary Sewer	I.P.	1,135,000	BB&T Leasing Corporation	5.23% yrs (1-8); reset at		2010
12/05/95	Asheboro	Public Building	I.P.	1,500,000	Randolph Bank and Trust Company	65% Prime yrs (9-15) cap		2010
12/05/95	Marion	Water	I.P.	1,397,184	First Union National Bank of N.C.	5.20% Fixed		2010
12/05/95	Nags Head	Sewer Public Building Fire Station Public Building	I.P.	1,324,249 245,000 305,062 2,400,000	First Union National Bank of N.C.	4.77% Fixed		March 21, 2008 Sept. 21, 2002 March 21, 2002 2010
12/05/95	Greene County	Schools	I.P.	2,165,000	BB&T Leasing Corporation	4.80% Fixed		2010
12/05/95	Jackson County	Sanitary Sewer	I.P.	2,879,800	BB&T Leasing Corporation	4.52% yr (1-5); 4.77% yr		2010
12/05/95	Lincoln County	Jail	I.P.	10,000,000	First Union National Bank of N.C.	(6-7): 4.91% yr (8); 5.04% yrs (9-10); 8.49% yrs (11-15)		2005
12/05/95	Moore County	Public Building (Register of Deeds Bldg)	I.P.	1,100,000	Southern Bank and Trust Company	4.71% yr (1-7); 6.57% yr		2010
12/05/95	Orange County	Jail/Courthouse Public Building (Human Services Center)	I.P. I.P.	1,500,000 500,000	NationsBank, N.A. (Carolina)	(8-10) 4.65% Fixed (\$5,800,000); 5.34% Fixed (\$4,200,000 - January 1997)		2005
						4.59% Fixed		2005
						4.35% Fixed		2005

FINANCING AGREEMENT REPORT

LGCA APPROVAL	UNIT	PURPOSE	TYPE OF FINANCING	AMOUNT APPROVED	LENDER	APPROVAL RATE (MAX)	EXPECTED RATE	MATURITY
12/05/95	Cumberland County Board of Ed.	Guaranteed Energy Savings Contract	I.P.	822,097	Wachovia Leasing Corporation	5.5% Fixed		2003
12/19/95	Bald Head Island	Erosion Control	I.P.	2,000,000	To be negotiated	4.73% Fixed		1999
12/19/95	Edgecombe County	Schools	I.P.	4,000,000	First Union National Bank of N.C.	4.88% Fixed		2010
01/02/96	Raleigh	Refunding (Walnut Creek Amphitheater)	I.P.	11,500,000	First Union National Bank of N.C.	6.40% Fixed (Taxable)		2014
01/02/96	Cabarrus County	Schools	I.P.	9,900,000	First Union National Bank of N.C.	4.29% Fixed		2005
02/06/96	Benson	Water	I.P.	490,550	Southern Bank & Trust Company	5.125% Fixed		2011
02/06/96	Long Beach	Parks & Recreation	I.P.	137,200	United Carolina Bank	4.45% Fixed		1999
02/06/96	Mount Holly	Sanitary Sewer	I.P.	1,388,000	BB&T Leasing Corporation	4.24% (years 1-5); 4.57% (years 6-7); 7.49% (years 8-10)		2006
02/06/96	Hoke County	Jail	I.P.	750,000	BB&T Leasing Corporation	5.04% (years 1-7); 7.11% (years 8-10); 9.23% (years 11-15)		2011
02/06/96	Person County	Refunding - Law Enforcement Center	I.P.	6,300,000	First Union National Bank	4.87% Fixed		2011
03/05/96	Bethel	Water	I.P.	150,000	Southern Bank and Trust Company	5.10% Fixed		2003
03/05/96	Burgaw	Public Building	I.P.	300,000	Branch Banking & Trust Company	5.25% Fixed		2011
03/05/96	Durham	Refunding - Law Enforcement	COPs	3,345,000	Craigie Incorporated	TIC = 5.80%		2012
03/05/96	Greensboro	Refunding - Public Building Refunding - Coliseum Refunding - Coliseum Improvements	COPs	4,855,000 19,000,000 8,000,000	The Robinson-Humphrey Company and Ward Bradford & Company	TIC = 6.20%		2016
03/05/96	Nashville	Public Building (Police/Fire Complex)	I.P.	200,000	Southern Bank & Trust Company	4.72% Fixed		2006
03/05/96	Weaverly	Public Building (Public Works Facility)	I.P.	400,000	Branch Banking & Trust Company	4.76% Fixed		2003
03/05/96	Alamance County	Public Buildings (Co. Hospital & Old Courthouse)	I.P.	5,406,000	First Union National Bank	4.53% Fixed		2016
03/05/96	Ashe County	School	I.P.	9,900,000	First Union National Bank	4.78% Fixed		2016
04/02/96	Burgaw	Public Building (Municipal Bldg)	I.P.	600,000	Branch Banking & Trust Company	5.25% Fixed		2011
04/02/96	Lewiston Woodville	In Town Resident for Police Chief	I.P.	35,000	Southern Bank	Years (1-5) fixed, years (6-10) & (11-15), 70% Prime cap 5.50% min. and 7.5% max.		2011

FINANCING AGREEMENT REPORT

LGIC APPROVAL	UNIT	PURPOSE	TYPE OF FINANCING	AMOUNT APPROVED	LENDER	APPROVAL RATE (MAX)	EXPECTED RATE	MATURITY
04/02/96	Smithfield	Public Safety Building	I.P.	850,000	Branch Banking & Trust Company	Years (1-7) 4.42%, years		2006
04/02/96	Duplin County	Parks & Recreation	I.P.	798,000	Global TransPark "Financier"	(8-10) 8.39% annually in arrears.		2008
04/02/96	Franklin County	Streets	I.P.	347,000	First Citizens Bank	4.125% Fixed		2006
04/02/96	Hyde County	Public Building	I.P.	180,000	East Carolina Bank	5.00% Fixed		2006
04/02/96	Northampton County	Public Building (Social Services Building)	I.P.	581,000	Branch Banking & Trust Company	5.21% Fixed		2006
04/02/96	Rowan County	Parks & Recreation	I.P.	3,300,000	Branch Banking & Trust Company	5.08% Fixed		2011
05/09/96	Beech Mountain	Sanitary Sewer	I.P.	135,200	Branch Banking & Trust Company	5.89% Fixed for years		2006
05/09/96	Brevard	Water	I.P.	180,000	First Union National Bank	(1-7), 6.31% Fixed for years (8-10) (non bank qualified)		2001
05/09/96	Clayton	Sanitary Sewer Electric	I.P.	720,000	Branch Banking & Trust Company	4.59% Fixed		2004
05/09/96	Edenton	Recreation	I.P.	500,000	Southern Bank & Trust Company	4.61% Fixed		2003
05/09/96	Franklin	Water	I.P.	55,000	Branch Banking & Trust Company	4.15% Fixed		2001
05/09/96	Tabor City	Sanitary Sewer Public Improvement (Sidewalks)	I.P.	110,000	Branch Banking & Trust Company	5.55% Avg. Var.		2006
05/09/96	Wilmington	Streets & Sidewalks	I.P.	90,000	United Carolina Bank	4.5% Fixed		2001
05/09/96	Durham County	Public Building (Fire Station) Land	I.P.	2,112,000	Branch Banking & Trust Company	4.89% Avg. Var.		2008
05/09/96	Forsyth County	Office Space for Register of Deeds	LEASE	528,000	First Union National Bank			2014
05/09/96	Franklin County*	School (Refrancing)	I.P.	550,000	Lessor: BDG Associates	4.84% Fixed (Tax-Exempt)		2009
05/09/96	Granville County	Water	I.P.	7,300,000	First Union National Bank	not to exceed 5.7%		2014
05/09/96	Granville County	Sanitary Sewer	I.P.	1,834,380	Branch Banking & Trust Company	5.12% Fixed		2011
05/09/96	Granville County	Water	I.P.	432,000	Branch Banking & Trust Company	5.12% Fixed		2011
05/09/96	Macon County	Sanitary Sewer Solid Waste	I.P.	1,105,000	Branch Banking & Trust Company	5.12% Fixed		2011
05/09/96	Macon County	Sanitary Sewer Solid Waste	I.P.	595,000	Branch Banking & Trust Company	4.79% Avg. Var.		2006
05/09/96	Macon County	Sanitary Sewer Solid Waste	I.P.	1,250,000	Branch Banking & Trust Company			2006

* Increase of \$30,000 apprx. 6/4/96

FINANCING AGREEMENT REPORT

LGCA APPROVAL	UNIT	PURPOSE	TYPE OF FINANCING	AMOUNT APPROVED	LENDER	APPROVAL RATE (MAX)	EXPECTED RATE	MATURITY
05/09/96	Moore County	Schools	I.P.	19,900,000	Branch Banking & Trust Company	4.64% to 4.90% Avg. Var.		2011
05/09/96	Sampson County	Schools	I.P.	393,811	Branch Banking & Trust Company	4.88% Fixed		2005
05/09/96	Stanly County	Agrt-Expo Center Community College Public Buildings (Roof)	I.P.	2,026,013 1,905,176 300,000	Branch Banking & Trust Company	4.74% to 4.83% Avg. Var.		12 yrs & 15 yrs resp.
05/09/96	Charlotte-Mecklenburg Hosp. Auth.	Land Water Sanitary Sewer Refinance County Office Bond Guaranty (G.S.131E-26(b))	F.A.	699,800 335,700 305,500 4,193,350 11,040,000	Lendor: The Rensselaerville Institute	8.75%		October 1, 2108
06/04/96	Bailey	Water	I.P.	84,650	Branch Banking & Trust Company	0%		2001
06/04/96	Burgaw	Sanitary Sewer	I.P.	350,000	Branch Banking & Trust Company	Yrs (1-7) 4.99%; Yrs (8-10) 6.59%; Yrs (11-15) 10.23% APR=5.73%		2011
06/04/96	Jacksonville	Sanitary Sewer	I.P.	8,000,000	Branch Banking & Trust Company	Yr(1) 4.11%; Yr(2) 4.39%; Yr(3) 4.52%; Yr(4) 4.61%; Yr(5) 4.66%; Yr(6) 4.74%; Yr(7) 4.85%; Yr(8) 4.91%; Yr(9) 4.97%; Yr(10) 5.02%; Yrs(11-15) 8.89% APR=4.99%		2011
06/04/96	Kernersville	Fire Station	I.P.	1,100,000	Southern Bank and Trust Company	Yrs (1-10) 4.76%; Yrs (11-15) 6.00% APR=4.91%		2011
06/04/96	Lansing	Public Building (Town Hall)	I.P.	32,000	First-Citizens Bank & Trust Company	Yrs (1-5) 4.6%; Yrs (6-15) 7.0% of Bank's Prime with a cap of 6.25%		2011
06/04/96	North Topsail Beach	Public Building (Town Hall Construction)	I.P.	800,000	Branch Banking and Trust Company	4.69% Fixed		2003
06/04/96	Forsyth County	Court Facilities	I.P.	2,618,400	First Union National Bank of N.C.	5.65% Fixed		2011
06/04/96	Johnston County	Schools	COPs	15,000,000	J.C. Bradford & Company & Wheat First Sec.	TTC: Not to exceed 7%		2016
06/04/96	Perquimans County	Law Enforcement Annex Hospital Facilities Water	I.P.	5,000,000 8,000,000 4,250,000	Branch Banking and Trust Company	Yr(1) 4.19%; Yr(2) 4.45%; Yr(3) 4.58%; Yr(4) 4.73%; Yr(5) 4.86%; Yr(6) 4.79%; Yrs(7-8) 4.92%; Yrs(9-10) 5.56%; Yrs(11-12) 8.29%; Yrs (13-15) 12.38% APR=5.27%		2011

FINANCING AGREEMENT REPORT

LGC APPROVAL		UNIT	PURPOSE	TYPE OF FINANCING	AMOUNT APPROVED	LENDER	APPROVAL RATE (MAX)	EXPECTED RATE	MATURITY
06/04/96	Mount Airy City Schools		Equipment (Guaranteed Energy Savings Contract)	I.P.	424,955	Wachovia Leasing Corporation	5.50% Fixed		2004
06/04/96	Sandhills Center MH/DD/SAS	Public Building		I.P.	336,300	Branch Banking and Trust Company	Yr(1) 4.06%; Yr(2) 4.51%;		2011
					350,577,802	Total Fiscal Year June 30, 1996			
07/02/96	Fayetteville	Law Enforcement (Police Adm. Building)		COPs	11,000,000	The Robinson-Humphrey Company	Yr(3) 4.92%; Yr(4) 5.00%; Yr(5) 5.03%; Yr(6) 5.10%; Yr(7) 5.15%; Yr(8) 5.29%; Yr(9) 5.53%; Yr(10-15) 8.47% APR=5.23%		2019
07/02/96	Huntersville	Refunding (Public Buildings)		I.P.	7,000,000	First Charter National Bank	TTC: not to exceed 6.75%; ETTC: not to exceed 6.25%		2011
07/02/96	Kings Mountain	Electric		I.P.	985,000	Branch Banking & Trust Company	5.228% Fixed		2001
07/02/96	Columbus County	Court Facilities		I.P.	2,000,000	United Carolina Bank	APR=4.77%		2016
					400,000		Years (1-15) 5.25%,		
					800,000		Fixed: Years (16-20)		
					1,500,000		County may negotiate		
							another fixed rate or		
							rate will automatically		
							convert to a rate 65% of		
							the bank's prime rate		
							with a ceiling of 7.5% and		
							a floor of 5%.		
07/02/96	Orange County	Public Buildings (Skills Development Center)		I.P.	1,200,000	NationsBank, N.A.	5.54% Fixed		2008
08/06/96	Franklin	Water		I.P.	842,000	First Union National Bank	5.28% Fixed		2008
					605,000				
					425,000				
08/06/96	Fremont	Sanitary Sewer		I.P.	180,000	The Heritage Bank	Years (1-5) 4.59%,		2006
							Fixed: Years (6-10),		
							Variable Rate of 75% of		
							Prime, floating with a		
							floor of 4.59% and a cap		
							of 7%. (APR = 5.1%)		
08/06/96	Long View	Medical Facility		I.P.	435,000	Branch Banking & Trust Company	5.63% Fixed		2011
08/06/96	Roxboro	Water		I.P.	1,000,000	Branch Banking & Trust Company	4.99% Fixed		2003
08/06/96	Beaufort County	Mental Health Facility Enlargement and Renovation		I.P.	1,700,000	Southern Bank & Trust Company	5.2%		2011
08/06/96	Caldwell County	Water		I.P.	1,250,000	First Union National Bank	5.29% Fixed		2011

FINANCING AGREEMENT REPORT

Updated 2-12-97

APPROVAL	UNIT	PURPOSE	TYPE OF FINANCING	AMOUNT APPROVED	LENDER	APPROVAL RATE (MAX)	EXPECTED RATE	MATURITY
08/06/96	Cherokee County	Schools	I.P.	9,800,000	Branch Banking & Trust Company	5.37% Fixed	5.37% Fixed	2011
08/06/96	Macon County	Public Buildings (Jail and Law Enforcement Center)	I.P.	1,600,000	Branch Banking & Trust Company	4.99% Fixed (Yrs. 1-7); 5.97% Fixed (Yrs. 8-10) (APR = 5.08%)	4.125% Fixed	2011
08/06/96	Pitt County	Economic Dev. (Business Tech. Incubator Project)	I.P.	1,200,000	Global Transpark Development Zone	4.74% to 4.83% avg.		2008
08/06/96	Slany County	Public Building - Roof Land Water Sanitary Sewer Funding (Refinance Co. Bldg.) TOTAL \$5,834,350	I.P. I.P. I.P. I.P. I.P. I.P.	300,000 699,800 335,700 305,500 4,193,350	Branch Banking & Trust Company	Variable on new money projects; 5.47% average rate on refinancing		2011
09/03/96	Hickory	Library	I.P.	4,385,954	Branch Banking & Trust Company	5.35% Fixed	5.37% Fixed	2011
09/03/96	Hillsborough	Land Acquisition	I.P.	2,220,000	Branch Banking & Trust Company	5.12% Fixed	5.37% Fixed	2011
09/03/96	Kannapolis	Sanitary Sewer	I.P.	5,000,000	Branch Banking & Trust Company	4.40% Fixed, Year (1), 5.37% Fixed, Years (2-15)	4.7% Fixed	2003
09/03/96	Morrisville	Municipal Building (Village Hall)	I.P.	1,300,000	Branch Banking & Trust Company	5.68% Fixed	5.68% Fixed	2011
09/03/96	Pinehurst	Water	I.P.	4,000,000	Branch Banking & Trust Company	5.6%	1st Advance: 5.35%, 2nd Advance: 5.48%	2016
09/03/96	Shalotte	Sanitary Sewer	I.P.	315,000	United Carolina Bank	4.89% Fixed	4.89% Fixed	2003
09/03/96	Troy	Sanitary Sewer	I.P.	700,000	Branch Banking & Trust Company	4.89% Fixed Yrs. (1-7), 8.97% Fixed Yrs. (8-10)	0%	2006
09/03/96	Clay County Schools	Guaranteed Energy Hospital	I.P.	309,297	Johnson Controls, Inc. (Wachovia Leasing Corp.)			2003
09/03/96	Columbus County	Courthouse (Judicial Center)	I.P.	12,000,000	First Union National Bank	5.2% Fixed	4.73% Fixed	2011
09/03/96	Curruck County	Equipment (Emergency Response System)	I.P.	100,000	Financing through the Halifax County Membership Corporation	4.73% Fixed	4.73% Fixed	2001
09/03/96	Halifax County	Recreation (Multi-Purpose Bldg.)	I.P.	3,500,000	United Carolina Bank	4.73% Fixed	4.73% Fixed	2001
09/03/96	Watauga County	County Buildings (Human Services Center)	I.P.	188,200	United Carolina Bank	5.33% Fixed	5.33% Fixed	2011
10/01/96	Bald Head Island	Land Acquisition/Municipal Building	I.P.	123,800	United Carolina Bank	4.5% Fixed	5.91% until 3/31/02 then the rate will be 72% of Prime with Cap of 7.41%	2003
10/01/96	Franklin County	Emer. Medical Facility	I.P.	190,000	United Carolina Bank	5.88% Fixed	5.88% Fixed	2016
10/01/96	Kannapolis	Total	I.P.	539,450	Branch Banking & Trust Company	5.88% Fixed	5.88% Fixed	2016
10/01/96	Brunswick County	Water	I.P.	2,460,550	Branch Banking & Trust Company	5.88% Fixed	5.88% Fixed	2016
10/01/96	Franklin County	Sewer	I.P.	2,400,000	Branch Banking & Trust Company	5.88% Fixed	5.88% Fixed	2016
10/01/96	Franklin County	Public Buildings (School Admin. Offices & Cooperative Ext. Offices)	I.P.	2,500,000	Branch Banking & Trust Company	5.88% Fixed	5.88% Fixed	2016
10/01/96	Franklin County	Sanitary Sewer	I.P.	13,620,000	Wachovia bank of North Carolina, N.A.	5.88% Fixed	5.88% Fixed	2016
10/01/96	Franklin County	Public Buildings (D.S.S. Facility)	I.P.	1,610,000	Wachovia bank of North Carolina, N.A.	5.88% Fixed	5.88% Fixed	2016
10/01/96	Gaston County	Public Buildings (Life Skills Bldgs.)	I.P.	4,735,000	Wachovia bank of North Carolina, N.A.	5.88% Fixed	5.88% Fixed	2016

FINANCING AGREEMENT REPORT

LGCA APPROVAL	UNIT	PURPOSE	TYPE OF FINANCING	AMOUNT APPROVED	LENDER	APPROVAL RATE (MAX)	EXPECTED RATE	MATURITY
10/01/96	Halifax County	School	I.P.	8,200,000	Branch Banking & Trust Company	5.08% Fixed		2011
10/01/96	Haywood County	School	I.P.	6,300,000	Wachovia bank of North Carolina, N.A.	4.59% Fixed		1999
10/01/96	Rutherford County	Solid Waste Disposal	I.P.	1,500,000	First Union National Bank	5.25% Fixed		2011
10/01/96	Sampson County	School	I.P.	393,811	Southern Bank & Trust Company	4.94% Fixed		2008
10/31/96	Cornelius	Community College	I.P.	1,904,197	Southern Bank & Trust Company	4.94% Fixed		2008
10/31/96	Elizabeth City	Municipal Building (Offices & City Hall)	I.P.	350,000	First Union National Bank	4.90% Fixed		2001
10/31/96	Mebane	Electric	I.P.	100,000	First Union National Bank	4.90% Fixed		2001
10/31/96	Mebane	Municipal (Offices & City Hall)	I.P.	850,000	Branch Banking & Trust Company	5.27% Fixed		2006
10/31/96	Mebane	Fire Station	I.P.	250,000	Branch Banking & Trust Company	5.27% Fixed		2001
10/31/96	Salisbury	Fire Station	I.P.	1,600,000	Branch Banking & Trust Company	5.37% Fixed		2011
10/31/96	Salisbury	Municipal Building (Public Works)	I.P.	700,000	Branch Banking & Trust Company	5.37% Fixed		2011
10/31/96	Wake Forest	Municipal Building (Public Works)	I.P.	1,257,250	Wachovia Bank of North Carolina	4.91% Fixed		2003
10/31/96	Wake Forest	Parking	I.P.	42,500	Wachovia Bank of North Carolina	4.91% Fixed		2003
10/31/96	Wake Forest	Recreation	I.P.	412,250	Wachovia Bank of North Carolina	4.91% Fixed		2003
10/31/96	Bladen County	Cemetery	I.P.	38,000	Wachovia Bank of North Carolina	4.91% Fixed		2003
10/31/96	Bladen County	Water	I.P.	291,930	Branch Banking & Trust Company	4.53% Fixed		1999
10/31/96	Cumberland County	Sanitary Sewer	I.P.	49,820	Branch Banking & Trust Company	4.53% Fixed		1999
10/31/96	Cumberland County	School	I.P.	2,500,000	Branch Banking & Trust Company	4.94% Fixed		2001
10/31/96	Cumberland County	Courthouse	I.P.	300,000	Wachovia Bank of North Carolina	4.94% Fixed		2001
10/31/96	Duplin County	Equipment	I.P.	3,120,000	Branch Banking & Trust Company	4.87% Fixed		2003
10/31/96	Duplin County	Public Vehicles	I.P.	600,000	Branch Banking & Trust Company	4.87% Fixed		1999
10/31/96	Union County	Water	I.P.	530,000	Branch Banking & Trust Company	4.87% Fixed		1999
10/31/96	Union County	School	I.P.	250,000	Financing through Four County EMC	0% Fixed		2003
12/31/96	Albemarle Mental Health Center	Mental Health	I.P.	6,550,000	First Union National Bank	5.00% Fixed		2008
12/31/96	Bunn	Mental Health	I.P.	175,000	Centura Bank	6.39% Fixed		2011
12/31/96	Havelock	Recreation	I.P.	79,850	First Citizens Bank & Trust Co.	Yr 1 - 5 : 5.25% , Yr 6 - 10: Variab	with a floor of 5% & ceiling of 6.5%	2006
12/31/96	Morganton	Municipal Building (Public Safety)	I.P.	182,850	Branch Banking & Trust Co.	5.37% Fixed		2006
12/31/96	Morganton	Telecommunications	I.P.	1,000,000	Branch Banking & Trust Co.	4.99% Fixed		2006
12/31/96	Shelby	Equipment	I.P.	482,809	First Union National Bank	4.39% Fixed		2001
12/31/96	Shelby	Equipment	I.P.	67,181	First Union National Bank	4.39% Fixed		2001
12/31/96	Winston-Salem	Apartments	COPs	5,115,000	Wachovia Bank of NC NA	TIC: not to exceed 5.85%		2017
12/31/96	Winston-Salem	Apartments	COPs	5,185,000	Wachovia Bank of NC NA	TIC: not to exceed 5.85%		2017
12/31/96	Orange County	School (\$5,000,000 for '96 & \$9,000,000 for '97: both @ 4.92 fixed)	I.P.	14,000,000	Branch Banking & Trust Co.	4.92% Fixed		2011
12/31/96	Orange County	School	I.P.	4,000,000	Branch Banking & Trust Co.	5.82% Fixed		2011
12/31/96	Wilson County	School (\$8,500,000 for '96 & \$8,500,000 for '97: both @ 5.07% fixed)	I.P.	17,000,000	Wachovia Bank of NC NA	5.07% Fixed		2011
12/31/96	Wilson County	School	I.P.	17,000,000	Branch Banking & Trust Co.	5.07% Fixed		2011
12/31/96	Albemarle Mental Health Center	Mental Health	I.P.	300,000	Centura Bank	5.84% Fixed		2011
12/31/96	Albemarle Mental Health Center	Purchase & Rehabilitation of 7 units for affordable housing	I.P.	205,000	Branch Banking & Trust Co.	Years 1 - 7 @ 5.97% , years 8 - 14	69% of Prime with floor of 5.75% & ceiling of 12.65% , year 15 will be repriced (All for the above for \$105,000)	2011
12/16/96	Black Mountain	Recreation (Lighted Ball Fields)	I.P.	142,847	First Union National Bank	Prime plus .25% adjusted daily with floor of 6.875% & ceiling of 10.875%		2004
12/16/96	Lillington	Sewer Lines	I.P.	320,000	Branch Banking & Trust Co.	5.50% Fixed		2001
12/16/96	Monroe	Aquatics & Fitness Center	I.P.	4,800,000	First Union National Bank	4.83% Fixed		2011
12/16/96	Sandyfield	Municipal Building	I.P.	52,000	United Carolina Bank	5.12% Fixed		2011
12/16/96	Sandyfield	Municipal Building	I.P.	52,000	United Carolina Bank	6.34% Fixed		2011

FINANCING AGREEMENT REPORT

LGCA APPROVAL	UNIT	PURPOSE	TYPE OF FINANCING	AMOUNT APPROVED	LENDER	APPROVAL RATE (MAX)	EXPECTED RATE	MATURITY
1/7/97	Clayton Morrisville	Recreation	I.P.	520,000	Branch Banking & Trust Co.	4.49% Fixed	4.97% Fixed	2002
1/7/97	Oakboro	Law Enforcement Sanitary Sewer	I.P. I.P.	685,000 2,211,000	Branch Banking & Trust Co. Bank of Stanly	5.281% Fixed for years 1-5, years adjusted every 5 years to a rate 89% of the rate for 60 month US Treasury securities (last day of each 5 year period) with a ceiling of 8.5% and floor of 3.5%) APR 8.15%	4.97% Fixed	2007
2-4-97	Dunn	Fire Station	I.P.	190,000	First-Citizens Bank & Trust Co.	5.162% fixed for yrs 1-4, yrs 5-20 adjusted every 4 yrs to a rate 89% of the rate for 48 month US Treasury (last day of each year period, with a ceiling of 8.5% & floor of 3.5%	5.12%	2002
2-4-97	Locust	Sanitary Sewer	I.P.	3,185,275	Bank of Stanly	5.47%	5.47%	2017
2-4-97	Ranlo	Sanitary Sewer	I.P.	1,200,000	BB&T	5.12%	5.12%	2012
2-4-97	Smithfield	Water	I.P.	878,537.50	BB&T	4.80%	4.80%	2006
2-4-97	Wilson, City of	Municipal Building	I.P.	1,000,000	First-Citizens Bank & Trust Co.	5.15%	5.15%	2007
2-4-97	Beaufort, County of	Electric	I.P.	2,000,000	BB&T	4.40%	4.40%	2004
2-4-97	Bladen	County Building (Health Dept.)	I.P.	2,000,000	NationsBank	5.30%	5.30%	2005
2-4-97	Forsyth	County Building (DSS)	I.P.	525,000	Wachovia Bank of NC	Lease payment \$162,303 for 1st yr, remaining yrs adjusted to Cost of Living Index of US	4.88% fixed	2007
2-4-97	Henderson, County of	Library	Lease	1,823,024	Covington-Wilson, Inc.	4.49% fixed	4.49% fixed	2002
2-4-97	Jackson	Sanitary Sewer	I.P.	440,000	BB&T	4.88% fixed	4.88% fixed	2012
2-4-97	Sampson	Library School Agrl-Expo Center	I.P. I.P. I.P.	296,000 8,000,000 2,580,000	BB&T BB&T First-Citizens Bank & Trust Co.	4.83%	4.83%	2009

\$ 236,133,743 Total from July 1, 1995 to February 4, 1997

\$ 2,419,460,657 Grand Total

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

3-27-97

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Lucius PULLEN	ATTORNEY
Michelle Cook	Weyerhaeuser
Cam Cover	BPMHL
Nancy Bradley	NCCBS
Amy Jo Bain	Smith Anderson
Amy Tindler	Auntor & Williams
Natalie Staskis	Charlotte Chamber
Alie Garland	Electricity
Pauli Magon	NFIB
Denny Williams	XSCRA
Jim L...	UC AFI
J. Allen Adams	Parker, Poe, Adams & BERNSTEIN

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

3-27-97
Date

Name of Committee

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bob Hays	Dept. of State Treas.
John Bailey	D. O. R.
Willie Riddick	DDA
Ed Brackett	Asheville Citizen-Times
David Simmons	Zeb Alley, PA
Mike Carpenter	NCHSA
Sandy Sads	WCSR
DAVID LAWRENCE	INTE OF COST

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT

Senator John Kerr, Co-Chair
Senator David Hoyle, Co-Chair

Wednesday, April 02, 1997

SENATOR KERR,

submits the following with recommendations as to passage:

**UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL**

H.B.(CS #1)295

No Tax on Intangible Property.

Draft Number: PCS 7176
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 1

Committee Clerk Comment:

SENATE FINANCE COMMITTEE

TUESDAY, APRIL 1, 1997

12 NOON - 544 LOB

The Senate Finance Committee met on April 1, 1997, with Senator Kerr presiding. There were 27 committee members present.

The following bills were on the agenda:

S.B. 123 - EXEMPT AUDIOVISUAL MASTERS

Senator Ballantine was recognized to explain S.B. 123. Copy of Bill, Fiscal Note, and letters of support included in the minutes. After a general discussion, Senator Cochrane was recognized for a motion for a "favorable" report and this motion carried. S.B. 123 will be given a "favorable" report and re-referred to Appropriations.

S.B. 389 - BASEBALL PARK DISTRICTS

Senator Hoyle was recognized to explain and to give a background on S.B. 389. Senator McDaniel was also recognized for further explanation of this bill. Senator Hoyle moved for adoption of committee substitute for this bill and the motion carried.

The following spoke in support of this bill:

Darrell Frye, Chairman of the Piedmont Triad Partnership, Greensboro, NC, and serves as a County Commissioner of Randolph County

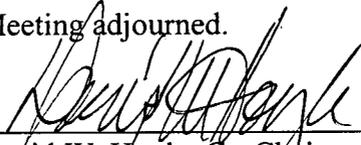
Bob Starkey, Arthur Anderson, Partner in Charge of Arthur Anderson's Worldwide Professional Sports Team and consultant to major league baseball on a number of issues

Don Beaver, working with the ownership groups of NC Major League Baseball, LCC

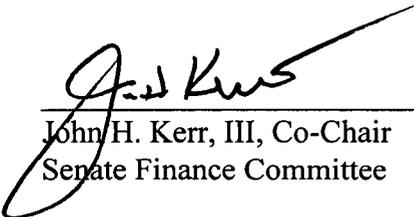
At the conclusion of the presentations by the speakers, there were several questions and concerns from the committee members to the bill sponsors and staff. Senator Hoyle assured the committee that all questions would be answered and all concerns addressed when the bill is again before the committee for further discussion and a vote.

Senator Webster requested that a group of his people who oppose this bill be allowed to speak at the meeting tomorrow and he was assured by Senator Kerr that they would be welcome to speak.

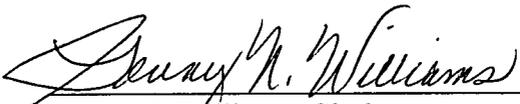
Meeting adjourned.



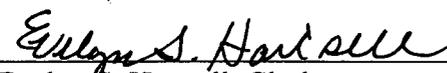
David W. Hoyle, Co-Chair
Senate Finance Committee



John H. Kerr, III, Co-Chair
Senate Finance Committee



Penny N. Williams, Clerk



Evelyn S. Hartsell, Clerk

NOTE:

Agenda is Attachment # 1
Visitors' Sign Up is Attachment # 2
Committee Report is Attachment # 3

Attachment # 1

AGENDA

SENATE FINANCE COMMITTEE

Tuesday, April 1, 1997

12 Noon - Room 544

S.B. 123 - Exempt Audiovisual Masters - Sen. Ballantine

S.B. 389 - Baseball Park Districts - Sen. Hoyle

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 123

Short Title: Exempt Audiovisual Masters.

(Public)

Sponsors: Senators Ballantine; Allran, Carpenter, Carrington, Clark, Cochrane, Forrester, Foxx, Hartsell, Horton, Hoyle, Jordan, Kerr, Martin of Pitt, McDaniel, Page, Rand, Rucho, Shaw of Guilford, Soles, Warren, and Webster.

Referred to: Finance.

February 17, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO EXEMPT FROM SALES TAX AUDIOVISUAL MASTER TAPES
3 USED IN THE MOTION PICTURE, TELEVISION, AND AUDIO
4 PRODUCTION INDUSTRIES.
5 The General Assembly of North Carolina enacts:
6 Section 1. G.S. 105-164.13 is amended by adding a new subdivision to
7 read:
8 "(22a) Sales of audiovisual masters made or used by a production
9 company in making visual and audio images for first generation
10 reproduction. For the purpose of this subdivision, an 'audiovisual
11 master' is an audio or video film, tape, or disk or another audio or
12 video storage device from which all other copies are made. For
13 the purpose of this subdivision, a production company is a person
14 engaged in the business of making motion picture, television, or
15 radio images for theatrical, commercial, advertising, or educational
16 purposes."
17 Section 2. This act becomes effective July 1, 1997, and applies to sales
18 made on or after that date.

**NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE**

BILL NUMBER: SB 123
SHORT TITLE: Exempt Audio Visual Masters
SPONSOR(S): Senator Patrick Ballantine

FISCAL IMPACT					
	Yes ()	No ()	No Estimate Available ()		
	<u>FY 1997-98</u>	<u>FY 1998-99</u>	<u>FY 1999-00</u>	<u>FY 2000-01</u>	<u>FY 2001-02</u>
REVENUES					
State (General Fund)	-\$1.40	-\$1.59	-\$1.68	-\$1.78	-\$1.88
Local	-.70	-.80	-.84	-.89	-.94
EXPENDITURES The enactment of the bill will have no impact on the budget requirements of the Department of Revenue.					
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue					
EFFECTIVE DATE: Sales occurring on or after July 1, 1997					

BILL SUMMARY: Exempts from state and local sales tax master tapes utilized by the motion picture, television, and audio production industries in making visual and aural first-generation images for reproduction.

ASSUMPTIONS AND METHODOLOGY: The estimate was developed through discussions with the Department of Revenue, the State Film Office, and a major company involved in post-production activities. The estimate is based on \$37.5 million of taxable post-production activity in the State and 6% annual growth (based on state economic forecast). The exemption would not apply to the production of duplicate tapes.

TECHNICAL CONSIDERATIONS:

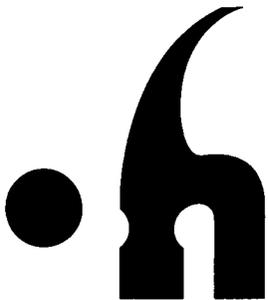
FISCAL RESEARCH DIVISION (733-4910)

PREPARED BY: David Crotts

APPROVED BY: Tom L. Covington

DATE: March 26, 1997





Silver Hammer Studios

817 Hamilton Street

P O B o x 3 4 1 2 9

Charlotte, NC 28234-4129

7 0 4 . 3 7 6 . 2 6 4 6

Fax 704.377.0501

WWW.SILVERHAMMER.COM

March 27, 1997

Senator John H. Kerr III
232 Ridgewood Dr.
Goldsboro, N.C. 27533

Dear Senator Kerr:

Thank you for bringing Senate Bill 123 to the attention of the Senate Finance Committee on April 1, 1997.

This bill is critical for the development of the film and video tape production industry in our state.

Please take a few moments to read the single page summary sheet explaining the importance of this bill. Also, the letter from the General Manager of ESPN/Walt Disney's post-production company clearly demonstrates how the current tax policy keeps businesses out of North Carolina.

I hope that you and your fellow Senators will enthusiastically endorse Senate Bill 123 and send it to the floor for approval.

Thank you for taking this important step to insure the healthy development of the film industry in our state.

Sincerely,

Mark de Castrique
General Manager

Bridge Productions/Catwalk Digital Post

BRIDGE PRODUCTIONS

7 0 4 . 3 7 6 . 1 2 1 1

CATWALK DIGITAL MEDIA

7 0 4 . 3 4 2 . 3 3 4 8

CAROLINA PRODUCTION SERVICES

7 0 4 . 3 7 7 . 4 1 6 1

REASONS TO SUPPORT SENATE BILL 123
EXEMPTING FILM AND AUDIO/VIDEO MASTERS FROM RETAIL TAX

North Carolina applies its retail tax code to the creation of film and audio/video Masters, taxing them as if they were an over-the-counter retail sale. This is a major disincentive for the film and video industry to develop full services within our state. For example, a \$1.5 million feature completed in the state, a \$100,000 commercial finished and delivered here, or a multi-media CD-Rom game all trigger 6% sales tax on their total budget. That is comparable to a contractor building the NationsBank Tower, your home, or a room addition and charging 6% retail sales tax on the entire construction cost including materials, labor, and architectural design.

The sales tax encourages resident advertising agencies and producers to complete their larger television projects out of state to avoid the tax. Sophisticated commercial production is important to the film industry because it utilizes the same crafts and technical skills as movie production. A healthy commercial production economy attracts and maintains a crew base which can reside in our state and thrive through diversified production opportunities.

Due to current tax law, production and post-production companies locate outside the state and immediately save 6% on the cost to their clients. For example, ESPN specifically located their post-production facility across the state line from Charlotte.

Virginia, South Carolina, and Georgia do not have this retail tax. Atlanta has developed superior resources in the Southeast because there is no sales tax. Several years ago, Florida enacted an exemption of sales tax on film production and enjoyed a surge of production and an expansion of resident businesses in Orlando and Miami. Because the sales tax is a disincentive for companies to locate in the state, jobs are not being created in the posting segment of the industry. For example, there are no motion picture labs or film transfer facilities in the state.

Industry players estimate the sales tax loss of such an exemption to be approximately \$1.4 million. Because over 50% of production expense is labor, even a modest increase in production would generate income for N.C. citizens and increase our income tax base. This additional money in our economy will also increase sales tax revenue through the increased purchasing power of a well-paid, resident industry labor force.

**CREATIVE
POST &
TRANSFER**

Senator Fountain Odom
North Carolina General Assembly
State Legislative Office Building
Raleigh, North Carolina 27601-2808

March 3, 1997

Dear Senator,

I am writing to you regarding the North Carolina sales tax that is charged on film and video production. This tax is a severe handicap to the development of the film and video post-production industry in our state.

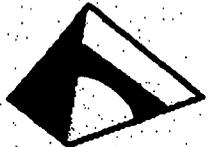
In its current form this tax is charged on the entire budget of any film or video project that is finished in North Carolina. The finishing of the commercial is what we refer to as Post-Production. It includes all of the editing, adding special effects, graphics and music, and the creation of the final product that will be delivered to the client.

If a production company creates a commercial for a total cost on \$100,000 (including creative services, talent, scripts, props and sets, crew and equipment, etc.) and they finish the commercial in Mecklenburg County, a sales tax of 6% is added.

If that same commercial is finished across the border in York County, South Carolina, the only tax charged is on the disposable goods used in the creation of the final master. This would be limited to about \$100 in video tapes.

The difference in costs to producers and advertising agencies means that millions in post-production dollars leaves North Carolina and instead goes to Atlanta, Nashville, Baltimore, New York and even Los Angeles. With that revenue goes dozens of quality jobs.

I am the General Manager of Creative Post and Transfer. We are a video post-production facility located in Fort Mill, South Carolina, and are a subsidiary of ESPN. This tax issue is the only reason that we're located in York County.



P.O. BOX 410205
CHARLOTTE, N.C.
281-0205
(803) 548-POST (7678)
(704) 331-9720

We have a full time staff of 29 people, annual revenues of close to four million dollars, and an annual payroll of over one million dollars.

ESPN is looking into expanding our facility and building a new state-of-the-art broadcast and production center, the goal being to make us the back-up broadcast facility for ESPN (a Walt Disney Company). This tax issue removes North Carolina from any consideration.

In the last two years, at least three separate post-production companies with national reputations have looked at building high-end state-of-the-art facilities in the Charlotte area. They have all come to the same conclusion: this sales tax on film and video production keeps North Carolina from being a viable site for a high-end post-production facility.

This is an exciting industry that creates high paying quality jobs. it's a shame that North Carolina can't be a part of it. Senate Bill #123 will correct this problem. I hope that we can count on your support.



Robert DeLano
General Manager
Creative Post & Transfer

CC: The Honorable Jim Hunt, Governor, North Carolina
Senator Patrick J. Ballantine
Ms. Marcie Kelso, Director, Carolinas Partnership Film Division
Mr. Terry Bishop, President, Charlotte Film & Video Association
Mr. Mark DeCastrique, C.O.O., Silver Hammer Studios

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 389

Short Title: Baseball Park Districts.

(Public)

Sponsors: Senators Hoyle, McDaniel, Martin of Guilford, and Shaw of Guilford.

Referred to: Finance.

March 13, 1997

- 1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH THE NORTH CAROLINA TRIAD METROPOLITAN
3 BASEBALL PARK DISTRICT AND TO ALLOW BASEBALL PARK
4 DISTRICTS TO ENTER INTO INSTALLMENT FINANCING AGREEMENTS.
5 The General Assembly of North Carolina enacts:
6 Section 1. A Charter for the North Carolina Triad Metropolitan Baseball
7 Park District is enacted as follows:
8 "CHARTER OF THE NORTH CAROLINA
9 TRIAD METROPOLITAN BASEBALL PARK DISTRICT.
10 "Section 1. **Legislative Findings.** -- (a) The General Assembly determines that the
11 construction, financing, and operation of a major league baseball park in the Triad
12 area serves a public purpose in that it will:
13 (1) Enhance the opportunities for recreational entertainment for all
14 North Carolinians;
15 (2) Generate new economic activity in the Triad area, leading to the
16 establishment of many new businesses;
17 (3) Encourage economic development throughout North Carolina by
18 enhancing the State's attractiveness to new and relocated
19 businesses and its attractiveness as a tourist destination; and
20 (4) Provide numerous new jobs for North Carolinians.
21 (b) The General Assembly further determines that because constructing a major
22 league baseball park is an extraordinarily complex task and because being able to

1 construct such a park in as short a time as possible is crucial to the award of a major
2 league baseball franchise to the Triad area, it is necessary to waive the application of
3 the usual construction contracting requirements for the park's construction.

4 "Sec. 2. **Definitions.** -- The words and phrases defined in this section have the
5 meanings indicated when used in this Charter, unless the context clearly requires
6 another meaning.

7 (1) 'Authority' means the North Carolina Triad Metropolitan Baseball
8 Park Authority.

9 (2) 'District' means the North Carolina Triad Metropolitan Baseball
10 Park District, established by this Charter.

11 (3) 'Major League Baseball' means the organization that controls the
12 administrative functions for the ownership and operation of major
13 league baseball operations in the United States and Canada.

14 (4) 'Major league baseball park' means a sports facility designed for
15 use primarily as a major league baseball park or stadium. Such a
16 facility may include, without limitation, features such as parking
17 areas and facilities, office facilities for the District or any team or
18 other user of the facility, associated retail and other commercial
19 facilities, and other ancillary facilities necessary or desirable for the
20 sports facility and its success. Such a facility also includes the
21 landscaped grounds surrounding the baseball park and related and
22 ancillary facilities.

23 "Sec. 3. **District Incorporated.** -- The inhabitants of the counties listed in this
24 section are a body corporate and politic and a political subdivision of the State under
25 the name 'North Carolina Triad Metropolitan Baseball Park District'. The District
26 comprises the following counties: Alamance, Caswell, Davidson, Davie, Forsyth,
27 Guilford, Montgomery, Randolph, Rockingham, Stokes, Surry, and Yadkin. The
28 District is a baseball park district.

29 "Sec. 4. **Authority Established.** -- (a) The District is governed by the Authority,
30 which has 15 members, appointed as follows:

31 (1) The Governor appoints five members, one at-large who shall be
32 the chair of the Authority, one each of whom at the time of
33 appointment were residents of Alamance and Davidson Counties
34 and two of whom at the time of appointment were residents of
35 Forsyth County.

36 (2) The General Assembly appoints five members upon the
37 recommendation of the President Pro Tempore of the Senate, one
38 each of whom at the time of appointment were residents of
39 Caswell, Rockingham, and Montgomery Counties and two of
40 whom at the time of appointment were residents of Guilford
41 County.

42 (3) The General Assembly appoints five members upon the
43 recommendation of the Speaker of the House of Representatives,

1 one each of whom at the time of appointment were residents of
2 Randolph, Stokes, Surry, Yadkin, and Davie Counties.

3 (b) Members of the Authority serve three-year terms, but in appointing the initial
4 members of the Authority, the Governor, the General Assembly upon the
5 recommendation of the Speaker of the House of Representatives and the General
6 Assembly upon the recommendation of the President Pro Tempore shall each
7 designate one of their appointees to serve until July 1, 1999, two to serve until July 1,
8 2000, and two to serve until July 1, 2001. If a vacancy occurs in the membership of
9 the Authority, and the person causing the vacancy was appointed by the Governor,
10 the Governor shall fill the vacancy for the remainder of the unexpired term. If the
11 person causing the vacancy was appointed by the General Assembly, the vacancy
12 shall be filled pursuant to G.S. 120-122. Initial terms commence upon appointment.

13 (c) The Authority may elect a vice-chair and such other officers as it determines
14 for terms established in the bylaws of the Authority.

15 (d) Once the Governor has appointed the initial chair of the Authority, the chair
16 shall determine the time and place of the Authority's initial meeting and shall cause
17 notice of the meeting to be given to each member of the Authority and to the public.
18 Thereafter, the Authority may establish a schedule of regular meetings and may
19 provide in its bylaws for the manner in which special meetings may be called.

20 (e) A majority of the members of the Authority, not counting vacant seats,
21 constitutes a quorum. The Authority may meet by conference telephone call as
22 provided by G.S. 143-318.13(a).

23 (f) The Authority may take action only upon the vote of a majority of its
24 members, not counting vacant seats and not counting members who have disclosed a
25 conflict of interest in the matter under discussion and vote.

26 (g) The Authority may adopt bylaws for the regulation of its affairs and the
27 conduct of its business, including rules of procedure, consistent with this Charter and
28 other applicable statutes.

29 (h) Members of the Authority are not compensated for their service, but the
30 Authority may provide that members are to be reimbursed for actual expenses
31 incurred while serving as an Authority member.

32 "Sec. 5. **Conflicts of Interest.** -- (a) G.S. 14-234 applies to the District and its
33 employees and to the members of the Authority.

34 (b) If a member of the Authority, or any member of the immediate family of a
35 member of the Authority, or the employer of a member of the Authority has a direct
36 financial interest in any matter that comes before the Authority, the affected member
37 shall disclose the interest and shall abstain from participating in the discussion of or
38 vote on the matter.

39 (c) Violation of this section does not affect the validity of any debts or obligations
40 incurred by the district.

41 "Sec. 6. **District Powers.** -- In addition to powers set out elsewhere in this Charter
42 and powers granted to the District by other statutes, the District may:

43 (1) Enter into contracts.

44 (2) Sue and be sued in its own name, and plead and be impleaded.

- 1 (3) Adopt an official seal.
- 2 (4) Apply for, accept, receive, and disburse funds and grants made
3 available to it by the United States of America or any agency
4 thereof, the State of North Carolina or any agency thereof, any
5 unit of local government or other political subdivision, and any
6 private entity or person; and accept donations of property. The
7 District may comply with the conditions and requirements
8 respecting any gift, grant, or donation of any property or funds.
- 9 (5) Employ and compensate such personnel as the Authority
10 determines. The Authority may delegate to any employee of the
11 District the authority to employ, supervise, discipline, or discharge
12 other employees of the District. The District is subject to G.S.
13 153A-98 with respect to the personnel files of its employees.
- 14 (6) Contract with consultants and other independent contractors.
- 15 (7) Contract with and appropriate money to any person, association,
16 or corporation, public or private, in order to carry out any public
17 purpose that the District is authorized by this Charter or other law
18 to engage in.
- 19 (8) Procure insurance to protect against loss of the District's property
20 or other assets, and against liabilities incurred by the District, the
21 Authority, or any officer, employee, or agent of the District. The
22 District may, pursuant to G.S. 160A-167, provide the defense of
23 any officer or employee of the District.
- 24 (9) Acquire and maintain administrative offices.
- 25 (10) Acquire by purchase, lease, gift, eminent domain, or otherwise, or
26 obtain options for the acquisition of, any real or personal property
27 or interest therein, in order to carry out the authorized activities of
28 the District. The District may not acquire property through the
29 exercise of eminent domain until after Major League Baseball has
30 announced approval of the award of a franchise for a location
31 within the District. In exercising the power of eminent domain,
32 the District shall follow the procedures of Chapter 40A of the
33 General Statutes applicable to local public condemnors.
- 34 (11) Sell, lease, exchange, transfer, or otherwise dispose of, or grant
35 options for any such purposes with respect to, any real or personal
36 property or interest therein. In disposing of property or any
37 interest in property, the District may proceed under such
38 procedures as it determines and is not subject to any procedural
39 requirements not included in this Charter.
- 40 (12) Promote award of a major league baseball franchise to a location
41 within the District.
- 42 (13) Design, construct, equip, improve, promote, operate, maintain,
43 lease, or contract for the operation and maintenance of a major
44 league baseball park. The baseball park shall be located on a tract

1 of land at least forty percent (40%) of which is located in each of
2 the two most populous counties in the district, according to the
3 most recent decennial federal census. If the Authority resolves that
4 construction of a major league baseball park or any portion thereof
5 must be expedited for good cause as determined by the Authority:

6 a. The District is exempt from the following statutes: G.S. 143-
7 128, subsections (a) through (e); G.S. 143-129; 143-131; and
8 143-132; or

9 b. The District may contract with the entity that has been
10 awarded the major league baseball franchise for that entity,
11 or an affiliated, parent, or subsidiary entity, to construct the
12 baseball park, with clear title to the baseball park passing to
13 the District at the completion of construction. Construction
14 under this paragraph is not subject to State laws on public
15 contract bidding.

16 If the Authority does adopt such a resolution, the Authority shall
17 establish and use alternative methods of contracting that are fair
18 and competitive, in the conclusive judgment of the Authority. The
19 District may contract for the right to name any park or other
20 facility owned by the District, or may include the right to contract
21 for the park's or facility's name in any lease of or contract for the
22 operation of the park or facility.

23 (14) Acquire real property or interests in real property for highway
24 improvements that will benefit the major league baseball park, and
25 convey, with or without monetary consideration, such property or
26 interests in property to the Department of Transportation. The
27 District may not acquire property for highway improvements
28 through the exercise of eminent domain until after Major League
29 Baseball has announced approval of the award of a franchise for a
30 location within the District. In the acquisition by eminent domain
31 of such real property or interests in real property, the District may
32 use the procedures of Article 9 of Chapter 136 of the General
33 Statutes. For the purpose of this subdivision, the words
34 'Department of Transportation' appear in Article 9, they are
35 deemed to include the District or Authority, and whenever the
36 words 'Administrator', 'Administrator of Highways',
37 'Administrator of the Department of Transportation', or
38 'Chairman of the Department of Transportation' appear in Article
39 9, they are deemed to include an appropriate official of the District
40 as designated by the Authority.

41 (15) Establish and collect fees and charges for the use of its facilities.

42 (16) Enter into partnerships, joint ventures, common ownership,
43 operating agreements, and other arrangements with other persons
44 to further District purposes.

1 (17) Do all acts and things necessary, convenient, or desirable to carry
2 out the purposes of and exercise the powers granted to it by this
3 Charter.

4 "Sec. 7. **Triple Net Lease Required.** -- Any lease of the baseball park for the
5 purpose of operating it for Major League Baseball must be triple net for a minimum
6 of 25 years, with the lessee responsible for upkeep and maintenance.

7 "Sec. 8. **District Taxes.** -- (a) Authorization. -- The Authority may, by resolution,
8 subject to the conditions set out in this subsection, levy a temporary local sales and
9 use tax at the rate of one percent (1%) within the District as provided in this section.
10 Before it may adopt such a resolution, however, two conditions must be met: (i)
11 Major League Baseball must have announced approval of the award of a franchise for
12 a location within the District, and (ii) the District's voters must have approved the
13 levy of the tax in a referendum called and held for that purpose.

14 (b) Referendum. -- The State Board of Elections shall, upon the written request of
15 the Authority, call a referendum for the purpose of submitting to the voters of the
16 District the question of whether a temporary sales and use tax at the rate of one
17 percent (1%) will be levied in the District. The date of the referendum shall be set
18 by the Authority, which may set it for any day, including the day of any regular or
19 special election held for another purpose; the referendum, however, may not
20 otherwise be held within 50 days before or 50 days after a statewide primary,
21 election, or referendum. In fixing the date of the referendum, the Authority shall
22 consult with one or more of the county boards of elections within the District in
23 order that the referendum shall not unduly interfere with other elections or
24 referendums already scheduled or in process. Notice of the referendum shall be
25 given in the manner and at the times required by G.S. 163-33(8). The referendum
26 and the registration of voters therefor shall be held under and in accordance with the
27 general laws of the State. Absentee ballots shall be authorized in the referendum.

28 Ballots, voting systems authorized by Article 14 of Chapter 163 of the General
29 Statutes, or both may be used in accordance with rules prescribed by the State Board
30 of Elections. The question to be presented on the ballots or voting systems shall be
31 substantially as follows:

32 'MAJOR LEAGUE BASEBALL PARK INITIATIVE

33 [] YES [] NO

34 When Major League Baseball has announced approval of a major league baseball
35 franchise for a location within the North Carolina Triad Metropolitan Baseball Park
36 District, may the District help finance no more than two-thirds of the cost of a major
37 league baseball park through levy of a temporary one percent (1%) sales and use tax
38 within the District, for no longer than one year?

39 The results of the referendum shall be canvassed and declared as provided by law
40 for elections of State officers; the results of the referendum shall be certified by the
41 State Board of Elections to the Authority in the manner and at the time provided by
42 the general election laws of the State for certifications of State elections. If a majority
43 of persons voting in the referendum vote in favor of levying the tax, the issue is
44 approved.

1 (c) Scope; Administration. -- Except as provided in this section, the adoption, levy,
2 scope, and collection of the tax shall be in accordance with Article 39 of Chapter 105
3 of the General Statutes as if the District were a county. The Secretary of Revenue
4 shall distribute the net proceeds of the tax to the Authority.

5 (d) Effective Date of Tax. -- A tax levied pursuant to this section shall become
6 effective on the date specified in the resolution levying the tax. That date must be
7 the first day of a calendar month, however, and may not be earlier than the first day
8 of the second month after the date the resolution is adopted.

9 (e) Use of Proceeds. -- The Authority may use the proceeds of a tax levied
10 pursuant to this section for any authorized activities of the district. Any of these
11 proceeds used to design, construct, equip, or improve a major league baseball park as
12 provided in Section 6(13) must be matched by private funds on the basis of one
13 dollar (\$1.00) of private funds used for this purpose for every two dollars (\$2.00) of
14 tax proceeds used for this purpose. Any of these proceeds not matched as required
15 in this subsection shall not be used to design, construct, equip, or improve a major
16 league baseball park as provided in Section (13).

17 (f) Termination of Tax. -- The authority to levy a tax pursuant to this section
18 terminates on the first day of the twelfth month after the effective date of the levy of
19 the tax.

20 "Sec. 9. **Budgeting and Fiscal Control.** -- The District is a unit of local government
21 under the Local Government Budget and Fiscal Control Act.

22 "Sec. 10. **Assistance From Local Governments.** -- Any county, city or town, or
23 other unit of local government or public authority located within the District may
24 contribute or advance moneys or other assets or services to the District. The District
25 may reimburse a local government or public authority for any such advance once it
26 is receiving the proceeds of any tax levied by it pursuant to this Charter or otherwise
27 has funds available to do so.

28 "Sec. 11. **Zoning and Annexation.** -- (a) The District may regulate land use upon
29 real property owned by it, and such property is not subject to any zoning ordinance
30 adopted by a county or city.

31 (b) Real property owned by the District is not subject to annexation pursuant to
32 Part 2 or 3 of Article 4A of Chapter 160A of the General Statutes."

33 Section 2. The General Statutes are amended by adding a new Chapter
34 to read:

35 "Chapter 160C.

36 "Baseball Park Districts.

37 "§ 160C-1. Baseball park districts.

38 The General Assembly may establish baseball park districts as bodies political and
39 corporate and political subdivisions of the State."

40 Section 3. G.S. 160A-20(h) reads as rewritten:

41 "(h) As used in this section, the term 'unit of local government' means any of the
42 following:

43 (1) A county.

44 (2) A city.

- 1 (3) A water and sewer authority created under Article 1 of Chapter
2 162A of the General Statutes.
- 3 (4) An airport authority whose situs is entirely within a county that
4 has (i) a population of over 120,000 according to the most recent
5 federal decennial census and (ii) an area of less than 200 square
6 miles.
- 7 (5) An airport authority in a county in which there are two
8 incorporated municipalities with a population of more than 65,000
9 according to the most recent federal decennial census.
- 10 (5a) An airport board or commission authorized by agreement between
11 two cities pursuant to G.S. 63-56, one of which is located partially
12 but not wholly in the county in which the jointly owned airport is
13 located, and where the board or commission provided water and
14 wastewater services off the airport premises before January 1, 1995;
15 provided that the authority granted by this section may be
16 exercised by such a board or commission with respect to water and
17 wastewater systems or improvements only.
- 18 (6) A local school administrative unit (i) that is located in a county
19 that has a population of over 90,000 according to the most recent
20 federal decennial census and (ii) whose board of education is
21 authorized to levy a school tax.
- 22 (7) An area mental health, developmental disabilities, and substance
23 abuse authority, acting in accordance with G.S. 122C-147.
- 24 (8) A consolidated city-county, as defined by G.S. 160B-2(1).
- 25 (9) A baseball park district."

26 Section 4. G.S. 159-148(a) reads as rewritten:

27 "(a) Except as provided in subsection (b) of this section, this Article applies to
28 any contract, agreement, memorandum of understanding, and any other transaction
29 having the force and effect of a contract (other than agreements made in connection
30 with the issuance of revenue bonds, special obligation bonds issued pursuant to
31 Chapter 159I of the General Statutes, or of general obligation bonds additionally
32 secured by a pledge of revenues) made or entered into by a unit of local government
33 (as defined by G.S. 159-7(b) or, in the case of a special obligation bond, as defined in
34 Chapter 159I of the General Statutes), relating to the lease, acquisition, or
35 construction of capital assets, which contract

- 36 (1) Extends for five or more years from the date of the contract,
37 including periods that may be added to the original term through
38 the exercise of options to renew or extend, and
- 39 (2) Obligates the unit to pay sums of money to another, without regard
40 to whether the payee is a party to the contract, and
- 41 (3) Obligates the unit over the full term of the contract, including
42 periods that may be added to the original term through the
43 exercise of options to renew or extend, to the extent of at least five
44 hundred thousand dollars (\$500,000) for baseball park districts

- 1 and, for other units, to the extent of five hundred thousand dollars
2 (\$500,000) or a sum equal to one tenth of one percent (1/10 of 1%)
3 of the assessed value of property subject to taxation by the
4 contracting unit, whichever is less, and
5 (4) Obligates the unit, expressly or by implication, to exercise its
6 power to levy taxes either to make payments falling due under the
7 contract, or to pay any judgment entered against the unit as a
8 result of the unit's breach of the contract.
9 Contingent obligation shall be included in calculating the value of the contract.
10 Several contracts that are all related to the same undertaking shall be deemed a
11 single contract for the purposes of this Article. When several contracts are
12 considered as a single contract, the term shall be that of the contract having the
13 longest term, and the sums to fall due shall be the total of all sums to fall due under
14 all single contracts in the group."
15 Section 5. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

D

SENATE BILL 389
Proposed Committee Substitute S389-PCS2651

Short Title: Baseball Park Districts.

(Public)

Sponsors:

Referred to:

March 13, 1997

- 1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH THE NORTH CAROLINA TRIAD METROPOLITAN
3 BASEBALL PARK DISTRICT, TO PROVIDE FOR A REFERENDUM ON
4 BASEBALL PARK FINANCING ON A DATE DESIGNATED BY THE
5 DISTRICT AND TO ALLOW BASEBALL PARK DISTRICTS TO ENTER
6 INTO INSTALLMENT FINANCING AGREEMENTS.
7 The General Assembly of North Carolina enacts:
8 Section 1. A Charter for the North Carolina Triad Metropolitan Baseball
9 Park District is enacted as follows:
10 "CHARTER OF THE NORTH CAROLINA
11 TRIAD METROPOLITAN BASEBALL PARK DISTRICT.
12 "Section 1. **Legislative Findings.** -- (a) The General Assembly determines that the
13 construction, financing, and operation of a major league baseball park in the Triad
14 area serves a public purpose in that it will:
15 (1) Enhance the opportunities for recreational entertainment for all
16 North Carolinians;
17 (2) Generate new economic activity in the Triad area, leading to the
18 establishment of many new businesses;
19 (3) Encourage economic development throughout North Carolina by
20 enhancing the State's attractiveness to new and relocated
21 businesses and its attractiveness as a tourist destination; and
22 (4) Provide numerous new jobs for North Carolinians.

1 (b) The General Assembly further determines that because constructing a major
2 league baseball park is an extraordinarily complex task and because being able to
3 construct such a park in as short a time as possible is crucial to the award of a major
4 league baseball franchise to the Triad area, it is necessary to waive the application of
5 the usual construction contracting requirements for the park's construction.

6 "Sec. 2. **Definitions.** -- The words and phrases defined in this section have the
7 meanings indicated when used in this Charter, unless the context clearly requires
8 another meaning.

9 (1) 'Authority' means the North Carolina Triad Metropolitan Baseball
10 Park Authority.

11 (2) 'District' means the North Carolina Triad Metropolitan Baseball
12 Park District, established by this Charter.

13 (3) 'Major League Baseball' means the organization that controls the
14 administrative functions for the ownership and operation of major
15 league baseball operations in the United States and Canada.

16 (4) 'Major league baseball park' means a sports facility designed for
17 use primarily as a major league baseball park or stadium. Such a
18 facility may include, without limitation, features such as parking
19 areas and facilities, office facilities for the District or any team or
20 other user of the facility, associated retail and other commercial
21 facilities, and other ancillary facilities necessary or desirable for the
22 sports facility and its success. Such a facility also includes the
23 landscaped grounds surrounding the baseball park and related and
24 ancillary facilities.

25 "Sec. 3. **District Incorporated.** -- The inhabitants of the counties listed in this
26 section are a body corporate and politic and a political subdivision of the State under
27 the name 'North Carolina Triad Metropolitan Baseball Park District'. The District
28 initially comprises the following counties: Alamance, Caswell, Davidson, Davie,
29 Forsyth, Guilford, Montgomery, Randolph, Rockingham, Stokes, Surry, and Yadkin.
30 If the voters in a county do not vote in favor of the question in Section 8 of this
31 Charter, then upon the certification of the results of the election, that county is
32 removed from the district. The District is a baseball park district.

33 "Sec. 4. **Authority Established.** -- (a) The District is governed by the Authority,
34 which has 15 members, appointed as follows:

35 (1) The Governor appoints five members, one at-large who shall be
36 the chair of the Authority, one each of whom at the time of
37 appointment were residents of Alamance and Davidson Counties
38 and two of whom at the time of appointment were residents of
39 Forsyth County.

40 (2) The General Assembly appoints five members upon the
41 recommendation of the President Pro Tempore of the Senate, one
42 each of whom at the time of appointment were residents of
43 Caswell, Davie, and Montgomery Counties and two of whom at the
44 time of appointment were residents of Guilford County.

- 1 (3) The General Assembly appoints five members upon the
2 recommendation of the Speaker of the House of Representatives,
3 one each of whom at the time of appointment were residents of
4 Randolph, Stokes, Surry, Yadkin, and Rockingham Counties.
- 5 (b) Members of the Authority serve three-year terms, but in appointing the initial
6 members of the Authority, the Governor, the General Assembly upon the
7 recommendation of the Speaker of the House of Representatives and the General
8 Assembly upon the recommendation of the President Pro Tempore shall each
9 designate one of their appointees to serve until July 1, 1999, two to serve until July 1,
10 2000, and two to serve until July 1, 2001. If a vacancy occurs in the membership of
11 the Authority, and the person causing the vacancy was appointed by the Governor,
12 the Governor shall fill the vacancy for the remainder of the unexpired term. If the
13 person causing the vacancy was appointed by the General Assembly, the vacancy
14 shall be filled pursuant to G.S. 120-122. Initial terms commence upon appointment.
- 15 (c) The Authority may elect a vice-chair and such other officers as it determines
16 for terms established in the bylaws of the Authority.
- 17 (d) Once the Governor has appointed the initial chair of the Authority, the chair
18 shall determine the time and place of the Authority's initial meeting and shall cause
19 notice of the meeting to be given to each member of the Authority and to the public.
20 Thereafter, the Authority may establish a schedule of regular meetings and may
21 provide in its bylaws for the manner in which special meetings may be called.
- 22 (e) A majority of the members of the Authority, not counting vacant seats,
23 constitutes a quorum. The Authority may meet by conference telephone call as
24 provided by G.S. 143-318.13(a).
- 25 (f) The Authority may take action only upon the vote of a majority of its
26 members, not counting vacant seats and not counting members who have disclosed a
27 conflict of interest in the matter under discussion and vote.
- 28 (g) The Authority may adopt bylaws for the regulation of its affairs and the
29 conduct of its business, including rules of procedure, consistent with this Charter and
30 other applicable statutes.
- 31 (h) Members of the Authority are not compensated for their service, but the
32 Authority may provide that members are to be reimbursed for actual expenses
33 incurred while serving as an Authority member.
- 34 (i) If any county is removed from the district as provided by Section 3 of this
35 Charter, any member of the Authority residing in that county is removed, and the
36 appointing authority may appoint a resident of any county remaining in the district to
37 that seat.
- 38 "Sec. 5. **Conflicts of Interest.** -- (a) G.S. 14-234 applies to the District and its
39 employees and to the members of the Authority.
- 40 (b) If a member of the Authority, or any member of the immediate family of a
41 member of the Authority, or the employer of a member of the Authority has a direct
42 financial interest in any matter that comes before the Authority, the affected member
43 shall disclose the interest and shall abstain from participating in the discussion of or
44 vote on the matter.

1 (c) Violation of this section does not affect the validity of any debts or obligations
2 incurred by the district.

3 "Sec. 6. **District Powers.** -- In addition to powers set out elsewhere in this Charter
4 and powers granted to the District by other statutes, the District may:

- 5 (1) Enter into contracts.
- 6 (2) Sue and be sued in its own name, and plead and be impleaded.
- 7 (3) Adopt an official seal.
- 8 (4) Apply for, accept, receive, and disburse funds and grants made
9 available to it by the United States of America or any agency
10 thereof, the State of North Carolina or any agency thereof, any
11 unit of local government or other political subdivision, and any
12 private entity or person; and accept donations of property. The
13 District may comply with the conditions and requirements
14 respecting any gift, grant, or donation of any property or funds.
- 15 (5) Employ and compensate such personnel as the Authority
16 determines. The Authority may delegate to any employee of the
17 District the authority to employ, supervise, discipline, or discharge
18 other employees of the District. The District is subject to G.S.
19 153A-98 with respect to the personnel files of its employees.
- 20 (6) Contract with consultants and other independent contractors.
- 21 (7) Contract with and appropriate money to any person, association,
22 or corporation, public or private, in order to carry out any public
23 purpose that the District is authorized by this Charter or other law
24 to engage in.
- 25 (8) Procure insurance to protect against loss of the District's property
26 or other assets, and against liabilities incurred by the District, the
27 Authority, or any officer, employee, or agent of the District. The
28 District may, pursuant to G.S. 160A-167, provide the defense of
29 any officer or employee of the District.
- 30 (9) Acquire and maintain administrative offices.
- 31 (10) Acquire by purchase, lease, gift, eminent domain, or otherwise, or
32 obtain options for the acquisition of, any real or personal property
33 or interest therein, in order to carry out the authorized activities of
34 the District. The District may not acquire property through the
35 exercise of eminent domain until after Major League Baseball has
36 announced approval of the award of a franchise for a location
37 within the District. In exercising the power of eminent domain,
38 the District shall follow the procedures of Chapter 40A of the
39 General Statutes applicable to local public condemners.
- 40 (11) Sell, lease, exchange, transfer, or otherwise dispose of, or grant
41 options for any such purposes with respect to, any real or personal
42 property or interest therein. In disposing of property or any
43 interest in property, the District may proceed under such

- 1 procedures as it determines and is not subject to any procedural
2 requirements not included in this Charter.
- 3 (12) Promote award of a Major League Baseball franchise to a location
4 within the District.
- 5 (13) Design, construct, equip, improve, promote, operate, maintain,
6 lease, or contract for the operation and maintenance of a major
7 league baseball park. The baseball park shall be located on a tract
8 of land at least forty percent (40%) of which is located in each of
9 the two most populous counties in the district, according to the
10 most recent decennial federal census. If the Authority resolves that
11 construction of a major league baseball park or any portion thereof
12 must be expedited for good cause as determined by the Authority:
- 13 a. The District is exempt from the following statutes: G.S. 143-
14 128, subsections (a) through (e); G.S. 143-129; 143-131; and
15 143-132; or
- 16 b. The District may contract with the entity that has been
17 awarded the major league baseball franchise for that entity,
18 or an affiliated, parent, or subsidiary entity, to construct the
19 baseball park, with clear title to the baseball park passing to
20 the District at the completion of construction. Construction
21 under this paragraph is not subject to State laws on public
22 contract bidding.
- 23 If the Authority does adopt such a resolution, the Authority shall
24 establish and use alternative methods of contracting that are fair
25 and competitive, in the conclusive judgment of the Authority. The
26 Authority shall use North Carolina based contractors where
27 feasible. The District may contract for the right to name any park
28 or other facility owned by the District, or may include the right to
29 contract for the park's or facility's name in any lease of or contract
30 for the operation of the park or facility.
- 31 (14) Acquire real property or interests in real property for highway
32 improvements that will benefit the major league baseball park, and
33 convey, with or without monetary consideration, such property or
34 interests in property to the Department of Transportation. The
35 District may not acquire property for highway improvements
36 through the exercise of eminent domain until after Major League
37 Baseball has announced approval of the award of a franchise for a
38 location within the District. In the acquisition by eminent domain
39 of such real property or interests in real property, the District may
40 use the procedures of Article 9 of Chapter 136 of the General
41 Statutes. For the purpose of this subdivision, whenever the words
42 'Department of Transportation' appear in Article 9, they are
43 deemed to include the District or Authority, and whenever the
44 words 'Administrator', 'Administrator of Highways',

1 'Administrator of the Department of Transportation', or
 2 'Chairman of the Department of Transportation' appear in Article
 3 9, they are deemed to include an appropriate official of the District
 4 as designated by the Authority.

5 (15) Establish and collect fees and charges for the use of its facilities.

6 (16) Enter into partnerships, joint ventures, common ownership,
 7 operating agreements, and other arrangements with other persons
 8 to further District purposes.

9 (17) Do all acts and things necessary, convenient, or desirable to carry
 10 out the purposes of and exercise the powers granted to it by this
 11 Charter.

12 "Sec. 7. **Triple Net Lease Required.** -- Any lease of the baseball park for the
 13 purpose of operating it for Major League Baseball must be triple net for a minimum
 14 of 25 years, with the lessee responsible for upkeep and maintenance.

15 "Sec. 8. **District Taxes.** -- (a) Authorization. -- The Authority may, by resolution,
 16 subject to the conditions set out in this subsection, levy a temporary local sales and
 17 use tax at the rate of one percent (1%) within the District as provided in this section.
 18 Before it may adopt such a resolution, however, two conditions must be met: (i)
 19 Major League Baseball must have announced approval of the award of a franchise for
 20 a location within the District, and (ii) the District's voters must have approved the
 21 levy of the tax in a referendum called and held for that purpose.

22 (b) Referendum. -- The State Board of Elections shall, upon the written request of
 23 the Authority, call a referendum for the purpose of submitting to the voters of the
 24 District the question of whether a temporary sales and use tax at the rate of one
 25 percent (1%) will be levied in the District. The date of the referendum shall be set
 26 by the Authority, which may set it for any day, including the day of any regular or
 27 special election held for another purpose; the referendum, however, may not
 28 otherwise be held within 50 days before or 50 days after a statewide primary,
 29 election, or referendum. In fixing the date of the referendum, the Authority shall
 30 consult with one or more of the county boards of elections within the District in
 31 order that the referendum shall not unduly interfere with other elections or
 32 referendums already scheduled or in process. Notice of the referendum shall be
 33 given in the manner and at the times required by G.S. 163-33(8). The referendum
 34 and the registration of voters therefor shall be held under and in accordance with the
 35 general laws of the State. Absentee ballots shall be authorized in the referendum.

36 Ballots, voting systems authorized by Article 14 of Chapter 163 of the General
 37 Statutes, or both may be used in accordance with rules prescribed by the State Board
 38 of Elections. The question to be presented on the ballots or voting systems shall be
 39 substantially as follows:

40 'MAJOR LEAGUE BASEBALL PARK INITIATIVE

41 [] YES [] NO

42 When Major League Baseball has announced approval of a major league baseball
 43 franchise for a location within the North Carolina Triad Metropolitan Baseball Park
 44 District, may _____ County which is currently in the District help finance no more

1 than two-thirds of the cost of a major league baseball park through levy of a
2 temporary one percent (1%) sales and use tax within the counties remaining in the
3 District, for no longer than one year?"

4 The results of the referendum shall be canvassed and declared as provided by law
5 for elections of State officers; the results of the referendum shall be certified by the
6 State Board of Elections to the Authority in the manner and at the time provided by
7 the general election laws of the State for certifications of State elections. If a majority
8 of persons voting in the referendum in one or more counties vote in favor of levying
9 the tax, the issue is approved. The votes shall be tallied separately in each county in
10 the District. As provided in Section 3 of this act, any county that does not vote in
11 favor of the question is removed from the District, and the tax is imposed in the
12 District consisting of the counties that have approved the levy.

13 (c) Scope; Administration. -- Except as provided in this section, the adoption, levy,
14 scope, and collection of the tax shall be in accordance with Article 39 of Chapter 105
15 of the General Statutes as if the District were a county. The Secretary of Revenue
16 shall distribute the net proceeds of the tax to the Authority.

17 (d) Effective Date of Tax. -- A tax levied pursuant to this section shall become
18 effective on the date specified in the resolution levying the tax. That date must be
19 the first day of a calendar month, however, and may not be earlier than the first day
20 of the second month after the date the resolution is adopted.

21 (e) Use of Proceeds. -- The Authority may use the proceeds of a tax levied
22 pursuant to this section for any authorized activities of the district. Any of these
23 proceeds used to design, construct, equip, or improve a major league baseball park as
24 provided in Section 6(13) of this Charter must be matched by private funds on the
25 basis of at least one dollar (\$1.00) of private funds used for this purpose for every two
26 dollars (\$2.00) of these proceeds used for this purpose. Any of these proceeds not
27 matched as required in this subsection shall not be used to design, construct, equip,
28 or improve a major league baseball park as provided in Section 6(13) of this Charter.

29 (f) Termination of Tax. -- The authority to levy a tax pursuant to this section
30 terminates on the first day of the twelfth month after the effective date of the levy of
31 the tax and cannot be extended for any reason.

32 (g) Refunds After Tax Ends. -- If the Secretary of Revenue refunds a tax imposed
33 by this section after the tax has expired and the proceeds of the tax have been
34 distributed to the Authority, the Secretary shall notify the Authority of the amount of
35 the refund. The Authority shall reimburse the Secretary for the amount of the
36 refund.

37 "Sec. 9. **Budgeting and Fiscal Control.** -- The District is a unit of local government
38 under the Local Government Budget and Fiscal Control Act.

39 "Sec. 10. **Assistance From Local Governments.** -- Any county, city or town, or
40 other unit of local government or public authority located within the District may
41 contribute or advance moneys or other assets or services to the District. The District
42 may reimburse a local government or public authority for any such advance once it
43 is receiving the proceeds of any tax levied by it pursuant to this Charter or otherwise
44 has funds available to do so.

1 "Sec. 11. **Zoning and Annexation.** -- (a) The District may regulate land use upon
2 real property owned by it, and such property is not subject to any zoning ordinance
3 adopted by a county or city.

4 (b) Real property owned by the District is not subject to annexation pursuant to
5 Part 2 or 3 of Article 4A of Chapter 160A of the General Statutes."

6 Section 2. The General Statutes are amended by adding a new Chapter
7 to read:

8 "Chapter 160C.

9 "Baseball Park Districts.

10 "§ 160C-1. Baseball park districts.

11 The General Assembly may establish baseball park districts as bodies political and
12 corporate and political subdivisions of the State."

13 Section 3. G.S. 160A-20(h) reads as rewritten:

14 "(h) As used in this section, the term 'unit of local government' means any of the
15 following:

- 16 (1) A county.
17 (2) A city.
18 (3) A water and sewer authority created under Article 1 of Chapter
19 162A of the General Statutes.
20 (4) An airport authority whose situs is entirely within a county that
21 has (i) a population of over 120,000 according to the most recent
22 federal decennial census and (ii) an area of less than 200 square
23 miles.
24 (5) An airport authority in a county in which there are two
25 incorporated municipalities with a population of more than 65,000
26 according to the most recent federal decennial census.
27 (5a) An airport board or commission authorized by agreement between
28 two cities pursuant to G.S. 63-56, one of which is located partially
29 but not wholly in the county in which the jointly owned airport is
30 located, and where the board or commission provided water and
31 wastewater services off the airport premises before January 1, 1995;
32 provided that the authority granted by this section may be
33 exercised by such a board or commission with respect to water and
34 wastewater systems or improvements only.
35 (6) A local school administrative unit (i) that is located in a county
36 that has a population of over 90,000 according to the most recent
37 federal decennial census and (ii) whose board of education is
38 authorized to levy a school tax.
39 (7) An area mental health, developmental disabilities, and substance
40 abuse authority, acting in accordance with G.S. 122C-147.
41 (8) A consolidated city-county, as defined by G.S. 160B-2(1).
42 (9) A baseball park district."

43 Section 4. G.S. 159-148(a) reads as rewritten:

1 "(a) Except as provided in subsection (b) of this section, this Article applies to
2 any contract, agreement, memorandum of understanding, and any other transaction
3 having the force and effect of a contract (other than agreements made in connection
4 with the issuance of revenue bonds, special obligation bonds issued pursuant to
5 Chapter 159I of the General Statutes, or of general obligation bonds additionally
6 secured by a pledge of revenues) made or entered into by a unit of local government
7 (as defined by G.S. 159-7(b) or, in the case of a special obligation bond, as defined in
8 Chapter 159I of the General Statutes), relating to the lease, acquisition, or
9 construction of capital assets, which contract

- 10 (1) Extends for five or more years from the date of the contract,
11 including periods that may be added to the original term through
12 the exercise of options to renew or extend, and
13 (2) Obligates the unit to pay sums of money to another, without regard
14 to whether the payee is a party to the contract, and
15 (3) Obligates the unit over the full term of the contract, including
16 periods that may be added to the original term through the
17 exercise of options to renew or extend, to the extent of at least five
18 hundred thousand dollars (\$500,000) for baseball park districts
19 and, for other units, to the extent of five hundred thousand dollars
20 (\$500,000) or a sum equal to one tenth of one percent (1/10 of 1%)
21 of the assessed value of property subject to taxation by the
22 contracting unit, whichever is less, and
23 (4) Obligates the unit, expressly or by implication, to exercise its
24 power to levy taxes either to make payments falling due under the
25 contract, or to pay any judgment entered against the unit as a
26 result of the unit's breach of the contract.

27 Contingent obligation shall be included in calculating the value of the contract.
28 Several contracts that are all related to the same undertaking shall be deemed a
29 single contract for the purposes of this Article. When several contracts are
30 considered as a single contract, the term shall be that of the contract having the
31 longest term, and the sums to fall due shall be the total of all sums to fall due under
32 all single contracts in the group."

33 Section 5. Notwithstanding G.S. 105-259, the Department of Revenue
34 may furnish to the finance officer of the North Carolina Triad Metropolitan Baseball
35 Park Authority information on the sales and use tax levied by that Authority.

36 Section 6. This act is effective when it becomes law.

EXPLANATION OF SENATE BILL 389
Baseball Park Districts

TO: Senate Finance Committee
FROM: Sabra Faires, Committee Counsel
DATE: April 1, 1997
SPONSOR: Senator David Hoyle

Senate Bill 389 establishes the North Carolina Triad Metropolitan Baseball Park District and its governing body, the Park Authority. The bill authorizes the Authority to construct, finance, and operate a major league baseball park, authorizes the Authority to levy 1% local sales and use taxes in the District for one year if the taxes are approved by a majority of those in the District who vote on the issue, and authorizes the Authority to finance the baseball park by using certificates of participation. The bill is effective upon ratification.

The District will be a unit of local government and will consist of the following 12 counties: Alamance, Caswell, Davidson, Davie, Forsyth, Guilford, Montgomery, Randolph, Rockingham, Stokes, Surry, and Yadkin. The Authority will be a 15-member board, five of whom will be appointed by the Governor, five of whom will be appointed by the General Assembly upon the recommendation of the President Pro Tempore, and five of whom will be appointed by the General Assembly upon the recommendation of the Speaker of the House. All appointments except one must be residents of particular counties in the district so that the membership will include two residents of Forsyth County, two residents of Guilford County, one resident of the remaining 10 counties in the district, and one at-large member.

When constructing and operating a baseball park, the Authority is exempt from the purchase and contract procedures that generally apply to local units of government. It also has the power of eminent domain, which can be used to acquire land for the baseball park or for highway improvements that will benefit the baseball park. The baseball park must be located on a tract of land at least 40% of which is located in each of the two most populous counties in the District. The two most populous counties in the District are Guilford and Forsyth.

The Authority can levy 1%, 1-year, local sales and use taxes in the District if Major League Baseball has announced the approval of an award of a franchise in a location in the District and the voters in the District approve the levy. If authorized, the taxes will be collected by the Department of Revenue and the net proceeds of the tax will be distributed to the Authority. The tax proceeds can be

used for any activity of the District. Any tax proceeds used to design, construct, equip, or improve the baseball park must be matched by private funds. Every \$2.00 of tax proceeds must be matched by \$1.00 in private funds.

Any lease of the baseball park must be a triple net lease for a minimum of 25 years. The Authority has zoning power over land owned by the District and land owned by the District is not subject to involuntary annexation.

**NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE**

BILL NUMBER: SB 389
SHORT TITLE: BASEBALL PARK DISTRICTS
SPONSOR(S): SEN. HOYLE, McDANIEL, MARTIN (GUILFORD), SHAW
(GUILFORD)

FISCAL IMPACT

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

FY 1997-98 FY 1998-99 FY 1999-00 FY 2000-01 FY 2001-02
(See "Assumptions and Methodology")

REVENUES

PRINCIPAL DEPARTMENT AFFECTED: The tax will be collected by the Department of Revenue. The Department is to be reimbursed for the actual cost of collecting the tax from the tax proceeds.

EFFECTIVE DATE: When the bill becomes law.

BILL SUMMARY: Creates a local government entity named the North Carolina Triad Metropolitan Baseball District consisting of 12 counties in the Piedmont Triad. The finance implication of the bill is that the District is **permitted** to call a referendum on a one-year levy of an additional 1% local sales and use tax within the district. The tax can be levied only if district voters approve the levy and if a major league baseball franchise is approved for location within the district. The proceeds of the tax may be used to construct a major league baseball park but only to the extent that each \$2 of tax proceeds is matched by \$1 of private funds. In addition the district will be able to enter into installment financing contracts.

ASSUMPTIONS AND METHODOLOGY: Since the tax levy is permissive and subject to both voter approval and the awarding of the major league franchise, it is impossible to know when the levy will occur. For information purposes, a simulation was run for the 12-month period of April 1, 1998-March 31, 1999. The potential yield for this period is \$130.6 million if the tax is levied in all 12 counties. The simulation applied a conservative 3% annual growth assumption to data supplied by the Department of Revenue for sales tax collections by county for the period February 1, 1996-January 31, 1997.

FISCAL RESEARCH DIVISION (733-4910)

PREPARED BY: Dave Crotts

APPROVED BY:

DATE: March 31, 1997.



Memorandum

To: Senate Finance Committee Participants

From: Tim Newman (910) 732-6834

Date: March 31, 1997

Re: Agenda for meeting

Our presentation on North Carolina Baseball and consideration of Senate Bill 389 before the Senate Finance Committee is scheduled for Tuesday, April 1 at Noon in Room 544, the Senate Finance Committee meeting room, in the Legislative Office Building, which is at the corner of Lane and Salisbury Streets on the enclosed map. We plan to meet in Senator Mark McDaniel's office, room 522, at 11am to go over our presentation, which will be sometime after 12 noon during the Committee meeting.

The agenda is planned as follows:

- 1) Overview of Importance of Project to North Carolina-Sen. David Hoyle (D-Gaston), Committee Co-Chair and Bill Co-Sponsor
- 2) Description of Bill and Committee Substitute for County-by-County Vote-Sen. Mark McDaniel (R-Forsyth), Committee Member and Bill Co-Sponsor
- 3) Overview of Importance of Project to the Triad-Sen. Bill Martin (D-Guilford), Committee Member and Bill Co-Sponsor
- 4) Piedmont Triad Partnership Support-Darrell Frye, Randolph County Commissioner and Chairman, Piedmont Triad Partnership
- 5) Overview of Ballpark Financing-Bob Starkey, Arthur Andersen
- 6) Overview of Ownership Effort-Don Beaver, North Carolina Major League Baseball, LLC

Please call me with any questions on this agenda, and we'll see you tomorrow.

sen-finan.doc

Wachovia Bank of North Carolina, N. A.
P. O. Box 3099
Winston-Salem, NC 27150-7281
April 1, 1997

Dear Members of the General Assembly:

As major employers in the Piedmont Triad Region, we have supported the ongoing effort to land a Major League Baseball franchise for our region. Now we strongly endorse the legislative proposal, Senate Bill 389, which will provide a referendum giving voters in the 12-county region the right to decide the issue for themselves by voting on a regional stadium financing plan.

We know the addition of a Major League franchise will have a huge economic impact throughout our region, adding hundreds of millions of new dollars to our economy and generating thousands of new jobs. As employers, we know that working families of the Triad will appreciate and enjoy the major league entertainment that will come with a Major League Baseball team.

Professional baseball has a rich tradition in our state and in our region. Now we have the fan base, the interest and the enthusiasm to step up and go after a Major League franchise. It represents one of the most important economic development efforts our region has ever pursued. And in addition, it will put the Piedmont Triad on the national map.

We urge your support of SB 389. Give our fellow citizens the chance to vote on Major League Baseball for North Carolina.

Sincerely,



J. Walter McDowell
President and Chief Executive Officer

Attachment

Members of the General Assembly
April 1, 1997
Attachment

John Allison	Chairman and CEO	BB&T
Jerry Bowman	President	Stuart Bowman Oldsmobile
J. B. Davis	President	Klaussner Furniture Industries
Hugh McColl	Chairman and CEO	NationsBank
John A. Piazza	Vice President CEO	Sara Lee Corporation Just My Size Clothing Company
Richard Pugh	Chief Executive Officer	Pugh Oil
Andrew J. Schindler	President and CEO	R.J. Reynolds Tobacco
Frederick B. Starr	President and CEO	Thomasville Furniture Inds.
David Stonecipher	President and CEO	Jefferson-Pilot
Randall Terry	President	High Point Enterprise

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

APRIL 1, 1997

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Susan Phillips

NCTU

Jim Lih

UCAFI

Erin Everton

Arthur Andersen

Robert J. Anderson

The office of Brian Starkey

BRIAN STARKEY

"

Darrell Frye

Piedmont Triad Partnership, G'boro

Kenny Moore

PTP

Don Brewer

N.C. Major League Baseball, LLC

Bob STARKEY

ARTHUR ANDERSEN

Randall Terry

High Point Enterprise/NCMLB, LLC

Eileen Hennassy
MIKE SOCOMONGrandpa's Chain of Commerce
NC BASEBALL

Cam Cover

BPMHL

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

APRIL 1, 1997

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Walt Klein	Walt Klein & Associates, Inc.
Dave Chase	Baseball America
Henry Jones	Attorney - Raleigh
Glenn Miller	EGHCS
John Grogan	N.C. Baseball
Reginald Thomas	City of Eden
Phil Pine	City of Eden
C. Jerry Wilkin	N.C. Bar Assoc.
Andy Lomenet	N.C. L.M.
Frank Capra	Los Angeles
Howard Kramer	N.C. Bd. of Nursing
Michael W. Brennan MD	NC Medical Society

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

APRIL 1, 1997

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Willie Riddick

DOR

Jani Smallwood

NC Baseball

Paula A. Wolf

Covenant with NC's Children

Don Gullett

NC BTC

Georget. Long

NC DOR

Don Tolson

unc / General

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

FINANCE COMMITTEE REPORT

John H. Kerr, III, Co-Chair
David W. Hoyle, Co-Chair

Tuesday, April 01, 1997

SENATOR JOHN KERR,

submits the following with recommendations as to passage:

FAVORABLE

S.B.	123	Exempt Audiovisual Masters.	
		Sequential Referral:	None
		Recommended Referral:	Appropriations

TOTAL REPORTED: 1

Committee Clerk Comment: None

SENATE FINANCE COMMITTEE

WEDNESDAY, APRIL 2, 1997

12:00 NOON - ROOM 544 LOB

Senator John H. Kerr, III, Co-Chairman, called the meeting to order. There were 26 members of the Committee present.

S. B. 389 - Baseball Park Districts

Senator Mark McDaniel made a motion to adopt a proposed committee substitute # 2655, motion passed. Senator David Hoyle explained the changes to the bill. Meeting was opened for discussion by the membership of the committee. Senator Cochrane made a motion for adoption of an amendment (attachment # 2), motion carried with instruction that bill put made into another committee substitute #2627. The following persons spoke in opposition to the bill:

Mr. Rufus Shelton from Alamance County

Mr. Earl Ewing of Alamance County

Mr. Charles Moore of Alamance County. He also had a petition of persons that opposed the bill.

Representative Cary Allred

The following persons spoke in support of the bill:

Mr. Tim Newman from Winston-Salem, North Carolina

Mr. Arnold King from Kernersville, North Carolina

Mr. Ken Carlson from Winston-Salem, North Carolina

Mr. Parker Kiser from Alamance County

Senator Conder made a motion that the new proposed committee substitute #2627 be given a "favorable" report, motion passed.

S. B. 447 Lumberton Economic Development District

Senator Weinstein came and explained the bill. Senator Soles made a motion to give the bill a "favorable" report, motion passed.

SENATE FINANCE COMMITTEE

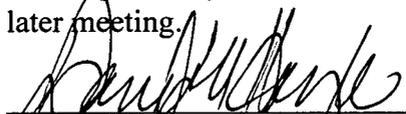
Wednesday, April 2, 1997

Page -2-

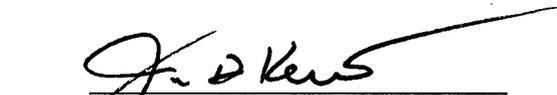
S. B. 363 Harnett Comm. Coll. Acquisition

Senator Page came to explain the bill. Senators Soles and Hartsell made a joint motion to give the bill a "favorable" report, motion passed.

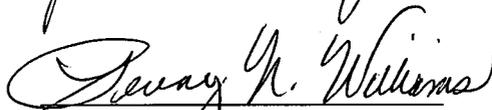
Meeting was adjourned with note that S. B. 124 and S. B. 153 would be taken up at a later meeting.



David W. Hoyle, Co-Chair



John H. Kerr, III Co-Chair



Penny N. Williams, Clerk



Evelyn S. Hartsell, Clerk

NOTE:

Agenda is Attachment # 1

Sen. Cochrane's Amendment to SB 389 is Attachment # 2

Visitor's Registration is Attachment # 3

Committee Report is Attachment # 4

AGENDA

SENATE FINANCE COMMITTEE

MEETING

WEDNESDAY, APRIL 2, 1997

12:00 NOON - ROOM 544 LOB

S. B. 363 - Harnett Comm. Coll. Acquisition - Senator Page

S. B. 447 - Lumberton Economic Development District -
Sen. Weinstein

S. B. 124 - Amend White Goods Tax - Senator Odom

S. B. 153 - Scrap Tire Disposal Tax Amendment - Senator Odom

S. B. 389 - Baseball Park Districts - Senator Hoyle

1 construct such a park in as short a time as possible is crucial to the award of a major
2 league baseball franchise to the Triad area, it is necessary to waive the application of
3 the usual construction contracting requirements for the park's construction.

4 "Sec. 2. **Definitions.** -- The words and phrases defined in this section have the
5 meanings indicated when used in this Charter, unless the context clearly requires
6 another meaning.

7 (1) 'Authority' means the North Carolina Triad Metropolitan Baseball
8 Park Authority.

9 (2) 'District' means the North Carolina Triad Metropolitan Baseball
10 Park District, established by this Charter.

11 (3) 'Major League Baseball' means the organization that controls the
12 administrative functions for the ownership and operation of major
13 league baseball operations in the United States and Canada.

14 (4) 'Major league baseball park' means a sports facility designed for
15 use primarily as a major league baseball park or stadium. Such a
16 facility may include, without limitation, features such as parking
17 areas and facilities, office facilities for the District or any team or
18 other user of the facility, associated retail and other commercial
19 facilities, and other ancillary facilities necessary or desirable for the
20 sports facility and its success. Such a facility also includes the
21 landscaped grounds surrounding the baseball park and related and
22 ancillary facilities.

23 "Sec. 3. **District Incorporated.** -- The inhabitants of the counties listed in this
24 section are a body corporate and politic and a political subdivision of the State under
25 the name 'North Carolina Triad Metropolitan Baseball Park District'. The District
26 comprises the following counties: Alamance, Caswell, Davidson, Davie, Forsyth,
27 Guilford, Montgomery, Randolph, Rockingham, Stokes, Surry, and Yadkin. The
28 District is a baseball park district.

29 "Sec. 4. **Authority Established.** -- (a) The District is governed by the Authority,
30 which has 15 members, appointed as follows:

31 (1) The Governor appoints five members, one at-large who shall be
32 the chair of the Authority, one each of whom at the time of
33 appointment were residents of Alamance and Davidson Counties
34 and two of whom at the time of appointment were residents of
35 Forsyth County.

36 (2) The General Assembly appoints five members upon the
37 recommendation of the President Pro Tempore of the Senate, one
38 each of whom at the time of appointment were residents of
39 Caswell, Rockingham, and Montgomery Counties and two of
40 whom at the time of appointment were residents of Guilford
41 County.

42 (3) The General Assembly appoints five members upon the
43 recommendation of the Speaker of the House of Representatives,

1 one each of whom at the time of appointment were residents of
2 Randolph, Stokes, Surry, Yadkin, and Davie Counties.

3 (b) Members of the Authority serve three-year terms, but in appointing the initial
4 members of the Authority, the Governor, the General Assembly upon the
5 recommendation of the Speaker of the House of Representatives and the General
6 Assembly upon the recommendation of the President Pro Tempore shall each
7 designate one of their appointees to serve until July 1, 1999, two to serve until July 1,
8 2000, and two to serve until July 1, 2001. If a vacancy occurs in the membership of
9 the Authority, and the person causing the vacancy was appointed by the Governor,
10 the Governor shall fill the vacancy for the remainder of the unexpired term. If the
11 person causing the vacancy was appointed by the General Assembly, the vacancy
12 shall be filled pursuant to G.S. 120-122. Initial terms commence upon appointment.

13 (c) The Authority may elect a vice-chair and such other officers as it determines
14 for terms established in the bylaws of the Authority.

15 (d) Once the Governor has appointed the initial chair of the Authority, the chair
16 shall determine the time and place of the Authority's initial meeting and shall cause
17 notice of the meeting to be given to each member of the Authority and to the public.
18 Thereafter, the Authority may establish a schedule of regular meetings and may
19 provide in its bylaws for the manner in which special meetings may be called.

20 (e) A majority of the members of the Authority, not counting vacant seats,
21 constitutes a quorum. The Authority may meet by conference telephone call as
22 provided by G.S. 143-318.13(a).

23 (f) The Authority may take action only upon the vote of a majority of its
24 members, not counting vacant seats and not counting members who have disclosed a
25 conflict of interest in the matter under discussion and vote.

26 (g) The Authority may adopt bylaws for the regulation of its affairs and the
27 conduct of its business, including rules of procedure, consistent with this Charter and
28 other applicable statutes.

29 (h) Members of the Authority are not compensated for their service, but the
30 Authority may provide that members are to be reimbursed for actual expenses
31 incurred while serving as an Authority member.

32 "Sec. 5. **Conflicts of Interest.** -- (a) G.S. 14-234 applies to the District and its
33 employees and to the members of the Authority.

34 (b) If a member of the Authority, or any member of the immediate family of a
35 member of the Authority, or the employer of a member of the Authority has a direct
36 financial interest in any matter that comes before the Authority, the affected member
37 shall disclose the interest and shall abstain from participating in the discussion of or
38 vote on the matter.

39 (c) Violation of this section does not affect the validity of any debts or obligations
40 incurred by the district.

41 "Sec. 6. **District Powers.** -- In addition to powers set out elsewhere in this Charter
42 and powers granted to the District by other statutes, the District may:

43 (1) Enter into contracts.

44 (2) Sue and be sued in its own name, and plead and be impleaded.

- 1 (3) Adopt an official seal.
- 2 (4) Apply for, accept, receive, and disburse funds and grants made
3 available to it by the United States of America or any agency
4 thereof, the State of North Carolina or any agency thereof, any
5 unit of local government or other political subdivision, and any
6 private entity or person; and accept donations of property. The
7 District may comply with the conditions and requirements
8 respecting any gift, grant, or donation of any property or funds.
- 9 (5) Employ and compensate such personnel as the Authority
10 determines. The Authority may delegate to any employee of the
11 District the authority to employ, supervise, discipline, or discharge
12 other employees of the District. The District is subject to G.S.
13 153A-98 with respect to the personnel files of its employees.
- 14 (6) Contract with consultants and other independent contractors.
- 15 (7) Contract with and appropriate money to any person, association,
16 or corporation, public or private, in order to carry out any public
17 purpose that the District is authorized by this Charter or other law
18 to engage in.
- 19 (8) Procure insurance to protect against loss of the District's property
20 or other assets, and against liabilities incurred by the District, the
21 Authority, or any officer, employee, or agent of the District. The
22 District may, pursuant to G.S. 160A-167, provide the defense of
23 any officer or employee of the District.
- 24 (9) Acquire and maintain administrative offices.
- 25 (10) Acquire by purchase, lease, gift, eminent domain, or otherwise, or
26 obtain options for the acquisition of, any real or personal property
27 or interest therein, in order to carry out the authorized activities of
28 the District. The District may not acquire property through the
29 exercise of eminent domain until after Major League Baseball has
30 announced approval of the award of a franchise for a location
31 within the District. In exercising the power of eminent domain,
32 the District shall follow the procedures of Chapter 40A of the
33 General Statutes applicable to local public condemnors.
- 34 (11) Sell, lease, exchange, transfer, or otherwise dispose of, or grant
35 options for any such purposes with respect to, any real or personal
36 property or interest therein. In disposing of property or any
37 interest in property, the District may proceed under such
38 procedures as it determines and is not subject to any procedural
39 requirements not included in this Charter.
- 40 (12) Promote award of a major league baseball franchise to a location
41 within the District.
- 42 (13) Design, construct, equip, improve, promote, operate, maintain,
43 lease, or contract for the operation and maintenance of a major
44 league baseball park. The baseball park shall be located on a tract

1 of land at least forty percent (40%) of which is located in each of
2 the two most populous counties in the district, according to the
3 most recent decennial federal census. If the Authority resolves that
4 construction of a major league baseball park or any portion thereof
5 must be expedited for good cause as determined by the Authority:

- 6 a. The District is exempt from the following statutes: G.S. 143-
7 128, subsections (a) through (e); G.S. 143-129; 143-131; and
8 143-132; or
9 b. The District may contract with the entity that has been
10 awarded the major league baseball franchise for that entity,
11 or an affiliated, parent, or subsidiary entity, to construct the
12 baseball park, with clear title to the baseball park passing to
13 the District at the completion of construction. Construction
14 under this paragraph is not subject to State laws on public
15 contract bidding.

16 If the Authority does adopt such a resolution, the Authority shall
17 establish and use alternative methods of contracting that are fair
18 and competitive, in the conclusive judgment of the Authority. The
19 District may contract for the right to name any park or other
20 facility owned by the District, or may include the right to contract
21 for the park's or facility's name in any lease of or contract for the
22 operation of the park or facility.

- 23 (14) Acquire real property or interests in real property for highway
24 improvements that will benefit the major league baseball park, and
25 convey, with or without monetary consideration, such property or
26 interests in property to the Department of Transportation. The
27 District may not acquire property for highway improvements
28 through the exercise of eminent domain until after Major League
29 Baseball has announced approval of the award of a franchise for a
30 location within the District. In the acquisition by eminent domain
31 of such real property or interests in real property, the District may
32 use the procedures of Article 9 of Chapter 136 of the General
33 Statutes. For the purpose of this subdivision, the words
34 'Department of Transportation' appear in Article 9, they are
35 deemed to include the District or Authority, and whenever the
36 words 'Administrator', 'Administrator of Highways',
37 'Administrator of the Department of Transportation', or
38 'Chairman of the Department of Transportation' appear in Article
39 9, they are deemed to include an appropriate official of the District
40 as designated by the Authority.

- 41 (15) Establish and collect fees and charges for the use of its facilities.

- 42 (16) Enter into partnerships, joint ventures, common ownership,
43 operating agreements, and other arrangements with other persons
44 to further District purposes.

1 (17) Do all acts and things necessary, convenient, or desirable to carry
2 out the purposes of and exercise the powers granted to it by this
3 Charter.

4 "Sec. 7. Triple Net Lease Required. -- Any lease of the baseball park for the
5 purpose of operating it for Major League Baseball must be triple net for a minimum
6 of 25 years, with the lessee responsible for upkeep and maintenance.

7 "Sec. 8. District Taxes. -- (a) Authorization. -- The Authority may, by resolution,
8 subject to the conditions set out in this subsection, levy a temporary local sales and
9 use tax at the rate of one percent (1%) within the District as provided in this section.
10 Before it may adopt such a resolution, however, two conditions must be met: (i)
11 Major League Baseball must have announced approval of the award of a franchise for
12 a location within the District, and (ii) the District's voters must have approved the
13 levy of the tax in a referendum called and held for that purpose.

14 (b) Referendum. -- The State Board of Elections shall, upon the written request of
15 the Authority, call a referendum for the purpose of submitting to the voters of the
16 District the question of whether a temporary sales and use tax at the rate of one
17 percent (1%) will be levied in the District. The date of the referendum shall be set
18 by the Authority, which may set it for any day, including the day of any regular or
19 special election held for another purpose; the referendum, however, may not
20 otherwise be held within 50 days before or 50 days after a statewide primary,
21 election, or referendum. In fixing the date of the referendum, the Authority shall
22 consult with one or more of the county boards of elections within the District in
23 order that the referendum shall not unduly interfere with other elections or
24 referendums already scheduled or in process. Notice of the referendum shall be
25 given in the manner and at the times required by G.S. 163-33(8). The referendum
26 and the registration of voters therefor shall be held under and in accordance with the
27 general laws of the State. Absentee ballots shall be authorized in the referendum.

28 Ballots, voting systems authorized by Article 14 of Chapter 163 of the General
29 Statutes, or both may be used in accordance with rules prescribed by the State Board
30 of Elections. The question to be presented on the ballots or voting systems shall be
31 substantially as follows:

32 'MAJOR LEAGUE BASEBALL PARK INITIATIVE

33 [] YES [] NO

34 When Major League Baseball has announced approval of a major league baseball
35 franchise for a location within the North Carolina Triad Metropolitan Baseball Park
36 District, may the District help finance no more than two-thirds of the cost of a major
37 league baseball park through levy of a temporary one percent (1%) sales and use tax
38 within the District, for no longer than one year?'

39 The results of the referendum shall be canvassed and declared as provided by law
40 for elections of State officers; the results of the referendum shall be certified by the
41 State Board of Elections to the Authority in the manner and at the time provided by
42 the general election laws of the State for certifications of State elections. If a majority
43 of persons voting in the referendum vote in favor of levying the tax, the issue is
44 approved.

1 (c) Scope; Administration. -- Except as provided in this section, the adoption, levy,
2 scope, and collection of the tax shall be in accordance with Article 39 of Chapter 105
3 of the General Statutes as if the District were a county. The Secretary of Revenue
4 shall distribute the net proceeds of the tax to the Authority.

5 (d) Effective Date of Tax. -- A tax levied pursuant to this section shall become
6 effective on the date specified in the resolution levying the tax. That date must be
7 the first day of a calendar month, however, and may not be earlier than the first day
8 of the second month after the date the resolution is adopted.

9 (e) Use of Proceeds. -- The Authority may use the proceeds of a tax levied
10 pursuant to this section for any authorized activities of the district. Any of these
11 proceeds used to design, construct, equip, or improve a major league baseball park as
12 provided in Section 6(13) must be matched by private funds on the basis of one
13 dollar (\$1.00) of private funds used for this purpose for every two dollars (\$2.00) of
14 tax proceeds used for this purpose. Any of these proceeds not matched as required
15 in this subsection shall not be used to design, construct, equip, or improve a major
16 league baseball park as provided in Section (13).

17 (f) Termination of Tax. -- The authority to levy a tax pursuant to this section
18 terminates on the first day of the twelfth month after the effective date of the levy of
19 the tax.

20 "Sec. 9. **Budgeting and Fiscal Control.** -- The District is a unit of local government
21 under the Local Government Budget and Fiscal Control Act.

22 "Sec. 10. **Assistance From Local Governments.** -- Any county, city or town, or
23 other unit of local government or public authority located within the District may
24 contribute or advance moneys or other assets or services to the District. The District
25 may reimburse a local government or public authority for any such advance once it
26 is receiving the proceeds of any tax levied by it pursuant to this Charter or otherwise
27 has funds available to do so.

28 "Sec. 11. **Zoning and Annexation.** -- (a) The District may regulate land use upon
29 real property owned by it, and such property is not subject to any zoning ordinance
30 adopted by a county or city.

31 (b) Real property owned by the District is not subject to annexation pursuant to
32 Part 2 or 3 of Article 4A of Chapter 160A of the General Statutes."

33 Section 2. The General Statutes are amended by adding a new Chapter
34 to read:

35 "Chapter 160C.

36 "Baseball Park Districts.

37 "§ 160C-1. Baseball park districts.

38 The General Assembly may establish baseball park districts as bodies political and
39 corporate and political subdivisions of the State."

40 Section 3. G.S. 160A-20(h) reads as rewritten:

41 "(h) As used in this section, the term 'unit of local government' means any of the
42 following:

43 (1) A county.

44 (2) A city.

- 1 (3) A water and sewer authority created under Article 1 of Chapter
2 162A of the General Statutes.
- 3 (4) An airport authority whose situs is entirely within a county that
4 has (i) a population of over 120,000 according to the most recent
5 federal decennial census and (ii) an area of less than 200 square
6 miles.
- 7 (5) An airport authority in a county in which there are two
8 incorporated municipalities with a population of more than 65,000
9 according to the most recent federal decennial census.
- 10 (5a) An airport board or commission authorized by agreement between
11 two cities pursuant to G.S. 63-56, one of which is located partially
12 but not wholly in the county in which the jointly owned airport is
13 located, and where the board or commission provided water and
14 wastewater services off the airport premises before January 1, 1995;
15 provided that the authority granted by this section may be
16 exercised by such a board or commission with respect to water and
17 wastewater systems or improvements only.
- 18 (6) A local school administrative unit (i) that is located in a county
19 that has a population of over 90,000 according to the most recent
20 federal decennial census and (ii) whose board of education is
21 authorized to levy a school tax.
- 22 (7) An area mental health, developmental disabilities, and substance
23 abuse authority, acting in accordance with G.S. 122C-147.
- 24 (8) A consolidated city-county, as defined by G.S. 160B-2(1).
- 25 (9) A baseball park district.

26 Section 4. G.S. 159-148(a) reads as rewritten:

27 "(a) Except as provided in subsection (b) of this section, this Article applies to
28 any contract, agreement, memorandum of understanding, and any other transaction
29 having the force and effect of a contract (other than agreements made in connection
30 with the issuance of revenue bonds, special obligation bonds issued pursuant to
31 Chapter 159I of the General Statutes, or of general obligation bonds additionally
32 secured by a pledge of revenues) made or entered into by a unit of local government
33 (as defined by G.S. 159-7(b) or, in the case of a special obligation bond, as defined in
34 Chapter 159I of the General Statutes), relating to the lease, acquisition, or
35 construction of capital assets, which contract

- 36 (1) Extends for five or more years from the date of the contract,
37 including periods that may be added to the original term through
38 the exercise of options to renew or extend, and
- 39 (2) Obligates the unit to pay sums of money to another, without regard
40 to whether the payee is a party to the contract, and
- 41 (3) Obligates the unit over the full term of the contract, including
42 periods that may be added to the original term through the
43 exercise of options to renew or extend, to the extent of at least five
44 hundred thousand dollars (\$500,000) for baseball park districts

- 1 and, for other units, to the extent of five hundred thousand dollars
2 (\$500,000) or a sum equal to one tenth of one percent (1/10 of 1%)
3 of the assessed value of property subject to taxation by the
4 contracting unit, whichever is less, and
5 (4) Obligates the unit, expressly or by implication, to exercise its
6 power to levy taxes either to make payments falling due under the
7 contract, or to pay any judgment entered against the unit as a
8 result of the unit's breach of the contract.
9 Contingent obligation shall be included in calculating the value of the contract.
10 Several contracts that are all related to the same undertaking shall be deemed a
11 single contract for the purposes of this Article. When several contracts are
12 considered as a single contract, the term shall be that of the contract having the
13 longest term, and the sums to fall due shall be the total of all sums to fall due under
14 all single contracts in the group."
15 Section 5. This act is effective when it becomes law.

Penny Williams (Sen. Hoyle)

From: Gerry Cohen (Bill Drafting, Director)
Sent: Wednesday, April 02, 1997 10:35 AM
To: Sen. David Hoyle
Subject: Baseball

Today's proposed committee substitute for Senate Bill 389 makes the following changes from yesterday's PCS:

- 1) Tax in the bill effective only if franchise awarded by 12/31/2001
- 2) election must be on a Tuesday
- 3) no condemnation of personal property
- 4) One Forsyth appointment switched with Montgomery
- 5) eminent domain only for purposes outlined in Section 6 of Charter.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

D

SENATE BILL 389
Proposed Committee Substitute S389-PCS2655

Short Title: Baseball Park Districts.

(Public)

Sponsors:

Referred to:

March 13, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH THE NORTH CAROLINA TRIAD METROPOLITAN
3 BASEBALL PARK DISTRICT, TO PROVIDE FOR A REFERENDUM ON
4 BASEBALL PARK FINANCING ON A DATE DESIGNATED BY THE
5 DISTRICT AND TO ALLOW BASEBALL PARK DISTRICTS TO ENTER
6 INTO INSTALLMENT FINANCING AGREEMENTS.

7 The General Assembly of North Carolina enacts:

8 Section 1. A Charter for the North Carolina Triad Metropolitan Baseball
9 Park District is enacted as follows:

10 "CHARTER OF THE NORTH CAROLINA
11 TRIAD METROPOLITAN BASEBALL PARK DISTRICT.

12 "Section 1. **Legislative Findings.** -- (a) The General Assembly determines that the
13 construction, financing, and operation of a major league baseball park in the Triad
14 area serves a public purpose in that it will:

- 15 (1) Enhance the opportunities for recreational entertainment for all
16 North Carolinians;
17 (2) Generate new economic activity in the Triad area, leading to the
18 establishment of many new businesses;
19 (3) Encourage economic development throughout North Carolina by
20 enhancing the State's attractiveness to new and relocated
21 businesses and its attractiveness as a tourist destination; and
22 (4) Provide numerous new jobs for North Carolinians.

1 (b) The General Assembly further determines that because constructing a major
2 league baseball park is an extraordinarily complex task and because being able to
3 construct such a park in as short a time as possible is crucial to the award of a major
4 league baseball franchise to the Triad area, it is necessary to waive the application of
5 the usual construction contracting requirements for the park's construction.

6 "Sec. 2. **Definitions.** -- The words and phrases defined in this section have the
7 meanings indicated when used in this Charter, unless the context clearly requires
8 another meaning.

9 (1) 'Authority' means the North Carolina Triad Metropolitan Baseball
10 Park Authority.

11 (2) 'District' means the North Carolina Triad Metropolitan Baseball
12 Park District, established by this Charter.

13 (3) 'Major League Baseball' means the organization that controls the
14 administrative functions for the ownership and operation of major
15 league baseball operations in the United States and Canada.

16 (4) 'Major league baseball park' means a sports facility designed for
17 use primarily as a major league baseball park or stadium. Such a
18 facility may include, without limitation, features such as parking
19 areas and facilities, office facilities for the District or any team or
20 other user of the facility, associated retail and other commercial
21 facilities, and other ancillary facilities necessary or desirable for the
22 sports facility and its success. Such a facility also includes the
23 landscaped grounds surrounding the baseball park and related and
24 ancillary facilities.

25 "Sec. 3. **District Incorporated.** -- The inhabitants of the counties listed in this
26 section are a body corporate and politic and a political subdivision of the State under
27 the name 'North Carolina Triad Metropolitan Baseball Park District'. The District
28 initially comprises the following counties: Alamance, Caswell, Davidson, Davie,
29 Forsyth, Guilford, Montgomery, Randolph, Rockingham, Stokes, Surry, and Yadkin.
30 If the voters in a county do not vote in favor of the question in Section 8 of this
31 Charter, then upon the certification of the results of the election, that county is
32 removed from the district. The District is a baseball park district.

33 "Sec. 4. **Authority Established.** -- (a) The District is governed by the Authority,
34 which has 15 members, appointed as follows:

35 (1) The Governor appoints five members, one at-large who shall be
36 the chair of the Authority, one each of whom at the time of
37 appointment were residents of Alamance, Davidson, Forsyth, and
38 Montgomery Counties.

39 (2) The General Assembly appoints five members upon the
40 recommendation of the President Pro Tempore of the Senate, one
41 each of whom at the time of appointment were residents of
42 Caswell, Davie, and Forsyth Counties and two of whom at the time
43 of appointment were residents of Guilford County.

1 (3) The General Assembly appoints five members upon the
2 recommendation of the Speaker of the House of Representatives,
3 one each of whom at the time of appointment were residents of
4 Randolph, Stokes, Surry, Yadkin, and Rockingham Counties.

5 (b) Members of the Authority serve three-year terms, but in appointing the initial
6 members of the Authority, the Governor, the General Assembly upon the
7 recommendation of the Speaker of the House of Representatives and the General
8 Assembly upon the recommendation of the President Pro Tempore shall each
9 designate one of their appointees to serve until July 1, 1999, two to serve until July 1,
10 2000, and two to serve until July 1, 2001. If a vacancy occurs in the membership of
11 the Authority, and the person causing the vacancy was appointed by the Governor,
12 the Governor shall fill the vacancy for the remainder of the unexpired term. If the
13 person causing the vacancy was appointed by the General Assembly, the vacancy
14 shall be filled pursuant to G.S. 120-122. Initial terms commence upon appointment.

15 (c) The Authority may elect a vice-chair and such other officers as it determines
16 for terms established in the bylaws of the Authority.

17 (d) Once the Governor has appointed the initial chair of the Authority, the chair
18 shall determine the time and place of the Authority's initial meeting and shall cause
19 notice of the meeting to be given to each member of the Authority and to the public.
20 Thereafter, the Authority may establish a schedule of regular meetings and may
21 provide in its bylaws for the manner in which special meetings may be called.

22 (e) A majority of the members of the Authority, not counting vacant seats,
23 constitutes a quorum. The Authority may meet by conference telephone call as
24 provided by G.S. 143-318.13(a).

25 (f) The Authority may take action only upon the vote of a majority of its
26 members, not counting vacant seats and not counting members who have disclosed a
27 conflict of interest in the matter under discussion and vote.

28 (g) The Authority may adopt bylaws for the regulation of its affairs and the
29 conduct of its business, including rules of procedure, consistent with this Charter and
30 other applicable statutes.

31 (h) Members of the Authority are not compensated for their service, but the
32 Authority may provide that members are to be reimbursed for actual expenses
33 incurred while serving as an Authority member.

34 (i) If any county is removed from the district as provided by Section 3 of this
35 Charter, any member of the Authority residing in that county is removed, and the
36 appointing authority may appoint a resident of any county remaining in the district to
37 that seat.

38 "Sec. 5. **Conflicts of Interest.** -- (a) G.S. 14-234 applies to the District and its
39 employees and to the members of the Authority.

40 (b) If a member of the Authority, or any member of the immediate family of a
41 member of the Authority, or the employer of a member of the Authority has a direct
42 financial interest in any matter that comes before the Authority, the affected member
43 shall disclose the interest and shall abstain from participating in the discussion of or
44 vote on the matter.

1 (c) Violation of this section does not affect the validity of any debts or obligations
2 incurred by the district.

3 "Sec. 6. **District Powers.** -- In addition to powers set out elsewhere in this Charter
4 and powers granted to the District by other statutes, the District may:

- 5 (1) Enter into contracts.
- 6 (2) Sue and be sued in its own name, and plead and be impleaded.
- 7 (3) Adopt an official seal.
- 8 (4) Apply for, accept, receive, and disburse funds and grants made
9 available to it by the United States of America or any agency
10 thereof, the State of North Carolina or any agency thereof, any
11 unit of local government or other political subdivision, and any
12 private entity or person; and accept donations of property. The
13 District may comply with the conditions and requirements
14 respecting any gift, grant, or donation of any property or funds.
- 15 (5) Employ and compensate such personnel as the Authority
16 determines. The Authority may delegate to any employee of the
17 District the authority to employ, supervise, discipline, or discharge
18 other employees of the District. The District is subject to G.S.
19 153A-98 with respect to the personnel files of its employees.
- 20 (6) Contract with consultants and other independent contractors.
- 21 (7) Contract with and appropriate money to any person, association,
22 or corporation, public or private, in order to carry out any public
23 purpose that the District is authorized by this Charter or other law
24 to engage in.
- 25 (8) Procure insurance to protect against loss of the District's property
26 or other assets, and against liabilities incurred by the District, the
27 Authority, or any officer, employee, or agent of the District. The
28 District may, pursuant to G.S. 160A-167, provide the defense of
29 any officer or employee of the District.
- 30 (9) Acquire and maintain administrative offices.
- 31 (10) Acquire by purchase, lease, gift, eminent domain, or otherwise, or
32 obtain options for the acquisition of, any real property or interest
33 therein, in order to carry out the the powers granted by this
34 section. The District may not acquire property through the
35 exercise of eminent domain until after Major League Baseball has
36 announced approval of the award of a franchise for a location
37 within the District. In exercising the power of eminent domain,
38 the District shall follow the procedures of Chapter 40A of the
39 General Statutes applicable to local public condemnors.
- 40 (11) Sell, lease, exchange, transfer, or otherwise dispose of, or grant
41 options for any such purposes with respect to, any real or personal
42 property or interest therein. In disposing of property or any
43 interest in property, the District may proceed under such

- 1 procedures as it determines and is not subject to any procedural
2 requirements not included in this Charter.
- 3 (12) Promote award of a Major League Baseball franchise to a location
4 within the District.
- 5 (13) Design, construct, equip, improve, promote, operate, maintain,
6 lease, or contract for the operation and maintenance of a major
7 league baseball park. The baseball park shall be located on a tract
8 of land at least forty percent (40%) of which is located in each of
9 the two most populous counties in the district, according to the
10 most recent decennial federal census. If the Authority resolves that
11 construction of a major league baseball park or any portion thereof
12 must be expedited for good cause as determined by the Authority:
- 13 a. The District is exempt from the following statutes: G.S. 143-
14 128, subsections (a) through (e); G.S. 143-129; 143-131; and
15 143-132; or
- 16 b. The District may contract with the entity that has been
17 awarded the major league baseball franchise for that entity,
18 or an affiliated, parent, or subsidiary entity, to construct the
19 baseball park, with clear title to the baseball park passing to
20 the District at the completion of construction. Construction
21 under this paragraph is not subject to State laws on public
22 contract bidding.
- 23 If the Authority does adopt such a resolution, the Authority shall
24 establish and use alternative methods of contracting that are fair
25 and competitive, in the conclusive judgment of the Authority. The
26 Authority shall use North Carolina based contractors where
27 feasible. The District may contract for the right to name any park
28 or other facility owned by the District, or may include the right to
29 contract for the park's or facility's name in any lease of or contract
30 for the operation of the park or facility.
- 31 (14) Acquire real property or interests in real property for highway
32 improvements that will benefit the major league baseball park, and
33 convey, with or without monetary consideration, such property or
34 interests in property to the Department of Transportation. The
35 District may not acquire property for highway improvements
36 through the exercise of eminent domain until after Major League
37 Baseball has announced approval of the award of a franchise for a
38 location within the District. In the acquisition by eminent domain
39 of such real property or interests in real property, the District may
40 use the procedures of Article 9 of Chapter 136 of the General
41 Statutes. For the purpose of this subdivision, whenever the words
42 'Department of Transportation' appear in Article 9, they are
43 deemed to include the District or Authority, and whenever the
44 words 'Administrator', 'Administrator of Highways',

1 'Administrator of the Department of Transportation', or
2 'Chairman of the Department of Transportation' appear in Article
3 9, they are deemed to include an appropriate official of the District
4 as designated by the Authority.

5 (15) Establish and collect fees and charges for the use of its facilities.

6 (16) Enter into partnerships, joint ventures, common ownership,
7 operating agreements, and other arrangements with other persons
8 to further District purposes.

9 (17) Do all acts and things necessary, convenient, or desirable to carry
10 out the purposes of and exercise the powers granted to it by this
11 Charter.

12 "Sec. 7. **Triple Net Lease Required.** -- Any lease of the baseball park for the
13 purpose of operating it for Major League Baseball must be triple net for a minimum
14 of 25 years, with the lessee responsible for upkeep and maintenance.

15 "Sec. 8. **District Taxes.** -- (a) Authorization. -- The Authority may, by resolution,
16 subject to the conditions set out in this subsection, levy a temporary local sales and
17 use tax at the rate of one percent (1%) within the District as provided in this section.
18 Before it may adopt such a resolution, however, two conditions must be met: (i)
19 Major League Baseball must have announced approval of the award of a franchise for
20 a location within the District no later than December 31, 2001, and (ii) the District's
21 voters must have approved the levy of the tax in a referendum called and held for
22 that purpose.

23 (b) Referendum. -- The State Board of Elections shall, upon the written request of
24 the Authority, call a referendum for the purpose of submitting to the voters of the
25 District the question of whether a temporary sales and use tax at the rate of one
26 percent (1%) will be levied in the District. The date of the referendum shall be set
27 by the Authority, which may set it for any Tuesday, including the day of any regular
28 or special election held for another purpose; the referendum, however, may not
29 otherwise be held within 50 days before or 50 days after a statewide primary,
30 election, or referendum. In fixing the date of the referendum, the Authority shall
31 consult with one or more of the county boards of elections within the District in
32 order that the referendum shall not unduly interfere with other elections or
33 referendums already scheduled or in process. Notice of the referendum shall be
34 given in the manner and at the times required by G.S. 163-33(8). The referendum
35 and the registration of voters therefor shall be held under and in accordance with the
36 general laws of the State. Absentee ballots shall be authorized in the referendum.

37 Ballots, voting systems authorized by Article 14 of Chapter 163 of the General
38 Statutes, or both may be used in accordance with rules prescribed by the State Board
39 of Elections. The question to be presented on the ballots or voting systems shall be
40 substantially as follows:

41 'MAJOR LEAGUE BASEBALL PARK INITIATIVE

42 [] YES [] NO

43 When Major League Baseball has announced approval of a major league baseball
44 franchise for a location within the North Carolina Triad Metropolitan Baseball Park

1 District, may _____ County which is currently in the District help finance no more
2 than two-thirds of the cost of a major league baseball park through levy of a
3 temporary one percent (1%) sales and use tax within the counties remaining in the
4 District, for no longer than one year?"

5 The results of the referendum shall be canvassed and declared as provided by law
6 for elections of State officers; the results of the referendum shall be certified by the
7 State Board of Elections to the Authority in the manner and at the time provided by
8 the general election laws of the State for certifications of State elections. If a majority
9 of persons voting in the referendum in one or more counties vote in favor of levying
10 the tax, the issue is approved. The votes shall be tallied separately in each county in
11 the District. As provided in Section 3 of this act, any county that does not vote in
12 favor of the question is removed from the District, and the tax is imposed in the
13 District consisting of the counties that have approved the levy.

14 (c) Scope; Administration. -- Except as provided in this section, the adoption, levy,
15 scope, and collection of the tax shall be in accordance with Article 39 of Chapter 105
16 of the General Statutes as if the District were a county. The Secretary of Revenue
17 shall distribute the net proceeds of the tax to the Authority.

18 (d) Effective Date of Tax. -- A tax levied pursuant to this section shall become
19 effective on the date specified in the resolution levying the tax. That date must be
20 the first day of a calendar month, however, and may not be earlier than the first day
21 of the second month after the date the resolution is adopted.

22 (e) Use of Proceeds. -- The Authority may use the proceeds of a tax levied
23 pursuant to this section for any authorized activities of the district. Any of these
24 proceeds used to design, construct, equip, or improve a major league baseball park as
25 provided in Section 6(13) of this Charter must be matched by private funds on the
26 basis of at least one dollar (\$1.00) of private funds used for this purpose for every two
27 dollars (\$2.00) of these proceeds used for this purpose. Any of these proceeds not
28 matched as required in this subsection shall not be used to design, construct, equip,
29 or improve a major league baseball park as provided in Section 6(13) of this Charter.

30 (f) Termination of Tax. -- The authority to levy a tax pursuant to this section
31 terminates on the first day of the twelfth month after the effective date of the levy of
32 the tax and cannot be extended for any reason.

33 (g) Refunds After Tax Ends. -- If the Secretary of Revenue refunds a tax imposed
34 by this section after the tax has expired and the proceeds of the tax have been
35 distributed to the Authority, the Secretary shall notify the Authority of the amount of
36 the refund. The Authority shall reimburse the Secretary for the amount of the
37 refund.

38 "Sec. 9. **Budgeting and Fiscal Control.** -- The District is a unit of local government
39 under the Local Government Budget and Fiscal Control Act.

40 "Sec. 10. **Assistance From Local Governments.** -- Any county, city or town, or
41 other unit of local government or public authority located within the District may
42 contribute or advance moneys or other assets or services to the District. The District
43 may reimburse a local government or public authority for any such advance once it

1 is receiving the proceeds of any tax levied by it pursuant to this Charter or otherwise
2 has funds available to do so.

3 "Sec. 11. **Zoning and Annexation.** -- (a) The District may regulate land use upon
4 real property owned by it, and such property is not subject to any zoning ordinance
5 adopted by a county or city.

6 (b) Real property owned by the District is not subject to annexation pursuant to
7 Part 2 or 3 of Article 4A of Chapter 160A of the General Statutes."

8 Section 2. The General Statutes are amended by adding a new Chapter
9 to read:

10 "Chapter 160C.

11 "Baseball Park Districts.

12 "§ 160C-1. Baseball park districts.

13 The General Assembly may establish baseball park districts as bodies political and
14 corporate and political subdivisions of the State."

15 Section 3. G.S. 160A-20(h) reads as rewritten:

16 "(h) As used in this section, the term 'unit of local government' means any of the
17 following:

- 18 (1) A county.
- 19 (2) A city.
- 20 (3) A water and sewer authority created under Article 1 of Chapter
21 162A of the General Statutes.
- 22 (4) An airport authority whose situs is entirely within a county that
23 has (i) a population of over 120,000 according to the most recent
24 federal decennial census and (ii) an area of less than 200 square
25 miles.
- 26 (5) An airport authority in a county in which there are two
27 incorporated municipalities with a population of more than 65,000
28 according to the most recent federal decennial census.
- 29 (5a) An airport board or commission authorized by agreement between
30 two cities pursuant to G.S. 63-56, one of which is located partially
31 but not wholly in the county in which the jointly owned airport is
32 located, and where the board or commission provided water and
33 wastewater services off the airport premises before January 1, 1995;
34 provided that the authority granted by this section may be
35 exercised by such a board or commission with respect to water and
36 wastewater systems or improvements only.
- 37 (6) A local school administrative unit (i) that is located in a county
38 that has a population of over 90,000 according to the most recent
39 federal decennial census and (ii) whose board of education is
40 authorized to levy a school tax.
- 41 (7) An area mental health, developmental disabilities, and substance
42 abuse authority, acting in accordance with G.S. 122C-147.
- 43 (8) A consolidated city-county, as defined by G.S. 160B-2(1).
- 44 (9) A baseball park district."

1 Section 4. G.S. 159-148(a) reads as rewritten:

2 "(a) Except as provided in subsection (b) of this section, this Article applies to
3 any contract, agreement, memorandum of understanding, and any other transaction
4 having the force and effect of a contract (other than agreements made in connection
5 with the issuance of revenue bonds, special obligation bonds issued pursuant to
6 Chapter 159I of the General Statutes, or of general obligation bonds additionally
7 secured by a pledge of revenues) made or entered into by a unit of local government
8 (as defined by G.S. 159-7(b) or, in the case of a special obligation bond, as defined in
9 Chapter 159I of the General Statutes), relating to the lease, acquisition, or
10 construction of capital assets, which contract

11 (1) Extends for five or more years from the date of the contract,
12 including periods that may be added to the original term through
13 the exercise of options to renew or extend, and

14 (2) Obligates the unit to pay sums of money to another, without regard
15 to whether the payee is a party to the contract, and

16 (3) Obligates the unit over the full term of the contract, including
17 periods that may be added to the original term through the
18 exercise of options to renew or extend, to the extent of at least five
19 hundred thousand dollars (\$500,000) for baseball park districts
20 and, for other units, to the extent of five hundred thousand dollars
21 (\$500,000) or a sum equal to one tenth of one percent (1/10 of 1%)
22 of the assessed value of property subject to taxation by the
23 contracting unit, whichever is less, and

24 (4) Obligates the unit, expressly or by implication, to exercise its
25 power to levy taxes either to make payments falling due under the
26 contract, or to pay any judgment entered against the unit as a
27 result of the unit's breach of the contract.

28 Contingent obligation shall be included in calculating the value of the contract.
29 Several contracts that are all related to the same undertaking shall be deemed a
30 single contract for the purposes of this Article. When several contracts are
31 considered as a single contract, the term shall be that of the contract having the
32 longest term, and the sums to fall due shall be the total of all sums to fall due under
33 all single contracts in the group."

34 Section 5. Notwithstanding G.S. 105-259, the Department of Revenue
35 may furnish to the finance officer of the North Carolina Triad Metropolitan Baseball
36 Park Authority information on the sales and use tax levied by that Authority.

37 Section 6. This act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

Attachment #2

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____
S. B. No. 389 (PC82655)

DATE _____

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

COMMITTEE SUBSTITUTE _____

Rep.) _____
Sen.) _____

1 moves to amend the bill on page 6, line 40

2 () WHICH CHANGES THE TITLE

3 by rewriting that line to read:

4 " as follows, with the ~~same~~ insertion of
5 the name of the appropriate county: "

6 _____
7 _____
8 _____
9 _____
10 _____
11 _____
12 _____
13 _____
14 _____
15 _____
16 _____
17 _____
18 _____
19 _____

SIGNED Betsy Cocheane

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

D

SENATE BILL 389
Proposed Committee Substitute S389-PCS2627

Short Title: Baseball Park Districts.

(Public)

Sponsors:

Referred to:

March 13, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH THE NORTH CAROLINA TRIAD METROPOLITAN
3 BASEBALL PARK DISTRICT, TO PROVIDE FOR A REFERENDUM ON
4 BASEBALL PARK FINANCING ON A DATE DESIGNATED BY THE
5 DISTRICT AND TO ALLOW BASEBALL PARK DISTRICTS TO ENTER
6 INTO INSTALLMENT FINANCING AGREEMENTS.

7 The General Assembly of North Carolina enacts:

8 Section 1. A Charter for the North Carolina Triad Metropolitan Baseball
9 Park District is enacted as follows:

10 "CHARTER OF THE NORTH CAROLINA
11 TRIAD METROPOLITAN BASEBALL PARK DISTRICT.

12 "Section 1. **Legislative Findings.** -- (a) The General Assembly determines that the
13 construction, financing, and operation of a major league baseball park in the Triad
14 area serves a public purpose in that it will:

- 15 (1) Enhance the opportunities for recreational entertainment for all
16 North Carolinians;
17 (2) Generate new economic activity in the Triad area, leading to the
18 establishment of many new businesses;
19 (3) Encourage economic development throughout North Carolina by
20 enhancing the State's attractiveness to new and relocated
21 businesses and its attractiveness as a tourist destination; and
22 (4) Provide numerous new jobs for North Carolinians.

1 (b) The General Assembly further determines that because constructing a major
2 league baseball park is an extraordinarily complex task and because being able to
3 construct such a park in as short a time as possible is crucial to the award of a major
4 league baseball franchise to the Triad area, it is necessary to waive the application of
5 the usual construction contracting requirements for the park's construction.

6 "Sec. 2. **Definitions.** -- The words and phrases defined in this section have the
7 meanings indicated when used in this Charter, unless the context clearly requires
8 another meaning.

9 (1) 'Authority' means the North Carolina Triad Metropolitan Baseball
10 Park Authority.

11 (2) 'District' means the North Carolina Triad Metropolitan Baseball
12 Park District, established by this Charter.

13 (3) 'Major League Baseball' means the organization that controls the
14 administrative functions for the ownership and operation of major
15 league baseball operations in the United States and Canada.

16 (4) 'Major league baseball park' means a sports facility designed for
17 use primarily as a major league baseball park or stadium. Such a
18 facility may include, without limitation, features such as parking
19 areas and facilities, office facilities for the District or any team or
20 other user of the facility, associated retail and other commercial
21 facilities, and other ancillary facilities necessary or desirable for the
22 sports facility and its success. Such a facility also includes the
23 landscaped grounds surrounding the baseball park and related and
24 ancillary facilities.

25 "Sec. 3. **District Incorporated.** -- The inhabitants of the counties listed in this
26 section are a body corporate and politic and a political subdivision of the State under
27 the name 'North Carolina Triad Metropolitan Baseball Park District'. The District
28 initially comprises the following counties: Alamance, Caswell, Davidson, Davie,
29 Forsyth, Guilford, Montgomery, Randolph, Rockingham, Stokes, Surry, and Yadkin.
30 If the voters in a county do not vote in favor of the question in Section 8 of this
31 Charter, then upon the certification of the results of the election, that county is
32 removed from the district. The District is a baseball park district.

33 "Sec. 4. **Authority Established.** -- (a) The District is governed by the Authority,
34 which has 15 members, appointed as follows:

35 (1) The Governor appoints five members, one at-large who shall be
36 the chair of the Authority, one each of whom at the time of
37 appointment were residents of Alamance, Davidson, Forsyth, and
38 Montgomery Counties.

39 (2) The General Assembly appoints five members upon the
40 recommendation of the President Pro Tempore of the Senate, one
41 each of whom at the time of appointment were residents of
42 Caswell, Davie, and Forsyth Counties and two of whom at the time
43 of appointment were residents of Guilford County.

1 (3) The General Assembly appoints five members upon the
2 recommendation of the Speaker of the House of Representatives,
3 one each of whom at the time of appointment were residents of
4 Randolph, Stokes, Surry, Yadkin, and Rockingham Counties.

5 (b) Members of the Authority serve three-year terms, but in appointing the initial
6 members of the Authority, the Governor, the General Assembly upon the
7 recommendation of the Speaker of the House of Representatives and the General
8 Assembly upon the recommendation of the President Pro Tempore shall each
9 designate one of their appointees to serve until July 1, 1999, two to serve until July 1,
10 2000, and two to serve until July 1, 2001. If a vacancy occurs in the membership of
11 the Authority, and the person causing the vacancy was appointed by the Governor,
12 the Governor shall fill the vacancy for the remainder of the unexpired term. If the
13 person causing the vacancy was appointed by the General Assembly, the vacancy
14 shall be filled pursuant to G.S. 120-122. Initial terms commence upon appointment.

15 (c) The Authority may elect a vice-chair and such other officers as it determines
16 for terms established in the bylaws of the Authority.

17 (d) Once the Governor has appointed the initial chair of the Authority, the chair
18 shall determine the time and place of the Authority's initial meeting and shall cause
19 notice of the meeting to be given to each member of the Authority and to the public.
20 Thereafter, the Authority may establish a schedule of regular meetings and may
21 provide in its bylaws for the manner in which special meetings may be called.

22 (e) A majority of the members of the Authority, not counting vacant seats,
23 constitutes a quorum. The Authority may meet by conference telephone call as
24 provided by G.S. 143-318.13(a).

25 (f) The Authority may take action only upon the vote of a majority of its
26 members, not counting vacant seats and not counting members who have disclosed a
27 conflict of interest in the matter under discussion and vote.

28 (g) The Authority may adopt bylaws for the regulation of its affairs and the
29 conduct of its business, including rules of procedure, consistent with this Charter and
30 other applicable statutes.

31 (h) Members of the Authority are not compensated for their service, but the
32 Authority may provide that members are to be reimbursed for actual expenses
33 incurred while serving as an Authority member.

34 (i) If any county is removed from the district as provided by Section 3 of this
35 Charter, any member of the Authority residing in that county is removed, and the
36 appointing authority may appoint a resident of any county remaining in the district to
37 that seat.

38 "Sec. 5. **Conflicts of Interest.** -- (a) G.S. 14-234 applies to the District and its
39 employees and to the members of the Authority.

40 (b) If a member of the Authority, or any member of the immediate family of a
41 member of the Authority, or the employer of a member of the Authority has a direct
42 financial interest in any matter that comes before the Authority, the affected member
43 shall disclose the interest and shall abstain from participating in the discussion of or
44 vote on the matter.

1 (c) Violation of this section does not affect the validity of any debts or obligations
2 incurred by the district.

3 "Sec. 6. **District Powers.** -- In addition to powers set out elsewhere in this Charter
4 and powers granted to the District by other statutes, the District may:

5 (1) Enter into contracts.

6 (2) Sue and be sued in its own name, and plead and be impleaded.

7 (3) Adopt an official seal.

8 (4) Apply for, accept, receive, and disburse funds and grants made
9 available to it by the United States of America or any agency
10 thereof, the State of North Carolina or any agency thereof, any
11 unit of local government or other political subdivision, and any
12 private entity or person; and accept donations of property. The
13 District may comply with the conditions and requirements
14 respecting any gift, grant, or donation of any property or funds.

15 (5) Employ and compensate such personnel as the Authority
16 determines. The Authority may delegate to any employee of the
17 District the authority to employ, supervise, discipline, or discharge
18 other employees of the District. The District is subject to G.S.
19 153A-98 with respect to the personnel files of its employees.

20 (6) Contract with consultants and other independent contractors.

21 (7) Contract with and appropriate money to any person, association,
22 or corporation, public or private, in order to carry out any public
23 purpose that the District is authorized by this Charter or other law
24 to engage in.

25 (8) Procure insurance to protect against loss of the District's property
26 or other assets, and against liabilities incurred by the District, the
27 Authority, or any officer, employee, or agent of the District. The
28 District may, pursuant to G.S. 160A-167, provide the defense of
29 any officer or employee of the District.

30 (9) Acquire and maintain administrative offices.

31 (10) Acquire by purchase, lease, gift, eminent domain, or otherwise, or
32 obtain options for the acquisition of, any real property or interest
33 therein, in order to carry out the the powers granted by this
34 section. The District may not acquire property through the
35 exercise of eminent domain until after Major League Baseball has
36 announced approval of the award of a franchise for a location
37 within the District. In exercising the power of eminent domain,
38 the District shall follow the procedures of Chapter 40A of the
39 General Statutes applicable to local public condemnors.

40 (11) Sell, lease, exchange, transfer, or otherwise dispose of, or grant
41 options for any such purposes with respect to, any real or personal
42 property or interest therein. In disposing of property or any
43 interest in property, the District may proceed under such

1 procedures as it determines and is not subject to any procedural
2 requirements not included in this Charter.

3 (12) Promote award of a Major League Baseball franchise to a location
4 within the District.

5 (13) Design, construct, equip, improve, promote, operate, maintain,
6 lease, or contract for the operation and maintenance of a major
7 league baseball park. The baseball park shall be located on a tract
8 of land at least forty percent (40%) of which is located in each of
9 the two most populous counties in the district, according to the
10 most recent decennial federal census. If the Authority resolves that
11 construction of a major league baseball park or any portion thereof
12 must be expedited for good cause as determined by the Authority:

13 a. The District is exempt from the following statutes: G.S. 143-
14 128, subsections (a) through (e); G.S. 143-129; 143-131; and
15 143-132; or

16 b. The District may contract with the entity that has been
17 awarded the major league baseball franchise for that entity,
18 or an affiliated, parent, or subsidiary entity, to construct the
19 baseball park, with clear title to the baseball park passing to
20 the District at the completion of construction. Construction
21 under this paragraph is not subject to State laws on public
22 contract bidding.

23 If the Authority does adopt such a resolution, the Authority shall
24 establish and use alternative methods of contracting that are fair
25 and competitive, in the conclusive judgment of the Authority. The
26 Authority shall use North Carolina based contractors where
27 feasible. The District may contract for the right to name any park
28 or other facility owned by the District, or may include the right to
29 contract for the park's or facility's name in any lease of or contract
30 for the operation of the park or facility.

31 (14) Acquire real property or interests in real property for highway
32 improvements that will benefit the major league baseball park, and
33 convey, with or without monetary consideration, such property or
34 interests in property to the Department of Transportation. The
35 District may not acquire property for highway improvements
36 through the exercise of eminent domain until after Major League
37 Baseball has announced approval of the award of a franchise for a
38 location within the District. In the acquisition by eminent domain
39 of such real property or interests in real property, the District may
40 use the procedures of Article 9 of Chapter 136 of the General
41 Statutes. For the purpose of this subdivision, whenever the words
42 'Department of Transportation' appear in Article 9, they are
43 deemed to include the District or Authority, and whenever the
44 words 'Administrator', 'Administrator of Highways',

1 'Administrator of the Department of Transportation', or
2 'Chairman of the Department of Transportation' appear in Article
3 9, they are deemed to include an appropriate official of the District
4 as designated by the Authority.

5 (15) Establish and collect fees and charges for the use of its facilities.

6 (16) Enter into partnerships, joint ventures, common ownership,
7 operating agreements, and other arrangements with other persons
8 to further District purposes.

9 (17) Do all acts and things necessary, convenient, or desirable to carry
10 out the purposes of and exercise the powers granted to it by this
11 Charter.

12 "Sec. 7. **Triple Net Lease Required.** -- Any lease of the baseball park for the
13 purpose of operating it for Major League Baseball must be triple net for a minimum
14 of 25 years, with the lessee responsible for upkeep and maintenance.

15 "Sec. 8. **District Taxes.** -- (a) Authorization. -- The Authority may, by resolution,
16 subject to the conditions set out in this subsection, levy a temporary local sales and
17 use tax at the rate of one percent (1%) within the District as provided in this section.
18 Before it may adopt such a resolution, however, two conditions must be met: (i)
19 Major League Baseball must have announced approval of the award of a franchise for
20 a location within the District no later than December 31, 2001, and (ii) the District's
21 voters must have approved the levy of the tax in a referendum called and held for
22 that purpose.

23 (b) Referendum. -- The State Board of Elections shall, upon the written request of
24 the Authority, call a referendum for the purpose of submitting to the voters of the
25 District the question of whether a temporary sales and use tax at the rate of one
26 percent (1%) will be levied in the District. The date of the referendum shall be set
27 by the Authority, which may set it for any Tuesday, including the day of any regular
28 or special election held for another purpose; the referendum, however, may not
29 otherwise be held within 50 days before or 50 days after a statewide primary,
30 election, or referendum. In fixing the date of the referendum, the Authority shall
31 consult with one or more of the county boards of elections within the District in
32 order that the referendum shall not unduly interfere with other elections or
33 referendums already scheduled or in process. Notice of the referendum shall be
34 given in the manner and at the times required by G.S. 163-33(8). The referendum
35 and the registration of voters therefor shall be held under and in accordance with the
36 general laws of the State. Absentee ballots shall be authorized in the referendum.

37 Ballots, voting systems authorized by Article 14 of Chapter 163 of the General
38 Statutes, or both may be used in accordance with rules prescribed by the State Board
39 of Elections. The question to be presented on the ballots or voting systems shall be
40 as follows, with the insertion of the name of the appropriate county:

41 'MAJOR LEAGUE BASEBALL PARK INITIATIVE

42 [] YES [] NO

43 When Major League Baseball has announced approval of a major league baseball
44 franchise for a location within the North Carolina Triad Metropolitan Baseball Park

1 District, may _____ County which is currently in the District help finance no more
2 than two-thirds of the cost of a major league baseball park through levy of a
3 temporary one percent (1%) sales and use tax within the counties remaining in the
4 District, for no longer than one year?’

5 The results of the referendum shall be canvassed and declared as provided by law
6 for elections of State officers; the results of the referendum shall be certified by the
7 State Board of Elections to the Authority in the manner and at the time provided by
8 the general election laws of the State for certifications of State elections. If a majority
9 of persons voting in the referendum in one or more counties vote in favor of levying
10 the tax, the issue is approved. The votes shall be tallied separately in each county in
11 the District. As provided in Section 3 of this act, any county that does not vote in
12 favor of the question is removed from the District, and the tax is imposed in the
13 District consisting of the counties that have approved the levy.

14 (c) Scope; Administration. -- Except as provided in this section, the adoption, levy,
15 scope, and collection of the tax shall be in accordance with Article 39 of Chapter 105
16 of the General Statutes as if the District were a county. The Secretary of Revenue
17 shall distribute the net proceeds of the tax to the Authority.

18 (d) Effective Date of Tax. -- A tax levied pursuant to this section shall become
19 effective on the date specified in the resolution levying the tax. That date must be
20 the first day of a calendar month, however, and may not be earlier than the first day
21 of the second month after the date the resolution is adopted.

22 (e) Use of Proceeds. -- The Authority may use the proceeds of a tax levied
23 pursuant to this section for any authorized activities of the district. Any of these
24 proceeds used to design, construct, equip, or improve a major league baseball park as
25 provided in Section 6(13) of this Charter must be matched by private funds on the
26 basis of at least one dollar (\$1.00) of private funds used for this purpose for every two
27 dollars (\$2.00) of these proceeds used for this purpose. Any of these proceeds not
28 matched as required in this subsection shall not be used to design, construct, equip,
29 or improve a major league baseball park as provided in Section 6(13) of this Charter.

30 (f) Termination of Tax. -- The authority to levy a tax pursuant to this section
31 terminates on the first day of the twelfth month after the effective date of the levy of
32 the tax and cannot be extended for any reason.

33 (g) Refunds After Tax Ends. -- If the Secretary of Revenue refunds a tax imposed
34 by this section after the tax has expired and the proceeds of the tax have been
35 distributed to the Authority, the Secretary shall notify the Authority of the amount of
36 the refund. The Authority shall reimburse the Secretary for the amount of the
37 refund.

38 "Sec. 9. **Budgeting and Fiscal Control.** -- The District is a unit of local government
39 under the Local Government Budget and Fiscal Control Act.

40 "Sec. 10. **Assistance From Local Governments.** -- Any county, city or town, or
41 other unit of local government or public authority located within the District may
42 contribute or advance moneys or other assets or services to the District. The District
43 may reimburse a local government or public authority for any such advance once it

1 is receiving the proceeds of any tax levied by it pursuant to this Charter or otherwise
2 has funds available to do so.

3 "Sec. 11. **Zoning and Annexation.** -- (a) The District may regulate land use upon
4 real property owned by it, and such property is not subject to any zoning ordinance
5 adopted by a county or city.

6 (b) Real property owned by the District is not subject to annexation pursuant to
7 Part 2 or 3 of Article 4A of Chapter 160A of the General Statutes."

8 Section 2. The General Statutes are amended by adding a new Chapter
9 to read:

10 "Chapter 160C.

11 "Baseball Park Districts.

12 "§ 160C-1. Baseball park districts.

13 The General Assembly may establish baseball park districts as bodies political and
14 corporate and political subdivisions of the State."

15 Section 3. G.S. 160A-20(h) reads as rewritten:

16 "(h) As used in this section, the term 'unit of local government' means any of the
17 following:

- 18 (1) A county.
19 (2) A city.
20 (3) A water and sewer authority created under Article 1 of Chapter
21 162A of the General Statutes.
22 (4) An airport authority whose situs is entirely within a county that
23 has (i) a population of over 120,000 according to the most recent
24 federal decennial census and (ii) an area of less than 200 square
25 miles.
26 (5) An airport authority in a county in which there are two
27 incorporated municipalities with a population of more than 65,000
28 according to the most recent federal decennial census.
29 (5a) An airport board or commission authorized by agreement between
30 two cities pursuant to G.S. 63-56, one of which is located partially
31 but not wholly in the county in which the jointly owned airport is
32 located, and where the board or commission provided water and
33 wastewater services off the airport premises before January 1, 1995;
34 provided that the authority granted by this section may be
35 exercised by such a board or commission with respect to water and
36 wastewater systems or improvements only.
37 (6) A local school administrative unit (i) that is located in a county
38 that has a population of over 90,000 according to the most recent
39 federal decennial census and (ii) whose board of education is
40 authorized to levy a school tax.
41 (7) An area mental health, developmental disabilities, and substance
42 abuse authority, acting in accordance with G.S. 122C-147.
43 (8) A consolidated city-county, as defined by G.S. 160B-2(1).
44 (9) A baseball park district."

1 Section 4. G.S. 159-148(a) reads as rewritten:

2 "(a) Except as provided in subsection (b) of this section, this Article applies to
3 any contract, agreement, memorandum of understanding, and any other transaction
4 having the force and effect of a contract (other than agreements made in connection
5 with the issuance of revenue bonds, special obligation bonds issued pursuant to
6 Chapter 159I of the General Statutes, or of general obligation bonds additionally
7 secured by a pledge of revenues) made or entered into by a unit of local government
8 (as defined by G.S. 159-7(b) or, in the case of a special obligation bond, as defined in
9 Chapter 159I of the General Statutes), relating to the lease, acquisition, or
10 construction of capital assets, which contract

- 11 (1) Extends for five or more years from the date of the contract,
12 including periods that may be added to the original term through
13 the exercise of options to renew or extend, and
14 (2) Obligates the unit to pay sums of money to another, without regard
15 to whether the payee is a party to the contract, and
16 (3) Obligates the unit over the full term of the contract, including
17 periods that may be added to the original term through the
18 exercise of options to renew or extend, to the extent of at least five
19 hundred thousand dollars (\$500,000) for baseball park districts
20 and, for other units, to the extent of five hundred thousand dollars
21 (\$500,000) or a sum equal to one tenth of one percent (1/10 of 1%)
22 of the assessed value of property subject to taxation by the
23 contracting unit, whichever is less, and
24 (4) Obligates the unit, expressly or by implication, to exercise its
25 power to levy taxes either to make payments falling due under the
26 contract, or to pay any judgment entered against the unit as a
27 result of the unit's breach of the contract.

28 Contingent obligation shall be included in calculating the value of the contract.
29 Several contracts that are all related to the same undertaking shall be deemed a
30 single contract for the purposes of this Article. When several contracts are
31 considered as a single contract, the term shall be that of the contract having the
32 longest term, and the sums to fall due shall be the total of all sums to fall due under
33 all single contracts in the group."

34 Section 5. Notwithstanding G.S. 105-259, the Department of Revenue
35 may furnish to the finance officer of the North Carolina Triad Metropolitan Baseball
36 Park Authority information on the sales and use tax levied by that Authority.

37 Section 6. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

D

SENATE BILL 389
Proposed Committee Substitute S389-PCS2651

Short Title: Baseball Park Districts.

(Public)

Sponsors:

Referred to:

March 13, 1997

- 1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH THE NORTH CAROLINA TRIAD METROPOLITAN
3 BASEBALL PARK DISTRICT, TO PROVIDE FOR A REFERENDUM ON
4 BASEBALL PARK FINANCING ON A DATE DESIGNATED BY THE
5 DISTRICT AND TO ALLOW BASEBALL PARK DISTRICTS TO ENTER
6 INTO INSTALLMENT FINANCING AGREEMENTS.
7 The General Assembly of North Carolina enacts:
8 Section 1. A Charter for the North Carolina Triad Metropolitan Baseball
9 Park District is enacted as follows:
10 "CHARTER OF THE NORTH CAROLINA
11 TRIAD METROPOLITAN BASEBALL PARK DISTRICT.
12 "Section 1. **Legislative Findings.** -- (a) The General Assembly determines that the
13 construction, financing, and operation of a major league baseball park in the Triad
14 area serves a public purpose in that it will:
15 (1) Enhance the opportunities for recreational entertainment for all
16 North Carolinians;
17 (2) Generate new economic activity in the Triad area, leading to the
18 establishment of many new businesses;
19 (3) Encourage economic development throughout North Carolina by
20 enhancing the State's attractiveness to new and relocated
21 businesses and its attractiveness as a tourist destination; and
22 (4) Provide numerous new jobs for North Carolinians.

1 (b) The General Assembly further determines that because constructing a major
2 league baseball park is an extraordinarily complex task and because being able to
3 construct such a park in as short a time as possible is crucial to the award of a major
4 league baseball franchise to the Triad area, it is necessary to waive the application of
5 the usual construction contracting requirements for the park's construction.

6 "Sec. 2. **Definitions.** -- The words and phrases defined in this section have the
7 meanings indicated when used in this Charter, unless the context clearly requires
8 another meaning.

9 (1) 'Authority' means the North Carolina Triad Metropolitan Baseball
10 Park Authority.

11 (2) 'District' means the North Carolina Triad Metropolitan Baseball
12 Park District, established by this Charter.

13 (3) 'Major League Baseball' means the organization that controls the
14 administrative functions for the ownership and operation of major
15 league baseball operations in the United States and Canada.

16 (4) 'Major league baseball park' means a sports facility designed for
17 use primarily as a major league baseball park or stadium. Such a
18 facility may include, without limitation, features such as parking
19 areas and facilities, office facilities for the District or any team or
20 other user of the facility, associated retail and other commercial
21 facilities, and other ancillary facilities necessary or desirable for the
22 sports facility and its success. Such a facility also includes the
23 landscaped grounds surrounding the baseball park and related and
24 ancillary facilities.

25 "Sec. 3. **District Incorporated.** -- The inhabitants of the counties listed in this
26 section are a body corporate and politic and a political subdivision of the State under
27 the name 'North Carolina Triad Metropolitan Baseball Park District'. The District
28 initially comprises the following counties: Alamance, Caswell, Davidson, Davie,
29 Forsyth, Guilford, Montgomery, Randolph, Rockingham, Stokes, Surry, and Yadkin.
30 If the voters in a county do not vote in favor of the question in Section 8 of this
31 Charter, then upon the certification of the results of the election, that county is
32 removed from the district. The District is a baseball park district.

33 "Sec. 4. **Authority Established.** -- (a) The District is governed by the Authority,
34 which has 15 members, appointed as follows:

35 (1) The Governor appoints five members, one at-large who shall be
36 the chair of the Authority, one each of whom at the time of
37 appointment were residents of Alamance and Davidson Counties
38 and two of whom at the time of appointment were residents of
39 Forsyth County.

40 (2) The General Assembly appoints five members upon the
41 recommendation of the President Pro Tempore of the Senate, one
42 each of whom at the time of appointment were residents of
43 Caswell, Davie, and Montgomery Counties and two of whom at the
44 time of appointment were residents of Guilford County.

- 1 (3) The General Assembly appoints five members upon the
2 recommendation of the Speaker of the House of Representatives,
3 one each of whom at the time of appointment were residents of
4 Randolph, Stokes, Surry, Yadkin, and Rockingham Counties.
- 5 (b) Members of the Authority serve three-year terms, but in appointing the initial
6 members of the Authority, the Governor, the General Assembly upon the
7 recommendation of the Speaker of the House of Representatives and the General
8 Assembly upon the recommendation of the President Pro Tempore shall each
9 designate one of their appointees to serve until July 1, 1999, two to serve until July 1,
10 2000, and two to serve until July 1, 2001. If a vacancy occurs in the membership of
11 the Authority, and the person causing the vacancy was appointed by the Governor,
12 the Governor shall fill the vacancy for the remainder of the unexpired term. If the
13 person causing the vacancy was appointed by the General Assembly, the vacancy
14 shall be filled pursuant to G.S. 120-122. Initial terms commence upon appointment.
- 15 (c) The Authority may elect a vice-chair and such other officers as it determines
16 for terms established in the bylaws of the Authority.
- 17 (d) Once the Governor has appointed the initial chair of the Authority, the chair
18 shall determine the time and place of the Authority's initial meeting and shall cause
19 notice of the meeting to be given to each member of the Authority and to the public.
20 Thereafter, the Authority may establish a schedule of regular meetings and may
21 provide in its bylaws for the manner in which special meetings may be called.
- 22 (e) A majority of the members of the Authority, not counting vacant seats,
23 constitutes a quorum. The Authority may meet by conference telephone call as
24 provided by G.S. 143-318.13(a).
- 25 (f) The Authority may take action only upon the vote of a majority of its
26 members, not counting vacant seats and not counting members who have disclosed a
27 conflict of interest in the matter under discussion and vote.
- 28 (g) The Authority may adopt bylaws for the regulation of its affairs and the
29 conduct of its business, including rules of procedure, consistent with this Charter and
30 other applicable statutes.
- 31 (h) Members of the Authority are not compensated for their service, but the
32 Authority may provide that members are to be reimbursed for actual expenses
33 incurred while serving as an Authority member.
- 34 (i) If any county is removed from the district as provided by Section 3 of this
35 Charter, any member of the Authority residing in that county is removed, and the
36 appointing authority may appoint a resident of any county remaining in the district to
37 that seat.
- 38 "Sec. 5. **Conflicts of Interest.** -- (a) G.S. 14-234 applies to the District and its
39 employees and to the members of the Authority.
- 40 (b) If a member of the Authority, or any member of the immediate family of a
41 member of the Authority, or the employer of a member of the Authority has a direct
42 financial interest in any matter that comes before the Authority, the affected member
43 shall disclose the interest and shall abstain from participating in the discussion of or
44 vote on the matter.

1 (c) Violation of this section does not affect the validity of any debts or obligations
2 incurred by the district.

3 "Sec. 6. **District Powers.** -- In addition to powers set out elsewhere in this Charter
4 and powers granted to the District by other statutes, the District may:

- 5 (1) Enter into contracts.
- 6 (2) Sue and be sued in its own name, and plead and be impleaded.
- 7 (3) Adopt an official seal.
- 8 (4) Apply for, accept, receive, and disburse funds and grants made
9 available to it by the United States of America or any agency
10 thereof, the State of North Carolina or any agency thereof, any
11 unit of local government or other political subdivision, and any
12 private entity or person; and accept donations of property. The
13 District may comply with the conditions and requirements
14 respecting any gift, grant, or donation of any property or funds.
- 15 (5) Employ and compensate such personnel as the Authority
16 determines. The Authority may delegate to any employee of the
17 District the authority to employ, supervise, discipline, or discharge
18 other employees of the District. The District is subject to G.S.
19 153A-98 with respect to the personnel files of its employees.
- 20 (6) Contract with consultants and other independent contractors.
- 21 (7) Contract with and appropriate money to any person, association,
22 or corporation, public or private, in order to carry out any public
23 purpose that the District is authorized by this Charter or other law
24 to engage in.
- 25 (8) Procure insurance to protect against loss of the District's property
26 or other assets, and against liabilities incurred by the District, the
27 Authority, or any officer, employee, or agent of the District. The
28 District may, pursuant to G.S. 160A-167, provide the defense of
29 any officer or employee of the District.
- 30 (9) Acquire and maintain administrative offices.
- 31 (10) Acquire by purchase, lease, gift, eminent domain, or otherwise, or
32 obtain options for the acquisition of, any real or personal property
33 or interest therein, in order to carry out the authorized activities of
34 the District. The District may not acquire property through the
35 exercise of eminent domain until after Major League Baseball has
36 announced approval of the award of a franchise for a location
37 within the District. In exercising the power of eminent domain,
38 the District shall follow the procedures of Chapter 40A of the
39 General Statutes applicable to local public condemners.
- 40 (11) Sell, lease, exchange, transfer, or otherwise dispose of, or grant
41 options for any such purposes with respect to, any real or personal
42 property or interest therein. In disposing of property or any
43 interest in property, the District may proceed under such

- 1 procedures as it determines and is not subject to any procedural
2 requirements not included in this Charter.
- 3 (12) Promote award of a Major League Baseball franchise to a location
4 within the District.
- 5 (13) Design, construct, equip, improve, promote, operate, maintain,
6 lease, or contract for the operation and maintenance of a major
7 league baseball park. The baseball park shall be located on a tract
8 of land at least forty percent (40%) of which is located in each of
9 the two most populous counties in the district, according to the
10 most recent decennial federal census. If the Authority resolves that
11 construction of a major league baseball park or any portion thereof
12 must be expedited for good cause as determined by the Authority:
- 13 a. The District is exempt from the following statutes: G.S. 143-
14 128, subsections (a) through (e); G.S. 143-129; 143-131; and
15 143-132; or
- 16 b. The District may contract with the entity that has been
17 awarded the major league baseball franchise for that entity,
18 or an affiliated, parent, or subsidiary entity, to construct the
19 baseball park, with clear title to the baseball park passing to
20 the District at the completion of construction. Construction
21 under this paragraph is not subject to State laws on public
22 contract bidding.
- 23 If the Authority does adopt such a resolution, the Authority shall
24 establish and use alternative methods of contracting that are fair
25 and competitive, in the conclusive judgment of the Authority. The
26 Authority shall use North Carolina based contractors where
27 feasible. The District may contract for the right to name any park
28 or other facility owned by the District, or may include the right to
29 contract for the park's or facility's name in any lease of or contract
30 for the operation of the park or facility.
- 31 (14) Acquire real property or interests in real property for highway
32 improvements that will benefit the major league baseball park, and
33 convey, with or without monetary consideration, such property or
34 interests in property to the Department of Transportation. The
35 District may not acquire property for highway improvements
36 through the exercise of eminent domain until after Major League
37 Baseball has announced approval of the award of a franchise for a
38 location within the District. In the acquisition by eminent domain
39 of such real property or interests in real property, the District may
40 use the procedures of Article 9 of Chapter 136 of the General
41 Statutes. For the purpose of this subdivision, whenever the words
42 'Department of Transportation' appear in Article 9, they are
43 deemed to include the District or Authority, and whenever the
44 words 'Administrator', 'Administrator of Highways',

1 'Administrator of the Department of Transportation', or
2 'Chairman of the Department of Transportation' appear in Article
3 9, they are deemed to include an appropriate official of the District
4 as designated by the Authority.

5 (15) Establish and collect fees and charges for the use of its facilities.

6 (16) Enter into partnerships, joint ventures, common ownership,
7 operating agreements, and other arrangements with other persons
8 to further District purposes.

9 (17) Do all acts and things necessary, convenient, or desirable to carry
10 out the purposes of and exercise the powers granted to it by this
11 Charter.

12 "Sec. 7. Triple Net Lease Required. -- Any lease of the baseball park for the
13 purpose of operating it for Major League Baseball must be triple net for a minimum
14 of 25 years, with the lessee responsible for upkeep and maintenance.

15 "Sec. 8. District Taxes. -- (a) Authorization. -- The Authority may, by resolution,
16 subject to the conditions set out in this subsection, levy a temporary local sales and
17 use tax at the rate of one percent (1%) within the District as provided in this section.
18 Before it may adopt such a resolution, however, two conditions must be met: (i)
19 Major League Baseball must have announced approval of the award of a franchise for
20 a location within the District, and (ii) the District's voters must have approved the
21 levy of the tax in a referendum called and held for that purpose.

22 (b) Referendum. -- The State Board of Elections shall, upon the written request of
23 the Authority, call a referendum for the purpose of submitting to the voters of the
24 District the question of whether a temporary sales and use tax at the rate of one
25 percent (1%) will be levied in the District. The date of the referendum shall be set
26 by the Authority, which may set it for any day, including the day of any regular or
27 special election held for another purpose; the referendum, however, may not
28 otherwise be held within 50 days before or 50 days after a statewide primary,
29 election, or referendum. In fixing the date of the referendum, the Authority shall
30 consult with one or more of the county boards of elections within the District in
31 order that the referendum shall not unduly interfere with other elections or
32 referendums already scheduled or in process. Notice of the referendum shall be
33 given in the manner and at the times required by G.S. 163-33(8). The referendum
34 and the registration of voters therefor shall be held under and in accordance with the
35 general laws of the State. Absentee ballots shall be authorized in the referendum.

36 Ballots, voting systems authorized by Article 14 of Chapter 163 of the General
37 Statutes, or both may be used in accordance with rules prescribed by the State Board
38 of Elections. The question to be presented on the ballots or voting systems shall be
39 substantially as follows:

40 'MAJOR LEAGUE BASEBALL PARK INITIATIVE
41 [] YES [] NO

42 When Major League Baseball has announced approval of a major league baseball
43 franchise for a location within the North Carolina Triad Metropolitan Baseball Park
44 District, may _____ County which is currently in the District help finance no more

1 than two-thirds of the cost of a major league baseball park through levy of a
2 temporary one percent (1%) sales and use tax within the counties remaining in the
3 District, for no longer than one year?"

4 The results of the referendum shall be canvassed and declared as provided by law
5 for elections of State officers; the results of the referendum shall be certified by the
6 State Board of Elections to the Authority in the manner and at the time provided by
7 the general election laws of the State for certifications of State elections. If a majority
8 of persons voting in the referendum in one or more counties vote in favor of levying
9 the tax, the issue is approved. The votes shall be tallied separately in each county in
10 the District. As provided in Section 3 of this act, any county that does not vote in
11 favor of the question is removed from the District, and the tax is imposed in the
12 District consisting of the counties that have approved the levy.

13 (c) Scope; Administration. -- Except as provided in this section, the adoption, levy,
14 scope, and collection of the tax shall be in accordance with Article 39 of Chapter 105
15 of the General Statutes as if the District were a county. The Secretary of Revenue
16 shall distribute the net proceeds of the tax to the Authority.

17 (d) Effective Date of Tax. -- A tax levied pursuant to this section shall become
18 effective on the date specified in the resolution levying the tax. That date must be
19 the first day of a calendar month, however, and may not be earlier than the first day
20 of the second month after the date the resolution is adopted.

21 (e) Use of Proceeds. -- The Authority may use the proceeds of a tax levied
22 pursuant to this section for any authorized activities of the district. Any of these
23 proceeds used to design, construct, equip, or improve a major league baseball park as
24 provided in Section 6(13) of this Charter must be matched by private funds on the
25 basis of at least one dollar (\$1.00) of private funds used for this purpose for every two
26 dollars (\$2.00) of these proceeds used for this purpose. Any of these proceeds not
27 matched as required in this subsection shall not be used to design, construct, equip,
28 or improve a major league baseball park as provided in Section 6(13) of this Charter.

29 (f) Termination of Tax. -- The authority to levy a tax pursuant to this section
30 terminates on the first day of the twelfth month after the effective date of the levy of
31 the tax and cannot be extended for any reason.

32 (g) Refunds After Tax Ends. -- If the Secretary of Revenue refunds a tax imposed
33 by this section after the tax has expired and the proceeds of the tax have been
34 distributed to the Authority, the Secretary shall notify the Authority of the amount of
35 the refund. The Authority shall reimburse the Secretary for the amount of the
36 refund.

37 **"Sec. 9. Budgeting and Fiscal Control.** -- The District is a unit of local government
38 under the Local Government Budget and Fiscal Control Act.

39 **"Sec. 10. Assistance From Local Governments.** -- Any county, city or town, or
40 other unit of local government or public authority located within the District may
41 contribute or advance moneys or other assets or services to the District. The District
42 may reimburse a local government or public authority for any such advance once it
43 is receiving the proceeds of any tax levied by it pursuant to this Charter or otherwise
44 has funds available to do so.

1 "Sec. 11. **Zoning and Annexation.** -- (a) The District may regulate land use upon
2 real property owned by it, and such property is not subject to any zoning ordinance
3 adopted by a county or city.

4 (b) Real property owned by the District is not subject to annexation pursuant to
5 Part 2 or 3 of Article 4A of Chapter 160A of the General Statutes."

6 Section 2. The General Statutes are amended by adding a new Chapter
7 to read:

8 "Chapter 160C.

9 "Baseball Park Districts.

10 "§ 160C-1. Baseball park districts.

11 The General Assembly may establish baseball park districts as bodies political and
12 corporate and political subdivisions of the State."

13 Section 3. G.S. 160A-20(h) reads as rewritten:

14 "(h) As used in this section, the term 'unit of local government' means any of the
15 following:

- 16 (1) A county.
- 17 (2) A city.
- 18 (3) A water and sewer authority created under Article 1 of Chapter
19 162A of the General Statutes.
- 20 (4) An airport authority whose situs is entirely within a county that
21 has (i) a population of over 120,000 according to the most recent
22 federal decennial census and (ii) an area of less than 200 square
23 miles.
- 24 (5) An airport authority in a county in which there are two
25 incorporated municipalities with a population of more than 65,000
26 according to the most recent federal decennial census.
- 27 (5a) An airport board or commission authorized by agreement between
28 two cities pursuant to G.S. 63-56, one of which is located partially
29 but not wholly in the county in which the jointly owned airport is
30 located, and where the board or commission provided water and
31 wastewater services off the airport premises before January 1, 1995;
32 provided that the authority granted by this section may be
33 exercised by such a board or commission with respect to water and
34 wastewater systems or improvements only.
- 35 (6) A local school administrative unit (i) that is located in a county
36 that has a population of over 90,000 according to the most recent
37 federal decennial census and (ii) whose board of education is
38 authorized to levy a school tax.
- 39 (7) An area mental health, developmental disabilities, and substance
40 abuse authority, acting in accordance with G.S. 122C-147.
- 41 (8) A consolidated city-county, as defined by G.S. 160B-2(1).
- 42 (9) A baseball park district."

43 Section 4. G.S. 159-148(a) reads as rewritten:

1 (a) Except as provided in subsection (b) of this section, this Article applies to
2 any contract, agreement, memorandum of understanding, and any other transaction
3 having the force and effect of a contract (other than agreements made in connection
4 with the issuance of revenue bonds, special obligation bonds issued pursuant to
5 Chapter 159I of the General Statutes, or of general obligation bonds additionally
6 secured by a pledge of revenues) made or entered into by a unit of local government
7 (as defined by G.S. 159-7(b) or, in the case of a special obligation bond, as defined in
8 Chapter 159I of the General Statutes), relating to the lease, acquisition, or
9 construction of capital assets, which contract

- 10 (1) Extends for five or more years from the date of the contract,
11 including periods that may be added to the original term through
12 the exercise of options to renew or extend, and
13 (2) Obligates the unit to pay sums of money to another, without regard
14 to whether the payee is a party to the contract, and
15 (3) Obligates the unit over the full term of the contract, including
16 periods that may be added to the original term through the
17 exercise of options to renew or extend, to the extent of at least five
18 hundred thousand dollars (\$500,000) for baseball park districts
19 and, for other units, to the extent of five hundred thousand dollars
20 (\$500,000) or a sum equal to one tenth of one percent (1/10 of 1%)
21 of the assessed value of property subject to taxation by the
22 contracting unit, whichever is less, and
23 (4) Obligates the unit, expressly or by implication, to exercise its
24 power to levy taxes either to make payments falling due under the
25 contract, or to pay any judgment entered against the unit as a
26 result of the unit's breach of the contract.

27 Contingent obligation shall be included in calculating the value of the contract.
28 Several contracts that are all related to the same undertaking shall be deemed a
29 single contract for the purposes of this Article. When several contracts are
30 considered as a single contract, the term shall be that of the contract having the
31 longest term, and the sums to fall due shall be the total of all sums to fall due under
32 all single contracts in the group."

33 Section 5. Notwithstanding G.S. 105-259, the Department of Revenue
34 may furnish to the finance officer of the North Carolina Triad Metropolitan Baseball
35 Park Authority information on the sales and use tax levied by that Authority.

36 Section 6. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 447

Short Title: Lumberton Economic Development District.

(Public)

Sponsors: Senators Weinstein; Conder, Odom, Rand, Shaw of Cumberland, Soles, and Wellons.

Referred to: Finance.

March 20, 1997

A BILL TO BE ENTITLED

1
2 AN ACT TO ESTABLISH THE LUMBERTON ECONOMIC DEVELOPMENT
3 AND TOURIST DISTRICT AND TO AUTHORIZE THE ISSUANCE OF
4 CERTAIN ABC PERMITS IN THIS TYPE OF DISTRICT.

5 The General Assembly of North Carolina enacts:

6 Section 1. District Created. -- The Lumberton Economic Development
7 and Tourist District is created. The District consists of the area described in Section
8 2 of this act. The District is a body politic and corporate and a political subdivision
9 of the State. The District is subject to the Local Government Budget and Fiscal
10 Control Act, Article 3 of Chapter 159 of the General Statutes.

11 The Lumberton City Council shall serve, ex officio, as the governing
12 body of the District, and the officers of the City Council shall likewise serve as the
13 officers of the governing body of the District. The governing body of the District
14 shall promote economic development and tourism in the District and do all acts
15 reasonably necessary to fulfill this purpose.

16 A simple majority of the governing body of the District constitutes a
17 quorum. Approval by a majority of a quorum is sufficient to determine any matter
18 before the governing body of the District.

19 Section 2. Description of District. -- The Lumberton Economic
20 Development and Tourist District consists of the following area:

21 BEGINNING at a point where the western right-of-way line of Interstate 95 intersects
22 Lumber River and runs thence from said beginning point in a western direction with
23 Lumber River to the run of Saddletree Swamp; thence in a northern direction with

1 the run of Saddletree Swamp to the southern right-of-way line of North Carolina
2 Highway 211 (also known as Roberts Avenue); thence with southern right-of-way line
3 of North Carolina Highway 211 in an eastern direction to a point where the southern
4 right-of-way line of said highway intersects the run of Five Mile Branch; thence in a
5 northern direction with the run of Five Mile Branch to a point in the run of said
6 branch being located 500 feet west of (perpendicular distance) the western right-of-
7 way line of Interstate 95; thence leaving said Five Mile Branch in a northern
8 direction with a line being 500 feet west of and parallel to the western right-of-way
9 line of Interstate 95 to a point in the eastern property line of Mayfair Subdivision;
10 thence in a general northern direction with the various eastern property lines of
11 Mayfair Subdivision to the eastern property line of Mayfair North Subdivision; thence
12 in a general northern direction with the various eastern property lines of Mayfair
13 North Subdivision and beyond to a point in a ditch just south of the AA building;
14 thence in a western direction with said ditch to the run of Saddletree Swamp; thence
15 with the run of Saddletree Swamp in a northern direction approximately 1900 feet to
16 a point; thence leaving said swamp in an eastern direction to and with the southern
17 line of property owned by Lumberton Motors (Deed Book 920, Page 557) to a point
18 in said southern line being 500 feet (perpendicular distance) west of the western
19 right-of-way line of Interstate 95; thence in a northern direction 500 feet west of and
20 parallel to the western right-of-way line of Interstate 95 to a point 500 feet south of
21 and perpendicular to U.S. Highway 301 (also known as Fayetteville Road); thence in
22 a northwestern direction 500 feet south of and parallel to U.S. Highway 301 to a
23 point where this line intersects the northwestern line of Lawrence H. Oliver's
24 property (Deed Book 628, Pages 673 and 674) if it were extended; thence in a
25 northeastern direction to, with, and beyond Lawrence H. Oliver's northwestern
26 property line to a point in the northeastern right-of-way line of U.S. Highway 301;
27 thence with the northeastern right-of-way line of U.S. Highway 301 in a southeastern
28 direction to the most southern corner of Robeson Community College property;
29 thence with the southeastern property line of Robeson Community College property
30 to the western right-of-way line of Interstate 95; thence crossing Interstate 95 to a
31 point in the eastern right-of-way line of said Interstate 95, said point being Thomas
32 Carr Gibson's southwest corner (Deed Book 775, Page 665); thence with and beyond
33 Gibson's southern line (Deed Book 775, Page 665, Deed Book 490, Pages 84 and 85,
34 and Deed Book 485, Page 335) to a point in the center line of Secondary Road 1005
35 (also known as Barker Ten Mile Road); thence with the center line of Secondary
36 Road 1005 in a southern direction to a point at the intersection of the center line of
37 said Secondary Road 1005 with the northeastern right-of-way line of U.S. Highway
38 301 (also known as Secondary Road 1997 and Fayetteville Road); thence with the
39 eastern right-of-way line of U.S. Highway 301, in a southeastern direction to a point
40 in the run of Five Mile Branch; thence in a northeastern direction with the run of
41 Five Mile Branch approximately 352.63 feet to a point in the run of said branch;
42 thence leaving said branch 300 feet east of and parallel to U.S. Highway 301
43 approximately 488.4 feet to a point in the northern right-of-way line of a private drive
44 (54 feet in width); thence with the northern right-of-way line of said private drive in a

1 western direction to a point in the western right-of-way line of said U.S. Highway
2 301; thence with said western right-of-way line to a point 300 feet (perpendicular
3 distance) south of the southern right-of-way line of Liberty Hill Road; thence in a
4 western direction 300 feet south of and parallel to the southern right-of-way line of
5 Liberty Hill Road to a point in the eastern right-of-way line of Independence Drive;
6 thence with the eastern right-of-way line of Independence Drive in a northern
7 direction to a point in the southern right-of-way line of Liberty Hill Road; thence
8 with the southern right-of-way line of Liberty Hill Road in a western direction
9 crossing Independence Drive to the northwestern property corner of property owned
10 by the Church of Jesus Christ of Latter Day Saints; thence in a southern direction
11 with the western property line of said church property to a point 300 feet
12 (perpendicular distance) south of Liberty Hill Road; thence in a western direction
13 300 feet south of and parallel to the southern right-of-way line of Liberty Hill Road
14 to a point 500 feet east of (perpendicular distance) the eastern right-of-way of
15 Interstate 95; thence in a southern direction 500 feet east of and parallel to the
16 eastern right-of-way line of Interstate 95 to a point 500 feet north (perpendicular
17 distance) of North Carolina Highway 211 (also known as Roberts Avenue); thence in
18 a southeastern direction 500 feet north of and parallel to North Carolina Highway
19 211 to a point where if extended the western right-of-way line of McMillian Avenue
20 would intersect this line; thence in a southern direction to and with the western right-
21 of-way line of McMillian Avenue to a point being 135 feet south (perpendicular
22 distance) of North Carolina Highway 211; thence in a western direction 135 feet
23 southeast of and parallel to North Carolina Highway 211, crossing Rowland Avenue
24 to a point in the western right-of-way line of Rowland Avenue; thence in a southern
25 direction with the western right-of-way line of Rowland Avenue to a point in the
26 northern right-of-way line of a now abandoned V & C S Railroad right-of-way;
27 thence with said railroad right-of-way line in a southwestern and then southern
28 direction to a point on the northern line of Jennings Cotton Mills Subdivision (Map
29 Book 7, Page 48) approximately 80 feet north of West Twenty-fourth Street; thence in
30 a western direction, with the northern line of said Jennings Cotton Mills Subdivision
31 line to a point approximately 218.39 feet east of Interstate 95; thence in a southern
32 direction approximately 79.72 feet to a point in the northern right-of-way line of West
33 Twenty-fourth Street at its intersection with Delmar Street; thence in a western
34 direction with the northern right-of-way line of Twenty-fourth Street to a point 200
35 feet east (perpendicular distance) of the eastern right-of-way line of Interstate 95;
36 thence in a southern direction 200 feet east of and parallel to Interstate 95 to a point
37 in the center line of Carthage Road; thence in a western direction with the center
38 line of Carthage Road to the intersection of the center line of said Carthage Road
39 with the western right-of-way line of Interstate 95; and thence in a southern direction
40 to and with the western right-of-way line of Interstate 95 to the point of beginning.

41 Section 3. G.S. 18B-1006 is amended by adding a new subsection to
42 read:

43 "(1) Economic and Tourist Development District. -- Notwithstanding the
44 provisions of Article 6 of this Chapter, the Commission may issue permits for the sale

1 of mixed beverages to qualified businesses in an economic and tourist development
2 district. An 'economic and tourist development district' is a district that is a political
3 subdivision of the State, is within the corporate limits of a city, was established by an
4 act of the General Assembly enacted before July 1, 1997, and was established for the
5 purpose of promoting economic development and tourism in the district. The mixed
6 beverages purchase-transportation permit authorized by G.S. 18B-404(b) shall be
7 issued by a local board operating a store located in the city in which the district is
8 located. The governing body of a district that is eligible for mixed beverages permits
9 under this subsection must file with the Commission a certified copy of a map setting
10 out the boundaries of the district."

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

EXPLANATION OF SENATE BILL 447
Lumberton Economic Development District

TO: Senate Finance Committee
FROM: Sabra Faires, Committee Counsel
DATE: April 2, 1997
SPONSOR: Senator Weinstein

Senate Bill 447 creates the Lumberton Economic Development District as a unit of local government and authorizes the ABC Commission to issue mixed beverages permits to restaurants, hotels, and other eligible businesses in the district. The bill is effective when it becomes law.

The District established in the bill is an area along I-95 in the City of Lumberton in Robeson County. Section 2 of the bill sets out the boundaries of the District. The District is to be governed by the City Council of Lumberton. The purpose of the District is to promote economic development and tourism in the District.

The bill is local in effect but is a public bill because the authorization in the bill to issue mixed beverages permits applies to all economic development districts that meet the description in the bill. To meet the description, a district must be a unit of government, be entirely within a city, be established for the purpose of promoting economic development, and be established before July 1, 1997. If this bill is enacted, the district created by this bill will be the only one that meets the description.

The following businesses are eligible for a mixed beverages permit: restaurants, hotels, private clubs, convention centers, community theatres, nonprofit organizations, and political organizations. To qualify as a restaurant, an establishment must derive at least 40% of its gross receipts from food and nonalcoholic beverages and have seating for at least 36 people.

The alcoholic beverage laws contain many classifications that appear general but are designed to apply to specific counties or areas only. The reason for this is that the North Carolina Constitution in Article II, Section 24 prohibits local acts regulating trade. The sale of alcoholic beverages is a form of trade. Therefore, local acts on alcoholic beverage sales are prohibited. A bill that establishes a general class is a public bill even if only one area fits in the class.

Under current law, mixed beverages cannot be sold in Lumberton because their sale has not been approved in an election in Robeson County or the City of Lumberton. No alcoholic beverages are authorized county-wide in Robeson County. Lumberton has authorized the on-premises sale of beer and unfortified wine at hotels, motels, and restaurants, has authorized the sale of off-premises beer and off-premises unfortified wine, and has authorized the operation of an ABC store.

**NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE**

BILL NUMBER: SB 447
SHORT TITLE: Lumberton Economic Development District
SPONSOR(S): Senator Weinstein, et al.

FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 1997-98</u>	<u>FY 1998-99</u>	<u>FY 1999-00</u>	<u>FY 2000-01</u>	<u>FY 2001-02</u>
REVENUES					
Lumberton GF.	\$11,800	\$12,100	\$12,300	\$12,600	\$13,000
PRINCIPAL DEPARTMENT(S) & City of Lumberton General Fund					
EFFECTIVE DATE: When it becomes law					

BILL SUMMARY: The act creates an economic district and a tourist district within the confines of the city of Lumberton. The sale of mixed beverages is authorized within this district.

ASSUMPTIONS AND METHODOLOGY: The city of Lumberton sales spirituous liquor through ABC outlets. This act does not authorize the sale of liquor by the drink thought-out the domain of the city but rather a small portion so designated as an economic development district. The analysis is based on comparing some cities along major road-ways such as highways 70 and 421 in North Carolina and the percent of mixed beverage sales to retail sales in these cities/counties is between 6% and 12%. The percentage for the city of Henderson bordering Interstate 85 is 12%. Since the district established by this act is only a portion of the municipality a more conservative percentage to apply to the retail sale value is 6%. Six percent of the \$1,641,262 is \$98,476 in sales. There is a mixed beverage surcharge of \$20.00 on bottles of spirituous liquor sold to establishments for liquor by the drink sales. Local units of government receive \$9.00 of this amount. The amount of mixed beverage retained by the local government is estimated to be \$11,800. The growth in liquor sales in the 1995/96 was 2.25%, prior to this year sales were flat or declined statewide.

FISCAL RESEARCH DIVISION

733-4910

PREPARED BY: H. Warren Plonk

APPROVED BY:

DATE: April 2, 1997

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 363

Short Title: Harnett Community College Acquisition.

(Local)

Sponsors: Senator Page.

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

March 11, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW HARNETT COUNTY TO ACQUIRE AND OTHERWISE
3 MAKE AVAILABLE PROPERTY FOR USE BY THE BOARD OF TRUSTEES
4 OF A COMMUNITY COLLEGE WITHIN THE COUNTY.

5 The General Assembly of North Carolina enacts:

6 Section 1. Section 3 of Chapter 613 of the 1993 Session Laws, as
7 amended by Chapters 154, 399, and 706 of the 1995 Session Laws, reads as rewritten:

8 "Section 3. This act applies only to Gaston, Green, Halifax, Harnett, Montgomery,
9 Nash, Sampson, and Wilson Counties."

10 Section 2. The amendments to G.S. 153A-158 made by Chapter 613 of
11 the 1993 Session Laws and Chapter 399 of the 1995 Session Laws apply to Harnett
12 County.

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

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

4/2/1977
Date

Name of Committee

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Parker Kiser	Alamogordo County
Rufus Shelton	Burlington
Eliot E. Miller	Davidson Co.
D. Richard Cameron	Lexington Chamber of Commerce
Walter C. Klein	W-S Chamber
TIM NEWMAN	W-S "
Dorey Cheryl Bailey	W-S "
Shelley Inadwell	W-S "
Stephen D. Be	W-S "
Chad Pearson	W-S "
Randy Britton	" "

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

4/2/1977
Date

Name of Committee

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Ken Carlson	W-S Chamber
RJ (Buck) Juebing	SURRY Co. Commissioner
PAUL CHAMBERS	BEUSONTA - GREENSBORO
Jim Kelley	GREENSBORO CHAMBER
Eileen Hennessy	Greensboro Chamber of Commerce
Allen Holt Gwynn	Patton Boggs
R Lee Farmer	Farmer + Watlington, L.L.P.
Peter Reichard	SoC Chamber
Jim Beck	Greensboro Chamber
Greta Lint	NC Zoo - Asheboro
Chris Vakari	NC Bank & Trust Wholesale

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

4/2/1977
Date

Name of Committee

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

ASL	THOMASVILLE CHAMBER
B. M. M. M.	Thomasville Chamber
Anna Fulton	ABC Commission
Cam Cover	NCACS
David Casse	Alamance County Area Chamber of Commerce PO Box 456 Burlington, NC 27216
Jerry Tolley	Town of Elon College
Matt Wall	Alamance Chamber of Commerce
John Dwyer	City of Eden
Charles Moore	ALAMANCE COUNTY
Earl Ewing	alamance County
Floyd Smith	Alamance County

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

4/2/97
Date

Name of Committee

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Susan Phillips	NCTU
Betsy Justice	NCEITA
WALKER MOFFITT	ASHEBORO RANDOLPH CHAMBER OF COMM.
George Gaster	Asheboro/Randolph Chamber of Commerce
Ann Case	DEHNR
ALLISON BARRISI	THOMASVILLE CHAMBER OF COMMERCE
TALMADGE S. BAKER	ASHEBORO/RANDOLPH CHAMBER OF COMMERCE
DOUG CROFT	THOMASVILLE CHAMBER
Kelly G. May	Burlington/Alamance Co. Convention + Visitors Bureau/Chamber
Alice Garland	Electronics
Russ Williams	N.C. Zoo Society / Pres. - Asheboro/Randolph Chamber

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

4/2/1977
Date

Name of Committee

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Chris Purdom	Surlington N.C.
Carl Wickers	Burlington N.C.
Crystal W. Smith	Levinston Area Chamber of Commerce
Paul Smith	" " " " "
John Walsen	" " " " "
CAROLYN SPENCE	GREENSBORO CHAMBER OF COMMERCE
Sam Sellers	Alamance County
Craig Miller	HP Enterprise
Carol Bilton	Alamance County
Richard C. Keziah Jr.	ALAMANCE COUNTY
Charlie Jones	ALAMANCE COUNTY

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

FINANCE COMMITTEE REPORT

Senator David Hoyle, Co-Chair

Senator John Kerr, Co-Chair

Wednesday, April 02, 1997

SENATOR HOYLE,

submits the following with recommendations as to passage:

FAVORABLE

S.B. 363 Harnett Community College Acquisition
 Sequential Referral: none
 Recommended Referral: none

S.B. 447 Lumberton Economic Development District
 Sequential Referral: none
 Recommended Referral: none

TOTAL REPORTED: 2

Committee Clerk Comment: none

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT

Senator David Hoyle, Co-Chair
Senator John Kerr, Co-Chair

Thursday, April 03, 1997

SENATOR KERR,

submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B.(CS #1)389

Baseball Park Districts

Draft Number: PCS2627

Sequential Referral: None

Recommended Referral: None

Long Title Amended: No

TOTAL REPORTED: 1

Committee Clerk Comment: none

SENATE FINANCE COMMITTEE

THURSDAY, APRIL 3, 1997

8:30 A.M. - ROOM 544 LOB

The Senate Finance Committee met on April 3, 1997, with Senator Hoyle presiding. There were 17 committee members present.

The following bills were discussed:

S.B. 157 - Corporate Amendments

Senator Hartsell was recognized to explain S.B. 157. On motion by Senator Hartsell, an amendment was adopted. Senator Conder moved that the bill be given a "favorable" report as amended. Motion carried and the amendment will be incorporated into a committee substitute. Copy of Bill, Amendment, Committee Substitute and Fiscal Note included in the minutes.

S.B. 153 - Scrap Tire Disposal Tax Amendment

Senator Odom was recognized to explain S. B. 153 and made a motion that a proposed committee substitute be adopted. Senator Kerr offered a technical amendment which was adopted on his motion. Paul Chrisman, Division of Waste Management, was recognized to comment on the bill and answer questions. Senator Kerr moved for the adoption of an amendment that would sunset this bill after 5 years and the amendment was adopted. (No copy of amendment) Senator Kerr also offered an amendment to remove the position called for in the bill and the amendment was adopted. (No copy of amendment) On motion of Senator Conder, the proposed committee substitute was given a "favorable report as amended" and will be rolled into a new committee substitute which will include the three amendments. Copy of Committee Substitute, Copy of New Committee Substitute, Copy of Technical Amendment, Explanation, Fact Sheet, Fiscal Note and Scrap Tire Collections History included in the minutes.

S.B. 124 - Amend White Goods Tax

Senator Odom was recognized to explain S.B. 124. At the conclusion of his explanation, the following were recognized to speak in support of this bill:

Minutes - Senate Finance Committee

April 3, 1997

Page 2

Ed Regan with the NC Association of County Commissioners

Phil Carter, President of the NC Chapter of Solid Waste Association, and Wake County Solid Waste Management Director

Bill Holman with the Conservation Council and the Sierra Club

Senator Hoyle again recognized Paul Chrisman who reported that there is now some 3 million dollars current surplus in this trust fund.

Senator Hoyle recognized Ms. Fran Preston, NC Retail Merchants Association, who spoke in opposition to this bill.

There was a general discussion on this bill and it will be held over for further discussion at a later date. Copy of Bill, Explanation, Fiscal Note and Costs for White Goods Disposal without S.B. 124 included in the minutes.

S.B. 390 - Huntersville Annexation

Senator Odom was recognized to explain S.B. 390. Senator Weinstein moved for a "favorable" report and the motion carried.

Senator Rand asked that the microphones in the Finance Committee Room be checked and the Sgt. Of Arms staff will take care of this matter.

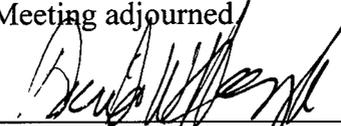
S.B. 518 - Local Choice: 1 Year 1¢ Sales Tax Vote

Senator Perdue was recognized to explain S.B. 518. On motion by Senator Perdue a proposed committee substitute for this bill was adopted by the committee.

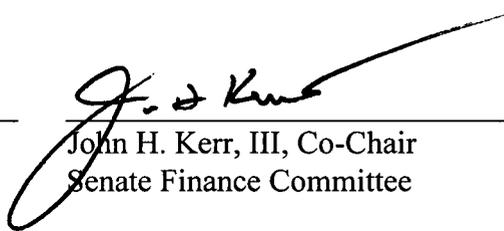
Minutes - Finance Committee Meeting
April 3, 1997
Page 3

After several questions from the committee members, Senator Hoyle announced that this bill will be held over for further discussion at a later date. Copy of Bill, Committee Substitute and Fiscal Note is included in the minutes.

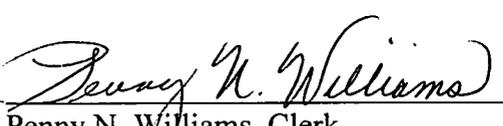
Meeting adjourned



David W. Hoyle, Co-Chair
Senate Finance Committee



John H. Kerr, III, Co-Chair
Senate Finance Committee



Penny N. Williams, Clerk



Evelyn S. Hartsell, Clerk

NOTE:

Agenda is Attachment # 1
Visitors' Sign Up Sheet is Attachment # 2
Committee Report is Attachment # 3

AGENDA

SENATE FINANCE COMMITTEE

THURSDAY, APRIL 3, 1997

8:30 A.M. - Room 544

S.B. 124 - Amend White Goods Tax - Sen. Odom

S.B. 153 - Scrap Tire Disposal Tax Amendment - Sen. Odom

S.B.157 - Corporate Amendments.- Sen. Hartsell

S.B. 390 - Huntersville Annexation - Sen. Odom

S.B. 518 - Local Choice: 1 Year 1¢ Sales Tax/Vote - Sen. Perdue

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 157*

Short Title: Corporate Amendments.

(Public)

Sponsors: Senators Hartsell; and Odom.

Referred to: Commerce.

February 17, 1997

- 1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE LAW GOVERNING DISSENTERS' RIGHTS
3 PROCEDURES AND THE FILING OF DOCUMENTS BY LIMITED
4 LIABILITY COMPANIES, TO ALLOW FACSIMILE SIGNATURES AND
5 ADVISORY REVIEW OF DOCUMENTS BY THE SECRETARY OF STATE,
6 AND TO CLARIFY CORRECTIONS PROCEDURES, LIMITED LIABILITY
7 NAME AVAILABILITY, AND THE DEFINITION OF FOREIGN
8 PROFESSIONAL CORPORATIONS AS RECOMMENDED BY THE
9 GENERAL STATUTES COMMISSION.
10 The General Assembly of North Carolina enacts:
11 PART I. AMENDMENT OF DISSENTERS' RIGHTS PROCEDURES.
12 Section 1. G.S. 55-13-22(b) reads as rewritten:
13 "(b) The dissenters' notice must be sent no later than 10 days after the corporate
14 ~~action was taken, shareholder approval, or if no shareholder approval is required,~~
15 after the approval of the board of directors, of the corporate action creating
16 dissenters' rights under G.S. 55-13-02, and must:
17 (1) State where the payment demand must be sent and where and
18 when certificates for certificated shares must be deposited;
19 (2) Inform holders of uncertificated shares to what extent transfer of
20 the shares will be restricted after the payment demand is received;
21 (3) Supply a form for demanding payment;
22 (4) Set a date by which the corporation must receive the payment
23 demand, which date may not be fewer than 30 nor more than 60
24 days after the date the subsection (a) notice is mailed; and

1 (5) Be accompanied by a copy of this Article."

2 Section 2. G.S. 55-13-30 reads as rewritten:

3 "**§ 55-13-30. Court action.**

4 (a) If a demand for payment under G.S. 55-13-28 remains unsettled, the dissenter
5 may commence a proceeding within 60 days after the date of his payment demand
6 under G.S. 55-13-28 ~~and petition the court by filing a complaint with the Superior~~
7 Court Division of the General Court of Justice to determine the fair value of the
8 shares and accrued interest. ~~Upon~~ Within 10 days after service upon it of the petition
9 ~~filed with the court, complaint,~~ the corporation shall pay to the dissenter the amount
10 offered by the corporation under G.S. 55-13-25.

11 (a1) If the dissenter does not commence the proceeding within the 60-day period,
12 the dissenter shall have an additional 30 days to either (i) accept in writing the
13 amount offered by the corporation under G.S. 55-13-25, upon which the corporation
14 shall pay such amount to the dissenter in full satisfaction of his demand, or (ii)
15 withdraw his demand for payment and resume the status of a nondissenting
16 shareholder. A dissenter who takes no action within such 30-day period shall be
17 deemed to have withdrawn his dissent and demand for payment.

18 (b) Reserved for future codification purposes.

19 (c) The court shall have the discretion to make all dissenters (whether or not
20 residents of this State) whose demands remain unsettled parties to the proceeding as
21 in an action against their shares and all parties must be served with a copy of the
22 ~~petition, complaint.~~ Nonresidents may be served by registered or certified mail or by
23 publication as provided by law.

24 (d) The jurisdiction of the superior court in which the proceeding is commenced
25 under ~~subsection (b)~~ subsection (a) is plenary and exclusive. The court may appoint
26 one or more persons as appraisers to receive evidence and recommend decision on
27 the question of fair value. The appraisers have the powers described in the order
28 appointing them, or in any amendment to it. The parties are entitled to the same
29 discovery rights as parties in other civil proceedings. The proceeding shall be tried as
30 in other civil actions. However, in a proceeding by a dissenter in a ~~public~~
31 ~~corporation,~~ corporation that was a public corporation immediately prior to
32 consummation of the corporate action giving rise to the right of dissent under G.S.
33 55-13-02, there is no right to a trial by jury.

34 (e) Each dissenter made a party to the proceeding is entitled to judgment for the
35 amount, if any, by which the court finds the fair value of his shares, plus interest,
36 exceeds the amount paid by the corporation."

37 PART II. ADVISORY REVIEW OF PRELIMINARY DRAFTS OF DOCUMENTS.

38 Section 3. Article 1 of Chapter 55 of the General Statutes is amended by
39 adding a new section to read:

40 "**§ 55-1-22.2. Advisory review of documents.**

41 The Secretary of State may honor a request for review of a document prior to its
42 submission for filing to determine whether it satisfies the requirements of this
43 Chapter. Submission of a document for review shall be accompanied by the proper
44 fee and shall be in accordance with procedures adopted by rule by the Secretary of

1 State. At the time of the advisory review, the Secretary of State shall notify the
 2 person submitting the document of all deficiencies in the document that would
 3 prevent its filing."

4 Section 4. Article 1 of Chapter 55A of the General Statutes is amended
 5 by adding a new section to read:

6 "§ 55A-1-22.2. Advisory review of documents.

7 The Secretary of State may honor a request for review of a document prior to its
 8 submission for filing to determine whether it satisfies the requirements of this
 9 Chapter. Submission of a document for review shall be accompanied by the proper
 10 fee and shall be in accordance with procedures adopted by rule by the Secretary of
 11 State. At the time of the advisory review, the Secretary of State shall notify the
 12 person submitting the document of all deficiencies in the document that would
 13 prevent its filing."

14 Section 5. Article 1 of Chapter 57C of the General Statutes is amended
 15 by adding a new section to read:

16 "§ 57C-1-22.2. Advisory review of documents.

17 The Secretary of State may honor a request for review of a document prior to its
 18 submission for filing to determine whether it satisfies the requirements of this
 19 Chapter. Submission of a document for review shall be accompanied by the proper
 20 fee and shall be in accordance with procedures adopted by rule by the Secretary of
 21 State. At the time of the advisory review, the Secretary of State shall notify the
 22 person submitting the document of all deficiencies in the document that would
 23 prevent its filing."

24 Section 6. Article 5 of Chapter 59 of the General Statutes is amended by
 25 adding a new section to read:

26 "§ 59-206.2. Advisory review of documents.

27 The Secretary of State may honor a request for review of a document prior to its
 28 submission for filing to determine whether it satisfies the requirements of this Article.
 29 Submission of a document for review shall be accompanied by the proper fee and
 30 shall be in accordance with procedures adopted by rule by the Secretary of State. At
 31 the time of the advisory review, the Secretary of State shall notify the person
 32 submitting the document of all deficiencies in the document that would prevent its
 33 filing."

34 Section 7. G.S. 55-1-22(a) reads as rewritten:

35 "(a) The Secretary of State shall collect the following fees when the documents
 36 described in this subsection are delivered to him for filing:

	Document	Fee
37		
38	(1) Articles of incorporation	\$100.00
39	(2) Application for reserved name	10.00
40	(3) Notice of transfer of reserved name	10.00
41	(4) Application for registered name	10.00
42	(5) Application for renewal of	
43	registered name	10.00
44	(6) Corporation's statement of change of	

1	registered agent or registered	
2	office or both	5.00
3	(7) Agent's statement of change of	
4	registered office for each affected	
5	corporation	5.00
6	(8) Agent's statement of resignation	No fee
7	(9) Designation of registered agent or	
8	registered office or both	5.00
9	(10) Amendment of articles of	
10	incorporation	50.00
11	(11) Restated articles of incorporation	10.00
12	with amendment of articles	50.00
13	(12) Articles of merger or share exchange	50.00
14	(13) Articles of dissolution	30.00
15	(14) Articles of revocation of	
16	dissolution	10.00
17	(15) Certificate of administrative	
18	dissolution	No fee
19	(16) Application for reinstatement	
20	following administrative dissolution	25.00
21	(17) Certificate of reinstatement	No fee
22	(18) Certificate of judicial dissolution	No fee
23	(19) Application for certificate of	
24	authority	200.00
25	(20) Application for amended certificate	
26	of authority	50.00
27	(21) Application for certificate of	
28	withdrawal	10.00
29	(22) Certificate of revocation of	
30	authority to transact business	No fee
31	(23) Annual report	10.00
32	(24) Articles of correction	10.00
33	(25) Application for certificate of	
34	existence or authorization	5.00
35	(26) Any other document required or	
36	permitted to be filed by this Chapter	10.00.
37		<u>10.00</u>
38	(27) <u>Advisory review of a document</u>	<u>200.00."</u>

Section 8. G.S. 55A-1-22(a) reads as rewritten:

"(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to the Secretary for filing:

	Document	Fee
43	(1) Articles of incorporation	\$50.00
44	(2) Application for reserved name	\$10.00

1	(3)	Notice of transfer of reserved name	\$10.00
2	(4)	Application for registered name	\$10.00
3	(5)	Application for renewal of registered	
4		name	\$10.00
5	(6)	Corporation's statement of change of	
6		registered agent or registered office or	
7		both	\$ 5.00
8	(7)	Agent's statement of change of registered	
9		office for each affected corporation	\$ 5.00
10	(8)	Agent's statement of resignation	No fee
11	(9)	Designation of registered agent or	
12		registered office or both	\$ 5.00
13	(10)	Amendment of articles of incorporation	\$25.00
14	(11)	Restated articles of incorporation without	
15		amendment of articles	\$10.00
16	(12)	Restated articles of incorporation with	
17		amendment of articles	\$25.00
18	(13)	Articles of merger	\$25.00
19	(14)	Articles of dissolution	\$15.00
20	(15)	Articles of revocation of dissolution	\$10.00
21	(16)	Certificate of administrative dissolution	No fee
22	(17)	Application for reinstatement following	
23		administrative dissolution	\$25.00
24	(18)	Certificate of reinstatement	No fee
25	(19)	Certificate of judicial dissolution	No fee
26	(20)	Application for certificate of authority	\$100.00
27	(21)	Application for amended certificate of	
28		authority	\$25.00
29	(22)	Application for certificate of withdrawal	\$10.00
30	(23)	Certificate of revocation of authority to	
31		conduct affairs	No fee
32	(24)	Corporation's Statement of Change of	
33		Principal Office	\$5.00
34	(24a)	Designation of Principal Office Address	\$5.00
35	(25)	Articles of correction	\$10.00
36	(26)	Application for certificate of existence or	
37		authorization	\$ 5.00
38	(27)	Any other document required or	
39		permitted to be filed by this Chapter	\$10.00.
40			<u>\$10.00</u>
41	(28)	<u>Advisory review of a document</u>	<u>\$200.00."</u>

Section 9. G.S. 57C-1-22(a) reads as rewritten:

(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to the Secretary of State for filing:

	<u>Document</u>	<u>Fee</u>
1		
2	(1) Articles of organization	\$100.00
3	(2) Application for reserved name	10.00
4	(3) Notice of transfer of reserved name	10.00
5	(4) Application for registered name	10.00
6	(5) Application for renewal of registered name	10.00
7	(6) Limited liability company's statement of	
8	change of registered agent or registered	
9	office or both	5.00
10	(7) Agent's statement of change of registered	
11	office for each affected limited	
12	liability company	5.00
13	(8) Agent's statement of resignation	No fee
14	(9) Designation of registered agent or	
15	registered office or both	5.00
16	(10) Amendment of articles of organization	50.00
17	(11) Restated articles of organization	
18	without amendment of articles	10.00
19	(12) Restated articles of organization	
20	with amendment of articles	50.00
21	(13) Articles of merger	50.00
22	(14) Articles of dissolution	30.00
23	(15) Articles of revocation of dissolution	10.00
24	(16) Certificate of administrative dissolution	No fee
25	(17) Certificate of reinstatement	No fee
26	(18) Certificate of judicial dissolution	No fee
27	(19) Application for certificate of authority	200.00
28	(20) Application for amended certificate	
29	of authority	50.00
30	(21) Application for certificate of withdrawal	10.00
31	(22) Certificate of revocation of authority	
32	to transact business	No fee
33	(23) Articles of correction	10.00
34	(24) Application for certificate of existence	
35	or authorization	5.00
36	(25) Annual report	200.00
37	(26) Any other document required or permitted	
38	to be filed by this Chapter	10.00.
39		<u>10.00</u>
40	(27) <u>Advisory review of a document</u>	<u>200.00."</u>

Section 10. G.S. 59-1106 reads as rewritten:

42 "§ 59-1106. Fees.

43 The Secretary of State shall collect the following fees and remit them to the State
44 Treasurer for the use of the State:

1	(1)	For filing a certificate of limited partnership	
2		(G.S. 59-201)	\$50.00
3	(2)	For filing a certificate of amendment	
4		(G.S. 59-202; 59-905)	25.00
5	(3)	For filing a certificate of cancellation	
6		(G.S. 59-203; 59-906)	25.00
7	(4)	For filing an application for reservation of name	
8		(G.S. 59-104(a))	10.00
9	(5)	For filing a transfer of name	
10		(G.S. 59-104(d))	10.00
11	(6)	For filing an application for registration	
12		as foreign limited partnership	
13		(G.S. 59-502)	50.00
14	(7)	For preparing and furnishing a copy of any	
15		document, instrument or paper filed or recorded	
16		relating to a limited partnership	
17		(G.S. 59-206(c)) For each page	1.00
18		For affixing his his the certificate and official seal thereto.	5.00
19	(8)	For comparing a copy furnished to him of any	
20		document, instrument or paper filed or recorded	
21		relating to a limited partnership	
22		For each page	1.00
23	(9)	For filing any other document not herein specifically	
24		provided for	10.00
25	(10)	For the expedited filing by the end of the same	
26		business day of a document received in good order	
27		by 12:00 noon Eastern Standard Time	200.00
28			additional fee
29	(11)	For the expedited filing of a document received in	
30		good order within 24 hours after receipt, excluding	
31		weekends and holidays	100.00
32			additional fee.
33			<u>additional fee</u>
34	(12)	<u>Advisory review of a document</u>	<u>200.00.</u>

36 The Secretary of State shall not collect the fees allowed in subdivisions (10) and
 37 (11) of this section unless the person submitting the document for filing requests an
 38 expedited filing and is informed by the Secretary of State of the fees prior to the
 39 filing of the document. Upon receipt of a document in proper form and payment of
 40 the required filing fee, the Secretary of State shall guarantee the expedited filing of
 41 the document."

42 PART III. CLARIFICATION OF ARTICLES OF CORRECTION PROCEDURES.

43 Section 11. G.S. 55-1-24(a) reads as rewritten:

1 "(a) A domestic or foreign corporation may correct a document filed by the
2 Secretary of State if the document (1) contains ~~an incorrect statement~~ a statement
3 that is incorrect and was incorrect when the document was filed or (2) was
4 defectively executed, attested, sealed, verified, or acknowledged."

5 Section 12. G.S. 55A-1-24(a) reads as rewritten:

6 "(a) A domestic or foreign corporation may correct a document filed by the
7 Secretary of State if the document (i) contains ~~an incorrect statement~~ a statement that
8 is incorrect and was incorrect when the document was filed or (ii) was defectively
9 executed, attested, sealed, verified, or acknowledged."

10 Section 13. G.S. 57C-1-24(a) reads as rewritten:

11 "(a) A domestic or foreign limited liability company may correct a document filed
12 by the Secretary of State if the document (i) contains ~~an incorrect statement~~ a
13 statement that is incorrect and was incorrect when the document was filed or (ii) was
14 defectively ~~executed~~ executed, attested, sealed, verified, or acknowledged."

15 Section 14. G.S. 59-206(a) is amended by adding a new subdivision to
16 read:

17 "(2b) A domestic or foreign limited partnership may correct a
18 document filed by the Secretary of State if the document (i)
19 contains a statement that is incorrect and was incorrect when the
20 document was filed or (ii) was defectively executed, attested,
21 sealed, verified, or acknowledged."

22 PART IV. RESTATEMENT OF LIMITED LIABILITY COMPANY ARTICLES OF
23 ORGANIZATION.

24 Section 15. Article 2 of Chapter 57C of the General Statutes is amended
25 by adding a new section to read:

26 "§ 57C-2-22.1. Restated articles of organization.

27 (a) A limited liability company may restate its articles of organization at any time
28 with or without member action.

29 (b) The restated articles of organization may include one or more amendments to
30 the articles. Unless otherwise provided in the articles of organization or a written
31 operating agreement, any amendment requires the unanimous vote of the members.
32 The restated articles of organization may include a statement of the address of the
33 current registered office and the name of the current registered agent of the limited
34 liability company.

35 (c) A limited liability company restating its articles of organization shall deliver to
36 the Secretary of State for filing articles of restatement that:

- 37 (1) Set forth the name of the limited liability company.
38 (2) Attach as an exhibit thereto the text of the restated articles of
39 organization.
40 (3) State that the restated articles of organization do not contain an
41 amendment or, if the articles do contain an amendment, that
42 there is an amendment that was approved as required by this
43 Chapter.

1 (d) Duly adopted restated articles of organization supersede the original articles of
2 organization and all amendments to them.

3 (e) The Secretary of State may certify restated articles of organization as the
4 articles of organization currently in effect, without including the other information
5 required by subsection (c) of this section."

6 PART V. CANCELLATION OF ARTICLES OF DISSOLUTION OF LIMITED
7 LIABILITY COMPANY.

8 Section 16. Article 6 of Chapter 57C is amended by adding a new
9 section to read:

10 "§ 57C-6-06.1. Cancellation of articles of dissolution.

11 After the filing of articles of dissolution by a limited liability company dissolved
12 pursuant to G.S. 57C-6-01(4) because of the happening of an event of withdrawal, the
13 articles of dissolution may be cancelled if, within 90 days after the event of
14 withdrawal, all remaining members agree in writing that the business of the limited
15 liability company should be continued and the limited liability company files articles
16 of cancellation with the Secretary of State. The Articles of Cancellation shall set
17 forth:

- 18 (1) The name of the limited liability company;
19 (2) The date of the event of withdrawal described in the articles of
20 dissolution;
21 (3) The date of filing of the company's articles of dissolution;
22 (4) A statement that within 90 days after the event of withdrawal, all
23 remaining members have agreed in writing that the business of
24 the limited liability company may be continued; and
25 (5) Any other information the members or managers filing the
26 articles of cancellation determine."

27 Section 17. G.S. 57C-1-22(a) reads as rewritten:

28 "(a) The Secretary of State shall collect the following fees when the documents
29 described in this subsection are delivered to the Secretary of State for filing:

30	<u>Document</u>	<u>Fee</u>
31	(1) Articles of organization	\$100.00
32	(2) Application for reserved name	10.00
33	(3) Notice of transfer of reserved name	10.00
34	(4) Application for registered name	10.00
35	(5) Application for renewal of registered name	10.00
36	(6) Limited liability company's statement of	
37	change of registered agent or registered	
38	office or both	5.00
39	(7) Agent's statement of change of registered	
40	office for each affected limited	
41	liability company	5.00
42	(8) Agent's statement of resignation	No fee
43	(9) Designation of registered agent or	
44	registered office or both	5.00

1	(10)	Amendment of articles of organization	50.00
2	(11)	Restated articles of organization	
3		without amendment of articles	10.00
4	(12)	Restated articles of organization	
5		with amendment of articles	50.00
6	(13)	Articles of merger	50.00
7	(14)	Articles of dissolution	30.00
8	(15)	Articles Cancellation of articles of revocation of	
9		dissolution	10.00
10	(16)	Certificate of administrative dissolution	No fee
11	(17)	Certificate of reinstatement	No fee
12	(18)	Certificate of judicial dissolution	No fee
13	(19)	Application for certificate of authority	200.00
14	(20)	Application for amended certificate	
15		of authority	50.00
16	(21)	Application for certificate of withdrawal	10.00
17	(22)	Certificate of revocation of authority	
18		to transact business	No fee
19	(23)	Articles of correction	10.00
20	(24)	Application for certificate of existence	
21		or authorization	5.00
22	(25)	Annual report	200.00
23	(26)	Any other document required or permitted	
24		to be filed by this Chapter	10.00."

25 PART VI. AVAILABILITY OF LIMITED LIABILITY COMPANY NAME.

26 Section 18. G.S. 57C-2-30(f) reads as rewritten:

27 "(f) The name of a limited liability company dissolved under ~~G.S. 57C-6-03~~
 28 Article 6 of this Chapter may not be used by another limited liability company
 29 company, business corporation, nonprofit corporation, or limited partnership until the
 30 expiration of two years after the effective date of the dissolution until:

31 (1) In the case of a dissolution pursuant to G.S. 57C-6-01, the later of
 32 (i) the date of filing of articles of dissolution pursuant to G.S. 57C-
 33 6-06 or (ii) the expiration of the time within which articles of
 34 dissolution of the limited liability company may be canceled
 35 pursuant to G.S. 57C-6-06.1; or

36 (2) In the case of an administrative dissolution pursuant to G.S. 57C-6-
 37 03, the expiration of the period within which the limited liability
 38 company may be reinstated pursuant to G.S. 57C-6-03, if the
 39 limited liability company's period of duration stated in its articles
 40 of organization or written operating agreement has not expired,

41 unless the dissolved limited liability company changes its name to a name
 42 distinguishable upon the records of the Secretary of State from the names of other
 43 limited liability companies, business corporations, nonprofit corporations, or limited
 44 partnerships organized or transacting business in this State."

1 PART VII. AUTHORIZATION OF FACSIMILE SIGNATURES FOR LIMITED
2 PARTNERSHIP DOCUMENTS.

3 Section 19. G.S. 59-204 is amended by adding a new subsection to read:

4 "(b1) Any signature on any document authorized to be filed with the Secretary of
5 State under any provision of this Article may be a facsimile."

6 PART VIII. MODIFICATION OF DEFINITION OF FOREIGN PROFESSIONAL
7 CORPORATION.

8 Section 20. G.S. 55B-16(b) reads as rewritten:

9 "(b) For purposes of this section, 'foreign professional corporation' means a
10 corporation for profit ~~that is that~~:

- 11 (1) Is incorporated under a law other than the law of this State State;
12 (2) Is incorporated for the sole and specific purpose of rendering
13 professional services of the type that if rendered in this State would
14 require the obtaining of a license from a licensing board pursuant
15 to the statutory provisions referred to in ~~G.S. 55B-2(6)~~ G.S. 55B-
16 2(6); and that (i) has as its shareholders only individuals who are
17 duly licensed, in this State or some other state, to render the same
18 professional services as the corporation, or (ii) is organized for the
19 purpose of rendering professional services of the type defined in
20 Chapters 83A, 89A, 89C, and 89E of the General Statutes, and has
21 as its shareholders only individuals who are duly licensed, in this
22 State or in another state, to render the same professional services
23 as the corporation or who are nonlicensed employees of the
24 corporation, provided that nonlicensed employees own not more
25 than one-third of the total issued and outstanding shares of the
26 corporation, or (iii) is described in G.S. 55B-15.
27 (3) Has as its shareholders only individuals who:
28 a. Qualify to hold shares of a corporation organized under this
29 Chapter;
30 b. Are licensed to provide professional services as defined in
31 G.S. 55B-2(6) in a state in which the corporation is
32 incorporated or is authorized to transact business, provided
33 that such professional services are the same as the
34 professional service rendered by the corporation; or
35 c. Are nonlicensed employees of a corporation rendering
36 services of the type defined in Chapters 83A, 89A, 89C, and
37 89E of the General Statutes provided that all such
38 nonlicensed employees own no more than one-third of the
39 total issued and outstanding shares of such corporation in
40 the aggregate."

41 PART IX. CORRECTION OF DELAYED EFFECTIVE DATE STATUTES FOR
42 LIMITED PARTNERSHIP DOCUMENTS.

43 Section 21. G.S. 59-201(b) reads as rewritten:

1 "(b) ~~A~~ Unless a delayed effective date is specified in the certificate of limited
2 partnership, a limited partnership is formed at the time effective time and date of the
3 filing of the certificate of limited partnership in the office of the Secretary of State or
4 at any later time not more than 20 days subsequent to the endorsement of the
5 Secretary of State specified in the certificate of limited partnership if, in either case, if
6 there has been substantial compliance with the requirements of this section."

7 Section 22. G.S. 59-203 reads as rewritten:

8 "§ 59-203. Cancellation of certificate.

9 A certificate of limited partnership shall be cancelled upon the dissolution and the
10 commencement of winding up of the partnership or at any other time that there are
11 no limited partners. A certificate of cancellation shall be filed in the office of the
12 Secretary of State and set forth:

- 13 (1) The name of the limited partnership;
- 14 (2) The date of filing of its certificate of limited partnership;
- 15 (3) The reason for filing the certificate of cancellation;
- 16 (4) The effective date (~~which shall be a date certain not more than 20~~
17 ~~days from the date of filing~~) of cancellation if it is not to be
18 effective upon the filing of the certificate; and
- 19 (5) Any other information the partners filing the certificate
20 determine."

21 PART X. REMOVAL OF "CONFORMING TO LAW" LANGUAGE IN REVISED
22 UNIFORM LIMITED PARTNERSHIP ACT.

23 Section 23. G.S. 59-206(a)(2) reads as rewritten:

- 24 "(2) The original document so signed, together with the conformed
25 copy, shall be delivered to the Secretary of State. ~~Unless~~ If the
26 Secretary finds that it ~~does not conform to law,~~ satisfies the
27 requirements of this Article, the Secretary shall, when the proper
28 fees have been tendered, endorse upon the original the word 'filed'
29 and the hour, day, month and year of the filing thereof and shall
30 file the same in the Secretary's office. The Secretary of State shall
31 thereupon immediately compare the copy with the original and if
32 the Secretary finds that they are identical the Secretary shall make
33 upon the conformed copy the same endorsement which appears on
34 the original and shall attach to the copy a certificate stating that
35 attached thereto is a true copy of the document, designated by an
36 appropriate title, filed in the Secretary's office and showing the
37 date of the filing. The Secretary shall thereupon return the copy so
38 certified to the limited partnership or its representatives. Any
39 documents filed with the Secretary of State pursuant to this
40 Chapter may be maintained by the Secretary either in their
41 original form or in photographic, microfilm, optical disk media, or
42 other reproduced form. The Secretary may make reproductions of
43 documents filed under this Chapter, or under any predecessor act,
44 by photographic, microfilm, optical disk media, or other means of

1 reproduction, and may destroy the originals of the documents
2 reproduced. The Secretary of State may correct apparent errors
3 and omissions on a document submitted for filing if authorized to
4 make the corrections by the person submitting the document for
5 filing. The authorization to make the corrections shall be
6 confirmed, according to procedures adopted by rule, by the
7 Secretary prior to making the correction."

8 Section 24. G.S. 59-903(a) reads as rewritten:

9 "(a) If the Secretary of State finds that an application ~~conforms to law~~ satisfies
10 the requirements of this Article, the Secretary shall, when all requisite fees have been
11 tendered as in this Article prescribed:

- 12 (1) Endorse on the application the word 'filed', and the hour, day,
13 month and year of the filing thereof;
- 14 (2) File in ~~his~~ the office the application;
- 15 (3) Issue a certificate of authority to transact business in this State to
16 which ~~he~~ the Secretary shall affix the conformed copy of the
17 application; and
- 18 (4) Send to the foreign limited partnership or its representative the
19 certificate of authority, together with the conformed copy of the
20 application affixed thereto."

21 PART XI. EFFECTIVE DATES.

22 Section 25. Sections 11 through 14, 20, and 23 through 25 of this act are
23 effective when the act becomes law. The remainder of this act becomes effective
24 October 1, 1997. Section 1 of this act applies to dissenter's rights created pursuant to
25 G.S. 55-13-02 on or after October 1, 1997, and Section 2 of this act applies to
26 proceedings commenced on or after October 1, 1997. Sections 3 through 10 of this
27 act apply to requests for review of documents on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

H. B. No. _____

DATE _____

S. B. No. 157
~~158~~

Amendment No. _____

(To be filled in by
Principal Clerk)

Rep.)

)

Sen.)

moves to amend the bill on page 2, line 41

by deleting the words "may honor a request for" and substituting the words "shall provide for the";
and on page 3, lines 1-2, by rewriting those lines to read:

"State. The advisory review shall be completed within 24 hours after submission, excluding weekends and holidays, unless the person submitting the document is otherwise notified in accordance with procedures adopted by rule by the Secretary of State fixing priority between submissions under this section and filings under G.S. 55-1-22.1. Upon completion of the advisory review, the Secretary of State shall notify the person submitting the document of any deficiencies in the document that would";

and on page 3, line 7, by deleting the words "may honor a request for" and substituting the words "shall provide for the";

and on page 3, lines 11-12, by rewriting those lines to read:

"State. The advisory review shall be completed within 24 hours after submission, excluding weekends and holidays, unless the person submitting the document is otherwise notified in accordance with procedures adopted by rule by the Secretary of State fixing priority between submissions under this section and filings under G.S. 55A-1-22.1. Upon completion of the advisory review, the Secretary of State shall notify the person submitting the document of any deficiencies in the document that would";

and on page 3, line 17, by deleting the words "may honor a request for" and substituting the words "shall provide for the";

and on page 3, lines 21-22, by rewriting those lines to read:

"State. The advisory review shall be completed within 24 hours after submission, excluding

weekends and holidays, unless the person submitting the document is otherwise notified in accordance with procedures adopted by rule by the Secretary of State fixing priority between submissions under this section and filings under G.S. 57C-1-22.1. Upon completion of the advisory review, the Secretary of State shall notify the person submitting the document of any deficiencies in the document that would”;

and on page 3, line 27, by deleting the words “may honor a request for” and substituting the words “shall provide for the”;

and on page 3, lines 30-32 by rewriting those lines to read:

“shall be in accordance with procedures adopted by rule by the Secretary of State. The advisory review shall be completed within 24 hours after submission, excluding weekends and holidays, unless the person submitting the document is otherwise notified in accordance with procedures adopted by rule by the Secretary of State fixing priority between submissions under this section and expedited filings as authorized by G.S. 59-1106. Upon completion of the advisory review, the Secretary of State shall notify the person submitting the document of any deficiencies in the document that would prevent its”.

Signed _____

ADOPTED _____

FAILED _____

TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

D

SENATE BILL 157*
Proposed Committee Substitute S157-PCS2672

Short Title: Corporate Amendments.

(Public)

Sponsors:

Referred to:

February 17, 1997

- 1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE LAW GOVERNING DISSENTERS' RIGHTS
3 PROCEDURES AND THE FILING OF DOCUMENTS BY LIMITED
4 LIABILITY COMPANIES, TO ALLOW FACSIMILE SIGNATURES AND
5 ADVISORY REVIEW OF DOCUMENTS BY THE SECRETARY OF STATE,
6 AND TO CLARIFY CORRECTIONS PROCEDURES, LIMITED LIABILITY
7 NAME AVAILABILITY, AND THE DEFINITION OF FOREIGN
8 PROFESSIONAL CORPORATIONS AS RECOMMENDED BY THE
9 GENERAL STATUTES COMMISSION.
10 The General Assembly of North Carolina enacts:
11 PART I. AMENDMENT OF DISSENTERS' RIGHTS PROCEDURES.
12 Section 1. G.S. 55-13-22(b) reads as rewritten:
13 "(b) The dissenters' notice must be sent no later than 10 days after ~~the corporate~~
14 ~~action was taken,~~ shareholder approval, or if no shareholder approval is required,
15 after the approval of the board of directors, of the corporate action creating
16 dissenters' rights under G.S. 55-13-02, and must:
17 (1) State where the payment demand must be sent and where and
18 when certificates for certificated shares must be deposited;
19 (2) Inform holders of uncertificated shares to what extent transfer of
20 the shares will be restricted after the payment demand is received;
21 (3) Supply a form for demanding payment;

1 (4) Set a date by which the corporation must receive the payment
2 demand, which date may not be fewer than 30 nor more than 60
3 days after the date the subsection (a) notice is mailed; and

4 (5) Be accompanied by a copy of this Article."

5 Section 2. G.S. 55-13-30 reads as rewritten:

6 "**§ 55-13-30. Court action.**

7 (a) If a demand for payment under G.S. 55-13-28 remains unsettled, the dissenter
8 may commence a proceeding within 60 days after the date of his payment demand
9 under G.S. 55-13-28 ~~and petition the court by filing a complaint with the Superior~~
10 Court Division of the General Court of Justice to determine the fair value of the
11 shares and accrued interest. ~~Upon~~ Within 10 days after service upon it of the petition
12 ~~filed with the court, complaint,~~ the corporation shall pay to the dissenter the amount
13 offered by the corporation under G.S. 55-13-25.

14 (a1) If the dissenter does not commence the proceeding within the 60-day period,
15 the dissenter shall have an additional 30 days to either (i) accept in writing the
16 amount offered by the corporation under G.S. 55-13-25, upon which the corporation
17 shall pay such amount to the dissenter in full satisfaction of his demand, or (ii)
18 withdraw his demand for payment and resume the status of a nondissenting
19 shareholder. A dissenter who takes no action within such 30-day period shall be
20 deemed to have withdrawn his dissent and demand for payment.

21 (b) Reserved for future codification purposes.

22 (c) The court shall have the discretion to make all dissenters (whether or not
23 residents of this State) whose demands remain unsettled parties to the proceeding as
24 in an action against their shares and all parties must be served with a copy of the
25 ~~petition- complaint.~~ Nonresidents may be served by registered or certified mail or by
26 publication as provided by law.

27 (d) The jurisdiction of the superior court in which the proceeding is commenced
28 under ~~subsection (b)~~ subsection (a) is plenary and exclusive. The court may appoint
29 one or more persons as appraisers to receive evidence and recommend decision on
30 the question of fair value. The appraisers have the powers described in the order
31 appointing them, or in any amendment to it. The parties are entitled to the same
32 discovery rights as parties in other civil proceedings. The proceeding shall be tried as
33 in other civil actions. However, in a proceeding by a dissenter in a ~~public~~
34 ~~corporation, corporation that was a public corporation immediately prior to~~
35 consummation of the corporate action giving rise to the right of dissent under G.S.
36 55-13-02, there is no right to a trial by jury.

37 (e) Each dissenter made a party to the proceeding is entitled to judgment for the
38 amount, if any, by which the court finds the fair value of his shares, plus interest,
39 exceeds the amount paid by the corporation."

40 PART II. ADVISORY REVIEW OF PRELIMINARY DRAFTS OF DOCUMENTS.

41 Section 3. Article 1 of Chapter 55 of the General Statutes is amended by
42 adding a new section to read:

43 "**§ 55-1-22.2. Advisory review of documents.**

1 The Secretary of State shall provide for the review of a document prior to its
2 submission for filing to determine whether it satisfies the requirements of this
3 Chapter. Submission of a document for review shall be accompanied by the proper
4 fee and shall be in accordance with procedures adopted by rule by the Secretary of
5 State. The advisory review shall be completed within 24 hours after submission,
6 excluding weekends and holidays, unless the person submitting the document is
7 otherwise notified in accordance with procedures adopted by rule by the Secretary of
8 State fixing priority between submissions under this section and filings under G.S. 55-
9 1-22.1. Upon completion of the advisory review, the Secretary of State shall notify
10 the person submitting the document of any deficiencies in the document that would
11 prevent its filing."

12 Section 4. Article 1 of Chapter 55A of the General Statutes is amended
13 by adding a new section to read:

14 "§ 55A-1-22.2. Advisory review of documents.

15 The Secretary of State shall provide for the review of a document prior to its
16 submission for filing to determine whether it satisfies the requirements of this
17 Chapter. Submission of a document for review shall be accompanied by the proper
18 fee and shall be in accordance with procedures adopted by rule by the Secretary of
19 State. At the time of the advisory review, the Secretary of State shall notify the State.
20 The advisory review shall be completed within 24 hours after submission, excluding
21 weekends and holidays, unless the person submitting the document is otherwise
22 notified in accordance with procedures adopted by rule by the Secretary of State
23 fixing priority between submissions under this section and filings under G.S. 55A-1-
24 22.1. Upon completion of the advisory review, the Secretary of State shall notify the
25 person submitting the document of any deficiencies in the document that would
26 prevent its filing."

27 Section 5. Article 1 of Chapter 57C of the General Statutes is amended
28 by adding a new section to read:

29 "§ 57C-1-22.2. Advisory review of documents.

30 The Secretary of State shall provide for the review of a document prior to its
31 submission for filing to determine whether it satisfies the requirements of this
32 Chapter. Submission of a document for review shall be accompanied by the proper
33 fee and shall be in accordance with procedures adopted by rule by the Secretary of
34 State. The advisory review shall be completed within 24 hours after submission,
35 excluding weekends and holidays, unless the person submitting the document is
36 otherwise notified in accordance with procedures adopted by rule by the Secretary of
37 State fixing priority between submissions under this section and filings under G.S.
38 57C-1-22.1. Upon completion of the advisory review, the Secretary of State shall
39 notify the person submitting the document of any deficiencies in the document that
40 would prevent its filing."

41 Section 6. Article 5 of Chapter 59 of the General Statutes is amended by
42 adding a new section to read:

43 "§ 59-206.2. Advisory review of documents.

1 The Secretary of State shall provide for the review of a document prior to its
 2 submission for filing to determine whether it satisfies the requirements of this Article.
 3 Submission of a document for review shall be accompanied by the proper fee and
 4 shall be in accordance with procedures adopted by rule by the Secretary of State.
 5 The advisory review shall be completed within 24 hours after submission, excluding
 6 weekends and holidays, unless the person submitting the document is otherwise
 7 notified in accordance with procedures adopted by rule by the Secretary of State
 8 fixing priority between submissions under this section and expedited filings as
 9 authorized by G.S. 59-1106. Upon completion of the advisory review, the Secretary
 10 of State shall notify the person submitting the document of any deficiencies in the
 11 document that would prevent its filing."

12 Section 7. G.S. 55-1-22(a) reads as rewritten:

13 "(a) The Secretary of State shall collect the following fees when the documents
 14 described in this subsection are delivered to him for filing:

Document	Fee
(1) Articles of incorporation	\$100.00
(2) Application for reserved name	10.00
(3) Notice of transfer of reserved name	10.00
(4) Application for registered name	10.00
(5) Application for renewal of registered name	10.00
(6) Corporation's statement of change of registered agent or registered office or both	5.00
(7) Agent's statement of change of registered office for each affected corporation	5.00
(8) Agent's statement of resignation	No fee
(9) Designation of registered agent or registered office or both	5.00
(10) Amendment of articles of incorporation	50.00
(11) Restated articles of incorporation with amendment of articles	50.00
(12) Articles of merger or share exchange	50.00
(13) Articles of dissolution	30.00
(14) Articles of revocation of dissolution	10.00
(15) Certificate of administrative dissolution	No fee
(16) Application for reinstatement following administrative dissolution	25.00
(17) Certificate of reinstatement	No fee
(18) Certificate of judicial dissolution	No fee

1	(19)	Application for certificate of	
2		authority	200.00
3	(20)	Application for amended certificate	
4		of authority	50.00
5	(21)	Application for certificate of	
6		withdrawal	10.00
7	(22)	Certificate of revocation of	
8		authority to transact business	No fee
9	(23)	Annual report	10.00
10	(24)	Articles of correction	10.00
11	(25)	Application for certificate of	
12		existence or authorization	5.00
13	(26)	Any other document required or	
14		permitted to be filed by this Chapter	10.00
15			<u>10.00</u>
16	(27)	<u>Advisory review of a document</u>	<u>200.00."</u>

Section 8. G.S. 55A-1-22(a) reads as rewritten:

"(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to the Secretary for filing:

	Document	Fee
21	(1) Articles of incorporation	\$50.00
22	(2) Application for reserved name	\$10.00
23	(3) Notice of transfer of reserved name	\$10.00
24	(4) Application for registered name	\$10.00
25	(5) Application for renewal of registered	
26	name	\$10.00
27	(6) Corporation's statement of change of	
28	registered agent or registered office or	
29	both	\$ 5.00
30	(7) Agent's statement of change of registered	
31	office for each affected corporation	\$ 5.00
32	(8) Agent's statement of resignation	No fee
33	(9) Designation of registered agent or	
34	registered office or both	\$ 5.00
35	(10) Amendment of articles of incorporation	\$25.00
36	(11) Restated articles of incorporation without	
37	amendment of articles	\$10.00
38	(12) Restated articles of incorporation with	
39	amendment of articles	\$25.00
40	(13) Articles of merger	\$25.00
41	(14) Articles of dissolution	\$15.00
42	(15) Articles of revocation of dissolution	\$10.00
43	(16) Certificate of administrative dissolution	No fee
44	(17) Application for reinstatement following	

1	administrative dissolution	\$25.00
2	(18) Certificate of reinstatement	No fee
3	(19) Certificate of judicial dissolution	No fee
4	(20) Application for certificate of authority	\$100.00
5	(21) Application for amended certificate of	
6	authority	\$25.00
7	(22) Application for certificate of withdrawal	\$10.00
8	(23) Certificate of revocation of authority to	
9	conduct affairs	No fee
10	(24) Corporation's Statement of Change of	
11	Principal Office	\$5.00
12	(24a) Designation of Principal Office Address	\$5.00
13	(25) Articles of correction	\$10.00
14	(26) Application for certificate of existence or	
15	authorization	\$ 5.00
16	(27) Any other document required or	
17	permitted to be filed by this Chapter	\$10.00.
18		<u>\$10.00</u>
19	(28) , <u>Advisory review of a document</u>	<u>\$200.00."</u>

Section 9. G.S. 57C-1-22(a) reads as rewritten:

"(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to the Secretary of State for filing:

	<u>Document</u>	<u>Fee</u>
24	(1) Articles of organization	\$100.00
25	(2) Application for reserved name	10.00
26	(3) Notice of transfer of reserved name	10.00
27	(4) Application for registered name	10.00
28	(5) Application for renewal of registered name	10.00
29	(6) Limited liability company's statement of	
30	change of registered agent or registered	
31	office or both	5.00
32	(7) Agent's statement of change of registered	
33	office for each affected limited	
34	liability company	5.00
35	(8) Agent's statement of resignation	No fee
36	(9) Designation of registered agent or	
37	registered office or both	5.00
38	(10) Amendment of articles of organization	50.00
39	(11) Restated articles of organization	
40	without amendment of articles	10.00
41	(12) Restated articles of organization	
42	with amendment of articles	50.00
43	(13) Articles of merger	50.00
44	(14) Articles of dissolution	30.00

1	(15)	Articles of revocation of dissolution	10.00
2	(16)	Certificate of administrative dissolution	No fee
3	(17)	Certificate of reinstatement	No fee
4	(18)	Certificate of judicial dissolution	No fee
5	(19)	Application for certificate of authority	200.00
6	(20)	Application for amended certificate	
7		of authority	50.00
8	(21)	Application for certificate of withdrawal	10.00
9	(22)	Certificate of revocation of authority	
10		to transact business	No fee
11	(23)	Articles of correction	10.00
12	(24)	Application for certificate of existence	
13		or authorization	5.00
14	(25)	Annual report	200.00
15	(26)	Any other document required or permitted	
16		to be filed by this Chapter	10.00.
17			<u>10.00</u>
18	(27)	<u>Advisory review of a document</u>	<u>200.00."</u>

19 Section 10. G.S. 59-1106 reads as rewritten:

20 "§ 59-1106. Fees.

21 The Secretary of State shall collect the following fees and remit them to the State
 22 Treasurer for the use of the State:

23	(1)	For filing a certificate of limited partnership	
24		(G.S. 59-201)	\$50.00
25	(2)	For filing a certificate of amendment	
26		(G.S. 59-202; 59-905)	25.00
27	(3)	For filing a certificate of cancellation	
28		(G.S. 59-203; 59-906)	25.00
29	(4)	For filing an application for reservation of name	
30		(G.S. 59-104(a))	10.00
31	(5)	For filing a transfer of name	
32		(G.S. 59-104(d))	10.00
33	(6)	For filing an application for registration	
34		as foreign limited partnership	
35		(G.S. 59-502)	50.00
36	(7)	For preparing and furnishing a copy of any	
37		document, instrument or paper filed or recorded	
38		relating to a limited partnership	
39		(G.S. 59-206(c)) For each page	1.00
40		For affixing his the certificate and official seal thereto.	5.00
41	(8)	For comparing a copy furnished to him of any	
42		document, instrument or paper filed or recorded	
43		relating to a limited partnership	
44		For each page	1.00

1	(9)	For filing any other document not herein specifically provided for	10.00
2			
3	(10)	For the expedited filing by the end of the same business day of a document received in good order by 12:00 noon Eastern Standard Time	200.00
4			
5			additional fee
6			
7	(11)	For the expedited filing of a document received in good order within 24 hours after receipt, excluding weekends and holidays	100.00
8			additional fee.
9			additional fee
10			
11			
12	(12)	<u>Advisory review of a document</u>	<u>200.00.</u>
13			

14 The Secretary of State shall not collect the fees allowed in subdivisions (10) and
 15 (11) of this section unless the person submitting the document for filing requests an
 16 expedited filing and is informed by the Secretary of State of the fees prior to the
 17 filing of the document. Upon receipt of a document in proper form and payment of
 18 the required filing fee, the Secretary of State shall guarantee the expedited filing of
 19 the document."

20 PART III. CLARIFICATION OF ARTICLES OF CORRECTION PROCEDURES.

21 Section 11. G.S. 55-1-24(a) reads as rewritten:

22 "(a) A domestic or foreign corporation may correct a document filed by the
 23 Secretary of State if the document (1) contains ~~an incorrect statement~~ a statement
 24 that is incorrect and was incorrect when the document was filed or (2) was
 25 defectively executed, attested, sealed, verified, or acknowledged."

26 Section 12. G.S. 55A-1-24(a) reads as rewritten:

27 "(a) A domestic or foreign corporation may correct a document filed by the
 28 Secretary of State if the document (i) contains ~~an incorrect statement~~ a statement that
 29 is incorrect and was incorrect when the document was filed or (ii) was defectively
 30 executed, attested, sealed, verified, or acknowledged."

31 Section 13. G.S. 57C-1-24(a) reads as rewritten:

32 "(a) A domestic or foreign limited liability company may correct a document filed
 33 by the Secretary of State if the document (i) contains ~~an incorrect statement~~ a
 34 statement that is incorrect and was incorrect when the document was filed or (ii) was
 35 defectively ~~executed.~~ executed, attested, sealed, verified, or acknowledged."

36 Section 14. G.S. 59-206(a) is amended by adding a new subdivision to
 37 read:

38 "(2b) A domestic or foreign limited partnership may correct a
 39 document filed by the Secretary of State if the document (i)
 40 contains a statement that is incorrect and was incorrect when the
 41 document was filed or (ii) was defectively executed, attested,
 42 sealed, verified, or acknowledged."

43 PART IV. RESTATEMENT OF LIMITED LIABILITY COMPANY ARTICLES OF
 44 ORGANIZATION.

1 Section 15. Article 2 of Chapter 57C of the General Statues is amended
2 by adding a new section to read:

3 "§ 57C-2-22.1. Restated articles of organization.

4 (a) A limited liability company may restate its articles of organization at any time
5 with or without member action.

6 (b) The restated articles of organization may include one or more amendments to
7 the articles. Unless otherwise provided in the articles of organization or a written
8 operating agreement, any amendment requires the unanimous vote of the members.
9 The restated articles of organization may include a statement of the address of the
10 current registered office and the name of the current registered agent of the limited
11 liability company.

12 (c) A limited liability company restating its articles of organization shall deliver to
13 the Secretary of State for filing articles of restatement that:

14 (1) Set forth the name of the limited liability company.

15 (2) Attach as an exhibit thereto the text of the restated articles of
16 organization.

17 (3) State that the restated articles of organization do not contain an
18 amendment or, if the articles do contain an amendment, that
19 there is an amendment that was approved as required by this
20 Chapter.

21 (d) Duly adopted restated articles of organization supersede the original articles of
22 organization and all amendments to them.

23 (e) The Secretary of State may certify restated articles of organization as the
24 articles of organization currently in effect, without including the other information
25 required by subsection (c) of this section."

26 PART V. CANCELLATION OF ARTICLES OF DISSOLUTION OF LIMITED
27 LIABILITY COMPANY.

28 Section 16. Article 6 of Chapter 57C is amended by adding a new
29 section to read:

30 "§ 57C-6-06.1. Cancellation of articles of dissolution.

31 After the filing of articles of dissolution by a limited liability company dissolved
32 pursuant to G.S. 57C-6-01(4) because of the happening of an event of withdrawal, the
33 articles of dissolution may be cancelled if, within 90 days after the event of
34 withdrawal, all remaining members agree in writing that the business of the limited
35 liability company should be continued and the limited liability company files articles
36 of cancellation with the Secretary of State. The Articles of Cancellation shall set
37 forth:

38 (1) The name of the limited liability company;

39 (2) The date of the event of withdrawal described in the articles of
40 dissolution;

41 (3) The date of filing of the company's articles of dissolution;

42 (4) A statement that within 90 days after the event of withdrawal, all
43 remaining members have agreed in writing that the business of
44 the limited liability company may be continued; and

1 (5) Any other information the members or managers filing the
2 articles of cancellation determine."

3 Section 17. G.S. 57C-1-22(a) reads as rewritten:

4 "(a) The Secretary of State shall collect the following fees when the documents
5 described in this subsection are delivered to the Secretary of State for filing:

<u>Document</u>	<u>Fee</u>
7 (1) Articles of organization	\$100.00
8 (2) Application for reserved name	10.00
9 (3) Notice of transfer of reserved name	10.00
10 (4) Application for registered name	10.00
11 (5) Application for renewal of registered name	10.00
12 (6) Limited liability company's statement of 13 change of registered agent or registered 14 office or both	5.00
15 (7) Agent's statement of change of registered 16 office for each affected limited 17 liability company	5.00
18 (8) Agent's statement of resignation	No fee
19 (9) Designation of registered agent or 20 registered office or both	5.00
21 (10) Amendment of articles of organization	50.00
22 (11) Restated articles of organization 23 without amendment of articles	10.00
24 (12) Restated articles of organization 25 with amendment of articles	50.00
26 (13) Articles of merger	50.00
27 (14) Articles of dissolution	30.00
28 (15) Articles <u>Cancellation of articles of revocation of</u> 29 dissolution	10.00
30 (16) Certificate of administrative dissolution	No fee
31 (17) Certificate of reinstatement	No fee
32 (18) Certificate of judicial dissolution	No fee
33 (19) Application for certificate of authority	200.00
34 (20) Application for amended certificate 35 of authority	50.00
36 (21) Application for certificate of withdrawal	10.00
37 (22) Certificate of revocation of authority 38 to transact business	No fee
39 (23) Articles of correction	10.00
40 (24) Application for certificate of existence 41 or authorization	5.00
42 (25) Annual report	200.00
43 (26) Any other document required or permitted 44 to be filed by this Chapter	10.00."

1 PART VI. AVAILABILITY OF LIMITED LIABILITY COMPANY NAME.

2 Section 18. G.S. 57C-2-30(f) reads as rewritten:

3 "(f) The name of a limited liability company dissolved under ~~G.S. 57C-6-03~~
4 Article 6 of this Chapter may not be used by another limited liability ~~company~~
5 company, business corporation, nonprofit corporation, or limited partnership ~~until the~~
6 expiration of two years after the effective date of the dissolution ~~until:~~

7 (1) In the case of a dissolution pursuant to G.S. 57C-6-01, the later of
8 (i) the date of filing of articles of dissolution pursuant to G.S. 57C-
9 6-06 or (ii) the expiration of the time within which articles of
10 dissolution of the limited liability company may be canceled
11 pursuant to G.S. 57C-6-06.1; or

12 (2) In the case of an administrative dissolution pursuant to G.S. 57C-6-
13 03, the expiration of the period within which the limited liability
14 company may be reinstated pursuant to G.S. 57C-6-03, if the
15 limited liability company's period of duration stated in its articles
16 of organization or written operating agreement has not expired,

17 unless the dissolved limited liability company changes its name to a name
18 distinguishable upon the records of the Secretary of State from the names of other
19 limited liability companies, business corporations, nonprofit corporations, or limited
20 partnerships organized or transacting business in this State."

21 PART VII. AUTHORIZATION OF FACSIMILE SIGNATURES FOR LIMITED
22 PARTNERSHIP DOCUMENTS.

23 Section 19. G.S. 59-204 is amended by adding a new subsection to read:

24 "(b1) Any signature on any document authorized to be filed with the Secretary of
25 State under any provision of this Article may be a facsimile."

26 PART VIII. MODIFICATION OF DEFINITION OF FOREIGN PROFESSIONAL
27 CORPORATION.

28 Section 20. G.S. 55B-16(b) reads as rewritten:

29 "(b) For purposes of this section, 'foreign professional corporation' means a
30 corporation for profit ~~that is that~~;

31 (1) Is incorporated under a law other than the law of this State ~~State~~;

32 (2) Is incorporated for the sole and specific purpose of rendering
33 professional services of the type that if rendered in this State would
34 require the obtaining of a license from a licensing board pursuant
35 to the statutory provisions referred to in ~~G.S. 55B-2(6)~~ G.S. 55B-
36 2(6); and ~~that (i) has as its shareholders only individuals who are~~
37 ~~duly licensed, in this State or some other state, to render the same~~
38 ~~professional services as the corporation, or (ii) is organized for the~~
39 ~~purpose of rendering professional services of the type defined in~~
40 ~~Chapters 83A, 89A, 89C, and 89E of the General Statutes, and has~~
41 ~~as its shareholders only individuals who are duly licensed, in this~~
42 ~~State or in another state, to render the same professional services~~
43 ~~as the corporation or who are nonlicensed employees of the~~
44 ~~corporation, provided that nonlicensed employees own not more~~

1 ~~than one-third of the total issued and outstanding shares of the~~
2 ~~corporation, or (iii) is described in G.S. 55B-15.~~

3 (3) Has as its shareholders only individuals who:

4 a. Qualify to hold shares of a corporation organized under this
5 Chapter;

6 b. Are licensed to provide professional services as defined in
7 G.S. 55B-2(6) in a state in which the corporation is
8 incorporated or is authorized to transact business, provided
9 that such professional services are the same as the
10 professional service rendered by the corporation; or

11 c. Are nonlicensed employees of a corporation rendering
12 services of the type defined in Chapters 83A, 89A, 89C, and
13 89E of the General Statutes provided that all such
14 nonlicensed employees own no more than one-third of the
15 total issued and outstanding shares of such corporation in
16 the aggregate."

17 PART IX. CORRECTION OF DELAYED EFFECTIVE DATE STATUTES FOR
18 LIMITED PARTNERSHIP DOCUMENTS.

19 Section 21. G.S. 59-201(b) reads as rewritten:

20 "(b) ~~A~~ Unless a delayed effective date is specified in the certificate of limited
21 partnership, a limited partnership is formed at the time effective time and date of the
22 filing of the certificate of limited partnership in the office of the Secretary of State or
23 ~~at any later time not more than 20 days subsequent to the endorsement of the~~
24 ~~Secretary of State specified in the certificate of limited partnership if, in either case, if~~
25 there has been substantial compliance with the requirements of this section."

26 Section 22. G.S. 59-203 reads as rewritten:

27 "§ 59-203. Cancellation of certificate.

28 A certificate of limited partnership shall be cancelled upon the dissolution and the
29 commencement of winding up of the partnership or at any other time that there are
30 no limited partners. A certificate of cancellation shall be filed in the office of the
31 Secretary of State and set forth:

- 32 (1) The name of the limited partnership;
33 (2) The date of filing of its certificate of limited partnership;
34 (3) The reason for filing the certificate of cancellation;
35 (4) The effective date ~~(which shall be a date certain not more than 20~~
36 ~~days from the date of filing)~~ of cancellation if it is not to be
37 effective upon the filing of the certificate; and
38 (5) Any other information the partners filing the certificate
39 determine."

40 PART X. REMOVAL OF "CONFORMING TO LAW" LANGUAGE IN REVISED
41 UNIFORM LIMITED PARTNERSHIP ACT.

42 Section 23. G.S. 59-206(a)(2) reads as rewritten:

43 "(2) The original document so signed, together with the conformed
44 copy, shall be delivered to the Secretary of State. ~~Unless~~ If the

1 Secretary finds that it ~~does not conform to law~~, satisfies the
2 requirements of this Article, the Secretary shall, when the proper
3 fees have been tendered, endorse upon the original the word 'filed'
4 and the hour, day, month and year of the filing thereof and shall
5 file the same in the Secretary's office. The Secretary of State shall
6 thereupon immediately compare the copy with the original and if
7 the Secretary finds that they are identical the Secretary shall make
8 upon the conformed copy the same endorsement which appears on
9 the original and shall attach to the copy a certificate stating that
10 attached thereto is a true copy of the document, designated by an
11 appropriate title, filed in the Secretary's office and showing the
12 date of the filing. The Secretary shall thereupon return the copy so
13 certified to the limited partnership or its representatives. Any
14 documents filed with the Secretary of State pursuant to this
15 Chapter may be maintained by the Secretary either in their
16 original form or in photographic, microfilm, optical disk media, or
17 other reproduced form. The Secretary may make reproductions of
18 documents filed under this Chapter, or under any predecessor act,
19 by photographic, microfilm, optical disk media, or other means of
20 reproduction, and may destroy the originals of the documents
21 reproduced. The Secretary of State may correct apparent errors
22 and omissions on a document submitted for filing if authorized to
23 make the corrections by the person submitting the document for
24 filing. The authorization to make the corrections shall be
25 confirmed, according to procedures adopted by rule, by the
26 Secretary prior to making the correction."

27 Section 24. G.S. 59-903(a) reads as rewritten:

28 "(a) If the Secretary of State finds that an application ~~conforms to law~~ he satisfies
29 the requirements of this Article, the Secretary shall, when all requisite fees have been
30 tendered as in this Article prescribed:

- 31 (1) Endorse on the application the word 'filed', and the hour, day,
32 month and year of the filing thereof;
- 33 (2) File in ~~his~~ the office the application;
- 34 (3) Issue a certificate of authority to transact business in this State to
35 which ~~he~~ the Secretary shall affix the conformed copy of the
36 application; and
- 37 (4) Send to the foreign limited partnership or its representative the
38 certificate of authority, together with the conformed copy of the
39 application affixed thereto."

40 PART XI. EFFECTIVE DATES.

41 Section 25. Sections 11 through 14, 20, and 23 through 25 of this act are
42 effective when the act becomes law. The remainder of this act becomes effective
43 October 1, 1997. Section 1 of this act applies to dissenter's rights created pursuant to
44 G.S. 55-13-02 on or after October 1, 1997, and Section 2 of this act applies to

1 proceedings commenced on or after October 1, 1997. Sections 3 through 10 of this
2 act apply to requests for review of documents on or after that date.

FISCAL ANALYSIS MEMORANDUM

DATE: April 3, 1997

TO: Senate Finance Committee

FROM: Richard Bostic
Fiscal Research Division

RE: SB 157 - Corporate Amendments (First Edition)

FISCAL IMPACT

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

	<u>FY 1997-98</u>	<u>FY 1998-99</u>	<u>FY 1999-00</u>	<u>FY 2000-01</u>	<u>FY 2001-02</u>
REVENUES					
General Fund					
Advisory Review	\$30,000	\$40,000	\$40,000	\$40,000	\$40,000
LLC Restatement	450	600	600	600	600
LLC Cancellation	10	10	10	10	10
Total - G.F.	\$30,460	\$40,610	\$40,610	\$40,610	\$40,610

EXPENDITURES

(No expenses requested at this time; will use existing staff.)

PRINCIPAL DEPARTMENT(S) &

PROGRAM(S) AFFECTED: Secretary of State/Corporations Division

EFFECTIVE DATE: Sections 11 through 14, 20, and 23 through 25 of the bill are effective upon ratification. The remainder of the act becomes effective October 1, 1997.

BILL SUMMARY: The bill amends various statutes relating to corporations, limited liability companies, and limited partnerships.

ASSUMPTIONS AND METHODOLOGY:

Of the numerous corporate amendments in this bill, only three have a fiscal impact.

Part II. Advisory Review of Documents

This part allows the Secretary of State to review documents prior to their filing under the Business Corporation Act (Chapter 55), the Nonprofit Corporation Act (Chapter 55A), the Limited Liability Company Act (Chapter 57C), and the Uniform Limited Partnership Act (Chapter 59). The Secretary of State will charge \$200 for this review. Staff Counsel for the Secretary of State receives 1 or 2 requests each week for this service now and expects passage of this bill to generate 200 requests per year. At \$200 per review, this new service will generate \$40,000 a year for the General Fund. Since the effective date is October 1, 1997, the first year revenue will be \$30,000 or 3/4 of the annual amount.

Part IV. Restatement of LLC Articles of Incorporation

This part allows limited liability companies (LLC) to restate and refile their articles of organization. In G.S. 57C-1-22(a) there is a \$10 charge for "restated articles of organization without amendment of articles" and a \$50 fee for "restated articles of organization with amendment of articles". Although the fees are listed in the statute, the Secretary of State was not given authority to collect the fees when the law creating LLC's was enacted in 1993. It is estimated by the Secretary of State's Staff Counsel that 12 LLC's will use this option each year and will restate their articles of organization with amendments and pay the \$50 fee. Annual revenue will be \$600, except for the first year when the October 1, 1997 effective date will cut the anticipated revenue to \$450.

Part V. Cancellation of Articles of Dissolution of LLC

This part allows LLC's to cancel articles of dissolution (an act to dissolve the company). Again in G.S. 57C-1-22(a) there is a \$10 charge for this act, but the Secretary of State was not given authority to collect this fee when the law was enacted. This option is estimated to be used only once per year.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 153*

Short Title: Scrap Tire Disposal Tax Amend.

(Public)

Sponsors: Senator Odom.

Referred to: Commerce.

February 17, 1997

A BILL TO BE ENTITLED

1 AN ACT TO EXTEND THE SCRAP TIRE DISPOSAL TAX AT ITS CURRENT
2 RATE, TO AMEND THE SCRAP TIRE DISPOSAL ACT TO DISCOURAGE
3 THE DISPOSAL OF SCRAP TIRES FROM OUTSIDE THE STATE, AND TO
4 COMPLETE THE CLEANUP OF NUISANCE TIRE COLLECTION SITES, AS
5 RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.
6

7 The General Assembly of North Carolina enacts:

8 Section 1. Section 9 of Chapter 548 of the 1993 Session Laws reads as
9 rewritten:

10 "Sec. 9. Section 4 of this act becomes effective January 1, 1994. ~~Section 8 of this~~
11 ~~act becomes effective June 30, 1997.~~ All other sections of this act become effective
12 October 1, 1993. ~~Sections 1 through 6 of this act expire June 30, 1997.~~ Section 7 of
13 this act expires June 30, 1995. ~~Any funds remaining in the Scrap Tire Disposal~~
14 ~~Account created by this act on June 30, 1997, shall be transferred to the Solid Waste~~
15 ~~Management Trust Fund. The expiration of the additional tax imposed by Section 1~~
16 ~~of this act does not affect the rights or liabilities of the State, a taxpayer, or another~~
17 ~~person that arise during the time the additional tax is in effect.~~ The first quarterly
18 report required by G.S. 130A-309.63(e), as enacted by this act, is due within 60 days
19 after the quarter that ends on December 31, 1993."

20 Section 2. G.S. 130A-309.63 reads as rewritten:

21 "§ 130A-309.63. Scrap Tire Disposal Account.

22 (a) Creation. -- The Scrap Tire Disposal Account is established as a nonreverting
23 account within the Department. The Account consists of revenue credited to the

1 Account from the proceeds of the scrap tire disposal tax imposed by Article 5B of
2 Chapter 105 of the General Statutes.

3 (b) Use. -- The Department may use revenue in the Account only as authorized
4 by this section. The Department may use up to ~~twenty five percent (25%)~~ fifty
5 percent (50%) of the revenue in the Account to make grants to units of local
6 government to assist them in disposing of scrap tires. To administer the grants, the
7 Department shall establish procedures for applying for a grant and the criteria for
8 selecting among grant applicants. The criteria shall include the financial ability of a
9 unit of local government to provide for scrap tire disposal, the severity of a unit of
10 local government's scrap tire disposal problem, the effort made by a unit of local
11 government to ensure that only tires generated in the normal course of business in
12 this State are provided free disposal, and the effort made by a unit of local
13 government to provide for scrap tire disposal within the resources available to it.
14 The Department may use up to forty percent (40%) of the revenue in the Account to
15 make grants to encourage the use of crumb rubber. Grants to encourage the use of
16 crumb rubber shall be made in consultation with the Department of Commerce and
17 the Recycling Business Assistance Center. Grants to encourage the use of crumb
18 rubber shall not be used to process tires.

19 (c) Eligibility. -- A unit of local government is not eligible for a grant unless its
20 costs for disposing of scrap tires for the six-month period preceding the date the unit
21 of local government files an application for a grant exceeded the amount the unit of
22 local government received during that period from the proceeds of the scrap tire tax
23 under G.S. 105-187.19. A grant to a unit of local government may not exceed the
24 unit of local government's unreimbursed cost for the six-month period.

25 (d) Cleanup of Nuisance Tire Sites. -- The Department may use the remaining
26 revenue in the Account only to clean up scrap tire collection sites that the
27 Department has determined are a nuisance. The Department may use funds in the
28 Account to clean up a nuisance tire collection site only if no other funds are available
29 for that purpose. The Department may use funds in the Account to establish and
30 support a position to provide regulatory assistance to local governments to develop
31 programs to prevent scrap tires from outside the State from being presented for free
32 disposal and to complete the cleanup of nuisance tire collection sites.

33 (e) Reports. -- The Department shall report annually on the Scrap Tire Disposal
34 Account to the Environmental Review Commission. The report shall be submitted
35 by 1 October of each year for the fiscal year ending the preceding 30 June. The
36 report shall show the beginning and ending balances in the Account for the reporting
37 period, the amount credited to the Account during the reporting period, and the
38 amount of revenue used for grants and to clean up nuisance tire collection sites."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

D

SENATE BILL 153
Proposed Committee Substitute S153-LDK-2
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Scrap Tire Disposal Tax Amend. (Public)

Sponsors:

Referred to: Commerce.

February 17, 1997

1 A BILL TO BE ENTITLED

2 AN ACT TO EXTEND THE SCRAP TIRE DISPOSAL TAX AT ITS CURRENT RATE,
3 TO AMEND THE SCRAP TIRE DISPOSAL ACT TO DISCOURAGE THE DISPOSAL
4 OF SCRAP TIRES FROM OUTSIDE THE STATE, AND TO COMPLETE THE
5 CLEANUP OF NUISANCE TIRE COLLECTION SITES, AS RECOMMENDED BY
6 THE ENVIRONMENTAL REVIEW COMMISSION.

7 The General Assembly of North Carolina enacts:

8 Section 1. Section 9 of Chapter 548 of the 1993 Session
9 Laws reads as rewritten:

10 "Sec. 9. Section 4 of this act becomes effective January 1,
11 1994. Section 8 of this act becomes effective June 30, 1997.
12 All other sections of this act become effective October 1, 1993.

extended
13 ~~Sections 1 through 6 of this act expire June 30, 1997. Section 7~~
14 ~~of this act expires June 30, 1995. Any funds remaining in the~~
15 ~~Scrap Tire Disposal Account created by this act on June 30, 1997,~~
16 ~~shall be transferred to the Solid Waste Management Trust Fund.~~
17 ~~The expiration of the additional tax imposed by Section 1 of this~~
18 ~~act does not affect the rights or liabilities of the State, a~~
19 ~~taxpayer, or another person that arise during the time the~~
20 ~~additional tax is in effect. The first quarterly report~~
21 ~~required by G.S. 130A-309.63(e), as enacted by this act, is due~~
22 ~~within 60 days after the quarter that ends on December 31, 1993."~~

23 Section 2. G.S. 130A-309.63 reads as rewritten:

1 "§ 130A-309.63. Scrap Tire Disposal Account.

2 (a) Creation. -- The Scrap Tire Disposal Account is
3 established as a nonreverting account within the Department. The
4 Account consists of revenue credited to the Account from the
5 proceeds of the scrap tire disposal tax imposed by Article 5B of
6 Chapter 105 of the General Statutes.

7 (b) Use. -- The Department may use revenue in the Account only
8 as authorized by this section. The Department may use up to
9 ~~twenty-five percent (25%)~~ fifty percent (50%) of the revenue in
10 the Account to make grants to units of local government to assist
11 them in disposing of scrap tires. To administer the grants, the
12 Department shall establish procedures for applying for a grant
13 and the criteria for selecting among grant applicants. The
14 criteria shall include the financial ability of a unit of local
15 government to provide for scrap tire disposal, the severity of a
16 unit of local government's scrap tire disposal problem, the
17 effort made by a unit of local government to ensure that only
18 tires generated in the normal course of business in this State
19 are provided free disposal, and the effort made by a unit of
20 local government to provide for scrap tire disposal within the
21 resources available to it. The Department may use up to forty
22 percent (40%) of the revenue in the Account to make grants to
23 encourage the use of processed scrap tire materials. These
24 grants may be made to encourage the use of tire-derived fuel,
25 crumb rubber, carbon black, or other components of tires for use
26 in products such as fuel, tires, mats, auto parts, gaskets,
27 flooring material, or other applications of processed tire
28 materials. These grants shall be made in consultation with the
29 Department of Commerce, the Division of Environmental Assistance
30 and Pollution Prevention, and, where appropriate, the Department
31 of Transportation. Grants to encourage the use of processed
32 scrap tire materials shall not be used to process tires.

33 (c) Eligibility. -- A unit of local government is not eligible
34 for a grant unless its costs for disposing of scrap tires for the
35 six-month period preceding the date the unit of local government
36 files an application for a grant exceeded the amount the unit of
37 local government received during that period from the proceeds of
38 the scrap tire tax under G.S. 105-187.19. A grant to a unit of
39 local government may not exceed the unit of local government's
40 unreimbursed cost for the six-month period.

41 (d) Cleanup of Nuisance Tire Sites. -- The Department may use
42 the remaining revenue in the Account only to clean up scrap tire
43 collection sites that the Department has determined are a
44 nuisance. The Department may use funds in the Account to clean

1 up a nuisance tire collection site only if no other funds are
2 available for that purpose. The Department may use funds in the
3 Account to establish and support a position to provide regulatory
4 assistance to local governments to develop programs to prevent
5 scrap tires from outside the State from being presented for free
6 disposal and to complete the cleanup of nuisance tire collection
7 sites.

8 (e) Reports. -- The Department shall report annually on the
9 Scrap Tire Disposal Account to the Environmental Review
10 Commission. The report shall be submitted by 1 October of each
11 year for the fiscal year ending the preceding 30 June. The
12 report shall show the beginning and ending balances in the
13 Account for the reporting period, the amount credited to the
14 Account during the reporting period, and the amount of revenue
15 used for grants and to clean up nuisance tire collection sites."
16 Section 3. This act is effective when it becomes law.

elim.
==

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

H. B. No. _____

DATE _____

S. B. No. 153 (PCB)

Amendment No. _____

(to be filled in by
Principal Clerk)

Rep.) _____

Sen.) _____

moves to amend the bill on page 1, line 11

by rewriting that line to read:

"1994. Section 8 of this act becomes effective June 30, 1997."

and on page 3, lines 15 and 16, by inserting a new section between these lines to read:

"Section 3. Section 8 of Chapter 548 of the 1993 Session Laws is repealed."

and on page 3, line 16, by deleting "Section 3." and substituting "Section 4."

SIGNED _____

ADOPTED FAILED TABLED

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

D

SENATE BILL 153*
Proposed Committee Substitute S153-PCS2671

Short Title: Scrap Tire Tax Changes.

(Public)

Sponsors:

Referred to:

February 17, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO EXTEND THE SCRAP TIRE DISPOSAL TAX AT ITS CURRENT
3 RATE FOR FIVE MORE YEARS, TO AMEND THE SCRAP TIRE DISPOSAL
4 ACT TO DISCOURAGE THE DISPOSAL OF SCRAP TIRES FROM OUTSIDE
5 THE STATE, AND TO COMPLETE THE CLEANUP OF NUISANCE TIRE
6 COLLECTION SITES, AS RECOMMENDED BY THE ENVIRONMENTAL
7 REVIEW COMMISSION.

8 The General Assembly of North Carolina enacts:

9 Section 1. Section 9 of Chapter 548 of the 1993 Session Laws reads as
10 rewritten:

11 "Sec. 9. Section 4 of this act becomes effective January 1, 1994. Section 8 of this
12 act becomes effective June 30, 1997. All other sections of this act become effective
13 October 1, 1993. ~~Sections Section 1 through 6 of this act expire June 30, 1997.~~
14 ~~expires June 30, 2002.~~ Section 7 of this act expires June 30, 1995. ~~Any funds~~
15 ~~remaining in the Scrap Tire Disposal Account created by this act on June 30, 1997,~~
16 ~~shall be transferred to the Solid Waste Management Trust Fund. The expiration of~~
17 ~~the additional tax imposed by Section 1 of this act does not affect the rights or~~
18 ~~liabilities of the State, a taxpayer, or another person that arise during the time the~~
19 ~~additional tax is in effect.~~ The first quarterly report required by G.S. 130A-309.63(e),
20 as enacted by this act, is due within 60 days after the quarter that ends on December
21 31, 1993."

22 Section 2. G.S. 130A-309.63 reads as rewritten:

23 "§ 130A-309.63. Scrap Tire Disposal Account.

extend the
sunset

1 (a) Creation. -- The Scrap Tire Disposal Account is established as a nonreverting
2 account within the Department. The Account consists of revenue credited to the
3 Account from the proceeds of the scrap tire disposal tax imposed by Article 5B of
4 Chapter 105 of the General Statutes.

5 (b) Use. -- The Department may use revenue in the Account only as authorized
6 by this section. The Department may use up to ~~twenty-five percent (25%)~~ fifty
7 percent (50%) of the revenue in the Account to make grants to units of local
8 government to assist them in disposing of scrap tires. To administer the grants, the
9 Department shall establish procedures for applying for a grant and the criteria for
10 selecting among grant applicants. The criteria shall include the financial ability of a
11 unit of local government to provide for scrap tire disposal, the severity of a unit of
12 local government's scrap tire disposal problem, the effort made by a unit of local
13 government to ensure that only tires generated in the normal course of business in
14 this State are provided free disposal, and the effort made by a unit of local
15 government to provide for scrap tire disposal within the resources available to it.
16 The Department may use up to forty percent (40%) of the revenue in the Account to
17 make grants to encourage the use of processed scrap tire materials. These grants may
18 be made to encourage the use of tire-derived fuel, crumb rubber, carbon black, or
19 other components of tires for use in products such as fuel, tires, mats, auto parts,
20 gaskets, flooring material, or other applications of processed tire materials. These
21 grants shall be made in consultation with the Department of Commerce, the Division
22 of Environmental Assistance and Pollution Prevention of the Department, and, where
23 appropriate, the Department of Transportation. Grants to encourage the use of
24 processed scrap tire materials shall not be used to process tires.

Del

25 (c) Eligibility. -- A unit of local government is not eligible for a grant for scrap
26 tire disposal unless its costs for disposing of scrap tires for the six-month period
27 preceding the date the unit of local government files an application for a grant
28 exceeded the amount the unit of local government received during that period from
29 the proceeds of the scrap tire tax under G.S. 105-187.19. A grant to a unit of local
30 government for scrap tire disposal may not exceed the unit of local government's
31 unreimbursed cost for the six-month period.

32 (d) Cleanup of Nuisance Tire Sites. -- The Department may use the remaining
33 revenue in the Account only to clean up scrap tire collection sites that the
34 Department has determined are a nuisance. The Department may use funds in the
35 Account to clean up a nuisance tire collection site only if no other funds are available
36 for that purpose.

*position
eliminated*

37 (e) Reports. -- The Department shall report annually on the Scrap Tire Disposal
38 Account to the Environmental Review Commission. The report shall be submitted
39 by 1 October of each year for the fiscal year ending the preceding 30 June. The
40 report shall show the beginning and ending balances in the Account for the reporting
41 period, the amount credited to the Account during the reporting period, and the
42 amount of revenue used for grants and to clean up nuisance tire collection sites."

43 Section 3. Section 8 of Chapter 548 of the 1993 Session Laws is repealed.
44 Section 4. This act is effective when it becomes law.

EXPLANATION OF SENATE BILL 153
Scrap Tire Disposal Tax Amendment

TO: Senate Finance Committee
FROM: Sabra Faires, Committee Counsel
DATE: April 2, 1997
SPONSOR: Senator Odom

Senate Bill 153 is one of the bills recommended to the 1997 General Assembly by the Environmental Review Commission. It changes the scrap tire tax and the use of the tax proceeds as follows:

1. It repeals the sunset on the 1993 increase in the tax. Effective October 1, 1993, the tax rate was increased from 1% to 2% for tires with a bead diameter of less than 20 inches. Bead width is the width of the inside opening of the tire. Tires for cars, vans, and pick-up trucks have a bead width of less than 20 inches. The tax on these tires will revert back to 1%, effective July 1, 1997, if this bill is not enacted.
2. It allows 50% (instead of the current 25%) of the amount in the Scrap Tire Disposal Account to be used for grants to local governments to assist in the disposal of scrap tires.
3. It adds a factor for the Department of Environment, Health, and Natural Resources (DEHNR) to consider when making grants to local units from the Scrap Tire Disposal Account. That factor is the effort made by the local unit to prevent out-of-state tires from being disposed of for free.
4. It allows DEHNR to use 40% of the amount in the Scrap Tire Disposal Account to make grants to encourage the use of processed scrap tire materials. Under current law, all the amount in the Scrap Tire Disposal Account that is not used to make grants to local units for scrap tire disposal must be used to clean up tire nuisance sites.
5. It allows DEHNR to use funds in the Scrap Tire Disposal Account to add an employee to provide assistance to local units in cleaning up tire nuisance sites and preventing the free disposal of out-of-state tires.

The scrap tire disposal tax became effective in 1991.

Fact Sheet

Senate Bill 153 Act to Extend the Scrap Tire Disposal Tax

Section 1

Eliminates the sunset scheduled for June 30, 1997
(Does NOT expand the tax)

Section 2 (b)

Changes the distribution of the Scrap Tire Disposal Account as follows:

- The portion of the Account available for reimbursing counties for deficits incurred in their tire programs increases from 25% to 50%.
(This change would provide sufficient funds to cover 100% of cost overruns, based on past history)
- Up to 40 % of the Account can be used by the state to support market development for the end-use of crumb rubber. No funds will be provided to processors of crumb rubber.
(The bill does not require the use of rubber in asphalt, but will promote the use of tires in any crumb rubber/ carbon black application or for tire derived fuel)
- The remaining 10% of the Account would be used to continue the tire clean up program as new sites are discovered. This funding added to the existing balance should be sufficient to fund both a position and to clean up the remaining nuisance tire sites.

The bill requires the State to consider local efforts to control out of state tires in awarding grants to counties for costs incurred in managing scrap tires (The flow of out of state tires into the state are a significant concern and cost the program approximately \$1 million per year).

Section 3 (d)

Allows the Solid Waste Section to establish a position to assist counties in the design of programs to prevent out-of-state tires and to help continue the clean-up program.
(The position does NOT use appropriations. The position will assist development of county specific programs and procedures for identifying the origin of tires)

Uses for Processed Tire Materials

Potential uses for processed tire materials include products made from crumb rubber and tire-derived fuel. Detail is provided below.

1. Products from Crumb Rubber

a. *New tire manufacturing* - Crumb rubber can be used at a rate of least 10% in new tire manufacturing. There are reports that some manufacturers can presently use up to 50%. There are 4 tire manufacturers in NC who may be able to consume crumb rubber in their process.

b. *Hard rubber wheels* - These are being manufactured by a company in Hickory which produces shopping cart, roll-off container wheels and caster type wheels from crumb rubber. The company is currently using 8000 tons of crumb annually and may be able to expand production.

c. *Athletic Shoes* - Crumb rubber can be used in producing athletic shoes. One company in NC serves as a potential local market.

d. *Rubber mats and pads* - A variety of mat products can utilize crumb rubber. Anti-fatigue, animal, entrance, and industrial mats as well carpet underlayment pads are beginning to be produced around the country using crumb rubber as their primary feedstock.

e. *Soaker and sprinkler water hoses* - Such products can be made with crumb rubber and are beginning to be available in retail outlets such as Lowes, Wal-Mart and Home Depot.

f. *Automotive parts* - Ford Motor Co. is mandating the use of crumb in bumpers. Other manufacturers may follow. This area is the fastest growing market for crumb rubber.

g. *Athletic and turfgrass products* - These products are "topdressings" that aid in conservation of water and reduction in wear on athletic fields and golf courses. There are currently no vendors of this product in the state.

2. Tire Derived Fuel

Currently in the US around a 100 million tires are utilized annually for fuel with a capacity of 165 million tires. In NC, there is only 1 permitted facility for tire-derived fuel (TDF) in Southport, and it uses tires on a supplemental basis at the present time.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: Senate Bill 153

SHORT TITLE: Scrap Tire Disposal Tax Amend

SPONSOR(S): Senator Odom

FISCAL IMPACT

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

FY 1997-98 FY 1998-99 FY 1999-00 FY 2000-01 FY 2001-02

REVENUES Reallocates funds from the Scrap Tire Disposal Account to Division of Waste Management. See spreadsheet page 3.

EXPENDITURES Equivalent to revenues generated by disposal tax. Funds credited to the Scrap Tire Disposal Account will be distributed according to proposed allocation formula.

POSITIONS: 1.0

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Environment Health and Natural Resources
Division of Pollution Prevention and Environmental Assistance
Division of Waste Management

EFFECTIVE DATE: When it becomes law

BILL SUMMARY:

Senate Bill 153 repeals the sunset on the scrap tire disposal tax and reallocates the revenues credited to the Scrap Tire Disposal Account. One position is established to assist local governments in scrap tire prevention and disposal.

The scrap tire disposal tax is set to expire on June 30, 1997. The proposed act repeals this sunset making the excise tax on scrap tires permanent.

Five percent of the revenue from the tax is credited to the Solid Waste Management Trust Fund (SWMTF), 27% to the Scrap Tire Disposal Account (STDA), and the remaining 69% is distributed to the counties. In accordance with G.S. 130A-309.63, 25% of the STDA can be

used by the Department for grants to units of local government to assist them in the disposal of scrap tires. This act increases the 25% to 50% and authorizes the Department to use an additional 40% from the STDA for grants to development markets for crumb rubber. The grants are to be made in consultation with the Department of Commerce and the Recycling Business Assistance Center.

The Department is authorized to use funds in the STDA to establish a position to provide regulatory assistance to local units of government to develop programs to prevent scrap tires from entering the State for disposal and to assist in the cleanup of nuisance tire collection sites.

ASSUMPTIONS AND METHODOLOGY:

The bill redistributes the funds within the Scrap Tire Disposal Account. See spreadsheet on page three. The year over year growth in the revenue forecast is 1.5% which represents the annual growth in passenger car and truck sale in the State for the past three year. Information provided by the N. C. Tire Dealers and Retreaders Association. The excise tax collections by year are from the quarterly reports on the scrap tire collections provided by the Department of Revenue.

Expenditures

The bill does not change the percentage of scrap tire tax receipts allocated to the Scrap Tire Disposal Account (STDA), but it does change the distribution or use of funds credited to the account.

Under current law, up to 25% of the proceeds credited to the STDA may be allocated as grants to local scrap tire management programs. The bill proposes to increase this percentage to allow the use of up to 50% the funds in the account to provide grants to local programs. According to the *Scrap Tire Management Report* prepared by the Division of Waste Management, Department of Environment, Health, and Natural Resources local governments spent \$7,029,756 during the 1995-96 fiscal year to operate tire disposal programs. Counties received \$5,818,752 from the direct distribution of the scrap tire tax to help cover this expense, creating a statewide deficit of approximately \$1.2 million. Counties requested grant funds from the STDA to cover the operating deficits; however, funds available for actual awards totaled \$579,652. The department believes increasing the allocation of STDA funds for grants to local governments from 25% to 50% will provide funds to adequately reimburse local disposal programs for costs incurred.

The bill also proposes to allow the use of up to 40% of the funds credited to the STDA to provide grants to fund recycling market development, particularly for crumb rubber. Currently the supply of crumb rubber exceeds demand nationally; however, the department believes there is market potential for recycled crumb rubber materials, particularly in the plastics and polymer industries, if funds are provided to support market research and development.

Current law, requires at least 75% of the funds in the STDA be used to clean up nuisance tire sites. This percentage may be more if the department does not allocate the maximum allowed, 25%, for local tire management programs. Senate Bill 153 redistributes the use of funds credited to the STDA to allocate a minimum of 10% to remove tires from identified nuisance sites.

According to the *Scrap Tire Management Report* for the 1995-96 fiscal year the number of known nuisance sites in the state totaled 255 on October 1, 1996. Of these, cleanups are complete for 158 sites and in progress for 56 sites. The remaining 41 sites contain less than 4% of the total number of tires disposed of at nuisance sites and are expected to be cleared before the end of the 1997 calendar year. In addition, the department expects to identify an additional 25 to 30 nuisance tire sites annually, which will be prioritized and cleaned up as funds are available. Because the majority of the nuisance sites in the state have been cleared or will be this year, the department does not believe redirecting funds for grants to local programs and recycling market development jeopardizes the state's effort to eliminate nuisance tire sites.

The bill allows the department to use funds in the STDA account to create a Waste Management Specialist position (salary grade 71) to provide regulatory assistance to local tire management programs, with an emphasis on reducing the number of scrap tires brought into the state for free disposal. The Division of Waste Management estimates, based on disposal volume, that the counties and the state spend in excess of \$1 million per year to dispose of tires illegally transported from out of state. A pilot program conducted in four counties to improve screening for illegal tires and verification of the origin and size of tire loads for disposal found significant reductions in tire disposal volumes. The department estimates the total cost for the position and operating support to be \$70,000 per year, including a budgeted salary of \$30,713.

TECHNICAL CONSIDERATIONS:

FISCAL RESEARCH DIVISION

733-4910

PREPARED BY: H. Warren Plonk ; Mona Moon

APPROVED BY:

DATE: April 1, 1997

FISCAL ANALYSIS OF SCRAP TIRE TOLL SAL TAX

Scrap Tire Collections History

Collection by FY Quarters	Revenue Forecast Summary											
	Actual 1990	Actual 1990-91	Actual 1991-92	Actual 1992-93	Actual 1993-94	Actual 1994-95	Actual 1995-96	Estimate 1996-97	Estimate 1997-98	Estimate 1998-99	Estimate 1999-00	Estimate 2000-01
September	\$1,161,628	\$1,079,069	\$1,238,053	\$1,149,382	\$2,277,256	\$2,371,943	\$2,451,129	\$2,529,875	\$2,560,638	\$2,619,947	\$2,624,468	\$2,685,255
December	\$786,792	\$1,096,225	\$1,058,473	\$1,647,650	\$2,079,808	\$2,189,408	\$2,447,369	\$2,453,978	\$2,483,819	\$2,515,149	\$2,545,734	\$2,604,698
March	\$376,582	\$791,565	\$1,036,553	\$1,684,577	\$1,819,579	\$1,873,949	\$2,251,579	\$2,257,660	\$2,309,952	\$2,313,937	\$2,367,532	\$2,396,322
June	\$929,148	\$922,740	\$1,145,373	\$1,997,868	\$2,350,134	\$2,343,679	\$2,386,674	\$2,415,696	\$2,471,648	\$2,475,913	\$2,533,260	\$2,564,064
Total	\$1,305,730	\$3,662,725	\$4,357,220	\$4,146,703	\$6,479,477	\$8,526,777	\$9,536,752	\$9,657,210	\$9,826,057	\$9,924,947	\$10,070,994	\$10,250,339

2nd Quarter 93

Distribution

Change

Revenue Distribution History

Revenue Distribution History

Current Distribution under Revenue Forecast

SWMTF 10%	\$130,573	\$366,273	\$435,722	\$414,670	\$364,304	\$426,339	\$438,949	\$476,838	\$482,860	\$491,303	\$496,247	\$503,550	\$512,517
STDA	-0-	-0-	-0-	-0-	\$1,389,247	\$2,302,230	\$2,370,324	\$2,574,923	\$2,607,447	\$2,653,035	\$2,679,736	\$2,719,168	\$2,767,591
COUNTIES 90%	\$1,175,157	\$3,296,453	\$3,921,498	\$3,732,033	\$4,462,165	\$5,798,208	\$5,969,706	\$6,484,991	\$6,566,903	\$6,681,719	\$6,748,964	\$6,848,276	\$6,970,230

Department Distribution under SB 153

STDA 27%	\$2,574,923	\$2,607,447	\$2,653,035	\$2,679,736	\$2,719,168	\$2,767,591
Local Grants 50%	\$1,287,461	\$1,303,723	\$1,326,518	\$1,339,868	\$1,359,584	\$1,383,796
Mkt Develop. 40%	\$1,029,969	\$1,042,979	\$1,061,214	\$1,071,894	\$1,087,667	\$1,107,037
Tire clean-up 10%	\$257,492	\$260,745	\$265,304	\$267,974	\$271,917	\$276,759

SWMTF Solid Waste Management Trust Fund
STDA Scrap Tire Disposal Account

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 124

Short Title: Amend White Goods Tax.

(Public)

Sponsors: Senators Odom; and Kinnaird.

Referred to: Finance.

February 17, 1997

1 A BILL TO BE ENTITLED

2 AN ACT TO REDUCE THE WHITE GOODS DISPOSAL TAX RATE TO ONE
3 RATE FOR ANY WHITE GOOD REGARDLESS OF WHETHER THE WHITE
4 GOOD CONTAINS CHLOROFLUOROCARBONS, TO REPEAL THE WHITE
5 GOODS DISPOSAL TAX SUNSET, TO PROVIDE THAT WHITE GOODS
6 TAX REVENUE THAT IS NOT NEEDED FOR THE MANAGEMENT OF
7 DISCARDED WHITE GOODS MAY BE USED TO CLEAN UP ILLEGAL
8 DUMP SITES, AND TO ALTER THE DISTRIBUTION OF THE TAX
9 PROCEEDS FROM THIS TAX.

10 The General Assembly of North Carolina enacts:

11 Section 1. G.S. 105-187.21 reads as rewritten:

12 "**§ 105-187.21. Tax imposed.**

13 A privilege tax is imposed on a white goods retailer at a flat rate for each new
14 white good that is sold by the retailer. An excise tax is imposed on a new white good
15 purchased outside the State for storage, use, or consumption in this State. The rate
16 of the privilege tax and the excise tax is five dollars ~~(\$5.00) if the new white good~~
17 ~~does not contain chlorofluorocarbon refrigerants and is ten dollars (\$10.00) if the new~~
18 ~~white good contains chlorofluorocarbon refrigerants. These taxes are (\$5.00). This~~
19 tax is in addition to all other taxes."

20 Section 2. G.S. 130A-309.82 reads as rewritten:

21 "**§ 130A-309.82. Use of disposal tax proceeds by counties.**

22 Article 5C of Chapter 105 of the General Statutes imposes a tax on new white
23 goods to provide funds for the management of discarded white goods. A county ~~may~~
24 must use proceeds of the tax distributed to it under that Article ~~only~~ for the

1 management of discarded white goods. If a county has a surplus of tax proceeds after
2 reimbursing its costs of managing discarded white goods, then it may use the
3 remainder of the tax proceeds for the cleanup of unmanaged illegal dump sites."

4 Section 3. G.S. 130A-309.83 reads as rewritten:

5 "**§ 130A-309.83. White Goods Management Account.**

6 The White Goods Management Account is established within the Department.
7 The Account consists of revenue credited to the Account from the proceeds of the
8 white goods disposal tax imposed by Article 5C of Chapter 105 of the General
9 ~~Statutes.~~ Statutes and any revenue credited to the Account as the result of the
10 recovery by the State of part or all of the costs of cleaning up an unmanaged illegal
11 dump site.

12 The Department shall use revenue in the Account to make grants to units of local
13 government to assist them in managing discarded white ~~goods.~~ goods and cleaning up
14 unmanaged illegal dump sites. The Department must make grants for the
15 management of discarded white goods to all applicants who meet the grant criteria
16 before it makes a grant for cleaning up unmanaged illegal dump sites. To administer
17 the grants, the Department shall establish procedures for applying for a grant and the
18 criteria for selecting among grant applicants. The criteria for a grant to manage
19 discarded white goods shall include the financial ability of a unit to manage white
20 goods, the severity of a unit's white goods management problem, and the effort made
21 by a unit to manage white goods within the resources available to it. The criteria for
22 a grant to clean up an unmanaged illegal dump site shall include the financial ability
23 of the unit to clean up the site and the severity of the problem created by the site.

24 A unit of local government is not eligible for a grant to manage discarded white
25 goods unless its costs of managing white goods for a six-month period preceding the
26 date the unit files an application for a grant exceeded the amount the unit received
27 during that period from the proceeds of the white goods disposal tax under G.S. 105-
28 187.24. The Department shall determine the six-month period to be used in
29 determining who is eligible for a ~~grant.~~ grant to manage discarded white goods. A
30 grant to a unit to manage discarded white goods may not exceed the unit's
31 unreimbursed cost for the six-month period."

32 Section 4. G.S. 105-187.24 reads as rewritten:

33 "**§ 105-187.24. Use of tax proceeds.**

34 The Secretary shall distribute the taxes collected under this Article, less the
35 Department of Revenue's allowance for administrative expenses, in accordance with
36 this section. The Secretary may retain the Department's cost of collection, not to
37 exceed two hundred twenty-five thousand dollars (\$225,000) a year, as reimbursement
38 to the Department.

39 Each quarter, the Secretary shall credit ~~five percent (5%)~~ eight percent (8%) of
40 the net tax proceeds to the Solid Waste Management Trust Fund and shall credit
41 twenty percent (20%) of the net tax proceeds to the White Goods Management
42 Account. The Secretary shall distribute the remaining ~~seventy-five percent (75%)~~
43 seventy-two percent (72%) of the net tax proceeds among the counties on a per

1 capita basis according to the most recent annual population estimates certified to the
2 Secretary by the State Planning Officer.

3 A county may use funds distributed to it under this section only as provided in
4 G.S. 130A-309.82. A county that receives funds under this section and that has an
5 interlocal agreement with another unit of local government under which the other
6 unit provides for the disposal of solid waste for the county must transfer the amount
7 received under this section to that other unit. A unit to which funds are transferred is
8 subject to the same restrictions on use of the funds as the county."

9 Section 5. G.S. 130A-309.12 reads as rewritten:

10 **"§ 130A-309.12. Solid Waste Management Trust Fund.**

11 (a) The Solid Waste Management Trust Fund is created and is to be administered
12 by the Department for the purposes of:

- 13 (1) Funding activities of the Department to promote waste reduction
14 and recycling including but not limited to public education
15 programs and technical assistance to units of local government;
- 16 (2) Funding research on the solid waste stream in North Carolina;
- 17 (3) Funding activities related to the development of secondary
18 materials markets;
- 19 (4) Providing funding for demonstration projects as provided by this
20 Part; and
- 21 (5) Providing funding for research by The University of North
22 Carolina and independent nonprofit colleges and universities
23 within the State which are accredited by the Southern Association
24 of Colleges and Schools as provided by this Part.

25 (b) The Solid Waste Management Trust Fund shall consist of the following:

- 26 (1) Funds appropriated by the General Assembly.
- 27 (2) Contributions and grants from public or private sources.
- 28 (3) Ten percent (10%) of the proceeds of the scrap tire disposal tax
29 imposed under Article 5B of Chapter 105 of the General Statutes.
- 30 (4) ~~Five percent (5%)~~ Eight percent (8%) of the proceeds of the white
31 goods disposal tax imposed under Article 5C of Chapter 105 of the
32 General Statutes.

33 (c) The Department shall report annually on or before 1 September to the
34 Environmental Review Commission as to the condition of the Solid Waste
35 Management Trust Fund and as to the use of all funds allocated from the Solid Waste
36 Management Trust Fund."

37 Section 6. Section 11 of Chapter 471 of the 1993 Session Laws, as
38 amended by Section 15.1(b) of Chapter 769 of the 1993 Session Laws, reads as
39 rewritten:

40 "Sec. 11. Sections 1 through 5 of this act and this section become effective
41 January 1, 1994. ~~Section 3 of this act expires July 1, 1998. Section 6 of this act~~
42 ~~becomes effective July 1, 1998. Sections 7, 8, and 9 of this act become effective July~~
43 ~~1, 1999.~~

1 ~~The repeal of the tax imposed by Section 3 of this act does not affect the rights or~~
2 ~~liabilities of the State, a taxpayer, or another person that arose during the time the~~
3 ~~tax was in effect.~~ The first report submitted by the Department to the
4 Environmental Review Commission under G.S. 130A-309.85, as enacted by this act,
5 shall cover the period from January 1, 1994, to June 30, 1994."

6 Section 7. This act becomes effective January 1, 1998, and applies to the
7 tax year beginning January 1, 1998.

EXPLANATION OF SENATE BILL 124
Amend White Goods Tax

TO: Senate Finance Committee
FROM: Sabra Faires, Committee Counsel
DATE: April 2, 1997
SPONSOR: Senator Odom

Senate Bill 124 changes the tax that is imposed on "white goods" as follows, effective January 1, 1998:

1. It repeals the sunset on the tax. Under current law, the tax will expire July 1, 1998.
2. It reduces from \$10.00 to \$5.00 the tax on a new white good that contains chloroflourocarbons. Under current law, the tax on those that contain chloroflourocarbons is \$10.00 and the tax on those that do not is \$5.00.
3. It allows revenue from the white goods tax to be used to clean up unmanaged, illegal dump sites if the revenue is not needed for the disposal of discarded white goods. Section 2 allows counties to use surplus white goods tax revenue for this purpose and Section 3 allows the Department of Environment, Health, and Natural Resources to make grants to counties for this purpose from the White Goods Management Account.
4. It changes the allocation of the white goods tax revenue by increasing the percentage that goes to the Solid Waste Management Trust Fund (from 5% to 8%) and decreasing the amount that is distributed to counties (from 75% to 72%).

The white goods tax was imposed effective January 1, 1994. The purpose of the tax was to provide a source of revenue for the proper disposal of discarded white goods. A white good is a domestic or commercial large appliance, such as a refrigerator, a water heater, an air conditioner unit, or a dishwasher. Chlorofluorocarbon refrigerant is a type of gas that must be removed from a white good under federal law. Chlorofluorocarbon refrigerants were banned as of January 1, 1996, by the Environmental Protection Agency.

Under current law, the tax proceeds are distributed quarterly as follows:

- (1) 5% to the Solid Waste Management Trust Fund. The money in this Fund is used to fund activities of the Department of Environment, Health, and Natural Resources (DEHNR) to promote waste reduction and recycling, to fund research on the solid waste stream in North Carolina, to fund activities related to the development of secondary materials markets, to

fund demonstration projects, and to fund research by in-State colleges and universities.

- (2) 20% to the White Goods Management Account. The money in this Account is used to make grants to local governmental units to assist them in managing discarded white goods.
- (3) 75% to the 100 counties on a per capita basis to be used only for the management of discarded white goods.

**NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE**

BILL NUMBER: Senate Bill 124, (First Edition)
SHORT TITLE: Amend White Goods Tax
SPONSOR(S): Senators Odom and Kinnaird

Estimate (\$ Loss)					
FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 1997-98</u>	<u>FY 1998-99</u>	<u>FY 1999-00</u>	<u>FY 2000-01</u>	<u>FY 2001-02</u>
REVENUES					
Total (Loss)	\$ (811,111)	(1,716,311)	(1,815,857)	(1,921,177)	(2,032,605)
Gain/Loss by Fund					
SWMTF	\$ 184,684	126,743	134,094	141,872	150,100
WGMA	\$ (162,222)	(343,262)	(363,171)	(384,235)	(406,521)
COUNTY	\$ (833,573)	(1,499,792)	(1,586,780)	(1,678,813)	(1,776,184)
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:					
SWMTF- Solid Waste Management Trust Fund					
WGMA - White Goods Management Account					
County units of government that dispose of white goods					
EFFECTIVE DATE: January 1, 1998					

BILL SUMMARY:

The current white goods disposal tax, paid at the point of sale on new goods, is \$5.00 on those that do not contain refrigerants and \$10.00 on those that do. This bill reduces the tax on goods containing refrigerants to \$5.00. The sunset on the tax is repealed making the excise tax on white goods permanent.

The act changes the allocation of tax revenues. The SWMTF is to receive 8% of the revenue instead of 5% and the county distribution is reduced from 75% to 72%. The percentage of revenue going to the WGMA does not change. Under the act, if a county has surplus revenue after covering its cost of managing discarded white goods it may use the additional revenue to clean-up illegal dump sites.

ASSUMPTIONS AND METHODOLOGY:

The fiscal summary is found on page 3. The tax data used in the analysis was provided by the Department of Revenue Sales and Use Tax Division. The Association of Home Appliance Manufactures provided information on product sales in the State.

Thirty nine percent of the white goods sold in 1996 used refrigerants. The estimate assumes 39% of the revenues will decline by 50%. The 5.8% growth in revenue collections, for fiscal years 1996-97 through 2001-02, is the annual average for sales of white goods sold in the State in 1991 over 1996 as reported by the Association of Home Appliance Manufacturers.

FISCAL RESEARCH DIVISION

733-4910

PREPARED BY: H. Warren Plonk

APPROVED BY:

DATE: March 31, 1997

Fiscal Summary White Goods Disposal Tax

White Goods Collections History

Revenue Forecast Summary

Collections By FY Quarters	White Goods Collections History				Revenue Forecast Summary					
	FY 93-94	FY 94-95	FY 95-96	Estimate FY 96-97	Collections By FY Quarters	Estimate FY 97-98	Estimate FY 98-99	Estimate FY 99-00	Estimate FY 00-01	Estimate FY 01-02
September		\$2,338,720	\$2,555,512	\$2,621,955	September	\$2,774,029	\$2,934,922	\$3,105,148	\$3,285,246	\$3,475,791
December		\$1,705,982	\$1,666,539	\$1,709,869	December	\$1,809,041	\$1,913,966	\$2,024,976	\$2,142,424	\$2,266,685
March	\$828,523	\$1,558,002	\$1,504,094	\$1,543,200	March	\$1,632,706	\$1,727,403	\$1,827,592	\$1,933,593	\$2,045,741
June	\$1,680,750	\$1,793,733	\$1,937,630	\$1,988,008	June	\$2,103,313	\$2,225,305	\$2,354,373	\$2,490,926	\$2,635,400
TOTAL	\$2,509,273	\$7,396,437	\$7,663,775	\$7,863,033	39% (loss) Collections	\$8,319,089 (\$811,111) \$7,507,978	\$8,801,596 (\$1,716,311) \$7,085,285	\$9,312,089 (\$1,815,857) \$7,496,232	\$9,852,190 (\$1,921,177) \$7,931,013	\$10,423,617 (\$2,032,605) \$8,391,012

Revenue Distribution History

Current Distribution under Revenue Forecast

SWMTF 5%	\$125,464	\$369,822	\$383,189	\$393,152	SWMTF 5%	\$415,954	\$440,080	\$465,604	\$492,609	\$521,181
WGMA 20%	\$501,855	\$1,479,287	\$1,532,755	\$1,572,607	WGMA 20%	\$1,663,818	\$1,760,319	\$1,862,418	\$1,970,438	\$2,084,723
COUNTY 75%	\$1,881,955	\$5,547,328	\$5,747,831	\$5,897,275	COUNTY 75%	\$6,239,317	\$6,601,197	\$6,984,067	\$7,389,142	\$7,817,713
TOTAL	\$2,509,273	\$7,396,437	\$7,663,775	\$7,863,033	Total	\$8,319,089	\$8,801,596	\$9,312,089	\$9,852,190	\$10,423,617

Revenue Distribution under SB 124

SWMTF 8%	\$600,638	\$566,823	\$599,699	\$634,481	\$671,281
WGMA 20%	\$1,501,596	\$1,417,057	\$1,499,246	\$1,586,203	\$1,678,202
COUNTY 72%	\$5,405,744	\$5,101,405	\$5,397,287	\$5,710,329	\$6,041,528
Total	\$7,507,978	\$7,085,285	\$7,496,232	\$7,931,013	\$8,391,012

Gain/(Loss) by Fund under SB 124

SWMTF 8%	\$184,684	\$126,743	\$134,094	\$141,872	\$150,100
WGMA 20%	(\$162,222)	(\$343,262)	(\$363,171)	(\$384,235)	(\$406,521)
COUNTY 72%	(\$833,573)	(\$1,499,792)	(\$1,586,780)	(\$1,678,813)	(\$1,776,184)
Total	(\$811,111)	(\$1,716,311)	(\$1,815,857)	(\$1,921,177)	(\$2,032,605)

North Carolina Association of County Commissioners
Costs for White Goods Disposal without SB 124

COUNTY	TOTAL DISPOSAL COSTS	SALE OF FREON/ SCRAP	NET COSTS W/O WHITE GOODS TAX
ALAMANCE	No data	\$0	No data
ALEXANDER	\$23,646	\$0	\$23,646
ALLEGHENY	\$5,000	\$0	\$5,000
ANSON	\$15,453	\$0	\$15,453
ASHE	\$9,530	\$0	\$9,530
AVERY	No data	\$0	No data
BEAUFORT	\$39,640	\$0	\$39,640
BERTIE	No data	\$0	No data
BLADEN	\$23,230	\$0	\$23,230
BRUNSWICK	\$1,354	\$256	\$1,098
BUNCOMBE	\$70,518	\$17,937	\$52,581
BURKE	\$62,000	\$2,084	\$59,916
CABARRUS	\$1,000	\$2,105	-\$1,105
CALDWELL	No data	\$0	No data
CAMDEN	No data	\$0	No data
CARTERET	\$44,407	\$0	\$44,407
CASWELL	\$8,573	\$1,328	\$7,245
CATAWBA	No data	\$3,485	No data
CHATHAM	\$201,816	\$13,859	\$187,957
CHEROKEE	\$20,800	\$0	\$20,800
CLAY	No data	\$0	No data
CLEVELAND	\$134,841	\$31,103	\$103,737
COLUMBUS	\$23,460	\$0	\$23,460
CRAVEN	\$97,538	\$0	\$97,538
CUMBERLAND	\$17,800	\$9,457	\$8,343
CURRITUCK	\$40,461	\$0	\$40,461
DARE	\$12,526	\$0	\$12,526
DAVIDSON	\$7,345	\$0	\$7,345
DAVIE	\$13,550	\$3,952	\$9,597
DUPLIN	\$43,866	\$1,213	\$42,653
DURHAM	\$158,330	\$7,700	\$150,630
EDGECOMBE	\$5,109	\$0	\$5,109
FORSYTH	\$65,000	\$7,813	\$57,187
FRANKLIN	\$7,656	\$0	\$7,656
GASTON	\$88,379	\$7,500	\$80,879
GRAHAM	\$16,083	\$0	\$16,083
GRANVILLE	\$8,328	\$0	\$8,328
GREENE	\$1,739	\$1,252	\$487
GUILFORD	No data	\$0	No data
HALIFAX	\$18,000	\$0	\$18,000
HARNETT	\$22,527	\$6,416	\$16,111
HAYWOOD	\$425	\$0	\$425
HENDERSON	\$65,000	\$0	\$65,000
HERTFORD	\$19,000	\$0	\$19,000
HOKE	\$5,300	\$0	\$5,300
HYDE	\$5,600	\$0	\$5,600
IREDELL	\$6,200	\$20,446	-\$14,246
JACKSON	\$10,000	\$0	\$10,000
JOHNSTON	\$32,497	\$5,826	\$26,671
JONES	No data	\$0	No data
LEE	\$39,144	\$2,801	\$36,343
LENOIR	\$20,491	\$0	\$20,491
LINCOLN	\$30,000	\$0	\$30,000
MACON	\$7,656	\$0	\$7,656

**North Carolina Association of County Commissioners
Costs for White Goods Disposal without SB 124**

COUNTY	TOTAL DISPOSAL COSTS	SALE OF FREON/ SCRAP	NET COSTS W/O WHITE GOODS TAX
MADISON	\$34,100	\$14,077	\$20,023
MARTIN	\$1,480	\$0	\$1,480
MCDOWELL	\$22,574	\$5,764	\$16,811
MECKLENBURG	\$203,004	\$40,729	\$162,275
MITCH/YANC*	\$18,780	\$9,907	\$8,873
MONTGOMERY	\$21,135	\$0	\$21,135
MOORE	\$37,412	\$0	\$37,412
NASH	\$20,687	\$0	\$20,687
NEW HANOVER	\$7,500	\$1,945	\$5,555
NORTHAMPTON	\$12,816	\$2,212	\$10,603
ONSLow	No data	\$0	No data
ORANGE	\$49,900	\$19,964	\$29,936
PAMLICO	No data	\$0	No data
PASQUOTANK	No data	\$0	No data
PE/CH/GA**	\$6,580	\$0	\$6,580
PENDER	\$57,500	\$2,407	\$55,093
PERSON	\$6,425	\$0	\$6,425
PITT	\$70,572	\$0	\$70,572
POLK	\$500	\$0	\$500
RANDOLPH	\$37,143	\$0	\$37,143
RICHMOND	No data	\$0	No data
ROBESON	\$3,500	\$0	\$3,500
ROCKINGHAM	\$97,459	\$20,412	\$77,047
ROWAN	\$10,289	\$9,161	\$1,128
RUTHERFORD	\$3,756	\$0	\$3,756
SAMPSON	\$20,055	\$0	\$20,055
SCOTLAND	\$14,860	\$507	\$14,353
STANLY	\$18,212	\$1,950	\$16,262
STOKES	No data	\$3,165	No data
SURRY	\$62,600	\$0	\$62,600
SWAIN	\$23,640	\$1,041	\$22,599
TRANSYLVANIA	\$5,000	\$0	\$5,000
TYRRELL	\$420	\$0	\$420
UNION	\$16,750	\$3,100	\$13,650
VANCE	No data	\$0	No data
WAKE	\$139,723	\$31,046	\$108,677
WARREN	No data	\$0	No data
WASHINGTON	No data	\$0	No data
WATAUGA	\$10,156	\$0	\$10,156
WAYNE	\$20,000	\$0	\$20,000
WILKES	\$25,000	\$0	\$25,000
WILSON	\$15,541	\$2,504	\$13,037
YADKIN	\$24,848	\$5,110	\$19,738
TOTALS	\$2,670,733	\$321,534	\$2,355,849
AVERAGE	\$33,384	\$3,315	\$29,448

*MITCH/YANC = Mitchell/Yancey regional management

**PE/CH/GA = Perquimans, Chowan, Gates regional management

TABLE 1. COUNTY COSTS OF MANAGING WHITE GOODS DURING JULY 1, 1995 - JUNE 30, 1996.

COUNTY	TONS COLLECTED	TOTAL COSTS	COST PER TON	INCOME		NET
				DISPOSAL TAX	SALE OF FREON/ SCRAP	TOTAL
						SURPLUS/ LOSS
MARTIN	289.2	\$1,480.00	\$5.12	\$21,201.44	\$0.00	\$19,721.44
MCDOWELL	230.8	\$22,574.38	\$97.80	\$29,882.01	\$5,763.75	\$13,071.38
MECKLENBURG	2,229.0	\$203,004.00	\$91.07	\$456,625.14	\$40,728.94	\$294,350.08
MITCH/YANC*	447.0	\$18,780.00	\$42.01	\$28,696.77	9907.38	\$19,824.15
MONTGOMERY	154.0	\$21,135.00	\$137.21	\$19,269.89	\$0.00	(\$1,865.11)
MOORE	496.6	\$37,411.60	\$75.34	\$52,860.42	\$0.00	\$15,448.82
NASH	422.4	\$20,686.90	\$48.97	\$67,358.39	\$0.00	\$46,671.49
NEW HANOVER	361.8	\$7,500.00	\$20.73	\$109,814.99	\$1,945.00	\$104,259.99
NORTHAMPTON	156.9	\$12,815.70	\$81.67	\$16,769.63	\$2,212.35	\$6,166.28
ONSLOW	No data	No data	No data	\$119,720.05	\$0.00	No data
ORANGE	465.0	\$49,900.00	\$107.31	\$85,160.52	\$19,964.00	\$55,224.52
PAMLICO	95.4	No data	No data	\$9,583.70	\$0.00	\$9,583.70
PASQUOTANK	No data	No data	No data	\$27,083.14	\$0.00	No data
PENDER	111.8	\$57,500.00	\$514.36	\$27,328.04	\$2,407.00	(\$27,764.96)
PE/CH/GA**	142.2	\$6,580.00	\$46.29	\$30,767.56	\$0.00	\$24,187.56
PERSON	128.5	\$6,425.00	\$50.00	\$25,492.49	\$0.00	\$19,067.49
PITT	596.0	\$70,571.80	\$118.41	\$94,452.12	\$0.00	\$23,880.32
POLK	76.1	\$500.00	\$6.57	\$12,587.60	\$0.00	\$12,087.60
RANDOLPH	282.0	\$37,143.00	\$131.71	\$91,879.44	\$0.00	\$54,736.44
RICHMOND	86.5	\$0.00	\$0.00	\$36,646.49	\$0.00	\$36,646.49
ROBESON	193.0	\$3,500.00	\$18.13	\$89,397.88	\$0.00	\$85,897.88
ROCKINGHAM	1,021.4	\$97,459.00	\$95.41	\$71,332.14	\$20,412.10	(\$5,714.76)
ROWAN	175.0	\$10,289.00	\$58.79	\$95,080.25	\$9,161.00	\$93,952.25
RUTHERFORD	200.0	\$3,755.75	\$18.78	\$47,701.22	\$0.00	\$43,945.47
SAMPSON	176.1	\$20,055.00	\$113.90	\$30,315.58	\$0.00	\$10,260.58
SCOTLAND	140.0	\$14,860.00	\$106.14	\$27,646.53	\$507.30	\$13,293.83
STANLY	3,271.0	\$18,212.00	\$5.57	\$43,713.65	\$1,950.00	\$27,451.65
STOKES	191.5	No data	No data	\$32,668.67	\$3,164.75	No data
SURRY	296.5	\$62,600.00	\$211.10	\$52,355.16	\$0.00	(\$10,244.84)
SWAIN	184.0	\$23,640.00	\$128.51	\$9,359.94	\$1,041.33	(\$13,238.73)
TRANSYLVANIA	193.5	\$5,000.00	\$25.85	\$22,001.25	\$0.00	\$17,001.25
TYRRELL	1.9	\$420.00	\$222.22	\$3,103.16	\$0.00	\$2,683.16
UNION	1,390.8	\$16,750.00	\$12.04	\$76,767.17	\$3,100.00	\$63,117.17
VANCE	404.7	\$0.00	\$0.00	\$32,457.14	\$0.00	\$32,457.14
WAKE	860.0	\$139,723.00	\$162.47	\$404,028.40	\$31,046.00	\$295,351.40
WARREN	No data	No data	No data	\$14,536.18	\$0.00	No data
WASHINGTON	118.8	No data	No data	\$11,289.05	\$0.00	No data
WATAUGA	174.9	\$10,155.83	\$58.08	\$32,027.54	\$0.00	\$21,871.71
WAYNE	342.6	\$20,000.00	\$58.38	\$88,752.68	\$0.00	\$68,752.68
WILKES	191.3	\$25,000.00	\$130.67	\$49,840.23	\$0.00	\$24,840.23
WILSON	629.3	\$15,541.00	\$24.70	\$54,890.40	\$2,503.70	\$41,853.10
YADKIN	333.4	\$24,848.00	\$74.54	\$26,744.67	\$5,110.15	\$7,006.82
TOTALS	37,095.0	\$2,670,732.80		\$5,747,830.08	\$321,533.98	\$3,090,050.85
AVERAGE	407.6	\$30,698.08	\$95.87	\$59,214.82	\$3,314.78	\$35,114.21
No data = County did not report data						
*MITCH/YANC = Mitchell/Yancey regional management						
**PE/CH/GA = Perquimans, Chowan, Gates regional management						

TABLE 1. COUNTY COSTS OF MANAGING WHITE GOODS DURING JULY 1, 1995 - JUNE 30, 1996.

COUNTY	TONS COLLECTED	TOTAL COSTS	COST PER TON	INCOME		NET
				DISPOSAL TAX	SALE OF FREON/SCRAP	TOTAL
						SURPLUS/LOSS
ALAMANCE	435.7	\$0.00	\$0.00	\$92,484.77	\$0.00	\$92,484.77
ALEXANDER	105.3	\$23,646.00	\$224.60	\$24,123.17	\$0.00	\$477.17
ALLEGHENY	225.1	\$5,000.00	\$22.21	\$7,818.94	\$0.00	\$2,818.94
ANSON	247.0	\$15,452.67	\$62.56	\$19,534.33	\$0.00	\$4,081.66
ASHE	282.0	\$9,529.50	\$33.79	\$18,651.54	\$0.00	\$9,122.04
AVERY	No data	No data	No data	\$12,261.31	\$0.00	No data
BEAUFORT	196.2	\$39,640.00	\$202.04	\$35,178.70	\$0.00	(\$4,461.30)
BERTIE	105.0	No data	No data	\$16,677.68	\$0.00	No data
BLADEN	81.6	\$23,230	\$284.79	\$23,984.04	\$0.00	\$754.04
BRUNSWICK	780.0	\$1,354.26	\$1.74	\$47,611.71	\$256.47	\$46,513.92
BUNCOMBE	900.0	\$70,518.00	No data	\$151,179.70	\$17,937.37	\$98,599.07
BURKE	644.1	\$62,000.00	\$96.26	\$64,801.99	\$2,083.69	\$4,885.68
CABARRUS	538.9	\$1,000.00	\$1.86	\$87,233.63	\$2,104.56	\$88,338.19
CALDWELL	1,028.0	No data	No data	\$59,458.92	\$0.00	No data
CAMDEN	55.0	\$0.00	\$0.00	\$5,061.56	\$0.00	\$5,061.56
CARTERET	283.4	\$44,407.00	\$156.70	\$46,070.71	\$0.00	\$1,663.71
CASWELL	74.2	\$8,573.16	\$115.51	\$17,265.94	\$1,327.86	\$10,020.64
CATAWBA	522.6	\$0.00	\$0.00	\$100,818.74	\$3,485.41	\$104,304.15
CHATHAM	455.0	\$201,816.00	\$443.55	\$34,138.90	\$13,859.00	(\$153,818.10)
CHEROKEE	148.0	\$20,800.00	\$140.54	\$17,453.88	\$0.00	(\$3,346.12)
CLAY	87.0	\$0.00	\$0.00	\$6,154.26	\$0.00	\$6,154.26
CLEVELAND	777.6	\$134,840.51	\$173.41	\$71,408.63	\$31,103.20	(\$32,328.68)
COLUMBUS	10.0	\$23,460.00		\$41,494.88	\$0.00	\$18,034.88
CRAVEN	1,115.3	\$97,538.00	\$87.45	\$68,678.10	\$0.00	(\$28,859.90)
CUMBERLAND	341.0	\$17,799.60	\$52.20	\$237,455.69	\$9,456.56	\$229,112.65
CURRITUCK	184.5	\$40,460.88	\$219.26	\$12,531.46	\$0.00	(\$27,929.42)
DARE	911.8	\$12,525.70	\$13.74	\$20,181.17	\$0.00	\$7,655.47
DAVIDSON	435.6	\$7,345.00	\$16.86	\$109,678.30	\$0.00	\$102,333.30
DAVIE	121.3	\$13,549.87	\$111.70	\$23,868.52	\$3,952.40	\$14,271.05
DUPLIN	408.5	\$43,865.97	\$107.38	\$34,164.12	\$1,212.54	(\$8,489.31)
DURHAM	830.3	\$158,330.00	\$190.69	\$155,522.82	\$7,700.00	\$4,892.82
EDGECOMBE	375.0	\$5,109.31	\$13.62	\$45,865.68	\$0.00	\$40,756.37
FORSYTH	451.0	\$65,000.00	\$144.12	\$224,700.47	\$7,813.00	\$167,513.47
FRANKLIN	750.0	\$7,656.00	\$10.21	\$32,884.29	\$0.00	\$25,228.29
GASTON	744.0	\$88,379.00	\$118.79	\$144,745.55	\$7,500.00	\$63,866.55
GRAHAM	48.2	\$16,083.20	\$333.68	\$6,037.10	\$0.00	(\$10,046.10)
GRANVILLE	269.7	\$8,328.00	\$269.65	\$32,934.74	\$0.00	\$24,606.74
GREENE	55.7	\$1,739.43	\$31.23	\$13,340.20	\$1,252.12	\$12,852.89
GUILFORD	No data	\$0.00	\$0.00	\$297,438.58	\$0.00	\$297,438.58
HALIFAX	628.0	\$18,000.00	\$28.66	\$46,525.52	\$0.00	\$28,525.52
HARNETT	287.5	\$22,526.93	\$78.36	\$60,886.82	\$6,415.51	\$44,775.40
HAYWOOD	No data	\$425.33	No data	\$39,909.12	\$0.00	\$39,483.79
HENDERSON	571.0	\$65,000.00	\$113.84	\$61,100.00	\$0.00	(\$3,900.00)
HERTFORD	153.4	\$19,000.00	\$123.84	\$18,249.61	\$0.00	(\$750.39)
HOKE	50.7	\$5,300.00	\$104.58	\$21,657.07	\$0.00	\$16,357.07
HYDE	22.4	\$5,600.00	\$250.00	\$4,287.80	\$0.00	(\$1,312.20)
IREDELL	221.0	\$6,200.00	\$28.05	\$82,002.02	\$20,446.00	\$96,248.02
JACKSON	342.0	\$10,000.00	\$29.24	\$23,118.34	\$0.00	\$13,118.34
JOHNSTON	291.3	\$32,497.00	\$111.54	\$74,489.01	\$5,826.00	\$47,818.01
JONES	22.7	No data	No data	\$7,727.81	\$0.00	No data
LEE	280.0	\$39,143.52	\$139.80	\$36,465.06	\$2,800.86	\$122.40
LENOIR	308.6	\$20,491.00	\$66.40	\$47,755.73	\$0.00	\$27,264.73
LINCOLN	642.0	30,000.0	\$46.73	\$44,537.85	\$0.00	\$14,537.85
MACON	750.0	\$7,656.00	\$10.21	\$20,723.85	\$0.00	\$13,067.85
MADISON	240.0	\$34,100.00	\$142.08	\$14,318.18	\$14,076.68	(\$5,705.14)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1997

S

1

SENATE BILL 390

Short Title: Huntersville Annexation.

(Local)

Sponsors: Senator Odom.

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

March 13, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO ANNEX CERTAIN TERRITORIES TO THE TOWN OF
3 HUNTERSVILLE, MECKLENBURG COUNTY.

4 The General Assembly of North Carolina enacts:

5 Section 1. Effective as of midnight, June 30, 1997, the corporate limits of
6 the Town of Huntersville are extended to include the following area and territory
7 lying in Mecklenburg County, which area and territory shall be deemed annexed to
8 and part of the Town of Huntersville:

9 AREA 96-A-I.a

10 BEGINNING AT A POINT being on the existing municipal boundary line of the
11 Town of Huntersville at its intersection with the eastern right-of-way boundary line of
12 Interstate Highway Number 77 (I-77), said point being approximately 1,875 feet north
13 of the intersection of said highway right-of-way with the centerline of Sam Furr
14 Road, SR 2145; thence northwesterly approximately 1,338 feet to a point being the
15 intersection of Northcross Drive with the western right-of-way boundary line of I-77;
16 thence southwest along the centerline of Northcross Drive approximately 964 feet to a
17 point being the intersection of said centerline with the eastern extension of the
18 northern property boundary line of parcel 62-9, tax map 05-06; thence westerly along
19 the northern property boundary lines of said parcel and parcel 62-1 approximately
20 2,584 feet to a point being a corner of said parcel, said point also being the
21 southwestern property boundary corner of parcel 62-2, tax map 05-06; thence
22 southwesterly in a straight line from said point approximately 1,394 feet to a point
23 being the southeast property boundary corner of parcel 61-3, tax map 05-06; thence
24 continuing southwesterly along the southern property boundary line of said parcel

1 and parcels 61-14, 61-16, 61-8, 61-12 and 61-18 approximately 2,831 feet to a point
2 being the intersection of said property boundary lines with the centerline of NC
3 Highway 73; thence southwest along said centerline approximately 6,278 feet to a
4 point being the intersection of said centerline and the centerline of Oliver Hager
5 Road, SR 2142; thence southeast approximately 61 feet to a point being the northwest
6 property boundary corner of parcel 11-6, tax map 09-01; thence easterly along the
7 northern property boundary lines of parcels 11-6 and 11-16 approximately 651 feet to
8 a point being the northeast property boundary corner of parcel 11-16, tax map 09-01;
9 thence south along the eastern property boundary line of parcel 11-16 approximately
10 157 feet to a point being the intersection of said boundary line and the centerline of a
11 branch of McDowell Creek; thence southeast with the centerline of said branch
12 approximately 5,776 feet to a point being the intersection of the centerline of said
13 branch and the centerline of McDowell Creek, said point also being on the existing
14 municipal boundary line of the Town of Huntersville; thence northeast with said
15 municipal boundary line approximately 11,107 feet to the POINT OF BEGINNING.
16 tract 96-A-I.a encompasses 1026.35 Acres more or less.

17 AREA 96-A-I.b

18 BEGINNING AT A POINT being on the existing municipal boundary line of the
19 Town of Huntersville at its intersection with the centerline of McDowell Creek, said
20 point being located northeast approximately 2,720 feet from the centerline
21 intersection of Ervin Cook Road, SR 2137, and Gilead Road, SR 2136; thence
22 southwesterly with the centerline of McDowell Creek approximately 2,975 feet to a
23 point being the intersection of the centerline of McDowell Creek and the centerline
24 of Torrence Creek; thence easterly with the centerline of Torrence Creek
25 approximately 411 feet to a point being the intersection of the centerline of Torrence
26 Creek and the existing municipal boundary line of the Town of Huntersville; thence
27 southeasterly with said municipal boundary line approximately 13,543 feet to the
28 POINT OF BEGINNING.

29 Tract 96-A-I.b encompasses 224.76 Acres more or less.

30 AREA 96-A-I.c

31 BEGINNING AT A POINT being on the existing municipal boundary line of the
32 Town of Huntersville at its intersection with the northern right-of-way boundary line
33 of McIlwaine Road, SR 2130, said point being located east approximately 610 feet
34 from the centerline intersection of McIlwaine Road, SR 2130, and Crabapple Lane;
35 thence southerly at a right angle from the northern right-of-way boundary line of
36 McIlwaine Road, SR 2130, approximately 23 feet to a point on the centerline of
37 McIlwaine Road, SR 2130; thence westerly along the centerline of McIlwaine Road,
38 SR 2130, approximately 1,590 feet to a point being the centerline intersection of
39 McIlwaine Road, SR 2130, and McIntosh Drive; thence northerly with the centerline
40 of McIntosh Drive approximately 1,600 feet to a point being the intersection of the
41 centerline of McIntosh Drive and the southwestern extension of the northwestern
42 property boundary line of parcel 282-1, tax map 015-28; thence northeasterly along
43 the northwestern property boundary line of parcel 282-1 approximately 629 feet to a
44 point being a corner in the northern property boundary line of parcel 282-1; thence

1 northeasterly in a straight line from said point approximately 479 feet to a point being
2 a corner on the existing municipal boundary line of the Town of Huntersville; thence
3 southerly with said municipal boundary line approximately 2,772 feet to the POINT
4 OF BEGINNING.

5 Tract 96-A-I.c encompasses 63.27 Acres more or less.

6 AREA 96-A-I.d

7 BEGINNING AT A POINT being on the existing municipal boundary line of the
8 Town of Huntersville at its intersection with the centerline of Hambright Road, SR
9 2117, said point being located west approximately 1,434 feet from the centerline
10 intersection of Hambright Road, SR 2117, and U. S. Highway 21; thence westerly
11 along the centerline of Hambright Road, SR 2117, approximately 11,367 feet to a
12 point being the centerline intersection of Hambright Road, SR 2117, and McCoy
13 Road, SR 2138; thence northeasterly along the centerline of McCoy Road, SR 2138,
14 approximately 899 feet to a point being the intersection of McCoy Road, SR 2138,
15 and the southeastward extension of the northern right-of-way of McIlwaine Road, SR
16 2130; thence to the northwest said right-of-way extension approximately 21 feet to a
17 point being the intersection of the northern right-of-way for McIlwaine Road and the
18 western right-of-way for McCoy Road, SR 2138, said point being a corner on the
19 existing municipal boundary line of the Town of Huntersville; thence eastward with
20 said municipal boundary line approximately 12,949 feet to the POINT OF
21 BEGINNING.

22 Tract 96-A-I.d encompasses 551.06 Acres more or less.

23 Section 2. Effective as of midnight, June 30, 1998, the corporate limits of
24 the Town of Huntersville are extended to include the following area and territory
25 lying in Mecklenburg County, North Carolina, which area and territory shall be
26 deemed annexed to and part of the Town of Huntersville:

27 AREA 96-A-II

28 BEGINNING AT A POINT being on the existing municipal boundary line of the
29 Town of Huntersville, said point being the centerline intersection of NC Highway 73
30 and Oliver Hager Road, SR 2142; thence west along the centerline of NC Highway 73
31 approximately 10,304 feet to a point being the intersection of said centerline and the
32 southern extension of the western property boundary line of parcel 11-6, tax map 01-
33 01; thence northward with the western property boundary lines of parcels 11-6, 11-15,
34 11-16, 11-17, 11-18, 11-10, 11-9, and 11-19 of tax map 01-01 approximately 1,159 feet
35 to a point being the southwestern property boundary corner of parcel 11-19; thence
36 southwesterly with the southern property boundary lines of parcels 11-7 and 11-8 of
37 tax map 01-01 approximately 490 feet to a point being the southwestern property
38 boundary corner of parcel 11-8; thence northward with the western property
39 boundary line of parcel 11-8, crossing the Hagers Ferry Road right-of-way, and with
40 the western property boundary lines for parcels 13-41 and 13-2 of tax map 01-01
41 approximately 1,613 feet to a point being a property boundary corner for parcel 13-2,
42 said point also being a point being the intersection of said property boundary lines
43 with the shore line of the impounded body of water known as Lake Norman; thence
44 easterly along said shoreline approximately 38,932 feet to a point being the

1 intersection of said shoreline with a northeastern property boundary corner of parcel
2 24-18, tax map 01-02; thence southeasterly with the northern property boundary lines
3 of parcels 24-18 and 24-11, tax map 01-02, approximately 1,173 feet to a point being
4 the intersection of the southeastern extension of the northern property boundary line
5 of parcel 24-11 and the centerline of NC Highway 73, said point also being on the
6 existing municipal boundary line of the Town of Huntersville; thence westward with
7 said municipal boundary line approximately 92 feet to the POINT OF BEGINNING.
8 Tract 96-A-II encompasses 415.84 Acres more or less.

9 Section 3. Effective as of midnight, June 30, 1999, the corporate limits of
10 the Town of Huntersville are extended to include the following area and territory
11 lying in Mecklenburg County, North Carolina, which area and territory shall be
12 deemed annexed to and part of the Town of Huntersville:

13 AREA 96-A-III

14 BEGINNING AT A POINT being on the existing municipal boundary line of the
15 Town of Huntersville, said point being the centerline intersection of NC Highway 73
16 and Beatties Ford Road, SR 2128; thence southward with the centerline of Beatties
17 Ford Road, SR 2128, approximately 1,659 feet to a point being the centerline
18 intersection of Beatties Ford Road, SR 2128, and Gilead Road, SR 2136; thence
19 southeast with the centerline of Gilead Road, SR 2136, approximately 6,460 feet to a
20 point being the centerline intersection of Gilead Road, SR 2136, and Bud Henderson
21 Road, SR 2131; thence southwesterly with the centerline of Bud Henderson Road, SR
22 approximately 5,657 feet to a point being the intersection of the centerline Bud
23 Henderson Road, SR 2131, and the centerline of a branch of Torrence Creek; thence
24 southerly with the centerline of a branch of Torrence Creek approximately 3,343 feet
25 to a point being the intersection of the centerline of a branch of Torrence Creek and
26 the centerline of Torrence Creek; thence southwesterly with the centerline of
27 Torrence Creek approximately 10,040 feet to a point being the intersection of the
28 centerline of Torrence Creek and the centerline of Neck Road, SR 2074; thence
29 easterly along the centerline of said road approximately 8,677 feet to a point being
30 the intersection of said road centerline and the centerline of Beatty's Ford Road, SR
31 2128; thence southeasterly along said road centerline approximately 13,491 feet to a
32 point being the intersection of said road centerline and the centerline of Overhill
33 Road, SR 2122; thence east along said road centerline approximately 517 feet to a
34 point being the intersection of said road centerline and the centerline of Pembroke
35 Road, SR 2121; thence northeast along said road centerline approximately 336 feet to
36 a point being the intersection of said road centerline and the northwest extension of
37 the western property boundary line of parcel 264-44, map 15-26; thence southeasterly
38 along said property boundary line, said line also being a northern property boundary
39 line of parcel 264-43, tax map 15-26, approximately 230 feet to a point being a
40 property boundary corner of said parcel; thence southeasterly along the northern
41 property boundary lines of said parcel approximately 1,578 feet to a point being an
42 eastern property boundary corner at its intersection with the northern property
43 boundary lines of parcel 264-29, tax map 15-26; thence easterly along the northern
44 property boundary lines of said parcel approximately 1,236 feet to a point being the

1 intersection of said property boundary lines extended to the centerline of Mount
2 Holly - Huntersville Road, SR 2004; thence northeasterly along said road centerline
3 approximately 8,076 feet to a point being the intersection of said road centerline and
4 the centerline of Alexanderana Road, SR 2116; thence east along said road centerline
5 approximately 5,577 feet to a point being the intersection of said road centerline and
6 the western right-of-way boundary line of US Highway 21, said point being on the
7 existing municipal boundary line of the Town of Huntersville; thence northerly along
8 the existing municipal boundary line approximately 45,475 feet to the POINT OF
9 BEGINNING.

10 Tract 96-A-III encompasses 6582.88 Acres more or less.

11 Section 4. Effective as of midnight, June 30, 2000, the corporate limits of
12 the Town of Huntersville are extended to include the following area and territory
13 lying in Mecklenburg County, North Carolina, which area and territory shall be
14 deemed annexed to and part of the Town of Huntersville:

15 AREA 96-A-IV

16 BEGINNING AT A POINT being on the existing municipal boundary line of the
17 Town of Huntersville, said point being the southwestern boundary corner of parcel
18 11-6, tax map 01-01, said point also being located west approximately 1400 feet from
19 the centerline intersection of Hagers Ferry Road and NC Highway 73; thence with
20 the eastern property boundary line of parcel 11-6 approximately 20 feet to a point
21 being the southeastern property boundary corner of parcel 11-5, tax map 01-01;
22 thence westerly along the southern property boundary lines of parcels 11-5, 11-4, 11-
23 3, and 11-13 of tax map 01 approximately 438 feet to a point being the southeastern
24 property boundary corner of parcel 11-2, tax map 01-01; thence northerly, westerly,
25 and then southerly with the property boundary lines of parcel 11-2 approximately 600
26 feet to the southwestern property boundary corner of parcel 11-2; thence westerly
27 with the southern boundary line of parcels 11-13 and 11-1 of tax map 01-01
28 approximately 387 feet to the southwestern property boundary corner of parcel 11-1;
29 thence southwesterly with the southwestern extension of the western property
30 boundary line of parcel 11-1 approximately 160 feet to a point being a property
31 boundary corner in the northern property boundary line of parcel 151-2, tax map 13-
32 15; thence easterly with said property line approximately 900 feet to the northwestern
33 property boundary corner of parcel 141-8, tax map 13-14; thence southerly, easterly,
34 and then southerly with the eastern property boundary line of parcel 151-2
35 approximately 947 feet to a point being the southwestern property boundary corner
36 of parcel 141-7, tax map 13-14, said point also being on the property boundary line of
37 parcel 141-9, tax map 13-14; thence with the easterly, southeasterly, and then westerly
38 with the eastern and southern property boundary lines of parcel 141-9 approximately
39 4,309 feet to the southwestern boundary corner of parcel 141-9; thence northerly and
40 then southwesterly with the northern property boundary lines of parcel 151-8, tax
41 map 13-15 approximately 1,535 feet to the northwestern property boundary corner of
42 parcel 151-8; thence southerly with the western property boundary lines of parcels
43 151-8, 151-3, 151-10, and 151-6 of tax map 13-15 approximately 969 feet to the
44 southwestern property boundary corner of parcel 151-6; thence easterly with the

1 southern property boundary lines of parcels 151-6 and 151-5 of tax map 13-15
2 approximately 897 to a point being the intersection of the eastern extension of the
3 southern property boundary line of parcel 151-5 and the centerline of Cashion Road,
4 SR 2133; thence southwesterly with the centerline of Cashion Road, SR 2133,
5 approximately 780 feet to a point being the intersection of the eastern extension of
6 the northern property boundary line of parcel 151-1, tax map 13-15, and the
7 centerline of Cashion Road, SR 2133; thence westerly with the northern property
8 boundary line of parcel 151-1 approximately 1044 feet to a point being the
9 northwestern property boundary corner of parcel 151-1; thence southeasterly with the
10 southwestern property boundary line of parcel 151-1 approximately 529 feet to a
11 point being the intersection of the southeastern extension of the southwestern
12 property boundary line of parcel 151-1 and the centerline of Cashion Road, SR 2133;
13 thence to the southwest with the centerline of Cashion Road, SR 2133, approximately
14 298 feet to a point being the intersection of the centerline of Cashion Road, SR 2133,
15 and the eastern extension of the northern property boundary line of parcel 111-4, tax
16 map 13-11; thence westerly with the northern property boundary line of parcel 111-4
17 approximately 2,484 feet to a point being the northwestern property boundary corner
18 of parcel 111-4; thence southerly with the western property boundary line of parcel
19 111-4 approximately 5,504 feet to the southwestern property boundary corner of
20 parcel 111-4; thence westerly with the northern property boundary line of parcel 161-
21 2, tax map 13-16 approximately 2,060 feet to a point being the intersection of the
22 westward extension of said property boundary line with the centerline of the Catawba
23 River, said point being on the Mecklenburg County line; thence southerly along said
24 county line, said line also lying within the Catawba River approximately 7,247 feet to
25 a point being the confluence of the Catawba River and an unnamed tributary flowing
26 north-northwest; thence southeasterly along said unnamed tributary approximately
27 2,460 feet to a point being the intersection of said unnamed tributary and the western
28 property boundary line of parcel 41-6, tax map 13-04; thence southeasterly along the
29 southern property boundary lines of said parcel and parcels 41-3 and 41-2, tax map
30 13-04 approximately 1,917 feet, to a point being the intersection of said property
31 boundary lines extended and the centerline of Neck Road, SR 2074; thence
32 southeasterly with the centerline of Neck Road, SR 2074, approximately 4,470 feet to
33 a point being the intersection of the centerline of Torrence Creek and the centerline
34 of Neck Road, SR 2074, said point being on the existing municipal boundary line of
35 the Town of Huntersville; thence northerly along the existing municipal boundary
36 line approximately 33,395 feet to the POINT OF BEGINNING.

37 Save and except the following tract:

38 BEGINNING AT A POINT being northwestern property boundary corner for parcel
39 131-16, tax map 13-13, said point being south approximately 810 feet from the
40 centerline intersection of NC Highway 73 and Hubbard Road, SR 2134; thence
41 easterly with the northern property boundary line of parcels 131-16, 131-18, and 131-
42 17 of tax map 13-13 approximately 2035' to a point being the northeastern property
43 boundary corner of parcel 131-17; thence southwesterly with the southeastern
44 property boundary lines of parcels 131-17 and 131-18 approximately 1311 feet to a

1 point being the intersection of the southwestern extension of the said property
2 boundary lines and the southeastward extension of the western property boundary
3 line for parcel 131-18; thence northwesterly with the western property boundary lines
4 of parcels 131-18 and 131-16 approximately 1144 feet to a point being a corner on the
5 southern property line of parcel 131-16; thence westerly with the southern property
6 line of parcel 131-16 approximately 300 feet to a point being the southeastern
7 property boundary corner of parcel 131-16; thence northerly with the western
8 property boundary line of parcel 131-16 approximately 379 feet to the POINT OF
9 BEGINNING.

10 This save and except tract encompasses 25,73 Acres more or less.

11 Tract 96-A-IV encompasses 3846.35 Acres more or less (without the save and except
12 tract described).

13 Section 5. From and after the effective date of each such annexation, the
14 territory and its citizens and property shall be subject to all debts, laws, ordinances
15 and regulations in force in the Town of Huntersville, and shall be entitled to the
16 same privileges and benefits as other parts of the Town of Huntersville.

17 The area so annexed shall receive services provided by the Town of
18 Huntersville in substantially the same basis and in the same manner, and according to
19 the same policies as such services are provided by the Town of Huntersville within
20 the rest of the municipality prior to each such annexation. Each such annexation
21 shall have the same effect as if adopted pursuant to Part 3 of Article 4A of Chapter
22 160A of the General Statutes of North Carolina.

23 Section 6. The provisions of G.S. 160A-49.1 and G.S. 160A-49.2 shall
24 apply to each annexation made by this act.

25 Section 7. A map of the area annexed under each such annexation shall
26 be duly recorded in the same manner as set forth in G.S. 160A-51, but without the
27 necessity of filing any ordinance.

28 Section 8. Nothing herein shall prevent the owner or owners of property
29 within any of the annexation areas from voluntarily seeking annexation to the Town
30 of Huntersville pursuant to the provisions of G.S. 160A-31 or Part 4 of Article 4A of
31 Chapter 160A of the North Carolina General Statutes, and any such voluntary
32 annexation shall not in any manner affect the subsequent annexations of territory as
33 set forth in this act.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 518

Short Title: Local Choice: 1-Year 1¢ Sales Tax/Vote.

(Public)

Sponsors: Senators Perdue; Ballantine, Rand, and Shaw of Cumberland.

Referred to: Finance.

March 26, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE EACH COUNTY OF THE STATE TO LEVY A
3 TEMPORARY ONE CENT LOCAL SALES TAX FOR A PERIOD OF ONE
4 YEAR, IF APPROVED BY THE VOTERS OF THE COUNTY.
5 The General Assembly of North Carolina enacts:
6 Section 1. Subchapter VIII of Chapter 105 of the General Statutes is
7 amended by adding a new Article to read:
8 "ARTICLE 43.
9 "Second One-Cent (1¢) Local Government
10 Sales and Use Tax.
11 "§ 105-505. Short title.
12 This Article shall be known as the Second One-Cent (1¢) Local Government Sales
13 and Use Tax Act.
14 "§ 105-506. Purpose.
15 This Article gives the counties of this State an opportunity to obtain a temporary
16 source of revenue with which to meet their growing financial needs. It provides all
17 counties of the State that are subject to this Article with authority to levy one percent
18 (1%) sales and use taxes for a period of up to one year.
19 "§ 105-507. Limitations.
20 This Article applies only to counties that levy the first one-cent (1¢) sales and use
21 tax under Article 39 of this Chapter or under Chapter 1096 of the 1967 Session Laws,
22 the first one-half cent (1/2¢) local sales and use tax under Article 40 of this Chapter,
23 and the second one-half cent (1/2¢) local sales and use tax under Article 42 of this
24 Chapter.

1 **"§ 105-508. County election on adoption of tax.**

2 (a) Resolution. -- The board of commissioners of a county may direct the county
3 board of elections to conduct an advisory referendum on the question of whether a
4 temporary local sales and use tax at the rate of one percent (1%) will be levied in
5 accordance with this Article. The election shall be held on a date jointly agreed
6 upon by the two boards and shall be held in accordance with the procedures of G.S.
7 163-287.

8 (b) Ballot Question. -- The form of the question to be presented on a ballot for a
9 special election concerning the levy of the taxes authorized by this Article shall be:

10 FOR AGAINST

11 temporary one percent (1%) local sales and use taxes, in addition to the current two
12 percent (2%) local sales and use taxes, for a period of one year.

13 **"§ 105-509. Levy and collection of taxes.**

14 If the majority of those voting in a referendum held pursuant to this Article vote
15 for the levy of the tax, the board of commissioners of the county may, by resolution,
16 levy one percent (1%) local sales and use taxes in addition to any other State and
17 local sales and use taxes levied pursuant to law. Except as provided in this Article,
18 the adoption, levy, collection, administration, and repeal of these additional taxes
19 shall be in accordance with Article 39 of this Chapter. In applying the provisions of
20 Article 39 of this Chapter to this Article, references to 'this Article' mean 'Article 43
21 of Chapter 105 of the General Statutes'.

22 **"§ 105-510. Distribution and use of taxes.**

23 The Secretary shall, on a quarterly basis, allocate the net proceeds of the tax levied
24 under this Article to the taxing counties on a per capita basis according to the most
25 recent annual population estimates certified to the Secretary by the State Budget
26 Officer. The amount allocated to each taxing county shall then be divided among the
27 county and its municipalities in accordance with the method by which the one
28 percent (1%) sales and use taxes levied in that county pursuant to Article 39 of this
29 Chapter or Chapter 1096 of the 1967 Session Laws are distributed. If any taxes
30 levied under this Article by a county have not been collected in that county for a full
31 quarter because of the levy or repeal of the taxes, the Secretary shall distribute a pro
32 rata share to that county for that quarter based on the number of months the taxes
33 were collected in that county during the quarter.

34 The proceeds of a tax levied under this Article may be used for any lawful public
35 purpose.

36 **"§ 105-511. Expiration.**

37 A tax levied under this Article expires one year after the effective date of its levy.
38 A county's authority to levy a tax under this Article expires one year after the
39 effective date of its levy of a tax under this Article. The expiration of a tax pursuant
40 to this Article does not affect the rights or liabilities of the county, a taxpayer, or
41 another person arising under the expired tax; nor does it affect the right to any
42 refund or credit of a tax that would otherwise have been available under the expired
43 tax before its expiration."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

D

SENATE BILL 518
Proposed Senate Finance Committee Substitute
S518-CSLJX-4/3

Short Title: Local Choice: 1-Year 1¢ Sales Tax. (Public)

Sponsors:

Referred to: Finance.

March 26, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE EACH COUNTY OF THE STATE TO LEVY A TEMPORARY
3 ONE CENT LOCAL SALES TAX FOR THE 1998 CALENDAR YEAR.
4 The General Assembly of North Carolina enacts:
5 Section 1. Subchapter VIII of Chapter 105 of the
6 General Statutes is amended by adding a new Article to read:
7 "ARTICLE 43.
8 "Second One-Cent (1¢) Local Government
9 Sales and Use Tax.
10 "§ 105-505. Short title.
11 This Article is the Second One-Cent (1¢) Local Government Sales
12 and Use Tax Act.
13 "§ 105-506. Purpose.
14 This Article gives the counties of this State an opportunity to
15 obtain a temporary source of revenue with which to meet their
16 growing financial needs. It provides all counties of the State
17 that are subject to this Article with authority to levy one
18 percent (1%) sales and use taxes for the 1998 calendar year.
19 "§ 105-507. Limitations.
20 This Article applies only to counties that levy the first one-
21 cent (1¢) sales and use tax under Article 39 of this Chapter or
22 under Chapter 1096 of the 1967 Session Laws, the first one-half

1 cent (1/2¢) local sales and use tax under Article 40 of this Chapter, and the second one-half cent (1/2¢) local sales and use tax under Article 42 of this Chapter.

4 "§ 105-508. Levy of tax.

5 (a) After Vote. -- If the majority of those voting in a referendum held pursuant to this Article vote for the levy of the taxes, the board of commissioners of the county may, by resolution adopted by November 1, 1997, levy one percent (1%) local sales and use taxes in addition to any other State and local sales and use taxes levied pursuant to law.

11 (b) Without Vote. -- If the question of whether to levy taxes under this Article has not been defeated in a referendum held in the county, the board of commissioners of the county may, by resolution adopted by November 1, 1997, levy one percent (1%) local sales and use taxes in addition to any other State and local sales and use taxes levied pursuant to law. Before adopting a resolution under this subsection, the board of commissioners must give at least 10 days' public notice of its intent to adopt the resolution and must hold a public hearing on the issue of adopting the resolution.

21 (c) Effective Date. -- A tax imposed under this Article becomes effective January 1, 1998.

23 "§ 105-509. County election on adoption of tax.

24 (a) Resolution. -- The board of commissioners of a county may direct the county board of elections to conduct an advisory referendum on the question of whether to levy temporary local one percent (1%) sales and use taxes in the county for the 1998 calendar year. The election shall be held on a date jointly agreed upon by the two boards and shall be held in accordance with the procedures of G.S. 163-287.

31 (b) Ballot Question. -- The form of the question to be presented on a ballot for a special election concerning the levy of the taxes authorized by this Article shall be:

34 FOR AGAINST

35 temporary one percent (1%) local sales and use taxes for calendar year 1998 in addition to the current two percent (2%) local sales and use taxes.

38 "§ 105-510. Administration of taxes.

39 Except as provided in this Article, the adoption, levy, collection, administration, and repeal of the additional taxes authorized by this Article shall be in accordance with Article 39 of this Chapter. In applying the provisions of Article 39 of this Chapter to this Article, references to 'this Article' mean 'Article 43 of Chapter 105 of the General Statutes'.

1 "§ 105-511. Distribution and use of taxes.

2 (a) Distribution. -- The Secretary shall, on a quarterly basis,
3 allocate the net proceeds of the tax levied under this Article to
4 the taxing counties on a per capita basis according to the most
5 recent annual population estimates certified to the Secretary by
6 the State Planning Officer. The amount allocated to each taxing
7 county shall then be divided among the county and its
8 municipalities in accordance with the method by which the one
9 percent (1%) sales and use taxes levied in that county pursuant
10 to Article 39 of this Chapter or Chapter 1096 of the 1967 Session
11 Laws are distributed.

12 (b) Use. -- The proceeds of a tax levied under this Article may
13 be used for any lawful public purpose.

14 "§ 105-512. Expiration.

15 A tax levied under this Article expires December 31, 1998. The
16 expiration of a tax pursuant to this Article does not affect the
17 rights or liabilities of the county, a taxpayer, or another
18 person arising under the expired tax; nor does it affect the
19 right to any refund or credit of a tax that would otherwise have
20 been available under the expired tax before its expiration. If
21 the Secretary refunds a tax imposed under this Article after the
22 tax has expired and the proceeds of the tax have been distributed
23 to the taxing counties, the Secretary shall deduct the amount of
24 the refund from the next distribution to the affected county
25 under G.S. 105-501."

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

**NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL ESTIMATE**

BILL NUMBER: SENATE COMMITTEE SUBSTITUTE FOR SB 518
SHORT TITLE: LOCAL CHOICE: 1-YEAR 1 CENT SALES TAX

FISCAL IMPACT

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

REVENUES (See "Assumptions and Methodology")

PRINCIPAL DEPARTMENT AFFECTED: The tax would be collected and distributed by the Department of Revenue. The Department's costs will be deducted from the distribution to local units in the same fashion as the existing local tax.

EFFECTIVE DATE: When the bill becomes law.

BILL SUMMARY: Authorizes all counties in the State to levy a temporary 1 cent sales tax effective for the 1998 calendar year. The tax would be in addition to the regular 2% tax and the additional tax that might be levied under Senate Bill 389 (Triad Baseball Park Districts). The tax can be adopted by a vote of the people of the county or by a resolution adopted by the board of commissioners (but not by resolution if the issue has failed in a referendum). The tax will be collected by the Department of Revenue and distributed quarterly to the counties that levy the tax on a per capita basis. Within the county, the proceeds shall be allocated on either an ad valorem levy or population basis, depending on the method used for the existing local sales tax.

ASSUMPTIONS AND METHODOLOGY: It is impossible to predict how many counties will adopt the tax and the population mix of the counties participating. This is important because the yield to a particular county depends not just on the population of that county but the total pot of money collected. For illustrative purposes, the attached table shows the distribution for each county area if all 100 counties adopted the tax. This analysis was based on updating the 1996 calendar year statewide yield from the current 1% sales tax to 1998 by applying a growth rate of 7% for 1997 and 5% for 1998 and then allocating the total based on estimated July, 1996 population for each county.

FISCAL RESEARCH DIVISION (733-4910)

PREPARED BY: Dave Crotts

APPROVED BY:

DATE: April 3, 1997

(OVER)

County Names	July 1, 1996 Population	Estimated 1% Sales Tax for 1998*
Alamance	117,115	\$11,681,050
Alexander	30,766	\$3,068,601
Alleghany	9,555	\$953,016
Anson	23,786	\$2,372,416
Ashe	23,166	\$2,310,577
Avery	15,205	\$1,516,547
Beaufort	43,645	\$4,353,152
Bertie	20,701	\$2,064,718
Bladen	30,063	\$2,998,484
Brunswick	62,750	\$6,258,685
Buncombe	191,798	\$19,129,933
Burke	82,866	\$8,265,055
Cabarrus	113,031	\$11,273,712
Caldwell	74,338	\$7,414,472
Camden	6,445	\$642,824
Carteret	58,562	\$5,840,974
Caswell	21,311	\$2,125,559
Catawba	127,942	\$12,760,935
Chatham	43,712	\$4,359,835
Cherokee	22,243	\$2,218,517
Chowan	14,140	\$1,410,324
Clay	7,862	\$784,156
Cleveland	90,053	\$8,981,886
Columbus	51,556	\$5,142,195
Craven	86,789	\$8,656,335
Cumberland	298,810	\$29,803,309
Currituck	16,257	\$1,621,473
Dare	26,516	\$2,644,706
Davidson	138,501	\$13,814,090
Davie	30,203	\$3,012,447
Duplin	43,413	\$4,330,013
Durham	194,685	\$19,417,882
Edgecombe	56,714	\$5,656,654
Forsyth	284,157	\$28,341,819
Franklin	42,605	\$4,249,423
Gaston	179,018	\$17,855,255
Gates	9,835	\$980,943
Graham	7,556	\$753,635
Granville	41,523	\$4,141,504
Greene	17,106	\$1,706,152
Guilford	378,067	\$37,708,403
Halifax	57,700	\$5,754,998
Harnett	78,967	\$7,876,169
Haywood	50,443	\$5,031,185
Henderson	77,549	\$7,734,737
Hertford	22,363	\$2,230,486

* Amount shown is for total county area and is based on a per capita allocation.

County Names	July 1, 1996 Population	Estimated 1% Sales Tax for 1998*
Alamance	117,115	\$11,681,050
Hoke	28,526	\$2,845,183
Hyde	5,109	\$509,572
Iredell	105,957	\$10,568,151
Jackson	29,268	\$2,919,190
Johnston	98,845	\$9,858,800
Jones	9,519	\$949,425
Lee	47,014	\$4,689,176
Lenoir	59,466	\$5,931,139
Lincoln	56,782	\$5,663,437
McDowell	37,696	\$3,759,799
Macon	26,757	\$2,668,743
Madison	18,020	\$1,797,315
Martin	25,895	\$2,582,767
Mecklenburg	592,634	\$59,109,315
Mitchell	14,864	\$1,482,535
Montgomery	24,090	\$2,402,737
Moore	68,732	\$6,855,330
Nash	85,588	\$8,536,547
New Hanover	144,043	\$14,366,849
Northampton	20,714	\$2,066,014
Onslow	150,714	\$15,032,214
Orange	107,992	\$10,771,122
Pamlico	11,972	\$1,194,087
Pasquotank	33,501	\$3,341,390
Pender	35,773	\$3,567,999
Perquimans	10,716	\$1,068,814
Person	32,608	\$3,252,322
Pitt	119,276	\$11,896,588
Polk	15,931	\$1,588,958
Randolph	117,405	\$11,709,975
Richmond	45,619	\$4,550,039
Robeson	111,894	\$11,160,308
Rockingham	89,345	\$8,911,270
Rowan	121,032	\$12,071,732
Rutherford	59,479	\$5,932,435
Sampson	51,177	\$5,104,394
Scotland	34,916	\$3,482,522
Stanly	54,301	\$5,415,982
Stokes	42,146	\$4,203,642
Surry	66,110	\$6,593,811
Swain	11,662	\$1,163,168
Transylvania	27,447	\$2,737,564
Tyrrell	3,752	\$374,224
Union	101,507	\$10,124,308
Vance	40,297	\$4,019,223

* Amount shown is for total county area and is based on a per capita allocation.

(over)

County Names	July 1, 1996 Population	Estimated 1% Sales Tax for 1998*
Alamance	117,115	\$11,681,050
Wake	538,131	\$53,673,186
Warren	18,331	\$1,828,334
Washington	13,675	\$1,363,945
Watauga	40,607	\$4,050,142
Wayne	112,331	\$11,203,894
Wilkes	62,438	\$6,227,566
Wilson	68,583	\$6,840,468
Yadkin	34,464	\$3,437,439
Yancey	16,278	\$1,623,568
	7,322,317	\$730,327,898

* Amount shown is for total county area and is based on a per capita allocation.

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

4-3-97

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

G. A. Haywood, Jr.	N.C.F.B.
A. R. Lowry	"
Lafrene Whitaker	NCFB 2991 Amsterdam Blvd. Whitaker Arms Clinic NC 27233
Josh Jordan	NCFB MONTGOMERY
Charles Carter	Irredell
Bobbie L. Williams	MCFB - Irredell County
Mexine Jordan	Columbus County
Mattie M. Sessions	MCFB - Columbus County
Cynthia Philpot	NCFB - Lee Co.
F. J. Smith	CS Franklin Co
David Simmons	Zeb Atley PA

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

4-3-97

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

R. Paul Wilms

N C M B A

B. H. Sewell

DOR

George Long

DOR

~~Bernard Allen~~

~~SOS~~

David J. Mussey

Sec of State

R. Bly Hall

General Statutes Commission

Cary L. McLeod

N.C. Farm Bureau

Jim Roney, Jr.

N. C. Farm Bureau

C. Hester Turner, III

Crawell W. Farm Bureau

W. B. Jenkins

N. C. Farm Bureau

Nancy H. Diggs

N C Farm Bureau

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

4-3-97

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Nicole Doff	NC Farm Bureau
Paul Zessin	OSBM
R. ROGERS	ENNR
Scott Moww	EHNR
Walter Matt	EHNR Solid Waste Section
Phil Carter	NC-SWANA - WAKE COUNTY Solid Waste
Jim Holan	ccnc / Swana Club
John Long	Melvin Wainla
FRAN PESTON	NCRMA
Ed Rego	N.C.A.C.C.
Don McCozqudale	NCRMA
Ron Aycock	NCAAC

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

4-3-97

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Andy Romanet	N.C.L.M
Jim JH	DEPT
Jamie Noffsinger	NC Farm Bureau
Mike Carver	NCHSA
Boyd Cample	City of Charlotte
Tom Crossman	ETHR
Gay Rowling	WYV DEPT. STATES
Chadly Cullin	REVENUE
George Long	n
Wilkie Riddle	DOR
Loretta Warner	Rowan County Farm Bureau
Bennie Warner	Rowan County Farm Bureau

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

4-3-97

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

BILL SCOBGIN

NCBA

Deanna Perry

Farm Bureau

Com Conv

BPMHL

Bill + Linda Cooley

NCFB

Paul + Judith Seibert

NCFB

Henry Sink sr

NCFB

Danese Sink

NCFB

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT

John H. Kerr, III, Co-Chair
David W. Hoyle, Co-Chair

Monday, April 07, 1997

SENATOR JOHN KERR,

submits the following with recommendations as to passage:

FAVORABLE

S.B. 390 Huntersville Annexation
 Sequential Referral: None
 Recommended Referral: None

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B. 153 Scrap Tire Disposal Tax Amend.
 Draft Number: PCS2671
 Sequential Referral: None
 Recommended Referral: None
 Long Title Amended: Yes

S.B. 157 Corporate Amendments
 Draft Number: PCS2672
 Sequential Referral: None
 Recommended Referral: None
 Long Title Amended: No

TOTAL REPORTED: 3

Committee Clerk Comment: None

SENATE FINANCE COMMITTEE

TUESDAY, APRIL 8, 1997

12:00 NOON - ROOM 544 LOB

The Senate Finance Committee met. There were 22 members of the committee present. Senate David W. Hoyle, Co-Chairman, presided. He introduced the Pages, there are Adam Wiggins from Whittier, sponsored by Senator Carpenter and Denna Hanshaw from Raleigh, sponsored by Senator Reeves.

H. B. 105 - Jackson County Airport Authority

Representative Beall came to explain the bill. Senator Hartsell moved for a "favorable" report.

S. B. 39 - Modify Setoff Debt Collection

Senator Larry Shaw came to explain the bill. Senator Shaw moved for adoption of a committee substitute to this bill, motion passed. Sabre Faires, Staff, spoke on the bill. Senator Weinstein moved for a "favorable" report, motion passed. Mr. Ed Regan with the North Carolina Association of County Commissioners stated that they support the bill. Ms. Kim Smith with the North Carolina League of Municipalities stated that they also support the bill. Bill will be reported "unfavorable as to bill, but favorable as to committee substitute bill".

S. B. 266 - Production and Sale of Red Deer

Senator Jess Ledbetter came to explain the bill. Senator Kerr sent forth an amendment to the bill and moved for adoption of the amendment, motion passed. Senator Rand stated that he wanted to send forth an amendment and moved for adoption of the amendment, motion passed. He also made a motion that the amendments be rolled into the bill to have a committee substitute, motion passed and the bill to be reported out as "favorable as to committee substitute". Ms. Sabre Faires, Staff, stated that she would check into the latin definitions in the bill before the bill would be reported out. Senator Wellons stated that he wanted to add a word to the bill. Because of the discussion on the bill, Senator Hoyle ruled that the bill would be pulled and cleaned up and then brought back to the committee for consideration the next day for a vote.

SENATE FINANCE COMMITTEE

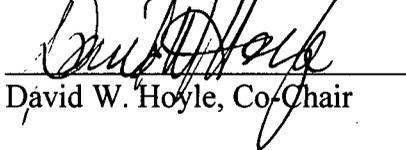
Tuesday, April 8, 1997

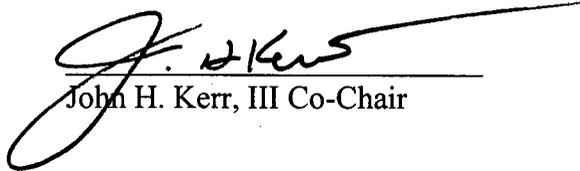
Page -2-

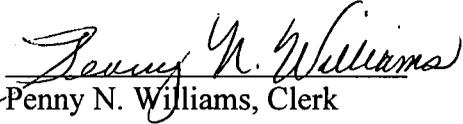
S. B.312 - Regulate Check Cashing

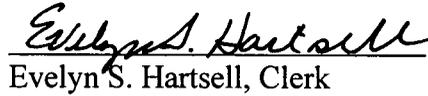
Senator Luther Jordan came to explain the bill. Mr. McNeil Chestnutt with the Attorney General's Office spoke on the bill. Mr. Jim Blain, who owns a couple of check cashing stores in North Carolina spoke in support of the bill. Senator Kerr made a motion for a "favorable" report, motion passed.

The Agenda had been completed, therefore, the meeting was adjourned.


David W. Hoyle, Co-Chair


John H. Kerr, III Co-Chair


Penny N. Williams, Clerk


Evelyn S. Hartsell, Clerk

NOTE:

Agenda is Attachment # 1

Visitor's Registration is Attachment # 2

Committee Reports are Attachment # 3 and # 4

AGENDA

FOR

SENATE FINANCE COMMITTEE

MEETING

TUESDAY, APRIL 8, 1997

AT 12:00 NOON IN ROOM 544 LOB

- H. B. 105 - Jackson County Airport Authority - Rep. Beall
- S. B. 39 - Modify Setoff Debt Collection - Senator Larry Shaw
- S. B. 266 - Production and Sale of Red Deer - Senator Ledbetter
- S. B. 312 - Regulate Check Cashing - Senator Jordan

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

2

HOUSE BILL 105
Committee Substitute Favorable 3/6/97

Short Title: Jackson County Airport Authority.

(Local)

Sponsors:

Referred to:

February 11, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO ENABLE THE COUNTY OF JACKSON TO ESTABLISH AN
3 AIRPORT AUTHORITY FOR THE MAINTENANCE OF AIRPORT
4 FACILITIES IN THE COUNTY.

5 The General Assembly of North Carolina enacts:

6 Section 1. There is hereby created the "Jackson County Airport
7 Authority" (for brevity hereinafter referred to as the "Airport Authority"), which
8 shall be a body both corporate and politic, having the powers and jurisdiction
9 hereinafter enumerated and such other and additional powers as shall be conferred
10 upon it by general law and future acts of the General Assembly.

11 Section 2. The Airport Authority shall consist of six members, who shall
12 be residents of Jackson County and who shall be appointed to staggered terms of six
13 years by the Jackson County Board of Commissioners. Members may succeed
14 themselves in office and serve more than one term. Two initial appointments to the
15 Airport Authority shall be for two years, two initial appointments to the Airport
16 Authority shall be for four years, and the remaining two initial appointments to the
17 Airport Authority shall be for six years. When vacancies occur in the membership of
18 the Airport Authority, for any reason, the remaining members of the Airport
19 Authority shall submit a list of two or more candidates to the Jackson County Board
20 of Commissioners who shall select one from that list to fill the unexpired term of the
21 vacant office. Each member shall take and subscribe before the Clerk of Superior
22 Court of Jackson County an oath of office and file the same with the Jackson County
23 Board of Commissioners. Membership on the Jackson County Board of

1 Commissioners and the Airport Authority shall not constitute double office holding
2 within the meaning of Article VI, Section 9 of the Constitution of North Carolina.

3 Section 3. The Airport Authority may adopt suitable bylaws for its
4 management. The members of the Airport Authority may receive compensation, per
5 diem, or otherwise as the Jackson County Board of Commissioners from time to time
6 determines. Members shall be allowed and paid their actual traveling expenses
7 incurred in transacting the business and at the instance of the Airport Authority.
8 Members of the Airport Authority shall not be personally liable for their acts as
9 members of the Airport Authority, except for acts resulting from misfeasance or
10 malfeasance.

11 Section 4. (a) The Airport Authority shall constitute a body, both
12 corporate and politic, and shall have the following powers and authority:

- 13 (1) To purchase, acquire, establish, construct, own, control, lease,
14 equip, improve, maintain, operate, and regulate airports and
15 landing fields for the use of airplanes and other aircraft within the
16 limits of the county and for this purpose to purchase, improve,
17 own, hold, lease, or operate real or personal property. The
18 Airport Authority may exercise these powers alone or in
19 conjunction with the County of Jackson.
- 20 (2) To sue and be sued in the name of the Airport Authority, to make
21 contracts and hold any personal property necessary for the exercise
22 of the powers of the Airport Authority, and acquire by purchase,
23 lease, or otherwise any existing lease, leasehold right, or other
24 interest in any existing airport located in the county.
- 25 (3) To charge and collect reasonable and adequate fees and rents for
26 the use of airport property or for services rendered in the
27 operation of the airport.
- 28 (4) To make all reasonable rules and regulations it deems necessary
29 for the proper maintenance, use, operation, and control of the
30 airport, including public safety, and provide penalties for the
31 violation of these rules and regulations; provided, the rules and
32 regulations and schedules of fees not be in conflict with the laws of
33 North Carolina, and the regulations of the Federal Aviation
34 Administration. The Airport Authority may administer and
35 enforce any airport zoning regulations adopted by the County of
36 Jackson.
- 37 (5) To issue bonds pursuant to Article 5 of Chapter 159 of the General
38 Statutes.
- 39 (6) To sell, lease, or otherwise dispose of any property, real or
40 personal, belonging to the Airport Authority, according to the
41 procedures described in Article 12 of Chapter 160A of the General
42 Statutes, but no sale of real property shall be made without the
43 approval of the Jackson County Board of Commissioners.

- 1 (7) To purchase any insurance that the Federal Aviation
2 Administration or the Airport Authority shall deem necessary.
3 The Airport Authority shall be responsible for any and all
4 insurance claims or liabilities.
- 5 (8) To deposit or invest and reinvest any of its funds as provided by
6 the Local Government Finance Act, as it may be amended from
7 time to time, for the deposit or investment of unit funds.
- 8 (9) To purchase any of its outstanding bonds or notes.
- 9 (10) To operate, own, lease, control, regulate, or grant to others, for a
10 period not to exceed 20 years, the right to operate on any airport
11 premises restaurants, snack bars, vending machines, food and
12 beverage dispensing outlets, rental car services, catering services,
13 novelty shops, insurance sales, advertising media, merchandising
14 outlets, motels, hotels, barber shops, automobile parking and
15 storage facilities, automobile service establishments, and all other
16 types of facilities as may be directly or indirectly related to the
17 maintenance and furnishing to the general public of a complete air
18 terminal installation.
- 19 (11) To contract with persons, firms, or corporations for terms not to
20 exceed 20 years, for the operation of airline-scheduled passenger
21 and freight flights, nonscheduled flights, and any other airplane
22 activities not inconsistent with the grant agreements under which
23 the airport property is held.
- 24 (12) To erect and construct buildings, hangars, shops, and other
25 improvements and facilities, not inconsistent with or in violation of
26 the agreements applicable to and the grants under which the real
27 property of the airport is held; to lease these improvements and
28 facilities for a term or terms not to exceed 20 years; to borrow
29 money for use in making and paying for these improvements and
30 facilities, secured by and on the credit only of the lease agreements
31 in respect to these improvements and facilities, and to pledge and
32 assign the leases and lease agreements as security for the
33 authorized loans.
- 34 (13) Subject to the limitations set out in this act, to have all the same
35 power and authority granted to cities and counties pursuant to
36 Chapter 63 of the General Statutes, Aeronautics.
- 37 (14) To have a corporate seal, which may be altered at will.
- 38 (b) The Airport Authority shall possess the same exemptions in respect
39 to payment of taxes and license fees and be eligible for sales and use tax refunds to
40 the same extent as provided for municipal corporations by the laws of the State of
41 North Carolina.

42 Section 5. The Airport Authority may acquire from the county, by
43 agreement with the county, and the county may grant and convey, either by gift or
44 for such consideration as the county may deem wise, any real or personal property

1 which it now owns or may hereafter acquire, including nontax monies, and which
2 may be necessary for the construction, operation, and maintenance of any airport
3 located in the county.

4 Section 6. Any lands acquired, owned, controlled, or occupied by the
5 Airport Authority shall be, and are declared to be, acquired, owned, controlled, and
6 occupied for a public purpose.

7 Section 7. Private property needed by the Airport Authority for any
8 airport, landing field, or as facilities of an airport or landing field, may be acquired
9 by gift or devise, or may be acquired by private purchase or by the exercise of
10 eminent domain pursuant to Chapter 40A of the General Statutes, as a local public
11 condemnor, including the provisions of G.S. 40A-42. If property acquired by
12 condemnation has a burial ground or graveyard, then it shall be lawful for the
13 Airport Authority, after 30 days notice to the surviving spouse or next of kin of the
14 deceased buried there, or the person in control of the graves, if they are known, to
15 remove the interred body and reinter the body in another cemetery in Jackson
16 County. If no surviving spouse or next of kin or person in control can be found, then
17 the Airport Authority may advertise for four consecutive weeks in a newspaper
18 published in Jackson County of the intended removal of the graves. The removal
19 shall then be conducted under the supervision of the Clerk of the Superior Court of
20 Jackson County or his or her representative. The expense of the removal shall be
21 borne by the Airport Authority.

22 Section 8. The Airport Authority shall make an annual report to the
23 Jackson County Board of Commissioners setting forth in detail the operations and
24 transactions conducted by it pursuant to this act. The Airport Authority shall not
25 have the power to pledge the credit of Jackson County, or any subdivision thereof, or
26 to impose any obligation on Jackson County, or any of their subdivisions, except
27 when that power is expressly granted by statute.

28 Section 9. Subject to the limitations as set out in this act, all rights and
29 powers given and granted to counties or municipalities by general law, which may
30 now be in effect, or enacted in the future, relating to the development, regulation,
31 and control of municipal airports and the regulation of aircraft are now concurrently
32 vested in the Airport Authority. The Jackson County Board of Commissioners may
33 delegate their powers under these acts to the Airport Authority, and the Airport
34 Authority shall have concurrent rights with Jackson County to control, regulate, and
35 provide for the development of aviation in Jackson County.

36 Section 10. The Airport Authority may contract with and accept grants
37 from the Federal Aviation Administration, the State of North Carolina, or any of the
38 agencies or representatives of either of said governmental bodies relating to the
39 purchase of land and air easements and to the grading, constructing, equipping,
40 improving, maintaining, or operating of an airport or its facilities or both.

41 Section 11. The Airport Authority may employ or contract with any
42 agents, engineers, attorneys, and other persons whose services may be deemed by the
43 Airport Authority to be necessary and useful in carrying out the provisions of
44 Sections 1 through 10 of this act.

1 Section 12. The Jackson County Board of Commissioners may
2 appropriate funds derived from any source including ad valorem taxes to carry out
3 the provisions of this act in any proportion or upon any basis as may be determined
4 by the Jackson County Board of Commissioners. The Jackson County Board of
5 Commissioners may provide county services to the Airport Authority upon any basis
6 as may be determined by the Jackson County Board of Commissioners.

7 Section 13. The Airport Authority may expend the funds that are
8 appropriated by the county for joint airport purposes and may pledge the credit of
9 the Airport Authority to the extent of the appropriated funds.

10 Section 14. The Airport Authority shall elect from among its members a
11 chair and other officers at its initial meeting and then biennially thereafter. Officers
12 shall be eligible to succeed themselves in office and to serve consecutive terms at the
13 will of the members of the Airport Authority. A majority of the Airport Authority
14 shall control its decisions. Each member of the Airport Authority, including the
15 chair, shall have one vote. The Airport Authority shall meet at the places and times
16 designated by the chair.

17 Section 15. If an airport established pursuant to this act ceases to be
18 operated by the Airport Authority, or if any property acquired pursuant to this act
19 for airport purposes is abandoned, then the title to that real or personal property, or
20 rights under any existing lease, shall revert to and vest in the County of Jackson and
21 on the sale of that property, the proceeds shall vest totally in the County of Jackson.

22 Section 16. The powers granted to the Airport Authority shall not be
23 effective until the members of the Airport Authority have been appointed by the
24 Jackson County Board of Commissioners, and nothing in this act shall require the
25 Board of Commissioners to make the initial appointments. It is the intent of this act
26 to enable but not to require the formation of the Jackson County Airport Authority.

27 Section 17. If any one or more sections, clauses, sentences, or parts of
28 this act shall be adjudged invalid, such judgment shall not affect, impair, or invalidate
29 the remaining provisions thereof, but shall be confined in its operation to the specific
30 provisions held invalid, and the inapplicability or invalidity of any section, clause,
31 sentence, or part of this act in one or more instances or circumstances shall not be
32 taken to affect or prejudice in any way its applicability or validity in any other
33 instance.

34 Section 18. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 39

Short Title: Modify Setoff Debt Collection.

(Public)

Sponsors: Senators Shaw of Cumberland, Cochrane, Cooper, Kerr, Soles; and
Weinstein.

Referred to: Judiciary.

February 3, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO REVISE THE SETOFF DEBT COLLECTION ACT.

3 The General Assembly of North Carolina enacts:

4 Section 1. Chapter 105A of the General Statutes reads as rewritten:

5 "Chapter 105A.

6 "Setoff Debt Collection Act.

7 "~~ARTICLE 1.~~

8 "~~In General.~~

9 "§ 105A-1. Purposes.

10 The purpose of this ~~Article~~ Chapter is to establish as policy that all claimant
11 agencies and the Department of Revenue shall cooperate in identifying debtors who
12 owe money to the State through its various ~~claimant~~ agencies or to a local
13 government and who qualify for refunds from the Department of Revenue. It is also
14 the intent of this ~~Article~~ Chapter that procedures be established for setting off against
15 any ~~such~~ refund the sum of any debt owed to the ~~State.~~ State or to a local
16 government. Furthermore, it is the legislative intent that this ~~Article~~ Chapter be
17 liberally construed so as to effectuate these purposes as far as legally and practically
18 possible.

19 "§ 105A-2. Definitions.

20 The following definitions apply in this Chapter:

21 (1) Claimant agency. -- A State agency or a local agency acting
22 through a clearinghouse or organization pursuant to G.S. 105A-
23 3(b1).

- 1 (2) Debt. -- A liquidated sum due and owing a claimant agency that
2 has accrued through contract, subrogation, tort, operation of law,
3 or any other legal theory regardless of whether there is an
4 outstanding judgment for the sum. The term includes sums
5 collectible pursuant to Title IV, Part D of the Social Security Act.
6 (3) Debtor. -- An individual owing money to or having a delinquent
7 account with any claimant agency which obligation has not been
8 adjudicated satisfied by court order, set aside by court order, or
9 discharged in bankruptcy.
10 (4) Department. -- The Department of Revenue.
11 (5) Reserved.
12 (6) Local agency. -- A county or municipality to the extent it is not a
13 State agency as defined in this section.
14 (7) Net proceeds collected. -- Gross proceeds collected through setoff
15 against a debtor's refund minus any collection assistance fee
16 charged by the Department.
17 (8) Refund. -- An individual's North Carolina income tax refund.
18 (9) State agency. -- Any of the following:
19 a. The North Carolina Department of Human Resources when
20 in the performance of its duties under the Medical
21 Assistance Program enabled by Chapter 108A, Article 2,
22 Part 6, and any county operating the same Program at the
23 local level, when and only to the extent such a county is in
24 the performance of Medical Assistance Program collection
25 functions.
26 b. The North Carolina Department of Human Resources when
27 in the performance of its duties under the Child Support
28 Enforcement Program as enabled by Chapter 110, Article 9
29 and Title IV, Part D of the Social Security Act to obtain
30 indemnification for past paid public assistance or to collect
31 child support arrearages owed to an individual receiving
32 program services and any county operating the program at
33 the local level, when and only to the extent that the county
34 is engaged in the performance of those same duties.
35 c. The North Carolina Department of Human Resources when
36 in the performance of its collection duties for intentional
37 program violations and violations due to inadvertent
38 household error under the Food Stamp Program enabled by
39 Chapter 108A, Article 2, Part 5, and any county operating
40 the same Program at the local level, when and only to the
41 extent such a county is in the performance of Food Stamp
42 Program collection functions.
43 d. The North Carolina Department of Human Resources when,
44 in the performance of its duties under the Aid to Families

1 with Dependent Children Program or the Aid to Families
 2 with Dependent Children -- Emergency Assistance Program
 3 provided in Part 2 of Article 2 of Chapter 108A or the
 4 Work First Cash Assistance Program established pursuant to
 5 the federal waivers received by the Department on February
 6 5, 1996, or under the State-County Special Assistance for
 7 Adults Program provided in Part 3 of Article 2 of Chapter
 8 108A, it seeks to collect public assistance payments obtained
 9 through an intentional false statement, intentional
 10 misrepresentation, intentional failure to disclose a material
 11 fact, or inadvertent household error.

12 e. The Office of the North Carolina Attorney General on
 13 behalf of any State agency when the debt has been reduced
 14 to a judgment.

15 f. Any other unit of the executive, legislative, or judicial
 16 branch of State government, such as a department, a
 17 commission, a board, a council, or The University of North
 18 Carolina.

19 ~~As used in this Article:~~

20 ~~(1) "Claimant agency" means and includes:~~

21 a. ~~The State Education Assistance Authority as enabled by~~
 22 ~~Article 23 of Chapter 116 of the General Statutes;~~

23 b. ~~The North Carolina Department of Human Resources when~~
 24 ~~in the exercise of its authority to collect health profession~~
 25 ~~student loans made pursuant to G.S. 131-121;~~

26 e. ~~The North Carolina Department of Human Resources when~~
 27 ~~in the performance of its duties under the Medical~~
 28 ~~Assistance Program enabled by Chapter 108A, Article 2,~~
 29 ~~Part 6, and any county operating the same Program at the~~
 30 ~~local level, when and only to the extent such a county is in~~
 31 ~~the performance of Medical Assistance Program collection~~
 32 ~~functions;~~

33 d. ~~The North Carolina Department of Human Resources when~~
 34 ~~in the performance of its duties, under the Child Support~~
 35 ~~Enforcement Program as enabled by Chapter 110, Article 9~~
 36 ~~and Title IV, Part D of the Social Security Act to obtain~~
 37 ~~indemnification for past paid public assistance or to collect~~
 38 ~~child support arrearages owed to an individual receiving~~
 39 ~~program services and any county operating the program at~~
 40 ~~the local level, when and only to the extent that the county~~
 41 ~~is engaged in the performance of those same duties;~~

42 e. ~~The University of North Carolina, including its constituent~~
 43 ~~institutions as specified by G.S. 116-2(4);~~

- 1 f. ~~The University of North Carolina Hospitals at Chapel Hill~~
2 ~~in the conduct of its financial affairs and operations~~
3 ~~pursuant to G.S. 116-37;~~
4 g. ~~The Board of Governors of the University of North Carolina~~
5 ~~and the State Board of Education through the College~~
6 ~~Scholarship Loan Committee when in the performance of its~~
7 ~~duties of administering the Scholarship Loan Fund for~~
8 ~~Prospective College Teachers enabled by Chapter 116;~~
9 ~~Article 5;~~
10 h. ~~The Office of the North Carolina Attorney General on~~
11 ~~behalf of any State agency when the claim has been reduced~~
12 ~~to a judgment;~~
13 i. ~~The State Board of Community Colleges through~~
14 ~~community colleges as enabled by Chapter 115D in the~~
15 ~~conduct of their financial affairs and operations;~~
16 j. ~~State facilities as listed in G.S. 122C-181(a), School for the~~
17 ~~Deaf at Morganton, North Carolina Sanatorium at McCain,~~
18 ~~Western Carolina Sanatorium at Black Mountain, Eastern~~
19 ~~North Carolina Sanatorium at Wilson, and Gravely~~
20 ~~Sanatorium at Chapel Hill under Chapter 143, Article 7;~~
21 ~~Governor Morehead School under Chapter 115, Article 40;~~
22 ~~Central North Carolina School for the Deaf under Chapter~~
23 ~~115, Article 41; Wright School for Treatment and Education~~
24 ~~of Emotionally Disturbed Children under Chapter 122C;~~
25 ~~and these same institutions by any other names by which~~
26 ~~they may be known in the future;~~
27 k. ~~The North Carolina Department of Revenue;~~
28 l. ~~The Administrative Office of the Courts;~~
29 m. ~~The Division of Forest Resources of the Department of~~
30 ~~Environment, Health, and Natural Resources;~~
31 n. ~~The Administrator of the Teachers' and State Employees'~~
32 ~~Comprehensive Major Medical Plan, established in Article 3~~
33 ~~of General Statutes Chapter 135;~~
34 o. ~~The State Board of Education through the Superintendent~~
35 ~~of Public Instruction when in the performance of his duties~~
36 ~~of administering the Scholarship Loan Fund for Prospective~~
37 ~~Teachers enabled by Chapter 115C, Article 32A and the~~
38 ~~scholarship loan and grant programs enabled by Chapter~~
39 ~~115C, Article 24C, Part 1;~~
40 p. ~~The Board of Trustees of the Teachers' and State~~
41 ~~Employees' Retirement System and the Board of Trustees of~~
42 ~~the Local Governmental Employees' Retirement System in~~
43 ~~the performance of their duties pursuant to Chapters 120,~~
44 ~~128, 135 and 143 of the General Statutes;~~

- 1 q. ~~The North Carolina Teaching Fellows Commission in the~~
2 ~~performance of its duties pursuant to Chapter 115C, Article~~
3 ~~24C, Part 2;~~
4 r. ~~The North Carolina Department of Human Resources when~~
5 ~~in the performance of its collection duties for intentional~~
6 ~~program violations and violations due to inadvertent~~
7 ~~household error under the Food Stamp Program enabled by~~
8 ~~Chapter 108A, Article 2, Part 5, and any county operating~~
9 ~~the same Program at the local level, when and only to the~~
10 ~~extent such a county is in the performance of Food Stamp~~
11 ~~Program collection functions.~~
12 ~~The North Carolina Department of Human Resources when,~~
13 ~~in the performance of its duties under the Aid to Families~~
14 ~~with Dependent Children Program or the Aid to Families~~
15 ~~with Dependent Children Emergency Assistance Program~~
16 ~~provided in Part 2 of Article 2 of Chapter 108A or the~~
17 ~~Work First Cash Assistance Program established pursuant to~~
18 ~~the federal waivers received by the Department on February~~
19 ~~5, 1996, or under the State County Special Assistance for~~
20 ~~Adults Program provided in Part 3 of Article 2 of Chapter~~
21 ~~108A, it seeks to collect public assistance payments obtained~~
22 ~~through an intentional false statement, intentional~~
23 ~~misrepresentation, intentional failure to disclose a material~~
24 ~~fact, or inadvertent household error;~~
25 s. ~~The Employment Security Commission of North Carolina.~~
26 t. ~~Any State agency in the collection of salary overpayments~~
27 ~~from former employees.~~
28 u. ~~The State Board of Education through the Superintendent~~
29 ~~of Public Instruction when in the performance of his duties~~
30 ~~of administering the program under which the State~~
31 ~~encourages participation in the National Board for~~
32 ~~Professional Teaching Standards (NBPTS) Program, enabled~~
33 ~~by Section 19.28 of Chapter 769 of the 1993 Session Laws.~~
34 (2) ~~"Debtor" means any individual owing money to or having a~~
35 ~~delinquent account with any claimant agency which obligation has~~
36 ~~not been adjudicated satisfied by court order, set aside by court~~
37 ~~order, or discharged in bankruptcy.~~
38 (3) ~~"Debt" means any liquidated sum due and owing any claimant~~
39 ~~agency which has accrued through contract, subrogation, tort,~~
40 ~~operation of law, or any other legal theory regardless of whether~~
41 ~~there is an outstanding judgment for that sum.~~
42 (4) ~~"Department" means the North Carolina Department of Revenue.~~
43 (5) ~~"Refund" means any individual's North Carolina income tax~~
44 ~~refund.~~

1 (6) ~~"Net proceeds collected" means gross proceeds collected through~~
2 ~~final setoff against a debtor's refund minus any collection~~
3 ~~assistance fee charged by the Department.~~

4 **"§ 105A-3. Remedy additional; mandatory State usage; optional local usage; obtaining**
5 **identifying information; information; registration.**

6 (a) Remedy Additional. -- The collection remedy under this ~~Article~~ Chapter is in
7 addition to and not in substitution for any other remedy available by law.

8 (b) Mandatory State Usage. -- All ~~claimant~~ State agencies shall submit, for
9 collection under the procedure established by this ~~Article, Chapter,~~ all debts ~~which~~
10 they are owed, except debts that they are advised by the Attorney General not to
11 submit because the validity of the debt is legitimately in dispute, because an
12 alternative means of collection is pending and believed to be adequate, or because
13 such a collection attempt would result in a loss of federal funds. Except in the case
14 of a State agency described in G.S. 105A-2(9)a. through d., the State Controller may
15 waive this requirement in situations when an agency's submission of the debts would
16 not be practical or would not be effective.

17 (b1) Optional Local Usage. -- After complying with the notice and hearing
18 requirements of G.S. 105A-5, a local agency may submit for collection under the
19 procedure established in this Chapter all debts it is owed, other than debts the
20 validity of which is in dispute. Local agencies shall submit debts for collection
21 pursuant to this Chapter only through one of the following:

22 (1) A clearinghouse established pursuant to an interlocal agreement
23 adopted under Article 20 of Chapter 160A of the General Statutes,
24 pursuant to which the clearinghouse will submit debts on behalf of
25 any requesting local agency.

26 (2) The North Carolina League of Municipalities.

27 (3) The North Carolina Association of County Commissioners.

28 (c) Identifying Information. -- All claimant agencies shall whenever possible
29 obtain the full name, social security number, address, and any other identifying
30 information required by ~~rules promulgated by the Department pursuant to G.S.~~
31 ~~105A-16~~ from any person for whom the agencies provide any service or transact any
32 business and who the claimant agencies can foresee may become a debtor under this
33 ~~Article, Chapter.~~

34 (d) Registration; Reports. -- A ~~claimant~~ State agency must register with the
35 Department and with the State Controller. Every State agency must report annually
36 to the ~~Department~~ State Controller the amount of debts owed to the agency for
37 which the agency did not submit a claim for setoff and the reason for not submitting
38 the claim.

39 A clearinghouse or organization that submits debts on behalf of a local agency
40 must register by filing written notice with the Department of its intention to effect
41 collection through setoff. If a clearinghouse registers to submit debts pursuant to this
42 subsection, no other clearinghouse may register to submit debts pursuant to this
43 subsection.

44 **"§ 105A-4. Minimum sum collectible.**

1 ~~A claimant agency shall not be allowed to effect final setoff and collect debts~~
2 ~~through use of the remedy established under this Article~~ The Department shall not
3 collect a debt pursuant to this Chapter unless both the debt and the refund, if any,
4 are at least fifty dollars (\$50.00).

5 **"§ 105A-5. Local agency notice, hearing, and determination.**

6 (a) Prerequisite. -- A local agency may not submit a debt to the Department
7 pursuant to G.S. 105A-6 until it has given the notice required by this section and the
8 claim has been finally determined as provided in this section.

9 (b) Notice. -- A local agency shall send written notice to the debtor that the agency
10 intends to submit the debt for collection by setoff. The notice shall clearly set forth
11 the basis for the agency's claim to the debt, the intention to apply the debtor's tax
12 refund against the debt, the debtor's opportunity to give written notice of intent to
13 contest the validity of the claim within 30 days after the date the notice was mailed,
14 the mailing address to which the application for a hearing must be sent, and the fact
15 that failure to apply for a hearing in writing within the 30-day period is a waiver of
16 the opportunity to contest the claim, causing potential setoff by default. The written
17 application by the debtor for a hearing becomes effective upon mailing the
18 application postage prepaid and properly addressed.

19 (c) Hearing. -- A hearing on a contested claim of a local agency shall be held first
20 before the governing body of the local agency or the governing body's designee. No
21 issues may be considered at the hearing that have been previously litigated. If the
22 debtor disagrees with the determination of the governing body or its designee, the
23 debtor may file a petition for a contested case under Article 3 of Chapter 150B of the
24 General Statutes. The petition must be filed within 30 days after the debtor receives
25 a copy of the determination of the governing body or its designee. Notwithstanding
26 the provisions of G.S. 150B-2, a local agency is an agency for purposes of contested
27 cases and appeals under this Chapter.

28 (d) Determination. -- It shall be determined at the hearing whether the claimed
29 sum asserted as due and owing is correct, and if not, an adjustment to the claim shall
30 be made. The debtor may appeal the determination as provided in G.S. 105A-9.

31 ~~Collection of sums due claimant agencies through setoff.~~

32 ~~Subject to the limitations contained in this Article, the Department of Revenue~~
33 ~~shall upon request render assistance in the collection of any delinquent account or~~
34 ~~debt owing to any claimant agency. This assistance shall be provided by setting off~~
35 ~~any refunds due the debtor from the Department by the sum certified by claimant~~
36 ~~agency as due and owing.~~

37 **"§ 105A-6. Procedure for setoff.**

38 (a) Notice to Department. -- A claimant agency seeking to attempt collection of a
39 debt through setoff shall notify the Department in writing and supply (i) information
40 necessary to identify the debtor whose refund is sought to be set off and (ii) off. The
41 claimant agency may include with the notification the date, if any, that the debt is
42 expected to expire. Notification to the Department and the furnishing of identifying
43 information must occur on or before a date specified by the Department in the first
44 year preceding the calendar year during which the refund would be paid. The notice

1 ~~is effective to initiate setoff against refunds that would be made in calendar years~~
2 ~~following the year in which the notice was first made until the date specified in the~~
3 ~~notice that the debt is expected to expire. The agency shall notify the Department in~~
4 ~~writing when a debt has been paid or is no longer owed the agency.~~

5 (b) Setoff by Department. -- The Department, upon receipt of notification, shall
6 determine each year whether the debtor to the claimant agency is entitled to a refund
7 of at least fifty dollars (\$50.00) from the Department. Upon determination by the
8 Department that a debtor specified by a claimant agency qualifies for such a refund,
9 the Department shall ~~notify in writing the claimant agency that a refund is pending,~~
10 ~~specify its sum, and indicate the debtor's address as listed on the tax return.~~

11 ~~(e) Unless stayed by court order, the Department shall, upon certification as~~
12 ~~provided in this Article, set off the certified debt against the refund to which the~~
13 ~~debtor would otherwise be entitled. entitled and shall refund any remaining balance~~
14 ~~to the debtor as if setoff had not occurred. The Department shall mail the debtor~~
15 ~~written notice that setoff has occurred. Upon effecting setoffs, the Department shall~~
16 ~~periodically credit claimant agencies with the net proceeds collected on their behalf.~~

17 (c) Refund if Setoff Exceeds Debt. -- If the net proceeds credited to a claimant
18 agency exceed the amount of the debtor's debt, the agency shall refund the balance
19 to the debtor. The refund shall bear interest as provided in G.S. 105A-8(b).

20 (d) State Agency Notice to Debtor. -- A State agency shall credit to a nonreverting
21 trust account all refund setoffs credited to it. Within 10 days after receipt of a refund
22 setoff from the Department, the State agency shall send written notification to the
23 debtor that the refund has been received. The notice shall clearly set forth the basis
24 for the claim to the refund, the intention to apply the refund against the debt to the
25 claimant agency, the debtor's opportunity to give written notice of intent to contest
26 the validity of the claim within 30 days after the date the notice was mailed, the
27 mailing address to which the application for a hearing must be sent, and the fact that
28 failure to apply for a hearing in writing within the 30-day period is a waiver of the
29 opportunity to contest the claim, causing final setoff by default. The written
30 application by the debtor for a hearing becomes effective upon mailing the
31 application postage prepaid and properly addressed.

32 If a State agency fails to provide timely notice in accordance with the requirements
33 of this subsection, the State agency shall refund to the debtor the entire amount set
34 off plus the collection assistance fee retained by the Department. That portion of the
35 refund reflecting the collection assistance fee must be paid from the State agency's
36 funds. The refund shall bear interest as provided in G.S. 105A-8(b).

37 ~~"§ 105A-7. Notification of intention to set off and right to hearing.~~

38 ~~(a) The claimant agency, upon receipt of notification from the Department that a~~
39 ~~debtor is entitled to a refund, shall within 10 days send a written notification to the~~
40 ~~debtor and a copy of same to the Department of its assertion of rights to the refund~~
41 ~~or any part thereof. Such notification shall inform the debtor of the claimant agency's~~
42 ~~intention to direct the Department to apply the refund or any portion thereof against~~
43 ~~the debt certified as due and owing. For the Department to be obligated to continue~~
44 ~~holding refunds until receipt of certification of the debt, if any, pursuant to G.S.~~

1 ~~105A-10, the copy of the notification to the debtor by the claimant agency of its~~
2 ~~intention to set off must be received by the Department within 15 days of the date of~~
3 ~~the Department's mailing to the respective claimant agency the notification of the~~
4 ~~debtor's entitlement to a refund.~~

5 ~~(b) The contents of the written notification to the debtor (and the Department's~~
6 ~~copy) of the setoff claim shall clearly set forth the basis for the claim to the refund,~~
7 ~~the intention to apply the refund against the debt to the claimant agency, the debtor's~~
8 ~~opportunity to give written notice of intent to contest the validity of the claim within~~
9 ~~30 days of the date of the mailing of the notice, the mailing address to which the~~
10 ~~application for a hearing must be sent, and the fact that failure to apply for a hearing~~
11 ~~in writing within the 30-day period will be deemed a waiver of the opportunity to~~
12 ~~contest the claim causing final setoff by default.~~

13 ~~(c) The written application by the debtor for a hearing shall be effective upon~~
14 ~~mailing the application postage prepaid and properly addressed to the claimant~~
15 ~~agency.~~

16 **"§ 105A-8. Hearing procedure. State agency hearing and determination.**

17 (a) Hearing. -- A hearing on a contested ~~claim~~, claim of a State agency, other than
18 a claim of a constituent institution of The University of North Carolina, or a claim of
19 the Employment Security Commission of North Carolina, shall be conducted in
20 accordance with Article 3 of Chapter 150B of the General Statutes. A hearing on a
21 contested claim of a constituent institution of The University of North Carolina shall
22 be conducted in accordance with administrative procedures approved by the
23 Attorney General. A hearing on a contested claim of the Employment Security
24 Commission of North Carolina shall be conducted in accordance with regulations
25 adopted by the Employment Security Commission of North Carolina. No issues may
26 be considered at the hearing that have been previously litigated.

27 (b) Determination; Refund. -- ~~Additionally, it~~ It shall be determined at the hearing
28 whether the claimed sum asserted as due and owing is correct, and if not, an
29 adjustment to the claim shall be made. If it is determined that the amount set off is
30 excessive, the State agency shall refund the excess amount to the taxpayer. If it is
31 determined that the State agency is not entitled to any part of the amount set off, the
32 State agency shall refund the entire amount set off plus the collection assistance fee
33 retained by the Department. That portion of the refund reflecting the collection
34 assistance fee must be paid from the State agency's funds. If a refund is made to the
35 taxpayer, the State agency shall pay interest to the taxpayer calculated as provided in
36 G.S. 105-241.1(i) from the date one day after the date through which the Department
37 pays interest on the refund or the date that interest begins to accrue, as provided in
38 G.S. 105-266(b), whichever is later.

39 ~~(b) Pending final determination at hearing of the validity of the debt asserted by~~
40 ~~the claimant agency, no action shall be taken in furtherance of collection through the~~
41 ~~setoff procedure allowed under this Article.~~

42 ~~(c) No issues may be considered at the hearing which have been previously~~
43 ~~litigated.~~

44 **"§ 105A-9. Appeals from hearings.**

1 Appeals from action taken at hearings allowed under this ~~Article~~ Chapter shall be
2 in accordance with the provisions of Chapter 150B of the General Statutes, the
3 Administrative Procedure Act, except that the place of initial judicial review shall be
4 the superior court for the county in which the debtor resides. Appeals from actions
5 allowed under this ~~Article~~ Chapter conducted by the Employment Security
6 Commission of North Carolina shall be in accordance with the provisions of Chapter
7 96 of the General Statutes.

8 ~~"§ 105A-10. Certification of debt by claimant agency; finalization of setoff.~~

9 ~~(a) Upon final determination through hearing provided by G.S. 105A-8 of the debt~~
10 ~~due and owing the claimant agency or upon the debtor's default for failure to~~
11 ~~comply with G.S. 105A-7 mandating timely request for review of the asserted basis~~
12 ~~for setoff, the claimant agency shall within 20 days certify the debt to the Department~~
13 ~~and in default thereof, the Department shall no longer be obligated to hold the~~
14 ~~refund for setoff.~~

15 ~~(b) Upon receipt by the Department of a certified debt from the claimant agency,~~
16 ~~the Department shall finalize the setoff by transferring the net proceeds collected for~~
17 ~~credit or payment in accordance with the provisions of G.S. 105A-14 and by~~
18 ~~refunding any remaining balance to the debtor as if setoff had not occurred.~~

19 ~~"§ 105A-11. Notice of final setoff.~~

20 ~~Upon the finalization of setoff under the provisions of this Article, the Department~~
21 ~~shall notify the debtor in writing of the action taken along with an accounting of the~~
22 ~~action taken on any refund. If there is an outstanding balance after setoff, the notice~~
23 ~~under this section shall accompany the balance when disbursed.~~

24 ~~"§ 105A-12. Priorities in claims to setoff.~~

25 ~~Priority in multiple claims to refunds allowed to be set off under the provisions of~~
26 ~~this Article shall be in the order in time which a claimant agency has filed a written~~
27 ~~notice with the Department of its intention to effect collection through setoff under~~
28 ~~this Article. Notwithstanding the priority set forth above according to time of filing,~~
29 ~~the The Department has priority over all other claimant agencies for collection by~~
30 ~~setoff whenever it is a competing agency for a refund. State agencies have priority~~
31 ~~over local agencies for collection by setoff. When there are multiple claims by State~~
32 ~~agencies other than the Department, the priority shall be in the order in time in~~
33 ~~which each agency registered for setoff pursuant to G.S. 105A-3. When there are~~
34 ~~multiple claims by organizations submitting debts on behalf of local agencies, the~~
35 ~~priority shall be in the order in time in which each organization registered for setoff~~
36 ~~pursuant to G.S. 105A-3. When there are multiple claims among local agencies~~
37 ~~whose debts are submitted by a single organization, the priority shall be in the order~~
38 ~~in time in which each local agency requested the organization to submit debts on its~~
39 ~~behalf.~~

40 ~~"§ 105A-13. Disposition of proceeds collected; collection Collection assistance fees.~~

41 ~~(a) Upon effecting final setoffs, the Department shall periodically write checks to~~
42 ~~the respective claimant agencies for the net proceeds collected on their behalf.~~

43 ~~(b) Each year the Department shall determine its actual cost of collection under~~
44 ~~the Setoff Debt Collection Act for the immediately preceding year and shall calculate~~

1 ~~the percentage that cost represents of the preceding year's collections, excluding~~
2 ~~collections of child support arrearages under G.S. 105A-2(1)d. To recover its cost of~~
3 ~~collection under this Chapter, the~~ The Department shall ~~retain that percentage from~~
4 ~~the gross proceeds collected by the Department through setoff for the current year,~~
5 ~~other than the gross proceeds collected of child support arrearages under G.S.~~
6 ~~105A-2(1)d. add a collection assistance fee to each debt collected through setoff,~~
7 ~~collect it as part of the debt, and retain it. The collection assistance fee shall be~~
8 ~~determined based on the Department's actual cost of collection under this Chapter~~
9 ~~for the immediately preceding year and shall not exceed fifteen dollars (\$15.00). If~~
10 ~~the Department is able to collect only part of a debt through setoff, the collection~~
11 ~~assistance fee has priority over the remainder of the debt. The collection assistance~~
12 ~~fee shall not be added to child support debts or collected as part of child support~~
13 ~~debts. The Department shall retain from collections under Division II of Article 4 of~~
14 ~~Chapter 105 of the General Statutes the cost of collection of child support debts~~
15 ~~under this Chapter.~~

16 "**§ 105A-14. Accounting to the claimant agency; credit to debtor's obligation.**

17 (a) Simultaneously with the transmittal of ~~a check for~~ the net proceeds collected
18 to a claimant agency, the Department shall provide the agency with an accounting of
19 the setoffs ~~finalized~~ for which payment is being made. The accounting shall,
20 whenever possible, include the full names of the debtors, the debtors' social security
21 numbers, the gross proceeds collected per ~~individual~~ setoff, the net proceeds collected
22 per setoff, and the collection assistance fee added to the debt and collected ~~charged~~
23 per setoff.

24 (b) Upon receipt by a claimant agency of ~~a check representing~~ net proceeds
25 collected on ~~a~~ the claimant agency's behalf by the ~~Department~~ Department, a final
26 determination of the claim, and an accounting of the proceeds as specified under this
27 section, the claimant agency shall credit the debtor's obligation with the gross net
28 proceeds collected.

29 "**§ 105A-15. Confidentiality exemption; nondisclosure.**

30 (a) Notwithstanding G.S. 105-259 or any other provision of law prohibiting
31 disclosure by the Department of the contents of taxpayer records or information and
32 notwithstanding any confidentiality statute of any claimant agency, ~~at~~ the exchange of
33 any information exchanged among the Department, the claimant agency, the
34 organization submitting debts on behalf of a local agency, and the debtor necessary to
35 ~~accomplish and effectuate the intent of this Article~~ implement this Chapter is lawful.

36 (b) The information ~~obtained by~~ a claimant agency or an organization submitting
37 debts on behalf of a local agency obtains from the Department in accordance with the
38 exemption allowed by subsection (a) ~~shall only~~ may be used by ~~a claimant~~ the agency
39 or organization only in the pursuit of its debt collection duties and ~~practices and any~~
40 ~~person employed by, or formerly employed by, a claimant agency who discloses any~~
41 ~~such information for any other purpose, except as otherwise allowed by G.S. 105-259,~~
42 ~~shall be penalized in accordance with the terms of that statute.~~ practices and may not
43 be disclosed except as provided in G.S. 105-259, 153A-148.1, or 160A-208.1.

44 "**§ 105A-16. Rules and regulations. Rules.**

1 The Secretary of Revenue ~~is authorized to prescribe forms and make all rules~~
2 ~~which he deems necessary in order to effectuate the intent of this Article.~~ may adopt
3 rules to implement this Chapter."

4 Section 2. G.S. 105-266(b) reads as rewritten:

5 "(b) Interest. -- An overpayment of tax bears interest at the rate established in
6 G.S. 105-241.1(i) from the date that interest begins to accrue until a refund is paid. A
7 refund is considered paid on a date determined by the Secretary that is no sooner
8 than five days after a refund check is ~~mailed.~~ mailed or, in the case of a refund set off
9 against a debt pursuant to Chapter 105A of the General Statutes, five days after the
10 Secretary's notice of setoff is mailed.

11 Interest on an overpayment of a tax, other than a tax levied under Article 4 or
12 Article 8B of this Chapter, accrues from a date 90 days after the date the tax was
13 originally paid by the taxpayer until the refund is paid. Interest on an overpayment of
14 a tax levied under Article 4 or Article 8B of this Chapter accrues from a date 45 days
15 after the latest of the following dates until the refund is paid:

- 16 (1) The date the final return was filed.
- 17 (2) The date the final return was due to be filed.
- 18 (3) The date of the overpayment.

19 The date of an overpayment of a tax levied under Article 4 or Article 8B of this
20 Chapter is determined in accordance with section 6611(d), (f), (g), and (h) of the
21 Code."

22 Section 3. The changes to G.S. 105A-3(d), 105A-5, and 105A-16 made by
23 this act are effective when this act becomes law. The remainder of this act becomes
24 effective January 1, 1998.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

D

SENATE BILL 39
Proposed Senate Finance Committee Substitute
S39-CSLJX-4/8

Short Title: Modify Setoff Debt Collection.

(Public)

Sponsors:

Referred to: Judiciary.

February 3, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO REVISE THE SETOFF DEBT COLLECTION ACT.

3 The General Assembly of North Carolina enacts:

4 Section 1. Chapter 105A of the General Statutes reads
5 as rewritten:

6 "Chapter 105A.

7 "Setoff Debt Collection Act.

8 "~~ARTICLE 1.~~

9 "~~In General.~~

10 "§ 105A-1. Purposes.

11 The purpose of this ~~Article~~ Chapter is to establish as policy
12 that all claimant agencies and the Department of Revenue shall
13 cooperate in identifying debtors who owe money to the State or to
14 a local government through ~~its~~ their various ~~claimant~~ agencies
15 and who qualify for refunds from the Department of Revenue. It is
16 also the intent of this ~~Article~~ Chapter that procedures be
17 established for setting off against any ~~such~~ refund the sum of
18 any debt owed to the ~~State.~~ State or to a local government.
19 Furthermore, it is the legislative intent that this ~~Article~~
20 Chapter be liberally construed so as to effectuate these purposes
21 as far as legally and practically possible.

1 "§ 105A-2. Definitions.

2 The following definitions apply in this Chapter:3 (1) Claimant agency. -- Either of the following:4 a. A State agency.5 b. A local agency acting through a clearinghouse
6 or an organization pursuant to G.S. 105A-
7 3(b1).8 (2) Debt. -- Any of the following:9 a. A sum owed to a claimant agency that has
10 accrued through contract, subrogation, tort,
11 operation of law, or any other legal theory
12 regardless of whether there is an outstanding
13 judgment for the sum.14 b. A sum a claimant agency is authorized or
15 required by law to collect, such as child
16 support payments collectible under Title IV,
17 Part D of the Social Security Act.18 c. A sum owed as a result of an intentional
19 program violation or a violation due to
20 inadvertent household error under the Food
21 Stamp Program enabled by Chapter 108A, Article
22 2, Part 5.23 e. A sum owed as a result of having obtained
24 public assistance payments under any of the
25 following program through an intentional false
26 statement, intentional misrepresentation,
27 intentional failure to disclose a material
28 fact, or inadvertent household error:29 1. The Aid to Families with Dependent
30 Children Program or the Aid to Families
31 with Dependent Children -- Emergency
32 Assistance Program, enabled by Chapter
33 108A, Article 2, Part 2.34 2. The Work First Cash Assistance Program
35 established pursuant to federal waivers
36 received by the Department of Human
37 Resources on February 5, 1996.38 3. The State-County Special Assistance for
39 Adults Program, enabled by Chapter 108A,
40 Article 2, Part 3.41 (3) Debtor. -- An individual who owes a debt.42 (4) Department. -- The Department of Revenue.43 (5) Reserved.

- 1 (6) Local agency. -- A county, to the extent it is not
2 considered a State agency, or a municipality.
- 3 (7) Net proceeds collected. -- Gross proceeds collected
4 through setoff against a debtor's refund minus the
5 collection assistance fee retained by the
6 Department.
- 7 (8) Refund. -- An individual's North Carolina income
8 tax refund.
- 9 (9) State agency. -- Any of the following:
- 10 a. A unit of the executive, legislative, or
11 judicial branch of State government.
- 12 b. A county, to the extent it administers a
13 program supervised by the Department of Human
14 Resources or it operates a Child Support
15 Enforcement Program, enabled by Chapter 110,
16 Article 9, and Title IV, Part D of the Social
17 Security Act.

18 ~~As used in this Article:~~

19 ~~(1) "Claimant agency" means and includes:~~

- 20 ~~a. The State Education Assistance Authority as~~
21 ~~enabled by Article 23 of Chapter 116 of the~~
22 ~~General Statutes;~~
- 23 ~~b. The North Carolina Department of Human~~
24 ~~Resources when in the exercise of its~~
25 ~~authority to collect health profession student~~
26 ~~loans made pursuant to G.S. 131-121;~~
- 27 ~~c. The North Carolina Department of Human~~
28 ~~Resources when in the performance of its~~
29 ~~duties under the Medical Assistance Program~~
30 ~~enabled by Chapter 108A, Article 2, Part 6,~~
31 ~~and any county operating the same Program at~~
32 ~~the local level, when and only to the extent~~
33 ~~such a county is in the performance of Medical~~
34 ~~Assistance Program collection functions;~~
- 35 ~~d. The North Carolina Department of Human~~
36 ~~Resources when in the performance of its~~
37 ~~duties, under the Child Support Enforcement~~
38 ~~Program as enabled by Chapter 110, Article 9~~
39 ~~and Title IV, Part D of the Social Security~~
40 ~~Act to obtain indemnification for past paid~~
41 ~~public assistance or to collect child support~~
42 ~~arrearrages owed to an individual receiving~~
43 ~~program services and any county operating the~~
44 ~~program at the local level, when and only to~~

- 1 ~~the extent that the county is engaged in the~~
2 ~~performance of those same duties;~~
- 3 ~~e. The University of North Carolina, including~~
4 ~~its constituent institutions as specified by~~
5 ~~G.S. 116-2(4);~~
- 6 ~~f. The University of North Carolina Hospitals at~~
7 ~~Chapel Hill in the conduct of its financial~~
8 ~~affairs and operations pursuant to G.S.~~
9 ~~116-37;~~
- 10 ~~g. The Board of Governors of the University of~~
11 ~~North Carolina and the State Board of~~
12 ~~Education through the College Scholarship Loan~~
13 ~~Committee when in the performance of its~~
14 ~~duties of administering the Scholarship Loan~~
15 ~~Fund for Prospective College Teachers enabled~~
16 ~~by Chapter 116, Article 5;~~
- 17 ~~h. The Office of the North Carolina Attorney~~
18 ~~General on behalf of any State agency when the~~
19 ~~claim has been reduced to a judgment;~~
- 20 ~~i. The State Board of Community Colleges through~~
21 ~~community colleges as enabled by Chapter 115D~~
22 ~~in the conduct of their financial affairs and~~
23 ~~operations;~~
- 24 ~~j. State facilities as listed in G.S.~~
25 ~~122C-181(a), School for the Deaf at Morganton,~~
26 ~~North Carolina Sanatorium at McCain, Western~~
27 ~~Carolina Sanatorium at Black Mountain, Eastern~~
28 ~~North Carolina Sanatorium at Wilson, and~~
29 ~~Gravelly Sanatorium at Chapel Hill under~~
30 ~~Chapter 143, Article 7; Governor Morehead~~
31 ~~School under Chapter 115, Article 40; Central~~
32 ~~North Carolina School for the Deaf under~~
33 ~~Chapter 115, Article 41; Wright School for~~
34 ~~Treatment and Education of Emotionally~~
35 ~~Disturbed Children under Chapter 122C; and~~
36 ~~these same institutions by any other names by~~
37 ~~which they may be known in the future;~~
- 38 ~~k. The North Carolina Department of Revenue;~~
- 39 ~~l. The Administrative Office of the Courts;~~
- 40 ~~m. The Division of Forest Resources of the~~
41 ~~Department of Environment, Health, and Natural~~
42 ~~Resources;~~
- 43 ~~n. The Administrator of the Teachers' and State~~
44 ~~Employees' Comprehensive Major Medical Plan,~~

- 1 ~~established in Article 3 of General Statutes~~
2 ~~Chapter 135;~~
- 3 ~~e. The State Board of Education through the~~
4 ~~Superintendent of Public Instruction when in~~
5 ~~the performance of his duties of administering~~
6 ~~the Scholarship Loan Fund for Prospective~~
7 ~~Teachers enabled by Chapter 115C, Article 32A~~
8 ~~and the scholarship loan and grant programs~~
9 ~~enabled by Chapter 115C, Article 24C, Part 1;~~
- 10 ~~p. The Board of Trustees of the Teachers' and~~
11 ~~State Employees' Retirement System and the~~
12 ~~Board of Trustees of the Local Governmental~~
13 ~~Employees' Retirement System in the~~
14 ~~performance of their duties pursuant to~~
15 ~~Chapters 120, 128, 135 and 143 of the General~~
16 ~~Statutes;~~
- 17 ~~q. The North Carolina Teaching Fellows Commission~~
18 ~~in the performance of its duties pursuant to~~
19 ~~Chapter 115C, Article 24C, Part 2;~~
- 20 ~~r. The North Carolina Department of Human~~
21 ~~Resources when in the performance of its~~
22 ~~collection duties for intentional program~~
23 ~~violations and violations due to inadvertent~~
24 ~~household error under the Food Stamp Program~~
25 ~~enabled by Chapter 108A, Article 2, Part 5,~~
26 ~~and any county operating the same Program at~~
27 ~~the local level, when and only to the extent~~
28 ~~such a county is in the performance of Food~~
29 ~~Stamp Program collection functions.~~
30 ~~The North Carolina Department of Human~~
31 ~~Resources when, in the performance of its~~
32 ~~duties under the Aid to Families with~~
33 ~~Dependent Children Program or the Aid to~~
34 ~~Families with Dependent Children -- Emergency~~
35 ~~Assistance Program provided in Part 2 of~~
36 ~~Article 2 of Chapter 108A or the Work First~~
37 ~~Cash Assistance Program established pursuant~~
38 ~~to the federal waivers received by the~~
39 ~~Department on February 5, 1996, or under the~~
40 ~~State-County Special Assistance for Adults~~
41 ~~Program provided in Part 3 of Article 2 of~~
42 ~~Chapter 108A, it seeks to collect public~~
43 ~~assistance payments obtained through an~~
44 ~~intentional false statement, intentional~~

- 1 ~~misrepresentation, intentional failure to~~
2 ~~disclose a material fact, or inadvertent~~
3 ~~household error;~~
4 ~~s. The Employment Security Commission of North~~
5 ~~Carolina.~~
6 ~~t. Any State agency in the collection of salary~~
7 ~~overpayments from former employees.~~
8 ~~u. The State Board of Education through the~~
9 ~~Superintendent of Public Instruction when in~~
10 ~~the performance of his duties of administering~~
11 ~~the program under which the State encourages~~
12 ~~participation in the National Board for~~
13 ~~Professional Teaching Standards (NBPTS)~~
14 ~~Program, enabled by Section 19.28 of Chapter~~
15 ~~769 of the 1993 Session Laws.~~
- 16 (2) ~~"Debtor" means any individual owing money to or~~
17 ~~having a delinquent account with any claimant~~
18 ~~agency which obligation has not been adjudicated~~
19 ~~satisfied by court order, set aside by court order,~~
20 ~~or discharged in bankruptcy.~~
- 21 (3) ~~"Debt" means any liquidated sum due and owing any~~
22 ~~claimant agency which has accrued through contract,~~
23 ~~subrogation, tort, operation of law, or any other~~
24 ~~legal theory regardless of whether there is an~~
25 ~~outstanding judgment for that sum.~~
- 26 (4) ~~"Department" means the North Carolina Department of~~
27 ~~Revenue.~~
- 28 (5) ~~"Refund" means any individual's North Carolina~~
29 ~~income tax refund.~~
- 30 (6) ~~"Net proceeds collected" means gross proceeds~~
31 ~~collected through final setoff against a debtor's~~
32 ~~refund minus any collection assistance fee charged~~
33 ~~by the Department.~~
- 34 "§ 105A-3. Remedy additional; mandatory State usage; optional
35 local usage; obtaining identifying information. information;
36 registration.
- 37 (a) Remedy Additional. -- The collection remedy under this
38 Article Chapter is in addition to and not in substitution for any
39 other remedy available by law.
- 40 (b) Mandatory State Usage. -- All claimant agencies shall
41 submit, for collection under the procedure established by this
42 Article, all debts which they are owed, except debts that they
43 are advised by A State agency must submit a debt owed to it for
44 collection under this Chapter unless the State Controller has

1 waived this requirement or the Attorney General has advised the
2 State agency not to submit the debt because the validity of the
3 debt is legitimately in dispute, because an alternative means of
4 collection is pending and believed to be adequate, or because
5 such a collection attempt would result in a loss of federal
6 funds. The State Controller may waive the requirement for a
7 State agency, other than the Department of Human Resources or a
8 county acting on behalf of that Department, to submit a debt owed
9 to it for collection under this Chapter if the State Controller
10 finds that collection by this means would not be practical or
11 cost effective. A waiver may apply to all debts owed a State
12 agency or a type of debt owed a State agency.

13 (b1) Optional Local Usage. -- A local agency may submit a
14 debt owed to it for collection under this Chapter. A local
15 agency that decides to submit a debt owed to it for collection
16 under this Chapter must establish the debt by following the
17 procedure set in G.S. 105A-5 and must submit the debt through one
18 of the following:

19 (1) A clearinghouse that is established pursuant to an
20 interlocal agreement adopted under Article 20 of
21 Chapter 160A of the General Statutes and has agreed
22 to submit debts on behalf of any requesting local
23 agency.

24 (2) The North Carolina League of Municipalities.

25 (3) The North Carolina Association of County
26 Commissioners.

27 (c) Identifying Information. -- All claimant agencies shall
28 whenever possible obtain the full name, social security number,
29 address, and any other identifying information required by rules
30 promulgated by the Department pursuant to G.S. 105A-16 from any
31 person for whom the agencies provide any service or transact any
32 business and who the claimant agencies can foresee may become a
33 debtor under this Article. Chapter.

34 (d) Registration and Reports. -- A claimant State agency must
35 register with the Department and with the State Controller. Every
36 State agency must report annually to the Department State
37 Controller the amount of debts owed to the agency for which the
38 agency did not submit a claim for setoff and the reason for not
39 submitting the claim.

40 A clearinghouse or an organization that submits debts on behalf
41 of a local agency must register with the Department. Once a
42 clearinghouse registers with the Department under this
43 subsection, no other clearinghouse may register to submit debts
44 for collection under this Chapter.

1 "§ 105A-4. Minimum ~~sum collectible.~~ debt and refund.

2 A claimant agency shall not be allowed to effect final setoff
3 and collect debts through use of the remedy established under
4 this Article unless both the debt and the refund, if any, are
5 This Chapter applies only to a debt that is at least fifty
6 dollars ~~(\$50.00).~~ (\$50.00) and to a refund that is at least this
7 same amount.

8 "§ 105A-5. Local agency notice, hearing, and decision.

9 (a) Prerequisite. -- A local agency may not submit a debt for
10 collection under this Chapter until it has given the notice
11 required by this section and the claim has been finally
12 determined as provided in this section.

13 (b) Notice. -- A local agency must send written notice to a
14 debtor that the agency intends to submit the debt owed by the
15 debtor for collection by setoff. The notice must explain the
16 basis for the agency's claim to the debt and that the agency
17 intends to apply the debtor's refund against the debt. The
18 notice must also inform the debtor that the debtor has the right
19 to contest the matter by filing a request for a hearing with the
20 local agency, must state the time limits and procedure for
21 requesting the hearing, and must state that failure to request a
22 hearing within the required time will result in setoff of the
23 debt.

24 (c) Administrative Review. -- A debtor who decides to contest a
25 proposed setoff must file a written request for a hearing with
26 the local agency within 30 days after the date the local agency
27 mails a notice of the proposed action to the debtor. A request
28 for a hearing is considered to be filed when it is delivered for
29 mailing with postage prepaid and properly addressed. The
30 governing body of the local agency or a person designated by the
31 governing body must hold the hearing.

32 If the debtor disagrees with the decision of the governing body
33 or the person designated by the governing body, the debtor may
34 file a petition for a contested case under Article 3 of Chapter
35 150B of the General Statutes. The petition must be filed within
36 30 days after the debtor receives a copy of the local decision.
37 Notwithstanding the provisions of G.S. 150B-2, a local agency is
38 considered an agency for purposes of contested cases and appeals
39 under this Chapter.

40 In a hearing under this section, an issue that has previously
41 been litigated in a court proceeding cannot be considered.

42 (d) Decision. -- A decision made after a hearing under this
43 section must determine whether a debt is owed to the local agency
44 and the amount of the debt.

1 (e) Return of Amount Set Off. -- If a local agency submits a
2 debt for collection under this Chapter without sending the notice
3 required by subsection (b) of this section, the agency must send
4 the taxpayer the entire amount set off plus the collection
5 assistance fee retained by the Department. Similarly, if a local
6 agency submits a debt for collection under this Chapter after
7 sending the required notice but before final determination of the
8 debt and a decision finds that the local agency is not entitled
9 to any part of the amount set off, the agency must send the
10 taxpayer the entire amount set off plus the collection assistance
11 fee retained by the Department. That portion of the amount
12 returned that reflects the collection assistance fee must be paid
13 from the local agency's funds.

14 If a local agency submits a debt for collection under this
15 Chapter after sending the required notice and the net proceeds
16 collected that are credited to the local agency for the debt
17 exceed the amount of the debt, the local agency must send the
18 balance to the debtor. No part of the collection assistance fee
19 retained by the Department may be returned when a notice was sent
20 and a debt is owed but the debt is less than the amount set off.

21 Interest accrues on the amount of a refund returned to a
22 taxpayer under this subsection in accordance with G.S. 105-266. A
23 local agency that returns a refund to a taxpayer under this
24 subsection must pay from the local agency's funds any interest
25 that has accrued since the fifth day after the Department mailed
26 the notice of setoff to the taxpayer.

27 ~~Collection of sums due claimant agencies through setoff.~~

28 ~~Subject to the limitations contained in this Article, the~~
29 ~~Department of Revenue shall upon request render assistance in the~~
30 ~~collection of any delinquent account or debt owing to any~~
31 ~~claimant agency. This assistance shall be provided by setting off~~
32 ~~any refunds due the debtor from the Department by the sum~~
33 ~~certified by claimant agency as due and owing.~~

34 ~~"§ 105A-6. Procedure for Department to follow in making setoff.~~

35 (a) Notice to Department. -- A claimant agency seeking to
36 attempt collection of a debt through setoff shall must notify the
37 Department in writing and supply (i) information necessary to
38 identify the debtor whose refund is sought to be set off and (ii)
39 off. The claimant agency may include with the notification the
40 date, if any, that the debt is expected to expire. Notification
41 to the Department and the furnishing of identifying information
42 must occur on or before a date specified by the Department in the
43 first year preceding the calendar year during which the refund
44 would be paid. The notice is effective to initiate setoff against

~~1 refunds that would be made in calendar years following the year
2 in which the notice was first made until the date specified in
3 the notice that the debt is expected to expire. The agency shall
4 must notify the Department in writing when a debt has been paid
5 or is no longer owed the agency.~~

6 (b) Setoff by Department. -- The Department, upon receipt of
7 notification, shall must determine each year whether the debtor
8 to the claimant agency is entitled to a refund of at least fifty
9 dollars (\$50.00) from the Department. Upon determination by the
10 Department that a debtor specified by a claimant agency qualifies
11 for such a refund, the Department shall ~~notify in writing the~~
12 ~~claimant agency that a refund is pending, specify its sum, and~~
13 ~~indicate the debtor's address as listed on the tax return.~~

14 ~~(c) Unless stayed by court order, the Department shall, upon~~
15 ~~certification as provided in this Article, must set off the~~
16 ~~certified debt against the refund to which the debtor would~~
17 ~~otherwise be entitled, entitled and must refund any remaining~~
18 ~~balance to the debtor. The Department must mail the debtor~~
19 ~~written notice that the setoff has occurred and must credit the~~
20 ~~net proceeds collected to the claimant agency. If the claimant~~
21 ~~agency is a State agency, that agency must credit the amount~~
22 ~~received to a nonreverting trust account and must follow the~~
23 ~~procedure set in G.S. 105A-8.~~

24 ~~"§ 105A-7. Notification of intention to set off and right to~~
25 ~~hearing.~~

26 ~~(a) The claimant agency, upon receipt of notification from the~~
27 ~~Department that a debtor is entitled to a refund, shall within 10~~
28 ~~days send a written notification to the debtor and a copy of same~~
29 ~~to the Department of its assertion of rights to the refund or any~~
30 ~~part thereof. Such notification shall inform the debtor of the~~
31 ~~claimant agency's intention to direct the Department to apply the~~
32 ~~refund or any portion thereof against the debt certified as due~~
33 ~~and owing. For the Department to be obligated to continue holding~~
34 ~~refunds until receipt of certification of the debt, if any,~~
35 ~~pursuant to G.S. 105A-10, the copy of the notification to the~~
36 ~~debtor by the claimant agency of its intention to set off must be~~
37 ~~received by the Department within 15 days of the date of the~~
38 ~~Department's mailing to the respective claimant agency the~~
39 ~~notification of the debtor's entitlement to a refund.~~

40 ~~(b) The contents of the written notification to the debtor (and~~
41 ~~the Department's copy) of the setoff claim shall clearly set~~
42 ~~forth the basis for the claim to the refund, the intention to~~
43 ~~apply the refund against the debt to the claimant agency, the~~
44 ~~debtor's opportunity to give written notice of intent to contest~~

~~1 the validity of the claim within 30 days of the date of the
2 mailing of the notice, the mailing address to which the
3 application for a hearing must be sent, and the fact that failure
4 to apply for a hearing in writing within the 30-day period will
5 be deemed a waiver of the opportunity to contest the claim
6 causing final setoff by default.~~

~~7 (c) The written application by the debtor for a hearing shall
8 be effective upon mailing the application postage prepaid and
9 properly addressed to the claimant agency.~~

10 "§ 105A-8. Hearing procedure. State agency notice, hearing,
11 decision, and refund of setoff.

12 (a) Notice. -- Within 10 days after a State agency receives a
13 refund of a debtor, the agency must send the debtor written
14 notice that the agency has received the debtor's refund. The
15 notice must explain the debt that is the basis for the agency's
16 claim to the debtor's refund and that the agency intends to apply
17 the refund against the debt. The notice must also inform the
18 debtor that the debtor has the right to contest the matter by
19 filing a request for a hearing, must state the time limits and
20 procedure for requesting the hearing, and must state that failure
21 to request a hearing within the required time will result in
22 setoff of the debt. A State agency that does not send a debtor a
23 notice within the time required by this subsection must refund
24 the amount set off plus the collection assistance fee, in
25 accordance with subsection (e) of this section.

26 (c) Hearing. -- A hearing on a contested claim of a State
27 agency, except a constituent institution of The University of
28 North Carolina or the Employment Security Commission, must be
29 conducted in accordance with Article 3 of Chapter 150B of the
30 General Statutes. A hearing on a contested claim of a
31 constituent institution of The University of North Carolina must
32 be conducted in accordance with administrative procedures
33 approved by the Attorney General. A hearing on a contested claim
34 of the Employment Security Commission must be conducted in
35 accordance with rules adopted by that Commission. A request for
36 a hearing on a contested claim of any State agency must be filed
37 within 30 days after the State agency mails the debtor notice of
38 the proposed setoff. A request for a hearing is considered to be
39 filed when it is delivered for mailing with postage prepaid and
40 properly addressed. In a hearing under this section, an issue
41 that has previously been litigated in a court proceeding cannot
42 be considered.

1 (d) Decision. -- A decision made after a hearing under this
2 section must determine whether a debt is owed to the State agency
3 and the amount of the debt.

4 (e) Return of Amount Set Off. -- If a State agency fails to
5 send the notice required by subsection (a) of this section within
6 the required time or a decision finds that a State agency is not
7 entitled to any part of an amount set off, the agency must send
8 the taxpayer the entire amount set off plus the collection
9 assistance fee retained by the Department. That portion of the
10 amount returned that reflects the collection assistance fee must
11 be paid from the State agency's funds.

12 If a debtor owes a debt to a State agency and the net proceeds
13 credited to the State agency for the debt exceed the amount of
14 the debt, the State agency must send the balance to the debtor.
15 No part of the collection assistance fee retained by the
16 Department may be returned when a debt is owed but it is less
17 than the amount set off.

18 Interest accrues on the amount of a refund returned to a
19 taxpayer under this subsection in accordance with G.S. 105-266. A
20 State agency that returns a refund to a taxpayer under this
21 subsection must pay from the State agency's funds any interest
22 that has accrued since the fifth day after the Department mailed
23 the notice of setoff to the taxpayer.

24 ~~(a) A hearing on a contested claim, other than a claim of a~~
25 ~~constituent institution of The University of North Carolina, or a~~
26 ~~claim of the Employment Security Commission of North Carolina,~~
27 ~~shall be conducted in accordance with Article 3 of Chapter 150B~~
28 ~~of the General Statutes. A hearing on a contested claim of a~~
29 ~~constituent institution of The University of North Carolina shall~~
30 ~~be conducted in accordance with administrative procedures~~
31 ~~approved by the Attorney General. A hearing on a contested claim~~
32 ~~of the Employment Security Commission of North Carolina shall be~~
33 ~~conducted in accordance with regulations adopted by the~~
34 ~~Employment Security Commission of North Carolina. Additionally,~~
35 ~~it shall be determined at the hearing whether the claimed sum~~
36 ~~asserted as due and owing is correct, and if not, an adjustment~~
37 ~~to the claim shall be made.~~

38 ~~(b) Pending final determination at hearing of the validity of~~
39 ~~the debt asserted by the claimant agency, no action shall be~~
40 ~~taken in furtherance of collection through the setoff procedure~~
41 ~~allowed under this Article.~~

42 ~~(c) No issues may be considered at the hearing which have been~~
43 ~~previously litigated.~~

44 "\$ 105A-9. Appeals from hearings.

1 Appeals from ~~action taken at~~ hearings allowed under this
2 Article Chapter, other than those conducted by the Employment
3 Security Commission, shall be in accordance with the provisions
4 of Chapter 150B of the General Statutes, the Administrative
5 Procedure Act, except that the place of initial judicial review
6 shall be the superior court for the county in which the debtor
7 resides. Appeals from ~~actions~~ hearings allowed under this
8 Article Chapter that are conducted by the Employment Security
9 Commission of North Carolina shall be in accordance with the
10 provisions of Chapter 96 of the General Statutes.

11 ~~"§ 105A-10. Certification of debt by claimant agency;~~
12 ~~finalization of setoff.~~

13 ~~(a) Upon final determination through hearing provided by G.S.~~
14 ~~105A-8 of the debt due and owing the claimant agency or upon the~~
15 ~~debtor's default for failure to comply with G.S. 105A-7 mandating~~
16 ~~timely request for review of the asserted basis for setoff, the~~
17 ~~claimant agency shall within 20 days certify the debt to the~~
18 ~~Department and in default thereof, the Department shall no longer~~
19 ~~be obligated to hold the refund for setoff.~~

20 ~~(b) Upon receipt by the Department of a certified debt from the~~
21 ~~claimant agency, the Department shall finalize the setoff by~~
22 ~~transferring the net proceeds collected for credit or payment in~~
23 ~~accordance with the provisions of G.S. 105A-14 and by refunding~~
24 ~~any remaining balance to the debtor as if setoff had not~~
25 ~~occurred.~~

26 ~~"§ 105A-11. Notice of final setoff.~~

27 ~~Upon the finalization of setoff under the provisions of this~~
28 ~~Article, the Department shall notify the debtor in writing of the~~
29 ~~action taken along with an accounting of the action taken on any~~
30 ~~refund. If there is an outstanding balance after setoff, the~~
31 ~~notice under this section shall accompany the balance when~~
32 ~~disbursed.~~

33 ~~"§ 105A-12. Priorities in claims to setoff.~~

34 ~~Priority in multiple claims to refunds allowed to be set off~~
35 ~~under the provisions of this Article shall be in the order in~~
36 ~~time which a claimant agency has filed a written notice with the~~
37 ~~Department of its intention to effect collection through setoff~~
38 ~~under this Article. Notwithstanding the priority set forth above~~
39 ~~according to time of filing, the~~ The Department ~~has priority over~~
40 ~~all other claimant agencies for collection by setoff whenever it~~
41 ~~is a competing agency for a refund. The Department of Human~~
42 ~~Resources and the counties that are acting on behalf of that~~
43 ~~Department and are therefore considered to be State agencies have~~
44 ~~priority over all other State agencies except the Department of~~

1 Revenue. State agencies have priority over local agencies for
2 collection by setoff. When there are multiple claims by State
3 agencies that do not have priority over other State agencies, the
4 claims have priority based on the date each agency registered
5 with the Department under G.S. 105A-3. When there are multiple
6 claims by two or more organizations submitting debts on behalf of
7 local agencies, the claims have priority based on the date each
8 organization registered with the Department under G.S. 105A-3.
9 When there are multiple claims among local agencies whose debts
10 are submitted by the same organization, the claims have priority
11 based on the date each local agency requested the organization to
12 submit debts on its behalf.

13 ~~"§ 105A-13. Disposition of proceeds collected; collection~~
14 ~~Collection assistance fees.~~

15 ~~(a) Upon effecting final setoffs, the Department shall~~
16 ~~periodically write checks to the respective claimant agencies for~~
17 ~~the net proceeds collected on their behalf.~~

18 ~~(b) Each year the Department shall determine its actual cost of~~
19 ~~collection under the Setoff Debt Collection Act for the~~
20 ~~immediately preceding year and shall calculate the percentage~~
21 ~~that cost represents of the preceding year's collections,~~
22 ~~excluding collections of child support arrearages under G.S.~~
23 ~~105A-2(1)d. The Department shall retain that percentage from the~~
24 ~~gross proceeds collected by the Department through setoff for the~~
25 ~~current year, other than the gross proceeds collected of child~~
26 ~~support arrearages under G.S. 105A-2(1)d. To recover the costs~~
27 ~~incurred by the Department in collecting debts under this~~
28 ~~Chapter, a collection assistance fee of no more than fifteen~~
29 ~~dollars (\$15.00) is imposed on each debt collected through~~
30 ~~setoff. The Department must collect this fee as part of the debt~~
31 ~~and retain it. The Department must set the amount of the~~
32 ~~collection assistance fee based on it's actual cost of collection~~
33 ~~under this Chapter for the immediately preceding year. If the~~
34 ~~Department is able to collect only part of a debt through setoff,~~
35 ~~the collection assistance fee has priority over the remainder of~~
36 ~~the debt. The collection assistance fee shall not be added to~~
37 ~~child support debts or collected as part of child support debts.~~
38 ~~Instead, the Department shall retain from collections under~~
39 ~~Division II of Article 4 of Chapter 105 of the General Statutes~~
40 ~~the cost of collecting child support debts under this Chapter.~~

41 "§ 105A-14. Accounting to the claimant agency; credit to
42 debtor's obligation.

43 (a) Simultaneously with the transmittal of a check for the net
44 proceeds collected to a claimant agency, the Department shall

1 must provide the agency with an accounting of the setoffs
2 ~~finalized~~ for which payment is being made. The accounting ~~shall,~~
3 must whenever possible, include the full names of the debtors,
4 the debtors' social security numbers, the gross proceeds
5 collected per ~~individual~~ setoff, the net proceeds collected per
6 setoff, and the collection assistance fee added to the debt and
7 collected charged per setoff.

8 (b) Upon receipt by a claimant agency of ~~a check representing~~
9 net proceeds collected on ~~a~~ the claimant agency's behalf by the
10 ~~Department~~ Department, a final determination of the claim if it
11 is a State agency claim, and an accounting of the proceeds as
12 specified under this section, the claimant agency ~~shall~~ must
13 credit the debtor's obligation with the gross net proceeds
14 collected.

15 "§ 105A-15. Confidentiality exemption; nondisclosure.

16 (a) Notwithstanding G.S. 105-259 or any other provision of law
17 prohibiting disclosure by the Department of the contents of
18 taxpayer records or information and notwithstanding any
19 confidentiality statute of any claimant agency, ~~all the exchange~~
20 of any information exchanged among the Department, the claimant
21 agency, the organization submitting debts on behalf of a local
22 agency, and the debtor necessary to accomplish and effectuate the
23 intent of this Article implement this Chapter is lawful.

24 (b) The information ~~obtained by~~ a claimant agency ~~or an~~
25 organization submitting debts on behalf of a local agency obtains
26 from the Department in accordance with the exemption allowed by
27 subsection (a) ~~shall only~~ may be used by ~~a claimant the~~ agency or
28 organization only in the pursuit of its debt collection duties
29 and ~~practices and any person employed by, or formerly employed~~
30 ~~by, a claimant agency who discloses any such information for any~~
31 ~~other purpose, except as otherwise allowed by G.S. 105-259, shall~~
32 ~~be penalized in accordance with the terms of that statute.~~
33 practices and may not be disclosed except as provided in G.S.
34 105-259, 153A-148.1, or 160A-208.1.

35 "§ 105A-16. Rules and regulations. Rules.

36 The Secretary of Revenue ~~is authorized to prescribe forms and~~
37 ~~make all rules which he deems necessary in order to effectuate~~
38 ~~the intent of this Article.~~ may adopt rules to implement this
39 Chapter. The State Controller may adopt rules to implement this
40 Chapter."

41 Section 2. G.S. 105-266(b) reads as rewritten:

42 "(b) Interest. -- An overpayment of tax bears interest at the
43 rate established in G.S. 105-241.1(i) from the date that interest
44 begins to accrue until a refund is paid. A refund sent to a

1 taxpayer is considered paid on a date determined by the Secretary
2 that is no sooner than five days after a refund check is mailed.
3 A refund set off against a debt pursuant to Chapter 105A of the
4 General Statutes is considered paid five days after the
5 Department mails the taxpayer a notice of the setoff, unless G.S.
6 105A-5 or G.S. 105A-8 requires the agency that requested the
7 setoff to return the refund to the taxpayer. In this
8 circumstance, the refund that was set off is not considered paid
9 until five days after the agency that requested the refund mails
10 the taxpayer a check for the refund.

11 Interest on an overpayment of a tax, other than a tax levied
12 under Article 4 or Article 8B of this Chapter, accrues from a
13 date 90 days after the date the tax was originally paid by the
14 taxpayer until the refund is paid. Interest on an overpayment of
15 a tax levied under Article 4 or Article 8B of this Chapter
16 accrues from a date 45 days after the latest of the following
17 dates until the refund is paid:

- 18 (1) The date the final return was filed.
- 19 (2) The date the final return was due to be filed.
- 20 (3) The date of the overpayment.

21 The date of an overpayment of a tax levied under Article 4 or
22 Article 8B of this Chapter is determined in accordance with
23 section 6611(d), (f), (g), and (h) of the Code."

24 Section 3. The General Assembly finds that the
25 Department of Human Resources will incur extraordinary one-time
26 costs for automation in administering the requirements of this
27 act because the various divisions of the Department of Human
28 Resources, and the county agencies through which they administer
29 their programs, have an extraordinary number of debts that they
30 are required by law to collect through setoff. Accordingly,
31 there is appropriated from the General Fund to the Department of
32 Human Resources the sum of \$X for the 1998-99 fiscal year for
33 one-time automation costs and related costs of administering the
34 requirements of this act. These funds shall not revert but shall
35 remain available to the Department of Human Resources until used
36 for this purpose.

37 Section 4. The General Assembly finds that the
38 Department of Human Resources will incur extraordinary recurring
39 costs for personnel in administering the requirements of this act
40 because the various divisions of the Department of Human
41 Resources, and the county agencies through which they administer
42 their programs, have an extraordinary number of debts that they
43 are required by law to collect through setoff. Accordingly, it
44 is the intent of the General Assembly to appropriate to the

1 Department of Human Resources the sum of \$X in recurring funds
2 beginning in the 1999-2000 fiscal biennium for recurring costs of
3 administering the requirements of this act.

4 Section 5. The changes to G.S. 105A-3(d) and G.S.
5 105A-16 made by this act are effective when this act becomes law.
6 The changes to G.S. 105A-5 made by this act become effective
7 January 1, 1999. Section 3 of this act becomes effective July 1,
8 1998. The remainder of this act becomes effective January 1,
9 2000, and applies to income tax refunds determined on or after
10 that date.

EXPLANATION OF SENATE BILL 39
Proposed Senate Finance Committee Substitute
Modify Setoff Debt Collection

TO: Senate Finance Committee
FROM: Sabra Faires, Committee Counsel
DATE: April 8, 1997
SPONSOR: Senator Larry Shaw

Senate Bill 39 is one of the bills recommended to the 1997 General Assembly by the Revenue Laws Study Committee. It modifies the Setoff Debt Collection Act, Chapter 105A of the General Statutes. Under that act, the Department of Revenue sends the income tax refund of an individual who owes money to a State agency to that agency in payment of the debt rather than to the individual. The individual's income tax refund is therefore set off against the debt the individual owes the State agency .

Senate Bill 39 expands and streamlines the setoff program as follows:

1. It requires all State agencies not given a waiver by the State Controller to use the setoff program to collect debts owed the agency. Under current law, the State agencies that are included in a list in the statute must use the setoff program to collect debts and those that are not listed cannot use the setoff program.
2. It extends the setoff program to local units of government and their agencies and establishes the procedures local units and their agencies must follow to use the setoff program. The bill allows, but does not require, local entities to use the setoff program.
3. It streamlines the setoff program by eliminating several unnecessary notices between the Department of Revenue and the claimant agencies. It accomplishes this by allowing the Department to place refunds of debtors of State agencies in escrow while the State agency finalizes the setoff.
4. It shifts the cost of the program from the agencies whose debts are collected to the debtors who owe the debts, sets a \$15.00 cap on the fee imposed for collection through setoff, and shifts the cost of collecting child support debts from all the State agencies that use the setoff program to an earmarking of income tax collections.
5. It clarifies and reorganizes some of the provisions in the Setoff Debt Collection Act.

Expansion to All State Agencies

The Setoff Debt Collection Act currently requires certain named State agencies to participate. Other State agencies may not participate, even on a voluntary basis. The bill would extend the mandatory State program to all State agencies, as recommended by the State Controller's Office, which administers the Statewide accounts receivable program pursuant to G.S. 147-86.22. If a State agency's use of the program would not be practical or cost effective in certain cases, the State Controller could waive the requirement.

Expansion to Local Governments

The idea to expand the setoff program to local entities originated with Senate Bill 761 of the 1995 Session, introduced by Senator Conder. Senate Bill 39 authorizes local governments to submit their debts for collection by setoff only after providing the debtor with notice, an opportunity to be heard before the local government, and an appeal process pursuant to the Administrative Procedure Act. After completing this process, the agency can submit the debt through the League of Municipalities, the Association of County Commissioners, or another clearinghouse. Funneling the debts through a clearinghouse rather than having each local government submit its own debts will avoid placing an undue administrative burden on the Department of Revenue.

Streamlining of Program

Under current law, the setoff process requires 3 notices to the Department by the claimant agency, 2 notices by the Department to the agency, and 2 notices to the taxpayer. The bill eliminates 2 of the notices to the Department by claimant agencies and 1 of the notices by the Department to claimant agencies.

Currently, a State agency notifies the Department of a debt. The Department checks to see if the debtor will be receiving a tax refund. If so, the Department notifies the agency that the debtor is entitled to a refund. The agency then sends the Department and the debtor a notice of intent to apply the refund to the debt. After any hearing requested by the debtor, the agency sends the Department a notice of certification of the debt. The Department then applies the tax refund to the debt and notifies the taxpayer and the agency of the setoff. If the debt is less than the refund, the Department sends the balance of the refund at the same time.

Under the bill, a claimant agency sends the Department notice of the debt and the Department immediately sets off the debt against the refund and notifies the taxpayer and the claimant agency. A local agency cannot notify the Department of a debt until after the debt has been established through notice to the debtor and a hearing, if requested. A State agency can notify the Department of a debt, have the refund placed in an escrow for the agency, notify the debtor and hold any hearing requested, and then disburse the escrowed amount accordingly.

The bill gives a debtor the same procedural and substantive rights as under current law, including the right to interest on any part of the refund found not to be a valid debt. Under current law, a debtor is notified of a potential setoff and the right to contest the setoff. The debtor receives the same notifications under the bill. Also, under the bill, if an agency fails to give the debtor the required notice, the agency must return all the refund even though a debt is owed.

Collection Assistance Fee Changes

The cost of administering the setoff debt collection program is paid by the State agencies whose debts are collected by setoff. Each year, the Department of Revenue determines its costs of running the program and recovers these costs by charging a collection assistance fee as a percentage of each debt collected. The bill caps this fee at no more than \$15.00 per debt. The actual fee is expected to be less.

The bill shifts the burden of paying the administrative costs of most setoffs from participating State agencies to the debtors. Under current law, except in the case of child support debts, the Department of Revenue retains the collection assistance fee from each setoff. The retention of the fee reduces the amount paid to the agency. The agency therefore absorbs the cost of collecting the debt by receiving less than the full amount of the debt. Under the bill, the Department of Revenue will still retain the collection assistance fee but the fee will be added to the debt and paid by the debtor from the refund rather than subtracted from the amount payable to the agency. As a result, the debtor will pay the fee out of the tax refund that was set off. This change will shift approximately \$270,000, which is the cost of collecting about 39,000 debts, from State agencies' budgets to debtors.

Under current law, the Department of Human Resources and their county counterparts use the debt setoff program to collect child support arrearages pursuant to the federal Child Support Enforcement Program. Since January 1, 1996, rather than deducting its administrative costs from amounts collected for child support arrearages, the Department of Revenue has been required to spread among other State agencies the portion of the Department's administrative costs attributable to child support collections. That change shifted child support setoff administrative costs from child support collections to other setoff collections, resulting in an increase in the percentage deducted from those other collections. The bill directs the administrative costs of collecting child support arrearages to be drawn from income tax collections rather than deducted from the amounts collected on behalf of other State agencies. The General Fund bears the cost in either case, but under the bill the cost will not come from amounts appropriated to State agencies for other purposes.

**NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL ESTIMATE**

BILL NUMBER: SENATE BILL 39 (Senate Committee Substitute)

SHORT TITLE: MODIFY SETOFF DEBT COLLECTION

FISCAL IMPACT

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

REVENUES (See "Assumptions and Methodology")

EXPENDITURES (See "Assumptions and Methodology")

POSITIONS:

PRINCIPAL DEPARTMENT(S) &

PROGRAM(S) AFFECTED: The program is administered by the Department of Revenue.

EFFECTIVE DATE: The major changes under the bill apply to tax refunds determined on or after January 1, 2000.

BILL SUMMARY: The 1979 General Assembly approved legislation to allow selected State agencies to request the Department of Revenue to offset income tax refunds (if refund at least \$50) as a means of collecting debts owed agencies by taxpayers (in addition to other remedies). The Department of Revenue's cost of collecting the debt is earmarked from refunds offset, with the earmarking based on the prior year's experience.

The program has been modified over the years as other agencies have asked to be included. The bill modifies the program as follows:

- (1) Authorizes local agencies to submit debts for setoff, but only through a local government clearinghouse for all units participating.
- (2) Provides that the state agency, rather than the Department of Revenue, hold the setoff amount while the debtor is given notice and an opportunity to contest the debt.
- (3) Requires State agencies not currently allowed to use the program to submit debts for setoff unless the State Controller waives the requirement.

(0 V R)

- (4) Provides that the Department of Revenue's costs of administering the program be charged to the debtor instead of the state agency. In addition, Child Support collection fees now paid for by the earmarking of debt setoff proceeds of all participating agencies shall be funded directly from an earmarking of General Fund tax revenue.
- (5) Limits collection assistance fee to \$15 per debt collected.
- (6) Provides that the Department of Human Resources be treated as a single agency for setoff purposes and gives the Department of Human Resources first priority, after the Department of Revenue, over all other departments in the case of claims by more than one agency.
- (7) Provides a one-time appropriation of an unspecified amount to the Department of Human Resources for the 1998-99 fiscal year to implement the changes. In addition, language states the legislative intent to appropriate recurring dollars beginning in 1999-2000.
- (8) Sets up a procedure for a state or local agency to mail a refund to a taxpayer in cases where the actual debt is less than the setoff amount or where the agency does not comply with the taxpayer notification requirements of the bill. In addition, if a taxpayer protests the setoff and the decision finds that the agency is not entitled to the setoff, the agency must send the taxpayer the full setoff amount plus the collection assistance fee. The return of the collection assistance fee is financed from the agency's budget. When the setoff amount exceeds the actual debt, the agency must refund the excess but is not required to refund the collection assistance fee. The payment of interest applies to refunds sent out by agencies.

ASSUMPTIONS AND METHODOLOGY:

(1) Authorizing local government units to participate in the program will increase revenue for the cities and counties that participate. There is no data available at this time to calculate the gains. However, if the change allowed local units to collect 1/3 of their delinquent property tax bills, the additional receipts would be over \$37 million.

This provision will substantially increase the number of claims processed by the Department of Revenue. However, the proposal to shift more of the administrative burden to claimant agencies and the use of a clearinghouse to submit claims for local units should help offset the additional workload. In addition, the new claims will be eligible for collection assistance fees.

(2) Requiring State agencies currently not eligible for the program to participate will increase agency receipts by a maximum of \$1 million per year. In theory, the additional receipts should reduce General Fund budget requirements for the recipient agencies. At this time, the State Controller estimates that as much as 90% of the potential claim volume in State government is covered by the program.

(3) Requiring the Department of Revenue's costs to be paid by the debtor instead of being earmarked out of the refunds offset would increase agency receipts by a maximum of \$300,000 per year based on the 1996 experience. This would reduce General Fund budget requirements. In cases where the tax refund is greater than the debt, more of the taxpayer's refund will be offset. If the debt is greater than the refund, the collection cost will be added to the debt amount to be carried over to the following year.

(4) The shift in the funding of child support collection costs to a General Fund earmarking from an earmarking of refunds offset will change how the General Fund pays for the costs, but here will be no change in overall budget requirements.

(5) Limiting the collection assistance fee to \$15 will not have a fiscal effect since the average fee now is far less than \$15.

(6) Shifting the administrative burden on state agency debts will increase the workload and costs of state agencies. The Department of Human Resources is developing data on the impact of their operations.

TECHNICAL CONSIDERATIONS:

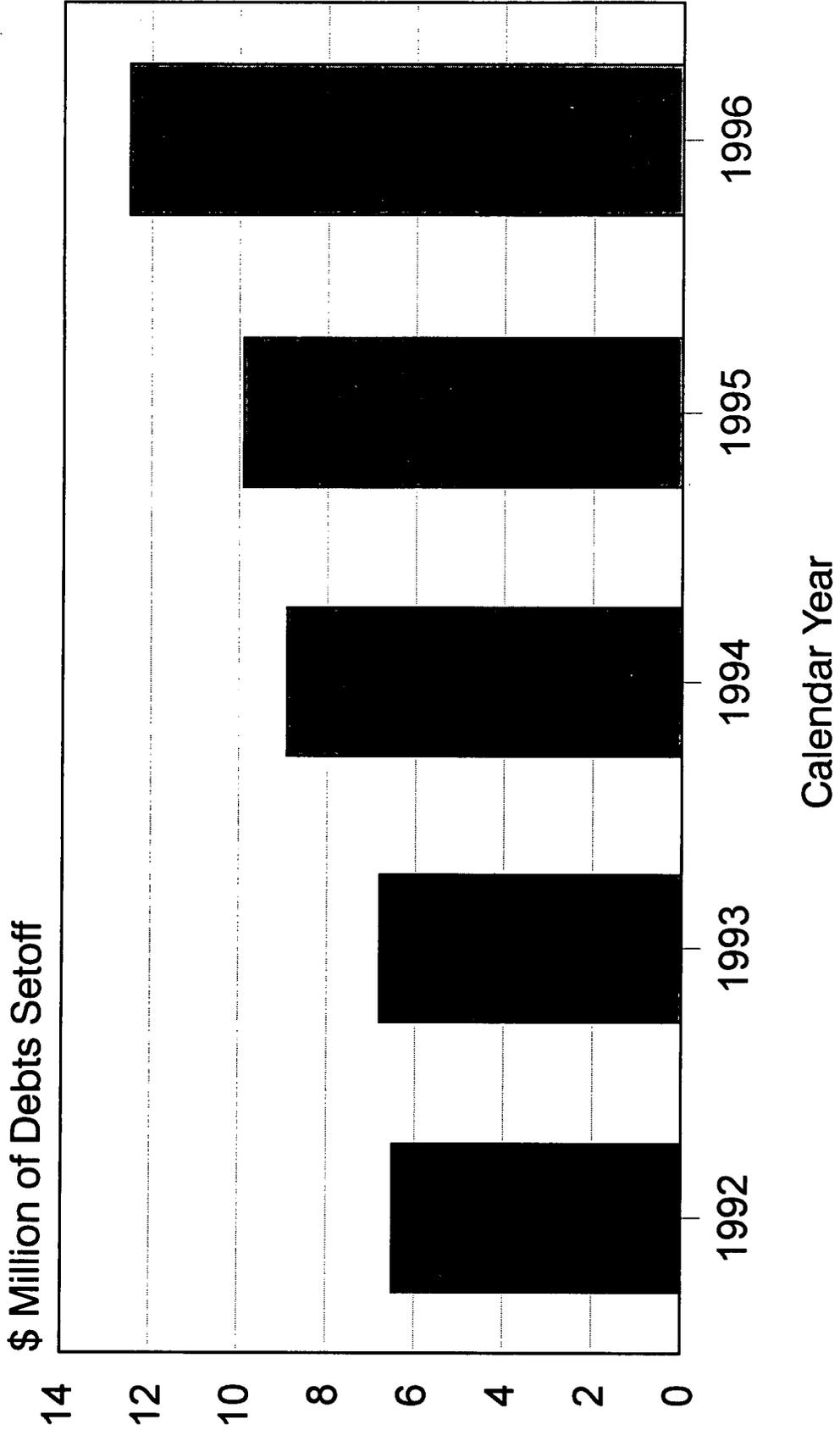
FISCAL RESEARCH DIVISION 733-4910

PREPARED BY: David Crotts

APPROVED BY:

DATE: April 8, 1997

SETOFF DEBT COLLECTION ACT RESULTS



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

D

SENATE BILL 39
Proposed Committee Substitute S39-PCS8633

Short Title: Modify Setoff Debt Collection.

(Public)

Sponsors:

Referred to:

February 3, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO REVISE THE SETOFF DEBT COLLECTION ACT.

3 The General Assembly of North Carolina enacts:

4 Section 1. Chapter 105A of the General Statutes reads as rewritten:

5 "Chapter 105A.

6 "Setoff Debt Collection Act.

7 "ARTICLE 1.

8 "~~In General.~~

9 "§ 105A-1. Purposes.

10 The purpose of this ~~Article~~ Chapter is to establish as policy that all claimant
11 agencies and the Department of Revenue shall cooperate in identifying debtors who
12 owe money to the State or to a local government through ~~its~~ their various ~~claimant~~
13 agencies and who qualify for refunds from the Department of Revenue. It is also the
14 intent of this ~~Article~~ Chapter that procedures be established for setting off against any
15 ~~such~~ refund the sum of any debt owed to the ~~State.~~ State or to a local government.
16 Furthermore, it is the legislative intent that this ~~Article~~ Chapter be liberally construed
17 so as to effectuate these purposes as far as legally and practically possible.

18 "§ 105A-2. Definitions.

19 The following definitions apply in this Chapter:

20 (1) Claimant agency. -- Either of the following:

21 a. A State agency.

22 b. A local agency acting through a clearinghouse or an
23 organization pursuant to G.S. 105A-3(b1).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44

- (2) Debt. -- Any of the following:
 - a. A sum owed to a claimant agency that has accrued through contract, subrogation, tort, operation of law, or any other legal theory regardless of whether there is an outstanding judgment for the sum.
 - b. A sum a claimant agency is authorized or required by law to collect, such as child support payments collectible under Title IV, Part D of the Social Security Act.
 - c. A sum owed as a result of an intentional program violation or a violation due to inadvertent household error under the Food Stamp Program enabled by Chapter 108A, Article 2, Part 5 of the General Statutes.
 - d. A sum owed as a result of having obtained public assistance payments under any of the following programs through an intentional false statement, intentional misrepresentation, intentional failure to disclose a material fact, or inadvertent household error:
 - 1. The Aid to Families with Dependent Children Program or the Aid to Families with Dependent Children. -- Emergency Assistance Program, enabled by Chapter 108A, Article 2, Part 2 of the General Statutes.
 - 2. The Work First Cash Assistance Program established pursuant to federal waivers received by the Department of Human Resources on February 5, 1996.
 - 3. The State-County Special Assistance for Adults Program, enabled by Chapter 108A, Article 2, Part 3 of the General Statutes.
- (3) Debtor. -- An individual who owes a debt.
- (4) Department. -- The Department of Revenue.
- (5) Reserved.
- (6) Local agency. -- A county, to the extent it is not considered a State agency, or a municipality.
- (7) Net proceeds collected. -- Gross proceeds collected through setoff against a debtor's refund minus the collection assistance fee retained by the Department.
- (8) Refund. -- An individual's North Carolina income tax refund.
- (9) State agency. -- Any of the following:
 - a. A unit of the executive, legislative, or judicial branch of State government.
 - b. A county, to the extent it administers a program supervised by the Department of Human Resources, or it operates a Child Support Enforcement Program, enabled by Chapter

- 1 ~~Western Carolina Sanatorium at Black Mountain, Eastern~~
2 ~~North Carolina Sanatorium at Wilson, and Gravelly~~
3 ~~Sanatorium at Chapel Hill under Chapter 143, Article 7;~~
4 ~~Governor Morehead School under Chapter 115, Article 40;~~
5 ~~Central North Carolina School for the Deaf under Chapter~~
6 ~~115, Article 41; Wright School for Treatment and Education~~
7 ~~of Emotionally Disturbed Children under Chapter 122C;~~
8 ~~and these same institutions by any other names by which~~
9 ~~they may be known in the future;~~
- 10 ~~k. The North Carolina Department of Revenue;~~
11 ~~l. The Administrative Office of the Courts;~~
12 ~~m. The Division of Forest Resources of the Department of~~
13 ~~Environment, Health, and Natural Resources;~~
14 ~~n. The Administrator of the Teachers' and State Employees'~~
15 ~~Comprehensive Major Medical Plan, established in Article 3~~
16 ~~of General Statutes Chapter 135;~~
17 ~~o. The State Board of Education through the Superintendent~~
18 ~~of Public Instruction when in the performance of his duties~~
19 ~~of administering the Scholarship Loan Fund for Prospective~~
20 ~~Teachers enabled by Chapter 115C, Article 32A and the~~
21 ~~scholarship loan and grant programs enabled by Chapter~~
22 ~~115C, Article 24C, Part 1;~~
- 23 ~~p. The Board of Trustees of the Teachers' and State~~
24 ~~Employees' Retirement System and the Board of Trustees of~~
25 ~~the Local Governmental Employees' Retirement System in~~
26 ~~the performance of their duties pursuant to Chapters 120,~~
27 ~~128, 135 and 143 of the General Statutes;~~
- 28 ~~q. The North Carolina Teaching Fellows Commission in the~~
29 ~~performance of its duties pursuant to Chapter 115C, Article~~
30 ~~24C, Part 2;~~
- 31 ~~r. The North Carolina Department of Human Resources when~~
32 ~~in the performance of its collection duties for intentional~~
33 ~~program violations and violations due to inadvertent~~
34 ~~household error under the Food Stamp Program enabled by~~
35 ~~Chapter 108A, Article 2, Part 5, and any county operating~~
36 ~~the same Program at the local level, when and only to the~~
37 ~~extent such a county is in the performance of Food Stamp~~
38 ~~Program collection functions.~~
- 39 ~~The North Carolina Department of Human Resources when,~~
40 ~~in the performance of its duties under the Aid to Families~~
41 ~~with Dependent Children Program or the Aid to Families~~
42 ~~with Dependent Children Emergency Assistance Program~~
43 ~~provided in Part 2 of Article 2 of Chapter 108A or the~~
44 ~~Work First Cash Assistance Program established pursuant to~~

1 the federal waivers received by the Department on February
 2 5, 1996, or under the State-County Special Assistance for
 3 Adults Program provided in Part 3 of Article 2 of Chapter
 4 108A, it seeks to collect public assistance payments obtained
 5 through an intentional false statement, intentional
 6 misrepresentation, intentional failure to disclose a material
 7 fact, or inadvertent household error;

8 s. ~~The Employment Security Commission of North Carolina.~~

9 t. ~~Any State agency in the collection of salary overpayments
 10 from former employees.~~

11 u. ~~The State Board of Education through the Superintendent
 12 of Public Instruction when in the performance of his duties
 13 of administering the program under which the State
 14 encourages participation in the National Board for
 15 Professional Teaching Standards (NBPTS) Program, enabled
 16 by Section 19.28 of Chapter 769 of the 1993 Session Laws.~~

17 (2) ~~"Debtor" means any individual owing money to or having a
 18 delinquent account with any claimant agency which obligation has
 19 not been adjudicated satisfied by court order, set aside by court
 20 order, or discharged in bankruptcy.~~

21 (3) ~~"Debt" means any liquidated sum due and owing any claimant
 22 agency which has accrued through contract, subrogation, tort,
 23 operation of law, or any other legal theory regardless of whether
 24 there is an outstanding judgment for that sum.~~

25 (4) ~~"Department" means the North Carolina Department of Revenue.~~

26 (5) ~~"Refund" means any individual's North Carolina income tax
 27 refund.~~

28 (6) ~~"Net proceeds collected" means gross proceeds collected through
 29 final setoff against a debtor's refund minus any collection
 30 assistance fee charged by the Department.~~

31 **"§ 105A-3. Remedy additional; mandatory State usage; optional local usage; obtaining
 32 identifying information; information; registration.**

33 (a) Remedy Additional. -- The collection remedy under this Article Chapter is in
 34 addition to and not in substitution for any other remedy available by law.

35 (b) Mandatory State Usage. -- ~~All claimant agencies shall submit, for collection
 36 under the procedure established by this Article, all debts which they are owed, except
 37 debts that they are advised by A State agency must submit a debt owed to it for
 38 collection under this Chapter unless the State Controller has waived this requirement
 39 or the Attorney General has advised the State agency not to submit the debt because
 40 the validity of the debt is legitimately in dispute, because an alternative means of
 41 collection is pending and believed to be adequate, or because such a collection
 42 attempt would result in a loss of federal funds. The State Controller may waive the
 43 requirement for a State agency, other than the Department of Human Resources or a
 44 county acting on behalf of that Department, to submit a debt owed to it for collection~~

1 under this Chapter if the State Controller finds that collection by this means would
2 not be practical or cost-effective. A waiver may apply to all debts owed a State
3 agency or a type of debt owed a State agency.

4 (b1) Optional Local Usage. -- A local agency may submit a debt owed to it for
5 collection under this Chapter. A local agency that decides to submit a debt owed to
6 it for collection under this Chapter must establish the debt by following the
7 procedure set in G.S. 105A-5 and must submit the debt through one of the following:

8 (1) A clearinghouse that is established pursuant to an interlocal
9 agreement adopted under Article 20 of Chapter 160A of the
10 General Statutes and has agreed to submit debts on behalf of any
11 requesting local agency.

12 (2) The North Carolina League of Municipalities.

13 (3) The North Carolina Association of County Commissioners.

14 (c) Identifying Information. -- All claimant agencies shall whenever possible
15 obtain the full name, social security number, address, and any other identifying
16 information required by ~~rules promulgated by the Department pursuant to G.S.~~
17 ~~105A-16~~ from any person for whom the agencies provide any service or transact any
18 business and who the claimant agencies can foresee may become a debtor under this
19 Article. Chapter.

20 (d) Registration and Reports. -- A ~~claimant~~ State agency must register with the
21 Department and with the State Controller. Every State agency must report annually
22 to the ~~Department~~ State Controller the amount of debts owed to the agency for
23 which the agency did not submit a claim for setoff and the reason for not submitting
24 the claim.

25 A clearinghouse or an organization that submits debts on behalf of a local agency
26 must register with the Department. Once a clearinghouse registers with the
27 Department under this subsection, no other clearinghouse may register to submit
28 debts for collection under this Chapter.

29 "§ 105A-4. Minimum ~~sum collectible, debt and refund.~~

30 ~~A claimant agency shall not be allowed to effect final setoff and collect debts~~
31 ~~through use of the remedy established under this Article unless both the debt and the~~
32 ~~refund, if any, are~~ This Chapter applies only to a debt that is at least fifty dollars
33 ~~(\$50.00).~~ (\$50.00) and to a refund that is at least this same amount.

34 "§ 105A-5. Local agency notice, hearing, and decision.

35 (a) Prerequisite. -- A local agency may not submit a debt for collection under this
36 Chapter until it has given the notice required by this section, and the claim has been
37 finally determined as provided in this section.

38 (b) Notice. -- A local agency must send written notice to a debtor that the agency
39 intends to submit the debt owed by the debtor for collection by setoff. The notice
40 must explain the basis for the agency's claim to the debt and that the agency intends
41 to apply the debtor's refund against the debt. The notice must also inform the debtor
42 that the debtor has the right to contest the matter by filing a request for a hearing
43 with the local agency, must state the time limits and procedure for requesting the

1 hearing, and must state that failure to request a hearing within the required time will
2 result in setoff of the debt.

3 (c) Administrative Review. -- A debtor who decides to contest a proposed setoff
4 must file a written request for a hearing with the local agency within 30 days after the
5 date the local agency mails a notice of the proposed action to the debtor. A request
6 for a hearing is considered to be filed when it is delivered for mailing with postage
7 prepaid and properly addressed. The governing body of the local agency or a person
8 designated by the governing body must hold the hearing.

9 If the debtor disagrees with the decision of the governing body or the person
10 designated by the governing body, the debtor may file a petition for a contested case
11 under Article 3 of Chapter 150B of the General Statutes. The petition must be filed
12 within 30 days after the debtor receives a copy of the local decision. Notwithstanding
13 the provisions of G.S. 150B-2, a local agency is considered an agency for purposes of
14 contested cases and appeals under this Chapter.

15 In a hearing under this section, an issue that has previously been litigated in a
16 court proceeding cannot be considered.

17 (d) Decision. -- A decision made after a hearing under this section must determine
18 whether a debt is owed to the local agency and the amount of the debt.

19 (e) Return of Amount Setoff. -- If a local agency submits a debt for collection
20 under this Chapter without sending the notice required by subsection (b) of this
21 section, the agency must send the taxpayer the entire amount set off plus the
22 collection assistance fee retained by the Department. Similarly, if a local agency
23 submits a debt for collection under this Chapter after sending the required notice but
24 before final determination of the debt, and a decision finds that the local agency is
25 not entitled to any part of the amount set off, the agency must send the taxpayer the
26 entire amount set off plus the collection assistance fee retained by the Department.
27 That portion of the amount returned that reflects the collection assistance fee must be
28 paid from the local agency's funds.

29 If a local agency submits a debt for collection under this Chapter after sending the
30 required notice and the net proceeds collected that are credited to the local agency
31 for the debt exceed the amount of the debt, the local agency must send the balance to
32 the debtor. No part of the collection assistance fee retained by the Department may
33 be returned when a notice was sent and a debt is owed but the debt is less than the
34 amount set off.

35 Interest accrues on the amount of a refund returned to a taxpayer under this
36 subsection in accordance with G.S. 105-266. A local agency that returns a refund to a
37 taxpayer under this subsection must pay from the local agency's funds any interest
38 that has accrued since the fifth day after the Department mailed the notice of setoff
39 to the taxpayer.

40 ~~Collection of sums due claimant agencies through setoff.~~

41 ~~Subject to the limitations contained in this Article, the Department of Revenue~~
42 ~~shall upon request render assistance in the collection of any delinquent account or~~
43 ~~debt owing to any claimant agency. This assistance shall be provided by setting off~~

1 ~~any refunds due the debtor from the Department by the sum certified by claimant~~
2 ~~agency as due and owing.~~

3 **"§ 105A-6. Procedure for Department to follow in making setoff.**

4 (a) Notice to Department. -- A claimant agency seeking to attempt collection of a
5 debt through setoff ~~shall~~ must notify the Department in writing and supply ~~(i)~~
6 information necessary to identify the debtor whose refund is sought to be set off ~~and~~
7 ~~(ii) off.~~ The claimant agency may include with the notification the date, if any, that
8 the debt is expected to expire. Notification to the Department and the furnishing of
9 identifying information must occur on or before a date specified by the Department
10 in the first year preceding the calendar year during which the refund would be paid.
11 The notice is effective to initiate setoff against refunds that would be made in
12 calendar years following the year in which the notice was first made until the date
13 specified in the notice that the debt is expected to expire. The agency shall must
14 notify the Department in writing when a debt has been paid or is no longer owed the
15 agency.

16 (b) Setoff by Department. -- The Department, upon receipt of notification, shall
17 must determine each year whether the debtor to the claimant agency is entitled to a
18 refund of at least fifty dollars (\$50.00) from the Department. Upon determination by
19 the Department that a debtor specified by a claimant agency qualifies for such a
20 refund, the Department shall ~~notify in writing the claimant agency that a refund is~~
21 ~~pending, specify its sum, and indicate the debtor's address as listed on the tax return.~~

22 (e) ~~Unless stayed by court order, the Department shall, upon certification as~~
23 ~~provided in this Article, must set off the certified debt against the refund to which the~~
24 ~~debtor would otherwise be entitled. entitled and must refund any remaining balance~~
25 to the debtor. The Department must mail the debtor written notice that the setoff
26 has occurred and must credit the net proceeds collected to the claimant agency. If
27 the claimant agency is a State agency, that agency must credit the amount received to
28 a nonreverting trust account and must follow the procedure set in G.S. 105A-8.

29 **"§ 105A-7. Notification of intention to set off and right to hearing.**

30 (a) ~~The claimant agency, upon receipt of notification from the Department that a~~
31 ~~debtor is entitled to a refund, shall within 10 days send a written notification to the~~
32 ~~debtor and a copy of same to the Department of its assertion of rights to the refund~~
33 ~~or any part thereof. Such notification shall inform the debtor of the claimant agency's~~
34 ~~intention to direct the Department to apply the refund or any portion thereof against~~
35 ~~the debt certified as due and owing. For the Department to be obligated to continue~~
36 ~~holding refunds until receipt of certification of the debt, if any, pursuant to G.S.~~
37 ~~105A-10, the copy of the notification to the debtor by the claimant agency of its~~
38 ~~intention to set off must be received by the Department within 15 days of the date of~~
39 ~~the Department's mailing to the respective claimant agency the notification of the~~
40 ~~debtor's entitlement to a refund.~~

41 (b) ~~The contents of the written notification to the debtor (and the Department's~~
42 ~~copy) of the setoff claim shall clearly set forth the basis for the claim to the refund,~~
43 ~~the intention to apply the refund against the debt to the claimant agency, the debtor's~~
44 ~~opportunity to give written notice of intent to contest the validity of the claim within~~

~~30 days of the date of the mailing of the notice, the mailing address to which the application for a hearing must be sent, and the fact that failure to apply for a hearing in writing within the 30 day period will be deemed a waiver of the opportunity to contest the claim causing final setoff by default.~~

~~(e) The written application by the debtor for a hearing shall be effective upon mailing the application postage prepaid and properly addressed to the claimant agency.~~

"§ 105A-8. Hearing procedure: State agency notice, hearing, decision, and refund of setoff.

(a) Notice. -- Within 10 days after a State agency receives a refund of a debtor, the agency must send the debtor written notice that the agency has received the debtor's refund. The notice must explain the debt that is the basis for the agency's claim to the debtor's refund and that the agency intends to apply the refund against the debt. The notice must also inform the debtor that the debtor has the right to contest the matter by filing a request for a hearing, must state the time limits and procedure for requesting the hearing, and must state that failure to request a hearing within the required time will result in setoff of the debt. A State agency that does not send a debtor a notice within the time required by this subsection must refund the amount set off plus the collection assistance fee, in accordance with subsection (e) of this section.

(c) Hearing. -- A hearing on a contested claim of a State agency, except a constituent institution of The University of North Carolina or the Employment Security Commission, must be conducted in accordance with Article 3 of Chapter 150B of the General Statutes. A hearing on a contested claim of a constituent institution of The University of North Carolina must be conducted in accordance with administrative procedures approved by the Attorney General. A hearing on a contested claim of the Employment Security Commission must be conducted in accordance with rules adopted by that Commission. A request for a hearing on a contested claim of any State agency must be filed within 30 days after the State agency mails the debtor notice of the proposed setoff. A request for a hearing is considered to be filed when it is delivered for mailing with postage prepaid and properly addressed. In a hearing under this section, an issue that has previously been litigated in a court proceeding cannot be considered.

(d) Decision. -- A decision made after a hearing under this section must determine whether a debt is owed to the State agency and the amount of the debt.

(e) Return of Amount Set Off. -- If a State agency fails to send the notice required by subsection (a) of this section within the required time or a decision finds that a State agency is not entitled to any part of an amount set off, the agency must send the taxpayer the entire amount set off plus the collection assistance fee retained by the Department. That portion of the amount returned that reflects the collection assistance fee must be paid from the State agency's funds.

If a debtor owes a debt to a State agency and the net proceeds credited to the State agency for the debt exceed the amount of the debt, the State agency must send the balance to the debtor. No part of the collection assistance fee retained by the

1 Department may be returned when a debt is owed but it is less than the amount set
2 off.

3 Interest accrues on the amount of a refund returned to a taxpayer under this
4 subsection in accordance with G.S. 105-266. A State agency that returns a refund to a
5 taxpayer under this subsection must pay from the State agency's funds any interest
6 that has accrued since the fifth day after the Department mailed the notice of setoff
7 to the taxpayer.

8 ~~(a) A hearing on a contested claim, other than a claim of a constituent institution~~
9 ~~of The University of North Carolina, or a claim of the Employment Security~~
10 ~~Commission of North Carolina, shall be conducted in accordance with Article 3 of~~
11 ~~Chapter 150B of the General Statutes. A hearing on a contested claim of a~~
12 ~~constituent institution of The University of North Carolina shall be conducted in~~
13 ~~accordance with administrative procedures approved by the Attorney General. A~~
14 ~~hearing on a contested claim of the Employment Security Commission of North~~
15 ~~Carolina shall be conducted in accordance with regulations adopted by the~~
16 ~~Employment Security Commission of North Carolina. Additionally, it shall be~~
17 ~~determined at the hearing whether the claimed sum asserted as due and owing is~~
18 ~~correct, and if not, an adjustment to the claim shall be made.~~

19 ~~(b) Pending final determination at hearing of the validity of the debt asserted by~~
20 ~~the claimant agency, no action shall be taken in furtherance of collection through the~~
21 ~~setoff procedure allowed under this Article.~~

22 ~~(c) No issues may be considered at the hearing which have been previously~~
23 ~~litigated.~~

24 **"§ 105A-9. Appeals from hearings.**

25 Appeals from ~~action taken at~~ hearings allowed under this Article Chapter, other
26 than those conducted by the Employment Security Commission, shall be in
27 accordance with the provisions of Chapter 150B of the General Statutes, the
28 Administrative Procedure Act, except that the place of initial judicial review shall be
29 the superior court for the county in which the debtor resides. Appeals from ~~actions~~
30 hearings allowed under this Article Chapter that are conducted by the Employment
31 Security Commission of North Carolina shall be in accordance with the provisions of
32 Chapter 96 of the General Statutes.

33 ~~"§ 105A-10. Certification of debt by claimant agency; finalization of setoff.~~

34 ~~(a) Upon final determination through hearing provided by G.S. 105A-8 of the debt~~
35 ~~due and owing the claimant agency or upon the debtor's default for failure to~~
36 ~~comply with G.S. 105A-7 mandating timely request for review of the asserted basis~~
37 ~~for setoff, the claimant agency shall within 20 days certify the debt to the Department~~
38 ~~and in default thereof, the Department shall no longer be obligated to hold the~~
39 ~~refund for setoff.~~

40 ~~(b) Upon receipt by the Department of a certified debt from the claimant agency,~~
41 ~~the Department shall finalize the setoff by transferring the net proceeds collected for~~
42 ~~credit or payment in accordance with the provisions of G.S. 105A-14 and by~~
43 ~~refunding any remaining balance to the debtor as if setoff had not occurred.~~

44 ~~"§ 105A-11. Notice of final setoff.~~

1 ~~Upon the finalization of setoff under the provisions of this Article, the Department~~
2 ~~shall notify the debtor in writing of the action taken along with an accounting of the~~
3 ~~action taken on any refund. If there is an outstanding balance after setoff, the notice~~
4 ~~under this section shall accompany the balance when disbursed.~~

5 **"§ 105A-12. Priorities in claims to setoff.**

6 ~~Priority in multiple claims to refunds allowed to be set off under the provisions of~~
7 ~~this Article shall be in the order in time which a claimant agency has filed a written~~
8 ~~notice with the Department of its intention to effect collection through setoff under~~
9 ~~this Article. Notwithstanding the priority set forth above according to time of filing,~~
10 ~~the Department has priority over all other claimant agencies for collection by~~
11 ~~setoff whenever it is a competing agency for a refund. The Department of Human~~
12 ~~Resources and the counties that are acting on behalf of that Department and are~~
13 ~~therefore considered to be State agencies have priority over all other State agencies~~
14 ~~except the Department of Revenue. State agencies have priority over local agencies~~
15 ~~for collection by setoff. When there are multiple claims by State agencies that do not~~
16 ~~have priority over other State agencies, the claims have priority based on the date~~
17 ~~each agency registered with the Department under G.S. 105A-3. When there are~~
18 ~~multiple claims by two or more organizations submitting debts on behalf of local~~
19 ~~agencies, the claims have priority based on the date each organization registered with~~
20 ~~the Department under G.S. 105A-3. When there are multiple claims among local~~
21 ~~agencies whose debts are submitted by the same organization, the claims have priority~~
22 ~~based on the date each local agency requested the organization to submit debts on its~~
23 ~~behalf.~~

24 **"§ 105A-13. ~~Disposition of proceeds collected; collection~~ Collection assistance fees.**

25 ~~(a) Upon effecting final setoffs, the Department shall periodically write checks to~~
26 ~~the respective claimant agencies for the net proceeds collected on their behalf.~~
27 ~~(b) Each year the Department shall determine its actual cost of collection under~~
28 ~~the Setoff Debt Collection Act for the immediately preceding year and shall calculate~~
29 ~~the percentage that cost represents of the preceding year's collections, excluding~~
30 ~~collections of child support arrearages under G.S. 105A-2(1)d. The Department shall~~
31 ~~retain that percentage from the gross proceeds collected by the Department through~~
32 ~~setoff for the current year, other than the gross proceeds collected of child support~~
33 ~~arrearages under G.S. 105A-2(1)d. To recover the costs incurred by the Department~~
34 ~~in collecting debts under this Chapter, a collection assistance fee of no more than~~
35 ~~fifteen dollars (\$15.00) is imposed on each debt collected through setoff. The~~
36 ~~Department must collect this fee as part of the debt and retain it. The Department~~
37 ~~must set the amount of the collection assistance fee based on its actual cost of~~
38 ~~collection under this Chapter for the immediately preceding year. If the Department~~
39 ~~is able to collect only part of a debt through setoff, the collection assistance fee has~~
40 ~~priority over the remainder of the debt. The collection assistance fee shall not be~~
41 ~~added to child support debts or collected as part of child support debts. Instead, the~~
42 ~~Department shall retain from collections under Division II of Article 4 of Chapter~~
43 ~~105 of the General Statutes the cost of collecting child support debts under this~~
44 ~~Chapter.~~

1 "**§ 105A-14. Accounting to the claimant agency; credit to debtor's obligation.**

2 (a) Simultaneously with the transmittal of ~~a check for~~ the net proceeds collected
3 to a claimant agency, the Department ~~shall~~ must provide the agency with an
4 accounting of the setoffs ~~finalized~~ for which payment is being made. The accounting
5 ~~shall, must,~~ whenever possible, include the full names of the debtors, the debtors'
6 social security numbers, the gross proceeds collected per ~~individual~~ setoff, the net
7 proceeds collected per setoff, and the collection assistance fee added to the debt and
8 collected charged per setoff.

9 (b) Upon receipt by a claimant agency of ~~a check representing~~ net proceeds
10 collected on ~~a~~ the claimant agency's behalf by the ~~Department~~ Department, a final
11 determination of the claim if it is a State agency claim, and an accounting of the
12 proceeds as specified under this section, the claimant agency ~~shall~~ must credit the
13 debtor's obligation with the gross net proceeds collected.

14 "**§ 105A-15. Confidentiality exemption; nondisclosure.**

15 (a) Notwithstanding G.S. 105-259 or any other provision of law prohibiting
16 disclosure by the Department of the contents of taxpayer records or information and
17 notwithstanding any confidentiality statute of any claimant agency, ~~at~~ the exchange of
18 any information exchanged among the Department, the claimant agency, the
19 organization submitting debts on behalf of a local agency, and the debtor necessary to
20 ~~accomplish and effectuate the intent of this Article~~ implement this Chapter is lawful.

21 (b) The information ~~obtained by~~ a claimant agency or an organization submitting
22 debts on behalf of a local agency obtains from the Department in accordance with the
23 exemption allowed by subsection (a) ~~shall only~~ may be used by ~~a claimant~~ the agency
24 or organization only in the pursuit of its debt collection duties and ~~practices and any~~
25 ~~person employed by, or formerly employed by, a claimant agency who discloses any~~
26 ~~such information for any other purpose, except as otherwise allowed by G.S. 105-259,~~
27 ~~shall be penalized in accordance with the terms of that statute.~~ practices and may not
28 be disclosed except as provided in G.S. 105-259, 153A-148.1, or 160A-208.1.

29 "**§ 105A-16. Rules and regulations. Rules.**

30 The Secretary of Revenue ~~is authorized to prescribe forms and make all rules~~
31 ~~which he deems necessary in order to effectuate the intent of this Article.~~ may adopt
32 rules to implement this Chapter. The State Controller may adopt rules to implement
33 this Chapter."

34 Section 2. G.S. 105-266(b) reads as rewritten:

35 "(b) Interest. -- An overpayment of tax bears interest at the rate established in
36 G.S. 105-241.1(i) from the date that interest begins to accrue until a refund is paid. A
37 refund sent to a taxpayer is considered paid on a date determined by the Secretary
38 that is no sooner than five days after a refund check is mailed.

39 A refund set off against a debt pursuant to Chapter 105A of the General Statutes is
40 considered paid five days after the Department mails the taxpayer a notice of the
41 setoff, unless G.S. 105A-5 or G.S. 105A-8 requires the agency that requested the
42 setoff to return the refund to the taxpayer. In this circumstance, the refund that was
43 set off is not considered paid until five days after the agency that requested the
44 refund mails the taxpayer a check for the refund.

1 Interest on an overpayment of a tax, other than a tax levied under Article 4 or
2 Article 8B of this Chapter, accrues from a date 90 days after the date the tax was
3 originally paid by the taxpayer until the refund is paid. Interest on an overpayment of
4 a tax levied under Article 4 or Article 8B of this Chapter accrues from a date 45 days
5 after the latest of the following dates until the refund is paid:

- 6 (1) The date the final return was filed.
- 7 (2) The date the final return was due to be filed.
- 8 (3) The date of the overpayment.

9 The date of an overpayment of a tax levied under Article 4 or Article 8B of this
10 Chapter is determined in accordance with section 6611(d), (f), (g), and (h) of the
11 Code."

12 Section 3. The General Assembly finds that the Department of Human
13 Resources will incur extraordinary one-time costs for automation in administering the
14 requirements of this act because the various divisions of the Department of Human
15 Resources and the county agencies through which they administer their programs
16 have an extraordinary number of debts that they are required by law to collect
17 through setoff. Accordingly, there is appropriated from the General Fund to the
18 Department of Human Resources the sum of \$X for the 1998-99 fiscal year for
19 one-time automation costs and related costs of administering the requirements of this
20 act. These funds shall not revert but shall remain available to the Department of
21 Human Resources until used for this purpose.

22 Section 4. The General Assembly finds that the Department of Human
23 Resources will incur extraordinary recurring costs for personnel in administering the
24 requirements of this act because the various divisions of the Department of Human
25 Resources and the county agencies through which they administer their programs
26 have an extraordinary number of debts that they are required by law to collect
27 through setoff. Accordingly, it is the intent of the General Assembly to appropriate
28 to the Department of Human Resources the sum of \$X in recurring funds beginning
29 in the 1999-2000 fiscal year for recurring costs of administering the requirements of
30 this act.

31 Section 5. The changes to G.S. 105A-3(d) and G.S. 105A-16 made by
32 this act are effective when this act becomes law. The changes to G.S. 105A-5 made
33 by this act become effective January 1, 1999. Section 3 of this act becomes effective
34 July 1, 1998. The remainder of this act becomes effective January 1, 2000, and
35 applies to income tax refunds determined on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 266

Short Title: Production and Sale of Red Deer.

(Public)

Sponsors: Senators Ledbetter; Allran, Ballantine, Blust, Carpenter, Carrington, Clark, Cochrane, East, Forrester, Foxx, Garwood, Hartsell, Horton, Kincaid, McDaniel, Page, Rucho, Shaw of Guilford, and Webster.

Referred to: Agriculture/Environment/Natural Resources.

February 27, 1997

1 A BILL TO BE ENTITLED

2 AN ACT TO AUTHORIZE THE PRODUCTION AND SALE OF RED DEER.

3 The General Assembly of North Carolina enacts:

4 Section 1. Article 49 of Chapter 106 of the General Statutes reads as
5 rewritten:

6 "ARTICLE 49H.

7 "Production and Sale of Fallow ~~Deer.~~ Deer and Red Deer.

8 "**§ 106-549.97. Regulation of fallow deer and red deer by Department of Agriculture;**
9 **certain authority of North Carolina Wildlife Resources Commission not affected.**

10 (a) The Department of Agriculture shall regulate the production and sale of
11 fallow deer and red deer for food purposes. The Board of Agriculture shall adopt
12 rules for the production and sale of fallow deer and red deer for food purposes in
13 such a manner as to provide for close supervision of any person, firm, or corporation
14 producing and selling fallow deer or red deer, or both, for food purposes.

15 ~~As used in this section, 'fallow deer' (*Dama dama* spp.) means a small European~~
16 ~~deer raised commercially for production and sale for food purposes.~~

17 (b) The North Carolina Wildlife Resources Commission shall regulate the
18 possession and transportation of live fallow deer and live red deer and may adopt
19 rules to prevent the release or escape of fallow deer or red deer, or both, upon
20 finding that it is necessary to protect live fallow deer or live red deer, or both or to
21 prevent damage to ~~the~~ either or both of these native deer population populations or
22 ~~its habitat.~~ their habitats.

1 (c) As used in this Article:

2 (1) 'Fallow deer' means a small European deer (Dama dama spp).

3 (2) 'Red deer' means a deer native to Europe (Cervus elephus).

4 "§ 106-549.98. **Inspection fees.**

5 The Commissioner may establish a fee at an hourly rate to be paid by the owner,
6 proprietor, or operator of each slaughtering, meat-canning, salting, packing,
7 rendering, or similar establishment for the purpose of defraying the expenses incurred
8 in the inspection of fallow deer as required by Article 49B of Chapter 106 of the
9 General Statutes. The Commissioner may establish a fee at an hourly rate to be paid
10 by the owner, proprietor, or operator of each slaughtering, meat-canning, salting,
11 packing, rendering, or similar establishment for the purpose of defraying the expenses
12 incurred in the inspection of red deer as required by Article 49B of Chapter 106 of
13 the General Statutes."

14 Section 2. G.S. 113-129(1b) reads as rewritten:

15 "(1b) Big Game. -- Bear, wild boar, wild turkey, and deer, not to
16 include fallow deer or red deer raised for production and sale
17 under G.S. 106-549.97."

18 Section 3. G.S. 113-129(7c) reads as rewritten:

19 "(7c) Game Animals. -- Bear, fox, rabbit, squirrel, wild boar, and deer,
20 not to include fallow deer or red deer raised for production and
21 sale under G.S. 106-549.97; bobcat, opossum, and raccoon except
22 when trapped in accordance with provisions relating to fur-
23 bearing animals."

24 Section 4. G.S. 106-549.15(14) reads as rewritten:

25 "(14) 'Meat food product' means any product capable of use as human
26 food that is made wholly or in part from any meat or other
27 portion of the carcass of any cattle, sheep, swine, goats, bison, ~~or~~
28 fallow deer, or red deer, excepting products that contain meat or
29 other portions of such carcasses only in a relatively small
30 proportion or historically have not been considered by consumers
31 as products of the meat food industry, and that are exempted
32 from definition as a meat food product by the Board under such
33 conditions as it may prescribe to assure that the meat or other
34 portions of such carcasses contained in such product are not
35 adulterated and that such products are not represented as meat
36 food products. This term as applied to food products of equines
37 shall have a meaning comparable to that provided in this
38 subdivision with respect to cattle, sheep, swine, goats, and bison."

39 Section 5. G.S. 106-549.15(22) reads as rewritten:

40 "(22) 'Renderer' means any person, firm, or corporation engaged in the
41 business of rendering carcasses, or parts or products of the
42 carcasses, of cattle, sheep, swine, goats, fallow deer, red deer,
43 horses, mules, or other equines, except rendering conducted
44 under inspection under this Article."

1 Section 6. G.S. 106-549.17 reads as rewritten:

2 "§ 106-549.17. Inspection of animals before slaughter; humane methods of
3 slaughtering.

4 (a) For the purpose of preventing the use in intrastate commerce, as hereinafter
5 provided, of meat and meat food products which are adulterated, the Commissioner
6 shall cause to be made, by inspectors appointed for that purpose, an examination and
7 inspection of all cattle, sheep, swine, goats, fallow deer, red deer, bison, horses,
8 mules, and other equines before they shall be allowed to enter into any slaughtering,
9 packing, meat-canning, rendering, or similar establishment in this State in which
10 slaughtering and preparation of meat and meat food products of such animals are
11 conducted for intrastate commerce; and all cattle, sheep, swine, goats, fallow deer,
12 red deer, bison, horses, mules, and other equines found on such inspection to show
13 symptoms of disease shall be set apart and slaughtered separately from all other
14 cattle, sheep, swine, goats, fallow deer, red deer, bison, horses, mules, or other
15 equines, and when so slaughtered, the carcasses of said cattle, sheep, swine, goats,
16 fallow deer, red deer, bison, horses, mules, or other equines shall be subject to a
17 careful examination and inspection, all as provided by the rules and regulations to be
18 prescribed by the Board as herein provided for.

19 (b) For the purpose of preventing the inhumane slaughtering of livestock, the
20 Commissioner shall cause to be made, by inspectors appointed for that purpose, an
21 examination and inspection of the method by which cattle, sheep, swine, goats, fallow
22 deer, red deer, bison, horses, mules, and other equines are slaughtered and handled
23 in connection with slaughter in the slaughtering establishments inspected under this
24 law. The Commissioner may refuse to provide inspection to a new slaughtering
25 establishment or may cause inspection to be temporarily suspended at a slaughtering
26 establishment if the Commissioner finds that any cattle, sheep, swine, goats, fallow
27 deer, red deer, bison, horses, mules, or other equines have been slaughtered or
28 handled in connection with slaughter at such establishment by any method not in
29 accordance with subsection (c) of this section until the establishment furnishes
30 assurances satisfactory to the Commissioner that all slaughtering and handling in
31 connection with slaughter of livestock shall be in accordance with such a method.

32 (c) Either of the following two methods of slaughtering of livestock and handling
33 of livestock in connection with slaughter are found to be humane:

34 (1) In the case of cattle, calves, fallow deer, red deer, bison, horses,
35 mules, sheep, swine, and other livestock, all animals are rendered
36 insensible to pain by a single blow or gunshot or an electrical,
37 chemical, or other means that is rapid and effective, before being
38 shackled, hoisted, thrown, cast, or cut; or

39 (2) By slaughtering in accordance with the ritual requirements of the
40 Jewish faith or any other religious faith that prescribes a method
41 of slaughter whereby the animal suffers loss of consciousness by
42 anemia of the brain caused by the simultaneous and instantaneous
43 severance of the carotid arteries with a sharp instrument and
44 handling in connection with such slaughtering."

1 Section 7. G.S. 106-549.18 reads as rewritten:

2 **"§ 106-549.18. Inspection; stamping carcass.**

3 For the purposes hereinbefore set forth the Commissioner shall cause to be made
4 by inspectors appointed for that purpose, as hereinafter provided, a post mortem
5 examination and inspection of the carcasses and parts thereof of all cattle, sheep,
6 swine, goats, fallow deer, red deer, bison, horses, mules, and other equines, capable of
7 use as human food, to be prepared at any slaughtering, meat-canning, salting,
8 packing, rendering, or similar establishment in this State in which such articles are
9 prepared for intrastate commerce; and the carcasses and parts thereof of all such
10 animals found to be not adulterated shall be marked, stamped, tagged, or labeled, as
11 'Inspected and Passed'; and said inspectors shall label, mark, stamp, or tag as
12 'Inspected and Condemned,' all carcasses and parts thereof of animals found to be
13 adulterated; and all carcasses and parts thereof thus inspected and condemned shall
14 be destroyed for food purposes by the said establishment in the presence of an
15 inspector, and the Commissioner or his authorized representative may remove
16 inspectors from any such establishment which fails to so destroy any such condemned
17 carcass or part thereof, and said inspectors, after said first inspection shall, when they
18 deem it necessary, reinspect said carcasses or parts thereof to determine whether
19 since the first inspection the same have become adulterated and if any carcass or any
20 part thereof shall, upon examination and inspection subsequent to the first
21 examination and inspection, be found to be adulterated, it shall be destroyed for food
22 purposes by the said establishment in the presence of an inspector, and the
23 Commissioner or his authorized representative may remove inspectors from any
24 establishment which fails to [do] so destroy any such condemned carcass or part
25 thereof."

26 Section 8. G.S. 106-549.19 reads as rewritten:

27 **"§ 106-549.19. Application of Article; place of inspection.**

28 The foregoing provisions shall apply to all carcasses or parts of carcasses of cattle,
29 sheep, swine, goats, fallow deer, red deer, bison, horses, mules, and other equines or
30 the meat or meat products thereof, capable of use as human food, which may be
31 brought into any slaughtering, meat-canning, salting, packing, rendering, or similar
32 establishment, where inspection under this Article is maintained, and such
33 examination and inspection shall be had before the said carcasses or parts thereof
34 shall be allowed to enter into any department wherein the same are to be treated and
35 prepared for meat food products; and the foregoing provisions shall also apply to all
36 such products which, after having been issued from any such slaughtering, meat-
37 canning, salting, packing, rendering, or similar establishment, shall be returned to the
38 same or to any similar establishment where such inspection is maintained. The
39 Commissioner or his authorized representative may limit the entry of carcasses, part
40 of carcasses, meat and meat food products, and other materials into any establishment
41 at which inspection under this Article is maintained, under such conditions as he may
42 prescribe to assure that allowing the entry of such articles into such inspected
43 establishments will be consistent with the purposes of this and the subsequent
44 Article."

1 Section 9. G.S. 106-549.22 reads as rewritten:

2 **"§ 106-549.22. Rules and regulations of Board.**

3 The Commissioner or his authorized representative shall cause to be made, by
4 experts in sanitation, or by other competent inspectors, such inspection of all
5 slaughtering, meat-canning, salting, packing, rendering, or similar establishments in
6 which cattle, sheep, swine, goats, fallow deer, red deer, bison, horses, mules, and
7 other equines are slaughtered and the meat and meat food products thereof are
8 prepared for intrastate commerce as may be necessary to inform himself concerning
9 the sanitary conditions of the same, and the Board shall prescribe the rules and
10 regulations of sanitation under which such establishments shall be maintained; and
11 where the sanitary conditions of any such establishment are such that the meat or
12 meat food products are rendered adulterated, the Commissioner or his authorized
13 representative shall refuse to allow said meat or meat food products to be labeled,
14 marked, stamped, or tagged as 'North Carolina Department of Agriculture Inspected
15 and Passed.'"

16 Section 10. G.S. 106-549.23 reads as rewritten:

17 **"§ 106-549.23. Prohibited slaughter, sale and transportation.**

18 No person, firm, or corporation shall, with respect to any cattle, sheep, swine,
19 goats, fallow deer, red deer, bison, horses, mules, or other equines, or any carcasses,
20 parts of carcasses, meat or meat food products of any such animals:

21 (1) Slaughter any of these animals or prepare any of these articles
22 which are capable of use as human food, at any establishment
23 preparing any such articles for intrastate commerce except in
24 compliance with the requirements of this and the subsequent
25 Article;

26 (2) Slaughter, or handle in connection with slaughter, any such
27 animals in any manner not in accordance with G.S. 106-549.17(c)
28 of this Article;

29 (3) Sell, transport, offer for sale or transportation, or receive for
30 transportation, in intrastate commerce:

31 a. Any of these articles which (i) are capable of use as human
32 food and (ii) are adulterated or misbranded at the time of
33 sale, transportation, offer for sale or transportation, or
34 receipt for transportation; or

35 b. Any articles required to be inspected under this Article
36 unless they have been so inspected and passed; or

37 (4) Do, with respect to any of these articles which are capable of use
38 as human food, any act while they are being transported in
39 intrastate commerce or held for sale after such transportation,
40 which is intended to cause or has the effect of causing the articles
41 to be adulterated or misbranded."

42 Section 11. G.S. 106-549.25 reads as rewritten:

43 **"§ 106-549.25. Slaughter, sale and transportation of equine carcasses.**

1 No person, firm, or corporation shall sell, transport, offer for sale or transportation,
2 or receive for transportation, in intrastate commerce, any carcasses of horses, mules,
3 or other equines or parts of such carcasses, or the meat or meat food products
4 thereof, unless they are plainly and conspicuously marked or labeled or otherwise
5 identified as required by regulations prescribed by the Board to show the kinds of
6 animals from which they were derived. When required by the Commissioner or his
7 authorized representative, with respect to establishments at which inspection is
8 maintained under this Article, such animals and their carcasses, parts thereof, meat
9 and meat food products shall be prepared in establishments separate from those in
10 which cattle, sheep, swine, fallow deer, red deer, bison, or goats are slaughtered or
11 their carcasses, parts thereof, meats or meat food products are prepared."

12 Section 12. G.S. 106-549.26 reads as rewritten:

13 "**§ 106-549.26. Inspection of establishment; bribery of or malfeasance of inspector.**

14 The Commissioner or his authorized representative shall appoint from time to time
15 inspectors to make examination and inspection of all cattle, sheep, swine, goats,
16 fallow deer, red deer, bison, horses, mules, and other equines the inspection of which
17 is hereby provided for, and of all carcasses and parts thereof, and of all meats and
18 meat food products thereof, and of the sanitary conditions of all establishments in
19 which such meat and meat food products hereinbefore described are prepared; and
20 said inspectors shall refuse to stamp, mark, tag or label any carcass or any part
21 thereof, or meat food product therefrom, prepared in any establishment hereinbefore
22 mentioned, until the same shall have actually been inspected and found to be not
23 adulterated; and shall perform such other duties as are provided by this and the
24 subsequent Article and by the rules and regulations to be prescribed by said Board
25 and said Board shall, from time to time, make such rules and regulations as are
26 necessary for the efficient execution of the provisions of this and the subsequent
27 Article, and all inspections and examinations made under this Article shall be such
28 and made in such manner as described in the rules and regulations prescribed by said
29 Board not inconsistent with the provisions of this Article and as directed by the
30 Commissioner or his authorized representative. Any person, firm, or corporation, or
31 any agent or employee of any person, firm, or corporation, who shall give, pay, or
32 offer, directly or indirectly, to any inspector, or any other officer or employee of this
33 State authorized to perform any of the duties prescribed by this and the subsequent
34 Article or by the rules and regulations of the Board or by the Commissioner or his
35 authorized representative any money or other thing of value, with intent to influence
36 said inspector, or other officer or employee of this State in the discharge of any duty
37 herein provided for, shall be deemed guilty of a Class I felony which may include a
38 fine not less than five hundred dollars (\$500.00) nor more than ten thousand dollars
39 (\$10,000); and any inspector, or other officer or employee of this State authorized to
40 perform any of the duties prescribed by this Article who shall accept any money, gift,
41 or other thing of value from any person, firm, or corporation, or officers, agents, or
42 employees thereof, given with intent to influence his official action, or who shall
43 receive or accept from any person, firm, or corporation engaged in intrastate
44 commerce any gift, money, or other thing of value given with any purpose or intent

1 whatsoever, shall be deemed guilty of a Class I felony and shall, upon conviction
2 thereof, be summarily discharged from office and may be punished by a fine not less
3 than five hundred dollars (\$500.00) nor more than ten thousand dollars (\$10,000)."

4 Section 13. G.S. 106-549.27(a) reads as rewritten:

5 "(a) The provisions of this Article requiring inspection of the slaughter of animals
6 and the preparation of the carcasses, parts thereof, meat and meat food products at
7 establishments conducting such operations shall not

8 (1) Apply to the slaughtering by any person of animals of his own
9 raising, and the preparation by him and transportation in
10 intrastate commerce of the carcasses, parts thereof, meat and meat
11 food products of such animals exclusively for use by him and
12 members of his household and his nonpaying guests and
13 employees; nor

14 (2) To the custom slaughter by any person, firm, or corporation of
15 cattle, sheep, swine, fallow deer, red deer, bison, or goats
16 delivered by the owner thereof for such slaughter, and the
17 preparation by such slaughterer and transportation in intrastate
18 commerce of the carcasses, parts thereof, meat and meat food
19 products of such animals, exclusively for use, in the household of
20 such owner, by him, and members of his household and his
21 nonpaying guests and employees: Provided, that all carcasses,
22 parts thereof, meat and meat food products derived from custom
23 slaughter shall be identified as required by the Commissioner,
24 during all phases of slaughtering, chilling, cooling, freezing,
25 packing, meat canning, rendering, preparation, storage and
26 transportation; provided further, that the custom slaughterer does
27 not engage in the business of buying or selling any carcasses, parts
28 thereof, meat or meat food products of any cattle, sheep, swine,
29 goats, fallow deer, red deer, bison, or equines, capable of use as
30 human food, unless the carcasses, parts thereof, meat or meat
31 food products have been inspected and passed and are identified
32 as having been inspected and passed by the Commissioner or the
33 United States Department of Agriculture."

34 Section 14. G.S. 106-549.28 reads as rewritten:

35 "§ 106-549.28. Regulation of storage of meat.

36 The Board may by regulations prescribe conditions under which carcasses, parts of
37 carcasses, meat, and meat food products of cattle, sheep, swine, goats, fallow deer, red
38 deer, bison, horses, mules, or other equines, capable of use as human food, shall be
39 stored or otherwise handled by any person, firm, or corporation engaged in the
40 business of buying, selling, freezing, storing, or transporting, in or for intrastate
41 commerce, such articles, whenever the Board deems such action necessary to assure
42 that such articles will not be adulterated or misbranded when delivered to the
43 consumer. Willful violation of any such regulation is a Class 2 misdemeanor."

44 Section 15. This act is effective when it becomes law.

ASSUMPTIONS AND METHODOLOGY: The Department of Agriculture/ Meat and Poultry Inspection section charges \$26/hour to inspect “exotic” animals such as bison, ostrich and fallow deer. The Department will charge the same inspection fee for red deer. Any revenue from this fee will be deposited as a receipt in the Meat and Poultry Inspection budget. The Department could ask the Office of State Budget & Management to increase their budget so that they may spend these receipts or the agency could apply them to their budget and reduce their General Fund appropriation.

The Department has not received a request for red deer inspection and did not know of any demand for red deer meat. The Department has had the authority to inspect fallow deer since 1991, but has not made one inspection. The bill was requested on behalf of a potential deer farmer in Buncombe County. Upon enactment of this bill, this farmer will acquire 20 to 25 red deer for breeding. It will take three to four years before enough deer are available for market. The number of other potential deer farmers in the state is unknown.



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 266

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

S266-ALJ-4/8

Date _____, 1997

Comm. Sub. []
Amends Title []

Senator _____

- 1 moves to amend the bill on page 1, lines 21 and 22, by rewriting
- 2 those lines to read:
- 3 "prevent damage to the native deer population or its habitat."

SIGNED J. Ken
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

EXPLANATION OF SENATE BILL 266
Production and Sale of Red Deer

TO: Senate Finance Committee
FROM: Sabra Faires, Committee Counsel
DATE: April 8, 1997
SPONSOR: Senator Ledbetter

Senate Bill 266 allows North Carolina farmers to raise red deer for production and sale. Red deer are a small European species that are raised commercially in other parts of the world. The red deer species is an exotic species to North Carolina.

The bill enables red deer to be raised for food in this State by making the following changes in the law:

Directing the Department of Agriculture to regulate the production and sale of red deer for food purposes.

Directing the Wildlife Resources Commission to regulate the possession and transportation of red deer.

Requiring red deer meat to be inspected by the Department of Agriculture when it is processed to ensure that meat distributed to consumers is wholesome, not adulterated, and properly marked, labeled, and packaged.

Authorizing the Department of Agriculture to establish an hourly fee to be paid by processors of red deer meat to defray the expenses incurred in inspecting red deer meat.

If meat is required to be inspected under federal law, the cost of the inspection is shared by the State and federal government. Red deer is not subject to the federal meat inspection laws. The cost of performing the inspection must therefore be borne by the State. The fee authorized by the bill will enable the Department to recover the costs it will incur in providing this service.

AGRICULTURAL ALTERNATIVES

Red Deer Production

Although commercial deer farming is a relatively new business, it generates more than \$100 million in annual income for major deer-producing countries, such as New Zealand, Ireland, Great Britain, and Germany. Americans consumed about 1.2 million pounds of commercially produced venison in 1992, and this market has grown 25 to 30 percent annually. Twenty-five percent of this venison is raised domestically, and the balance is imported primarily from New Zealand.

U.S. deer production is growing steadily due to increasing demand for deer products, minimal acreage requirements for production, and adaptability of deer to marginal pastures. More than 200,000 red, fallow, axis, sika, elk, and white-tailed deer are raised in national parks and on game preserves, farms, and ranches. Pennsylvania has about 30 commercial deer operations.

Compared to other livestock enterprises, deer farming has several advantages. Because deer convert pasture efficiently into protein, with proper management they can be raised on marginal land. They also fit well into an existing grazing operation. Another advantage is the high ratio of lean meat produced per pound of live weight. The labor requirements for deer production are minimal, while the profit potential can be much greater than for a comparable beef cow-calf operation.

This publication was developed by the Small-scale and Part-time Farming Project at Penn State with support from the U.S. Department of Agriculture-Extension Service.



Almost 25,000 red deer are produced annually on U.S. and Canadian farms. The advantages of raising this breed include the following:

- Red deer have a high fertility rate and a long productive breed life.
- They calve easily and wean their calves early.
- Their calm disposition and compact body size make them easy to handle and transport.
- They tolerate cold winters and hot summers and have low susceptibility to disease.
- They yield high-quality meat, by-products, and velvet antler.

PENNSYLVANIA STATE UNIVERSITY



College of Agricultural Sciences ■ Cooperative Extension

Marketing

Before establishing a deer operation, you should research local demand and identify possible markets for your products. Producers can market directly or through a distributor. Individual producers can promote their products through county fairs, mail-order businesses, state and national deer associations, agricultural publications, and media outlets.

Although they are known throughout the world for their velvet production, red deer are raised mainly for venison and breeding stock. Farm-raised venison is a fine-grained, mild, tender meat with a delicate flavor that is distinctly different from wild game venison. It also meets the American Heart Association's guidelines per serving for fat, cholesterol, and calories (Table 1). While venison is sold mostly to gourmet restaurants, the meat also is sold to the general public through specialty shops or mail-order businesses, and at special events such as food fairs.

Table 1. Calories, cholesterol, fat, and protein content of various types of meat (3-ounce cooked portions).

	CALORIES	CHOLESTEROL (MG)	FAT (MG)	PROTEIN (MG)
Venison loin	139	62	5	22
Beef brisket	223	77	13	24
Ground beef	213	84	12	25
Pork shoulder	207	82	13	22
Beef bottom round	189	81	8	27
Lamb loin	183	80	8	25
Veal cutlet	155	112	4	28
Chicken breast	140	72	3	26
Salmon	140	60	5	22

SOURCE: USDA research; venison analysis by The National Food Laboratory, Inc.

Yearlings are slaughtered between 14 and 20 months of age at a weight of about 200 pounds. Two-year-olds are slaughtered at 24 to 30 months of age at a weight of 240 to 300 pounds. The meat is sold as various cuts, in quarters, and as whole carcasses. Some large producers have their own on-site USDA slaughtering facilities. For smaller operations without on-site facilities, USDA has a voluntary inspection program that for a fee offers live inspection on the farm and a postmortem inspection at a USDA-inspected slaughtering facility.

Red deer produce a large amount of good-quality velvet. The velvet antler is removed in early summer, when it has reached about 55 percent full growth and weighs 2 to 10 pounds. Velvet antler is used to produce traditional Asian medicines and tonics. The market for velvet antler often is unstable and currently is dominated by countries producing large amounts of red deer and elk.

Breeder markets are another specialized outlet for red deer producers. Weaners, yearlings, and older breeders can be sold directly to other producers or at auctions. When selling breeding stock, you need to have accurate performance and health records readily available. Many customers are looking for stags (males) with high weight gains and high velvet yields and for hinds (females) with high weight gains and good fertility. A calm temperament also is important as the animals are not completely domesticated.

Deer by-products, including hides, tails, leg sinews, antler buttons, and ivories (eye teeth), all have special markets. Stags can be sold as trophy animals to game and hunting preserves.

Facilities and Equipment

Deer farming requires special facilities, including grazing land, a fresh water supply, and natural shelter for calving, such as trees, shrubs, or fallen branches. Red deer also enjoy having an open water supply for wallowing. The stocking rate for red deer generally is six adults plus nursing calves per acre of pasture. Grazing areas should be fenced with 17 strands of wire at least 75 inches tall. A high-tensile woven deer wire is recommended. To keep calves and predators from getting under fences, add either a strand of barbed wire at ground level or an electrified wire just above ground level. Provide some form of shelter (such as a stand of trees or a three-sided shed) to protect the deer from wind, freezing rain, and the hot summer sun.

You also will need a handling facility with chutes, gates, squeezes, and stalls. A trailer with solid walls and all light sources covered is required for transporting deer. A gutted horse trailer often works well. Before building new facilities or purchasing handling equipment, you should visit other operations to determine what you will need.

Breeding

Red deer hinds are able to reproduce at approximately 16 months of age. Hinds weighing at least 175 pounds have the best chance for a successful pregnancy. Stags reach reproductive maturity at 24 to 30 months of age, and their productivity starts to decline at about 8 years of age. Although a stag's breeding rate depends on his age, one stag typically breeds 40 hinds.

Two types of breeding programs can be used. With single-sire mating, one stag is grouped with a number of hinds. This method is used to improve genetic characteristics and keep more accurate breeding records. When using single-sire mating, you should change stags after two estrus cycles (estrus cycles are 18 days apart) to ensure pregnancy. With multisire mating, several stags are grouped with a number of hinds. This method requires fewer paddocks, but it increases stag aggression and puts younger stags at a

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

2

SENATE BILL 312
Commerce Committee Substitute Adopted 4/2/97

Short Title: Regulate Check Cashing/AB.

(Public)

Sponsors:

Referred to: Finance.

March 5, 1997

- 1 A BILL TO BE ENTITLED
2 AN ACT TO REGULATE CHECK-CASHING BUSINESSES.
3 The General Assembly of North Carolina enacts:
4 Section 1. Chapter 53 of the General Statutes is amended by adding the
5 following new Article to read:
6 "ARTICLE 22.
7 "Check-Cashing Businesses.
8 "§ 53-275. Definitions.
9 As used in this Article, unless the context clearly requires otherwise, the term:
10 (1) 'Cashing' means providing currency for payment instruments, but
11 does not include the bona fide sale or exchange of travelers checks
12 and foreign denomination payment instruments.
13 (2) 'Check-cashing service' means any person or entity engaged in the
14 business of cashing checks, drafts, or money orders for a fee,
15 service charge, or other consideration.
16 (3) 'Commission' means the State Banking Commission.
17 (4) 'Commissioner' means the Commissioner of Banks.
18 (5) 'Licensee' means a person or entity licensed to engage in a check-
19 cashing business under this Article.
20 (6) 'Person' means an individual, partnership, association, or
21 corporation.
22 "§ 53-276. License required.

1 No person or other entity may engage in the business of cashing checks, drafts, or
2 money orders for consideration without first obtaining a license under this Article.
3 No person or other entity providing a check-cashing service may avoid the
4 requirements of this Article by providing a check or other currency equivalent
5 instead of currency when cashing payment instruments.

6 **"§ 53-277. Exemptions.**

7 **(a) This Article shall not apply to:**

- 8 (1) A bank, savings institution, credit union, or farm credit system
9 organized under the laws of the United States or any state; and
10 (2) Any person or entity principally engaged in the bona fide retail
11 sale of goods or services, who either as an incident to or
12 independently of a retail sale or service and not holding itself out
13 to be a check-cashing service, from time to time cashes checks,
14 drafts, or money orders for a fee or other consideration, where not
15 more than two dollars (\$2.00) is charged for the service.

16 **(b) A person licensed under Article 16 of this Chapter (Money Transmitters Act)**
17 **is exempt from G.S. 53-276, 53-278, 53-279, and 53-284, but is deemed a licensee for**
18 **purposes of the remaining provisions of this Article. This exemption does not apply**
19 **to an agent of a person licensed under Article 16 of this Chapter.**

20 **"§ 53-278. Application for license; investigation; application fee.**

21 **(a) An application for licensure under this Article shall be in writing, under oath,**
22 **and on a form prescribed by the Commissioner. The application shall set forth all of**
23 **the following:**

- 24 (1) The name and address of the applicant.
25 (2) If the applicant is a firm or partnership, the name and address of
26 each member of the firm or partnership.
27 (3) If the applicant is a corporation, the name and address of each
28 officer, director, registered agent, and principal.
29 (4) The addresses of the locations of the business to be licensed.
30 (5) Other information concerning the financial responsibility,
31 background experience, and activities of the applicant and its
32 members, officers, directors, and principals as the Commissioner
33 requires.

34 **(b) The Commissioner may make such investigations as the Commissioner deems**
35 **necessary to determine if the applicant has complied with all applicable provisions of**
36 **this Article and State and federal law.**

37 **(c) The application shall be accompanied by payment of a two hundred fifty**
38 **dollar (\$250.00) application fee and a five hundred dollar (\$500.00) investigation fee.**
39 **These fees are not refundable or abatable, but, if the license is granted, payment of**
40 **the application fee shall satisfy the fee requirement for the first license year or**
41 **remaining part thereof.**

42 **(d) Licenses shall expire annually and may be renewed upon payment of a license**
43 **fee of two hundred fifty dollars (\$250.00) plus a fifty dollar (\$50.00) fee for each**
44 **branch location certificate issued under a license.**

- 1 "§ 53-279. Liquid assets required; other qualifications; denial of license; hearing.
2 (a) Every licensee and applicant shall have and maintain liquid assets of at least
3 fifty thousand dollars (\$50,000) per licensee.
4 (b) Upon the filing and investigation of an application, and compliance by the
5 applicant with G.S. 53-278, and this section, the Commissioner shall issue and deliver
6 to the applicant the license applied for to engage in business under this Article at the
7 locations specified in the application, provided that the Commissioner finds that the
8 financial responsibility, character, reputation, experience, and general fitness of the
9 applicant and its members, officers, directors, and principals are such as to warrant
10 belief that the business will be operated efficiently and fairly, in the public interest,
11 and in accordance with law. If the Commissioner fails to make such findings, no
12 license shall be issued, and the Commissioner shall notify the applicant of the denial
13 and the reasons therefor. The applicant shall be entitled to an informal hearing on
14 the denial provided the applicant requests the hearing in writing within 30 days after
15 the Commissioner has mailed the notice required under this subsection to the
16 applicant. In the event of a hearing, which shall be held in the offices of the
17 Commissioner of Banks in Raleigh, the Commissioner shall reconsider the application
18 and, after hearing, issue a written order granting or denying the application.
19 "§ 53-280. Maximum fees for service; fees posted; endorsement of checks cashed.
20 (a) Notwithstanding any other provision of law, no check-cashing business
21 licensed under this Article shall directly or indirectly charge or collect fees or other
22 consideration for check-cashing services in excess of the following:
23 (1) Three percent (3%) of the face amount of the check or five dollars
24 (\$5.00), whichever is greater, for checks issued by the federal
25 government, State government, or any agency of the State or
26 federal government, or any county or municipality of this State.
27 (2) Ten percent (10%) of the face amount of the check or five dollars
28 (\$5.00), whichever is greater, for personal checks.
29 (3) Five percent (5%) of the face amount of the check or five dollars
30 (\$5.00), whichever is greater, for all other checks, or for money
31 orders.
32 (b) A licensee may not advance monies on the security of any check unless the
33 account from which the check being presented is drawn is legitimate, open, and
34 active. Except as provided by G.S. 53-281(a), any licensee who cashes a check for a
35 fee shall deposit the check not later than three business days from the date the check
36 is cashed.
37 (c) A licensee shall ensure that in every location conducting business under a
38 license issued under this Article, there is conspicuously posted and at all times
39 displayed a notice stating the fees charged for cashing checks, drafts, and money
40 orders. A licensee shall further ensure that notice of the fees currently charged at
41 every location shall be filed with the Commissioner.
42 (d) A licensee shall endorse every check, draft, or money order presented by the
43 licensee for payment in the name of the licensee.
44 "§ 53-281. Postdated or delayed deposit checks.

1 (a) A licensee may defer the deposit of a personal check cashed for a customer for
2 up to 31 days pursuant to the provisions of this section.

3 (b) The face amount of any postdated or delayed deposit check cashed pursuant
4 to this section shall not exceed three hundred dollars (\$300.00).

5 (c) Each postdated or delayed deposit check cashed by a licensee shall be
6 documented by a written agreement that has been signed by the customer and the
7 licensee. The written agreement shall contain a statement of the total amount of any
8 fees charged, expressed both as a dollar amount and as an effective annual percentage
9 rate (APR). The written agreement shall authorize the licensee to defer deposit of
10 the personal check until a specific date not later than 31 days from the date the check
11 is cashed.

12 (d) A licensee shall not directly or indirectly charge any fee or other consideration
13 for cashing a postdated or delayed deposit check in excess of fifteen per cent (15%)
14 of the face amount of the check.

15 (e) No check cashed under the provisions of this section shall be repaid by the
16 proceeds of another check cashed by the same licensee or any affiliate of the licensee.
17 A licensee shall not, for any consideration, renew or otherwise extend any postdated
18 or delayed check or withhold such check from deposit for any period beyond the
19 time set forth in the written agreement with the customer.

20 **§ 53-282. Record keeping; receipt requirements.**

21 (a) Every person required to be licensed under this Article shall maintain in its
22 offices such books, accounts, and records as the Commissioner may reasonably
23 require. The books, accounts, and records shall be maintained separate from any
24 other business in which the person is engaged, and shall be retained for a period
25 prescribed by the Commissioner.

26 (b) The licensee shall ensure that each customer cashing a check shall be
27 provided a receipt showing the name or trade name of the licensee, the transaction
28 date, amount of the check, and the fee charged.

29 (c) The Commissioner may examine the books, accounts, and records in order to
30 determine whether the person is complying with this Article and rules adopted
31 pursuant thereto. The cost of the examination shall be paid by the licensee and shall
32 be determined by applying the hourly rate for special examinations adopted by the
33 State Banking Commission by regulation.

34 **§ 53-283. Prohibited practices.**

35 No person required to be licensed under this Article shall do any of the following:

- 36 (1) Charge fees in excess of those authorized under this Article.
37 (2) Engage in the business of making loans of money, or extensions of
38 credit, or discounting notes, bills of exchange, items, or other
39 evidences of debt; or accepting deposits or bailments of money or
40 items, except as expressly provided by G.S. 53-281.
41 (3) Use or cause to be published or disseminated any advertising
42 communication which contains any false, misleading, or deceptive
43 statement or representation.

- 1 (4) Conduct business at premises or locations other than locations
2 licensed by the Commissioner.
3 (5) Engage in unfair, deceptive, or fraudulent practices.
4 (6) Cash a check, draft, or money order made payable to a payee
5 other than a natural person unless the licensee has previously
6 obtained appropriate documentation from the executive entity of
7 the payee clearly indicating the authority of the natural person or
8 persons cashing the check, draft, or money order on behalf of the
9 payee.

10 **"§ 53-284. Suspension and revocation of license; grounds; procedure.**

11 (a) The Commissioner may suspend or revoke any license or licenses issued
12 pursuant to this Article if, after notice and opportunity for hearing, the Commissioner
13 issues written findings that the licensee has engaged in any of the following conduct:

- 14 (1) Violated this Article or applicable State or federal law or rules.
15 (2) Made a false statement on the application for a license under this
16 Article.
17 (3) Refused to permit investigation by the Commissioner authorized
18 under this Article.
19 (4) Failed to comply with an order of the Commissioner.
20 (5) Demonstrated incompetency or untrustworthiness to engage in the
21 business of check cashing.
22 (6) Been convicted of a felony or misdemeanor involving fraud,
23 misrepresentation, or deceit.

24 (b) The Commissioner may not suspend or revoke any license issued under this
25 Article unless the licensee has been given notice and opportunity for hearing in
26 accordance with Article 3A of Chapter 150B of the General Statutes.

27 **"§ 53-285. Cease and desist orders.**

28 If the Commissioner determines that a person required to be licensed under this
29 Article has violated this Article or rules adopted pursuant to it, then the
30 Commissioner may, upon notice and opportunity for hearing in accordance with
31 Article 3A of Chapter 150B of the General Statutes, order the person to cease and
32 desist from the violations and to comply with this Article. The Commissioner may
33 enforce compliance with an order issued pursuant to this section by the imposition
34 and collection of civil penalties authorized under this Article.

35 **"§ 53-286. Civil penalties and restitution.**

36 The Commissioner may order and impose civil penalties upon any person required
37 to be licensed under this Article for violations of this Article or rules adopted
38 thereunder. Civil penalties shall not exceed one thousand dollars (\$1,000) per
39 violation. All civil money penalties collected under this Article shall be paid to the
40 county school fund. The Commissioner may also order repayment of unlawful or
41 excessive fees charged to customers.

42 **"§ 53-287. Criminal penalties.**

1 A violation of G.S. 53-276 by a person required to obtain a license under this
2 Article is a Class I felony. Each transaction involving the unlawful cashing of a
3 check, draft, or money order constitutes a separate offense.

4 **"§ 53-288. Commissioner to adopt rules.**

5 The Commissioner may adopt rules necessary to carry out the purposes of this
6 Article, to provide for the protection of the public, and to assist licensees in
7 interpreting and complying with this Article.

8 **"§ 53-289. Commission may review rules, orders, or acts by Commissioner.**

9 The Commission shall have full authority to review any rule, regulation, order, or
10 act of the Commissioner done pursuant to or with respect to the provisions of this
11 Article, and any person aggrieved by any such rule, regulation, order, or act may
12 appeal to the Commission for review upon giving notice in writing within 20 days
13 after such rule, regulation, order, or act complained of is adopted, issued, or done."

14 Section 2. The Commissioner of Banks shall report to the 2001 General
15 Assembly on the practices of licensees with regard to checks cashed pursuant to the
16 provisions of G.S. 53-281, including any evidence as to consumer complaints, unfair
17 or deceptive trade practices, and the frequency of repeat use by individuals of
18 postdated or delayed deposit checks. It is the intent of the General Assembly that the
19 sunset contained in Section 3 of this act be repealed if there is no evidence of
20 excessive complaints or unfair and deceptive trade practices.

21 Section 3. This act becomes effective October 1, 1997, and the provisions
22 of G.S. 53-281 shall expire on July 31, 2001.

SUMMARY OF SB 312: REGULATION OF CHECK CASHING SERVICES

LICENSING REQUIRED. Application on a form prescribed by Commissioner of Banks. Application fee -- \$250; one-time investigation fee -- \$500.

EXEMPTIONS. Banks and other licensed financial institutions are exempt. Also, retail sellers who charge no more than \$2.00 to cash a check.

ASSET REQUIREMENT. Licensees to maintain \$50,000 in liquid assets.

MAXIMUM FEES.

- 3% or \$5.00 (whichever is greater) for government checks
- 10% for personal checks
- 5% or \$5.00 (whichever is greater) for other checks (e.g. payroll checks) and money orders
- Fee schedule must be posted at each location.

POSTDATED OR DELAYED DEPOSIT CHECKS

- 15% maximum fee to cash check postdated or held for up to 31 days
- no "rolling over" or extending these checks for additional fees
- must be written agreement with effective APR disclosed
- four year sunset on this provision; Commissioner of Banks to report to General Assembly on delayed deposit/postdated check cashing practices

RECORD KEEPING REQUIREMENT. The Commissioner may require financial records and accounts to be maintained which are subject to examination by the Commissioner's office.

SUSPENSION OR REVOCATION OF LICENSE. Commissioner of Banks may suspend or revoke license for violation of law or rules but only after notice of violation and opportunity for hearing.

Regulation of the Business of Check Cashing

Summary and Major Points of Proposed Legislation (SB 312)

SB 312 imposes reasonable regulatory requirements on companies in the business of cashing checks. The bill's main provisions require licensing by the Commissioner of Banks, place limits on fees that can be charged, and provide safeguards on the use of postdated or delayed deposit checks. Only those in the business of cashing checks are regulated. Retail stores who may cash checks as a convenience for nominal fees are exempt.

1. Legislation to regulate the business of check cashing was recommended by a study committee in 1994. A check cashing bill passed the Senate in 1995 with bipartisan support but was not voted on in the House.

2. This bill is recommended by the Attorney General and the Commissioner of Banks. The proposed committee substitute is a compromise measure which is the result of careful negotiations between representatives of the Attorney General's Office and the check cashing industry. In its current proposed committee substitute form, the bill is acceptable to industry while retaining its important consumer protection provisions.

3. The bill would allow limited authority for cashing postdated or delayed deposit personal checks. The maximum fee for such checks would be capped at 15% and "rolling over" these checks for additional fees would be prohibited. There is a four year sunset on this provision which will allow time for the Commissioner of Banks to audit industry practices and report back to the General Assembly on his findings. The intent is that the sunset will be removed if there is no evidence of excessive complaints or unfair or deceptive practices.

4. Virtually all other forms of retail credit and small consumer loans are strictly regulated by law. This bill would create a level playing field by controlling delayed deposit transactions. Representatives of trade associations representing retail merchants, consumer finance lenders, and pawnbrokers have indicated they support licensing and regulation of check cashing businesses..

5. Congress has called upon the states to regulate the business of check cashing for money laundering control purposes. The licensing and examination provisions in this bill will satisfy the Congressional intent in the Anti-Money Laundering Act of 1994 and will serve to deter the use of check cashing operations as outlets for money laundering.

6. The licensing and examination fees specified in the bill are consistent with fees assessed by the Commissioner of Banks for other regulated consumer industries including refund anticipation lenders, money transmitters and mortgage brokers.

Philip A. Lehman
Assistant Attorney General

L. McNeil Chestnut
Assistant Attorney General

FISCAL ANALYSIS MEMORANDUM

DATE: April 7, 1997
TO: Senate Finance Committee
FROM: Richard Bostic
Fiscal Research Division
RE: SB 312 (Second Edition) - Regulate Check Cashing

FISCAL IMPACT

	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 1997-98</u>	<u>FY 1998-99</u>	<u>FY 1999-00</u>	<u>FY 2000-01</u>	<u>FY 2001-02</u>
REVENUES					
Commerce - Special Fund					
New License	\$52,500	\$18,750	\$7,500	\$3,750	\$3,750
Renewal License	0	17,500	23,750	23,750	23,750
Renewal Branch	0	5,500	5,750	6,000	5,750
Compliance Exams	<u>12,600</u>	<u>14,000</u>	<u>16,100</u>	<u>16,800</u>	<u>15,400</u>
Total	\$65,100	\$55,750	\$53,100	\$50,300	\$48,650
EXPENDITURES					
Commerce - Special Fund	\$65,100	\$55,750	\$53,100	\$50,300	\$48,650

POSITIONS: (No new positions; will use Consumer Finance staff.)

**PRINCIPAL DEPARTMENT(S) &
PROGRAM(S) AFFECTED:** State Banking Commission

EFFECTIVE DATE: October 1, 1997

BILL SUMMARY: The bill allows the State Banking Commission to license firms in the business of cashing checks, drafts or money orders for a fee. Check-cashing businesses must apply for a license and pay an application fee of \$250. The initial application fee is accompanied by a \$500 investigation fee. The license expires annually and is renewed upon payment of \$250 plus \$50 for each branch location of the business. Check-cashing businesses must maintain \$50,000 in liquid assets and are limited in the service fees they charge. Operating without a license is a Class I felony.

ASSUMPTIONS AND METHODOLOGY: Estimates of the number of check-cashing businesses in the state were provided by officials of the State Banking Commission. The Commission anticipates beginning with 70 businesses with 110 branches on October 1, 1997. The growth rate in check cashing businesses is based on the Commission's regulatory experience with consumer finance, mortgage bankers and brokers, and refund anticipation lenders. (see chart below) The Commission also estimates that competition will cause 10 firms and 10 branches to go out of business in 2000-01 and 5 firms and 10 branches will cease operations in 2001-02.

	<u>97-98</u>	<u>98-99</u>	<u>99-00</u>	<u>00-01</u>	<u>01-02</u>
New License	70	25	10	5	5
New Branch	110	5	15	5	10
Renew License		70	95	95	95
Renew Branch		110	115	120	115
Exams	90	100	115	120	110

The chart above also shows the number of compliance exams the Banking Commission estimates it will conduct each year. Compliance exams are not financial audits, but are a method to see if companies are complying with state law in such areas as the fees being charged consumers and the filing of reports with the state. Each exam is performed by an Examiner I and takes approximately 4 hours.

In FY 1997-98, check-cashing businesses will pay \$750 for a license (\$250 application fee and a \$500 investigation fee). The license expires annually and is renewed upon payment of \$250 plus \$50 for each branch location of the business. Each compliance exam costs the firm \$140 (\$35 per hour X 4 hours). License and exam revenues are deposited as receipts for the Commission and may be spent for cost incurred in regulating the check cashing industry.

	<u>97-98</u>	<u>98-99</u>	<u>99-00</u>	<u>00-01</u>	<u>01-02</u>
New License	\$ 52,500	\$ 18,750	\$ 7,500	\$ 3,750	\$ 3,750
New Branch					
Renew License		17,500	23,750	23,750	23,750
Renew Branch		5,500	5,750	6,000	5,750
Exams	12,600	14,000	16,100	16,800	15,400
	\$ 65,100	\$ 55,750	\$ 53,100	\$ 50,300	\$ 48,650

As for the criminal penalties listed on page 6 of the bill, the Administrative Office of the Courts (AOC) does not anticipate that this legislation will have a substantial impact on the Judicial Department as there will not be any significant change in how cases are processed or disposed. The AOC believes that the very few additional cases which may result from this bill can be absorbed within existing resources. Likewise, the proposed legislation will not have a significant fiscal impact on the Department of Correction, assuming that the courts will order active sentences in a very minimal number of cases.

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

4-8-97

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Guy Radford	DOR
Alice Manning	DOR
Nancy Pomeranz	DOR
GARY FUQUAY	DHR
Alice Garland	Electric Cities
Kim Smith	NCLM
Jerry Boyd	NECCA
Ed Regan	N.C.A.C.C.

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

FINANCE COMMITTEE REPORT

Senator David Hoyle, Co-Chair

Senator John Kerr, Co-Chair

Tuesday, April 08, 1997

SENATOR HOYLE,

submits the following with recommendations as to passage:

FAVORABLE

H.B.(CS) 105

Jackson County Airport Authority.

Sequential Referral: None

Recommended Referral: None

S.B.(CS #1)312

Regulate Check Cashing/AB.

Sequential Referral: None

Recommended Referral: None

TOTAL REPORTED: 2

Committee Clerk Comment:

None

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT

Senator David Hoyle, Co-Chair
Senator John Kerr, Co-Chair

Wednesday, April 09, 1997

SENATOR HOYLE,

submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B.	39	Modify Setoff Debt Collection	
		Draft Number:	PCS8633
		Sequential Referral:	None
		Recommended Referral:	Appropriations
		Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comment: None

SENATE FINANCE COMMITTEE

WEDNESDAY, APRIL 9, 1997

8:30 A.M - ROOM 543 LOB

The Senate Finance Committee met April 9, 1997 with Senator Kerr presiding and 15 committee members present. After the meeting was called to order, Senator Kerr announced that S.B. 124 would not be heard this week.

S.B. 500 - Mtn. Island Lake Marine Commission

Senator Odom was recognized to explain S.B. 500. Senator Cooper offered a technical amendment to this bill and on his motion it was adopted by the committee. Copy of amendment and copy of bill included in the minutes. Senator Cooper moved that this bill be given a "favorable" report as amended and the motion was approved.

S.B. 424 - Wake Forest Annexations

Senator Miller was recognized to explain S.B. 424 and at the conclusion of his explanation, on motion by Senator Albertson the bill was given a "favorable" report by the committee. Copy of bill included in the minutes.

S. B. 425 - Refrigeration Contractors

Senator Miller was recognized to explain S.B. 425. Mr. Jack Nichols, Attorney for the Board, was also introduced and gave additional information on the bill. Ms. Barbara Hines, Executive Director of the State Board of Refrigeration Examiners, was also recognized to explain the actions of the Board and the fees charged by the Board. There was a general discussion on this bill with questions from the committee members directed to all three speakers. At the conclusion of this discussion, Senator Cooper moved for a "favorable" report and the motion carried. Copy of the bill and fiscal note included in the minutes.

S.B. 266 - An Act to Authorize the Production and Sale of Red Deer

This bill was discussed at the April 8th meeting. Senator Hoyle moved for adoption of a new proposed committee substitute and the motion carried. Sabra Faires reviewed the changes in the committee substitute. Senator Ballantine was recognized for a motion for "favorable" report for the committee substitute and the motion carried. Copy of bill, committee substitute, amendment and fiscal note included in the minutes.

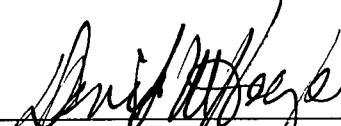
Senator Kerr noted there was a large group of visitors attending the finance meeting. Senator Foxx acknowledged that several of the visitors were representing the Farm Bureau and were from her district.

S.B. 168 - An Act to Increase the Examination and Certification Fees Collected Under the Nursing Practice Act

Senator Hoyle informed the committee that he had introduced this bill at the request of the nurses and gave an explanation of the bill. Senator Kerr offered an amendment and on his motion, the amendment was adopted by the committee. Ms. Polly Johnston, Executive Director of the North Carolina Board of Nursing, introduced herself and spoke in support of this bill. Mr. Howard Kramer, legal counsel to the Board of Nursing, informed the committee that the nursing fees in North Carolina were among the lowest in the nation. On motion of Senator Albertson, this bill was given a "favorable" report and will be rolled into a committee substitute to include the amendment. Copy of bill, amendment, committee substitute, fiscal note and information on nursing fees included in the minutes.

Senator Hoyle and Senator Rand welcomed the visitors representing the automobile association and the Farm Bureau from their districts.

Meeting adjourned.



David W. Hoyle, Co-Chair
Senate Finance Committee



John H. Kerr, III, Co-Chair
Senate Finance Committee



Penny N. Williams, Clerk



Evelyn S. Hartsell, Clerk

NOTE:

Agenda is Attachment # 1
Visitors' List is Attachment # 2
Committee Reports are Attachment # 3

AGENDA

SENATE FINANCE COMMITTEE

Wednesday, April 9, 1997

8:30 A.M. - Room 544

S.B. 266 - Production and Sale of Red Deer. -Sen. Ledbetter

S.B. 168 - Increase Nurses Fees. - Sen. Hoyle

S.B. 424 - Wake Forest Annexations. - Sen. Miller

S.B. 425 - Refrigeration Contractors. - Sen. Miller

S.B. 500 - Mtn. Island Lake Marine Commission. - Sen. Odom

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 500*

Short Title: Mtn. Island Lake Marine Commission.

(Local)

Sponsors: Senator Odom.

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

March 25, 1997

- 1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH THE MOUNTAIN ISLAND LAKE MARINE
3 COMMISSION.
4 The General Assembly of North Carolina enacts:
5 Section 1. For purposes of this act:
6 (1) "Board" means the board of commissioners of one of the three
7 counties.
8 (2) "Commission" means the Mountain Island Lake Marine
9 Commission or its governing board, as the case may be.
10 (3) "Commissioner" means a member of the governing board of the
11 Mountain Island Lake Marine Commission.
12 (4) "Three counties" means Gaston, Lincoln, and Mecklenburg
13 Counties.
14 (5) "Joint resolution" means a resolution or ordinance substantially
15 identical in content adopted separately by the governing boards in
16 each of the three counties.
17 (6) "Mountain Island Lake" means the impounded body of water
18 along the Catawba River in the three counties extending from the
19 Cowans Ford Dam downstream to the Mountain Island Dam.
20 (7) "Shoreline area" means, except as modified by a joint resolution,
21 the area within the three counties lying within 1,000 feet of the
22 mean high waterline on Mountain Island Lake. In addition, the
23 shoreline area includes all islands within Mountain Island Lake

1 and all peninsulas extending into the waters of Mountain Island
2 Lake.

3 (8) "Wildlife Commission" means the North Carolina Wildlife
4 Resources Commission.

5 Section 2. The three counties may by joint resolution create the
6 Mountain Island Lake Marine Commission. Upon its creation the Commission has
7 the powers, duties, and responsibilities conferred upon it by joint resolution, subject
8 to the provisions of this act. The provisions of any joint resolution may be modified,
9 amended, or rescinded by a subsequent joint resolution. A county may unilaterally
10 withdraw from participation as provided by any joint resolution or the provisions of
11 this act, once the Commission has been created, and any county may unilaterally
12 withdraw from the Commission at the end of any budget period upon 90 days prior
13 written notice. Upon the effectuation of the withdrawal, the Commission is dissolved,
14 and all property of the Commission must be distributed to or divided among the
15 three counties and any other public agency or agencies serving the Mountain Island
16 Lake area in a manner considered equitable by the Commission by resolution
17 adopted by it prior to dissolution.

18 Section 3. Upon its creation, the Commission shall have a governing
19 board of seven. Except as otherwise provided for the initial appointees, each
20 commissioner shall serve a three-year term. Upon creation of the Commission, the
21 Boards of Commissioners of Gaston County and Mecklenburg County shall appoint
22 three commissioners each, and the Board of Commissioners of Lincoln County shall
23 appoint one commissioner. Of the initial appointees:

- 24 (1) One commissioner appointed by Gaston County and one member
25 appointed by Mecklenburg County shall serve one-year terms;
26 (2) One commissioner appointed by Gaston County and one member
27 appointed by Mecklenburg County shall serve two-year terms; and
28 (3) One member appointed by Gaston County, one member appointed
29 by Mecklenburg County, and the member appointed by Lincoln
30 County shall serve three-year terms.

31 Any commissioner who has served two consecutive terms, including any
32 initial term of less than three years, may not be reappointed to a third consecutive
33 term. Such a member may, however, be appointed to serve again after the expiration
34 of the term of the member's successor.

35 On the death of a commissioner, resignation, incapacity, or inability to
36 serve, as determined by the board appointing that commissioner, or removal of the
37 commissioner for cause, as determined by the board appointing that commissioner,
38 the board affected may appoint another commissioner to fill the unexpired term.

39 Section 4. The joint resolution of the three counties shall state the terms
40 relating to compensation to commissioners, if any, compensation of consultants and
41 staff members employed by the Commission, and reimbursement of expenses incurred
42 by commissioners, consultants, and employees. The Commission shall be governed
43 by those budgetary and accounting procedures specified by joint resolution.

1 Section 5. Upon creation of the Commission, its governing board shall
2 meet at a time and place agreed upon by the boards of the three counties concerned.
3 The commissioners shall elect a chairman and officers as they choose. All officers
4 shall serve one-year terms. The governing board shall adopt rules and regulations as
5 it deems necessary, not inconsistent with the provisions of this act or of any joint
6 resolution, for the proper discharge of its duties and for the governance of the
7 Commission. In order to conduct business, a quorum must be present. The
8 chairman may adopt those committees as authorized by those rules and regulations.
9 The Commission shall meet regularly at times and places as specified in its rules and
10 regulations or in any joint resolution. However, meetings of the Commission must be
11 held in all three counties on a rotating basis so that an equal number of meetings is
12 held in each county. Special meetings may be called as specified in the rules and
13 regulations. The provisions of the Open Meetings Law, Article 33C of Chapter 143
14 of the General Statutes, shall apply.

15 Section 6. (a) Within the limits of funds available to it and subject to the
16 provisions of this act and of any joint resolution, the Commission may:

- 17 (1) Hire and fix the compensation of permanent and temporary
18 employees and staff as it may deem necessary in carrying out its
19 duties;
- 20 (2) Contract with consultants for services it requires;
- 21 (3) Contract with the State of North Carolina or the federal
22 government, or any agency or department, or subdivision of them,
23 for property or services as may be provided to or by these agencies
24 and carry out the provisions of these contracts;
- 25 (4) Contract with persons, firms, and corporations generally as to all
26 matters over which it has a proper concern, and carry out the
27 provisions of contracts;
- 28 (5) Lease, rent, purchase, or otherwise obtain suitable quarters and
29 office space for its employees and staff, and lease, rent, purchase,
30 or otherwise obtain furniture, fixtures, vessels, vehicles, firearms,
31 uniforms, and other supplies and equipment necessary or desirable
32 for carrying out the duties imposed in or under the authority of
33 this act; and
- 34 (6) Lease, rent, purchase, construct, otherwise obtain, maintain,
35 operate, repair, and replace, either on its own or in cooperation
36 with other public or private agencies or individuals, any of the
37 following: boat docks, navigation aids, waterway markers, public
38 information signs and notices, and other items of real and personal
39 property designed to enhance public safety in Mountain Island
40 Lake and its shoreline area, or protection of property in the
41 shoreline area subject however to Chapter 113 of the General
42 Statutes and rules promulgated under that Chapter.

43 (b) The Commission may accept, receive, and disburse in furtherance of
44 its functions any funds, grants, services, or property made available by the federal

1 government or its agencies or subdivisions, by the State of North Carolina or its
2 agencies or subdivisions, or by private and civic sources.

3 (c) The governing boards of the three counties may appropriate funds to
4 the Commission out of surplus funds or funds derived from nontax sources. They
5 may appropriate funds out of tax revenues and may also levy annually taxes for the
6 payments of such appropriation as a special purpose, in addition to any allowed by
7 the Constitution, or as provided by G.S. 153A-149.

8 (d) The Commission shall be subject to those audit requirements as may
9 be specified in any joint resolution.

10 (e) In carrying out its duties and either in addition to or in lieu of
11 exercising various provisions of the above authorization, the Commission may, with
12 the agreement of the governing board of the county concerned, utilize personnel and
13 property of or assign responsibilities to any officer or employee of any of the three
14 counties. Such contribution in kind, if substantial, may with the agreement of the
15 other two counties be deemed to substitute in whole or in part for the financial
16 contribution required of that county in support of the Commission.

17 (f) Unless otherwise specified by joint resolution, each of the three
18 counties shall annually contribute an equal financial contribution to the Commission
19 in an amount appropriate to support the activities of the Commission in carrying out
20 its duties.

21 Section 7. (a) A copy of the joint resolution creating the Commission
22 and of any joint resolution amending or repealing the joint resolution creating the
23 Commission shall be filed with the Executive Director of the Wildlife Commission.
24 When the Executive Director receives resolutions that are in substance identical from
25 all three counties concerned, the Executive Director shall within 10 days so certify
26 and distribute a certified single resolution text to the following:

27 (1) The Secretary of State;
28 (2) The clerk to the governing board of each of the three counties;
29 (3) The clerks of superior court of Lincoln, Mecklenburg, and Gaston
30 Counties. Upon request, the Executive Director also shall send a
31 certified single copy of any and all applicable joint resolutions to
32 the chairman of the Commission; and

33 (4) A newspaper of general circulation in the three counties.

34 (b) Unless a joint resolution specifies a later date, it shall take effect
35 when the Executive Director's certified text has been submitted to the Secretary of
36 State for filing. Certifications of the Executive Director under the seal of the
37 Commission as to the text or amended text of any joint resolution and of the date or
38 dates of submission to the Secretary of State shall be admissible in evidence in any
39 court. Certifications by any clerk of superior court of the text of any certified
40 resolution filed with him by the Executive Director is admissible in evidence and the
41 Executive Director's submission of the resolution for filing to the clerk shall
42 constitute prima facie evidence that that resolution was on the date of submission also
43 submitted for filing with the Secretary of State. Except for the certificate of a clerk
44 as to receipt and date of submission, no evidence may be admitted in court

1 concerning the submission of the certified text of any resolution by the Executive
2 Director to any person other than the Secretary of State.

3 Section 8. (a) Except as limited in subsection (b) of this section, by
4 restrictions in any joint resolution, and by other supervening provisions of law, the
5 Commission may make regulations applicable to Mountain Island Lake and its
6 shoreline area concerning all matters relating to or affecting the use of Mountain
7 Island Lake. These regulations may not conflict with or supersede provisions of
8 general or special acts or of regulations of State agencies promulgated under the
9 authority of general law. No regulations adopted under this section may be adopted
10 by the Commission except after public hearing, with publication of notice of the
11 hearing being given in a newspaper of general circulation in the three counties at
12 least 10 days before the hearing. In lieu of or in addition to passing regulations
13 supplementary to State law and regulations concerning the operation of vessels on
14 Mountain Island Lake, the Commission may, after public notice, request that the
15 Wildlife Commission pass local regulations on this subject in accordance with the
16 procedure established by appropriate State law.

17 (b) Violation of any regulation of the Commission commanding or
18 prohibiting an act shall be a Class 3 misdemeanor.

19 (c) The regulations promulgated under this section take effect upon
20 passage or upon dates as stipulated in the regulations, except that no regulation may
21 be enforced unless adequate notice of the regulation has been posted in or on
22 Mountain Island Lake or its shoreline area. Adequate notice as to a regulation
23 affecting only a particular location may be by a sign, uniform waterway marker,
24 posted notice, or other effective method of communicating the essential provisions of
25 the regulation in the immediate vicinity of the location in question. Where a
26 regulation applies generally as to Mountain Island Lake or its shoreline area, or both,
27 there must be a posting of notices, signs, or markers communicating the essential
28 provisions in at least three different places throughout the area, and it must be
29 printed in a newspaper of general circulation in the three counties.

30 (d) A copy of each regulation promulgated under this section must be
31 filed by the Commission with the following persons:

32 (1) The Secretary of State;

33 (2) The clerks of superior court of Gaston, Lincoln, and Mecklenburg
34 Counties; and

35 (3) The Executive Director of the Wildlife Commission;

36 (e) Any official designated in subsection (d) above may issue certified
37 copies of regulations filed with him under the seal of his office. Those certified
38 copies may be received in evidence in any proceeding.

39 (f) Publication and filing of regulations promulgated under this section as
40 required above is for informational purposes and shall not be a prerequisite to their
41 validity if they in fact have been duly promulgated, the public has been notified as to
42 the substance of regulations, a copy of the text of all regulations is in fact available to
43 any person who may be affected, and no party to any proceeding has been prejudiced
44 by any defect that may exist with respect to publication and filing. Rules and

1 regulations promulgated by the Commission under the provisions of other sections of
2 this act relating to internal governance of the Commission need not be filed or
3 published. Where posting of any sign, notice, or marker or the making of other
4 communication is essential to the validity of a regulation duly promulgated, it shall be
5 presumed in any proceeding that prior notice was given and maintained and the
6 burden lies upon the party asserting to the contrary to prove lack of adequate notice
7 of any regulation.

8 Section 9. (a) Where a joint resolution so provides, all law enforcement
9 officers, or those officers as may be designated in the joint resolution, with territorial
10 jurisdiction as to any part of Mountain Island Lake or its shoreline area shall, within
11 the limitations of their subject matter jurisdiction, have the authority of peace officers
12 in enforcing the laws over all of Mountain Island Lake and its shoreline area.

13 (b) Where a joint resolution provides it, the Commission may hire
14 special officers to patrol and enforce the laws on Mountain Island Lake and its
15 shoreline area. These special officers have and exercise all the powers of peace
16 officers generally within the area in question and shall take the oaths and be subject
17 to all provisions of law relating to law enforcement officers.

18 (c) Unless a joint resolution provides otherwise, all courts in the three
19 counties within the limits of their subject matter jurisdiction shall have concurrent
20 jurisdiction as to all criminal offenses arising within the boundaries of Mountain
21 Island Lake and its shoreline area.

22 (d) Where a law enforcement officer with jurisdiction over any part of
23 Mountain Island Lake or its shoreline area is performing duties relating to the
24 enforcement of the laws on Mountain Island Lake or in its shoreline area, the officer
25 has the extraterritorial jurisdiction necessary to perform his duties. These duties
26 include investigation of crimes an officer reasonably believes have been, or are about
27 to be, committed within the area in question. This includes traversing by reasonable
28 routes from one portion of that area to another although across territory not within
29 the boundaries of Mountain Island Lake and its shoreline area; conducting prisoners
30 in custody to court or detention facilities as authorized by law, although this may
31 involve going outside the area in question; execution of process connected with any
32 criminal offense alleged to have been committed within the boundaries in question,
33 except that such process may not be executed by virtue of this provision beyond the
34 boundaries of the three counties. This also includes continuing pursuit of and
35 arresting any violator or suspected violator as to which grounds for arrest arose
36 within the area in question.

37 (e) Where law enforcement officers are given additional territorial
38 jurisdiction under the provisions of this section, this shall be deemed an extension of
39 the duties of the office held, and no officer shall take any additional oath or title of
40 office.

41 Section 10. This act applies only to Gaston, Lincoln, and Mecklenburg
42 Counties.

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



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 500

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

S500-ALJ-4/9

Date April 9, 1997

Comm. Sub. []
Amends Title []

Senator Cooper

1 moves to amend the bill on page 4, line 5, by inserting the word
2 "property" between "annually" and "taxes";
3
4
5 and on page 6, line 27, by changing "included" to "includes".

SIGNED Rob Cooper
Amendment Sponsor

SIGNED J. A. Kesler
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

2

SENATE BILL 424

State Government, Local Government, and Personnel Committee Substitute Adopted
3/27/97

Short Title: Wake Forest Annexations.

(Local)

Sponsors:

Referred to: Finance.

March 19, 1997

- 1 A BILL TO BE ENTITLED
2 AN ACT CONCERNING ANNEXATION OF NONCONTIGUOUS AREAS BY
3 THE TOWNS OF APEX, FUQUAY-VARINA, KNIGHTDALE, AND WAKE
4 FOREST.
5 The General Assembly of North Carolina enacts:
6 Section 1. G.S. 160A-58.1(b)(2) shall not apply to any property if:
7 (1) The property is within the Town's perimunicipal planning area, as
8 delineated on the Perimunicipal Planning Areas Map, which has
9 been approved by Wake County.
10 (2) The Town has entered into an annexation agreement pursuant to
11 Part 6 of Article 4A of Chapter 160A of the General Statutes with
12 the city to which a point on the proposed satellite corporate limits
13 is closer, and that agreement states that the parties have agreed to
14 waive the provisions of G.S. 160A-58.1(b)(2) as to any property
15 that is within the Town's Perimunicipal Planning Area and as
16 more particularly described in the agreement.
17 Section 2. This act applies only to the Towns of Apex, Fuquay-Varina,
18 Knightdale, and Wake Forest.
19 Section 3. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 425

Short Title: Refrigeration Contractors.

(Public)

Sponsors: Senator Miller.

Referred to: Commerce.

March 19, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE ARTICLE ON REFRIGERATION CONTRACTORS.
3 The General Assembly of North Carolina enacts:
4 Section 1. G.S. 87-58(a) reads as rewritten:
5 "(a) As applied in this Article, "refrigeration trade or business" is defined to
6 include all persons, firms or corporations engaged in the installation, maintenance,
7 servicing and repairing of refrigerating machinery, equipment, devices and
8 components relating thereto and within limits as set forth in the codes, laws and
9 regulations governing refrigeration installation, maintenance, service and repairs
10 within the State of North Carolina or any of its political subdivisions, ~~provided~~
11 ~~however, that this subdivisions.~~ This Article shall not apply to the replacement of
12 lamps and fuses and to the installation and servicing of domestic household
13 refrigerators and freezers or domestic ice-making appliances connected by means of
14 attachment plug-in devices to suitable receptacles which have been permanently
15 ~~installed, and provided, further, that the~~ installed. The provisions of this Article shall
16 not repeal any wording, phrase, or paragraph as set forth in Article 2 of Chapter 87
17 of the General Statutes, North Carolina General Statutes, Chapter 87, Article 2, and
18 ~~provided, further, that this~~ This Article shall not apply to employees of persons,
19 firms, or corporations or persons, firms or corporations, not engaged in refrigeration
20 contracting as herein defined, that install, maintain and service their own refrigerating
21 machinery, equipment and devices. The provisions of this Article shall not apply to
22 any person, firm or corporation engaged in the business of selling, repairing and
23 installing any ~~air-conditioning units, comfort cooling devices or systems~~ systems. for

1 ~~the purpose of cooling offices, buildings, houses, works, manufacturing plants, or any~~
2 ~~machinery, manufactured article or processing of material."~~

3 Section 2. G.S. 87-58(d) reads as rewritten:

4 "(d) In order to protect the public health, comfort and safety, the Board shall
5 prescribe the standard of experience to be required of an applicant for license and
6 shall give an examination designed to ascertain the technical and practical knowledge
7 of the applicant concerning the analysis of plans and specifications, estimating cost,
8 fundamentals of installation and design as they pertain to refrigeration; and as a result
9 of the examination, the Board shall issue a certificate of license in refrigeration to
10 applicants who pass the required examination and a license shall be obtained in
11 accordance with the provisions of this Article, before any person, firm or corporation
12 shall engage in, or offer to engage in the business of refrigeration contracting. The
13 Board shall prescribe standards for and issue licenses for refrigeration contracting and
14 for transport refrigeration contracting. A transport refrigeration contractor license is a
15 specialty license that authorizes the licensee to engage only in transport refrigeration
16 contracting. A refrigeration contractor licensee is authorized to engage in transport
17 refrigeration and all other aspects of refrigeration contracting.

18 Each application for examination shall be accompanied by a check, post-office
19 money order or cash in the amount of the annual license fee required by this Article.
20 Regular examinations shall be given in the months of April and October of each year
21 and additional examinations may be given at times the Board deems wise and
22 necessary. Any person may demand in writing a special examination and upon
23 payment by the applicant of the cost of holding the examination and the deposit of
24 the amount of the annual license fee, the Board in its discretion will fix a time and
25 place for the examination. ~~A person who fails to pass any examination shall not be~~
26 ~~reexamined until the next regular examination."~~

27 Section 3. G.S. 87-60 reads as rewritten:

28 "**§ 87-60. Reissuance of revoked licenses; replacing lost or destroyed licenses.**

29 The Board may in its discretion reissue license to any person, firm or corporation
30 whose license ~~may have been revoked. Provided, three or more members was~~
31 revoked if a majority of the Board vote votes in favor of such reissuance for reasons
32 deemed sufficient by the Board. A new certificate of registration to replace any
33 license which may be lost or destroyed may be issued subject to the rules and
34 regulations of the Board."

35 Section 4. G.S. 87-62 reads as rewritten:

36 "**§ 87-62. Only one person in partnership or corporation need have license.**

37 (a) A corporation or partnership may engage in the business of refrigeration
38 contracting ~~provided~~ if one or more persons connected with ~~such~~ the corporation or
39 partnership is registered and licensed as herein ~~required, and provided such~~ required,
40 and the licensed person ~~shall execute~~ executes all contracts, ~~exercise~~ exercises general
41 supervision over the work done thereunder and ~~be~~ is responsible for compliance with
42 all the provisions of this Article. The Board may determine the number of businesses
43 and the proximity of the businesses one to another over which the licensed person
44 may be responsible.

1 (b) For purposes of this section, the licensee's connection to the corporation or
2 partnership shall be in the form of a written contract that is executed prior to the
3 corporation or partnership engaging in refrigeration contracting.

4 (c) Nothing in this Article shall prohibit any employee from becoming licensed
5 pursuant to the provisions thereof."

6 Section 5. G.S. 87-64 reads as rewritten:

7 "**§ 87-64. Examination and license fees; annual renewal.**

8 Each applicant for a license by examination shall pay to the Board of Refrigeration
9 Examiners a nonrefundable examination fee in an amount not to exceed the sum of
10 forty dollars (\$40.00). In the event the applicant successfully passes ~~said~~ the
11 examination, the examination fee ~~so paid~~ shall be applied to the license fee required
12 of licensees for the current year in which the examination was taken and passed.

13 The license of every person licensed under the provisions of this statute shall be
14 annually renewed. On or before November 1 of each year the Board shall cause to be
15 mailed an application for renewal of license to every person who has received from
16 the Board a license to engage in the refrigeration business, as heretofore defined. On
17 or before January 1 of each year every licensed person who desires to continue in the
18 refrigeration business shall forward to the Board a renewal fee in an amount not to
19 exceed forty dollars (\$40.00) together with the application for renewal. Upon receipt
20 of the application and renewal fee the Board shall issue a renewal certificate for the
21 current year. Failure to renew the license annually shall automatically result in a
22 forfeiture of the right to engage in the refrigeration business. Any licensee who allows
23 ~~his~~ the license to lapse may be reinstated by the Board upon payment of a fee not to
24 exceed ~~forty-five dollars (\$45.00); provided any~~ seventy-five dollars (\$75.00). Any
25 person who fails to renew ~~his~~ a license for two consecutive years shall be required to
26 take and pass the examination prescribed by the Board for new applicants before
27 being licensed to engage further in the refrigeration business."

28 Section 6. This act is effective when it becomes law.

FISCAL ANALYSIS MEMORANDUM

DATE: April 7, 1997
TO: Senate Finance Committee
FROM: Richard Bostic
Fiscal Research Division
RE: SB 425 - Refrigeration Contractors

FISCAL IMPACT

	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 1997-98</u>	<u>FY 1998-99</u>	<u>FY 1999-00</u>	<u>FY 2000-01</u>	<u>FY 2001-02</u>
REVENUES					
Board's Operating Fund	\$3,750	\$3,750	\$3,750	\$3,750	\$3,750

**PRINCIPAL DEPARTMENT(S) &
PROGRAM(S) AFFECTED:** State Board of Refrigeration Examiners

EFFECTIVE DATE: Effective upon ratification.

BILL SUMMARY: The bill increases the fee for reinstating a lapsed license from \$45 to \$75. The bill makes other minor changes to the law on refrigeration contractors.

ASSUMPTIONS AND METHODOLOGY: In 1995, 14.3% (310 out of 2,163) of the refrigeration contractors did not pay their \$40 license renewal fee on time and allowed their licenses to lapse. In 1996, 13.3% (294 out of 2,206) of the contractors allowed their licenses to lapse. To regain their licenses, these contractors paid a \$45 reinstatement fee. The Executive Director of the State Board of Refrigeration Examiners, Barbara Hines, believes an increase in the reinstatement fee is needed to reduce the number of lapsed licenses. Ms. Hines believes that the increase from \$45 to \$75 will cut the number of lapsed licenses in half. The revenue gained from this change is calculated as follows:

Average number of lapsed licenses each year = 300

Current law 300 X \$45 = \$13,500

Proposed law 150 X \$40 = \$6,000
 150 X \$75 = \$11,250
 \$17,250

Net Gain \$3,750

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 266

Short Title: Production and Sale of Red Deer.

(Public)

Sponsors: Senators Ledbetter; Allran, Ballantine, Blust, Carpenter, Carrington, Clark, Cochrane, East, Forrester, Foxx, Garwood, Hartsell, Horton, Kincaid, McDaniel, Page, Rucho, Shaw of Guilford, and Webster.

Referred to: Agriculture/Environment/Natural Resources.

February 27, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE THE PRODUCTION AND SALE OF RED DEER.
3 The General Assembly of North Carolina enacts:
4 Section 1. Article 49 of Chapter 106 of the General Statutes reads as
5 rewritten:
6 "ARTICLE 49H.
7 "Production and Sale of Fallow ~~Deer~~: Deer and Red Deer.
8 "**§ 106-549.97. Regulation of fallow deer and red deer by Department of Agriculture;**
9 **certain authority of North Carolina Wildlife Resources Commission not affected.**
10 (a) The Department of Agriculture shall regulate the production and sale of
11 fallow deer and red deer for food purposes. The Board of Agriculture shall adopt
12 rules for the production and sale of fallow deer and red deer for food purposes in
13 such a manner as to provide for close supervision of any person, firm, or corporation
14 producing and selling fallow deer or red deer, or both, for food purposes.
15 ~~As used in this section, 'fallow deer' (*Dama dama* spp.) means a small European~~
16 ~~deer raised commercially for production and sale for food purposes.~~
17 (b) The North Carolina Wildlife Resources Commission shall regulate the
18 possession and transportation of live fallow deer and live red deer and may adopt
19 rules to prevent the release or escape of fallow deer or red deer, or both, upon
20 finding that it is necessary to protect live fallow deer or live red deer, or both or to
21 prevent damage to ~~the~~ either or both of these native deer populations or
22 ~~its habitat~~: their habitats.

1 (c) As used in this Article:

2 (1) 'Fallow deer' means a small European deer (Dama dama spp).

3 (2) 'Red deer' means a deer native to Europe (Cervus elephus).

4 **"§ 106-549.98. Inspection fees.**

5 The Commissioner may establish a fee at an hourly rate to be paid by the owner,
6 proprietor, or operator of each slaughtering, meat-canning, salting, packing,
7 rendering, or similar establishment for the purpose of defraying the expenses incurred
8 in the inspection of fallow deer as required by Article 49B of Chapter 106 of the
9 General Statutes. The Commissioner may establish a fee at an hourly rate to be paid
10 by the owner, proprietor, or operator of each slaughtering, meat-canning, salting,
11 packing, rendering, or similar establishment for the purpose of defraying the expenses
12 incurred in the inspection of red deer as required by Article 49B of Chapter 106 of
13 the General Statutes."

14 Section 2. G.S. 113-129(1b) reads as rewritten:

15 "(1b) Big Game. -- Bear, wild boar, wild turkey, and deer, not to
16 include fallow deer or red deer raised for production and sale
17 under G.S. 106-549.97."

18 Section 3. G.S. 113-129(7c) reads as rewritten:

19 "(7c) Game Animals. -- Bear, fox, rabbit, squirrel, wild boar, and deer,
20 not to include fallow deer or red deer raised for production and
21 sale under G.S. 106-549.97; bobcat, opossum, and raccoon except
22 when trapped in accordance with provisions relating to fur-
23 bearing animals."

24 Section 4. G.S. 106-549.15(14) reads as rewritten:

25 "(14) 'Meat food product' means any product capable of use as human
26 food that is made wholly or in part from any meat or other
27 portion of the carcass of any cattle, sheep, swine, goats, bison, ~~or~~
28 fallow deer, or red deer, excepting products that contain meat or
29 other portions of such carcasses only in a relatively small
30 proportion or historically have not been considered by consumers
31 as products of the meat food industry, and that are exempted
32 from definition as a meat food product by the Board under such
33 conditions as it may prescribe to assure that the meat or other
34 portions of such carcasses contained in such product are not
35 adulterated and that such products are not represented as meat
36 food products. This term as applied to food products of equines
37 shall have a meaning comparable to that provided in this
38 subdivision with respect to cattle, sheep, swine, goats, and bison."

39 Section 5. G.S. 106-549.15(22) reads as rewritten:

40 "(22) 'Renderer' means any person, firm, or corporation engaged in the
41 business of rendering carcasses, or parts or products of the
42 carcasses, of cattle, sheep, swine, goats, fallow deer, red deer,
43 horses, mules, or other equines, except rendering conducted
44 under inspection under this Article."

1 Section 6. G.S. 106-549.17 reads as rewritten:

2 "§ 106-549.17. Inspection of animals before slaughter; humane methods of
3 slaughtering.

4 (a) For the purpose of preventing the use in intrastate commerce, as hereinafter
5 provided, of meat and meat food products which are adulterated, the Commissioner
6 shall cause to be made, by inspectors appointed for that purpose, an examination and
7 inspection of all cattle, sheep, swine, goats, fallow deer, red deer, bison, horses,
8 mules, and other equines before they shall be allowed to enter into any slaughtering,
9 packing, meat-canning, rendering, or similar establishment in this State in which
10 slaughtering and preparation of meat and meat food products of such animals are
11 conducted for intrastate commerce; and all cattle, sheep, swine, goats, fallow deer,
12 red deer, bison, horses, mules, and other equines found on such inspection to show
13 symptoms of disease shall be set apart and slaughtered separately from all other
14 cattle, sheep, swine, goats, fallow deer, red deer, bison, horses, mules, or other
15 equines, and when so slaughtered, the carcasses of said cattle, sheep, swine, goats,
16 fallow deer, red deer, bison, horses, mules, or other equines shall be subject to a
17 careful examination and inspection, all as provided by the rules and regulations to be
18 prescribed by the Board as herein provided for.

19 (b) For the purpose of preventing the inhumane slaughtering of livestock, the
20 Commissioner shall cause to be made, by inspectors appointed for that purpose, an
21 examination and inspection of the method by which cattle, sheep, swine, goats, fallow
22 deer, red deer, bison, horses, mules, and other equines are slaughtered and handled
23 in connection with slaughter in the slaughtering establishments inspected under this
24 law. The Commissioner may refuse to provide inspection to a new slaughtering
25 establishment or may cause inspection to be temporarily suspended at a slaughtering
26 establishment if the Commissioner finds that any cattle, sheep, swine, goats, fallow
27 deer, red deer, bison, horses, mules, or other equines have been slaughtered or
28 handled in connection with slaughter at such establishment by any method not in
29 accordance with subsection (c) of this section until the establishment furnishes
30 assurances satisfactory to the Commissioner that all slaughtering and handling in
31 connection with slaughter of livestock shall be in accordance with such a method.

32 (c) Either of the following two methods of slaughtering of livestock and handling
33 of livestock in connection with slaughter are found to be humane:

34 (1) In the case of cattle, calves, fallow deer, red deer, bison, horses,
35 mules, sheep, swine, and other livestock, all animals are rendered
36 insensible to pain by a single blow or gunshot or an electrical,
37 chemical, or other means that is rapid and effective, before being
38 shackled, hoisted, thrown, cast, or cut; or

39 (2) By slaughtering in accordance with the ritual requirements of the
40 Jewish faith or any other religious faith that prescribes a method
41 of slaughter whereby the animal suffers loss of consciousness by
42 anemia of the brain caused by the simultaneous and instantaneous
43 severance of the carotid arteries with a sharp instrument and
44 handling in connection with such slaughtering."

1 Section 7. G.S. 106-549.18 reads as rewritten:

2 **"§ 106-549.18. Inspection; stamping carcass.**

3 For the purposes hereinbefore set forth the Commissioner shall cause to be made
4 by inspectors appointed for that purpose, as hereinafter provided, a post mortem
5 examination and inspection of the carcasses and parts thereof of all cattle, sheep,
6 swine, goats, fallow deer, red deer, bison, horses, mules, and other equines, capable of
7 use as human food, to be prepared at any slaughtering, meat-canning, salting,
8 packing, rendering, or similar establishment in this State in which such articles are
9 prepared for intrastate commerce; and the carcasses and parts thereof of all such
10 animals found to be not adulterated shall be marked, stamped, tagged, or labeled, as
11 'Inspected and Passed'; and said inspectors shall label, mark, stamp, or tag as
12 'Inspected and Condemned,' all carcasses and parts thereof of animals found to be
13 adulterated; and all carcasses and parts thereof thus inspected and condemned shall
14 be destroyed for food purposes by the said establishment in the presence of an
15 inspector, and the Commissioner or his authorized representative may remove
16 inspectors from any such establishment which fails to so destroy any such condemned
17 carcass or part thereof, and said inspectors, after said first inspection shall, when they
18 deem it necessary, reinspect said carcasses or parts thereof to determine whether
19 since the first inspection the same have become adulterated and if any carcass or any
20 part thereof shall, upon examination and inspection subsequent to the first
21 examination and inspection, be found to be adulterated, it shall be destroyed for food
22 purposes by the said establishment in the presence of an inspector, and the
23 Commissioner or his authorized representative may remove inspectors from any
24 establishment which fails to [do] so destroy any such condemned carcass or part
25 thereof."

26 Section 8. G.S. 106-549.19 reads as rewritten:

27 **"§ 106-549.19. Application of Article; place of inspection.**

28 The foregoing provisions shall apply to all carcasses or parts of carcasses of cattle,
29 sheep, swine, goats, fallow deer, red deer, bison, horses, mules, and other equines or
30 the meat or meat products thereof, capable of use as human food, which may be
31 brought into any slaughtering, meat-canning, salting, packing, rendering, or similar
32 establishment, where inspection under this Article is maintained, and such
33 examination and inspection shall be had before the said carcasses or parts thereof
34 shall be allowed to enter into any department wherein the same are to be treated and
35 prepared for meat food products; and the foregoing provisions shall also apply to all
36 such products which, after having been issued from any such slaughtering, meat-
37 canning, salting, packing, rendering, or similar establishment, shall be returned to the
38 same or to any similar establishment where such inspection is maintained. The
39 Commissioner or his authorized representative may limit the entry of carcasses, part
40 of carcasses, meat and meat food products, and other materials into any establishment
41 at which inspection under this Article is maintained, under such conditions as he may
42 prescribe to assure that allowing the entry of such articles into such inspected
43 establishments will be consistent with the purposes of this and the subsequent
44 Article."

1 Section 9. G.S. 106-549.22 reads as rewritten:

2 "**§ 106-549.22. Rules and regulations of Board.**

3 The Commissioner or his authorized representative shall cause to be made, by
4 experts in sanitation, or by other competent inspectors, such inspection of all
5 slaughtering, meat-canning, salting, packing, rendering, or similar establishments in
6 which cattle, sheep, swine, goats, fallow deer, red deer, bison, horses, mules, and
7 other equines are slaughtered and the meat and meat food products thereof are
8 prepared for intrastate commerce as may be necessary to inform himself concerning
9 the sanitary conditions of the same, and the Board shall prescribe the rules and
10 regulations of sanitation under which such establishments shall be maintained; and
11 where the sanitary conditions of any such establishment are such that the meat or
12 meat food products are rendered adulterated, the Commissioner or his authorized
13 representative shall refuse to allow said meat or meat food products to be labeled,
14 marked, stamped, or tagged as 'North Carolina Department of Agriculture Inspected
15 and Passed.'"

16 Section 10. G.S. 106-549.23 reads as rewritten:

17 "**§ 106-549.23. Prohibited slaughter, sale and transportation.**

18 No person, firm, or corporation shall, with respect to any cattle, sheep, swine,
19 goats, fallow deer, red deer, bison, horses, mules, or other equines, or any carcasses,
20 parts of carcasses, meat or meat food products of any such animals:

- 21 (1) Slaughter any of these animals or prepare any of these articles
22 which are capable of use as human food, at any establishment
23 preparing any such articles for intrastate commerce except in
24 compliance with the requirements of this and the subsequent
25 Article;
- 26 (2) Slaughter, or handle in connection with slaughter, any such
27 animals in any manner not in accordance with G.S. 106-549.17(c)
28 of this Article;
- 29 (3) Sell, transport, offer for sale or transportation, or receive for
30 transportation, in intrastate commerce:
 - 31 a. Any of these articles which (i) are capable of use as human
32 food and (ii) are adulterated or misbranded at the time of
33 sale, transportation, offer for sale or transportation, or
34 receipt for transportation; or
 - 35 b. Any articles required to be inspected under this Article
36 unless they have been so inspected and passed; or
- 37 (4) Do, with respect to any of these articles which are capable of use
38 as human food, any act while they are being transported in
39 intrastate commerce or held for sale after such transportation,
40 which is intended to cause or has the effect of causing the articles
41 to be adulterated or misbranded."

42 Section 11. G.S. 106-549.25 reads as rewritten:

43 "**§ 106-549.25. Slaughter, sale and transportation of equine carcasses.**

1 No person, firm, or corporation shall sell, transport, offer for sale or transportation,
2 or receive for transportation, in intrastate commerce, any carcasses of horses, mules,
3 or other equines or parts of such carcasses, or the meat or meat food products
4 thereof, unless they are plainly and conspicuously marked or labeled or otherwise
5 identified as required by regulations prescribed by the Board to show the kinds of
6 animals from which they were derived. When required by the Commissioner or his
7 authorized representative, with respect to establishments at which inspection is
8 maintained under this Article, such animals and their carcasses, parts thereof, meat
9 and meat food products shall be prepared in establishments separate from those in
10 which cattle, sheep, swine, fallow deer, red deer, bison, or goats are slaughtered or
11 their carcasses, parts thereof, meats or meat food products are prepared."

12 Section 12. G.S. 106-549.26 reads as rewritten:

13 "**§ 106-549.26. Inspection of establishment; bribery of or malfeasance of inspector.**

14 The Commissioner or his authorized representative shall appoint from time to time
15 inspectors to make examination and inspection of all cattle, sheep, swine, goats,
16 fallow deer, red deer, bison, horses, mules, and other equines the inspection of which
17 is hereby provided for, and of all carcasses and parts thereof, and of all meats and
18 meat food products thereof, and of the sanitary conditions of all establishments in
19 which such meat and meat food products hereinbefore described are prepared; and
20 said inspectors shall refuse to stamp, mark, tag or label any carcass or any part
21 thereof, or meat food product therefrom, prepared in any establishment hereinbefore
22 mentioned, until the same shall have actually been inspected and found to be not
23 adulterated; and shall perform such other duties as are provided by this and the
24 subsequent Article and by the rules and regulations to be prescribed by said Board
25 and said Board shall, from time to time, make such rules and regulations as are
26 necessary for the efficient execution of the provisions of this and the subsequent
27 Article, and all inspections and examinations made under this Article shall be such
28 and made in such manner as described in the rules and regulations prescribed by said
29 Board not inconsistent with the provisions of this Article and as directed by the
30 Commissioner or his authorized representative. Any person, firm, or corporation, or
31 any agent or employee of any person, firm, or corporation, who shall give, pay, or
32 offer, directly or indirectly, to any inspector, or any other officer or employee of this
33 State authorized to perform any of the duties prescribed by this and the subsequent
34 Article or by the rules and regulations of the Board or by the Commissioner or his
35 authorized representative any money or other thing of value, with intent to influence
36 said inspector, or other officer or employee of this State in the discharge of any duty
37 herein provided for, shall be deemed guilty of a Class I felony which may include a
38 fine not less than five hundred dollars (\$500.00) nor more than ten thousand dollars
39 (\$10,000); and any inspector, or other officer or employee of this State authorized to
40 perform any of the duties prescribed by this Article who shall accept any money, gift,
41 or other thing of value from any person, firm, or corporation, or officers, agents, or
42 employees thereof, given with intent to influence his official action, or who shall
43 receive or accept from any person, firm, or corporation engaged in intrastate
44 commerce any gift, money, or other thing of value given with any purpose or intent

1 whatsoever, shall be deemed guilty of a Class I felony and shall, upon conviction
2 thereof, be summarily discharged from office and may be punished by a fine not less
3 than five hundred dollars (\$500.00) nor more than ten thousand dollars (\$10,000)."

4 Section 13. G.S. 106-549.27(a) reads as rewritten:

5 "(a) The provisions of this Article requiring inspection of the slaughter of animals
6 and the preparation of the carcasses, parts thereof, meat and meat food products at
7 establishments conducting such operations shall not

8 (1) Apply to the slaughtering by any person of animals of his own
9 raising, and the preparation by him and transportation in
10 intrastate commerce of the carcasses, parts thereof, meat and meat
11 food products of such animals exclusively for use by him and
12 members of his household and his nonpaying guests and
13 employees; nor

14 (2) To the custom slaughter by any person, firm, or corporation of
15 cattle, sheep, swine, fallow deer, red deer, bison, or goats
16 delivered by the owner thereof for such slaughter, and the
17 preparation by such slaughterer and transportation in intrastate
18 commerce of the carcasses, parts thereof, meat and meat food
19 products of such animals, exclusively for use, in the household of
20 such owner, by him, and members of his household and his
21 nonpaying guests and employees: Provided, that all carcasses,
22 parts thereof, meat and meat food products derived from custom
23 slaughter shall be identified as required by the Commissioner,
24 during all phases of slaughtering, chilling, cooling, freezing,
25 packing, meat canning, rendering, preparation, storage and
26 transportation; provided further, that the custom slaughterer does
27 not engage in the business of buying or selling any carcasses, parts
28 thereof, meat or meat food products of any cattle, sheep, swine,
29 goats, fallow deer, red deer, bison, or equines, capable of use as
30 human food, unless the carcasses, parts thereof, meat or meat
31 food products have been inspected and passed and are identified
32 as having been inspected and passed by the Commissioner or the
33 United States Department of Agriculture."

34 Section 14. G.S. 106-549.28 reads as rewritten:

35 "**§ 106-549.28. Regulation of storage of meat.**

36 The Board may by regulations prescribe conditions under which carcasses, parts of
37 carcasses, meat, and meat food products of cattle, sheep, swine, goats, fallow deer, red
38 deer, bison, horses, mules, or other equines, capable of use as human food, shall be
39 stored or otherwise handled by any person, firm, or corporation engaged in the
40 business of buying, selling, freezing, storing, or transporting, in or for intrastate
41 commerce, such articles, whenever the Board deems such action necessary to assure
42 that such articles will not be adulterated or misbranded when delivered to the
43 consumer. Willful violation of any such regulation is a Class 2 misdemeanor."

44 Section 15. This act is effective when it becomes law.

- 1 (1) Fallow deer. -- A member of the *Dama dama* species.
2 (2) Red deer. -- A member of the *Cervus elephus* species.

3 "**§ 106-549.98. Inspection fees.**

4 The Commissioner may establish a fee at an hourly rate to be paid by the owner,
5 proprietor, or operator of each slaughtering, meat-canning, salting, packing,
6 rendering, or similar establishment for the purpose of defraying the expenses incurred
7 in the inspection of fallow deer as required by Article 49B of Chapter 106 of the
8 General Statutes. The Commissioner may establish a fee at an hourly rate to be paid
9 by the owner, proprietor, or operator of each slaughtering, meat-canning, salting,
10 packing, rendering, or similar establishment for the purpose of defraying the expenses
11 incurred in the inspection of red deer as required by Article 49B of Chapter 106 of
12 the General Statutes."

13 Section 2. G.S. 113-129(1b) reads as rewritten:

14 "(1b) Big Game. -- Bear, wild boar, wild turkey, and deer, not to include
15 fallow deer or red deer raised for production and sale under G.S.
16 106-549.97."

17 Section 3. G.S. 113-129(7c) reads as rewritten:

18 "(7c) Game Animals. -- Bear, fox, rabbit, squirrel, wild boar, and deer,
19 not to include fallow deer or red deer raised for production and
20 sale under G.S. 106-549.97; bobcat, opossum, and raccoon except
21 when trapped in accordance with provisions relating to fur-bearing
22 animals."

23 Section 4. G.S. 106-549.15(14) reads as rewritten:

24 "(14) 'Meat food product' means any product capable of use as human
25 food that is made wholly or in part from any meat or other portion
26 of the carcass of any cattle, sheep, swine, goats, bison, ~~or~~ fallow
27 deer, or red deer, excepting products that contain meat or other
28 portions of such carcasses only in a relatively small proportion or
29 historically have not been considered by consumers as products of
30 the meat food industry, and that are exempted from definition as a
31 meat food product by the Board under such conditions as it may
32 prescribe to assure that the meat or other portions of such
33 carcasses contained in such product are not adulterated and that
34 such products are not represented as meat food products. This
35 term as applied to food products of equines shall have a meaning
36 comparable to that provided in this subdivision with respect to
37 cattle, sheep, swine, goats, and bison."

38 Section 5. G.S. 106-549.15(22) reads as rewritten:

39 "(22) 'Renderer' means any person, firm, or corporation engaged in the
40 business of rendering carcasses, or parts or products of the
41 carcasses, of cattle, sheep, swine, goats, fallow deer, red deer,
42 horses, mules, or other equines, except rendering conducted under
43 inspection under this Article."

44 Section 6. G.S. 106-549.17 reads as rewritten:

1 "§ 106-549.17. Inspection of animals before slaughter; humane methods of
2 slaughtering.

3 (a) For the purpose of preventing the use in intrastate commerce, as hereinafter
4 provided, of meat and meat food products which are adulterated, the Commissioner
5 shall cause to be made, by inspectors appointed for that purpose, an examination and
6 inspection of all cattle, sheep, swine, goats, fallow deer, red deer, bison, horses,
7 mules, and other equines before they shall be allowed to enter into any slaughtering,
8 packing, meat-canning, rendering, or similar establishment in this State in which
9 slaughtering and preparation of meat and meat food products of such animals are
10 conducted for intrastate commerce; and all cattle, sheep, swine, goats, fallow deer,
11 red deer, bison, horses, mules, and other equines found on such inspection to show
12 symptoms of disease shall be set apart and slaughtered separately from all other
13 cattle, sheep, swine, goats, fallow deer, red deer, bison, horses, mules, or other
14 equines, and when so slaughtered, the carcasses of said cattle, sheep, swine, goats,
15 fallow deer, red deer, bison, horses, mules, or other equines shall be subject to a
16 careful examination and inspection, all as provided by the rules and regulations to be
17 prescribed by the Board as herein provided for.

18 (b) For the purpose of preventing the inhumane slaughtering of livestock, the
19 Commissioner shall cause to be made, by inspectors appointed for that purpose, an
20 examination and inspection of the method by which cattle, sheep, swine, goats, fallow
21 deer, red deer, bison, horses, mules, and other equines are slaughtered and handled
22 in connection with slaughter in the slaughtering establishments inspected under this
23 law. The Commissioner may refuse to provide inspection to a new slaughtering
24 establishment or may cause inspection to be temporarily suspended at a slaughtering
25 establishment if the Commissioner finds that any cattle, sheep, swine, goats, fallow
26 deer, red deer, bison, horses, mules, or other equines have been slaughtered or
27 handled in connection with slaughter at such establishment by any method not in
28 accordance with subsection (c) of this section until the establishment furnishes
29 assurances satisfactory to the Commissioner that all slaughtering and handling in
30 connection with slaughter of livestock shall be in accordance with such a method.

31 (c) Either of the following two methods of slaughtering of livestock and handling
32 of livestock in connection with slaughter are found to be humane:

33 (1) In the case of cattle, calves, fallow deer, red deer, bison, horses,
34 mules, sheep, swine, and other livestock, all animals are rendered
35 insensible to pain by a single blow or gunshot or an electrical,
36 chemical, or other means that is rapid and effective, before being
37 shackled, hoisted, thrown, cast, or cut; or

38 (2) By slaughtering in accordance with the ritual requirements of the
39 Jewish faith or any other religious faith that prescribes a method of
40 slaughter whereby the animal suffers loss of consciousness by
41 anemia of the brain caused by the simultaneous and instantaneous
42 severance of the carotid arteries with a sharp instrument and
43 handling in connection with such slaughtering."

44 Section 7. G.S. 106-549.18 reads as rewritten:

1 **"§ 106-549.18. Inspection; stamping carcass.**

2 For the purposes hereinbefore set forth the Commissioner shall cause to be made
3 by inspectors appointed for that purpose, as hereinafter provided, a post mortem
4 examination and inspection of the carcasses and parts thereof of all cattle, sheep,
5 swine, goats, fallow deer, red deer, bison, horses, mules, and other equines, capable of
6 use as human food, to be prepared at any slaughtering, meat-canning, salting,
7 packing, rendering, or similar establishment in this State in which such articles are
8 prepared for intrastate commerce; and the carcasses and parts thereof of all such
9 animals found to be not adulterated shall be marked, stamped, tagged, or labeled, as
10 'Inspected and Passed'; and said inspectors shall label, mark, stamp, or tag as
11 'Inspected and Condemned,' all carcasses and parts thereof of animals found to be
12 adulterated; and all carcasses and parts thereof thus inspected and condemned shall
13 be destroyed for food purposes by the said establishment in the presence of an
14 inspector, and the Commissioner or his authorized representative may remove
15 inspectors from any such establishment which fails to so destroy any such condemned
16 carcass or part thereof, and said inspectors, after said first inspection shall, when they
17 deem it necessary, reinspect said carcasses or parts thereof to determine whether
18 since the first inspection the same have become adulterated and if any carcass or any
19 part thereof shall, upon examination and inspection subsequent to the first
20 examination and inspection, be found to be adulterated, it shall be destroyed for food
21 purposes by the said establishment in the presence of an inspector, and the
22 Commissioner or his authorized representative may remove inspectors from any
23 establishment which fails to ~~do~~ so destroy any such condemned carcass or part
24 thereof."

25 Section 8. G.S. 106-549.19 reads as rewritten:

26 **"§ 106-549.19. Application of Article; place of inspection.**

27 The foregoing provisions shall apply to all carcasses or parts of carcasses of cattle,
28 sheep, swine, goats, fallow deer, red deer, bison, horses, mules, and other equines or
29 the meat or meat products thereof, capable of use as human food, which may be
30 brought into any slaughtering, meat-canning, salting, packing, rendering, or similar
31 establishment, where inspection under this Article is maintained, and such
32 examination and inspection shall be had before the said carcasses or parts thereof
33 shall be allowed to enter into any department wherein the same are to be treated and
34 prepared for meat food products; and the foregoing provisions shall also apply to all
35 such products which, after having been issued from any such slaughtering, meat-
36 canning, salting, packing, rendering, or similar establishment, shall be returned to the
37 same or to any similar establishment where such inspection is maintained. The
38 Commissioner or his authorized representative may limit the entry of carcasses, part
39 of carcasses, meat and meat food products, and other materials into any establishment
40 at which inspection under this Article is maintained, under such conditions as he may
41 prescribe to assure that allowing the entry of such articles into such inspected
42 establishments will be consistent with the purposes of this and the subsequent
43 Article."

44 Section 9. G.S. 106-549.22 reads as rewritten:

1 **"§ 106-549.22. Rules and regulations of Board.**

2 The Commissioner or his authorized representative shall cause to be made, by
3 experts in sanitation; or by other competent inspectors, such inspection of all
4 slaughtering, meat-canning, salting, packing, rendering, or similar establishments in
5 which cattle, sheep, swine, goats, fallow deer, red deer, bison, horses, mules, and
6 other equines are slaughtered and the meat and meat food products thereof are
7 prepared for intrastate commerce as may be necessary to inform himself concerning
8 the sanitary conditions of the same, and the Board shall prescribe the rules and
9 regulations of sanitation under which such establishments shall be maintained; and
10 where the sanitary conditions of any such establishment are such that the meat or
11 meat food products are rendered adulterated, the Commissioner or his authorized
12 representative shall refuse to allow said meat or meat food products to be labeled,
13 marked, stamped, or tagged as 'North Carolina Department of Agriculture Inspected
14 and Passed.'"

15 Section 10. G.S. 106-549.23 reads as rewritten:

16 **"§ 106-549.23. Prohibited slaughter, sale and transportation.**

17 No person, firm, or corporation shall, with respect to any cattle, sheep, swine,
18 goats, fallow deer, red deer, bison, horses, mules, or other equines, or any carcasses,
19 parts of carcasses, meat or meat food products of any such animals:

- 20 (1) Slaughter any of these animals or prepare any of these articles
21 which are capable of use as human food, at any establishment
22 preparing any such articles for intrastate commerce except in
23 compliance with the requirements of this and the subsequent
24 Article;
- 25 (2) Slaughter, or handle in connection with slaughter, any such
26 animals in any manner not in accordance with G.S. 106-549.17(c)
27 of this Article;
- 28 (3) Sell, transport, offer for sale or transportation, or receive for
29 transportation, in intrastate commerce:
- 30 a. Any of these articles which (i) are capable of use as human
31 food and (ii) are adulterated or misbranded at the time of
32 sale, transportation, offer for sale or transportation, or
33 receipt for transportation; or
- 34 b. Any articles required to be inspected under this Article
35 unless they have been so inspected and passed; or
- 36 (4) Do, with respect to any of these articles which are capable of use
37 as human food, any act while they are being transported in
38 intrastate commerce or held for sale after such transportation,
39 which is intended to cause or has the effect of causing the articles
40 to be adulterated or misbranded."

41 Section 11. G.S. 106-549.25 reads as rewritten:

42 **"§ 106-549.25. Slaughter, sale and transportation of equine carcasses.**

43 No person, firm, or corporation shall sell, transport, offer for sale or transportation,
44 or receive for transportation, in intrastate commerce, any carcasses of horses, mules,

1 or other equines or parts of such carcasses, or the meat or meat food products
2 thereof, unless they are plainly and conspicuously marked or labeled or otherwise
3 identified as required by regulations prescribed by the Board to show the kinds of
4 animals from which they were derived. When required by the Commissioner or his
5 authorized representative, with respect to establishments at which inspection is
6 maintained under this Article, such animals and their carcasses, parts thereof, meat
7 and meat food products shall be prepared in establishments separate from those in
8 which cattle, sheep, swine, fallow deer, red deer, bison, or goats are slaughtered or
9 their carcasses, parts thereof, meats or meat food products are prepared."

10 Section 12. G.S. 106-549.26 reads as rewritten:

11 "**§ 106-549.26. Inspection of establishment; bribery of or malfeasance of inspector.**

12 The Commissioner or his authorized representative shall appoint from time to time
13 inspectors to make examination and inspection of all cattle, sheep, swine, goats,
14 fallow deer, red deer, bison, horses, mules, and other equines the inspection of which
15 is hereby provided for, and of all carcasses and parts thereof, and of all meats and
16 meat food products thereof, and of the sanitary conditions of all establishments in
17 which such meat and meat food products hereinbefore described are prepared; and
18 said inspectors shall refuse to stamp, mark, tag or label any carcass or any part
19 thereof, or meat food product therefrom, prepared in any establishment hereinbefore
20 mentioned, until the same shall have actually been inspected and found to be not
21 adulterated; and shall perform such other duties as are provided by this and the
22 subsequent Article and by the rules and regulations to be prescribed by said Board
23 and said Board shall, from time to time, make such rules and regulations as are
24 necessary for the efficient execution of the provisions of this and the subsequent
25 Article, and all inspections and examinations made under this Article shall be such
26 and made in such manner as described in the rules and regulations prescribed by said
27 Board not inconsistent with the provisions of this Article and as directed by the
28 Commissioner or his authorized representative. Any person, firm, or corporation, or
29 any agent or employee of any person, firm, or corporation, who shall give, pay, or
30 offer, directly or indirectly, to any inspector, or any other officer or employee of this
31 State authorized to perform any of the duties prescribed by this and the subsequent
32 Article or by the rules and regulations of the Board or by the Commissioner or his
33 authorized representative any money or other thing of value, with intent to influence
34 said inspector, or other officer or employee of this State in the discharge of any duty
35 herein provided for, shall be deemed guilty of a Class I felony which may include a
36 fine not less than five hundred dollars (\$500.00) nor more than ten thousand dollars
37 (\$10,000); and any inspector, or other officer or employee of this State authorized to
38 perform any of the duties prescribed by this Article who shall accept any money, gift,
39 or other thing of value from any person, firm, or corporation, or officers, agents, or
40 employees thereof, given with intent to influence his official action, or who shall
41 receive or accept from any person, firm, or corporation engaged in intrastate
42 commerce any gift, money, or other thing of value given with any purpose or intent
43 whatsoever, shall be deemed guilty of a Class I felony and shall, upon conviction

1 thereof, be summarily discharged from office and may be punished by a fine not less
2 than five hundred dollars (\$500.00) nor more than ten thousand dollars (\$10,000)."

3 Section 13. G.S. 106-549.27(a) reads as rewritten:

4 "(a) The provisions of this Article requiring inspection of the slaughter of animals
5 and the preparation of the carcasses, parts thereof, meat and meat food products at
6 establishments conducting such operations shall not

7 (1) Apply to the slaughtering by any person of animals of his own
8 raising, and the preparation by him and transportation in intrastate
9 commerce of the carcasses, parts thereof, meat and meat food
10 products of such animals exclusively for use by him and members
11 of his household and his nonpaying guests and employees; nor

12 (2) To the custom slaughter by any person, firm, or corporation of
13 cattle, sheep, swine, fallow deer, red deer, bison, or goats delivered
14 by the owner thereof for such slaughter, and the preparation by
15 such slaughterer and transportation in intrastate commerce of the
16 carcasses, parts thereof, meat and meat food products of such
17 animals, exclusively for use, in the household of such owner, by
18 him, and members of his household and his nonpaying guests and
19 employees: Provided, that all carcasses, parts thereof, meat and
20 meat food products derived from custom slaughter shall be
21 identified as required by the Commissioner, during all phases of
22 slaughtering, chilling, cooling, freezing, packing, meat canning,
23 rendering, preparation, storage and transportation; provided
24 further, that the custom slaughterer does not engage in the business
25 of buying or selling any carcasses, parts thereof, meat or meat food
26 products of any cattle, sheep, swine, goats, fallow deer, red deer,
27 bison, or equines, capable of use as human food, unless the
28 carcasses, parts thereof, meat or meat food products have been
29 inspected and passed and are identified as having been inspected
30 and passed by the Commissioner or the United States Department
31 of Agriculture."

32 Section 14. G.S. 106-549.28 reads as rewritten:

33 "§ 106-549.28. Regulation of storage of meat.

34 The Board may by regulations prescribe conditions under which carcasses, parts of
35 carcasses, meat, and meat food products of cattle, sheep, swine, goats, fallow deer, red
36 deer, bison, horses, mules, or other equines, capable of use as human food, shall be
37 stored or otherwise handled by any person, firm, or corporation engaged in the
38 business of buying, selling, freezing, storing, or transporting, in or for intrastate
39 commerce, such articles, whenever the Board deems such action necessary to assure
40 that such articles will not be adulterated or misbranded when delivered to the
41 consumer. Willful violation of any such regulation is a Class 2 misdemeanor."

42 Section 15. This act is effective when it becomes law.



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 266

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

S266-ALJ-4/8

Date _____, 1997

Comm. Sub.
Amends Title

Senator _____

- 1 moves to amend the bill on page 1, lines 21 and 22, by rewriting
- 2 those lines to read:
- 3 "prevent damage to the native deer population or its habitat."

SIGNED J. Kerr
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

ASSUMPTIONS AND METHODOLOGY: The Department of Agriculture/ Meat and Poultry Inspection section charges \$26/hour to inspect "exotic" animals such as bison, ostrich and fallow deer. The Department will charge the same inspection fee for red deer. Any revenue from this fee will be deposited as a receipt in the Meat and Poultry Inspection budget. The Department could ask the Office of State Budget & Management to increase their budget so that they may spend these receipts or the agency could apply them to their budget and reduce their General Fund appropriation.

The Department has not received a request for red deer inspection and did not know of any demand for red deer meat. The Department has had the authority to inspect fallow deer since 1991, but has not made one inspection. The bill was requested on behalf of a potential deer farmer in Buncombe County. Upon enactment of this bill, this farmer will acquire 20 to 25 red deer for breeding. It will take three to four years before enough deer are available for market. The number of other potential deer farmers in the state is unknown.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 168

Short Title: Increase Nurses Fees.

(Public)

Sponsors: Senators Hoyle; and Carpenter.

Referred to: Finance.

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE EXAMINATION AND CERTIFICATION FEES
COLLECTED UNDER THE NURSING PRACTICE ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-171.27(b) reads as rewritten:

"(b) The schedule of fees shall not exceed the following rates:

Application for examination leading to certificate and license as registered nurse	45.00	<u>75.00</u>
Application for certificate and license as registered nurse by endorsement	75.00	<u>150.00</u>
Application for each re-examination leading to certificate and license as registered nurse	45.00	<u>75.00</u>
Renewal of license to practice as registered nurse (two-year period)	50.00	<u>100.00</u>
Reinstatement of lapsed license to practice as a registered nurse and renewal fee	90.00	<u>180.00</u>
Application for examination leading to certificate and license as licensed practical nurse by examination	45.00	<u>75.00</u>
Application for certificate and license as licensed practical nurse by endorsement	75.00	<u>150.00</u>
Application for each re-examination leading to certificate and license as licensed practical nurse	45.00	<u>75.00</u>
Renewal of license to practice as a licensed practical nurse (two-year period)	50.00	<u>100.00</u>
Reinstatement of lapsed license to practice as a licensed practical nurse and renewal fee	90.00	<u>180.00</u>
Reasonable charge for duplication services and materials."		

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



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 168

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

S168-ALJ-4/9

Date _____, 1997

Comm. Sub. [
Amends Title [

Senator _____

- 1 moves to amend the bill on page 1, line 28, by rewriting that line
- 2 to read:
- 3 "materials.
- 4 An annual fee for an item listed in this schedule shall not increase
- 5 from one year to the next by more than twenty percent (20%)."

SIGNED *[Signature]*
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____

FAILED _____

TABLED _____

1	Renewal of license to practice as a licensed practical		
2	nurse (two-year period)	50.00	<u>100.00</u>
3	Reinstatement of lapsed license to practice as a		
4	licensed practical nurse and renewal fee	90.00	<u>180.00</u>
5	Reasonable charge for duplication services and		
6	materials.		

7 An annual fee for an item listed in this schedule shall not increase from one year to
8 the next by more than twenty percent (20%)."

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

FISCAL ANALYSIS MEMORANDUM

DATE: April 8, 1997
 TO: Senate Committee on Finance
 FROM: Warren Plonk, Fiscal Research Division
 RE: SB 168, Increase Nurses Fees

	FISCAL IMPACT				
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 1997-98</u>	<u>FY 1998-99</u>	<u>FY 1999-00</u>	<u>FY 2000-01</u>	<u>FY 2001-02</u>
REVENUES	See section on assumptions and methodology				
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:	North Carolina Board of Nursing				
EFFECTIVE DATE:	When it becomes law				

BILL SUMMARY:

The proposed act increases the licensing and registration fees authorized under G.S. 90-171.27(b). The revenue from these charges is used by the North Carolina Board of Nursing in its normal course of conducting the affairs of the State Board. The last year the General Assembly granted the Board an increase in fees was in 1987.

ASSUMPTIONS AND METHODOLOGY

Source: Deloitte Touche Tomatsu International

	<u>Year Ending June 30, 1993, 1994, 1995, 1996</u>			
	<u>1996</u>	<u>1995</u>	<u>1994</u>	<u>1993</u>
REVENUES (Fees & Licenses)	\$3,160,560	\$3,106,519	\$2,840,414	\$2,445,987
EXPENDITURES	\$3,307,598	\$2,756,580	\$2,652,213	\$2,328,682
Ending Year Balance	-18% (\$147,038)	\$349,939	\$188,201	\$117,305
Beginning Year Balance	\$961,088	\$611,149	\$422,948	\$264,931
Balance End of Year	\$814,050	\$961,088	\$611,149	\$422,948

The loss of \$147,038 represents 18% of the year end balance for 1996.

Fee Incorporation Dates

	<u>Prior to</u>		<u>Effective</u>	<u>Effective</u>		<u>Effective</u>	<u>Effective</u>
	<u>1987</u>	<u>1987 Act</u>		<u>7/1/88</u>	<u>01/01/92</u>		
Application Examination Fee - Registered Nurse	\$45.00	\$45.00	\$40.00	\$45.00			
Endorsement - Registered	\$45.00	\$75.00	\$50.00	\$60.00			\$75.00
Re-examination Fee - Registered Nurse	\$45.00	\$45.00	\$40.00	\$45.00			
Renewal of License (Two Year License), Registered	\$25.00	\$50.00	\$40.00		\$50.00		
Reinstatement of License Fee, Registered	\$50.00	\$90.00	\$90.00				
Application Examination Fee - Practical Nurse	\$45.00	\$45.00	\$30.00	\$35.00			\$45.00
Endorsement - Practical	\$45.00	\$75.00	\$50.00	\$60.00			\$75.00
Re-examination Fee - Practical Nurse	\$45.00	\$45.00	\$30.00	\$35.00			
Renewal of License (Two Year License), Practical	\$25.00	\$50.00	\$40.00		\$50.00		\$45.00
Reinstatement of License Fee, Practical	\$50.00	\$90.00	\$90.00				

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

April 9, 1997

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Ed Bower	R W Borne
Clifford B. Nuteaf	UNO GA
John MEAD	BRADSHAW'S FORD LINC Merc. Center Inc. P.O. Box 780 LENOIR, NC 28645
Harold Treadmore	ASHE CO. FORD-MERCURY W. JEFFERSON N.C. 28694
Rick Hodges	HAYGOOD L/M, INC P.O. Box 2394 GASTONIA, NC 28053
JOHN D COON	JOHN COOL SUBARU 175 Hwy 105 Ely BOONE, NC 28607
Wm S. Ely	TOWN + COUNTRY TOYOTA 9101 South Blvd. CHARLOTTE, NC 28273
Randy Maun	Randy Maun Chevrolet P.O. Box 1559 MOORESVILLE NC 28115
Tom BURTON	AL SMITH BUILT INC Wake Forest Rd RAL. N.C. 27609
DAVID M. FARRIS	FARRIS MTS. P.O. Box 8425 Rocky MT N.C. 27804
Grady Shore	MOORESVILLE Ford-Mercury Box 509 MOORESVILLE, NC.

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

April 9, 1997

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Rick Williamson	Williamson Mazda, Lumberton NC
HARRY L LANDY	LAND Automotive Network, Durham
Glenn Shepherd	TEAM Ford-Mercury Sales, Inc. Tarboro, N.C.
W.P. Howard	Becht, Howard Statesville N.C. Chevrolet Trucks
Ray McWhorter	ABERNETHY CHEV-OLDS INC LINCOLNTON NC
Charles Snipes	Snipes Ford Goldsboro, N.C.
Pete Williams	FOLGER BUICK-SUBARU CHARLOTTE
Paul Ziser	OSBY
Donald W. Colclough	University Ford Durham, NC
Thomas Clement	Salisbury Motors Co Salisbury N.C.

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

April 9, 1997

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jim B/A	NCAFI
Arlin Masley	Farm Bureau Monroe n.c
Arene Masley	Farm Bureau Monroe, n.c.
Betty Lou Masley	Farm Bureau Wapahaw, N.C.
Ethel Lutz	Farm Bureau Newton, N.C.
Ruby Webb	Farm Bureau Reidsville, NC.
Johnny Masley	" " WAXHAW N.C.
David Simmons	Zeb Alley, PA
Ruby Moore	Farm Bureau Reidsville N.C.
Kerry Kida	Farm Bureau Jefferson, N.C.
Robert M. Wallace	Farm Bureau Middleburg N.C.

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

April 9, 1997

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Lee M. Rea	Farm Bureau Charlotte NC
HOWARD REINHARDT	NC FARM BUREAU MAIDEN NC
PATSY WARD	NC FARM BUREAU MCHANSVILLE NC
JIMMY DALTON	N.C. FARM BUREAU Pine HALL, N.C.
Jerry Pless	N.C. FARM BUREAU Rockwell, N.C.
KENT SMITH	N.C. FARM BUREAU DALLAS, NC.
W. B. Jenkins	N.C. " " Raleigh N.C.
Howard KRAMER	N.C. Bd. of Nursing
Polly Johnson	NC Bd of Nursing
Gayle Bellamy	NC Board of Nursing
Amy Mendenhall	Hunton & Williams
Ron Azcock	Co. Com. Assoc.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT

John H. Kerr, III, Co-Chair
David W. Hoyle, Co-Chair

Wednesday, April 09, 1997

SENATOR JOHN KERR,

submits the following with recommendations as to passage:

FAVORABLE

S.B.(CS #1)424 Wake Forest Annexations.
 Sequential Referral: None
 Recommended Referral: None

S.B. 425 Refrigeration Contractors.
 Sequential Referral: None
 Recommended Referral: None

FAVORABLE, AS AMENDED

S.B. 500 Mtn. Island Lake Marine Commission.
 Sequential Referral: None
 Recommended Referral: None
 Long Title Amended: No

TOTAL REPORTED: 3

Committee Clerk Comment: None

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

FINANCE COMMITTEE REPORT

John H. Kerr, III, Co-Chair
David W. Hoyle, Co-Chair

Thursday, April 10, 1997

SENATOR JOHN KERR,

submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B. **168** Increase Nurses Fees. .
 Draft Number: PCS7707
 Sequential Referral: None
 Recommended Referral: None
 Long Title Amended: No

S.B. **266** Production and Sale of Red Deer.
 Draft Number: PCS2675
 Sequential Referral: None
 Recommended Referral: None
 Long Title Amended: No

TOTAL REPORTED: 2

Committee Clerk Comment: None

SENATE FINANCE COMMITTEE

THURSDAY, APRIL 10, 1997

12:00 NOON - ROOM 544 LOB

The Senate Finance Committee met. There were 21 members of the committee present. Senator David W. Hoyle, Co-Chairman, was president. Senator Hoyle introduced the Pages for the meeting. They are Robert Brinson from Gastonia, N. C., sponsored by Senator Hoyle and Matt Hiatt from Mount Airy, N. C., sponsored by Senator Foxx.

S. B. 719 - Goldsboro Room Tax Use

Senator Kerr explain the bill. Senator McDaniel moved for a "favorable" report, motion passed.

S. B. 317 - Local Government Debt Changes

Senator Winner explained the bill and moved for adoption of proposed committee substitute, motion passed. Senator Webster moved for a "favorable" report, motion passed. Mr. Ed Regan with the N. C. Association of County Commissioners stated that they were okay with the bill. Mr. Andy Romenet, General Counsel, with the N. C. League of Municipalities stated that they do not have a problem with most of the bill, however, they still have a problem with some parts of the bill. Mr. Bob High with the Department of State Treasurer also spoke on the bill. The bill will be reported out as "unfavorable as to bill, but favorable as to committee substitute bill". NOTE: Bill was reported out of committee on April 14, 1997.

S. B. 158 - Administrative Dissolution/Annual Rept.

Senator Hartsell came to explain the bill and made a motion to adopt the proposed committee substitute, motion passed. Ms. Sabre Faires, Staff, gave a report on the proposed amendments to the bill. Senator Kerr moved for adoption of amendments, motion passed. Senator Hartsell began to explain the proposed committee substitute as amended. Mr. David Massey, General Counsel, to the Secretary of State's Office spoke on the bill. Mr. Jack Parker with the Department of Revenue also spoke on the bill. Senator Kerr moved for a "favorable" report on the proposed committee substitute as

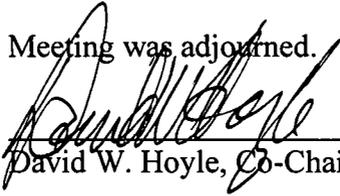
SENATE FINANCE COMMITTEE

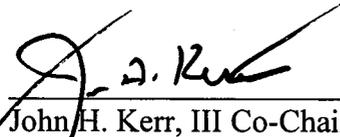
Thursday, April 10, 1997

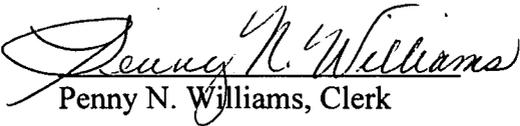
Page -2-

amended and be turned into a new committee substitute, motion passed. Senator Webster made a motion that the fee for application for reinstatement of corporation following administrative dissolution be a one (1) time fee of \$100.00, motion passed. NOTE: The bill was reported out on April 14, 1997 "unfavorable as to bill, but favorable as to committee substitute bill, and be re-referred to Senate Appropriations.

Meeting was adjourned.


David W. Hoyle, Co-Chair


John H. Kerr, III Co-Chair


Penny N. Williams, Clerk


Evelyn S. Hartsell, Clerk

NOTE:

Agenda is Attachment # 1

Visitor's Registration is Attachment # 2

Committee Reports are Attachment # 3 and # 4

AGENDA

SENATE FINANCE COMMITTEE

MEETING

ON THURSDAY, APRIL 10, 1997

12:00 NOON - ROOM 544

S.B. 719 - GOLDSBORO ROOM TAX USE - SEN. KERR

S.B. 158 - ADMINISTRATIVE DISSOLUTION/ANNUAL REPORT -
SEN. HARTSELL

S.B. 317 - LOCAL GOVERNMENT DEBT CHANGES - SEN. WINNER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 719

Short Title: Goldsboro Room Tax Use.

(Local)

Sponsors: Senator Kerr.

Referred to: Finance.

April 7, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO MODIFY THE PURPOSES FOR WHICH THE GOLDSBORO
3 ROOM OCCUPANCY TAX MAY BE USED AND TO MAKE TECHNICAL
4 AND CONFORMING CHANGES.
5 The General Assembly of North Carolina enacts:
6 Section 1. Sections 2 through 9 of Chapter 555 of the 1991 Session Laws
7 read as rewritten:
8 "Sec. 2. Levy of Tax. The City of Goldsboro may ~~by resolution, after not less~~
9 ~~than 10 days public notice and after a public hearing held pursuant thereto,~~ levy a
10 room occupancy and tourism development tax. ~~Collection of the tax, and liability,~~
11 ~~therefore, shall begin and continue only on and after the first day of a calendar~~
12 ~~month set in the resolution levying the tax, which in no case may be earlier than the~~
13 ~~first day of the second succeeding calendar month after the date of adoption of the~~
14 ~~resolution.~~
15 "~~Sec. 3. Rate, Scope.~~ The room occupancy and tourism development tax that
16 may be levied under this act shall not be less than three percent (3%) nor more than
17 five percent (5%) of the gross receipts derived from the rental of any room, lodging,
18 or similar accommodation furnished by any hotel, motel, inn, tourist camp, or other
19 similar place within the levying unit now subject to the three percent (3%) sales tax
20 imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State
21 or local sales tax.
22 "Sec. 4. Exemptions. The tax authorized by this act does not apply to gross
23 receipts derived by the following entities from accommodations furnished by them:
24 (1) Religious organizations;

- 1 (2) A business that offers to rent fewer than five units;
- 2 (3) Educational organizations;
- 3 (4) Summer camps; and
- 4 (5) Charitable, benevolent, and other nonprofit organizations.

5 "Sec. 5. Administration of Tax. A tax levied under this section shall be levied,
6 administered, collected, and repealed as provided in G.S. 160A-215, except that the
7 return is due on the 25th day of the month rather than the 15th day of the month.
8 The penalties provided in G.S. 160A-215 apply to a tax levied under this section. (a)
9 ~~A tax levied under this act is due and payable to the city in monthly installments on~~
10 ~~or before the twenty fifth day of the month following the month in which the tax~~
11 ~~accrues. Every person, firm, corporation, or association liable for the tax shall, on or~~
12 ~~before the twenty fifth day of each month, prepare and render a return on a form~~
13 ~~prescribed by the city. The return shall state the total gross receipts derived in the~~
14 ~~preceding month from rentals upon which the tax is levied. A return filed under this~~
15 ~~section is not a public record as defined by G.S. 132-1 and may not be disclosed~~
16 ~~except as required by law.~~

17 ~~(b) Any person, firm, corporation, or association who fails or refuses to file the~~
18 ~~return required by this act shall pay a penalty of fifty dollars (\$50.00) for each day's~~
19 ~~omission as provided under G.S. 160A-175.~~

20 ~~(c) Any person who willfully attempts in any manner to evade the occupancy tax~~
21 ~~imposed by this act or to make a return or who willfully fails to pay the tax or make~~
22 ~~and file a return shall, in addition to all other penalties provided by law, be guilty of~~
23 ~~a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars~~
24 ~~(\$1,000), imprisonment not to exceed six months, or both.~~

25 "Sec. 6. Collection of Tax. ~~Every operator of a business subject to the tax levied~~
26 ~~by this act shall, on and after the effective date of the tax, collect the tax. The tax~~
27 ~~shall be collected as part of the charge for the furnishing of any taxable~~
28 ~~accommodations. The tax shall be stated and charged separately from the sales~~
29 ~~records, and shall be paid by the purchaser to the operator of the business as trustee~~
30 ~~for and on account of the governing bodies. The room occupancy tax levied~~
31 ~~pursuant to this act shall be added to the sales price and shall be passed on to the~~
32 ~~purchaser instead of being borne by the operator of the business. The city shall~~
33 ~~design, print, and furnish to all appropriate businesses in the city the necessary forms~~
34 ~~for filing returns and instructions to ensure the full collection of the tax.~~

35 "Sec. 7. Disposition of Taxes Collected. (a) Feasibility Study. After levying a tax
36 under this act, the City of Goldsboro shall place the net proceeds of the tax in a
37 special fund. 'Net proceeds' means gross proceeds less the cost to the city of
38 collecting and administering the tax. When sufficient proceeds have been
39 accumulated in the special fund, the city council shall create a citizens' advisory
40 committee to conduct a study of the feasibility of the construction of a civic center in
41 Goldsboro. The citizens' advisory committee shall be composed of either five or
42 seven members, as determined by the city council. If the committee is composed of
43 five members, three shall be appointed by the city council and two shall be appointed
44 by the Chamber of Commerce of Wayne County. If the committee is composed of

1 seven members, four shall be appointed by the city council and three shall be
2 appointed by the Chamber of Commerce of Wayne County. The city shall remit no
3 more than twenty percent (20%) of the net proceeds of the tax levied under this act
4 to the Goldsboro Tourism Council created in Section 8 of this act. The Council shall
5 use the proceeds to develop tourism, support services, and tourist-related events, and
6 for any other appropriate activities to provide tourism-related facilities and
7 attractions. The citizens' advisory committee shall use the remainder of the net
8 proceeds of the tax levied under this act for a study of the feasibility of the
9 construction of a civic center in Goldsboro.

10 (b) If Civic Center Feasible. If the Goldsboro City Council determines that the
11 results of the feasibility study indicate that a civic center would be a viable alternative
12 for the city, the proceeds of the tax levied under this act shall thereafter be used as
13 provided in this subsection. The citizens' advisory committee created pursuant to
14 subsection (a) of this section shall continue to serve in an advisory capacity to the
15 Goldsboro City Council. The city shall ~~use~~ remit no more than twenty percent
16 (20%) of the net proceeds of the tax levied under this act to the Goldsboro Tourism
17 Council created in Section 8 of this act. The Council shall use the proceeds to
18 develop tourism, support services, and tourist-related events, and for any other
19 appropriate activities to provide tourism-related facilities and attractions. ~~for~~
20 ~~development of tourism, support services, and tourist-related events and attractions.~~
21 The city shall use the remainder of the net proceeds for improving, leasing,
22 constructing, financing, operating, or acquiring facilities and properties as needed to
23 provide for a civic center facility for Goldsboro. The city may contract with any
24 person, firm, or agency to assist it in carrying out the purposes provided in this
25 subsection.

26 (c) If Civic Center Not Feasible at Present. If the Goldsboro City Council
27 determines that the results of the feasibility study indicate that a civic center would
28 not be a viable alternative for the city at present or without the participation of other
29 governmental, educational, or nonprofit entities, then the city may, on a monthly
30 basis, remit up to fifty percent (50%) of the net proceeds of the tax to the Goldsboro
31 Tourism Council created in Section 8 of this act. The Council shall use the proceeds
32 to develop tourism, support services, and tourist-related events, and for any other
33 appropriate activities to provide tourism-related facilities and attractions. The
34 remaining net proceeds of the tax shall be invested in a special interest bearing fund
35 and held by the city for improving, leasing, constructing, financing, operating, or
36 acquiring facilities and properties, either by the city or in conjunction with other
37 governmental, educational, or nonprofit entities. Thereafter, if the Goldsboro City
38 Council determines that a civic center would be a viable alternative for the city, then
39 a citizens' advisory committee shall be again created, if it has been disbanded,
40 pursuant to subsection (a) of this section, and the provisions of subsection (b) of this
41 section shall apply. Further, the citizens' advisory committee may conduct additional
42 feasibility studies as it deems necessary. If the Goldsboro City Council later
43 determines that a civic center would not be a viable alternative for the city, then the
44 provisions of subsection (d) of this section shall apply.

1 (d) If Civic Center Not Feasible. If the Goldsboro City Council determines that
2 the results of the feasibility study indicate that a civic center would not be a viable
3 alternative for the city, the proceeds of the tax levied under this act shall thereafter
4 be used as provided in this subsection. The citizens' advisory committee created
5 pursuant to subsection (a) of this section shall be disbanded. The city shall, on a
6 monthly basis, remit the net proceeds of the tax to the Goldsboro Tourism Council
7 created in Section 8 of this act. The Council shall use the proceeds to develop
8 tourism, support services, and tourist-related events, and for any other appropriate
9 activities to provide tourism-related facilities and attractions.

10 "Sec. 8. Goldsboro Tourism Council. (a) ~~If the~~ The Goldsboro City Council
11 ~~determines that the results of the feasibility study indicate that a civic center would~~
12 ~~not be a viable alternative for the city, as provided in Section 7,~~ it shall adopt a
13 resolution creating a Goldsboro Tourism Council. The membership of the Goldsboro
14 Tourism Council shall be appointed by the Goldsboro City Council as follows:

15 (1) Three owners or operators of hotels, motels, or other taxable
16 accommodations in the City of Goldsboro.

17 (2) Three individuals who have demonstrated an interest in
18 conventions and tourism development in the Goldsboro area, and
19 who do not own or operate hotels, motels, or other taxable tourism
20 accommodations.

21 (3) Three ex officio members: the city manager, the executive
22 vice-president of the Chamber of Commerce of Wayne County,
23 and the mayor of the City of Goldsboro.

24 (b) All members of the Council shall serve without compensation. Travel
25 expenses, as approved in the annual budget, may be provided by the Goldsboro
26 Tourism Council. Vacancies in the Council shall be filled in the same manner as the
27 original appointments. Members appointed to fill vacancies shall serve for the
28 remainder of the unexpired term for which they are appointed to fill. Members shall
29 serve three-year terms which will be staggered as provided by the city council;
30 members may serve no more than two consecutive three-year terms. The members
31 shall elect a chairperson and treasurer, who shall serve for a term of two years. The
32 Council shall meet at the call of the chairperson and shall adopt rules of procedure to
33 govern its meeting as provided by Robert's Rules of Order.

34 (c) The Goldsboro Tourism Council may contract with any person, firm, or
35 agency to assist it in carrying out the purposes provided in this act. The Council
36 shall prepare an annual budget and shall report quarterly and at the close of the fiscal
37 year to the Goldsboro City Council on its receipts and expenditures for the preceding
38 quarter and year in such detail as the city may require. An audit will be conducted
39 as part of the city's audit contract.

40 ~~"Sec. 9. Repeal. A tax levied under this section may be repealed by a resolution~~
41 ~~adopted by the Goldsboro City Council. Repeal of a tax levied under this section~~
42 ~~shall become effective on the first day of a month and may not become effective until~~
43 ~~the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax~~
44 ~~levied under this section does not affect a liability for a tax that was attached before~~

1 ~~the effective date of the repeal, nor does it affect a right to a refund of a tax that~~
2 ~~accrued before the effective date of the repeal."~~

3 Section 2. (a) Article 9 of Chapter 160A of the General Statutes is
4 amended by adding a new section to read:

5 "§ 160A-215. Uniform provisions for room occupancy taxes.

6 (a) Scope. -- This section applies only to municipalities the General Assembly has
7 authorized to levy room occupancy taxes. For the purpose of this section, the term
8 'city' means a municipality.

9 (b) Levy. -- A room occupancy tax may be levied only by resolution, after not less
10 than 10 days' public notice and after a public hearing held pursuant thereto. A room
11 occupancy tax shall become effective on the date specified in the resolution levying
12 the tax. That date must be the first day of a calendar month, however, and may not
13 be earlier than the first day of the second month after the date the resolution is
14 adopted.

15 (c) Collection. -- Every operator of a business subject to a room occupancy tax
16 shall, on and after the effective date of the levy of the tax, collect the tax. The tax
17 shall be collected as part of the charge for furnishing a taxable accommodation. The
18 tax shall be stated and charged separately from the sales records and shall be paid by
19 the purchaser to the operator of the business as trustee for and on account of the
20 taxing city. The tax shall be added to the sales price and shall be passed on to the
21 purchaser instead of being borne by the operator of the business. The taxing city
22 shall design, print, and furnish to all appropriate businesses and persons in the city
23 the necessary forms for filing returns and instructions to ensure the full collection of
24 the tax. An operator of a business who collects a room occupancy tax may deduct
25 from the amount remitted to the taxing city a discount equal to the discount the State
26 allows the operator for State sales and use tax.

27 (d) Administration. -- The taxing city shall administer a room occupancy tax it
28 levies. A room occupancy tax is due and payable to the city finance officer in
29 monthly installments on or before the 15th day of the month following the month in
30 which the tax accrues. Every person, firm, corporation, or association liable for the
31 tax shall, on or before the 15th day of each month, prepare and render a return on a
32 form prescribed by the taxing city. The return shall state the total gross receipts
33 derived in the preceding month from rentals upon which the tax is levied. A room
34 occupancy tax return filed with the city finance officer is not a public record and may
35 not be disclosed except in accordance with G.S. 153A-148.1 or G.S. 160A-208.1.

36 (e) Penalties. -- A person, firm, corporation, or association who fails or refuses to
37 file a room occupancy tax return or pay a room occupancy tax as required by law is
38 subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file
39 a return for State sales and use taxes. The governing board of the taxing city has the
40 same authority to waive the penalties for a room occupancy tax that the Secretary of
41 Revenue has to waive the penalties for State sales and use taxes.

42 (f) Repeal or Reduction. -- A room occupancy tax levied by a city may be
43 repealed or reduced by a resolution adopted by the governing body of the city.
44 Repeal or reduction of a room occupancy tax shall become effective on the first day

1 of a month and may not become effective until the end of the fiscal year in which the
2 resolution was adopted. Repeal or reduction of a room occupancy tax does not affect
3 a liability for a tax that was attached before the effective date of the repeal or
4 reduction, nor does it affect a right to a refund of a tax that accrued before the
5 effective date of the repeal or reduction."

6 (b) This section applies only to the City of Goldsboro.
7 Section 3. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 317

Short Title: Local Government Debt Changes.

(Public)

Sponsors: Senators Winner, Hartsell; Cooper, Hoyle, Kerr, and Odom.

Referred to: Finance.

March 5, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW ALL COUNTIES TO ACQUIRE PROPERTY FOR USE BY
3 THEIR LOCAL BOARDS OF EDUCATION, TO PROVIDE THAT EXISTING
4 LOCAL GOVERNMENT DEBT STATEMENT REQUIREMENTS AND DEBT
5 LIMITATIONS APPLY TO INSTALLMENT PURCHASE AND LEASE DEBTS,
6 TO REQUIRE LOCAL GOVERNMENT COMMISSION APPROVAL OF
7 MORE NONVOTED DEBTS, AND TO CAP THE AMOUNT OF
8 INSTALLMENT PURCHASE AND LEASE DEBT COUNTIES AND CITIES
9 MAY INCUR.

10 The General Assembly of North Carolina enacts:

11 Section 1. (a) G.S. 153A-158.1 reads as rewritten:

12 "**§ 153A-158.1. Acquisition and improvement of school ~~property in certain counties.~~**
13 **property.**

14 (a) Acquisition by County. -- A county may acquire, by any lawful method, any
15 interest in real or personal property for use by a school administrative unit within the
16 county. In exercising the power of eminent domain a county shall use the procedures
17 of Chapter 40A. The county shall use its authority under this subsection to acquire
18 property for use by a school administrative unit within the county only upon the
19 request of the board of education of that school administrative unit and after a public
20 hearing.

21 (b) Construction or Improvement by County. -- A county may construct, equip,
22 expand, improve, renovate, or otherwise make available property for use by a school
23 administrative unit within the county. The local board of education shall be involved

1 in the design, construction, equipping, expansion, improvement, or renovation of the
2 property to the same extent as if the local board owned the property.

3 (c) Lease or Sale by Board of Education. -- Notwithstanding the provisions of G.S.
4 115C-518 and G.S. 160A-274, a local board of education may, in connection with
5 additions, improvements, renovations, or repairs to all or part of any of its property,
6 lease or sell the property to the board of commissioners of the county in which the
7 property is located for any price negotiated between the two boards.

8 (d) Board of Education May Contract for Construction. -- Notwithstanding the
9 provisions of G.S. 115C-40 and G.S. 115C-521, a local board of education may enter
10 into contracts for the erection or repair of school buildings upon sites owned in fee
11 simple by one or more counties in which the local school administrative unit is
12 located.

13 ~~(e) Scope. This section applies to Alleghany, Ashe, Avery, Bladen, Brunswick,~~
14 ~~Cabarrus, Carteret, Cherokee, Chowan, Columbus, Currituck, Dare, Duplin,~~
15 ~~Edgecombe, Forsyth, Franklin, Graham, Greene, Guilford, Halifax, Harnett,~~
16 ~~Haywood, Hyde, Iredell, Jackson, Johnston, Jones, Lee, Macon, Madison, Martin,~~
17 ~~Moore, Nash, New Hanover, Orange, Pasquotank, Pender, Person, Pitt, Randolph,~~
18 ~~Richmond, Rockingham, Rowan, Sampson, Scotland, Stanly, Surry, Union, Vance,~~
19 ~~Wake, Wilson, and Watauga Counties."~~

20 (b) The repeal of G.S. 153A-158.1(e) gives to all counties in the State the
21 authority that was previously limited to the counties listed in that subsection.

22 Section 2. G.S. 159-55 reads as rewritten:

23 "**§ 159-55. Sworn statement of debt; debt limitation.**

24 (a) Sworn Statement of Debt. -- After the bond order has been introduced and
25 before the public hearing thereon, the finance officer (or some other officer
26 designated by the governing board for this purpose) shall file with the clerk a
27 statement showing the following:

28 (1) Gross debt. -- The gross debt of the unit, excluding therefrom debt
29 incurred or to be incurred in anticipation of the collection of taxes
30 or other revenues or in anticipation of the sale of bonds other than
31 funding and refunding bonds. The gross debt (after exclusions) is
32 the sum of (i) outstanding debt evidenced by bonds, (ii) bonds
33 authorized by orders introduced but not yet adopted, (iii) unissued
34 bonds authorized by adopted orders, and (iv) outstanding debt not
35 evidenced by ~~bonds.~~ bonds, as determined in subsection (d) of this
36 section. However, for purposes of the sworn statement of debt and
37 the debt limitation, revenue bonds shall not be considered debt
38 and ~~such bonds~~ shall not be included in gross debt nor deducted
39 from gross debt.

40 (2) Deductions in computing net debt. -- The deductions to be made
41 from gross debt in computing net debt. The following deductions
42 are allowed:

43 a. Funding and refunding bonds authorized by orders
44 introduced but not yet adopted.

- 1 b. Funding and refunding bonds authorized but not yet issued.
2 c. The amount of money held in sinking funds or otherwise for
3 the payment of any part of the principal of gross debt other
4 than debt incurred for water, gas, electric light or power
5 purposes, or sanitary sewer purposes (to the extent that the
6 bonds are deductible under subsection (b) of this section), or
7 two or more of these purposes.
8 d. The amount of bonded debt included in gross debt and
9 incurred, or to be incurred, for water, gas, or electric light
10 or power purposes, or any two or more of these purposes.
11 e. The amount of bonded debt included in the gross debt and
12 incurred, or to be incurred, for sanitary sewer system
13 purposes to the extent that the debt is made deductible by
14 subsection (b) of this section.
15 f. The amount of uncollected special assessments theretofore
16 levied for local improvements for which any part of the
17 gross debt (that is not otherwise deducted) was or is to be
18 incurred, to the extent that the assessments will be applied,
19 when collected, to the payment of any part of the gross debt.
20 g. The amount, as estimated by the governing board of the
21 issuing unit or an officer designated by the board for this
22 purpose, of special assessments to be levied for local
23 improvements for which any part of the gross debt (that is
24 not otherwise deducted) was or is to be incurred, to the
25 extent that the special assessments, when collected, will be
26 applied to the payment of any part of the gross debt.
- 27 (3) Net debt. -- The net debt of the issuing unit, being the difference
28 between the gross debt and deductions.
- 29 (4) Assessed value of property. -- The assessed value of property
30 subject to taxation by the issuing unit, as revealed by the tax
31 records and certified to the issuing unit by the assessor.
- 32 (5) Net debt percentage. -- The percentage that the net debt bears to
33 the assessed value of property subject to taxation by the issuing
34 unit.
- 35 (b) Sewer System Debt Deductible. -- Debt incurred or to be incurred for sanitary
36 sewer system purposes is deductible from gross debt when the combined revenues of
37 the water system and the sanitary sewer system (whether or not the water and sewer
38 system are operated separately or as a consolidated system) were sufficient to pay all
39 operating, capital outlay, and debt service expenditures attributable to both systems in
40 each of the three complete fiscal years immediately preceding the date on which the
41 sworn statement of debt is filed. For the purposes of this subsection, the 'revenues'
42 of a water system and a sanitary sewer system include:
- 43 (1) Rates, fees, rentals, charges, and other receipts and income derived
44 from or in connection with the system.

1 (2) Fees, rents, or other charges collected from other offices, agencies,
2 institutions, and departments of the issuing unit at rates not in
3 excess of those charged to other consumers, customers, or users.

4 (3) Appropriations from the fund balance of the prior fiscal year from
5 the fund or funds established to account for the revenues and
6 expenditures of the water system or sewer system pursuant to G.S.
7 159-13(a) of the Local Government Budget and Fiscal Control Act.

8 Before the sworn statement of debt is filed, the secretary shall determine to what
9 extent debt incurred or to be incurred for sanitary sewer system purposes qualifies for
10 deduction from gross debt pursuant to this subsection, and shall give ~~his~~ a certificate
11 to that effect. The secretary's certificate shall be filed with and deemed a part of the
12 sworn statement of debt. The secretary's certificate shall be conclusive in the absence
13 of fraud.

14 (c) Debt Limitation. -- No bond order shall be adopted unless it appears from the
15 sworn statement of debt filed in connection therewith that the net debt of the unit
16 does not exceed eight percent (8%) of the assessed value of property subject to
17 taxation by the issuing unit. This limitation shall not apply to:

18 (1) Funding and refunding bonds.

19 (2) Bonds issued for water, gas, or electric power purposes, or two or
20 more of these purposes.

21 (3) Bonds issued for sanitary sewer system purposes when the bonds
22 are deductible pursuant to subsection (b) of this section.

23 (4) Bonds issued for sanitary sewers, sewage disposal, or sewage
24 purification plants when the construction of these facilities has
25 been ordered by the Environmental Management ~~Commission,~~
26 ~~which Commission is hereby authorized to make such an order,~~
27 Commission or by a court of competent jurisdiction.

28 (5) Bonds or notes issued for erosion control purposes.

29 (6) Bonds or notes issued for the purpose of erecting jetties or other
30 protective works to prevent encroachment by the ocean, sounds, or
31 other bodies of water.

32 (d) Determination of Outstanding Debt Not Evidenced by Bonds. -- For the
33 purpose of this section, outstanding debt not evidenced by bonds includes the
34 principal component of outstanding installment contracts and capital leases and the
35 total lease payments due under outstanding operating leases. Outstanding debt not
36 evidenced by bonds is includable in gross debt and deductible in determining net
37 debt to the same extent as if it were bonded debt.

38 If an installment contract, a capital lease, or an operating lease provides funds for
39 more than one purpose within the meaning of this section, the amount of funds
40 borrowed for each purpose shall be the amounts set forth in the installment contract,
41 capital lease, or operating lease. If the installment contract, capital lease, or operating
42 lease does not set forth the amount borrowed for each purpose, the finance officer
43 shall file a certificate with the clerk determining the purposes and amounts, and the

1 determination shall be conclusive and binding for purposes of complying with this
2 section.

3 The following definitions apply in this subsection:

- 4 (1) Capital lease. -- An agreement entered into under G.S. 153A-165
5 or G.S. 160A-19 that constitutes a capital lease under generally
6 accepted accounting principles and that is subject to approval by
7 the Local Government Commission under Article 8 of Chapter 159
8 of the General Statutes.
- 9 (2) Installment contract. -- An agreement entered into under G.S.
10 160A-20 that is subject to approval by the Local Government
11 Commission under Article 8 of Chapter 159 of the General
12 Statutes.
- 13 (3) Operating lease. -- An agreement entered into under G.S. 153A-
14 165 or G.S. 160A-19 that constitutes an operating lease under
15 generally accepted accounting principles and that is subject to
16 approval by the Local Government Commission under Article 8 of
17 Chapter 159 of the General Statutes.
- 18 (4) Principal component. -- The aggregate amount payable under an
19 installment contract or a capital lease over its term in respect of
20 principal only, as set forth in the installment contract or capital
21 lease or in a principal component certificate.
- 22 (5) Principal component certificate. -- A certificate of the finance
23 officer, or some other officer designated by the governing body for
24 this purpose, filed with the clerk setting forth the principal
25 component of an installment contract or capital lease when the
26 installment contract or capital lease does not expressly designate a
27 principal component."

28 Section 3. G.S. 159-148 reads as rewritten:

29 "**§ 159-148. Contracts subject to Article; exceptions.**

30 (a) Except as provided in subsection (b) of this section, this Article applies to any
31 contract, agreement, memorandum of understanding, and any other transaction
32 having the force and effect of a contract (other than agreements made in connection
33 with the issuance of revenue bonds, special obligation bonds issued pursuant to
34 Chapter 159I of the General Statutes, or of general obligation bonds additionally
35 secured by a pledge of revenues) made or entered into by a unit of local government
36 (as defined by G.S. 159-7(b) or, in the case of a special obligation bond, as defined in
37 Chapter 159I of the General Statutes), relating to the lease, acquisition, or
38 construction of capital assets, which contract

- 39 (1) Extends for five or more years from the date of the contract,
40 including periods that may be added to the original term through
41 the exercise of options to renew or extend, and
- 42 (2) Obligates the unit to pay sums of money to another, without regard
43 to whether the payee is a party to the contract, and

1 (3) Obligates the unit over the full term of the contract, including
2 periods that may be added to the original term through the
3 exercise of options to renew or extend, to the extent of five
4 hundred thousand dollars (\$500,000) or a sum equal to one tenth
5 of one percent (1/10 of 1%) of the assessed value of property
6 subject to taxation by the contracting unit, whichever is less, and
7 less.

8 ~~(4) Obligates the unit, expressly or by implication, to exercise its~~
9 ~~power to levy taxes either to make payments falling due under the~~
10 ~~contract, or to pay any judgment entered against the unit as a~~
11 ~~result of the unit's breach of the contract.~~

12 Contingent ~~obligation~~ obligations shall be included in calculating the value of the
13 contract. Several contracts that are all related to the same undertaking shall be
14 deemed a single contract for the purposes of this Article. When several contracts are
15 considered as a single contract, the term shall be that of the contract having the
16 longest term, and the sums to fall due shall be the total of all sums to fall due under
17 all single contracts in the group.

18 (b) This Article shall not apply to:

- 19 (1) Contracts between a unit of local government and the State of
20 North Carolina or the United States of America (or any agency of
21 either) entered into as a condition to the making of grants or loans
22 to the unit of local government.
23 (2) Contracts for the purchase, lease, or lease with option to purchase
24 of motor vehicles or voting machines.
25 (3) Loan agreements entered into by a unit of local government
26 pursuant to the North Carolina Solid Waste Management Loan
27 Program, Chapter 159I of the General Statutes."

28 Section 4. G.S. 159-150 reads as rewritten:

29 "**§ 159-150. Sworn statement of debt; debt limitation.**

30 (a) Sworn Statement of Debt. -- After or at the time an application is filed under
31 G.S. 159-149, the finance officer, or some other officer designated by the board, shall
32 prepare, swear to, and file with the secretary and for public inspection in the office of
33 the clerk to the board a statement of debt in the same form prescribed in G.S. 159-55
34 for statements of debt filed in connection with general obligation bond issues. The
35 sums to be included in gross debt and the deductions therefrom to arrive at net debt
36 shall be the same as prescribed in G.S. 159-55, ~~except that sums to fall due under~~
37 ~~contracts subject to this Article shall be treated as if they were evidenced by general~~
38 ~~obligation bonds of the unit~~ except that the contract to be entered into under this
39 Article shall be treated as outstanding debt not evidenced by bonds as determined
40 under G.S. 159-55(d).

41 (b) Overall Debt Limitation. -- No contract subject to this Article may be
42 executed if the net debt of the contracting unit, after execution of the contract, would
43 exceed eight percent (8%) of the assessed value of property subject to taxation by the

1 contracting unit. This subsection does not apply to contracts executed by units that
2 do not have the power to levy taxes.

3 (c) Limitation on Debt Not Evidenced by Bonds. -- Unless the contract has been
4 approved by the voters of the contracting county or city as provided in subsection (e)
5 of this section, a county or city may not execute a contract subject to this Article if
6 the net outstanding debt not evidenced by bonds issued by the county or city on or
7 after July 1, 1997, would, after execution of the contract, exceed one percent (1%) of
8 the assessed value of property subject to taxation by the county or city.

9 (d) Exceptions to Limitations. -- Subsections (b) and (c) of this section shall not
10 apply to:

- 11 (1) Funding and refunding contracts.
- 12 (2) Contracts entered into for water, gas, or electric power purposes,
13 or two or more of these purposes.
- 14 (3) Contracts entered into for sanitary sewer system purposes when the
15 amounts payable under the contracts are deductible pursuant to
16 G.S. 159-55(d)(2) or G.S. 159-55(d)(3).
- 17 (4) Contracts entered into for sanitary sewers, sewage disposal, or
18 sewage purification plants when the construction of these facilities
19 has been ordered by the Environmental Management Commission
20 or by a court of competent jurisdiction.
- 21 (5) Contracts entered into for erosion control purposes.
- 22 (6) Contracts entered into for the purpose of erecting jetties or other
23 protective works to prevent encroachment by the ocean, sounds, or
24 other bodies of water.

25 (e) Voter Approval of Certain Contracts. -- If a county or city would be
26 prohibited from executing a contract subject to this Article because the net
27 outstanding debt not evidenced by bonds issued by the county or city on or after July
28 1, 1997, would, after execution of the contract, exceed the debt limit set by subsection
29 (c) of this section, then the governing board of the county or city may, in its
30 discretion, submit the question of whether to execute the contract for approval by the
31 qualified voters of the county or city. A referendum held pursuant to this subsection
32 shall be conducted according to the standards, procedures, and limitations set out in
33 G.S. 159-60 through G.S. 159-62."

34 Section 5. This act is effective when it becomes law. This act does not
35 affect contracts and obligations entered into before July 1, 1997, or for which an
36 application for Local Government Commission approval was filed before July 1,
37 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

D

SENATE BILL 317
Proposed Committee Substitute S317-CSLC-4/9
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Local Government Debt Changes.

(Public)

Sponsors:

Referred to:

March 5, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW ALL COUNTIES TO ACQUIRE PROPERTY FOR USE BY THEIR
3 LOCAL BOARDS OF EDUCATION, TO PROVIDE THAT EXISTING LOCAL
4 GOVERNMENT DEBT STATEMENT REQUIREMENTS AND DEBT LIMITATIONS
5 APPLY TO INSTALLMENT CONTRACT AND LEASE DEBTS, TO REQUIRE LOCAL
6 GOVERNMENT COMMISSION APPROVAL OF MORE NONVOTED DEBTS, AND TO
7 CAP THE AMOUNT OF INSTALLMENT CONTRACT AND LEASE DEBT COUNTIES
8 AND CITIES MAY INCUR.
9 The General Assembly of North Carolina enacts:
10 Section 1. (a) G.S. 153A-158.1 reads as rewritten:
11 "§ 153A-158.1. Acquisition and improvement of school property in
12 certain counties. property.
13 (a) Acquisition by County. -- A county may acquire, by any
14 lawful method, any interest in real or personal property for use
15 by a school administrative unit within the county. In exercising
16 the power of eminent domain a county shall use the procedures of
17 Chapter 40A. The county shall use its authority under this
18 subsection to acquire property for use by a school administrative
19 unit within the county only upon the request of the board of
20 education of that school administrative unit and after a public
21 hearing.

1 (b) Construction or Improvement by County. -- A county may
2 construct, equip, expand, improve, renovate, or otherwise make
3 available property for use by a school administrative unit within
4 the county. The local board of education shall be involved in
5 the design, construction, equipping, expansion, improvement, or
6 renovation of the property to the same extent as if the local
7 board owned the property.

8 (c) Lease or Sale by Board of Education. -- Notwithstanding
9 the provisions of G.S. 115C-518 and G.S. 160A-274, a local board
10 of education may, in connection with additions, improvements,
11 renovations, or repairs to all or part of any of its property,
12 lease or sell the property to the board of commissioners of the
13 county in which the property is located for any price negotiated
14 between the two boards.

15 (d) Board of Education May Contract for Construction. --
16 Notwithstanding the provisions of G.S. 115C-40 and G.S. 115C-521,
17 a local board of education may enter into contracts for the
18 erection or repair of school buildings upon sites owned in fee
19 simple by one or more counties in which the local school
20 administrative unit is located.

21 ~~(e) Scope. -- This section applies to Alleghany, Ashe, Avery,~~
22 ~~Bladen, Brunswick, Cabarrus, Carteret, Cherokee, Chowan,~~
23 ~~Columbus, Currituck, Dare, Duplin, Edgecombe, Forsyth, Franklin,~~
24 ~~Graham, Greene, Guilford, Halifax, Harnett, Haywood, Hyde,~~
25 ~~Iredell, Jackson, Johnston, Jones, Lee, Macon, Madison, Martin,~~
26 ~~Moore, Nash, New Hanover, Orange, Pasquotank, Pender, Person,~~
27 ~~Pitt, Randolph, Richmond, Rockingham, Rowan, Sampson, Scotland,~~
28 ~~Stanly, Surry, Union, Vance, Wake, Wilson, and Watauga Counties."~~

29 (b) The repeal of G.S. 153A-158.1(e) gives to all
30 counties in the State the authority that was previously limited
31 to the counties listed in that subsection."

32 Section 2. G.S. 159-55 reads as rewritten:

33 "§ 159-55. Sworn statement of debt; debt limitation.

34 (a) Sworn Statement of Debt. -- After the bond order has been
35 introduced and before the public hearing thereon, the finance
36 officer (or some other officer designated by the governing board
37 for this purpose) shall file with the clerk a statement showing
38 the following:

39 (1) Gross debt. -- The gross debt of the unit,
40 excluding therefrom debt incurred or to be incurred
41 in anticipation of the collection of taxes or other
42 revenues or in anticipation of the sale of bonds
43 other than funding and refunding bonds. The gross
44 debt (after exclusions) is the sum of (i)

1 outstanding debt evidenced by bonds, (ii) bonds
2 authorized by orders introduced but not yet
3 adopted, (iii) unissued bonds authorized by adopted
4 orders, and (iv) outstanding debt not evidenced by
5 ~~bonds.~~ bonds, including debt described in
6 subsection (d) of this section. However, for
7 purposes of the sworn statement of debt and the
8 debt limitation, special obligation bonds, other
9 obligations incurred under Chapter 159I of the
10 General Statutes, and revenue bonds shall not be
11 considered debt and such bonds shall not be
12 included in gross debt nor deducted from gross
13 debt.

14 (2) Deductions from gross debt. -- The deductions to be
15 made from gross debt in computing net debt. The
16 following deductions are allowed:

- 17 a. Funding and refunding bonds authorized by
18 orders introduced but not yet adopted.
- 19 b. Funding and refunding bonds authorized but not
20 yet issued.
- 21 c. The amount of money held in sinking funds or
22 otherwise for the payment of any part of the
23 principal of gross debt other than debt
24 incurred for water, gas, electric light or
25 power purposes, or sanitary sewer purposes (to
26 the extent that the bonds are deductible under
27 subsection (b) of this section), or two or
28 more of these purposes.
- 29 d. The amount of bonded debt included in gross
30 debt and incurred, or to be incurred, for
31 water, gas, or electric light or power
32 purposes, or any two or more of these
33 purposes.
- 34 e. The amount of bonded debt included in the
35 gross debt and incurred, or to be incurred,
36 for sanitary sewer system purposes to the
37 extent that the debt is made deductible by
38 subsection (b) of this section.
- 39 f. The amount of uncollected special assessments
40 theretofore levied for local improvements for
41 which any part of the gross debt (that is not
42 otherwise deducted) was or is to be incurred,
43 to the extent that the assessments will be

- 1 applied, when collected, to the payment of any
2 part of the gross debt.
- 3 g. The amount, as estimated by the governing
4 board of the issuing unit or an officer
5 designated by the board for this purpose, of
6 special assessments to be levied for local
7 improvements for which any part of the gross
8 debt (that is not otherwise deducted) was or
9 is to be incurred, to the extent that the
10 special assessments, when collected, will be
11 applied to the payment of any part of the
12 gross debt.
- 13 (3) Net debt. -- The net debt of the issuing unit,
14 being the difference between the gross debt and
15 deductions.
- 16 (4) Assessed value of property. -- The assessed value
17 of property subject to taxation by the issuing
18 unit, as revealed by the tax records and certified
19 to the issuing unit by the assessor.
- 20 (5) Net debt percentage. -- The percentage that the net
21 debt bears to the assessed value of property
22 subject to taxation by the issuing unit.
- 23 (b) Sewer System Debt Deductible. -- Debt incurred or to be
24 incurred for sanitary sewer system purposes is deductible from
25 gross debt when the combined revenues of the water system and the
26 sanitary sewer system (whether or not the water and sewer system
27 are operated separately or as a consolidated system) were
28 sufficient to pay all operating, capital outlay, and debt service
29 expenditures attributable to both systems in each of the three
30 complete fiscal years immediately preceding the date on which the
31 sworn statement of debt is filed. For the purposes of this
32 subsection, the 'revenues' of a water system and a sanitary sewer
33 system include:
- 34 (1) Rates, fees, rentals, charges, and other receipts
35 and income derived from or in connection with the
36 system.
- 37 (2) Fees, rents, or other charges collected from other
38 offices, agencies, institutions, and departments of
39 the issuing unit at rates not in excess of those
40 charged to other consumers, customers, or users.
- 41 (3) Appropriations from the fund balance of the prior
42 fiscal year from the fund or funds established to
43 account for the revenues and expenditures of the
44 water system or sewer system pursuant to G.S. 159-

1 13(a) of the Local Government Budget and Fiscal
2 Control Act.

3 Before the sworn statement of debt is filed, the secretary shall
4 determine to what extent debt incurred or to be incurred for
5 sanitary sewer system purposes qualifies for deduction from gross
6 debt pursuant to this subsection, and shall give his a
7 certificate to that effect. The secretary's certificate shall be
8 filed with and deemed a part of the sworn statement of debt. The
9 secretary's certificate shall be conclusive in the absence of
10 fraud.

11 (c) Debt Limitation. -- No bond order shall be adopted unless
12 it appears from the sworn statement of debt filed in connection
13 therewith that the net debt of the unit does not exceed eight
14 percent (8%) of the assessed value of property subject to
15 taxation by the issuing unit. This limitation shall not apply
16 to:

- 17 (1) Funding and refunding bonds.
- 18 (2) Bonds issued for water, gas, or electric power
19 purposes, or two or more of these purposes.
- 20 (3) Bonds issued for sanitary sewer system purposes
21 when the bonds are deductible pursuant to
22 subsection (b) of this section.
- 23 (4) Bonds issued for sanitary sewers, sewage disposal,
24 or sewage purification plants when the construction
25 of these facilities has been ordered by the
26 Environmental Management Commission, ~~which~~
27 ~~Commission is hereby authorized to make such an~~
28 ~~order,~~ Commission or by a court of competent
29 jurisdiction.
- 30 (5) Bonds or notes issued for erosion control purposes.
- 31 (6) Bonds or notes issued for the purpose of erecting
32 jetties or other protective works to prevent
33 encroachment by the ocean, sounds, or other bodies
34 of water.

35 (d) Outstanding Debt Not Evidenced by Bonds. -- For the
36 purpose of this section, outstanding debt not evidenced by bonds
37 includes the principal component of outstanding installment
38 contracts and capital leases and the total lease payments due
39 under outstanding operating leases. Outstanding debt not
40 evidenced by bonds is includable in gross debt and deductible in
41 determining net debt to the same extent as if it were bonded
42 debt.

43 If an installment contract, a capital lease, or an operating
44 lease provides funds for more than one purpose within the meaning

1 of this section, the amount of funds borrowed for each purpose
2 shall be the amounts set forth in the installment contract,
3 capital lease, or operating lease. If the installment contract,
4 capital lease, or operating lease does not set forth the amount
5 borrowed for each purpose, the finance officer, or some other
6 officer designated by the governing body for this purpose, shall
7 file a certificate with the clerk determining the purposes and
8 amounts, and the determination shall be conclusive and binding
9 for purposes of complying with this section.

10 The following definitions apply in this subsection:

- 11 (1) Capital lease. -- An agreement entered into under
12 G.S. 153A-165 or G.S. 160A-19 that constitutes a
13 capital lease of a lessee under generally accepted
14 accounting principles and that is subject to
15 approval by the Local Government Commission under
16 Article 8 of Chapter 159 of the General Statutes.
- 17 (2) Installment contract. -- An agreement entered into
18 under G.S. 160A-20 that is subject to approval by
19 the Local Government Commission.
- 20 (3) Operating lease. -- An agreement entered into under
21 G.S. 153A-165 or G.S. 160A-19 that constitutes an
22 operating lease of a lessee under generally
23 accepted accounting principles and that is subject
24 to approval by the Local Government Commission
25 under Article 8 of Chapter 159 of the General
26 Statutes.
- 27 (4) Principal component. -- The aggregate amount
28 payable under an installment contract or a capital
29 lease over its term in respect of principal only,
30 as set forth in the installment contract or capital
31 lease or in a principal component certificate.
- 32 (5) Principal component certificate. -- A certificate
33 of the finance officer, or some other officer
34 designated by the governing body for this purpose,
35 filed with the clerk setting forth the principal
36 component of an installment contract or capital
37 lease when the installment contract or capital
38 lease does not expressly designate a principal
39 component. A certificate filed with the clerk is a
40 conclusive determination of the principal
41 component."

42 Section 3. G.S. 159-148 reads as rewritten:
43 "§ 159-148. Contracts subject to Article; exceptions.

1 (a) Except as provided in subsection (b) of this section, this
2 Article applies to any contract, agreement, memorandum of
3 understanding, and any other transaction having the force and
4 effect of a contract (other than agreements made in connection
5 with the issuance of revenue bonds, special obligation bonds
6 issued pursuant to Chapter 159I of the General Statutes, or of
7 general obligation bonds additionally secured by a pledge of
8 revenues) made or entered into by a unit of local government (as
9 defined by G.S. 159-7(b) or, in the case of a special obligation
10 bond, as defined in Chapter 159I of the General Statutes),
11 relating to the lease, acquisition, or construction of capital
12 assets, which contract

13 (1) Extends for five or more years from the date of the
14 contract, including periods that may be added to
15 the original term through the exercise of options
16 to renew or extend, and

17 (2) Obligates the unit to pay sums of money to another,
18 without regard to whether the payee is a party to
19 the contract, and

20 (3) Obligates the unit over the full term of the
21 contract, including periods that may be added to
22 the original term through the exercise of options
23 to renew or extend, to the extent of five hundred
24 thousand dollars (\$500,000) or a sum equal to one
25 tenth of one percent (1/10 of 1%) of the assessed
26 value of property subject to taxation by the
27 contracting unit, whichever is less, and less.

28 ~~(4) Obligates the unit, expressly or by implication, to~~
29 ~~exercise its power to levy taxes either to make~~
30 ~~payments falling due under the contract, or to pay~~
31 ~~any judgment entered against the unit as a result~~
32 ~~of the unit's breach of the contract.~~

33 Contingent ~~obligation~~ obligations shall be included in
34 calculating the value of the contract. Several contracts that
35 are all related to the same undertaking shall be deemed a single
36 contract for the purposes of this Article. When several
37 contracts are considered as a single contract, the term shall be
38 that of the contract having the longest term, and the sums to
39 fall due shall be the total of all sums to fall due under all
40 single contracts in the group.

41 (b) This Article shall not apply to:

42 (1) Contracts between a unit of local government and
43 the State of North Carolina or the United States of
44 America (or any agency of either) entered into as a

- 1 condition to the making of grants or loans to the
2 unit of local government.
- 3 (2) Contracts for the purchase, lease, or lease with
4 option to purchase of motor vehicles or voting
5 machines.
- 6 (3) Loan agreements entered into by a unit of local
7 government pursuant to the North Carolina Solid
8 Waste Management Loan Program, Chapter 159I of the
9 General Statutes.
- 10 (4) Contracts between two units of local government if
11 utility revenues will support the payments under
12 the contract."

13 Section 4. G.S. 159-150 reads as rewritten:

14 "§ 159-150. Sworn statement of debt; debt limitation.

15 (a) Sworn Statement of Debt. -- After or at the time an
16 application is filed under G.S. 159-149, the finance officer, or
17 some other officer designated by the board, shall prepare, swear
18 to, and file with the secretary and for public inspection in the
19 office of the clerk to the board a statement of debt in the same
20 form prescribed in G.S. 159-55 for statements of debt filed in
21 connection with general obligation bond issues. The sums to be
22 included in gross debt and the deductions therefrom to arrive at
23 net debt shall be the same as prescribed in G.S. 159-55, ~~except~~
24 ~~that sums to fall due under contracts subject to this Article~~
25 ~~shall be treated as if they were evidenced by general obligation~~
26 ~~bonds of the unit~~ except that the contract to be entered into
27 under this Article shall be treated as outstanding debt not
28 evidenced by bonds to the extent provided under G.S. 159-55(d).

29 (b) Overall Debt Limitation. -- No contract subject to this
30 Article may be executed if the net debt of the contracting unit,
31 after execution of the contract, would exceed eight percent (8%)
32 of the assessed value of property subject to taxation by the
33 contracting unit.

34 (c) Limitation on Debt Not Evidenced by Bonds. -- A unit of
35 local government that has a population of at least 10,000 may not
36 execute a contract subject to this Article if the net outstanding
37 debt not evidenced by bonds incurred by the unit on or after July
38 1, 1997, would, after execution of the contract, exceed one
39 percent (1%) of the assessed value of property subject to
40 taxation by the unit. A unit of local government that has a
41 population of less than 10,000 may not execute a contract subject
42 to this Article if the net outstanding debt not evidenced by
43 bonds incurred by the unit on or after July 1, 1997, would, after
44 execution of the contract, exceed two percent (2%) of the

1 assessed value of property subject to taxation by the unit. The
2 unit may enter into the contract, however, if the contract has
3 been approved by the voters of the unit as provided in subsection
4 (e) of this section. The most recent annual estimate of
5 population certified by the State Planning Officer determines the
6 population of a unit.

7 The following outstanding debt not evidenced by bonds is not
8 counted in determining whether the percentage limitations set by
9 this subsection have been exceeded:

- 10 (1) Contracts entered into by the unit before July 1,
11 1997.
- 12 (2) Contracts approved by the voters as provided in
13 subsection (e) of this section.
- 14 (3) Contracts entered into for public school capital
15 outlay purposes.
- 16 (4) Contracts entered into for sanitary sewers, sewage
17 disposal, or sewage purification plants.

18 (d) Exceptions to Limitations. -- Subsections (b) and (c) of
19 this section do not apply to:

- 20 (1) Funding and refunding contracts.
- 21 (2) Contracts entered into for water, gas, or electric
22 power purposes, or two or more of these purposes.
- 23 (3) Contracts entered into for sanitary sewer system
24 purposes when the amounts payable under the
25 contracts are deductible pursuant to G.S. 159-
26 55(b).
- 27 (4) Contracts entered into for sanitary sewers, sewage
28 disposal, or sewage purification plants when the
29 construction of these facilities has been ordered
30 by the Environmental Management Commission or by a
31 court of competent jurisdiction.
- 32 (5) Contracts entered into for erosion control
33 purposes.
- 34 (6) Contracts entered into for the purpose of erecting
35 jetties or other protective works to prevent
36 encroachment by the ocean, sounds, or other bodies
37 of water.
- 38 (7) Contracts entered into for jail or other
39 confinement facility purposes, if the contract is
40 entered into to resolve litigation or to comply
41 with a court order.
- 42 (8) Contracts entered into by units that do not have
43 the power to levy taxes.

1 (e) Voter Approval of Certain Contracts. -- Before executing a
2 contract subject to this Article, the governing board of a unit
3 of local government may, in its discretion, submit the question
4 of whether to execute the contract for approval by the qualified
5 voters of the unit. A referendum held pursuant to this
6 subsection shall be conducted according to the standards,
7 procedures, and limitations set out in G.S. 159-153 and G.S. 159-
8 154. This subsection does not apply to units of local government
9 that do not have the power to levy taxes."

10 Section 4. Article 8 of Chapter 159 of the General
11 Statutes is amended by adding the following new sections to read:
12 "§ 159-153. Referendum; majority required; notice of referendum;
13 form of ballot; canvass.

14 (a) Definitions. -- The definitions provided in G.S. 159-55
15 apply in this section.

16 (b) Majority Required. -- If a contract is subject to the
17 approval of the voters pursuant to G.S. 159-150(e), the
18 affirmative vote of a majority of those who vote on the question
19 is be required.

20 (c) Date of Referendum. -- The date of a referendum shall be
21 fixed by the governing board of the contracting unit. The
22 governing board may call a special referendum for the purpose of
23 voting on the contract on any day, including the day of any
24 regular or special election held for another purpose, unless the
25 law under which the referendum or other election is held
26 specifically prohibits submission of other questions at the same
27 time. A special referendum may not be held within 30 days before
28 or 10 days after a statewide primary, election, or referendum, or
29 within 30 days before or 10 days after any other primary,
30 election, or referendum to be held in the same unit holding the
31 referendum and already validly called or scheduled by law at the
32 time the bond referendum is called. The clerk to the board shall
33 mail or deliver a certified copy of the resolution calling a
34 special referendum to the board of elections that is to conduct
35 it within three days after the resolution is adopted, but failure
36 to observe this requirement shall not in any manner affect the
37 validity of the referendum or contract approved pursuant thereto.
38 Referenda shall be conducted by the board of elections conducting
39 regular elections of the contracting unit. In fixing the date of
40 a referendum, the governing board shall consult the board of
41 elections in order that the referendum shall not unduly interfere
42 with other elections already scheduled or in process. Several
43 contracts or other matters may be voted upon at the same
44 referendum.

1 (d) Notice. -- The clerk shall publish a notice of the
2 referendum at least twice. The first publication shall be not
3 less than 14 days and the second publication not less than seven
4 days before the last day on which voters may register for the
5 referendum. The notice shall contain all of the following

- 6 (1) The date of the referendum.
7 (2) The purpose of the contract.
8 (3) The last day for registration for the referendum
9 under the election laws then in effect.
10 (4) The maximum principal component or maximum total
11 payments, as the case may be, to be made under the
12 contract.
13 (5) The maximum term of the contract, including any
14 optional renewal periods.
15 (6) A statement that the taxing power of the
16 contracting unit is not and may not be pledged
17 directly or indirectly to secure any moneys due
18 under the contract.
19 (7) Any other information that the contracting unit, in
20 its sole discretion, considers necessary or
21 appropriate to properly inform the voters of the
22 contract and the referendum.

23 The purpose of the contract required to be set forth in the
24 notice of the referendum and the ballot may be set forth, in
25 either place, as the governing body of the contracting unit in
26 its discretion may determine, by inserting (i) the phrase
27 "providing capital improvements" or (ii) a description of the
28 purpose for which the contract is to be entered into, which
29 purpose may include several otherwise related purposes.

30 In the case of installment contracts, the notice shall also
31 contain a statement substantially to the effect that the
32 installment contract will create in all or some portion of the
33 property acquired or improved, or in all or some portion of the
34 real property on which the property is located, a security
35 interest to secure repayment of moneys under the installment
36 contract, but no deficiency judgment may be rendered against the
37 contracting unit in any action for breach of obligation under the
38 installment contract. In the case of capital leases, the notice
39 shall also contain a statement substantially to the effect that
40 title to the property subject to the capital lease will be
41 acquired upon payment of all sums due under the capital lease.

42 (e) Ballot Question. -- The forms of the various questions as
43 stated on the ballot shall be in substantially the following
44 words:

1 (1) In the case of installment contracts:

2 [] FOR AGAINST []

3 The execution of an installment contract in the maximum principal
4 amount of \$ for (briefly stating the purpose) granting a
5 security interest in (briefly describing collateral security) to
6 secure repayment of moneys due under the installment contract.

7 (2) In the case of capital leases:

8 [] FOR AGAINST []

9 The execution of a capital lease in the maximum principal amount
10 of \$ for (briefly stating the purpose) whereby title to the
11 property subject to the capital lease will be acquired upon
12 payment of all sums due under the capital lease.

13 (3) In the case of operating leases:

14 [] FOR AGAINST []

15 The execution of an operating lease with maximum total lease
16 payments of \$ and a maximum term, including any optional
17 renewal periods, of for (briefly stating the purpose).

18 (4) In the case of any other contracts:

19 [] FOR AGAINST []

20 The execution of a contract [in the maximum principal amount]
21 [with total payments thereunder] of \$ and a maximum term,
22 including any optional renewal periods, of for (briefly
23 stating the purpose).

24 (f) Results. -- The board of elections shall canvass the
25 referendum and certify the results to the governing board of the
26 contracting unit. The governing board shall then certify and
27 declare the result of the referendum and shall publish a
28 statement of the result once, with the following statement
29 appended:

30 'Any action or proceeding challenging the regularity or
31 validity of this referendum must be begun within 30 days after
32 (date of publication).

33

34

35

(Title of Governing Board)'

36

37 The statement of results of the referendum shall be filed in the
38 clerk's office and inserted in the minutes of the governing
39 board.

40 "§ 159-154. Limitation on actions contesting validity of
41 referenda.

42 Any action or proceeding in any court to set aside a referendum
43 conducted pursuant to G.S. 159-153, or to obtain any other
44 relief, upon the ground that the referendum is invalid or was

1 irregularly conducted, must be begun within 30 days after the
2 publication on the statement of the results of the referendum.
3 After the expiration of this period of limitation, no right of
4 action or defense based upon the invalidity of or any
5 irregularity in the referendum shall be asserted, nor shall the
6 validity of the referendum be open to question in any court upon
7 any ground whatever, except in an action or proceeding begun
8 within the period of limitation prescribed in this section."

9 Section 5. This act becomes effective July 1, 1997.
10 This act does not affect a unit of government's right to execute
11 a contract for which an application for Local Government
12 Commission approval was filed before July 1, 1997.

EXPLANATION OF SENATE BILL 317
Proposed Committee Substitute
Local Government Debt Changes

TO: Senate Finance Committee
FROM: Sabra Faires, Committee Counsel
DATE: March 12, 1997
SPONSOR: Senator Leslie Winner

Senate Bill 317 makes the following changes concerning local government debt:

1. It gives all counties the same authority that 52 counties now have to acquire and improve property to be used by their local boards of education (Section 1) G.S. 153A-158.1(e) lists the 52 counties that currently have this authority.
2. It requires certain nonvoted local debt to be included in determining whether the net debt of the local unit meets the statutory debt limitation of 8% of the assessed value of property in the local unit. (Sections 2 and 4).
3. It establishes a new 1% debt limit for nonvoted debt and allows the limit to be exceeded only by a vote of the people. (Section 4)
4. It deletes one of the current conditions a local financing agreement must meet in order to be subject to approval by the Local Government Commission. The condition that is deleted is an obligation to levy taxes to pay either the debt incurred under the contract or a judgment entered against the unit for breach of the contract. (Section 3)
5. It adds a new exemption from the debt limitations on financing agreements and the procedures for entering into financing agreements. The new exemption is for agreements between units of local government if utility revenues will be used to support the payments under the agreement.

Nonvoted Local Debt To Be Included In Determining 8% Debt Limitations

Current law (G.S. 159-55) prohibits the issuance of a general obligation bond if the net debt of the issuing unit, when combined with the proposed bond, would exceed 8% of the assessed value of property in the unit. Similarly, current law (G.S. 159-150) prohibits a local unit from entering into certain financing agreements if the net debt of the unit, when combined with the proposed agreement, would exceed the 8% limit.

Current law requires outstanding debt not evidenced by bonds to be included in determining the net debt of the unit but does not specify what debt is included in this group. The decision on whether or not to include nonvoted debt rests with the bond attorneys. There is disagreement among these attorneys over

what needs to be included. Some bond counsel do not require installment financings under G.S. 160A-20 to be included.

The bill specifies that certain local, nonvoted debt must be included in determining the unit's net debt. The debt the bill requires to be included consists of all capital leases, operating leases, and installment contracts that must be submitted to the Local Government Commission for approval. The types of financing agreements that must be submitted for approval under the bill are those that meet the following criteria and are not exempt: (i) extend for at least five years and obligate payment of \$500,000 or 1/10th of 1% of the assessed value of property, whichever is less, or (ii) give a security interest and involve the construction or repair of fixtures or improvements to real property. Current law exempts agreements between a local unit and the State or federal government, contracts to purchase or lease motor vehicles or voting machines, and solid waste loan agreements.

New 1% Limit on Nonvoted Debt

The bill limits the amount of nonvoted debt a unit of local government can incur. The limit is 1% of the assessed value of taxable property in the unit. Under the bill, a unit cannot enter a financing agreement that requires the approval of the Local Government Commission if the net, nonvoted debt of the unit, when combined with the proposed debt, would exceed 1% of the assessed value of taxable property. In calculating whether the 1% threshold has been reached, only nonvoted debt incurred after July 1, 1997, is counted. Therefore, all the existing nonvoted debt does not count towards this 1% limit.

The same deductions apply in determining net debt that apply in determining net debt for purposes of the 8% limitation. The bill creates exceptions to the 1% limit that mirror the exceptions to the 8% limit and add two new exceptions for purposes of the 1% limit. The exceptions for contracts entered to comply with a court order and contracts entered into by units that do not have any power to tax.

The bill authorizes a local unit to exceed the 1% limit if it has voter approval of the proposed financing agreement. The bill gives the governing board of the unit the discretion to submit a proposed financing agreement to a vote if the unit is otherwise prohibited from entering into the agreement because of the 1% limit.

Acquisition of Property For Use By Local Boards of Education

The bill makes the following changes concerning the acquisition and financing of public school facilities in the 48 counties that do not currently have this authority:

- (1) It authorizes the counties to acquire real or personal property for use by a school administrative unit located in the county when requested to do so by the unit. Under current law, only those counties listed in G.S. 153A-

158.1(a), have this authority. Under general law, a county is authorized to acquire real or personal property only on behalf of the county or an agency of the county and a school administrative unit is not an agency of the county.

- (2) It authorizes the local boards of education to contract with their county for the erection or repair of a public school building that is located on a site owned by the county. Under current general law, local boards of education are required to hold title to all school property and therefore have no authority to make contracts concerning the construction or repair of school buildings located on sites not owned by them.
- (3) It authorizes the local boards of education to transfer to the county property on which a school building in need of renovation or repair is located for any price agreed to by the board of education and the county. Current law requires transfers from a local board of education to a county to be at fair market value and allows a local board of education to transfer property to a county only if the board does not believe the property is necessary or desirable for a school.

**NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL ESTIMATE**

BILL NUMBER: SB 317 (Proposed Committee Substitute)
SHORT TITLE: Local Government Debt Changes
SPONSOR(S):

FISCAL IMPACT

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

FY 1997-98 FY 1998-99 FY 1999-00 FY 2000-01 FY 2001-02

REVENUES

EXPENDITURES (See "Assumptions and Methodology")

POSITIONS:

**PRINCIPAL DEPARTMENT(S) &
PROGRAM(S) AFFECTED:**

EFFECTIVE DATE: The bill is effective when it becomes law. However, it does not affect contracts and obligations entered into before July 1, 1997, or for which an application for Local Government Commission was filed prior to July 1, 1997.

BILL SUMMARY: Presently 52 counties have the authority to acquire property for use by their local boards of Education providing counties with the ability to finance school capital outlay through installment purchases and certificates of participation. The bill amends county government and local finance law as follows:

- (1) Extends authority to all 100 counties to acquire property for use by local boards of education.
- (2) Provides that existing local government debt statement requirements and debt limitations apply to "debt not evidenced by bonds" (primarily installment purchases and certificates of participation).
- (3) Requires Local Government Commission approval of more nonvoted debts.
- (4) Requires certain nonvoted local debt to be included in determining whether the net debt of a local unit exceeds the limit of 8% of assessed property value and caps the amount of nonvoted debt that counties and cities may incur without a vote of the people.

(over)

ASSUMPTIONS AND METHODOLOGY: An indirect impact of the bill is that to the extent the additional authority to use installment financing or certificates of participation is used by counties as a result of the bill, the financing cost of projects will rise by .25-.50% due to the increased risk. It is not clear at this point what impact the \$1.8 billion state school bond issue will have on the use of these financing vehicles. Most counties have already met their match for the state bond proceeds but many counties with a backlog of facility needs will continue going to the market in tandem with the state dollars to maximize their ability to meet the address the backlog. For other counties the state funds will take the pressure off local financing. Another factor is that during the last couple of years local school bond issues have had a high success rate with the voters. This may relieve the pressure for the type of financing addressed under this bill. In fact, so far this year

Another potential indirect impact is that the greater use of installment purchases and certificates of participation could increase the refund of state and local sales taxes to local units because the county owns the facility. Unless the sales tax law is changed this year school boards will continue to not have the right to receive refunds. Some counties are now receiving refunds by working out agreements in which the county makes the taxable purchases or uses their lease purchase authority. The type of financing under this bill will make the refunds automatic. Again, it is impossible to predict how many counties will actually use this avenue.

TECHNICAL CONSIDERATIONS:

FISCAL RESEARCH DIVISION (733-4910)
PREPARED BY: David Crotts
APPROVED BY:
DATE: March 12, 1997

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

D

SENATE BILL 317
Proposed Committee Substitute S317-PCS4562

Short Title: Local Government Debt Changes.

(Public)

Sponsors:

Referred to:

March 5, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW ALL COUNTIES TO ACQUIRE PROPERTY FOR USE BY
3 THEIR LOCAL BOARDS OF EDUCATION, TO PROVIDE THAT EXISTING
4 LOCAL GOVERNMENT DEBT STATEMENT REQUIREMENTS AND DEBT
5 LIMITATIONS APPLY TO INSTALLMENT CONTRACT AND LEASE
6 DEBTS, TO REQUIRE LOCAL GOVERNMENT COMMISSION APPROVAL
7 OF MORE NONVOTED DEBTS, AND TO CAP THE AMOUNT OF
8 INSTALLMENT CONTRACT AND LEASE DEBT COUNTIES AND CITIES
9 MAY INCUR.

10 The General Assembly of North Carolina enacts:

11 Section 1. (a) G.S. 153A-158.1 reads as rewritten:

12 "**§ 153A-158.1. Acquisition and improvement of school ~~property in certain counties.~~**
13 **property.**

14 (a) Acquisition by County. -- A county may acquire, by any lawful method, any
15 interest in real or personal property for use by a school administrative unit within the
16 county. In exercising the power of eminent domain a county shall use the procedures
17 of Chapter 40A. The county shall use its authority under this subsection to acquire
18 property for use by a school administrative unit within the county only upon the
19 request of the board of education of that school administrative unit and after a public
20 hearing.

21 (b) Construction or Improvement by County. -- A county may construct, equip,
22 expand, improve, renovate, or otherwise make available property for use by a school
23 administrative unit within the county. The local board of education shall be involved

1 in the design, construction, equipping, expansion, improvement, or renovation of the
2 property to the same extent as if the local board owned the property.

3 (c) Lease or Sale by Board of Education. -- Notwithstanding the provisions of G.S.
4 115C-518 and G.S. 160A-274, a local board of education may, in connection with
5 additions, improvements, renovations, or repairs to all or part of any of its property,
6 lease or sell the property to the board of commissioners of the county in which the
7 property is located for any price negotiated between the two boards.

8 (d) Board of Education May Contract for Construction. -- Notwithstanding the
9 provisions of G.S. 115C-40 and G.S. 115C-521, a local board of education may enter
10 into contracts for the erection or repair of school buildings upon sites owned in fee
11 simple by one or more counties in which the local school administrative unit is
12 located.

13 ~~(e) Scope. This section applies to Alleghany, Ashe, Avery, Bladen, Brunswick,~~
14 ~~Cabarrus, Carteret, Cherokee, Chowan, Columbus, Currituck, Dare, Duplin,~~
15 ~~Edgecombe, Forsyth, Franklin, Graham, Greene, Guilford, Halifax, Harnett,~~
16 ~~Haywood, Hyde, Iredell, Jackson, Johnston, Jones, Lee, Macon, Madison, Martin,~~
17 ~~Moore, Nash, New Hanover, Orange, Pasquotank, Pender, Person, Pitt, Randolph,~~
18 ~~Richmond, Rockingham, Rowan, Sampson, Scotland, Stanly, Surry, Union, Vance,~~
19 ~~Wake, Wilson, and Watauga Counties."~~

20 (b) The repeal of G.S. 153A-158.1(e) gives to all counties in the State the
21 authority that was previously limited to the counties listed in that subsection.

22 Section 2. G.S. 159-55 reads as rewritten:

23 "**§ 159-55. Sworn statement of debt; debt limitation.**

24 (a) Sworn Statement of Debt. -- After the bond order has been introduced and
25 before the public hearing thereon, the finance officer (or some other officer
26 designated by the governing board for this purpose) shall file with the clerk a
27 statement showing the following:

28 (1) Gross debt. -- The gross debt of the unit, excluding therefrom debt
29 incurred or to be incurred in anticipation of the collection of taxes
30 or other revenues or in anticipation of the sale of bonds other than
31 funding and refunding bonds. The gross debt (after exclusions) is
32 the sum of (i) outstanding debt evidenced by bonds, (ii) bonds
33 authorized by orders introduced but not yet adopted, (iii) unissued
34 bonds authorized by adopted orders, and (iv) outstanding debt not
35 evidenced by ~~bonds.~~ bonds, including debt described in subsection
36 (d) of this section. However, for purposes of the sworn statement
37 of debt and the debt limitation, special obligation bonds, other
38 obligations incurred under Chapter 159I of the General Statutes,
39 and revenue bonds shall not be considered debt and ~~such bonds~~
40 shall not be included in gross debt nor deducted from gross debt.

41 (2) Deductions from gross debt. -- The deductions to be made from
42 gross debt in computing net debt. The following deductions are
43 allowed:

- 1 a. Funding and refunding bonds authorized by orders
2 introduced but not yet adopted.
- 3 b. Funding and refunding bonds authorized but not yet issued.
- 4 c. The amount of money held in sinking funds or otherwise for
5 the payment of any part of the principal of gross debt other
6 than debt incurred for water, gas, electric light or power
7 purposes, or sanitary sewer purposes (to the extent that the
8 bonds are deductible under subsection (b) of this section), or
9 two or more of these purposes.
- 10 d. The amount of bonded debt included in gross debt and
11 incurred, or to be incurred, for water, gas, or electric light
12 or power purposes, or any two or more of these purposes.
- 13 e. The amount of bonded debt included in the gross debt and
14 incurred, or to be incurred, for sanitary sewer system
15 purposes to the extent that the debt is made deductible by
16 subsection (b) of this section.
- 17 f. The amount of uncollected special assessments theretofore
18 levied for local improvements for which any part of the
19 gross debt (that is not otherwise deducted) was or is to be
20 incurred, to the extent that the assessments will be applied,
21 when collected, to the payment of any part of the gross debt.
- 22 g. The amount, as estimated by the governing board of the
23 issuing unit or an officer designated by the board for this
24 purpose, of special assessments to be levied for local
25 improvements for which any part of the gross debt (that is
26 not otherwise deducted) was or is to be incurred, to the
27 extent that the special assessments, when collected, will be
28 applied to the payment of any part of the gross debt.
- 29 (3) Net debt. -- The net debt of the issuing unit, being the difference
30 between the gross debt and deductions.
- 31 (4) Assessed value of property. -- The assessed value of property
32 subject to taxation by the issuing unit, as revealed by the tax
33 records and certified to the issuing unit by the assessor.
- 34 (5) Net debt percentage. -- The percentage that the net debt bears to
35 the assessed value of property subject to taxation by the issuing
36 unit.
- 37 (b) Sewer System Debt Deductible. -- Debt incurred or to be incurred for sanitary
38 sewer system purposes is deductible from gross debt when the combined revenues of
39 the water system and the sanitary sewer system (whether or not the water and sewer
40 system are operated separately or as a consolidated system) were sufficient to pay all
41 operating, capital outlay, and debt service expenditures attributable to both systems in
42 each of the three complete fiscal years immediately preceding the date on which the
43 sworn statement of debt is filed. For the purposes of this subsection, the 'revenues'
44 of a water system and a sanitary sewer system include:

- 1 (1) Rates, fees, rentals, charges, and other receipts and income derived
2 from or in connection with the system.
- 3 (2) Fees, rents, or other charges collected from other offices, agencies,
4 institutions, and departments of the issuing unit at rates not in
5 excess of those charged to other consumers, customers, or users.
- 6 (3) Appropriations from the fund balance of the prior fiscal year from
7 the fund or funds established to account for the revenues and
8 expenditures of the water system or sewer system pursuant to G.S.
9 159-13(a) of the Local Government Budget and Fiscal Control Act.

10 Before the sworn statement of debt is filed, the secretary shall determine to what
11 extent debt incurred or to be incurred for sanitary sewer system purposes qualifies for
12 deduction from gross debt pursuant to this subsection, and shall give ~~his~~ a certificate
13 to that effect. The secretary's certificate shall be filed with and deemed a part of the
14 sworn statement of debt. The secretary's certificate shall be conclusive in the absence
15 of fraud.

16 (c) Debt Limitation. -- No bond order shall be adopted unless it appears from the
17 sworn statement of debt filed in connection therewith that the net debt of the unit
18 does not exceed eight percent (8%) of the assessed value of property subject to
19 taxation by the issuing unit. This limitation shall not apply to:

- 20 (1) Funding and refunding bonds.
- 21 (2) Bonds issued for water, gas, or electric power purposes, or two or
22 more of these purposes.
- 23 (3) Bonds issued for sanitary sewer system purposes when the bonds
24 are deductible pursuant to subsection (b) of this section.
- 25 (4) Bonds issued for sanitary sewers, sewage disposal, or sewage
26 purification plants when the construction of these facilities has
27 been ordered by the Environmental Management ~~Commission,~~
28 ~~which Commission is hereby authorized to make such an order,~~
29 Commission or by a court of competent jurisdiction.
- 30 (5) Bonds or notes issued for erosion control purposes.
- 31 (6) Bonds or notes issued for the purpose of erecting jetties or other
32 protective works to prevent encroachment by the ocean, sounds, or
33 other bodies of water.

34 (d) Outstanding Debt Not Evidenced by Bonds. -- For the purpose of this section,
35 outstanding debt not evidenced by bonds includes the principal component of
36 outstanding installment contracts and capital leases and the total lease payments due
37 under outstanding operating leases. Outstanding debt not evidenced by bonds is
38 includable in gross debt and deductible in determining net debt to the same extent as
39 if it were bonded debt.

40 If an installment contract, a capital lease, or an operating lease provides funds for
41 more than one purpose within the meaning of this section, the amount of funds
42 borrowed for each purpose shall be the amounts set forth in the installment contract,
43 capital lease, or operating lease. If the installment contract, capital lease, or operating
44 lease does not set forth the amount borrowed for each purpose, the finance officer, or

1 some other officer designated by the governing body for this purpose, shall file a
2 certificate with the clerk determining the purposes and amounts, and the
3 determination shall be conclusive and binding for purposes of complying with this
4 section.

5 The following definitions apply in this subsection:

- 6 (1) Capital lease. -- An agreement entered into under G.S. 153A-165
7 or G.S. 160A-19 that constitutes a capital lease of a lessee under
8 generally accepted accounting principles and that is subject to
9 approval by the Local Government Commission under Article 8 of
10 Chapter 159 of the General Statutes.
- 11 (2) Installment contract. -- An agreement entered into under G.S.
12 160A-20 that is subject to approval by the Local Government
13 Commission.
- 14 (3) Operating lease. -- An agreement entered into under G.S. 153A-
15 165 or G.S. 160A-19 that constitutes an operating lease of a lessee
16 under generally accepted accounting principles and that is subject
17 to approval by the Local Government Commission under Article 8
18 of Chapter 159 of the General Statutes.
- 19 (4) Principal component. -- The aggregate amount payable under an
20 installment contract or a capital lease over its term in respect of
21 principal only, as set forth in the installment contract or capital
22 lease or in a principal component certificate.
- 23 (5) Principal component certificate. -- A certificate of the finance
24 officer, or some other officer designated by the governing body for
25 this purpose, filed with the clerk setting forth the principal
26 component of an installment contract or capital lease when the
27 installment contract or capital lease does not expressly designate a
28 principal component. A certificate filed with the clerk is a
29 conclusive determination of the principal component."

30 Section 3. G.S. 159-148 reads as rewritten:

31 "**§ 159-148. Contracts subject to Article; exceptions.**

32 (a) Except as provided in subsection (b) of this section, this Article applies to any
33 contract, agreement, memorandum of understanding, and any other transaction
34 having the force and effect of a contract (other than agreements made in connection
35 with the issuance of revenue bonds, special obligation bonds issued pursuant to
36 Chapter 159I of the General Statutes, or of general obligation bonds additionally
37 secured by a pledge of revenues) made or entered into by a unit of local government
38 (as defined by G.S. 159-7(b) or, in the case of a special obligation bond, as defined in
39 Chapter 159I of the General Statutes), relating to the lease, acquisition, or
40 construction of capital assets, which contract

- 41 (1) Extends for five or more years from the date of the contract,
42 including periods that may be added to the original term through
43 the exercise of options to renew or extend, and

- 1 (2) Obligates the unit to pay sums of money to another, without regard
2 to whether the payee is a party to the contract, and
3 (3) Obligates the unit over the full term of the contract, including
4 periods that may be added to the original term through the
5 exercise of options to renew or extend, to the extent of five
6 hundred thousand dollars (\$500,000) or a sum equal to one tenth
7 of one percent (1/10 of 1%) of the assessed value of property
8 subject to taxation by the contracting unit, whichever is less, ~~and~~
9 less.
10 (4) ~~Obligates the unit, expressly or by implication, to exercise its~~
11 ~~power to levy taxes either to make payments falling due under the~~
12 ~~contract, or to pay any judgment entered against the unit as a~~
13 ~~result of the unit's breach of the contract.~~

14 Contingent ~~obligation~~ obligations shall be included in calculating the value of the
15 contract. Several contracts that are all related to the same undertaking shall be
16 deemed a single contract for the purposes of this Article. When several contracts are
17 considered as a single contract, the term shall be that of the contract having the
18 longest term, and the sums to fall due shall be the total of all sums to fall due under
19 all single contracts in the group.

20 (b) This Article shall not apply to:

- 21 (1) Contracts between a unit of local government and the State of
22 North Carolina or the United States of America (or any agency of
23 either) entered into as a condition to the making of grants or loans
24 to the unit of local government.
25 (2) Contracts for the purchase, lease, or lease with option to purchase
26 of motor vehicles or voting machines.
27 (3) Loan agreements entered into by a unit of local government
28 pursuant to the North Carolina Solid Waste Management Loan
29 Program, Chapter 159I of the General Statutes.
30 (4) Contracts between two units of local government if utility revenues
31 will support the payments under the contract."

32 Section 4. G.S. 159-150 reads as rewritten:

33 "**§ 159-150. Sworn statement of debt; debt limitation.**

34 (a) Sworn Statement of Debt. -- After or at the time an application is filed under
35 G.S. 159-149, the finance officer, or some other officer designated by the board, shall
36 prepare, swear to, and file with the secretary and for public inspection in the office of
37 the clerk to the board a statement of debt in the same form prescribed in G.S. 159-55
38 for statements of debt filed in connection with general obligation bond issues. The
39 sums to be included in gross debt and the deductions therefrom to arrive at net debt
40 shall be the same as prescribed in G.S. 159-55, ~~except that sums to fall due under~~
41 ~~contracts subject to this Article shall be treated as if they were evidenced by general~~
42 ~~obligation bonds of the unit~~ except that the contract to be entered into under this
43 Article shall be treated as outstanding debt not evidenced by bonds to the extent
44 provided under G.S. 159-55(d).

1 (b) Overall Debt Limitation. -- No contract subject to this Article may be
2 executed if the net debt of the contracting unit, after execution of the contract, would
3 exceed eight percent (8%) of the assessed value of property subject to taxation by the
4 contracting unit.

5 (c) Limitation on Debt Not Evidenced by Bonds. -- A unit of local government
6 that has a population of at least 10,000 may not execute a contract subject to this
7 Article if the net outstanding debt not evidenced by bonds incurred by the unit on or
8 after July 1, 1997, would, after execution of the contract, exceed one percent (1%) of
9 the assessed value of property subject to taxation by the unit. A unit of local
10 government that has a population of less than 10,000 may not execute a contract
11 subject to this Article if the net outstanding debt not evidenced by bonds incurred by
12 the unit on or after July 1, 1997, would, after execution of the contract, exceed two
13 percent (2%) of the assessed value of property subject to taxation by the unit. The
14 unit may enter into the contract, however, if the contract has been approved by the
15 voters of the unit as provided in subsection (e) of this section. The most recent
16 annual estimate of population certified by the State Planning Officer determines the
17 population of a unit.

18 The following outstanding debt not evidenced by bonds is not counted in
19 determining whether the percentage limitations set by this subsection have been
20 exceeded:

- 21 (1) Contracts entered into by the unit before July 1, 1997.
- 22 (2) Contracts approved by the voters as provided in subsection (e) of
23 this section.
- 24 (3) Contracts entered into for public school capital outlay purposes.
- 25 (4) Contracts entered into for sanitary sewers, sewage disposal, or
26 sewage purification plants.

27 (d) Exceptions to Limitations. -- Subsections (b) and (c) of this section do not
28 apply to:

- 29 (1) Funding and refunding contracts.
- 30 (2) Contracts entered into for water, gas, or electric power purposes,
31 or two or more of these purposes.
- 32 (3) Contracts entered into for sanitary sewer system purposes when the
33 amounts payable under the contracts are deductible pursuant to
34 G.S. 159-55(b).
- 35 (4) Contracts entered into for sanitary sewers, sewage disposal, or
36 sewage purification plants when the construction of these facilities
37 has been ordered by the Environmental Management Commission
38 or by a court of competent jurisdiction.
- 39 (5) Contracts entered into for erosion control purposes.
- 40 (6) Contracts entered into for the purpose of erecting jetties or other
41 protective works to prevent encroachment by the ocean, sounds, or
42 other bodies of water.

1 (7) Contracts entered into for jail or other confinement facility
2 purposes, if the contract is entered into to resolve litigation or to
3 comply with a court order.

4 (8) Contracts entered into by units that do not have the power to levy
5 taxes.

6 (e) Voter Approval of Certain Contracts. -- Before executing a contract subject to
7 this Article, the governing board of a unit of local government may, in its discretion,
8 submit the question of whether to execute the contract for approval by the qualified
9 voters of the unit. A referendum held pursuant to this subsection shall be conducted
10 according to the standards, procedures, and limitations set out in G.S. 159-153 and
11 G.S. 159-154. This subsection does not apply to units of local government that do
12 not have the power to levy taxes."

13 Section 5. Article 8 of Chapter 159 of the General Statutes is amended
14 by adding the following new sections to read:

15 "§ 159-153. Referendum; majority required; notice of referendum; form of ballot;
16 canvass.

17 (a) Definitions. -- The definitions provided in G.S. 159-55 apply in this section.

18 (b) Majority Required. -- If a contract is subject to the approval of the voters
19 pursuant to G.S. 159-150(e), the affirmative vote of a majority of those who vote on
20 the question is required.

21 (c) Date of Referendum. -- The date of a referendum shall be fixed by the
22 governing board of the contracting unit. The governing board may call a special
23 referendum for the purpose of voting on the contract on any day, including the day
24 of any regular or special election held for another purpose, unless the law under
25 which the referendum or other election is held specifically prohibits submission of
26 other questions at the same time. A special referendum may not be held within 30
27 days before or 10 days after a statewide primary, election, or referendum, or within
28 30 days before or 10 days after any other primary, election, or referendum to be held
29 in the same unit holding the referendum and already validly called or scheduled by
30 law at the time the bond referendum is called. The clerk to the board shall mail or
31 deliver a certified copy of the resolution calling a special referendum to the board of
32 elections that is to conduct it within three days after the resolution is adopted, but
33 failure to observe this requirement shall not in any manner affect the validity of the
34 referendum or contract approved pursuant thereto. Referenda shall be conducted by
35 the board of elections conducting regular elections of the contracting unit. In fixing
36 the date of a referendum, the governing board shall consult the board of elections in
37 order that the referendum shall not unduly interfere with other elections already
38 scheduled or in process. Several contracts or other matters may be voted upon at the
39 same referendum.

40 (d) Notice. -- The clerk shall publish a notice of the referendum at least twice.
41 The first publication shall be not less than 14 days and the second publication not less
42 than seven days before the last day on which voters may register for the referendum.
43 The notice shall contain all of the following:

44 (1) The date of the referendum.

- 1 (2) The purpose of the contract.
- 2 (3) The last day for registration for the referendum under the election
- 3 laws then in effect.
- 4 (4) The maximum principal component or maximum total payments,
- 5 as the case may be, to be made under the contract.
- 6 (5) The maximum term of the contract, including any optional renewal
- 7 periods.
- 8 (6) A statement that the taxing power of the contracting unit is not
- 9 and may not be pledged directly or indirectly to secure any moneys
- 10 due under the contract.
- 11 (7) Any other information that the contracting unit, in its sole
- 12 discretion, considers necessary or appropriate to properly inform
- 13 the voters of the contract and the referendum.

14 The purpose of the contract required to be set forth in the notice of the
 15 referendum and the ballot may be set forth, in either place, as the governing body of
 16 the contracting unit in its discretion may determine, by inserting (i) the phrase
 17 'providing capital improvements' or (ii) a description of the purpose for which the
 18 contract is to be entered into, which purpose may include several otherwise related
 19 purposes.

20 In the case of installment contracts, the notice shall also contain a statement
 21 substantially to the effect that the installment contract will create in all or some
 22 portion of the property acquired or improved, or in all or some portion of the real
 23 property on which the property is located, a security interest to secure repayment of
 24 moneys under the installment contract, but no deficiency judgment may be rendered
 25 against the contracting unit in any action for breach of obligation under the
 26 installment contract. In the case of capital leases, the notice shall also contain a
 27 statement substantially to the effect that title to the property subject to the capital
 28 lease will be acquired upon payment of all sums due under the capital lease.

29 (e) Ballot Question. -- The forms of the various questions as stated on the ballot
 30 shall be in substantially the following words:

31 (1) In the case of installment contracts:
 32 '[] FOR AGAINST []
 33 The execution of an installment contract in the maximum principal amount of
 34 \$ _____ for (briefly stating the purpose) granting a security interest in (briefly
 35 describing collateral security) to secure repayment of moneys due under the
 36 installment contract.'

37 (2) In the case of capital leases:
 38 '[] FOR AGAINST []
 39 The execution of a capital lease in the maximum principal amount of \$ _____ for
 40 (briefly stating the purpose) whereby title to the property subject to the capital lease
 41 will be acquired upon payment of all sums due under the capital lease.'

42 (3) In the case of operating leases:
 43 '[] FOR AGAINST []

1 The execution of an operating lease with maximum total lease payments of
2 \$ _____ and a maximum term, including any optional renewal periods, of
3 _____ for (briefly stating the purpose).'

4 (4) In the case of any other contracts:

5 '[] FOR AGAINST []

6 The execution of a contract [in the maximum principal amount] [with total payments
7 thereunder] of \$ _____ and a maximum term, including any optional renewal
8 periods, of _____ for (briefly stating the purpose).'

9 (f) Results. -- The board of elections shall canvass the referendum and certify the
10 results to the governing board of the contracting unit. The governing board shall
11 then certify and declare the result of the referendum and shall publish a statement of
12 the result once, with the following statement appended:

13 'Any action or proceeding challenging the regularity or validity of this referendum
14 must be begun within 30 days after (date of publication).

15 _____
16
17 (Title of Governing Board)
18

19 The statement of results of the referendum shall be filed in the clerk's office and
20 inserted in the minutes of the governing board.

21 **"§ 159-154. Limitation on actions contesting validity of referenda.**

22 Any action or proceeding in any court to set aside a referendum conducted
23 pursuant to G.S. 159-153, or to obtain any other relief, upon the ground that the
24 referendum is invalid or was irregularly conducted, must be begun within 30 days
25 after the publication on the statement of the results of the referendum. After the
26 expiration of this period of limitation, no right of action or defense based upon the
27 invalidity of or any irregularity in the referendum shall be asserted, nor shall the
28 validity of the referendum be open to question in any court upon any ground
29 whatever, except in an action or proceeding begun within the period of limitation
30 prescribed in this section."

31 Section 6. This act becomes effective July 1, 1997. This act does not
32 affect a unit of government's right to execute a contract for which an application for
33 Local Government Commission approval was filed before July 1, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 158*

Short Title: Administrative Dissolution/Annual Rept.

(Public)

Sponsors: Senators Hartsell; Foxx and Odom.

Referred to: Commerce.

February 17, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO EXPAND THE TIME CORPORATIONS AND LIMITED LIABILITY
3 COMPANIES MAY APPLY FOR REINSTATEMENT FROM
4 ADMINISTRATIVE DISSOLUTION, TO INCREASE THE FEE
5 CORPORATIONS MUST PAY FOR REINSTATEMENT AFTER
6 ADMINISTRATIVE DISSOLUTION, TO ESTABLISH A FEE LIMITED
7 LIABILITY COMPANIES MUST PAY FOR REINSTATEMENT AFTER
8 ADMINISTRATIVE DISSOLUTION, AND TO PROVIDE THAT ANNUAL
9 REPORTS OF BUSINESS CORPORATIONS AND LIMITED LIABILITY
10 COMPANIES SHALL BE FILED WITH THE DEPARTMENT OF REVENUE
11 RATHER THAN THE SECRETARY OF STATE, AS RECOMMENDED BY
12 THE GENERAL STATUTES STUDY COMMISSION.

13 The General Assembly of North Carolina enacts:

14 PART I. ADMINISTRATIVE DISSOLUTIONS.

15 Section 1. G.S. 55-14-22(a) reads as rewritten:

16 "(a) A corporation administratively dissolved under G.S. 55-14-21 may apply to
17 the Secretary of State for reinstatement ~~within two years~~ not later than five years after
18 the effective date of dissolution. The application must:

- 19 (1) Recite the name of the corporation and the effective date of its
20 administrative dissolution; and
21 (2) State that the ground or grounds for dissolution either did not exist
22 or have been eliminated.
23 (3) Reserved.
24 (4) Repealed by Session Laws 1995, c. 539, s. 6."

1 Section 2. G.S. 55A-14-22(a) reads as rewritten:

2 "(a) A corporation administratively dissolved under G.S. 55A-14-21 may apply to
3 the Secretary of State for reinstatement ~~within two years~~ not later than five years after
4 the effective date of dissolution. The application shall:

- 5 (1) Recite the name of the corporation and the effective date of its
6 administrative dissolution; and
7 (2) State that the ground or grounds for dissolution either did not exist
8 or have been eliminated."

9 Section 3. G.S. 57C-6-03(c) reads as rewritten:

10 "(c) A limited liability company administratively dissolved under this section may
11 apply to the Secretary of State for reinstatement ~~within two years~~ not later than five
12 years after the effective date of the administrative dissolution. The procedures for
13 reinstatement and for the appeal of any denial of the limited liability company's
14 application for reinstatement shall be the same procedures applicable to business
15 corporations under G.S. 55-14-22, 55-14-23, and 55-14-24."

16 Section 4. G.S. 55-1-22 reads as rewritten:

17 "§ 55-1-22. Filing, service, and copying fees.

18 (a) The Secretary of State shall collect the following fees when the documents
19 described in this subsection are delivered to ~~him~~ the Secretary for filing:

20	Document	Fee
21	(1) Articles of incorporation	\$100.00
22	(2) Application for reserved name	10.00
23	(3) Notice of transfer of reserved name	10.00
24	(4) Application for registered name	10.00
25	(5) Application for renewal of	
26	registered name	10.00
27	(6) Corporation's statement of change of	
28	registered agent or registered	
29	office or both	5.00
30	(7) Agent's statement of change of	
31	registered office for each affected	
32	corporation	5.00
33	(8) Agent's statement of resignation	No fee
34	(9) Designation of registered agent or	
35	registered office or both	5.00
36	(10) Amendment of articles of	
37	incorporation	50.00
38	(11) Restated articles of incorporation	10.00
39	with amendment of articles	50.00
40	(12) Articles of merger or share exchange	50.00
41	(13) Articles of dissolution	30.00
42	(14) Articles of revocation of	
43	dissolution	10.00
44	(15) Certificate of administrative	

1	dissolution	No fee
2	(16) Application for reinstatement	
3	following administrative dissolution	25.00
4	(17) Certificate of reinstatement	No fee
5	(18) Certificate of judicial dissolution	No fee
6	(19) Application for certificate of	
7	authority	200.00
8	(20) Application for amended certificate	
9	of authority	50.00
10	(21) Application for certificate of	
11	withdrawal	10.00
12	(22) Certificate of revocation of	
13	authority to transact business	No fee
14	(23) Annual report	10.00
15	(24) Articles of correction	10.00
16	(25) Application for certificate of	
17	existence or authorization	5.00
18	(26) Any other document required or	
19	permitted to be filed by this Chapter	10.00.

20 (b) The Secretary of State shall collect a fee of ten dollars (\$10.00) each time
 21 process is served on ~~him~~ the Secretary under this Chapter. The party to a proceeding
 22 causing service of process is entitled to recover this fee as costs if ~~he~~ the party prevails
 23 in the proceeding.

24 (c) The Secretary of State shall collect the following fees for copying, comparing,
 25 and certifying a copy of any filed document relating to a domestic or foreign
 26 corporation:

- 27 (1) One dollar (\$1.00) a page for copying or comparing a copy to the
 28 original; and
 29 (2) Five dollars (\$5.00) for the certificate.

30 (d) The Secretary of State shall collect a fee of two hundred dollars (\$200.00) for
 31 each year, or portion of a year, following the effective date of an administrative
 32 dissolution when an application for reinstatement following an administrative
 33 dissolution is delivered to the Secretary for filing."

34 Section 5. G.S. 55A-1-22 reads as rewritten:

35 "§ 55A-1-22. Filing, service, and copying fees.

36 (a) The Secretary of State shall collect the following fees when the documents
 37 described in this subsection are delivered to the Secretary for filing:

38	Document	Fee
39	(1) Articles of incorporation	\$50.00
40	(2) Application for reserved name	\$10.00
41	(3) Notice of transfer of reserved name	\$10.00
42	(4) Application for registered name	\$10.00
43	(5) Application for renewal of registered	
44	name	\$10.00

1	(6)	Corporation's statement of change of	
2		registered agent or registered office or	
3		both	\$ 5.00
4	(7)	Agent's statement of change of registered	
5		office for each affected corporation	\$ 5.00
6	(8)	Agent's statement of resignation	No fee
7	(9)	Designation of registered agent or	
8		registered office or both	\$ 5.00
9	(10)	Amendment of articles of incorporation	\$25.00
10	(11)	Restated articles of incorporation without	
11		amendment of articles	\$10.00
12	(12)	Restated articles of incorporation with	
13		amendment of articles	\$25.00
14	(13)	Articles of merger	\$25.00
15	(14)	Articles of dissolution	\$15.00
16	(15)	Articles of revocation of dissolution	\$10.00
17	(16)	Certificate of administrative dissolution	No fee
18	(17)	Application for reinstatement following	
19		administrative dissolution	\$25.00
20	(18)	Certificate of reinstatement	No fee
21	(19)	Certificate of judicial dissolution	No fee
22	(20)	Application for certificate of authority	\$100.00
23	(21)	Application for amended certificate of	
24		authority	\$25.00
25	(22)	Application for certificate of withdrawal	\$10.00
26	(23)	Certificate of revocation of authority to	
27		conduct affairs	No fee
28	(24)	Corporation's Statement of Change of	
29		Principal Office	\$5.00
30	(24a)	Designation of Principal Office Address	\$5.00
31	(25)	Articles of correction	\$10.00
32	(26)	Application for certificate of existence or	
33		authorization	\$ 5.00
34	(27)	Any other document required or	
35		permitted to be filed by this Chapter	\$10.00.

36 (b) The Secretary of State shall collect a fee of ten dollars (\$10.00) each time
 37 process is served on the Secretary under this Chapter. The party to a proceeding
 38 causing service of process is entitled to recover this fee as costs if the party prevails in
 39 the proceeding.

40 (c) The Secretary of State shall collect the following fees for copying, comparing,
 41 and certifying a copy of any filed document relating to a domestic or foreign
 42 corporation:

- 43 (1) One dollar (\$1.00) a page for copying or comparing a copy to the
 44 original; and

1 (2) Five dollars (\$5.00) for the certificate.

2 (d) The Secretary of State shall collect a fee of two hundred dollars (\$200.00) for
3 each year, or portion of a year, following the effective date of an administrative
4 dissolution when an application for reinstatement following an administrative
5 dissolution is delivered to the Secretary for filing."

6 Section 6. G.S. 57C-1-22 is amended by adding a new subsection to read:

7 "(d) The Secretary of State shall collect a fee of two hundred dollars (\$200.00) for
8 each year, or portion of a year, following the effective date of an administrative
9 dissolution when an application for reinstatement following an administrative
10 dissolution is delivered to the Secretary for filing."

11 PART II. ANNUAL CORPORATE REPORT.

12 Section 7. G.S. 55-16-22 reads as rewritten:

13 "§ 55-16-22. Annual report for Secretary of State: Revenue.

14 (a) Each domestic corporation except those governed by Chapter 55B, and each
15 foreign corporation authorized to transact business in this State, shall deliver to the
16 Secretary of State Revenue for filing an annual ~~report~~ report, in a form prescribed by
17 the Secretary of Revenue, that sets ~~forth~~ forth all of the following:

18 (1) The name of the corporation and the state or country under whose
19 law it is ~~incorporated~~; incorporated.

20 (2) The street address, and the mailing address if different from the
21 street address, of the registered office, the county in which its
22 registered office is located, and the name of its registered agent at
23 that office in this State, and a statement of any change of such
24 registered office or registered agent, or ~~both~~; both.

25 (3) The address and telephone number of its principal ~~office~~; office.

26 (4) The names, titles, and business addresses of its principal ~~officers~~;
27 officers.

28 ~~(4a) The names and business addresses of its directors, and~~

29 (5) A brief description of the nature of its business.

30 If the information contained in the most recently filed annual report has not changed,
31 a certification to that effect may be made instead of setting forth the information
32 required by subdivisions (2) through (5) of this subsection.

33 (b) Information in the annual report must be current as of the date the annual
34 report is executed on behalf of the corporation.

35 (c) The annual report shall be delivered to the Secretary of ~~State~~ each year
36 Revenue ~~within 60 days immediately following the last day of the month in which the~~
37 ~~domestic corporation was incorporated or the foreign corporation received a~~
38 ~~certificate of authority in this State. by the due date for filing the corporation's~~
39 income and franchise tax returns. If a corporation requests an extension of time for
40 filing its income and franchise tax return, then the annual report must be delivered to
41 the Secretary of Revenue with its application for an extension of time for filing.
42 ~~Forms required for the filing of the annual report shall be mailed by the Secretary of~~
43 ~~State to the domestic or foreign corporation at its registered office for the first annual~~

1 ~~report, then to its principal office for subsequent annual reports.~~ Forms required for
 2 the filing of annual reports shall be made available by the Secretary of Revenue.

3 (d) If an annual report does not contain the information required by this section,
 4 the Secretary of State shall promptly notify the reporting domestic or foreign
 5 corporation in writing and return the report to it for correction. If the report is
 6 corrected to contain the information required by this section and delivered to the
 7 Secretary of State within 30 days after the effective date of notice, it is deemed to be
 8 timely filed.

9 (e) Amendments to any previously filed annual report may be filed with the
 10 Secretary of State at any time for the purpose of correcting, updating, or augmenting
 11 the information contained in ~~such~~ the annual report.

12 (f) Expired.

13 (g) When a statement of change of registered office or registered agent is filed in
 14 the annual report, the change shall become effective when the statement is received
 15 by the Secretary of State.

16 (h) If the Secretary of State does not receive an annual report from the Secretary
 17 of Revenue, it shall be presumed that the annual report was not filed with the
 18 Secretary of Revenue."

19 Section 8. G.S. 55-1-21(a) reads as rewritten:

20 "(a) The Secretary of State may promulgate and furnish on request forms ~~for~~ for
 21 the following:

- 22 (1) An application for a certificate of ~~existence;~~ existence.
- 23 (2) A foreign corporation's application for a certificate of authority to
 24 transact business in this ~~State;~~ State.
- 25 (3) A foreign corporation's application for a certificate of ~~withdrawal;~~
 26 ~~and~~ withdrawal.
- 27 (4) ~~The annual report.~~

28 If the Secretary of State so requires, use of these forms is mandatory."

29 Section 9. G.S. 55-1-22(a), as amended by Section 4 of this act, reads as
 30 rewritten:

31 "(a) The Secretary of State shall collect the following fees when the documents
 32 described in this subsection are delivered to the Secretary for filing:

Document	Fee
34 (1) Articles of incorporation	\$100.00
35 (2) Application for reserved name	10.00
36 (3) Notice of transfer of reserved name	10.00
37 (4) Application for registered name	10.00
38 (5) Application for renewal of	
39 registered name	10.00
40 (6) Corporation's statement of change of	
41 registered agent or registered	
42 office or both	5.00
43 (7) Agent's statement of change of	
44 registered office for each affected	

1	corporation	5.00
2	(8) Agent's statement of resignation	No fee
3	(9) Designation of registered agent or	
4	registered office or both	5.00
5	(10) Amendment of articles of	
6	incorporation	50.00
7	(11) Restated articles of incorporation	10.00
8	with amendment of articles	50.00
9	(12) Articles of merger or share exchange	50.00
10	(13) Articles of dissolution	30.00
11	(14) Articles of revocation of	
12	dissolution	10.00
13	(15) Certificate of administrative	
14	dissolution	No fee
15	(16) Repealed.	
16	(17) Certificate of reinstatement	No fee
17	(18) Certificate of judicial dissolution	No fee
18	(19) Application for certificate of	
19	authority	200.00
20	(20) Application for amended certificate	
21	of authority	50.00
22	(21) Application for certificate of	
23	withdrawal	10.00
24	(22) Certificate of revocation of	
25	authority to transact business	No fee
26	(23) Annual report	10.00
27	(24) Articles of correction	10.00
28	(25) Application for certificate of	
29	existence or authorization	5.00
30	(26) Any other document required or	
31	permitted to be filed by this Chapter	10.00."
32	Section 10. G.S. 55-1-28(b)(4) reads as rewritten:	
33	"(4) That its most recent annual report required by G.S. 55-16-22 has	
34	been delivered to the Secretary of State ; <u>Revenue</u> ;"	
35	Section 11. G.S. 55-14-20(2) reads as rewritten:	
36	"(2) The corporation does not deliver its annual report to the Secretary	
37	of State within 60 days after it is due ; <u>Revenue on or before the</u>	
38	<u>date it is due</u> ;"	
39	Section 12. G.S. 55-15-30(a)(1) reads as rewritten:	
40	"(1) The foreign corporation does not deliver its annual report to the	
41	Secretary of State within 60 days after it is due ; <u>Revenue on or</u>	
42	<u>before the date it is due</u> ;"	
43	Section 13. G.S. 55-16-01(e)(7) reads as rewritten:	

1 "(7) Its most recent annual report delivered to the Secretary of State
2 Revenue under G.S. 55-16-22."

3 Section 14. G.S. 57C-2-23 reads as rewritten:

4 "**§ 57C-2-23. Annual report for Secretary of State: Revenue.**

5 (a) Each domestic limited liability company and each foreign limited liability
6 company authorized to transact business in this State, shall deliver to the Secretary of
7 State Revenue for filing an annual ~~report~~ report, in a form prescribed by the
8 Secretary of Revenue, that sets forth: forth all of the following:

9 (1) The name of the limited liability or foreign limited liability
10 company and the state or country under whose law it is ~~organized;~~
11 organized.

12 (2) The street address, and the mailing address if different from the
13 street address, of the registered office, the county in which the
14 registered office is located, and the name of its registered agent at
15 that office in this State, and a statement of any change of the
16 registered office or registered agent, or ~~both;~~ both.

17 (3) The address and telephone number of its principal ~~office;~~ office.

18 (4) The names and business addresses of its ~~managers; and~~ managers.

19 (5) A brief description of the nature of its business.

20 If the information contained in the most recently filed annual report has not changed,
21 a certification to that effect may be made instead of setting forth the information
22 required by subdivisions (2) through (5) of this subsection.

23 (b) Information in the annual report must be current as of the date the annual
24 report is executed on behalf of the limited liability company or the foreign limited
25 liability company.

26 (c) The annual report shall be delivered to the Secretary of State ~~each year~~
27 Revenue within 60 days immediately following the last day of the month in which the
28 domestic limited liability company was organized or the foreign limited liability
29 company received a certificate of authority in this State: by the due date for filing the
30 limited liability company's partnership tax return. If a limited liability company
31 requests an extension of time for filing its partnership tax return, then the annual
32 report must be delivered to the Secretary of Revenue with its application for an
33 extension of time for filing. Forms required for the filing of the annual report shall be
34 mailed by the Secretary of State to the domestic or foreign limited liability company
35 at its registered office for the first annual report, and then to its principal office for
36 subsequent annual reports. Forms required for the filing of annual reports shall be
37 made available by the Secretary of Revenue.

38 (d) If an annual report does not contain the information required by this section,
39 the Secretary of State shall promptly notify the reporting domestic or foreign limited
40 liability company in writing and return the report to it for correction. If the report is
41 corrected to contain the information required by this section and delivered to the
42 Secretary of State within 30 days after the effective date of notice, it is deemed to be
43 timely filed.

1 (e) Amendments to any previously filed annual report may be filed with the
 2 Secretary of State at any time for the purpose of correcting, updating, or augmenting
 3 the information contained in the annual report.

4 (f) When a statement of change of registered office or registered agent is filed in
 5 the annual report, the change shall become effective when the statement is received
 6 by the Secretary of State.

7 (g) If the Secretary of State does not receive an annual report from the Secretary
 8 of Revenue, it shall be presumed that the annual report was not filed with the
 9 Secretary of Revenue."

10 Section 15. G.S. 57C-1-22, as amended by Section 6 of this act, reads as
 11 rewritten:

12 "§ 57C-1-22. Filing, service, and copying fees.

13 (a) The Secretary of State shall collect the following fees when the documents
 14 described in this subsection are delivered to the Secretary of State for filing:

15	<u>Document</u>	<u>Fee</u>
16	(1) Articles of organization	\$100.00
17	(2) Application for reserved name	10.00
18	(3) Notice of transfer of reserved name	10.00
19	(4) Application for registered name	10.00
20	(5) Application for renewal of registered name	10.00
21	(6) Limited liability company's statement of	
22	change of registered agent or registered	
23	office or both	5.00
24	(7) Agent's statement of change of registered	
25	office for each affected limited	
26	liability company	5.00
27	(8) Agent's statement of resignation	No fee
28	(9) Designation of registered agent or	
29	registered office or both	5.00
30	(10) Amendment of articles of organization	50.00
31	(11) Restated articles of organization	
32	without amendment of articles	10.00
33	(12) Restated articles of organization	
34	with amendment of articles	50.00
35	(13) Articles of merger	50.00
36	(14) Articles of dissolution	30.00
37	(15) Articles of revocation of dissolution	10.00
38	(16) Certificate of administrative dissolution	No fee
39	(17) Certificate of reinstatement	No fee
40	(18) Certificate of judicial dissolution	No fee
41	(19) Application for certificate of authority	200.00
42	(20) Application for amended certificate	
43	of authority	50.00
44	(21) Application for certificate of withdrawal	10.00

1	(22)	Certificate of revocation of authority	
2		to transact business	No fee
3	(23)	Articles of correction	10.00
4	(24)	Application for certificate of existence	
5		or authorization	5.00
6	(25)	Annual report	200.00
7	(26)	Any other document required or permitted	
8		to be filed by this Chapter	10.00.

9 (b) The Secretary of State shall collect a fee of ten dollars (\$10.00) each time
10 process is served on the Secretary of State under this Chapter. The party to a
11 proceeding causing service of process is entitled to recover this fee as costs if ~~he~~ the
12 party prevails in the proceeding.

13 (c) The Secretary of State shall collect the following fees for copying, comparing,
14 and certifying a copy of any filed document relating to a domestic or foreign limited
15 liability company:

- 16 (1) One dollar (\$1.00) a page for copying or comparing a copy to the
17 original; and
18 (2) Five dollars (\$5.00) for the certificate.

19 (d) The Secretary of State shall collect a fee of two hundred dollars (\$200.00) for
20 each year, or portion of a year, following the effective date of an administrative
21 dissolution when an application for reinstatement following an administrative
22 dissolution is delivered to the Secretary for filing."

23 Section 16. G.S. 57C-3-25(a) reads as rewritten:

24 "(a) Any person dealing with a limited liability company or a foreign limited
25 liability company may rely conclusively upon its most recent annual report and any
26 amendments ~~thereto filed with~~ to it on file with the Secretary of State ~~pursuant to~~
27 ~~G.S. 57C-2-23~~ as to the identity of its managers, except to the extent the person has
28 actual knowledge that a person identified therein as a manager is not a manager."

29 Section 17. G.S. 57C-6-03(a) reads as rewritten:

30 "(a) The Secretary of State may administratively dissolve a limited liability
31 company if the Secretary of State determines that:

- 32 (1) The limited liability company has not paid within 60 days after
33 they are due any penalties, fees, or other payments due under this
34 ~~Chapter, Chapter or G.S. 105-257.1(b);~~
35 (2) The limited liability company does not deliver its annual report to
36 the Secretary of ~~State~~ Revenue on or before the date it is due;
37 (3) The limited liability company has been without a registered agent
38 or registered office in this State for 60 days or more;
39 (4) The limited liability company has not notified the Secretary of
40 State within 60 days that its registered agent or registered office has
41 been changed, that its registered agent has resigned, or that its
42 registered office has been discontinued; or
43 (5) The limited liability company's period of duration stated in its
44 articles of organization has expired."

1 Section 18. G.S. 57C-7-14(a)(2) reads as rewritten:

2 "(2) The foreign limited liability company has not delivered its annual
3 report to the Secretary of State Revenue on or before the date it is
4 due;"

5 Section 19. G.S. 105-228.90(a) reads as rewritten:

6 "(a) Scope. -- This Article applies to Subchapters I, V, and VIII of this ~~Chapter~~
7 Chapter, to the annual report filing requirements of G.S. 55-16-22 and G.S. 57C-2-23,
8 and to inspection taxes levied under Article 3 of Chapter 119 of the General
9 Statutes."

10 Section 20. Article 9 of Chapter 105 of the General Statutes is amended
11 by adding a new section to read:

12 "§ 105-257.1. Secretary to administer annual report filing; fee for limited liability
13 companies.

14 (a) Filing Duty. -- The Secretary shall submit the annual reports filed with the
15 Secretary by corporations and limited liability companies pursuant to G.S. 55-16-22
16 and G.S. 57C-2-23 to the Secretary of State. The penalty in G.S. 105-230 does not
17 apply to the failure to file an annual report required by G.S. 55-16-22 or G.S. 57C-2-
18 23.

19 (b) Fee. -- A limited liability company shall pay a fee of two hundred dollars
20 (\$200.00) to the Secretary of Revenue with its annual report. The fees collected
21 under this subsection shall be credited to the General Fund as tax revenue."

22 Section 21. G.S. 105-259 reads as rewritten:

23 "§ 105-259. (See notes) Secrecy required of officials; penalty for violation.

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

25 (1) Employee or officer. -- The term includes a former employee, a
26 former officer, and a current or former member of a State board or
27 commission.

28 (2) Tax information. -- Any information from any source concerning
29 the liability of a taxpayer for a tax, as defined in G.S. 105-228.90.
30 The term includes the following:

31 a. Information contained on a tax return, a tax report, or an
32 application for a license for which a tax is imposed.

33 b. Information obtained through an audit of a taxpayer or by
34 correspondence with a taxpayer.

35 c. Information on whether a taxpayer has filed a tax return or
36 a tax report.

37 d. A list or other compilation of the names, addresses, social
38 security numbers, or similar information concerning
39 taxpayers.

40 The term does not include (i) statistics classified so that
41 information about specific taxpayers cannot be ~~identified or (ii)~~
42 identified, (ii) an annual report required to be filed under G.S. 55-
43 16-22 or G.S. 57C-2-23, or (iii) information submitted to the
44 Business License Information Office of the Department of

1 Secretary of State on a master application form for various
2 business licenses.

3 (b) Disclosure Prohibited. -- An officer, an employee, or an agent of the State who
4 has access to tax information in the course of service to or employment by the State
5 may not disclose the information to any other person unless the disclosure is made
6 for one of the following purposes:

- 7 (1) To comply with a court order or a law.
- 8 (2) Review by the Attorney General or a representative of the
9 Attorney General.
- 10 (3) Review by a tax official of another state or the Internal Revenue
11 Commissioner of the United States to aid the state or the
12 Commissioner in collecting a tax imposed by this State, the other
13 state, or the United States if the laws of the other state or the
14 United States allow the state or the United States to provide
15 similar tax information to a representative of this State.
- 16 (4) To provide a governmental agency or an officer of an organized
17 association of taxpayers with a list of taxpayers who have paid a
18 privilege license tax under Article 2 of this Chapter.
- 19 (5) To furnish to the chair of a board of county commissioners
20 information on the county sales and use tax.
- 21 (6) To sort, process, or deliver tax information on behalf of the
22 Department of Revenue.
- 23 (6a) To furnish the chair of a board of county commissioners a list of
24 claimants that have received a refund of the county sales or use tax
25 to the extent authorized in G.S. 105- 164.14(f).
- 26 (7) To exchange information with the Division of Motor Vehicles of
27 the Department of Transportation when the information is needed
28 to fulfill a duty imposed on the Department of Revenue or the
29 Division of Motor Vehicles.
- 30 (8) To furnish to the Department of State Treasurer, upon request, the
31 name, address, and account and identification numbers of a
32 taxpayer who may be entitled to property held in the Escheat
33 Fund.
- 34 (9) To furnish to the Employment Security Commission the name,
35 address, and account and identification numbers of a taxpayer
36 when the information is requested by the Commission in order to
37 fulfill a duty imposed under Article 2 of Chapter 96 of the General
38 Statutes.
- 39 (10) Review by the State Auditor to the extent authorized in G.S. 147-
40 64.7.
- 41 (11) To give a spouse who elects to file a joint tax return a copy of the
42 return or information contained on the return.
- 43 (11a) To provide a copy of a return to the taxpayer who filed the return.

- 1 (11b) In the case of a return filed by a corporation, a partnership, a trust,
2 or an estate, to provide a copy of the return or information on the
3 return to a person who has a material interest in the return if,
4 under the circumstances, section 6103(e)(1) of the Code would
5 require disclosure to that person of any corresponding federal
6 return or information.
- 7 (11c) In the case of a return of an individual who is legally incompetent
8 or deceased, to provide a copy of the return to the legal
9 representative of the estate of the incompetent individual or
10 decedent.
- 11 (12) To contract with a financial institution for the receipt of withheld
12 income tax payments under G.S. 105-163.6 or for the transmittal of
13 payments by electronic funds transfer.
- 14 (13) To furnish the Fiscal Research Division of the General Assembly,
15 upon request, a sample, suitable in character, composition, and size
16 for statistical analyses, of tax returns or other tax information from
17 which taxpayers' names and identification numbers have been
18 removed.
- 19 (14) To exchange information concerning a tax imposed by Subchapter
20 V of this Chapter with the Standards Division of the Department
21 of Agriculture when the information is needed to administer the
22 Gasoline and Oil Inspection Act, Article 3 of Chapter 119 of the
23 General Statutes.
- 24 (15) To exchange information concerning a tax imposed by Articles 2A,
25 2B, 2C, or 2D of this Chapter with one of the following agencies
26 when the information is needed to fulfill a duty imposed on the
27 agency:
- 28 a. The North Carolina Alcoholic Beverage Control
29 Commission.
- 30 b. The Division of Alcohol Law Enforcement of the
31 Department of Crime Control and Public Safety.
- 32 c. The Bureau of Alcohol, Tobacco, and Firearms of the
33 United States Treasury Department.
- 34 (16) To furnish to the Department of Secretary of State the name,
35 address, tax year end, and account and identification numbers of a
36 corporation liable for corporate income or franchise taxes or of a
37 limited liability company liable for a partnership tax return to
38 enable the Secretary of State to notify the corporation or the
39 limited liability company of the annual report filing requirement or
40 that its articles of incorporation or articles of organization or its
41 certificate of authority has been suspended.
- 42 (17) To inform the Business License Information Office of the
43 Department of Secretary of State of the status of an application for

1 a license for which a tax is imposed and of any information needed
2 to process the application.

3 (18) To furnish to the Office of the State Controller the name, address,
4 and account and identification numbers of a taxpayer upon request
5 to enable the State Controller to verify statewide vendor files or
6 track debtors of the State.

7 (19) To furnish to the North Carolina Industrial Commission
8 information concerning workers' compensation reported to the
9 Secretary under G.S. 105-163.7.

10 (c) Punishment. -- A person who violates this section is guilty of a Class 1
11 misdemeanor. If the person committing the violation is an officer or employee, that
12 person shall be dismissed from public office or public employment and may not hold
13 any public office or public employment in this State for five years after the violation."

14 Section 22. There is appropriated from the General Fund to the
15 Department of Revenue the sum of one hundred ninety-two thousand one hundred
16 fifty-one dollars (\$192,151) for the 1997-98 fiscal year, allocated as one hundred
17 twenty-seven thousand seven hundred fifty-one dollars (\$127,751) recurring funds and
18 sixty-four thousand four hundred dollars (\$64,400) nonrecurring funds, for the costs
19 associated with collecting and transmitting the annual corporate reports.

20 PART III. EFFECTIVE DATES.

21 Section 23. (a) Sections 1 through 6 and Sections 21 through 23 of this
22 act become effective July 1, 1997. The remainder of this act becomes effective
23 January 1, 1998, and applies to tax years ending on or after December 31, 1997.

24 (b) Annual reports erroneously filed with the Secretary of State after
25 December 31, 1997, but before January 1, 1999, shall nevertheless be deemed filed
26 with the correct State agency. The Secretary of State shall notify the Secretary of
27 Revenue of these filings.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

D

SENATE BILL 158*

S158-CSLJX-4/10

Proposed Senate Finance Committee Substitute

Short Title: Administrative Dissolution/Annual Rept. (Public)

Sponsors:

Referred to: Commerce.

February 17, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO EXPAND THE TIME CORPORATIONS AND LIMITED LIABILITY
3 COMPANIES MAY APPLY FOR REINSTATEMENT FROM ADMINISTRATIVE
4 DISSOLUTION, TO INCREASE THE FEE CORPORATIONS MUST PAY FOR
5 REINSTATEMENT AFTER ADMINISTRATIVE DISSOLUTION, TO ESTABLISH A
6 FEE LIMITED LIABILITY COMPANIES MUST PAY FOR REINSTATEMENT
7 AFTER ADMINISTRATIVE DISSOLUTION, TO PROVIDE THAT ANNUAL
8 REPORTS OF MOST BUSINESS CORPORATIONS AND LIMITED LIABILITY
9 COMPANIES SHALL BE FILED WITH THE DEPARTMENT OF REVENUE RATHER
10 THAN THE SECRETARY OF STATE, AS RECOMMENDED BY THE GENERAL
11 STATUTES STUDY COMMISSION AND OTHERS.
12 The General Assembly of North Carolina enacts:
13 PART I. ADMINISTRATIVE DISSOLUTIONS.
14 Section 1. G.S. 55-14-22(a) reads as rewritten:
15 "(a) A corporation administratively dissolved under G.S. 55-14-
16 21 may apply to the Secretary of State for reinstatement ~~within~~
17 two years not later than five years after the effective date of
18 dissolution. The application must:
19 (1) Recite the name of the corporation and the
20 effective date of its administrative dissolution;
21 and

1 (2) State that the ground or grounds for dissolution
 2 either did not exist or have been eliminated.

3 (3) Reserved.

4 (4) Repealed by Session Laws 1995, c. 539, s. 6."

5 Section 2. G.S. 55A-14-22(a) reads as rewritten:

6 "(a) A corporation administratively dissolved under G.S. 55A-
 7 14-21 may apply to the Secretary of State for reinstatement
 8 within two years not later than five years after the effective
 9 date of dissolution. The application shall:

10 (1) Recite the name of the corporation and the
 11 effective date of its administrative dissolution;
 12 and

13 (2) State that the ground or grounds for dissolution
 14 either did not exist or have been eliminated."

15 Section 3. G.S. 57C-6-03(c) reads as rewritten:

16 "(c) A limited liability company administratively dissolved
 17 under this section may apply to the Secretary of State for
 18 reinstatement within two years not later than five years after
 19 the effective date of the administrative dissolution. The
 20 procedures for reinstatement and for the appeal of any denial of
 21 the limited liability company's application for reinstatement
 22 shall be the same procedures applicable to business corporations
 23 under G.S. 55-14-22, 55-14-23, and 55-14-24."

24 Section 4. G.S. 55-1-22 reads as rewritten:

25 "§ 55-1-22. Filing, service, and copying fees.

26 (a) The Secretary of State shall collect the following fees
 27 when the documents described in this subsection are delivered to
 28 him the Secretary for filing:

Document	Fee
30 (1) Articles of incorporation	\$100.00
31 (2) Application for reserved name	10.00
32 (3) Notice of transfer of reserved name	10.00
33 (4) Application for registered name	10.00
34 (5) Application for renewal of	
35 registered name	10.00
36 (6) Corporation's statement of change of	
37 registered agent or registered	
38 office or both	5.00
39 (7) Agent's statement of change of	
40 registered office for each affected	
41 corporation	5.00
42 (8) Agent's statement of resignation	No fee
43 (9) Designation of registered agent or	
44 registered office or both	5.00

1	(10) Amendment of articles of	
2	incorporation	50.00
3	(11) Restated articles of incorporation	10.00
4	with amendment of articles	50.00
5	(12) Articles of merger or share exchange	50.00
6	(13) Articles of dissolution	30.00
7	(14) Articles of revocation of	
8	dissolution	10.00
9	(15) Certificate of administrative	
10	dissolution	No fee
11	(16) Application for reinstatement	
12	following administrative dissolution	25.00
13		<u>Set in (d)</u>
14	(17) Certificate of reinstatement	No fee
15	(18) Certificate of judicial dissolution	No fee
16	(19) Application for certificate of	
17	authority	200.00
18	(20) Application for amended certificate	
19	of authority	50.00
20	(21) Application for certificate of	
21	withdrawal	10.00
22	(22) Certificate of revocation of	
23	authority to transact business	No fee
24	(23) Annual report	10.00
25	(24) Articles of correction	10.00
26	(25) Application for certificate of	
27	existence or authorization	5.00
28	(26) Any other document required or	
29	permitted to be filed by this Chapter	10.00.

30 (b) The Secretary of State shall collect a fee of ten dollars
 31 (\$10.00) each time process is served on ~~him~~ the Secretary under
 32 this Chapter. The party to a proceeding causing service of
 33 process is entitled to recover this fee as costs if ~~he~~ the party
 34 prevails in the proceeding.

35 (c) The Secretary of State shall collect the following fees for
 36 copying, comparing, and certifying a copy of any filed document
 37 relating to a domestic or foreign corporation:

- 38 (1) One dollar (\$1.00) a page for copying or comparing a
- 39 copy to the original; and
- 40 (2) Five dollars (\$5.00) for the certificate.

41 (d) The Secretary of State shall collect a fee of two hundred
 42 dollars (\$200.00) for each year, or portion of a year, following
 43 the effective date of an administrative dissolution when an

1 application for reinstatement following an administrative
 2 dissolution is delivered to the Secretary for filing."

3 Section 5. G.S. 55A-1-22 reads as rewritten:

4 "§ 55A-1-22. Filing, service, and copying fees.

5 (a) The Secretary of State shall collect the following fees
 6 when the documents described in this subsection are delivered to
 7 the Secretary for filing:

8	Document	Fee
9	(1) Articles of incorporation	\$50.00
10	(2) Application for reserved name	\$10.00
11	(3) Notice of transfer of reserved name	\$10.00
12	(4) Application for registered name	\$10.00
13	(5) Application for renewal of registered	
14	name	\$10.00
15	(6) Corporation's statement of change of	
16	registered agent or registered office or	
17	both	\$ 5.00
18	(7) Agent's statement of change of registered	
19	office for each affected corporation	\$ 5.00
20	(8) Agent's statement of resignation	No fee
21	(9) Designation of registered agent or	
22	registered office or both	\$ 5.00
23	(10) Amendment of articles of incorporation	\$25.00
24	(11) Restated articles of incorporation without	
25	amendment of articles	\$10.00
26	(12) Restated articles of incorporation with	
27	amendment of articles	\$25.00
28	(13) Articles of merger	\$25.00
29	(14) Articles of dissolution	\$15.00
30	(15) Articles of revocation of dissolution	\$10.00
31	(16) Certificate of administrative dissolution	No fee
32	(17) Application for reinstatement following	
33	administrative dissolution	\$25.00
34		<u>Set in (d)</u>
35	(18) Certificate of reinstatement	No fee
36	(19) Certificate of judicial dissolution	No fee
37	(20) Application for certificate of authority	\$100.00
38	(21) Application for amended certificate of	
39	authority	\$25.00
40	(22) Application for certificate of withdrawal	\$10.00
41	(23) Certificate of revocation of authority to	
42	conduct affairs	No fee
43	(24) Corporation's Statement of Change of	
44	Principal Office	\$5.00

- 1 (24a) Designation of Principal Office Address \$5.00
2 (25) Articles of correction \$10.00
3 (26) Application for certificate of existence or
4 authorization \$ 5.00
5 (27) Any other document required or
6 permitted to be filed by this Chapter \$10.00.
7 (b) The Secretary of State shall collect a fee of ten dollars
8 (\$10.00) each time process is served on the Secretary under this
9 Chapter. The party to a proceeding causing service of process is
10 entitled to recover this fee as costs if the party prevails in
11 the proceeding.
12 (c) The Secretary of State shall collect the following fees
13 for copying, comparing, and certifying a copy of any filed
14 document relating to a domestic or foreign corporation:
15 (1) One dollar (\$1.00) a page for copying or comparing
16 a copy to the original; and
17 (2) Five dollars (\$5.00) for the certificate.
18 (d) The Secretary of State shall collect a fee of two hundred
19 dollars (\$200.00) for each year, or portion of a year, following
20 the effective date of an administrative dissolution when an
21 application for reinstatement following an administrative
22 dissolution is delivered to the Secretary for filing."
23 Section 6. G.S. 57C-1-22(b) reads as rewritten:
24 "(b) The Secretary of State shall collect a fee of ten dollars
25 (\$10.00) each time process is served on the Secretary of State
26 under this Chapter. The party to a proceeding causing service of
27 process is entitled to recover this fee as costs if ~~he~~ the party
28 prevails in the proceeding."
29 Section 6.1. G.S. 57C-1-22 is amended by adding a new
30 subsection to read:
31 "(d) The Secretary of State shall collect a fee of two hundred
32 dollars (\$200.00) for each year, or portion of a year, following
33 the effective date of an administrative dissolution when an
34 application for reinstatement following an administrative
35 dissolution is delivered to the Secretary for filing."
36 PART II. ANNUAL CORPORATE REPORT.
37 Section 7. G.S. 55-16-22 reads as rewritten:
38 "§ 55-16-22. Annual ~~report for Secretary of State.~~ report.
39 (a) ~~Each~~ Except as provided in subsections (a1) and (a2) of
40 this section, each domestic corporation ~~except those governed by~~
41 Chapter 55B, and each foreign corporation authorized to transact
42 business in this State, ~~State~~ shall deliver to the Secretary of
43 State for filing an annual report that sets forth: an annual
44 report to the Secretary of Revenue.

1 (a1) Each insurance company subject to the provisions of
2 Chapter 58 of the General Statutes and each corporation required
3 to pay a franchise tax under G.S. 105-116, 105-119, 105-120, or
4 105-120.1 shall deliver an annual report to the Secretary of
5 State.

6 (a2) A domestic corporation governed by Chapter 55B of the
7 General Statutes is exempt from this section.

8 (a3) The annual report required by this section shall be in a
9 form jointly prescribed by the Secretary of Revenue and the
10 Secretary of State. The Secretary of Revenue shall provide the
11 form needed to file an annual report with that Secretary. The
12 annual report shall set forth all of the following:

13 (1) The name of the corporation and the state or
14 country under whose law it is incorporated;
15 incorporated.

16 (2) The street address, and the mailing address if
17 different from the street address, of the
18 registered office, the county in which its
19 registered office is located, and the name of its
20 registered agent at that office in this State, and
21 a statement of any change of such registered office
22 or registered agent, or ~~both~~; both.

23 (3) The address and telephone number of its principal
24 office; office.

25 (4) The names, titles, and business addresses of its
26 principal ~~officers~~; officers.

27 ~~(4a) The names and business addresses of its directors;~~
28 ~~and~~

29 (5) A brief description of the nature of its business.
30 If the information contained in the most recently filed annual
31 report has not changed, a certification to that effect may be
32 made instead of setting forth the information required by
33 subdivisions (2) through (5) of this subsection.

34 (b) Information in the annual report must be current as of the
35 date the annual report is executed on behalf of the corporation.

36 ~~(c) The annual report shall be delivered to the Secretary of~~
37 ~~State each year within 60 days immediately following the last day~~
38 ~~of the month in which the domestic corporation was incorporated~~
39 ~~or the foreign corporation received a certificate of authority in~~
40 ~~this State. Forms required for the filing of the annual report~~
41 ~~shall be mailed by the Secretary of State to the domestic or~~
42 ~~foreign corporation at its registered office for the first annual~~
43 ~~report, then to its principal office for subsequent annual~~
44 ~~reports. An annual report required to be delivered to the~~

1 Secretary of Revenue is due by the due date for filing the
2 corporation's income and franchise tax returns. An annual report
3 required to be delivered to the Secretary of State is due by the
4 fifteenth day of the third month following the close of the
5 corporation's fiscal year.

6 (d) If an annual report does not contain the information
7 required by this section, the Secretary of State shall promptly
8 notify the reporting domestic or foreign corporation in writing
9 and return the report to it for correction. If the report is
10 corrected to contain the information required by this section and
11 delivered to the Secretary of State within 30 days after the
12 effective date of notice, it is deemed to be timely filed.

13 (e) Amendments to any previously filed annual report may be
14 filed with the Secretary of State at any time for the purpose of
15 correcting, updating, or augmenting the information contained in
16 such the annual report.

17 (f) Expired.

18 (g) When a statement of change of registered office or
19 registered agent is filed in the annual report, the change shall
20 become effective when the statement is received by the Secretary
21 of State.

22 (h) If the Secretary of State does not receive an annual
23 report within 120 days of the date the return is due, the
24 Secretary of State may presume that the annual report is
25 delinquent. This presumption may be rebutted by receipt of the
26 annual report from the Secretary of Revenue or by evidence of
27 delivery presented by the filing corporation."

28 Section 8. G.S. 55-1-21(a) reads as rewritten:

29 "(a) The Secretary of State may promulgate and furnish on
30 request forms ~~for:~~ for the following:

31 (1) An application for a certificate of ~~existence;~~
32 existence.

33 (2) A foreign corporation's application for a
34 certificate of authority to transact business in
35 ~~this State;~~ State.

36 (3) A foreign corporation's application for a
37 certificate of ~~withdrawal;~~ and withdrawal.

38 ~~(4) The annual report.~~

39 If the Secretary of State so requires, use of these forms is
40 mandatory."

41 Section 9. G.S. 55-1-22(a), as amended by Section 4 of
42 this act, reads as rewritten:

1 "(a) The Secretary of State shall collect the following fees
 2 when the documents described in this subsection are delivered to
 3 the Secretary for filing:

4	Document	Fee
5	(1) Articles of incorporation	\$100.00
6	(2) Application for reserved name	10.00
7	(3) Notice of transfer of reserved name	10.00
8	(4) Application for registered name	10.00
9	(5) Application for renewal of	
10	registered name	10.00
11	(6) Corporation's statement of change of	
12	registered agent or registered	
13	office or both	5.00
14	(7) Agent's statement of change of	
15	registered office for each affected	
16	corporation	5.00
17	(8) Agent's statement of resignation	No fee
18	(9) Designation of registered agent or	
19	registered office or both	5.00
20	(10) Amendment of articles of	
21	incorporation	50.00
22	(11) Restated articles of incorporation	10.00
23	with amendment of articles	50.00
24	(12) Articles of merger or share exchange	50.00
25	(13) Articles of dissolution	30.00
26	(14) Articles of revocation of	
27	dissolution	10.00
28	(15) Certificate of administrative	
29	dissolution	No fee
30	(16) Repealed.	
31	(17) Certificate of reinstatement	No fee
32	(18) Certificate of judicial dissolution	No fee
33	(19) Application for certificate of	
34	authority	200.00
35	(20) Application for amended certificate	
36	of authority	50.00
37	(21) Application for certificate of	
38	withdrawal	10.00
39	(22) Certificate of revocation of	
40	authority to transact business	No fee
41	(23) Annual report	10.00 <u>N</u>
42	<u>o fee</u>	
43	(24) Articles of correction	10.00
44	(25) Application for certificate of	

- 1 existence or authorization 5.00
2 (26) Any other document required or
3 permitted to be filed by this Chapter 10.00."
4 Section 10. G.S. 55-1-28(b)(4) reads as rewritten:
5 "(4) That its most recent annual report required by G.S.
6 55-16-22 has either been delivered to the Secretary
7 of State; State or is not delinquent;".
8 Section 11. G.S. 55-14-20(2) reads as rewritten:
9 "(2) The corporation ~~does not deliver its annual report~~
10 ~~to the Secretary of State within 60 days after it~~
11 ~~is due; is delinquent in delivering its annual~~
12 ~~report;~~".
13 Section 12. G.S. 55-15-30(a)(1) reads as rewritten:
14 "(1) The foreign corporation ~~does not deliver its annual~~
15 ~~report to the Secretary of State within 60 days~~
16 ~~after it is due; is delinquent in delivering its~~
17 ~~annual report;~~".
18 Section 13. G.S. 55-16-01(e)(7) reads as rewritten:
19 "(7) Its most recent annual report delivered ~~to the~~
20 ~~Secretary of State under as required by G.S. 55-16-~~
21 ~~22."~~
22 Section 14. G.S. 57C-2-23 reads as rewritten:
23 "§ 57C-2-23. Annual report for Secretary of State.
24 (a) Each domestic limited liability company and each foreign
25 limited liability company authorized to transact business in this
26 State, shall deliver to the Secretary of State for filing an
27 annual report report, in a form jointly prescribed by the
28 Secretary of Revenue and Secretary of State, that sets forth:
29 forth all of the following:
30 (1) The name of the limited liability or foreign
31 limited liability company and the state or country
32 under whose law it is ~~organized;~~ organized.
33 (2) The street address, and the mailing address if
34 different from the street address, of the
35 registered office, the county in which the
36 registered office is located, and the name of its
37 registered agent at that office in this State, and
38 a statement of any change of the registered office
39 or registered agent, or ~~both;~~ both.
40 (3) The address and telephone number of its principal
41 office; office.
42 (4) The names and business addresses of its ~~managers;~~
43 and managers.
44 (5) A brief description of the nature of its business.

1 If the information contained in the most recently filed annual
2 report has not changed, a certification to that effect may be
3 made instead of setting forth the information required by
4 subdivisions (2) through (5) of this subsection. The Secretary
5 of State shall make available the form required to file an annual
6 report.

7 (b) Information in the annual report must be current as of the
8 date the annual report is executed on behalf of the limited
9 liability company or the foreign limited liability company.

10 (c) ~~The annual report shall be delivered to the Secretary of~~
11 ~~State each year within 60 days immediately following the last day~~
12 ~~of the month in which the domestic limited liability company was~~
13 ~~organized or the foreign limited liability company received a~~
14 ~~certificate of authority in this State. Forms required for the~~
15 ~~filing of the annual report shall be mailed by the Secretary of~~
16 ~~State to the domestic or foreign limited liability company at its~~
17 ~~registered office for the first annual report, and then to its~~
18 ~~principal office for subsequent annual reports. by the fifteenth~~
19 ~~day of the fourth month following the close of the limited~~
20 ~~liability company's fiscal year.~~

21 (d) If an annual report does not contain the information
22 required by this section, the Secretary of State shall promptly
23 notify the reporting domestic or foreign limited liability
24 company in writing and return the report to it for correction.
25 If the report is corrected to contain the information required by
26 this section and delivered to the Secretary of State within 30
27 days after the effective date of notice, it is deemed to be
28 timely filed.

29 (e) Amendments to any previously filed annual report may be
30 filed with the Secretary of State at any time for the purpose of
31 correcting, updating, or augmenting the information contained in
32 the annual report."

33 Section 15. G.S. 57C-1-22(b) reads as rewritten:

34 "(b) The Secretary of State shall collect a fee of ten dollars
35 (\$10.00) each time process is served on the Secretary of State
36 under this Chapter. The party to a proceeding causing service of
37 process is entitled to recover this fee as costs if he the party
38 prevails in the proceeding."

39 Section 16. G.S. 57C-3-25(a) reads as rewritten:

40 "(a) Any person dealing with a limited liability company or a
41 foreign limited liability company may rely conclusively upon its
42 most recent annual report and any amendments ~~thereto filed with~~
43 to it on file with the Secretary of State ~~pursuant to G.S.~~
44 ~~57C-2-23~~ as to the identity of its managers, except to the extent

1 the person has actual knowledge that a person identified therein
2 as a manager is not a manager."

3 Section 17. G.S. 105-228.90(a) reads as rewritten:

4 "(a) Scope. -- This Article applies to Subchapters I, V, and
5 VIII of this ~~Chapter~~ Chapter, to the annual report filing
6 requirements of G.S. 55-16-22, and to inspection taxes levied
7 under Article 3 of Chapter 119 of the General Statutes."

8 Section 18. Article 9 of Chapter 105 of the General
9 Statutes is amended by adding a new section to read:

10 "§ 105-257.1. Secretary to administer annual report filing; fee
11 for limited liability companies.

12 (a) Filing Duty. -- The Secretary must submit the annual
13 reports filed with the Secretary pursuant to G.S. 55-16-22 to the
14 Secretary of State.

15 (b) Fee. -- A corporation that files an annual report with the
16 Secretary must pay a fee of twenty dollars (\$20.00) with its
17 annual report. The fees collected under this subsection shall be
18 considered a franchise tax and shall be credited to the General
19 Fund as franchise tax revenue."

20 Section 19. G.S. 105-259 reads as rewritten:

21 "§ 105-259. Secrecy required of officials; penalty for
22 violation.

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

25 (1) Employee or officer. -- The term includes a former
26 employee, a former officer, and a current or former
27 member of a State board or commission.

28 (2) Tax information. -- Any information from any source
29 concerning the liability of a taxpayer for a tax,
30 as defined in G.S. 105-228.90. The term includes
31 the following:

32 a. Information contained on a tax return, a tax
33 report, or an application for a license for
34 which a tax is imposed.

35 b. Information obtained through an audit of a
36 taxpayer or by correspondence with a taxpayer.

37 c. Information on whether a taxpayer has filed a
38 tax return or a tax report.

39 d. A list or other compilation of the names,
40 addresses, social security numbers, or similar
41 information concerning taxpayers.

42 The term does not include (i) statistics classified
43 so that information about specific taxpayers cannot
44 be ~~identified or (ii) identified, (ii) an annual~~

1 report required to be filed under G.S. 55-16-22 or
2 (iii) information submitted to the Business License
3 Information Office of the Department of Secretary
4 of State on a master application form for various
5 business licenses.

6 (b) Disclosure Prohibited. -- An officer, an employee, or an
7 agent of the State who has access to tax information in the
8 course of service to or employment by the State may not disclose
9 the information to any other person unless the disclosure is made
10 for one of the following purposes:

- 11 (1) To comply with a court order or a law.
- 12 (2) Review by the Attorney General or a representative
13 of the Attorney General.
- 14 (3) Review by a tax official of another state or the
15 Internal Revenue Commissioner of the United States
16 to aid the state or the Commissioner in collecting
17 a tax imposed by this State, the other state, or
18 the United States if the laws of the other state or
19 the United States allow the state or the United
20 States to provide similar tax information to a
21 representative of this State.
- 22 (4) To provide a governmental agency or an officer of
23 an organized association of taxpayers with a list
24 of taxpayers who have paid a privilege license tax
25 under Article 2 of this Chapter.
- 26 (5) To furnish to the chair of a board of county
27 commissioners information on the county sales and
28 use tax.
- 29 (6) To sort, process, or deliver tax information on
30 behalf of the Department of Revenue.
- 31 (6a) To furnish the chair of a board of county
32 commissioners a list of claimants that have
33 received a refund of the county sales or use tax to
34 the extent authorized in G.S. 105-164.14(f).
- 35 (7) To exchange information with the Division of Motor
36 Vehicles of the Department of Transportation when
37 the information is needed to fulfill a duty imposed
38 on the Department of Revenue or the Division of
39 Motor Vehicles.
- 40 (8) To furnish to the Department of State Treasurer,
41 upon request, the name, address, and account and
42 identification numbers of a taxpayer who may be
43 entitled to property held in the Escheat Fund.

- 1 (9) To furnish to the Employment Security Commission
2 the name, address, and account and identification
3 numbers of a taxpayer when the information is
4 requested by the Commission in order to fulfill a
5 duty imposed under Article 2 of Chapter 96 of the
6 General Statutes.
- 7 (10) Review by the State Auditor to the extent
8 authorized in G.S. 147-64.7.
- 9 (11) To give a spouse who elects to file a joint tax
10 return a copy of the return or information
11 contained on the return.
- 12 (11a) To provide a copy of a return to the taxpayer
13 who filed the return.
- 14 (11b) In the case of a return filed by a
15 corporation, a partnership, a trust, or an
16 estate, to provide a copy of the return or
17 information on the return to a person who has
18 a material interest in the return if, under
19 the circumstances, section 6103(e)(1) of the
20 Code would require disclosure to that person
21 of any corresponding federal return or
22 information.
- 23 (11c) In the case of a return of an individual who
24 is legally incompetent or deceased, to provide
25 a copy of the return to the legal
26 representative of the estate of the
27 incompetent individual or decedent.
- 28 (12) To contract with a financial institution for the
29 receipt of withheld income tax payments under G.S.
30 105-163.6 or for the transmittal of payments by
31 electronic funds transfer.
- 32 (13) To furnish the Fiscal Research Division of the
33 General Assembly, upon request, a sample, suitable
34 in character, composition, and size for statistical
35 analyses, of tax returns or other tax information
36 from which taxpayers' names and identification
37 numbers have been removed.
- 38 (14) To exchange information concerning a tax imposed by
39 Subchapter V of this Chapter with the Standards
40 Division of the Department of Agriculture when the
41 information is needed to administer the Gasoline
42 and Oil Inspection Act, Article 3 of Chapter 119 of
43 the General Statutes.

- 1 (15) To exchange information concerning a tax imposed by
2 Articles 2A, 2B, 2C, or 2D of this Chapter with one
3 of the following agencies when the information is
4 needed to fulfill a duty imposed on the agency:
- 5 a. The North Carolina Alcoholic Beverage Control
6 Commission.
- 7 b. The Division of Alcohol Law Enforcement of the
8 Department of Crime Control and Public Safety.
- 9 c. The Bureau of Alcohol, Tobacco, and Firearms
10 of the United States Treasury Department.
- 11 (16) To furnish to the Department of Secretary of State
12 the name, address, tax year end, and account and
13 identification numbers of a corporation liable for
14 corporate income or franchise taxes or of a limited
15 liability company liable for a corporate or a
16 partnership tax return to enable the Secretary of
17 State to notify the corporation or the limited
18 liability company of the annual report filing
19 requirement or that its articles of incorporation
20 or articles of organization or its certificate of
21 authority has been suspended.
- 22 (17) To inform the Business License Information Office
23 of the Department of Secretary of State of the
24 status of an application for a license for which a
25 tax is imposed and of any information needed to
26 process the application.
- 27 (18) To furnish to the Office of the State Controller
28 the name, address, and account and identification
29 numbers of a taxpayer upon request to enable the
30 State Controller to verify statewide vendor files
31 or track debtors of the State.
- 32 (19) To furnish to the North Carolina Industrial
33 Commission information concerning workers'
34 compensation reported to the Secretary under G.S.
35 105-163.7.

36 (c) Punishment. -- A person who violates this section is
37 guilty of a Class 1 misdemeanor. If the person committing the
38 violation is an officer or employee, that person shall be
39 dismissed from public office or public employment and may not
40 hold any public office or public employment in this State for
41 five years after the violation."

42 Section 20. There is appropriated from the General Fund
43 to the Department of Revenue the sum of one hundred seventy-eight
44 thousand three hundred seventy-one dollars (\$178,371) for the

1 1997-98 fiscal year, allocated as one hundred twelve thousand one
2 hundred seventy-one dollars (\$112,171) recurring funds and sixty-
3 six thousand two hundred dollars (\$66,200) nonrecurring funds,
4 for the costs associated with collecting and transmitting the
5 annual corporate reports.

6 PART III. EFFECTIVE DATES.

7 Section 21. (a) Sections 1 through 6 and Sections 19
8 through 21 of this act become effective July 1, 1997. The
9 remainder of this act becomes effective January 1, 1998, and
10 applies to tax years ending on or after December 31, 1997, in the
11 case of corporations required to file annual reports with the
12 Secretary of Revenue and to fiscal years ending on or after
13 December 31, 1997, in the case of corporations required to file
14 annual reports with the Secretary of State.

15 (b) Annual reports delivered to either the Secretary of
16 State or the Secretary of Revenue after December 31, 1997, but
17 before January 1999, shall nevertheless be deemed filed with the
18 correct State agency. The Secretary of State shall notify the
19 Secretary of Revenue of reports erroneously filed with the
20 Secretary of State, and the Secretary of Revenue shall notify the
21 Secretary of State of reports erroneously filed with the
22 Secretary of Revenue.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: Senate Bill 158

SHORT TITLE: Administrative Dissolution/Annual Report

SPONSOR(S): Senators Hartsell, Foxx and Odom

FISCAL IMPACT

	Yes (x)	No ()	No Estimate Available ()		
	<u>FY 1997-98</u>	<u>FY 1998-99</u>	<u>FY 1999-00</u>	<u>FY 2000-01</u>	<u>FY 2001-02</u>
REVENUES:	-1,250,000	-1,250,000	-1,250,000	-1,250,000	-1,250,000
EXPENDITURES:					
Dept. of Revenue:	70,515 R 64,400 NR	127,749 R	127,749 R	127,749 R	127,749 R
Secretary of State:	+2,500	-73,000	-73,000	-73,000	-73,000
POSITIONS:					
***Dept. of Revenue:	3 PFT* 1 Temp	3 PFT 1 Temp	3 PFT 1 Temp	3 PFT 1 Temp	3 PFT 1 Temp
Secretary of State:	-.4FTE**	-.4FTE	-.4FTE	-.4FTE	-.4FTE

PRINCIPAL DEPARTMENT(S) &

PROGRAM(S) AFFECTED: Department of Revenue, Secretary of State

EFFECTIVE DATE: Administrative dissolution provisions and appropriation provision are effective July 1, 1997. Remainder of act is effective Jan. 1, 1998.

* PFT refers to Permanent Full Time

** FTE refers to Full Time Equivalent

BILL SUMMARY: *TO EXPAND THE TIME CORPORATIONS AND LIMITED LIABILITY COMPANIES MAY APPLY FOR REINSTATEMENT FROM ADMINISTRATIVE DISSOLUTION, TO INCREASE THE FEE CORPORATIONS MUST PAY FOR REINSTATEMENT AFTER ADMINISTRATIVE DISSOLUTION, TO ESTABLISH A FEE LIMITED LIABILITY COMPANIES MUST PAY FOR REINSTATEMENT AFTER ADMINISTRATIVE DISSOLUTION, AND TO PROVIDE THAT ANNUAL REPORTS OF BUSINESS CORPORATIONS AND LIMITED LIABILITY COMPANIES SHALL BE FILED WITH THE DEPARTMENT OF REVENUE RATHER THAN THE SECRETARY OF STATE, AS RECOMMENDED BY THE GENERAL STATUTES STUDY COMMISSION.* Makes changes related to (1) the reinstatement of administratively dissolved corporations and limited liability companies and (2) the filing of corporate annual reports.

Reinstatement of dissolved corporations and limited liability companies. Amends GS 55-14-21(a) and GS 57C-6-03(c) to provide that administratively dissolved corporations and limited liability companies may apply to the Secretary of State for reinstatement within five years (now, two years) of dissolution. Amends GS 55-1-22 and GS 55A-1-22 (business corporations and nonprofit corporations) and GS 57C-1-22 (limited liability companies) to set the fee to be charged by the Secretary of State for such reinstatements at \$200 for each year, or portion of year, between the dissolution and application for reinstatement.

Corporate report filing. Amends GS 55-16-22 (business corporations) and GS 57C-2-23 (limited liability companies) (1) to direct the filing of annual reports to the Secretary of Revenue (now, Secretary of State), (2) to provide that if specified information from the previous year's annual report has not changed, a certification to that effect may be filed in lieu of a new report, and (3) to change the due date for filing the annual report to the due date for filing the corporation's or company's tax return (now, trigger date is tied to organizational date). Deletes from GS 55-16-22 the requirement that the annual report contain the names and addresses of the corporation's directors. Amends GS 105-257.1 to direct the Secretary of Revenue to submit the annual reports to the Secretary of State, and sets fee for limited liability companies for filing annual report at \$200. Provides that annual reports erroneously filed with the Secretary of State through the end of 1998 will be deemed filed correctly.

Appropriates from General Fund to Department of Revenue \$192,151 for 1997-98 for costs associated with collecting and transmitting reports.

Source of above text: North Carolina General Assembly Bill Digest System

ASSUMPTIONS AND METHODOLOGY:

Revenues

The Office of Secretary of State reports that 125,000 foreign and domestic corporations file an annual report yearly and pay the \$10.00 fee. This act repeals the \$10.00 fee creating a loss in General Fund revenue of \$1.25million annually.

Expenditures - Department of Revenue

As proposed the bill requires corporations and limited liability companies to file their annual report with the Department of Revenue instead of with the Office of the Secretary of State. The annual report would be filed by the due date of the applicable tax return or at the time for filing a request for an extension. The Department would collect the \$200 Limited Liability Company fee and submit the annual reports to the Secretary of State for processing. Approximately 125,000 corporations and 10,000 limited liability companies would file annual reports each year with the Department. According to the department this new responsibility would impact four areas in the Department -- Management Information Systems Division, Corporate Tax & Personal Taxes Division, Accounting Division, and Office Examinations & Office Services Division. The specific work requirements of each division and increased costs are outlined below:

Management Information Systems Division

- o Create a shared data base between DOR and SOS to exchange information on tax due dates, extensions processed, number of returned filed, and number of corporations registered.
- o Modify ITAS to establish a new tax type to accept the \$200 LLC payment.
- o Conduct annual file transfers and maintenance.

Applications Development	\$42,000 (NR)
SIPS Development Costs	22,400 (NR)
SIPS Computer Charges	11,200 (R)

Corporate Tax & Personal Taxes Division

- o Design and print annual report form with instructions, and include in corporate and partnership booklets to be mailed to taxpayers.

Tax Forms and Postage	\$35,000 (R)
-----------------------	---------------

Accounting Division

- o Deposit the \$200 fee remitted by limited liability companies.
- o Screen approximately 250,000 tax returns to separate the annual reports from corporate and partnership tax returns. (Locating the report in a typical 10-50 page

return will require additional resources since the annual reports will be filed during the annual tax rush period.)

- o Sort the tax returns and annual reports. Prepare annual reports with remittances for the deposit process.
- o Red ring, write substitute documents or perform tasks associated with manual deposit of the remittance.
- o Reconcile the bundles of reports to the funds deposited from this fee.
- o Perform research of remittances upon request of taxpayers and the Secretary of State's Office.

(2)Processing Assistant III	\$44,650 (R) - Eff. 1.1.98
Clerk III - Temporary	4,500 (R) - Eff. 1.1.98
Substitute Documents	1,080 (R)

Although corporate returns are filed throughout the year, a reduction in the estimated cost may be realized in this division with -- 1) consideration of peak periods in the year when corporate returns are filed, and assessing workload requirements to employ temporary staff during that period; 2) scrutiny of the 38 Processing Assistant positions at levels III, IV, and V employed by the division and potential reassignment of workloads; or 3) employing additional temporary staff, only. If the peak period for the receipt of corporate returns occurs each year between January and April, the Department could assign temporary personnel employed during the annual tax season to this division to assist with this responsibility.

Office Examinations & Office Services Division

- o Coordinate the content of data transferred between the two agencies.
- o Perform an ongoing reconciliation of the number of corporations on file with the Secretary of State's Office to the number of corporations filing tax returns with the Department of Revenue.
- o On-going transport annual report forms to Secretary of State's Office.
- o Assisting with requests for letters of good standing, delinquent returns, and the process of recommendation for dissolution.
- o Research files to ascertain that the annual report was or was not attached to the tax return.
- o Follow up with companies that do not remit payment with the annual report.
- o Answer telephone calls from taxpayers regarding the annual report.
- o Resolve any issues with Secretary of State's Office regarding the annual report.

Fiscal Note
Senate Bill 158

Tax Technician	\$27,819 (R) - Eff. 1.1.98
Taxpayer Assistance Costs	3,500 (R)

Expenditures - Secretary of State

Under the bill, the Secretary of State will continue to maintain annual report records, and administer the annual report program. However, the Secretary of State will no longer be required to remind corporations to file the annual report, send out blank annual report forms, or collect and deposit annual report fees for business corporations. The Secretary of State estimates it would save \$66,000 per year from the elimination of correspondence and other paperwork associated with these responsibilities. These savings are chiefly in envelopes, postage, and SIPS data processing charges.

The Secretary of State also estimates that it would be able to eliminate salaries and benefits for one full-time cash management position and temporary wages for another part-time cash management position. The Secretary of State estimates these salaries and wages at about \$44,000. However, the Secretary of State believes it will also need additional temporary labor to manage the peak work load associated with the new filing deadlines, and to help coordinate the flow of information with the Department of Revenue. The Secretary of State believes it can meet these additional demands with three temporary employees working six months per year, at a cost of about \$37,000 per year.

Because the changes in administration would not be effective until the last half of the 1997-98 fiscal year, we assume that only half of the recurring savings discussed above would be realized in FY 1997-98.

The Secretary of State will need to modify its annual reports and corporations databases so that these databases can include new information and interact with data from the Department of Revenue. The Secretary of State estimates one-time costs of computer programming to be around \$39,000. We assume that this cost would be incurred in 1997-98.

TECHNICAL CONSIDERATIONS:

FISCAL RESEARCH DIVISION
733-4910

PREPARED BY: Warren Plonk, Michèle Nelson, and Evan Rodewald

APPROVED BY: Tom Covington

DATE: April 9, 1997



STATE OF NORTH CAROLINA
GENERAL STATUTES COMMISSION
P.O. BOX 629
RALEIGH, NORTH CAROLINA 27602
(919) 733-6026

MEMORANDUM

TO: Senate Finance Committee

FROM: General Statutes Commission

DATE: March 17, 1997

RE: Senate Bill 158 (Administrative Dissolution/Annual Rept.)

General Comments

This bill is the result of a study assigned to the General Statutes Commission last year by the General Assembly in Chapter 17 of the 1996 Session Laws, Second Extra Session.

As is set forth more fully in the Commission's Report to the 1997 General Assembly of North Carolina on Corporate Reinstatement After Dissolution, filed on or about February 17, 1997, business corporations, nonprofit corporations, and limited liability companies can be administratively dissolved by the Secretary of State for a variety of statutorily fixed reasons. Once dissolved, an entity is required to cease doing business. It can, however, be reinstated by the Secretary of State if it corrects whatever the problem was and applies for reinstatement within two years after administrative dissolution. If it does not act within this two-year grace period, it has no alternative but to wind up its affairs and go out of business, with possible disastrous tax consequences. Experience has shown that the current reinstatement period of two years is too short, although some outside limit is desirable to afford closure to the public records. The Commission concluded that five years was a reasonable period.

The most common reason for administrative dissolution is the failure of a business corporation or limited liability company to file the annual report required of these entities by statute (nonprofit corporations do not file annual reports). Since the early 1990's, the Office of the Secretary of State has been able in this way to remove from its records more than 50,000 abandoned corporations, both clearing the public record and making the names of these corporations available for use by others. In most cases the affected entity was actually abandoned and no longer doing business; it had merely failed to file articles of dissolution. The annual report provides other benefits as well, so the Commission concluded that it should be retained rather than eliminated.

There are, however, a comparatively small but significant number of administrative

dissolutions that are caused by the apparently inadvertent failure of an active entity to file its annual report. In these cases, the entity most commonly failed to file a change of address with the Secretary of State and apparently never received either the annual report form or any notices of dissolution sent it by the Secretary of State, through no fault of the Secretary. Because corporations generally have a higher level of awareness about filing their tax returns than they do about filing annual reports, the Commission concluded that it would virtually eliminate inadvertent failures to file if the Department of Revenue mailed the annual report forms with the appropriate tax forms for entities to return with their tax return. On receipt, the Department of Revenue would transmit the annual reports to the Secretary of State. This procedure would further allow business corporations and limited liability companies the benefit of making a single filing.

Because truly inadvertent filings should be virtually eliminated by having the annual report forms mailed and filed with the appropriate tax forms, the Commission further concurred with a proposal by the Office of the Secretary of State to increase the reinstatement fee. An increased reinstatement fee should serve as an incentive for corporations and limited liability companies to remain in good standing and file the required reports.

Specific Comments

Part I.

Sections 1 through 3 amend G.S. 55-14-22, 55A-14-22, and 57C-6-03, respectively, to extend the grace period for reinstatement from two to five years for business corporations, nonprofit corporations, and limited liability companies.

Sections 4 and 5 amend G.S. 55-1-22 and 55A-1-22, respectively, to increase the reinstatement fee from \$25 to \$200 per year for business corporations and nonprofit corporations. Section 4 also makes a stylistic change to G.S. 55-1-22 to make the reference to the Secretary of State gender neutral. Section 6 amends G.S. 57C-1-22 to add a reinstatement fee in the amount of \$200 per year for limited liability companies.

Part II.

Section 7 amends G.S. 55-16-22 (i) to require a business corporation to file its annual report with the Secretary of Revenue rather than the Secretary of State, (ii) to delete the requirement that the names of directors be included in the report, on the basis that this information is not truly useful to the public, (iii) to explicitly allow a corporation to certify that there are no changes from the previous annual report and eliminate the burden of filling out repetitious reports, and (iv) to tie the due date of a corporation's annual report to the due date of its tax return. Amendments to annual reports continue to be filed with the Secretary of State.

Please note that the issues reflected in proposed new subsections 55-16-22(f) and (g) were raised by the Office of the Secretary of State after the Commission last met, and accordingly it has

not had the opportunity of reviewing these proposed new subsections.

Section 9 amends G.S. 55-1-22 to delete the ten dollar fee currently collected by the Secretary of State for filing an annual report.

Sections 8 and 10 through 13 make conforming amendments to other sections of Chapter 55 of the General Statutes to reflect the filing of annual reports with the Secretary of Revenue rather than the Secretary of State.

Sections 14 through 18 make equivalent amendments to comparable sections of Chapter 57C of the General Statutes, dealing with limited liability companies.

Section 19 makes a conforming amendment to G.S. 105-228.90, in the chapter of the General Statutes dealing with the Department of Revenue, to reflect the filing of annual reports with the Secretary of Revenue.

Section 20 adds a new Section, G.S. 105-257.1, to Chapter 105 of the General Statutes requiring the Secretary of Revenue to transmit the annual reports to the Secretary of State. It also transfers payment of the annual report filing fee of \$200 currently paid by limited liability companies from the Secretary of State to the Secretary of Revenue. This fee is not truly a mere filing fee but is a substitute for a franchise tax and should be continued.

Section 21 amends G.S. 105-259 to specify that annual reports are not tax information and to allow the Secretary of Revenue to provide the Secretary of State with an entity's end of tax year date. This Section also makes a conforming amendment to recognize the existence of limited liability companies.

Section 22 makes a appropriation to carry out the transfer of function from the Secretary of State to the Secretary of Revenue. The amount of the appropriation was submitted by the Department of Revenue, since the General Statutes Commission lacks the expertise to determine an appropriate amount independently of the Department.

Part III.

Section 23 contains effective date and applications provisions.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

D

SENATE BILL 158*
Proposed Senate Finance Committee Substitute S158-PCS1750

Short Title: Administrative Dissolution/Annual Rept.

(Public)

Sponsors:

Referred to:

February 17, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO EXPAND THE TIME CORPORATIONS AND LIMITED LIABILITY
3 COMPANIES MAY APPLY FOR REINSTATEMENT FROM
4 ADMINISTRATIVE DISSOLUTION, TO INCREASE THE FEE
5 CORPORATIONS MUST PAY FOR REINSTATEMENT AFTER
6 ADMINISTRATIVE DISSOLUTION, TO ESTABLISH A FEE LIMITED
7 LIABILITY COMPANIES MUST PAY FOR REINSTATEMENT AFTER
8 ADMINISTRATIVE DISSOLUTION, TO PROVIDE THAT ANNUAL
9 REPORTS OF ~~MOST~~ BUSINESS CORPORATIONS AND LIMITED
10 LIABILITY COMPANIES SHALL BE FILED WITH THE DEPARTMENT OF
11 REVENUE RATHER THAN THE SECRETARY OF STATE, AS
12 RECOMMENDED BY THE GENERAL STATUTES STUDY COMMISSION
13 AND OTHERS.

14 The General Assembly of North Carolina enacts:

15 PART I. ADMINISTRATIVE DISSOLUTIONS.

16 Section 1. G.S. 55-14-22(a) reads as rewritten:

17 "(a) A corporation administratively dissolved under G.S. 55-14-21 may apply to
18 the Secretary of State for reinstatement ~~within two years~~ not later than five years after
19 the effective date of dissolution. The application must:

- 20 (1) Recite the name of the corporation and the effective date of its
21 administrative dissolution; and
22 (2) State that the ground or grounds for dissolution either did not exist
23 or have been eliminated.

1 (3) Reserved.

2 (4) Repealed by Session Laws 1995, c. 539, s. 6."

3 Section 2. G.S. 55A-14-22(a) reads as rewritten:

4 "(a) A corporation administratively dissolved under G.S. 55A-14-21 may apply to
5 the Secretary of State for reinstatement ~~within two years~~ not later than five years after
6 the effective date of dissolution. The application shall:

7 (1) Recite the name of the corporation and the effective date of its
8 administrative dissolution; and

9 (2) State that the ground or grounds for dissolution either did not exist
10 or have been eliminated."

11 Section 3. G.S. 57C-6-03(c) reads as rewritten:

12 "(c) A limited liability company administratively dissolved under this section may
13 apply to the Secretary of State for reinstatement ~~within two years~~ not later than five
14 years after the effective date of the administrative dissolution. The procedures for
15 reinstatement and for the appeal of any denial of the limited liability company's
16 application for reinstatement shall be the same procedures applicable to business
17 corporations under G.S. 55-14-22, 55-14-23, and 55-14-24."

18 Section 4. G.S. 55-1-22 reads as rewritten:

19 "§ 55-1-22. Filing, service, and copying fees.

20 (a) The Secretary of State shall collect the following fees when the documents
21 described in this subsection are delivered to ~~him~~ the Secretary for filing:

22	Document	Fee
23	(1) Articles of incorporation	\$100.00
24	(2) Application for reserved name	10.00
25	(3) Notice of transfer of reserved name	10.00
26	(4) Application for registered name	10.00
27	(5) Application for renewal of	
28	registered name	10.00
29	(6) Corporation's statement of change of	
30	registered agent or registered	
31	office or both	5.00
32	(7) Agent's statement of change of	
33	registered office for each affected	
34	corporation	5.00
35	(8) Agent's statement of resignation	No fee
36	(9) Designation of registered agent or	
37	registered office or both	5.00
38	(10) Amendment of articles of	
39	incorporation	50.00
40	(11) Restated articles of incorporation	10.00
41	with amendment of articles	50.00
42	(12) Articles of merger or share exchange	50.00
43	(13) Articles of dissolution	30.00
44	(14) Articles of revocation of	

1		dissolution	10.00
2	(15)	Certificate of administrative	
3		dissolution	No fee
4	(16)	Application for reinstatement	
5		following administrative dissolution	25.00
6			<u>100.00</u>
7	(17)	Certificate of reinstatement	No fee
8	(18)	Certificate of judicial dissolution	No fee
9	(19)	Application for certificate of	
10		authority	200.00
11	(20)	Application for amended certificate	
12		of authority	50.00
13	(21)	Application for certificate of	
14		withdrawal	10.00
15	(22)	Certificate of revocation of	
16		authority to transact business	No fee
17	(23)	Annual report	10.00
18	(24)	Articles of correction	10.00
19	(25)	Application for certificate of	
20		existence or authorization	5.00
21	(26)	Any other document required or	
22		permitted to be filed by this Chapter	10.00.

23 (b) The Secretary of State shall collect a fee of ten dollars (\$10.00) each time
 24 process is served on ~~him~~ the Secretary under this Chapter. The party to a proceeding
 25 causing service of process is entitled to recover this fee as costs if ~~he~~ the party prevails
 26 in the proceeding.

27 (c) The Secretary of State shall collect the following fees for copying, comparing,
 28 and certifying a copy of any filed document relating to a domestic or foreign
 29 corporation:

30 (1) One dollar (\$1.00) a page for copying or comparing a copy to the
 31 original; and

32 (2) Five dollars (\$5.00) for the certificate."

33 Section 5. G.S. 55A-1-22 reads as rewritten:

34 "**§ 55A-1-22. Filing, service, and copying fees.**

35 (a) The Secretary of State shall collect the following fees when the documents
 36 described in this subsection are delivered to the Secretary for filing:

37		Document	Fee
38	(1)	Articles of incorporation	\$50.00
39	(2)	Application for reserved name	\$10.00
40	(3)	Notice of transfer of reserved name	\$10.00
41	(4)	Application for registered name	\$10.00
42	(5)	Application for renewal of registered	
43		name	\$10.00
44	(6)	Corporation's statement of change of	

1		registered agent or registered office or	
2		both	\$ 5.00
3	(7)	Agent's statement of change of registered	
4		office for each affected corporation	\$ 5.00
5	(8)	Agent's statement of resignation	No fee
6	(9)	Designation of registered agent or	
7		registered office or both	\$ 5.00
8	(10)	Amendment of articles of incorporation	\$25.00
9	(11)	Restated articles of incorporation without	
10		amendment of articles	\$10.00
11	(12)	Restated articles of incorporation with	
12		amendment of articles	\$25.00
13	(13)	Articles of merger	\$25.00
14	(14)	Articles of dissolution	\$15.00
15	(15)	Articles of revocation of dissolution	\$10.00
16	(16)	Certificate of administrative dissolution	No fee
17	(17)	Application for reinstatement following	
18		administrative dissolution	\$25.00
19			<u>\$100.00</u>
20	(18)	Certificate of reinstatement	No fee
21	(19)	Certificate of judicial dissolution	No fee
22	(20)	Application for certificate of authority	\$100.00
23	(21)	Application for amended certificate of	
24		authority	\$25.00
25	(22)	Application for certificate of withdrawal	\$10.00
26	(23)	Certificate of revocation of authority to	
27		conduct affairs	No fee
28	(24)	Corporation's Statement of Change of	
29		Principal Office	\$5.00
30	(24a)	Designation of Principal Office Address	\$5.00
31	(25)	Articles of correction	\$10.00
32	(26)	Application for certificate of existence or	
33		authorization	\$ 5.00
34	(27)	Any other document required or	
35		permitted to be filed by this Chapter	\$10.00.

36 (b) The Secretary of State shall collect a fee of ten dollars (\$10.00) each time
 37 process is served on the Secretary under this Chapter. The party to a proceeding
 38 causing service of process is entitled to recover this fee as costs if the party prevails in
 39 the proceeding.

40 (c) The Secretary of State shall collect the following fees for copying, comparing,
 41 and certifying a copy of any filed document relating to a domestic or foreign
 42 corporation:

- 43 (1) One dollar (\$1.00) a page for copying or comparing a copy to the
 44 original; and

1 (2) Five dollars (\$5.00) for the certificate."

2 Section 6. G.S. 57C-1-22 reads as rewritten:

3 "**§ 57C-1-22. Filing, service, and copying fees.**

4 (a) The Secretary of State shall collect the following fees when the documents
5 described in this subsection are delivered to the Secretary of State for filing:

6	<u>Document</u>	<u>Fee</u>
7	(1) Articles of organization	\$100.00
8	(2) Application for reserved name	10.00
9	(3) Notice of transfer of reserved name	10.00
10	(4) Application for registered name	10.00
11	(5) Application for renewal of registered name	10.00
12	(6) Limited liability company's statement of	
13	change of registered agent or registered	
14	office or both	5.00
15	(7) Agent's statement of change of registered	
16	office for each affected limited	
17	liability company	5.00
18	(8) Agent's statement of resignation	No fee
19	(9) Designation of registered agent or	
20	registered office or both	5.00
21	(10) Amendment of articles of organization	50.00
22	(11) Restated articles of organization	
23	without amendment of articles	10.00
24	(12) Restated articles of organization	
25	with amendment of articles	50.00
26	(13) Articles of merger	50.00
27	(14) Articles of dissolution	30.00
28	(15) Articles of revocation of dissolution	10.00
29	(16) Certificate of administrative dissolution	No fee
30	<u>(16a) Application for reinstatement following</u>	
31	<u>administrative dissolution</u>	<u>100.00</u>
32	(17) Certificate of reinstatement	No fee
33	(18) Certificate of judicial dissolution	No fee
34	(19) Application for certificate of authority	200.00
35	(20) Application for amended certificate	
36	of authority	50.00
37	(21) Application for certificate of withdrawal	10.00
38	(22) Certificate of revocation of authority	
39	to transact business	No fee
40	(23) Articles of correction	10.00
41	(24) Application for certificate of existence	
42	or authorization	5.00
43	(25) Annual report	200.00
44	(26) Any other document required or permitted	

1 to be filed by this Chapter 10.00.

2 (b) The Secretary of State shall collect a fee of ten dollars (\$10.00) each time
3 process is served on the Secretary of State under this Chapter. The party to a
4 proceeding causing service of process is entitled to recover this fee as costs if ~~he the~~
5 party prevails in the proceeding.

6 (c) The Secretary of State shall collect the following fees for copying, comparing,
7 and certifying a copy of any filed document relating to a domestic or foreign limited
8 liability company:

9 (1) One dollar (\$1.00) a page for copying or comparing a copy to the
10 original; and

11 (2) Five dollars (\$5.00) for the certificate."

12 PART II. ANNUAL CORPORATE REPORT.

13 Section 7. G.S. 55-16-22 reads as rewritten:

14 "~~§ 55-16-22. Annual report for Secretary of State report.~~

15 (a) ~~Each~~ Except as provided in subsections (a1) and (a2) of this section, each
16 domestic corporation except those governed by Chapter 55B, and each foreign
17 corporation authorized to transact business in this State, State shall deliver to the
18 Secretary of State for filing an annual report that sets forth: an annual report to the
19 Secretary of Revenue.

20 (a1) Each insurance company subject to the provisions of Chapter 58 of the
21 General Statutes shall deliver an annual report to the Secretary of State.

22 (a2) A domestic corporation governed by Chapter 55B of the General Statutes is
23 exempt from this section.

24 (a3) The annual report required by this section shall be in a form jointly
25 prescribed by the Secretary of Revenue and the Secretary of State. The Secretary of
26 Revenue shall provide the form needed to file an annual report. The annual report
27 shall set forth all of the following:

28 (1) The name of the corporation and the state or country under whose
29 law it is ~~incorporated;~~ incorporated.

30 (2) The street address, and the mailing address if different from the
31 street address, of the registered office, the county in which its
32 registered office is located, and the name of its registered agent at
33 that office in this State, and a statement of any change of such
34 registered office or registered agent, or ~~both;~~ both.

35 (3) The address and telephone number of its principal ~~office;~~ office.

36 (4) The names, titles, and business addresses of its principal ~~officers;~~
37 officers.

38 ~~(4a) The names and business addresses of its directors; and~~

39 (5) A brief description of the nature of its business.

40 If the information contained in the most recently filed annual report has not changed,
41 a certification to that effect may be made instead of setting forth the information
42 required by subdivisions (2) through (5) of this subsection.

43 (b) Information in the annual report must be current as of the date the annual
44 report is executed on behalf of the corporation.

1 (c) ~~The annual report shall be delivered to the Secretary of State each year within~~
2 ~~60 days immediately following the last day of the month in which the domestic~~
3 ~~corporation was incorporated or the foreign corporation received a certificate of~~
4 ~~authority in this State. Forms required for the filing of the annual report shall be~~
5 ~~mailed by the Secretary of State to the domestic or foreign corporation at its~~
6 ~~registered office for the first annual report, then to its principal office for subsequent~~
7 ~~annual reports.~~ An annual report required to be delivered to the Secretary of
8 Revenue is due by the due date for filing the corporation's income and franchise tax
9 returns. An extension of time to file a return is an extension of time to file an annual
10 report. An annual report required to be delivered to the Secretary of State is due by
11 the fifteenth day of the third month following the close of the corporation's fiscal
12 year.

13 (d) If an annual report does not contain the information required by this section,
14 the Secretary of State shall promptly notify the reporting domestic or foreign
15 corporation in writing and return the report to it for correction. If the report is
16 corrected to contain the information required by this section and delivered to the
17 Secretary of State within 30 days after the effective date of notice, it is deemed to be
18 timely filed.

19 (e) Amendments to any previously filed annual report may be filed with the
20 Secretary of State at any time for the purpose of correcting, updating, or augmenting
21 the information contained in ~~such~~ the annual report.

22 (f) Expired.

23 (g) When a statement of change of registered office or registered agent is filed in
24 the annual report, the change shall become effective when the statement is received
25 by the Secretary of State.

26 (h) If the Secretary of State does not receive an annual report within 120 days of
27 the date the return is due, the Secretary of State may presume that the annual report
28 is delinquent. This presumption may be rebutted by receipt of the annual report
29 from the Secretary of Revenue or by evidence of delivery presented by the filing
30 corporation."

31 Section 8. G.S. 55-1-21(a) reads as rewritten:

32 "(a) The Secretary of State may promulgate and furnish on request forms ~~for~~ for
33 the following:

- 34 (1) An application for a certificate of ~~existence~~; existence.
- 35 (2) A foreign corporation's application for a certificate of authority to
36 transact business in this ~~State~~; State.
- 37 (3) A foreign corporation's application for a certificate of ~~withdrawal~~;
38 and withdrawal.
- 39 (4) ~~The annual report.~~

40 If the Secretary of State so requires, use of these forms is mandatory."

41 Section 9. G.S. 55-1-22(a), as amended by Section 4 of this act, reads as
42 rewritten:

43 "(a) The Secretary of State shall collect the following fees when the documents
44 described in this subsection are delivered to the Secretary for filing:

	Document	Fee
1		
2	(1) Articles of incorporation	\$100.00
3	(2) Application for reserved name	10.00
4	(3) Notice of transfer of reserved name	10.00
5	(4) Application for registered name	10.00
6	(5) Application for renewal of	
7	registered name	10.00
8	(6) Corporation's statement of change of	
9	registered agent or registered	
10	office or both	5.00
11	(7) Agent's statement of change of	
12	registered office for each affected	
13	corporation	5.00
14	(8) Agent's statement of resignation	No fee
15	(9) Designation of registered agent or	
16	registered office or both	5.00
17	(10) Amendment of articles of	
18	incorporation	50.00
19	(11) Restated articles of incorporation	10.00
20	with amendment of articles	50.00
21	(12) Articles of merger or share exchange	50.00
22	(13) Articles of dissolution	30.00
23	(14) Articles of revocation of	
24	dissolution	10.00
25	(15) Certificate of administrative	
26	dissolution	No fee
27	(16) Repealed.	
28	(17) Certificate of reinstatement	No fee
29	(18) Certificate of judicial dissolution	No fee
30	(19) Application for certificate of	
31	authority	200.00
32	(20) Application for amended certificate	
33	of authority	50.00
34	(21) Application for certificate of	
35	withdrawal	10.00
36	(22) Certificate of revocation of	
37	authority to transact business	No fee
38	(23) Annual report	10.00
39		<u>20.00</u>
40	(24) Articles of correction	10.00
41	(25) Application for certificate of	
42	existence or authorization	5.00
43	(26) Any other document required or	
44	permitted to be filed by this Chapter	10.00."

1 Section 10. G.S. 55-1-28(b)(4) reads as rewritten:

2 "(4) That its most recent annual report required by G.S. 55-16-22 has
3 either been delivered to the Secretary of State; State or is not
4 delinquent;".

5 Section 11. G.S. 55-14-20(2) reads as rewritten:

6 "(2) The corporation ~~does not deliver its annual report to the Secretary~~
7 ~~of State within 60 days after it is due; is delinquent in delivering its~~
8 annual report;".

9 Section 12. G.S. 55-15-30(a)(1) reads as rewritten:

10 "(1) The foreign corporation ~~does not deliver its annual report to the~~
11 ~~Secretary of State within 60 days after it is due; is delinquent in~~
12 delivering its annual report;".

13 Section 13. G.S. 55-16-01(e)(7) reads as rewritten:

14 "(7) Its most recent annual report delivered ~~to the Secretary of State~~
15 ~~under as required by G.S. 55-16-22."~~

16 Section 14. G.S. 57C-2-23 reads as rewritten:

17 "**§ 57C-2-23. Annual report for Secretary of State.**

18 (a) Each domestic limited liability company and each foreign limited liability
19 company authorized to transact business in this State, shall deliver to the Secretary of
20 State for filing an annual ~~report~~ report, in a form jointly prescribed by the Secretary
21 of Revenue and Secretary of State, that sets forth: forth all of the following:

22 (1) The name of the limited liability or foreign limited liability
23 company and the state or country under whose law it is ~~organized;~~
24 organized.

25 (2) The street address, and the mailing address if different from the
26 street address, of the registered office, the county in which the
27 registered office is located, and the name of its registered agent at
28 that office in this State, and a statement of any change of the
29 registered office or registered agent, or ~~both; both.~~

30 (3) The address and telephone number of its principal ~~office; office.~~

31 (4) The names and business addresses of its ~~managers; and managers.~~

32 (5) A brief description of the nature of its business.

33 If the information contained in the most recently filed annual report has not changed,
34 a certification to that effect may be made instead of setting forth the information
35 required by subdivisions (2) through (5) of this subsection. The Secretary of State
36 shall make available the form required to file an annual report.

37 (b) Information in the annual report must be current as of the date the annual
38 report is executed on behalf of the limited liability company or the foreign limited
39 liability company.

40 (c) The annual report shall be delivered to the Secretary of State ~~each year within~~
41 ~~60 days immediately following the last day of the month in which the domestic~~
42 ~~limited liability company was organized or the foreign limited liability company~~
43 ~~received a certificate of authority in this State. Forms required for the filing of the~~
44 ~~annual report shall be mailed by the Secretary of State to the domestic or foreign~~

1 ~~limited liability company at its registered office for the first annual report, and then~~
2 ~~to its principal office for subsequent annual reports. by the fifteenth day of the fourth~~
3 ~~month following the close of the limited liability company's fiscal year.~~

4 (d) If an annual report does not contain the information required by this section,
5 the Secretary of State shall promptly notify the reporting domestic or foreign limited
6 liability company in writing and return the report to it for correction. If the report is
7 corrected to contain the information required by this section and delivered to the
8 Secretary of State within 30 days after the effective date of notice, it is deemed to be
9 timely filed.

10 (e) Amendments to any previously filed annual report may be filed with the
11 Secretary of State at any time for the purpose of correcting, updating, or augmenting
12 the information contained in the annual report."

13 Section 15. G.S. 57C-1-22(b) reads as rewritten:

14 "(b) The Secretary of State shall collect a fee of ten dollars (\$10.00) each time
15 process is served on the Secretary of State under this Chapter. The party to a
16 proceeding causing service of process is entitled to recover this fee as costs if ~~he~~ the
17 party prevails in the proceeding."

18 Section 16. G.S. 57C-3-25(a) reads as rewritten:

19 "(a) Any person dealing with a limited liability company or a foreign limited
20 liability company may rely conclusively upon its most recent annual report and any
21 amendments ~~thereto filed with~~ to it on file with the Secretary of State ~~pursuant to~~
22 ~~G.S. 57C-2-23~~ as to the identity of its managers, except to the extent the person has
23 actual knowledge that a person identified therein as a manager is not a manager."

24 Section 17. G.S. 105-228.90(a) reads as rewritten:

25 "(a) Scope. -- This Article applies to Subchapters I, V, and VIII of this ~~Chapter~~
26 Chapter, to the annual report filing requirements of G.S. 55-16-22, and to inspection
27 taxes levied under Article 3 of Chapter 119 of the General Statutes."

28 Section 18. Article 9 of Chapter 105 of the General Statutes is amended
29 by adding a new section to read:

30 "**§ 105-257.1. Secretary to administer annual report filing; fee for filing report.**

31 (a) Filing Duty. -- The Secretary must submit the annual reports filed with the
32 Secretary pursuant to G.S. 55-16-22 to the Secretary of State.

33 (b) Fee. -- A corporation that files an annual report with the Secretary must pay a
34 fee of twenty dollars (\$20.00) with its annual report. The fees collected under this
35 subsection shall be credited to the General Fund as tax revenue."

36 Section 19. G.S. 105-259 reads as rewritten:

37 "**§ 105-259. Secrecy required of officials; penalty for violation.**

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

39 (1) Employee or officer. -- The term includes a former employee, a
40 former officer, and a current or former member of a State board or
41 commission.

42 (2) Tax information. -- Any information from any source concerning
43 the liability of a taxpayer for a tax, as defined in G.S. 105-228.90.
44 The term includes the following:

- 1 a. Information contained on a tax return, a tax report, or an
2 application for a license for which a tax is imposed.
3 b. Information obtained through an audit of a taxpayer or by
4 correspondence with a taxpayer.
5 c. Information on whether a taxpayer has filed a tax return or
6 a tax report.
7 d. A list or other compilation of the names, addresses, social
8 security numbers, or similar information concerning
9 taxpayers.

10 The term does not include (i) statistics classified so that
11 information about specific taxpayers cannot be ~~identified or (ii)~~
12 identified, (ii) an annual report required to be filed under G.S. 55-
13 16-22 or (iii) information submitted to the Business License
14 Information Office of the Department of Secretary of State on a
15 master application form for various business licenses.

16 (b) Disclosure Prohibited. -- An officer, an employee, or an agent of the State who
17 has access to tax information in the course of service to or employment by the State
18 may not disclose the information to any other person unless the disclosure is made
19 for one of the following purposes:

- 20 (1) To comply with a court order or a law.
21 (2) Review by the Attorney General or a representative of the
22 Attorney General.
23 (3) Review by a tax official of another state or the Internal Revenue
24 Commissioner of the United States to aid the state or the
25 Commissioner in collecting a tax imposed by this State, the other
26 state, or the United States if the laws of the other state or the
27 United States allow the state or the United States to provide
28 similar tax information to a representative of this State.
29 (4) To provide a governmental agency or an officer of an organized
30 association of taxpayers with a list of taxpayers who have paid a
31 privilege license tax under Article 2 of this Chapter.
32 (5) To furnish to the chair of a board of county commissioners
33 information on the county sales and use tax.
34 (6) To sort, process, or deliver tax information on behalf of the
35 Department of Revenue.
36 (6a) To furnish the chair of a board of county commissioners a list of
37 claimants that have received a refund of the county sales or use tax
38 to the extent authorized in G.S. 105- 164.14(f).
39 (7) To exchange information with the Division of Motor Vehicles of
40 the Department of Transportation when the information is needed
41 to fulfill a duty imposed on the Department of Revenue or the
42 Division of Motor Vehicles.
43 (8) To furnish to the Department of State Treasurer, upon request, the
44 name, address, and account and identification numbers of a

- 1 taxpayer who may be entitled to property held in the Escheat
2 Fund.
- 3 (9) To furnish to the Employment Security Commission the name,
4 address, and account and identification numbers of a taxpayer
5 when the information is requested by the Commission in order to
6 fulfill a duty imposed under Article 2 of Chapter 96 of the General
7 Statutes.
- 8 (10) Review by the State Auditor to the extent authorized in G.S. 147-
9 64.7.
- 10 (11) To give a spouse who elects to file a joint tax return a copy of the
11 return or information contained on the return.
- 12 (11a) To provide a copy of a return to the taxpayer who filed the return.
- 13 (11b) In the case of a return filed by a corporation, a partnership, a trust,
14 or an estate, to provide a copy of the return or information on the
15 return to a person who has a material interest in the return if,
16 under the circumstances, section 6103(e)(1) of the Code would
17 require disclosure to that person of any corresponding federal
18 return or information.
- 19 (11c) In the case of a return of an individual who is legally incompetent
20 or deceased, to provide a copy of the return to the legal
21 representative of the estate of the incompetent individual or
22 decedent.
- 23 (12) To contract with a financial institution for the receipt of withheld
24 income tax payments under G.S. 105-163.6 or for the transmittal of
25 payments by electronic funds transfer.
- 26 (13) To furnish the Fiscal Research Division of the General Assembly,
27 upon request, a sample, suitable in character, composition, and size
28 for statistical analyses, of tax returns or other tax information from
29 which taxpayers' names and identification numbers have been
30 removed.
- 31 (14) To exchange information concerning a tax imposed by Subchapter
32 V of this Chapter with the Standards Division of the Department
33 of Agriculture when the information is needed to administer the
34 Gasoline and Oil Inspection Act, Article 3 of Chapter 119 of the
35 General Statutes.
- 36 (15) To exchange information concerning a tax imposed by Articles 2A,
37 2B, 2C, or 2D of this Chapter with one of the following agencies
38 when the information is needed to fulfill a duty imposed on the
39 agency:
- 40 a. The North Carolina Alcoholic Beverage Control
41 Commission.
- 42 b. The Division of Alcohol Law Enforcement of the
43 Department of Crime Control and Public Safety.

- 1 c. The Bureau of Alcohol, Tobacco, and Firearms of the
2 United States Treasury Department.
- 3 (16) To furnish to the Department of Secretary of State the name,
4 address, tax year end, and account and identification numbers of a
5 corporation liable for corporate income or franchise taxes or of a
6 limited liability company liable for a corporate or a partnership tax
7 return to enable the Secretary of State to notify the corporation or
8 the limited liability company of the annual report filing
9 requirement or that its articles of incorporation or articles of
10 organization or its certificate of authority has been suspended.
- 11 (17) To inform the Business License Information Office of the
12 Department of Secretary of State of the status of an application for
13 a license for which a tax is imposed and of any information needed
14 to process the application.
- 15 (18) To furnish to the Office of the State Controller the name, address,
16 and account and identification numbers of a taxpayer upon request
17 to enable the State Controller to verify statewide vendor files or
18 track debtors of the State.
- 19 (19) To furnish to the North Carolina Industrial Commission
20 information concerning workers' compensation reported to the
21 Secretary under G.S. 105-163.7.

22 (c) Punishment. -- A person who violates this section is guilty of a Class 1
23 misdemeanor. If the person committing the violation is an officer or employee, that
24 person shall be dismissed from public office or public employment and may not hold
25 any public office or public employment in this State for five years after the violation."

26 Section 20. There is appropriated from the General Fund to the
27 Department of Revenue the sum of one hundred seventy-eight thousand three
28 hundred seventy-one dollars (\$178,371) for the 1997-98 fiscal year, allocated as one
29 hundred twelve thousand one hundred seventy-one dollars (\$112,171) recurring funds
30 and sixty-six thousand two hundred dollars (\$66,200) nonrecurring funds, for the
31 costs associated with collecting and transmitting the annual corporate reports.

32 PART III. EFFECTIVE DATES.

33 Section 21. (a) Sections 1 through 6 and Sections 19 through 21 of this
34 act become effective July 1, 1997. The remainder of this act becomes effective
35 January 1, 1998, and applies to tax years ending on or after December 31, 1997, in
36 the case of corporations required to file annual reports with the Secretary of Revenue
37 and to fiscal years ending on or after December 31, 1997, in the case of corporations
38 required to file annual reports with the Secretary of State.

39 (b) Annual reports delivered to either the Secretary of State or the
40 Secretary of Revenue after December 31, 1997, but before January 1999, shall
41 nevertheless be deemed filed with the correct State agency. The Secretary of State
42 shall notify the Secretary of Revenue of reports erroneously filed with the Secretary
43 of State, and the Secretary of Revenue shall notify the Secretary of State of reports
44 erroneously filed with the Secretary of Revenue.

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

4-10-97

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jim Blackburn	N C Association of County Commissioners
Andy Romanet	N.C.L.M.
Alice Paulana	Electricians
Ron Aycock	County Com. Assoc " " "
Patricia Rossler	
Bob High	Dept of State Treas.
Ed Regan	N.C.A.C.C.
Allen Ward	FCDC
Robert Wilson	S.O.S.
Gene Wimer	NCBA
Floyd M. Lewis	General Statutes Commission

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

4-10-97

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Bly Hall	General Statutes Commission
David Prosser	Dept of Secretary of State
Barbara Bunyan	Secretary of State's Office
Charlene Durkin	Sec of State Office
Elaine Mashuel	SOS
Bernard Allen	SOS
Jess Temples	SOS
Dra Powell	DOR
AJ Campbell	Cummings High School
Michelle Madden	Cummings High School
Barbara M	Cummings High School - Burlington

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

4-10-97

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Shanna Evans

Cummings High School

Yshountaw M. Lee

Cummings High School of Burlington, NC

Lesley Epperly

Cummings High School

Tasha Taylor

Cummings High % Kiwanis Club

LAMPANH KINGLANTON

CUMMINGS HIGH SCHOOL

KASSIE POWELL

Cummings High School

Kimberly Smith

Cummings High School

Michelle Potrat

Cummings High School - Burlington

Phil A. By

CUMMINGS HIGH SCHOOL - Burlington

Willie K. Edell

DKR

Paper miles

CHS

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

4-10-97

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Kelly Johnson	Cummings High School.
April Roberts	Cummings H.S. Burlington
Vivian Moore	Cummings
Alida Lorenz	Cummings High School - Burlington
Michael Lowery	Cummings High School - Burlington
Allen Sanders	Burlington Kiwanis Club
Ella McCoy	Cummings High School
Henry A. Brown	" " "
Jorge Suarez	" " "
Brian K. White	Cummings High School
Justin Justin	Cummings High School

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

FINANCE COMMITTEE REPORT
Senator David Hoyle, Co-Chair
Senator John Kerr, Co-Chair

Thursday, April 10, 1997

SENATOR HOYLE,
submits the following with recommendations as to passage:

FAVORABLE

S.B. 719 Goldsboro Room Tax Use
 Sequential Referral: None
 Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comment: None

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT

Senator David Hoyle, Co-Chair

Senator John Kerr, Co-Chair

Monday, April 14, 1997

SENATOR HOYLE,

submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B.(CS #1)158 Administrative Dissolution/Annual Rept.
 Draft Number: PCS 1750
 Sequential Referral: None
 Recommended Referral: Appropriations
 Long Title Amended: Yes

S.B.(CS #1)317 Local Government Debt Changes
 Draft Number: PCS 4562
 Sequential Referral: None
 Recommended Referral: None
 Long Title Amended: Yes

S.B.(CS #1)727 Insurance Regulatory Charge
 Draft Number: PCS2691
 Sequential Referral: None
 Recommended Referral: Appropriations
 Long Title Amended: Yes

TOTAL REPORTED: 3

Committee Clerk Comment: None

SENATE FINANCE COMMITTEE

MONDAY, APRIL 14, 1997

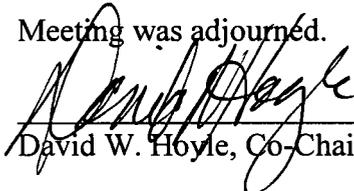
4:00 P. M. - ROOM 643 LOB

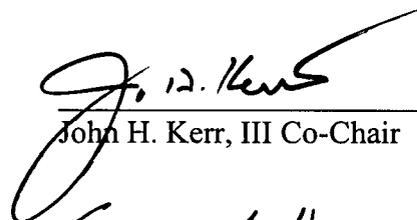
The Senate Finance Committee met. There were 20 members of the committee present. Senator David W. Hoyle, Co-Chairman, called the meeting to order.

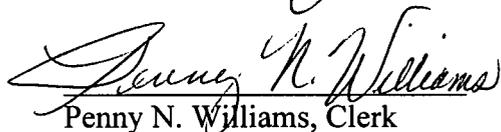
S. B. 727 - Insurance Regulatory Charge

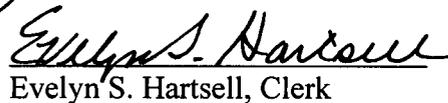
Senator Brad Miller came to explain the bill. Senator Kerr moved for adoption of proposed committee substitute to the bill, motion passed. Senator Kerr has a proposed amendment to the bill, however, he asked that we leave Senate Bill 158 intact and put the fees in this bill, motion passed. Senator Rand made a motion that proposed committee substitute for S. B. 727 be rolled into another committee substitute with Sen. Kerr's amendment and be given a "favorable" report, motion passed. Bill is to be re-referred to Appropriations.

Meeting was adjourned.


David W. Hoyle, Co-Chair


John H. Kerr, III Co-Chair


Penny N. Williams, Clerk


Evelyn S. Hartsell, Clerk

NOTE:

Visitor's Registration is Attachment # 1
Committee Report is Attachment # 2

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 727

Short Title: Insurance Regulatory Charge.

(Public)

Sponsors: Senator Miller.

Referred to: Finance.

April 7, 1997

A BILL TO BE ENTITLED

1
2 AN ACT TO SET THE INSURANCE REGULATORY CHARGE FOR
3 CALENDAR YEAR 1997 AND TO CLARIFY THE BASIS OF THE PREMIUM
4 TAX LIABILITY ON WHICH THE CHARGE IS LEVIED.

5 The General Assembly of North Carolina enacts:

6 Section 1. The percentage rate to be used in calculating the insurance
7 regulatory charge under G.S. 58-6-25 is eight and one-half percent (8.5%) for the
8 1997 calendar year.

9 Section 2. G.S. 58-6-25(a) reads as rewritten:

10 "(a) Charge Levied. -- There is levied on each insurance company an annual
11 charge for the purposes stated in subsection (d) of this section. As used in this
12 section, the term 'insurance company' means a company that pays the gross
13 premiums tax levied in G.S. 105-228.5 and G.S. 105-228.8, ~~except that the term does~~
14 ~~not include a hospital, medical, or dental service corporation regulated under Articles~~
15 ~~65 and 66 of this Chapter. The term "insurance company" does not include a~~
16 ~~company regulated under Article 67 of this Chapter. for service corporations and~~
17 health maintenance organizations under Articles 65 and 67 of this Chapter. The
18 charge levied in this section is in addition to all other fees and taxes. The charge shall
19 be at a percentage rate of the company's premium tax liability for the taxable year. In
20 determining an insurance company's premium tax liability for a taxable year,
21 additional taxes imposed by ~~G.S. 105-228.8 and~~ G.S. 105-228.8, the additional local
22 fire and lightning tax imposed by ~~G.S. 105-228.5(d)(4)~~ G.S. 105-228.5(d)(4), and any
23 tax credits for guaranty or solvency fund assessments under G.S. 105-228.5A or G.S.
24 97-133(a) shall be disregarded."

1 Section 3. G.S. 97-133(a)(2) reads as rewritten:

2 "(2) Assess each member of the Association as follows:

- 3 a. Each individual member self-insurer shall be annually
4 assessed an amount equal to one-quarter of one percent
5 (0.25%) of the annual standard premium that would have
6 been paid by that member self-insurer for workers'
7 compensation insurance during the prior calendar year; and
8 payment to the Association shall be made no later than
9 September 15 following the close of that calendar year.
10 Where any such assessment is paid based in whole or in part
11 upon estimates of annual standard premium for the prior
12 calendar year, there shall be made in the next year's
13 assessment an adjustment of the assessment of such prior
14 year based on actual audited annual standard premium.
15 Each group member self-insurer shall be annually assessed
16 an amount equal to one-quarter of one percent (0.25%) of
17 the annual premium collected by the group member self-
18 insurer during the prior calendar year; and payment to the
19 Association shall be made no later than September 15
20 following the close of that calendar year. Regardless of the
21 size of the Fund, during its first 12 months of membership,
22 no member self-insurer may discount or reduce this one-
23 quarter of one percent (0.25%) assessment. Assessments paid
24 by members pursuant to this subdivision shall be credited
25 toward the tax paid by self-insurers under ~~G.S. 105-228.5~~
26 ~~and G.S. 97-100.~~ Article 8B of Chapter 105 of the General
27 Statutes.
- 28 b. Each member self-insurer shall be notified of the assessment
29 no later than 30 days before it is due.
- 30 c. If a self-insurer is a member of the Association for less than
31 a full calendar year, the annual standard premium shall be
32 adjusted by that portion of the year the self-insurer is not a
33 member of the Association.
- 34 d. If application of the contribution rates referenced in sub-
35 subdivisions a. and b. of this subdivision would produce an
36 amount in excess of the five million dollar (\$5,000,000)
37 limits of the fund, an equitable proration may be made;
38 provided that every self-insurer that becomes a member of
39 the Association shall pay an initial assessment, in an amount
40 established by the Board, regardless of the size of the fund
41 at the time the member joins the Association."

42 Section 4. G.S. 97-133(a)(4) reads as rewritten:

43 "(4) Be obligated to the extent of covered claims occurring prior to the
44 determination of the member self-insurer's insolvency, or occurring

1 after such determination but prior to the obtaining by the self-
2 insurer of workers' compensation insurance as otherwise required
3 under this Chapter. The Association shall pay claims against a
4 self-insurer that are not or have not been paid as a result of a
5 determination of insolvency or the institution of bankruptcy or
6 receivership proceedings that occurred prior to the effective date
7 of this Article; ~~provided that any assessments made to pay such~~
8 ~~claims may be credited towards the tax paid by the self-insurers~~
9 ~~under G.S. 97-100; Article. Any assessments made to those claims~~
10 described in this subdivision may be credited toward the tax paid
11 by self-insurers under Article 8B of Chapter 105 of the General
12 Statutes."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

D

SENATE BILL 727
Proposed Senate Finance Committee Substitute
S727-CSLJX-4/14

Short Title: Fees To Implement State Budget.

(Public)

Sponsors:

Referred to: Finance.

April 7, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE GENERAL STATUTES
3 COMMISSION CONCERNING APPLICATIONS FOR REINSTATEMENT AFTER
4 DISSOLUTION AND THE FILING OF CORPORATE REPORTS, AND TO
5 IMPLEMENT THE RECOMMENDATIONS OF THE COMMITTEE ON
6 APPROPRIATIONS BY ESTABLISHING THE PERCENTAGE RATES FOR THE
7 INSURANCE REGULATORY CHARGE AND THE PUBLIC UTILITY REGULATORY
8 FEE, BY CLARIFYING THE BASIS OF THE PREMIUM TAX LIABILITY ON
9 WHICH THE INSURANCE REGULATORY CHARGE IS LEVIED, BY INCREASING
10 COURT FEES IN CRIMINAL CASES, AND BY INCREASING THE FEES FOR
11 FILING CERTAIN DOCUMENTS.
12 The General Assembly of North Carolina enacts:
13 Section 1. The percentage rate to be used in
14 calculating the insurance regulatory charge under G.S. 58-6-25 is
15 eight and seventy-five hundredths percent (8.75%) for the 1997
16 calendar year.
17 Section 2. G.S. 58-6-25(a) reads as rewritten:
18 "(a) Charge Levied. -- There is levied on each insurance
19 company an annual charge for the purposes stated in subsection
20 (d) of this section. As used in this section, the term 'insurance
21 company' means a company that pays the gross premiums tax levied

1 in G.S. 105-228.5 and G.S. 105-228.8, except that the term does
2 not include a hospital, medical, or dental service corporation
3 regulated under Articles 65 and 66 of this Chapter. The term
4 "insurance company" does not include a company regulated under
5 Article 67 of this Chapter. a service corporation subject to
6 Article 65 of this Chapter. A health maintenance organization
7 subject to Article 67 of this Chapter is not subject to those
8 taxes and is therefore not subject to the charge levied in this
9 section. The charge levied in this section is in addition to all
10 other fees and taxes. The charge shall be at a percentage rate of
11 the company's premium tax liability for the taxable year. In
12 determining an insurance company's premium tax liability for a
13 taxable year, additional taxes imposed by ~~G.S. 105-228.8~~ and
14 G.S. 105-228.8, the additional local fire and lightning tax
15 imposed by G.S. 105-228.5(d)(4) G.S. 105-228.5(d)(4), and any tax
16 credits for guaranty or solvency fund assessments under G.S. 105-
17 228.5A or G.S. 97-133(a) shall be disregarded."

18 Section 3. G.S. 97-133(a)(2) reads as rewritten:

19 "(2) Assess each member of the Association as follows:

- 20 a. Each individual member self-insurer shall be
21 annually assessed an amount equal to one-
22 quarter of one percent (0.25%) of the annual
23 standard premium that would have been paid by
24 that member self-insurer for workers'
25 compensation insurance during the prior
26 calendar year; and payment to the Association
27 shall be made no later than September 15
28 following the close of that calendar year.
29 Where any such assessment is paid based in
30 whole or in part upon estimates of annual
31 standard premium for the prior calendar year,
32 there shall be made in the next year's
33 assessment an adjustment of the assessment of
34 such prior year based on actual audited annual
35 standard premium. Each group member self-
36 insurer shall be annually assessed an amount
37 equal to one-quarter of one percent (0.25%) of
38 the annual premium collected by the group
39 member self-insurer during the prior calendar
40 year; and payment to the Association shall be
41 made no later than September 15 following the
42 close of that calendar year. Regardless of
43 the size of the Fund, during its first 12
44 months of membership, no member self-insurer

1 may discount or reduce this one-quarter of one
2 percent (0.25%) assessment. Assessments paid
3 by members pursuant to this subdivision shall
4 be credited toward the tax paid by self-
5 insurers under ~~G.S. 105-228.5 and G.S. 97-100.~~
6 Article 8B of Chapter 105 of the General
7 Statutes.

- 8 b. Each member self-insurer shall be notified of
9 the assessment no later than 30 days before it
10 is due.
- 11 c. If a self-insurer is a member of the
12 Association for less than a full calendar
13 year, the annual standard premium shall be
14 adjusted by that portion of the year the self-
15 insurer is not a member of the Association.
- 16 d. If application of the contribution rates
17 referenced in sub-subdivisions a. and b. of
18 this subdivision would produce an amount in
19 excess of the five million dollar (\$5,000,000)
20 limits of the fund, an equitable proration may
21 be made; provided that every self-insurer that
22 becomes a member of the Association shall pay
23 an initial assessment, in an amount
24 established by the Board, regardless of the
25 size of the fund at the time the member joins
26 the Association."

27 Section 4. G.S. 97-133(a)(4) reads as rewritten:

28 "(4) Be obligated to the extent of covered claims
29 occurring prior to the determination of the member
30 self-insurer's insolvency, or occurring after such
31 determination but prior to the obtaining by the
32 self-insurer of workers' compensation insurance as
33 otherwise required under this Chapter. The
34 Association shall pay claims against a self-insurer
35 that are not or have not been paid as a result of a
36 determination of insolvency or the institution of
37 bankruptcy or receivership proceedings that
38 occurred prior to the effective date of this
39 ~~Article; provided that any assessments made to pay~~
40 ~~such claims may be credited towards the tax paid by~~
41 ~~the self-insurers under G.S. 97-100; Article."~~

42 Section 5. The percentage rate to be used in
43 calculating the public utility regulatory fee under G.S. 62-
44 302(b)(2) is nine hundredths percent (0.09%) of each public

1 utility's North Carolina jurisdictional revenues earned during
2 each quarter that begins on or after July 1, 1997.

3 Section 6. G.S. 7A-304 reads as rewritten:

4 "§ 7A-304. Costs in criminal actions.

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

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

22 (2) For the use of the courtroom and related judicial
23 facilities, the sum of six dollars (\$6.00) in the
24 district court, including cases before a
25 magistrate, and the sum of twenty-four dollars
26 (\$24.00) in superior court, to be remitted to the
27 county in which the judgment is rendered. In all
28 cases where the judgment is rendered in facilities
29 provided by a municipality, the facilities fee
30 shall be paid to the municipality. Funds derived
31 from the facilities fees shall be used exclusively
32 by the county or municipality for providing,
33 maintaining, and constructing adequate courtroom
34 and related judicial facilities, including:
35 adequate space and furniture for judges, district
36 attorneys, public defenders, magistrates, juries,
37 and other court related personnel; office space,
38 furniture and vaults for the clerk; jail and
39 juvenile detention facilities; free parking for
40 jurors; and a law library (including books) if one
41 has heretofore been established or if the governing
42 body hereafter decides to establish one. In the
43 event the funds derived from the facilities fees
44 exceed what is needed for these purposes, the

- 1 county or municipality may, with the approval of
2 the Administrative Officer of the Courts as to the
3 amount, use any or all of the excess to retire
4 outstanding indebtedness incurred in the
5 construction of the facilities, or to reimburse the
6 county or municipality for funds expended in
7 constructing or renovating the facilities (without
8 incurring any indebtedness) within a period of two
9 years before or after the date a district court is
10 established in such county, or to supplement the
11 operations of the General Court of Justice in the
12 county.
- 13 (3) For the retirement and insurance benefits of both
14 State and local government law-enforcement
15 officers, the sum of seven dollars and twenty-five
16 cents (\$7.25), to be remitted to the State
17 Treasurer. Fifty cents (50¢) of this sum shall be
18 administered as is provided in Article 12C of
19 Chapter 143 of the General Statutes. Five dollars
20 and seventy-five cents (\$5.75) of this sum shall be
21 administered as is provided in Article 12E of
22 Chapter 143 of the General Statutes, with one
23 dollar and twenty-five cents (\$1.25) being
24 administered in accordance with the provisions of
25 G.S. 143-166.50(e). One dollar (\$1.00) of this sum
26 shall be administered as is provided in Article 12F
27 of Chapter 143 of the General Statutes.
- 28 (3a) For the supplemental pension benefits of sheriffs,
29 the sum of seventy-five cents (75¢) to be remitted
30 to the Department of Justice and administered under
31 the provisions of Article 12G of Chapter 143 of the
32 General Statutes.
- 33 (4) For support of the General Court of Justice, the
34 sum of ~~forty-six dollars (\$46.00)~~ sixty-one dollars
35 (\$61.00) in the district court, including cases
36 before a magistrate, and the sum of ~~fifty-three~~
37 ~~dollars (\$53.00)~~ sixty-eight dollars (68.00) in the
38 superior court, to be remitted to the State
39 Treasurer.
- 40 (5) For using pretrial release services, the district
41 or superior court judge shall, upon conviction,
42 impose a fee of fifteen dollars (\$15.00) to be
43 remitted to the county providing the pretrial
44 release services. This cost shall be assessed and

- 1 collected only if the defendant had been accepted
2 and released to the supervision of the agency
3 providing the pretrial release services.
- 4 (6) For support of the General Court of Justice, for
5 the issuance by the clerk of a report to the
6 Division of Motor Vehicles pursuant to G.S. 20-
7 24.2, the sum of fifty dollars (\$50.00), to be
8 remitted to the State Treasurer. Upon a showing to
9 the court that the defendant failed to appear
10 because of an error or omission of a judicial
11 official, a prosecutor, or a law-enforcement
12 officer, the court shall waive this fee.
- 13 (a) The costs assessed pursuant to subsection (a) may also be
14 collected by clerks of court for charges in which a party elects
15 to pay the court's costs to satisfy the requirements of G.S. 20-
16 7.2. Costs collected pursuant to this subsection shall be
17 allocated in the same manner as other costs collected pursuant to
18 this section. ~~If a~~ A party who elects to pay the costs of court
19 to satisfy the requirements of G.S. 20-7.2 and is subsequently
20 adjudged guilty of the same charge by the court, ~~he shall~~ is not
21 ~~be~~ required to pay the costs of court again for that charge, but
22 ~~he~~ is subject to any other orders of the court, including an
23 order to pay a fine.
- 24 (b) On appeal, costs are cumulative, and costs assessed before
25 a magistrate shall be added to costs assessed in the district
26 court, and costs assessed in the district court shall be added to
27 costs assessed in the superior court, except that the fee for the
28 Law-Enforcement Officers' Benefit and Retirement Fund and the
29 Sheriffs' Supplemental Pension Fund and the fee for pretrial
30 release services shall be assessed only once in each case. No
31 superior court costs shall be assessed against a defendant who
32 gives notice of appeal from the district court but withdraws it
33 prior to the expiration of the 10-day period for entering notice
34 of appeal. When a case is reversed on appeal, the defendant shall
35 not be liable for costs, and the State shall be liable for the
36 cost of printing records and briefs in the Appellate Division.
- 37 (c) Witness fees, expenses for blood tests and comparisons
38 incurred by G.S. 8-50.1(a), jail fees and cost of necessary trial
39 transcripts shall be assessed as provided by law in addition to
40 other costs set out in this section. Nothing in this section
41 shall limit the power or discretion of the judge in imposing
42 fines or forfeitures or ordering restitution.
- 43 (d) In any criminal case in which the liability for costs,
44 fines, restitution, or any other lawful charge has been finally

1 determined, the clerk of superior court shall, unless otherwise
 2 ordered by the presiding judge, disburse such funds when paid in
 3 accordance with the following priorities:

- 4 (1) Costs due the county;
- 5 (2) Costs due the city;
- 6 (3) Fines to the county school fund;
- 7 (4) Sums in restitution prorated among the persons
 8 entitled thereto;
- 9 (5) Costs due the State;
- 10 (6) Attorney's fees.

11 Sums in restitution received by the clerk of superior court
 12 shall be disbursed when:

- 13 (1) Complete restitution has been received; or
- 14 (2) When, in the opinion of the clerk, additional
 15 payments in restriction will not be collected; or
- 16 (3) Upon the request of the person or persons entitled
 17 thereto; and
- 18 (4) In any event, at least once each calendar year.

19 (e) Unless otherwise provided by law, the costs assessed
 20 pursuant to this section for criminal actions disposed of in the
 21 district court are also applicable to infractions disposed of in
 22 the district court. The costs assessed in superior court for
 23 criminal actions appealed from district court to superior court
 24 are also applicable to infractions appealed to superior court. If
 25 an infraction is disposed of in the superior court pursuant to
 26 G.S. 7A-271(d), costs applicable to the original charge are
 27 applicable to the infraction."

28 Section 7. G.S. 55-1-22 reads as rewritten:

29 **§ 55-1-22. Filing, service, and copying fees.**

30 (a) The Secretary of State shall collect the following fees
 31 when the documents described in this subsection are delivered to
 32 him the Secretary for filing:

Document	Fee
34 (1) Articles of incorporation	\$100.00
35	<u>\$125.00</u>
36 (2) Application for reserved name	10.00
37 (3) Notice of transfer of reserved name	10.00
38 (4) Application for registered name	10.00
39 (5) Application for renewal of 40 registered name	10.00
41 (6) Corporation's statement of change of 42 registered agent or registered 43 office or both	5.00
44 (7) Agent's statement of change of	

1	registered office for each affected	
2	corporation	5.00
3	(8) Agent's statement of resignation	No fee
4	(9) Designation of registered agent or	
5	registered office or both	5.00
6	(10) Amendment of articles of	
7	incorporation	50.00
8	(11) Restated articles of incorporation	10.00
9	with amendment of articles	50.00
10	(12) Articles of merger or share exchange	50.00
11	(13) Articles of dissolution	30.00
12	(14) Articles of revocation of	
13	dissolution	10.00
14	(15) Certificate of administrative	
15	dissolution	No fee
16	(16) Application for reinstatement	
17	following administrative dissolution	25.00
18		<u>100.00</u>
19	(17) Certificate of reinstatement	No fee
20	(18) Certificate of judicial dissolution	No fee
21	(19) Application for certificate of	
22	authority	200.00
23		<u>250.00</u>
24	(20) Application for amended certificate	
25	of authority	50.00
26	(21) Application for certificate of	
27	withdrawal	10.00
28	(22) Certificate of revocation of	
29	authority to transact business	No fee
30	(23) Annual report	10.00
31		<u>20.00</u>
32	(24) Articles of correction	10.00
33	(25) Application for certificate of	
34	existence or authorization	5.00
35	(26) Any other document required or	
36	permitted to be filed by this Chapter	10.00

37 .
 38 (b) The Secretary of State shall collect a fee of ten dollars
 39 (\$10.00) each time process is served on ~~him~~ the Secretary under
 40 this Chapter. The party to a proceeding causing service of
 41 process is entitled to recover this fee as costs if ~~he~~ the party
 42 prevails in the proceeding.

1 (c) The Secretary of State shall collect the following fees
 2 for copying, comparing, and certifying a copy of any filed
 3 document relating to a domestic or foreign corporation:

4 (1) One dollar (\$1.00) a page for copying or comparing
 5 a copy to the original; and

6 (2) Five dollars (\$5.00) for the certificate."

7 Section 8. G.S. 55A-1-22 reads as rewritten:

8 "**§ 55A-1-22. Filing, service, and copying fees.**

9 (a) The Secretary of State shall collect the following fees
 10 when the documents described in this subsection are delivered to
 11 the Secretary for filing:

Document	Fee
12 (1) Articles of incorporation	\$50.00
	<u>\$60.00</u>
15 (2) Application for reserved name	\$10.00
16 (3) Notice of transfer of reserved name	\$10.00
17 (4) Application for registered name	\$10.00
18 (5) Application for renewal of registered	
19 name	\$10.00
20 (6) Corporation's statement of change of	
21 registered agent or registered office or	
22 both	\$ 5.00
23 (7) Agent's statement of change of registered	
24 office for each affected corporation	\$ 5.00
25 (8) Agent's statement of resignation	No fee
26 (9) Designation of registered agent or	
27 registered office or both	\$ 5.00
28 (10) Amendment of articles of incorporation	\$25.00
29 (11) Restated articles of incorporation without	
30 amendment of articles	\$10.00
31 (12) Restated articles of incorporation with	
32 amendment of articles	\$25.00
33 (13) Articles of merger	\$25.00
34 (14) Articles of dissolution	\$15.00
35 (15) Articles of revocation of dissolution	\$10.00
36 (16) Certificate of administrative dissolution	No fee
37 (17) Application for reinstatement following	
38 administrative dissolution	\$25.00
	<u>\$100.00</u>
40 (18) Certificate of reinstatement	No fee
41 (19) Certificate of judicial dissolution	No fee
42 (20) Application for certificate of authority	\$100.00
	<u>\$125.00</u>
44 (21) Application for amended certificate of	

1	authority	\$25.00
2	(22) Application for certificate of withdrawal	\$10.00
3	(23) Certificate of revocation of authority to	
4	conduct affairs	No fee
5	(24) Corporation's Statement of Change of	
6	Principal Office	\$5.00
7	(24a) Designation of Principal Office Address	\$5.00
8	(25) Articles of correction	\$10.00
9	(26) Application for certificate of existence or	
10	authorization	\$ 5.00
11	(27) Any other document required or	
12	permitted to be filed by this Chapter	\$10.00."
13	Section 9. G.S. 57C-1-22 reads as rewritten:	
14	"§ 57C-1-22. Filing, service, and copying fees.	
15	(a) The Secretary of State shall collect the following fees	
16	when the documents described in this subsection are delivered to	
17	the Secretary of State for filing:	
18	<u>Document</u>	<u>Fee</u>
19	(1) Articles of organization	\$100.00
20		\$125.00
21	(2) Application for reserved name	10.00
22	(3) Notice of transfer of reserved name	10.00
23	(4) Application for registered name	10.00
24	(5) Application for renewal of registered name	10.00
25	(6) Limited liability company's statement of	
26	change of registered agent or registered	
27	office or both	5.00
28	(7) Agent's statement of change of registered	
29	office for each affected limited	
30	liability company	5.00
31	(8) Agent's statement of resignation	No fee
32	(9) Designation of registered agent or	
33	registered office or both	5.00
34	(10) Amendment of articles of organization	50.00
35	(11) Restated articles of organization	
36	without amendment of articles	10.00
37	(12) Restated articles of organization	
38	with amendment of articles	50.00
39	(13) Articles of merger	50.00
40	(14) Articles of dissolution	30.00
41	(15) Articles of revocation of dissolution	10.00
42	(16) Certificate of administrative dissolution	No fee
43	<u>(16a) Application for reinstatement following</u>	
44	<u>administrative dissolution</u>	<u>100.00</u>

1	(17) Certificate of reinstatement	No fee
2	(18) Certificate of judicial dissolution	No fee
3	(19) Application for certificate of authority	<u>200.00</u>
4		<u>250.00</u>
5	(20) Application for amended certificate	
6	of authority	50.00
7	(21) Application for certificate of withdrawal	10.00
8	(22) Certificate of revocation of authority	
9	to transact business	No fee
10	(23) Articles of correction	10.00
11	(24) Application for certificate of existence	
12	or authorization	5.00
13	(25) Annual report	200.00
14	(26) Any other document required or permitted	
15	to be filed by this Chapter	10.00

17 (b) The Secretary of State shall collect a fee of ten dollars
 18 (\$10.00) each time process is served on the Secretary of State
 19 under this Chapter. The party to a proceeding causing service of
 20 process is entitled to recover this fee as costs if ~~he~~ the party
 21 prevails in the proceeding.

22 (c) The Secretary of State shall collect the following fees
 23 for copying, comparing, and certifying a copy of any filed
 24 document relating to a domestic or foreign limited liability
 25 company:

- 26 (1) One dollar (\$1.00) a page for copying or comparing
 - 27 a copy to the original; and
 - 28 (2) Five dollars (\$5.00) for the certificate."
- 29 Section 10. G.S. 105-228.90(a) reads as rewritten:

30 "(a) Scope. -- This Article applies to Subchapters I, V, and
 31 VIII of this ~~Chapter~~ Chapter, to the annual report filing
 32 requirements of G.S. 55-16-22, and to inspection taxes levied
 33 under Article 3 of Chapter 119 of the General Statutes."

34 Section 11. Article 9 of Chapter 105 of the General
 35 Statutes is amended by adding a new section to read:

36 "§ 105-256.1. Corporate annual report.

37 A charge of twenty dollars (\$20.00) is imposed on a corporation
 38 that files its annual report with the Secretary. The charge must
 39 be paid when the annual report is filed. Amounts collected under
 40 this section shall be credited to the General Fund as tax
 41 revenue. The Secretary must transmit an annual report filed with
 42 the Secretary in accordance with G.S. 55-16-22 to the Secretary
 43 of State.

44 Section 12. G.S. 55-14-22(a) reads as rewritten:

1 "(a) A corporation administratively dissolved under G.S. 55-14-
2 21 may apply to the Secretary of State for reinstatement ~~within~~
3 ~~two years not later than five years~~ after the effective date of
4 dissolution. The application must:

- 5 (1) Recite the name of the corporation and the
6 effective date of its administrative dissolution;
7 and
- 8 (2) State that the ground or grounds for dissolution
9 either did not exist or have been eliminated.
- 10 (3) Reserved.
- 11 (4) Repealed by Session Laws 1995, c. 539, s. 6."

12 Section 13. G.S. 55A-14-22(a) reads as rewritten:

13 "(a) A corporation administratively dissolved under G.S. 55A-
14 14-21 may apply to the Secretary of State for reinstatement
15 ~~within two years not later than five years~~ after the effective
16 date of dissolution. The application shall:

- 17 (1) Recite the name of the corporation and the
18 effective date of its administrative dissolution;
19 and
- 20 (2) State that the ground or grounds for dissolution
21 either did not exist or have been eliminated."

22 Section 14. G.S. 57C-6-03(c) reads as rewritten:

23 "(c) A limited liability company administratively dissolved
24 under this section may apply to the Secretary of State for
25 reinstatement ~~within two years not later than five years~~ after
26 the effective date of the administrative dissolution. The
27 procedures for reinstatement and for the appeal of any denial of
28 the limited liability company's application for reinstatement
29 shall be the same procedures applicable to business corporations
30 under G.S. 55-14-22, 55-14-23, and 55-14-24."

31 Section 15. G.S. 55-16-22 reads as rewritten:

32 "~~§ 55-16-22. Annual report for Secretary of State report.~~

33 (a) ~~Each Except as provided in subsections (a1) and (a2) of~~
34 ~~this section, each domestic corporation except those governed by~~
35 ~~Chapter 55B, and each foreign corporation authorized to transact~~
36 ~~business in this State, State shall deliver to the Secretary of~~
37 ~~State for filing an annual report that sets forth: an annual~~
38 ~~report to the Secretary of Revenue.~~

39 (a1) Each insurance company subject to the provisions of
40 Chapter 58 of the General Statutes shall deliver an annual report
41 to the Secretary of State.

42 (a2) A domestic corporation governed by Chapter 55B of the
43 General Statutes is exempt from this section.

1 (a3) The annual report required by this section shall be in a
2 form jointly prescribed by the Secretary of Revenue and the
3 Secretary of State. The Secretary of Revenue shall provide the
4 form needed to file an annual report. The annual report shall
5 set forth all of the following:

- 6 (1) The name of the corporation and the state or
7 country under whose law it is ~~incorporated;~~
8 incorporated.
9 (2) The street address, and the mailing address if
10 different from the street address, of the
11 registered office, the county in which its
12 registered office is located, and the name of its
13 registered agent at that office in this State, and
14 a statement of any change of such registered office
15 or registered agent, or ~~both;~~ both.
16 (3) The address and telephone number of its principal
17 office; office.
18 (4) The names, titles, and business addresses of its
19 principal ~~officers;~~ officers.
20 ~~(4a) The names and business addresses of its directors;~~
21 ~~and~~

22 (5) A brief description of the nature of its business.
23 If the information contained in the most recently filed annual
24 report has not changed, a certification to that effect may be
25 made instead of setting forth the information required by
26 subdivisions (2) through (5) of this subsection.

27 (b) Information in the annual report must be current as of the
28 date the annual report is executed on behalf of the corporation.

29 ~~(c) The annual report shall be delivered to the Secretary of~~
30 ~~State each year within 60 days immediately following the last day~~
31 ~~of the month in which the domestic corporation was incorporated~~
32 ~~or the foreign corporation received a certificate of authority in~~
33 ~~this State. Forms required for the filing of the annual report~~
34 ~~shall be mailed by the Secretary of State to the domestic or~~
35 ~~foreign corporation at its registered office for the first annual~~
36 ~~report, then to its principal office for subsequent annual~~
37 ~~reports. An annual report required to be delivered to the~~
38 Secretary of Revenue is due by the due date for filing the
39 corporation's income and franchise tax returns. An extension of
40 time to file a return is an extension of time to file an annual
41 report. An annual report required to be delivered to the
42 Secretary of State is due by the fifteenth day of the third month
43 following the close of the corporation's fiscal year.

1 (d) If an annual report does not contain the information
2 required by this section, the Secretary of State shall promptly
3 notify the reporting domestic or foreign corporation in writing
4 and return the report to it for correction. If the report is
5 corrected to contain the information required by this section and
6 delivered to the Secretary of State within 30 days after the
7 effective date of notice, it is deemed to be timely filed.

8 (e) Amendments to any previously filed annual report may be
9 filed with the Secretary of State at any time for the purpose of
10 correcting, updating, or augmenting the information contained in
11 ~~such~~ the annual report.

12 (f) Expired.

13 (g) When a statement of change of registered office or
14 registered agent is filed in the annual report, the change shall
15 become effective when the statement is received by the Secretary
16 of State.

17 (h) If the Secretary of State does not receive an annual
18 report within 120 days of the date the return is due, the
19 Secretary of State may presume that the annual report is
20 delinquent. This presumption may be rebutted by receipt of the
21 annual report from the Secretary of Revenue or by evidence of
22 delivery presented by the filing corporation."

23 Section 16. G.S. 55-1-21(a) reads as rewritten:

24 "(a) The Secretary of State may promulgate and furnish on
25 request forms ~~for~~ for the following:

26 (1) An application for a certificate of ~~existence;~~
27 existence.

28 (2) A foreign corporation's application for a
29 certificate of authority to transact business in
30 ~~this State;~~ State.

31 (3) A foreign corporation's application for a
32 certificate of ~~withdrawal;~~ and withdrawal.

33 ~~(4) The annual report.~~

34 If the Secretary of State so requires, use of these forms is
35 mandatory."

36 Section 17. G.S. 55-1-28(b)(4) reads as rewritten:

37 "(4) That its most recent annual report required by G.S.
38 55-16-22 has either been delivered to the Secretary
39 of ~~State;~~ State or is not delinquent;".

40 Section 18. G.S. 55-14-20(2) reads as rewritten:

41 "(2) The corporation ~~does not deliver its annual report~~
42 ~~to the Secretary of State within 60 days after it~~
43 ~~is due;~~ is delinquent in delivering its annual
44 report;".

1 Section 19. G.S. 55-15-30(a)(1) reads as rewritten:

2 "~~(1) The foreign corporation does not deliver its annual~~
3 ~~report to the Secretary of State within 60 days~~
4 ~~after it is due; is delinquent in delivering its~~
5 ~~annual report;~~".

6 Section 20. G.S. 55-16-01(e)(7) reads as rewritten:

7 "~~(7) Its most recent annual report delivered to the~~
8 ~~Secretary of State under as required by G.S. 55-16-~~
9 ~~22.~~"

10 Section 21. G.S. 57C-2-23 reads as rewritten:

11 "~~§ 57C-2-23. Annual report for Secretary of State.~~

12 (a) Each domestic limited liability company and each foreign
13 limited liability company authorized to transact business in this
14 State, shall deliver to the Secretary of State for filing an
15 ~~annual report report, in a form jointly prescribed by the~~
16 ~~Secretary of Revenue and Secretary of State, that sets forth;~~
17 ~~forth all of the following:~~

18 (1) The name of the limited liability or foreign
19 limited liability company and the state or country
20 under whose law it is ~~organized;~~ organized.

21 (2) The street address, and the mailing address if
22 different from the street address, of the
23 registered office, the county in which the
24 registered office is located, and the name of its
25 registered agent at that office in this State, and
26 a statement of any change of the registered office
27 or registered agent, or ~~both;~~ both.

28 (3) The address and telephone number of its principal
29 ~~office;~~ office.

30 (4) The names and business addresses of its ~~managers;~~
31 ~~and managers.~~

32 (5) A brief description of the nature of its business.
33 If the information contained in the most recently filed annual
34 report has not changed, a certification to that effect may be
35 made instead of setting forth the information required by
36 subdivisions (2) through (5) of this subsection. The Secretary
37 of State shall make available the form required to file an annual
38 report.

39 (b) Information in the annual report must be current as of the
40 date the annual report is executed on behalf of the limited
41 liability company or the foreign limited liability company.

42 (c) The annual report shall be delivered to the Secretary of
43 State ~~each year within 60 days immediately following the last day~~
44 ~~of the month in which the domestic limited liability company was~~

~~1 organized or the foreign limited liability company received a
2 certificate of authority in this State. Forms required for the
3 filing of the annual report shall be mailed by the Secretary of
4 State to the domestic or foreign limited liability company at its
5 registered office for the first annual report, and then to its
6 principal office for subsequent annual reports, by the fifteenth
7 day of the fourth month following the close of the limited
8 liability company's fiscal year.~~

9 (d) If an annual report does not contain the information
10 required by this section, the Secretary of State shall promptly
11 notify the reporting domestic or foreign limited liability
12 company in writing and return the report to it for correction.
13 If the report is corrected to contain the information required by
14 this section and delivered to the Secretary of State within 30
15 days after the effective date of notice, it is deemed to be
16 timely filed.

17 (e) Amendments to any previously filed annual report may be
18 filed with the Secretary of State at any time for the purpose of
19 correcting, updating, or augmenting the information contained in
20 the annual report."

21 Section 22. G.S. 57C-3-25(a) reads as rewritten:

22 "(a) Any person dealing with a limited liability company or a
23 foreign limited liability company may rely conclusively upon its
24 most recent annual report and any amendments ~~thereto filed with~~
25 to it on file with the Secretary of State ~~pursuant to G.S.~~
26 ~~57C-2-23~~ as to the identity of its managers, except to the extent
27 the person has actual knowledge that a person identified therein
28 as a manager is not a manager."

29 Section 23. G.S. 105-259 reads as rewritten:

30 "§ 105-259. Secrecy required of officials; penalty for
31 violation.

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

34 (1) Employee or officer. -- The term includes a former
35 employee, a former officer, and a current or former
36 member of a State board or commission.

37 (2) Tax information. -- Any information from any source
38 concerning the liability of a taxpayer for a tax,
39 as defined in G.S. 105-228.90. The term includes
40 the following:

41 a. Information contained on a tax return, a tax
42 report, or an application for a license for
43 which a tax is imposed.

- 1 b. Information obtained through an audit of a
2 taxpayer or by correspondence with a taxpayer.
3 c. Information on whether a taxpayer has filed a
4 tax return or a tax report.
5 d. A list or other compilation of the names,
6 addresses, social security numbers, or similar
7 information concerning taxpayers.
8 The term does not include (i) statistics classified
9 so that information about specific taxpayers cannot
10 be ~~identified or (ii) identified~~, (ii) an annual
11 report required to be filed under G.S. 55-16-22 or
12 (iii) information submitted to the Business License
13 Information Office of the Department of Secretary
14 of State on a master application form for various
15 business licenses.
- 16 (b) Disclosure Prohibited. -- An officer, an employee, or an
17 agent of the State who has access to tax information in the
18 course of service to or employment by the State may not disclose
19 the information to any other person unless the disclosure is made
20 for one of the following purposes:
- 21 (1) To comply with a court order or a law.
22 (2) Review by the Attorney General or a representative
23 of the Attorney General.
24 (3) Review by a tax official of another state or the
25 Internal Revenue Commissioner of the United States
26 to aid the state or the Commissioner in collecting
27 a tax imposed by this State, the other state, or
28 the United States if the laws of the other state or
29 the United States allow the state or the United
30 States to provide similar tax information to a
31 representative of this State.
32 (4) To provide a governmental agency or an officer of
33 an organized association of taxpayers with a list
34 of taxpayers who have paid a privilege license tax
35 under Article 2 of this Chapter.
36 (5) To furnish to the chair of a board of county
37 commissioners information on the county sales and
38 use tax.
39 (6) To sort, process, or deliver tax information on
40 behalf of the Department of Revenue.
41 (6a) To furnish the chair of a board of county
42 commissioners a list of claimants that have
43 received a refund of the county sales or use tax to
44 the extent authorized in G.S. 105- 164.14(f).

- 1 (7) To exchange information with the Division of Motor
2 Vehicles of the Department of Transportation when
3 the information is needed to fulfill a duty imposed
4 on the Department of Revenue or the Division of
5 Motor Vehicles.
- 6 (8) To furnish to the Department of State Treasurer,
7 upon request, the name, address, and account and
8 identification numbers of a taxpayer who may be
9 entitled to property held in the Escheat Fund.
- 10 (9) To furnish to the Employment Security Commission
11 the name, address, and account and identification
12 numbers of a taxpayer when the information is
13 requested by the Commission in order to fulfill a
14 duty imposed under Article 2 of Chapter 96 of the
15 General Statutes.
- 16 (10) Review by the State Auditor to the extent
17 authorized in G.S. 147-64.7.
- 18 (11) To give a spouse who elects to file a joint tax
19 return a copy of the return or information
20 contained on the return.
- 21 (11a) To provide a copy of a return to the taxpayer
22 who filed the return.
- 23 (11b) In the case of a return filed by a
24 corporation, a partnership, a trust, or an
25 estate, to provide a copy of the return or
26 information on the return to a person who has
27 a material interest in the return if, under
28 the circumstances, section 6103(e)(1) of the
29 Code would require disclosure to that person
30 of any corresponding federal return or
31 information.
- 32 (11c) In the case of a return of an individual who
33 is legally incompetent or deceased, to provide
34 a copy of the return to the legal
35 representative of the estate of the
36 incompetent individual or decedent.
- 37 (12) To contract with a financial institution for the
38 receipt of withheld income tax payments under G.S.
39 105-163.6 or for the transmittal of payments by
40 electronic funds transfer.
- 41 (13) To furnish the Fiscal Research Division of the
42 General Assembly, upon request, a sample, suitable
43 in character, composition, and size for statistical
44 analyses, of tax returns or other tax information

- 1 from which taxpayers' names and identification
2 numbers have been removed.
- 3 (14) To exchange information concerning a tax imposed by
4 Subchapter V of this Chapter with the Standards
5 Division of the Department of Agriculture when the
6 information is needed to administer the Gasoline
7 and Oil Inspection Act, Article 3 of Chapter 119 of
8 the General Statutes.
- 9 (15) To exchange information concerning a tax imposed by
10 Articles 2A, 2B, 2C, or 2D of this Chapter with one
11 of the following agencies when the information is
12 needed to fulfill a duty imposed on the agency:
- 13 a. The North Carolina Alcoholic Beverage Control
14 Commission.
- 15 b. The Division of Alcohol Law Enforcement of the
16 Department of Crime Control and Public Safety.
- 17 c. The Bureau of Alcohol, Tobacco, and Firearms
18 of the United States Treasury Department.
- 19 (16) To furnish to the Department of Secretary of State
20 the name, address, tax year end, and account and
21 identification numbers of a corporation liable for
22 corporate income or franchise taxes or of a limited
23 liability company liable for a corporate or a
24 partnership tax return to enable the Secretary of
25 State to notify the corporation or the limited
26 liability company of the annual report filing
27 requirement or that its articles of incorporation
28 or articles of organization or its certificate of
29 authority has been suspended.
- 30 (17) To inform the Business License Information Office
31 of the Department of Secretary of State of the
32 status of an application for a license for which a
33 tax is imposed and of any information needed to
34 process the application.
- 35 (18) To furnish to the Office of the State Controller
36 the name, address, and account and identification
37 numbers of a taxpayer upon request to enable the
38 State Controller to verify statewide vendor files
39 or track debtors of the State.
- 40 (19) To furnish to the North Carolina Industrial
41 Commission information concerning workers'
42 compensation reported to the Secretary under G.S.
43 105-163.7.

1 (c) Punishment. -- A person who violates this section is
2 guilty of a Class 1 misdemeanor. If the person committing the
3 violation is an officer or employee, that person shall be
4 dismissed from public office or public employment and may not
5 hold any public office or public employment in this State for
6 five years after the violation."

7 Section 24. G.S. 25-9-403(5) reads as rewritten:

8 "(5) The uniform fee for filing and indexing and for stamping
9 a copy furnished by the secured party to show the date and place
10 of filing for an original financing statement or for a
11 continuation statement is ~~eight dollars (\$8.00)~~, fifteen dollars
12 (15.00)."

13 Section 25. G.S. 25-9-405 reads as rewritten:

14 "§ 25-9-405. Assignment of security interest; duties of filing
15 officer; fees.

16 (1) A financing statement may disclose an assignment of a
17 security interest in the collateral described in the financing
18 statement by indication in the financing statement of the name
19 and address of the assignee or by an assignment itself or a copy
20 thereof on the face or back of the statement. On presentation to
21 the filing officer of such a financing statement the filing
22 officer shall mark the same as provided in G.S. 25-9-403(4). The
23 uniform fee for filing, indexing, and furnishing filing data for
24 a financing statement so indicating an assignment is ~~eight~~
25 ~~dollars (\$8.00)~~, fifteen dollars (\$15.00).

26 (2) A secured party may assign of record all or part of his
27 rights under a financing statement by the filing in the place
28 where the original financing statement was filed of a separate
29 written statement of assignment signed by the secured party of
30 record and setting forth the name of the secured party of record
31 and the debtor, the file number and also the most current file
32 number if it has been continued and the date of filing of the
33 financing statement and the name and address of the assignee and
34 containing a description of the collateral assigned. A copy of
35 the assignment is sufficient as a separate statement if it
36 complies with the preceding sentence. On presentation to the
37 filing officer of such a separate statement, the filing officer
38 shall mark such separate statement with the date and hour of the
39 filing. He shall note the assignment on the Uniform Commercial
40 Code index of the financing statement, and in the case of a
41 fixture filing, or a filing covering timber to be cut, or
42 covering minerals or the like (including oil and gas) or accounts
43 subject to subsection (5) of G.S. 25-9-103, he shall index in the
44 real estate index the assignment under the name of the assignor

1 as grantor and, to the extent that the law of this State provides
2 for indexing the assignment of a mortgage under the name of the
3 assignee, he shall index the assignment of the financing
4 statement under the name of the assignee. The uniform fee for
5 filing, indexing, and furnishing filing data about such a
6 separate statement of assignment is ~~eight dollars (\$8.00)~~
7 fifteen dollars (\$15.00). Notwithstanding the provisions of this
8 subsection, an assignment of record of a security interest in a
9 fixture contained in a mortgage effective as a fixture filing
10 (subsection (6) of G.S. 25-9-402) may be made only by an
11 assignment of the mortgage in the manner provided by the law of
12 the State other than this Chapter.

13 (3) After the disclosure or filing of an assignment under this
14 section, the assignee is the secured party of record.

15 Section 26. G.S. 25-9-406 reads as rewritten:

16 "**§ 25-9-406. Release of collateral; duties of filing officer;
17 fees.**

18 A secured party of record may, by his signed statement, release
19 all or a part of any collateral described in a filed financing
20 statement. The statement of release is sufficient if it contains
21 a description of the collateral being released, the name and
22 address of the debtor, the name and address of the secured party,
23 and the file number of the financing statement. A statement of
24 release signed by a person other than the secured party of record
25 must be accompanied by a separate written statement of assignment
26 signed by the secured party of record and complying with
27 subsection (2) of G.S. 25-9-405, including payment of the
28 required fee. Upon presentation of such a statement of release to
29 the filing officer he shall mark the statement with the hour and
30 date of filing and shall note the same upon the margin of the
31 index of the filing of the financing statement. The uniform fee
32 for filing and noting such a statement of release is ~~eight
33 dollars (\$8.00)~~ fifteen dollars (\$15.00)."

34 Section 27. G.S. 25-9-407 reads as rewritten:

35 "**§ 25-9-407. Information from filing officer.**

36 (1) If the person filing any financing statement, termination
37 statement, statement of assignment or statement of release
38 furnishes the filing officer a copy thereof, the filing officer
39 shall upon request note upon the copy the file number and date
40 and hour of the filing of the original and deliver or send the
41 copy to such person.

42 (2) Upon request of any person, the filing officer shall issue
43 his certificate for which he shall not be liable showing whether
44 there is on file, on the date and hour stated therein, any

1 presently effective financing statement naming a particular
2 debtor and any statement of assignment thereof and if there is,
3 giving the date and hour of filing of each such statement and the
4 names and addresses of each secured party therein. The uniform
5 fee for such a certificate shall be ~~eight dollars (\$8.00)~~
6 fifteen dollars (\$15.00). Where the Uniform Commercial Code
7 index has been automated, the filing officer shall issue a
8 computer printout of the index entries for a particular debtor
9 for a fee of ~~eight dollars (\$8.00)~~ fifteen dollars (\$15.00).
10 Upon request the filing officer shall furnish a copy of any filed
11 financing statement or statement of assignment for a uniform fee
12 of one dollar (\$1.00) per page.

13 " Section 28. Sections 1 through 4, 12 through 14, 23,
14 and this section of this act are effective when the act becomes
15 law. Sections 5 and 6 of this act become effective July 1, 1997.
16 G.S. 55-1-22(a)(23), as amended by Section 7 of this act, and
17 sections 15 through 22 become effective January 1, 1998, and
18 apply to tax years ending on or after December 31, 1997, in the
19 case of corporations required to file annual reports with the
20 Secretary of Revenue and to fiscal years ending on or after
21 December 31, 1997, in the case of corporations required to file
22 annual reports with the Secretary of State. The remaining
23 changes made by Section 7 of this act become effective July 1,
24 1997. Sections 8 and 9 become effective July 1, 1997. Sections
25 10 and 11 of this act become effective January 1, 1998, and apply
26 to annual reports filed for tax years ending on or after December
27 31, 1997. Sections 24 through 27 of this act become effective
28 July 1 1997.

29 Annual reports delivered to either the Secretary of
30 State or the Secretary of Revenue after December 31, 1997, but
31 before January 1999, shall nevertheless be deemed filed with the
32 correct State agency. The Secretary of State shall notify the
33 Secretary of Revenue of reports erroneously filed with the
34 Secretary of State, and the Secretary of Revenue shall notify the
35 Secretary of State of reports erroneously filed with the
36 Secretary of Revenue.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 727 (Proposed Senate Finance Committee Substitute)

SHORT TITLE: Fees to Implement State Budget

SPONSOR(S):

FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	(\$Millions)				
	<u>FY 1997-98</u>	<u>FY 1998-99</u>	<u>FY 1999-00</u>	<u>FY 2000-01</u>	<u>FY 2001-02</u>
REVENUES					
Insurance Regulatory Fund	18.12				
Utilities Special Fund	7.83				
General Fund					
Court Fees	15.10	15.10	15.10	15.10	15.10
Secretary of State Fees	<u>2.14</u>	<u>3.07</u>	<u>3.07</u>	<u>3.07</u>	<u>3.07</u>
TOTAL Gen. Fund	17.24	18.17	18.17	18.17	18.17
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Insurance, Department of the Secretary of State N. C. Utilities Commission, N. C. Judicial Department					
EFFECTIVE DATE: Sections 1 through 4 (insurance regulatory surcharge) are effective upon ratification. Sections 5 (public utility regulatory fee) and 6 (criminal court costs) are effective July 1, 1997. The portion of section 7 that amends the corporation annual report in G. S. 55-1-22(a)(23) is effective January 1, 1998 and applies to corporations whose fiscal years end on or after December 31, 1997. The remainder of the fees in section 7 are effective July 1, 1997. Sections 8 (Nonprofit Corporations) and 9 (Limited Liability Companies) are effective July 1, 1997. Sections 10 and 11 (corporate annual reports) are effective January 1, 1998. Sections 12 and 13 (Uniform Commercial Code) are effective July 1, 1997.					

BILL SUMMARY: : This bill establishes the annual tax rate for the insurance regulatory surcharge and the public utility regulatory fee. The bill increases court fees in criminal cases by \$15. The bill increases several fees paid by corporations to the Secretary of State.

ASSUMPTIONS AND METHODOLOGY:

Insurance Regulatory Fund

Section 1 of the bill sets the insurance regulatory charge at 8.75% of the gross premiums tax and is effective for the 1997 calendar year. (This is an increase from the 7.25% rate in calendar year 1996.) The revenue from this charge is used to reimburse the General Fund for money appropriated to State agencies to pay the expenses incurred in regulating the insurance industry, in certifying statewide data processors for medical data collection and purchasing reports of patient data from statewide data processors.

The insurance regulatory charge will earn \$18.12 million in FY 1997-98 and is calculated as follows:

Estimated Gross Premiums Tax	\$207 million
Insurance Regulatory Surcharge	<u>X .0875</u>
	\$18.12 million

Even with this rate increase, the proposed insurance regulatory charge rate of 8.75% is not sufficient to fund the change enacted by the General Assembly in 1995 relating to fees charged insurance companies for audits conducted by the Department of Insurance. Prior to July 1, 1995, financial examination audits conducted by the Department were billed directly to the insurance company being audited. The Department of Insurance is required by state law to do a financial examination on each domestic insurance company every three years. Billings for these audits were approximately \$4.5 million in FY 1994-95. The General Assembly felt that a more equitable distribution of these audit costs would be to recoup them through the insurance regulatory charge rather than billing each insurance company for the audit conducted by the Department. In this manner the insurance industry still covers the cost of the audits, but no insurance company is charged with a sizable audit expense once every three years. Because the \$4.5 million is now covered by the insurance regulatory charge and not billed directly to the individual insurance companies, the regulatory charge should be increased to 9.10% beginning in FY 1998-99. (Fund reserves can be used in FY 1997-98 to cover the deficit.) If audits were still billed directly to the insurance companies and not covered by the regulatory charge, the current rate of 7.25% would be adequate to sustain the Insurance Regulatory Fund.

Utilities Commission and Public Staff Fund

Section 5 of the bill reduces the utilities regulatory fee from .10% to 0.09% of each public utilities' North Carolina jurisdictional revenues earned during each quarter that begins on or after July 1, 1997. The revenue generated from this fee supports the operations of the North Carolina Utilities Commission and Public Staff.

Per G.S. 62-302(b)(2), the percentage rate established by the General Assembly and assessed by the Commission "may not exceed the amount necessary to generate funds sufficient to defray the estimated cost of the operations of the Commission and Public Staff for the upcoming fiscal year,

including a reasonable margin for a reserve fund.” Combined operations of the Commission and the Public Staff in FY 1997-98 will require expenditures of not less than \$8,791,854. Revenues generated by the utilities regulatory fee will amount to \$7,830,000. The balance will be derived from other revenues generated by Commission fees and charges, or from the Accumulated Fee Margin Reserve Account.

The Utilities Commission indicated that the status of the Accumulated Fee Margin Reserve is as follows:

Balance as of 6/30/97	\$ 9,636,995
Add: Estimated Collections and Interest for FY 1997-98	\$ 8,968,000
Total Funds Available	\$18,604,995
Less: Estimated FY 1997-98 Expenditures Reimbursable from Fees	\$(9,000,000)
Estimated Margin Reserve for Period Ending 6/30/98	\$ 9,604,995

Based on the projected Fee Margin Reserve, the fee of 0.09% should be sufficient to cover the operations of the Utilities Commission and Public Staff.

General Court of Justice Fees

Section 6 of the bill raises the General Court of Justice fees on all criminal cases in the superior or district court where the defendant is convicted, or enters a plea of guilty or nolo contendere, or when costs are assessed against the prosecuting witness. The fee in the Superior Court Criminal Division is raised from \$53 to \$68 and the fee in the District Court Criminal Division is raised from \$46 to \$61. Each dollar increase in these Criminal Division fees raises \$1,007,521 in revenue. The \$15 increase will produce \$15.1 million in revenue that will be deposited into the General Fund. These fees were increased \$5 in 1996.

Secretary of State Fees

Section 7 - General Business Corporations (G.S. 55-1-22)

The filing fee for articles of incorporation with the Secretary of State is increased from \$100.00 to \$125.00. The expected revenue from the \$25.00 increase is \$460,750 annually.

In 1996, there were 17,145 corporations subject to this fee authorized under G.S. 55-1-22(1).

The Secretary of State projects 18,430 corporations could be subject to this fee in 1997.

The filing fee for an application of reinstatement of the articles of incorporation for failure to file the annual report is increased from \$25.00 to \$100.00. This filing fee applies to general business corporations, non-profit corporations, and limited liability corporations authorized under General Statutes 55-1-22(16), 55A-1-22(17), and 55C-1-22(16a) respectively. The expected revenue, from the \$75.00 increase in this filing fee, is \$243,000 annually. In 1996, there were 3,240 corporations subject to this fee. The Office did not provide a projection for 1997 because it is

not known how many corporations will be deterred by the increase in the fee and pay on time. It is also expected that fewer corporations will be late because the annual report will be filed with the annual income tax returns.

The filing fee for a certificate of authority of an out-of-state corporation is increase from \$200.00 to \$250.00. The expected revenue, from the \$50.00 increase in this filing fee, is \$235,600 annually. In 1996, 3,816 out-of-state corporations were subject to this fee authorized under G.S. 55-1-22(19). The Secretary of State projects 4,712 corporations could be subject to this fee in 1997.

The filing fee for a corporation's annual report is increased from \$10.00 to \$20.00. The expected revenue, from the \$10.00 increase in this fee, is \$1,250,000 annually. In 1996, there were 125,000 corporations subject to this fee authorized under G.S. 55-1-22(23). The Office did not provide a 1997 projection for this fee. The fee is due on the anniversary date of the corporation and the Office of Secretary of State expects, approximately, 25% of the corporations will file in the remaining three months of this fiscal year.

Section 8 - Nonprofit Corporations (G.S. 55A-1-22)

The filing fee for articles of incorporation of a non-profit corporation with the Secretary of State is increased from \$50.00 to \$60.00. The annual revenue expected from the \$10.00 increase is \$25,030 annually. In 1996, there were 2,430 non-profit corporations subject to this fee authorized under G.S. 55A-1-22(1). The Secretary of State projects 2,503 corporations could be subject to this fee in 1997.

The filing fee for a certificate of authority of an out-of-state non-profit corporation is increase from \$100.00 to \$125.00. The expected revenue, from the \$25.00 increase in this filing fee, is \$2,300 annually. In 1996, 84 out-of-state non-profit corporations were subject to this fee authorized under G.S. 55A-1-22(20). The Secretary of State projects 92 corporations subject to this fee in 1997.

Section 9 - Limited Liability Corporations (G.S. 55C-1-22)

The filing fee for articles of organization of a limited liability corporation with the Secretary of State is increased from \$100.00 to \$125.00. The annual revenue expected from the \$25.00 increase is \$113,400 annually. In 1996, there were 4,200 limited liability corporations subject to this fee authorized under G.S. 55C-1-22(1). The Secretary of State projects 4,536 corporation could be subject to this fee in 1997.

The filing fee for a certificate of authority of an out-of-state limited liability corporation is increase from \$200.00 to \$250.00. The expected revenue, from the \$50.00 increase in this filing fee, is \$40,400 annually. In 1996, 330 out-of-state limited liability corporations were subject to this fee authorized under G.S. 55C-1-22(19). The Secretary of State projects 808 corporations could be subject to this fee in 1997.

Sections 12 and 13 - Uniform Commercial Code fee (G.S. 25-9-405)

The uniform filing fee for filing, indexing, and furnishing financing statements is increased from \$8.00 to \$15.00. The expected revenue from the \$7.00 increase in this filing fee is \$706,472 annually. In 1996, 87,204 financing statements were subject to this fee authorized under G.S. 25-9-405. The Secretary of State projects 88,309 corporations could be subject to this fee in 1997.

FISCAL RESEARCH DIVISION

733-4910

PREPARED BY: Richard Bostic and Warren Plonk

APPROVED BY: Tom Covington

DATE: April 14, 1997

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____

DATE _____

S. B. No. 727 (PCS)

Amendment No. _____

(to be filled in by
Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) _____

Sen.) _____

1 moves to amend the bill on page 1, line 2-54

2 () WHICH CHANGES THE TITLE

3 by rewriting those lines to read:

4 "AN ACT TO";

5
6
7 and on page 11, line 44, through page 20,
8 line 6, by deleting Sections 12 through
9 23 of the bill,

10
11 and on page 20, line 7 through page 22, line 13,
12 by renumbering the succeeding subdivisions accordingly;

13
14 and on page 22, line 13, by rewriting that line to read:
15 "Section 16. Sections 1 through 4 of this act";

16 and on page 22, line ¹⁶17, by deleting
17 "and sections 15 through 22";

18 and on page 1, lines 27-36, by rewriting those
19 lines to read: "31, 1997."

SIGNED

J. Ken
David Hyley Clum

ADOPTED _____

FAILED _____

TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

D

SENATE BILL 727

Proposed Senate Finance Committee Substitute S727-PCS2691

Short Title: Fees to Implement State Budget.

(Public)

Sponsors:

Referred to:

April 7, 1997

1

A BILL TO BE ENTITLED

2

AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE COMMITTEE

3

ON APPROPRIATIONS BY ESTABLISHING THE PERCENTAGE RATES

4

FOR THE INSURANCE REGULATORY CHARGE AND THE PUBLIC

5

UTILITY REGULATORY FEE, BY CLARIFYING THE BASIS OF THE

6

PREMIUM TAX LIABILITY ON WHICH THE INSURANCE REGULATORY

7

CHARGE IS LEVIED, BY INCREASING COURT FEES IN CRIMINAL CASES,

8

AND BY INCREASING THE FEES FOR FILING CERTAIN DOCUMENTS.

9

The General Assembly of North Carolina enacts:

10

Section 1. The percentage rate to be used in calculating the insurance

11

regulatory charge under G.S. 58-6-25 is eight and seventy-five hundredths percent

12

(8.75%) for the 1997 calendar year.

13

Section 2. G.S. 58-6-25(a) reads as rewritten:

14

"(a) Charge Levied. -- There is levied on each insurance company an annual

15

charge for the purposes stated in subsection (d) of this section. As used in this

16

section, the term 'insurance company' means a company that pays the gross

17

premiums tax levied in G.S. 105-228.5 and G.S. 105-228.8, except ~~that the term does~~

18

~~not include a hospital, medical, or dental service corporation regulated under Articles~~

19

~~65 and 66 of this Chapter. The term "insurance company" does not include a~~

20

~~company regulated under Article 67 of this Chapter. a service corporation subject to~~

21

Article 65 of this Chapter. A health maintenance organization subject to Article 67

22

of this Chapter is not subject to those taxes and is therefore not subject to the charge

23

levied in this section. The charge levied in this section is in addition to all other fees

1 and taxes. The charge shall be at a percentage rate of the company's premium tax
2 liability for the taxable year. In determining an insurance company's premium tax
3 liability for a taxable year, additional taxes imposed by ~~G.S. 105-228.8~~ and G.S. 105-
4 228.8, the additional local fire and lightning tax imposed by ~~G.S. 105-228.5(d)(4)~~ G.S.
5 105-228.5(d)(4), and any tax credits for guaranty or solvency fund assessments under
6 G.S. 105-228.5A or G.S. 97-133(a) shall be disregarded."

7 Section 3. G.S. 97-133(a)(2) reads as rewritten:

8 "(2) Assess each member of the Association as follows:

- 9 a. Each individual member self-insurer shall be annually
10 assessed an amount equal to one-quarter of one percent
11 (0.25%) of the annual standard premium that would have
12 been paid by that member self-insurer for workers'
13 compensation insurance during the prior calendar year; and
14 payment to the Association shall be made no later than
15 September 15 following the close of that calendar year.
16 Where any such assessment is paid based in whole or in part
17 upon estimates of annual standard premium for the prior
18 calendar year, there shall be made in the next year's
19 assessment an adjustment of the assessment of such prior
20 year based on actual audited annual standard premium.
21 Each group member self-insurer shall be annually assessed
22 an amount equal to one-quarter of one percent (0.25%) of
23 the annual premium collected by the group member self-
24 insurer during the prior calendar year; and payment to the
25 Association shall be made no later than September 15
26 following the close of that calendar year. Regardless of the
27 size of the Fund, during its first 12 months of membership,
28 no member self-insurer may discount or reduce this one-
29 quarter of one percent (0.25%) assessment. Assessments
30 paid by members pursuant to this subdivision shall be
31 credited toward the tax paid by self-insurers under ~~G.S.~~
32 ~~105-228.5~~ and ~~G.S. 97-100~~. Article 8B of Chapter 105 of the
33 General Statutes.
34 b. Each member self-insurer shall be notified of the assessment
35 no later than 30 days before it is due.
36 c. If a self-insurer is a member of the Association for less than
37 a full calendar year, the annual standard premium shall be
38 adjusted by that portion of the year the self-insurer is not a
39 member of the Association.
40 d. If application of the contribution rates referenced in sub-
41 subdivisions a. and b. of this subdivision would produce an
42 amount in excess of the five million dollar (\$5,000,000)
43 limits of the fund, an equitable proration may be made;
44 provided that every self-insurer that becomes a member of

1 the Association shall pay an initial assessment, in an amount
2 established by the Board, regardless of the size of the fund
3 at the time the member joins the Association."

4 Section 4. G.S. 97-133(a)(4) reads as rewritten:

5 "(4) Be obligated to the extent of covered claims occurring prior to the
6 determination of the member self-insurer's insolvency, or occurring
7 after such determination but prior to the obtaining by the self-
8 insurer of workers' compensation insurance as otherwise required
9 under this Chapter. The Association shall pay claims against a
10 self-insurer that are not or have not been paid as a result of a
11 determination of insolvency or the institution of bankruptcy or
12 receivership proceedings that occurred prior to the effective date
13 of this Article; ~~provided that any assessments made to pay such~~
14 ~~claims may be credited towards the tax paid by the self-insurers~~
15 ~~under G.S. 97-100, Article."~~

16 Section 5. The percentage rate to be used in calculating the public utility
17 regulatory fee under G.S. 62-302(b)(2) is nine hundredths percent (0.09%) of each
18 public utility's North Carolina jurisdictional revenues earned during each quarter that
19 begins on or after July 1, 1997.

20 Section 6. G.S. 7A-304 reads as rewritten:

21 "**§ 7A-304. Costs in criminal actions.**

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

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

35 (2) For the use of the courtroom and related judicial facilities, the sum
36 of six dollars (\$6.00) in the district court, including cases before a
37 magistrate, and the sum of twenty-four dollars (\$24.00) in superior
38 court, to be remitted to the county in which the judgment is
39 rendered. In all cases where the judgment is rendered in facilities
40 provided by a municipality, the facilities fee shall be paid to the
41 municipality. Funds derived from the facilities fees shall be used
42 exclusively by the county or municipality for providing,
43 maintaining, and constructing adequate courtroom and related
44 judicial facilities, including: adequate space and furniture for

1 judges, district attorneys, public defenders, magistrates, juries, and
2 other court related personnel; office space, furniture and vaults for
3 the clerk; jail and juvenile detention facilities; free parking for
4 jurors; and a law library (including books) if one has heretofore
5 been established or if the governing body hereafter decides to
6 establish one. In the event the funds derived from the facilities
7 fees exceed what is needed for these purposes, the county or
8 municipality may, with the approval of the Administrative Officer
9 of the Courts as to the amount, use any or all of the excess to
10 retire outstanding indebtedness incurred in the construction of the
11 facilities, or to reimburse the county or municipality for funds
12 expended in constructing or renovating the facilities (without
13 incurring any indebtedness) within a period of two years before or
14 after the date a district court is established in such county, or to
15 supplement the operations of the General Court of Justice in the
16 county.

17 (3) For the retirement and insurance benefits of both State and local
18 government law-enforcement officers, the sum of seven dollars and
19 twenty-five cents (\$7.25), to be remitted to the State Treasurer.
20 Fifty cents (50¢) of this sum shall be administered as is provided in
21 Article 12C of Chapter 143 of the General Statutes. Five dollars
22 and seventy-five cents (\$5.75) of this sum shall be administered as
23 is provided in Article 12E of Chapter 143 of the General Statutes,
24 with one dollar and twenty-five cents (\$1.25) being administered in
25 accordance with the provisions of G.S. 143-166.50(e). One dollar
26 (\$1.00) of this sum shall be administered as is provided in Article
27 12F of Chapter 143 of the General Statutes.

28 (3a) For the supplemental pension benefits of sheriffs, the sum of
29 seventy-five cents (75¢) to be remitted to the Department of Justice
30 and administered under the provisions of Article 12G of Chapter
31 143 of the General Statutes.

32 (4) For support of the General Court of Justice, the sum of ~~forty-six~~
33 ~~dollars (\$46.00)~~ sixty-one dollars (\$61.00) in the district court,
34 including cases before a magistrate, and the sum of ~~fifty-three~~
35 ~~dollars (\$53.00)~~ sixty-eight dollars (\$68.00) in the superior court, to
36 be remitted to the State Treasurer.

37 (5) For using pretrial release services, the district or superior court
38 judge shall, upon conviction, impose a fee of fifteen dollars
39 (\$15.00) to be remitted to the county providing the pretrial release
40 services. This cost shall be assessed and collected only if the
41 defendant had been accepted and released to the supervision of the
42 agency providing the pretrial release services.

43 (6) For support of the General Court of Justice, for the issuance by the
44 clerk of a report to the Division of Motor Vehicles pursuant to

1 G.S. 20-24.2, the sum of fifty dollars (\$50.00), to be remitted to the
2 State Treasurer. Upon a showing to the court that the defendant
3 failed to appear because of an error or omission of a judicial
4 official, a prosecutor, or a law-enforcement officer, the court shall
5 waive this fee.

6 (a1) The costs assessed pursuant to subsection (a) may also be collected by clerks
7 of court for charges in which a party elects to pay the court's costs to satisfy the
8 requirements of G.S. 20-7.2. Costs collected pursuant to this subsection shall be
9 allocated in the same manner as other costs collected pursuant to this section. ~~If a~~ A
10 party who elects to pay the costs of court to satisfy the requirements of G.S. 20-7.2
11 and is subsequently adjudged guilty of the same charge by the ~~court, he shall~~ is not be
12 required to pay the costs of court again for that charge, but ~~he~~ is subject to any other
13 orders of the court, including an order to pay a fine.

14 (b) On appeal, costs are cumulative, and costs assessed before a magistrate shall
15 be added to costs assessed in the district court, and costs assessed in the district court
16 shall be added to costs assessed in the superior court, except that the fee for the Law-
17 Enforcement Officers' Benefit and Retirement Fund and the Sheriffs' Supplemental
18 Pension Fund and the fee for pretrial release services shall be assessed only once in
19 each case. No superior court costs shall be assessed against a defendant who gives
20 notice of appeal from the district court but withdraws it prior to the expiration of the
21 10-day period for entering notice of appeal. When a case is reversed on appeal, the
22 defendant shall not be liable for costs, and the State shall be liable for the cost of
23 printing records and briefs in the Appellate Division.

24 (c) Witness fees, expenses for blood tests and comparisons incurred by G.S. 8-
25 50.1(a), jail fees and cost of necessary trial transcripts shall be assessed as provided by
26 law in addition to other costs set out in this section. Nothing in this section shall
27 limit the power or discretion of the judge in imposing fines or forfeitures or ordering
28 restitution.

29 (d) In any criminal case in which the liability for costs, fines, restitution, or any
30 other lawful charge has been finally determined, the clerk of superior court shall,
31 unless otherwise ordered by the presiding judge, disburse such funds when paid in
32 accordance with the following priorities:

- 33 (1) Costs due the county;
- 34 (2) Costs due the city;
- 35 (3) Fines to the county school fund;
- 36 (4) Sums in restitution prorated among the persons entitled thereto;
- 37 (5) Costs due the State;
- 38 (6) Attorney's fees.

39 Sums in restitution received by the clerk of superior court shall be disbursed when:

- 40 (1) Complete restitution has been received; or
- 41 (2) When, in the opinion of the clerk, additional payments in
42 restriction will not be collected; or
- 43 (3) Upon the request of the person or persons entitled thereto; and
- 44 (4) In any event, at least once each calendar year.

1 (e) Unless otherwise provided by law, the costs assessed pursuant to this section
 2 for criminal actions disposed of in the district court are also applicable to infractions
 3 disposed of in the district court. The costs assessed in superior court for criminal
 4 actions appealed from district court to superior court are also applicable to
 5 infractions appealed to superior court. If an infraction is disposed of in the superior
 6 court pursuant to G.S. 7A-271(d), costs applicable to the original charge are
 7 applicable to the infraction."

8 Section 7. G.S. 55-1-22 reads as rewritten:

9 "§ 55-1-22. Filing, service, and copying fees.

10 (a) The Secretary of State shall collect the following fees when the documents
 11 described in this subsection are delivered to ~~him~~ the Secretary for filing:

Document	Fee
(1) Articles of incorporation	\$100.00
	<u>\$125.00</u>
(2) Application for reserved name	10.00
(3) Notice of transfer of reserved name	10.00
(4) Application for registered name	10.00
(5) Application for renewal of registered name	10.00
(6) Corporation's statement of change of registered agent or registered office or both	5.00
(7) Agent's statement of change of registered office for each affected corporation	5.00
(8) Agent's statement of resignation	No fee
(9) Designation of registered agent or registered office or both	5.00
(10) Amendment of articles of incorporation	50.00
(11) Restated articles of incorporation with amendment of articles	10.00 50.00
(12) Articles of merger or share exchange	50.00
(13) Articles of dissolution	30.00
(14) Articles of revocation of dissolution	10.00
(15) Certificate of administrative dissolution	No fee
(16) Application for reinstatement following administrative dissolution	25.00 <u>100.00</u>
(17) Certificate of reinstatement	No fee
(18) Certificate of judicial dissolution	No fee
(19) Application for certificate of	

1	authority	200.00
2		<u>250.00</u>
3	(20) Application for amended certificate	
4	of authority	50.00
5	(21) Application for certificate of	
6	withdrawal	10.00
7	(22) Certificate of revocation of	
8	authority to transact business	No fee
9	(23) Annual report	10.00
10		<u>20.00</u>
11	(24) Articles of correction	10.00
12	(25) Application for certificate of	
13	existence or authorization	5.00
14	(26) Any other document required or	
15	permitted to be filed by this Chapter	10.00.

16 (b) The Secretary of State shall collect a fee of ten dollars (\$10.00) each time
 17 process is served on ~~him~~ the Secretary under this Chapter. The party to a proceeding
 18 causing service of process is entitled to recover this fee as costs if ~~he~~ the party
 19 prevails in the proceeding.

20 (c) The Secretary of State shall collect the following fees for copying, comparing,
 21 and certifying a copy of any filed document relating to a domestic or foreign
 22 corporation:

- 23 (1) One dollar (\$1.00) a page for copying or comparing a copy to the
- 24 original; and
- 25 (2) Five dollars (\$5.00) for the certificate."
- 26 Section 8. G.S. 55A-1-22 reads as rewritten:

27 "**§ 55A-1-22. Filing, service, and copying fees.**

28 (a) The Secretary of State shall collect the following fees when the documents
 29 described in this subsection are delivered to the Secretary for filing:

30	Document	Fee
31	(1) Articles of incorporation	\$50.00
32		<u>\$60.00</u>
33	(2) Application for reserved name	\$10.00
34	(3) Notice of transfer of reserved name	\$10.00
35	(4) Application for registered name	\$10.00
36	(5) Application for renewal of registered	
37	name	\$10.00
38	(6) Corporation's statement of change of	
39	registered agent or registered office or	
40	both	\$ 5.00
41	(7) Agent's statement of change of registered	
42	office for each affected corporation	\$ 5.00
43	(8) Agent's statement of resignation	No fee
44	(9) Designation of registered agent or	

1		registered office or both	\$ 5.00
2	(10)	Amendment of articles of incorporation	\$25.00
3	(11)	Restated articles of incorporation without	
4		amendment of articles	\$10.00
5	(12)	Restated articles of incorporation with	
6		amendment of articles	\$25.00
7	(13)	Articles of merger	\$25.00
8	(14)	Articles of dissolution	\$15.00
9	(15)	Articles of revocation of dissolution	\$10.00
10	(16)	Certificate of administrative dissolution	No fee
11	(17)	Application for reinstatement following	
12		administrative dissolution	\$25.00
13			<u>\$100.00</u>
14	(18)	Certificate of reinstatement	No fee
15	(19)	Certificate of judicial dissolution	No fee
16	(20)	Application for certificate of authority	\$100.00
17			<u>\$125.00</u>
18	(21)	Application for amended certificate of	
19		authority	\$25.00
20	(22)	Application for certificate of withdrawal	\$10.00
21	(23)	Certificate of revocation of authority to	
22		conduct affairs	No fee
23	(24)	Corporation's Statement of Change of	
24		Principal Office	\$ 5.00
25	(24a)	Designation of Principal Office Address	\$ 5.00
26	(25)	Articles of correction	\$10.00
27	(26)	Application for certificate of existence or	
28		authorization	\$ 5.00
29	(27)	Any other document required or	
30		permitted to be filed by this Chapter	\$10.00."

31 Section 9. G.S. 57C-1-22 reads as rewritten:

32 "§ 57C-1-22. Filing, service, and copying fees.

33 (a) The Secretary of State shall collect the following fees when the documents
34 described in this subsection are delivered to the Secretary of State for filing:

35	<u>Document</u>	<u>Fee</u>
36	(1) Articles of organization	\$100.00
37		<u>\$125.00</u>
38	(2) Application for reserved name	10.00
39	(3) Notice of transfer of reserved name	10.00
40	(4) Application for registered name	10.00
41	(5) Application for renewal of registered name	10.00
42	(6) Limited liability company's statement of	
43	change of registered agent or registered	
44	office or both	5.00

1	(7)	Agent's statement of change of registered	
2		office for each affected limited	
3		liability company	5.00
4	(8)	Agent's statement of resignation	No fee
5	(9)	Designation of registered agent or	
6		registered office or both	5.00
7	(10)	Amendment of articles of organization	50.00
8	(11)	Restated articles of organization	
9		without amendment of articles	10.00
10	(12)	Restated articles of organization	
11		with amendment of articles	50.00
12	(13)	Articles of merger	50.00
13	(14)	Articles of dissolution	30.00
14	(15)	Articles of revocation of dissolution	10.00
15	(16)	Certificate of administrative dissolution	No fee
16	(16a)	<u>Application for reinstatement following</u>	
17		<u>administrative dissolution</u>	<u>100.00</u>
18	(17)	Certificate of reinstatement	No fee
19	(18)	Certificate of judicial dissolution	No fee
20	(19)	Application for certificate of authority	200.00
21			<u>250.00</u>
22	(20)	Application for amended certificate	
23		of authority	50.00
24	(21)	Application for certificate of withdrawal	10.00
25	(22)	Certificate of revocation of authority	
26		to transact business	No fee
27	(23)	Articles of correction	10.00
28	(24)	Application for certificate of existence	
29		or authorization	5.00
30	(25)	Annual report	200.00
31	(26)	Any other document required or permitted	
32		to be filed by this Chapter	10.00.

(b) The Secretary of State shall collect a fee of ten dollars (\$10.00) each time process is served on the Secretary of State under this Chapter. The party to a proceeding causing service of process is entitled to recover this fee as costs if ~~he~~ the party prevails in the proceeding.

(c) The Secretary of State shall collect the following fees for copying, comparing, and certifying a copy of any filed document relating to a domestic or foreign limited liability company:

- (1) One dollar (\$1.00) a page for copying or comparing a copy to the original; and
 - (2) Five dollars (\$5.00) for the certificate."
- Section 10. G.S. 105-228.90(a) reads as rewritten:

1 "(a) Scope. -- This Article applies to Subchapters I, V, and VIII of this Chapter
2 Chapter, to the annual report filing requirements of G.S. 55-16-22, and to inspection
3 taxes levied under Article 3 of Chapter 119 of the General Statutes."

4 Section 11. Article 9 of Chapter 105 of the General Statutes is amended
5 by adding a new section to read:

6 "**§ 105-256.1. Corporate annual report.**

7 A charge of twenty dollars (\$20.00) is imposed on a corporation that files its
8 annual report with the Secretary. The charge must be paid when the annual report is
9 filed. Amounts collected under this section shall be credited to the General Fund as
10 tax revenue. The Secretary must transmit an annual report filed with the Secretary
11 in accordance with G.S. 55-16-22 to the Secretary of State."

12 Section 12. G.S. 25-9-403(5) reads as rewritten:

13 "(5) The uniform fee for filing and indexing and for stamping a copy furnished by
14 the secured party to show the date and place of filing for an original financing
15 statement or for a continuation statement is ~~eight dollars (\$8.00).~~ fifteen dollars
16 (15.00)."

17 Section 13. G.S. 25-9-405 reads as rewritten:

18 "**§ 25-9-405. Assignment of security interest; duties of filing officer; fees.**

19 (1) A financing statement may disclose an assignment of a security interest in the
20 collateral described in the financing statement by indication in the financing
21 statement of the name and address of the assignee or by an assignment itself or a
22 copy thereof on the face or back of the statement. On presentation to the filing
23 officer of such a financing statement the filing officer shall mark the same as provided
24 in G.S. 25-9-403(4). The uniform fee for filing, indexing, and furnishing filing data
25 for a financing statement so indicating an assignment is ~~eight dollars (\$8.00).~~ fifteen
26 dollars (\$15.00).

27 (2) A secured party may assign of record all or part of his rights under a financing
28 statement by the filing in the place where the original financing statement was filed of
29 a separate written statement of assignment signed by the secured party of record and
30 setting forth the name of the secured party of record and the debtor, the file number
31 and also the most current file number if it has been continued and the date of filing
32 of the financing statement and the name and address of the assignee and containing a
33 description of the collateral assigned. A copy of the assignment is sufficient as a
34 separate statement if it complies with the preceding sentence. On presentation to the
35 filing officer of such a separate statement, the filing officer shall mark such separate
36 statement with the date and hour of the filing. He shall note the assignment on the
37 Uniform Commercial Code index of the financing statement, and in the case of a
38 fixture filing, or a filing covering timber to be cut, or covering minerals or the like
39 (including oil and gas) or accounts subject to subsection (5) of G.S. 25-9-103, he shall
40 index in the real estate index the assignment under the name of the assignor as
41 grantor and, to the extent that the law of this State provides for indexing the
42 assignment of a mortgage under the name of the assignee, he shall index the
43 assignment of the financing statement under the name of the assignee. The uniform
44 fee for filing, indexing, and furnishing filing data about such a separate statement of

1 assignment is ~~eight dollars (\$8.00)~~ fifteen dollars (\$15.00). Notwithstanding the
2 provisions of this subsection, an assignment of record of a security interest in a fixture
3 contained in a mortgage effective as a fixture filing (subsection (6) of G.S. 25-9-402)
4 may be made only by an assignment of the mortgage in the manner provided by the
5 law of the State other than this Chapter.

6 (3) After the disclosure or filing of an assignment under this section, the assignee is
7 the secured party of record."

8 Section 14. G.S. 25-9-406 reads as rewritten:

9 "**§ 25-9-406. Release of collateral; duties of filing officer; fees.**

10 A secured party of record may, by his signed statement, release all or a part of any
11 collateral described in a filed financing statement. The statement of release is
12 sufficient if it contains a description of the collateral being released, the name and
13 address of the debtor, the name and address of the secured party, and the file number
14 of the financing statement. A statement of release signed by a person other than the
15 secured party of record must be accompanied by a separate written statement of
16 assignment signed by the secured party of record and complying with subsection (2)
17 of G.S. 25-9-405, including payment of the required fee. Upon presentation of such a
18 statement of release to the filing officer he shall mark the statement with the hour
19 and date of filing and shall note the same upon the margin of the index of the filing
20 of the financing statement. The uniform fee for filing and noting such a statement of
21 release is ~~eight dollars (\$8.00)~~ fifteen dollars (\$15.00)."

22 Section 15. G.S. 25-9-407 reads as rewritten:

23 "**§ 25-9-407. Information from filing officer.**

24 (1) If the person filing any financing statement, termination statement, statement of
25 assignment or statement of release furnishes the filing officer a copy thereof, the filing
26 officer shall upon request note upon the copy the file number and date and hour of
27 the filing of the original and deliver or send the copy to such person.

28 (2) Upon request of any person, the filing officer shall issue his certificate for
29 which he shall not be liable showing whether there is on file, on the date and hour
30 stated therein, any presently effective financing statement naming a particular debtor
31 and any statement of assignment thereof and if there is, giving the date and hour of
32 filing of each such statement and the names and addresses of each secured party
33 therein. The uniform fee for such a certificate shall be ~~eight dollars (\$8.00)~~ fifteen
34 dollars (\$15.00). Where the Uniform Commercial Code index has been automated,
35 the filing officer shall issue a computer printout of the index entries for a particular
36 debtor for a fee of ~~eight dollars (\$8.00)~~ fifteen dollars (\$15.00). Upon request the
37 filing officer shall furnish a copy of any filed financing statement or statement of
38 assignment for a uniform fee of one dollar (\$1.00) per page."

39 Section 16. Sections 1 through 4 and this section of this act are effective
40 when the act becomes law. Sections 5 and 6 of this act become effective July 1, 1997.
41 G.S. 55-1-22(a)(23), as amended by Section 7 of this act, becomes effective January 1,
42 1998, and applies to tax years ending on or after December 31, 1997. The remaining
43 changes made by Section 7 of this act become effective July 1, 1997. Sections 8 and 9
44 of this act become effective July 1, 1997. Sections 10 and 11 of this act become

1 effective January 1, 1998, and apply to annual reports filed for tax years ending on or
2 after December 31, 1997. Sections 12 through 15 of this act become effective July 1,
3 1997.

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

April 17, 1997

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Elaine Marshall

SOS

Stella H. McKenney

NC DOF

Bill Hale

NC DOF

John Alford

NC DOI

Dorothy Proves

NC DOI

Alan Miles

Bailey & Dixon, LLP

Stan Williams

United HealthCare of NC

Jimmie Knight

Harry Lofgren

Robert Price

Indian Price Water Agency & Services

Brenda Allen

SOS

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

FINANCE COMMITTEE REPORT

Senator David Hoyle, Co-Chair
Senator John Kerr, Co-Chair

Monday, April 14, 1997

SENATOR HOYLE,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B.(CS #1)158 Administrative Dissolution/Annual Rept.
Draft Number: PCS 1750
Sequential Referral: None
Recommended Referral: Appropriations
Long Title Amended: No

S.B.(CS #1)317 Local Government Debt Changes
Draft Number: PCS 4562
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

S.B.(CS #1)727 Insurance Regulatory Charge
Draft Number: PCS2691
Sequential Referral: None
Recommended Referral: Appropriations
Long Title Amended: Yes

TOTAL REPORTED: 3

Committee Clerk Comment: None

SENATE FINANCE COMMITTEE

TUESDAY, APRIL 15, 1997

12 NOON - ROOM 544 LOB

The Senate Finance Committee met on April 15, 1997 with Senator Hoyle presiding. There were 23 committee members present.

S.B. 232 - Clean Water Bonds

Senator Kerr was recognized to explain S.B. 232 and he moved that a proposed committee substitute be adopted. The motion carried and Senator Kerr explained the committee substitute. At the conclusion of his presentation Senator Albertson and Senator Larry Shaw both commended Senator Kerr for introducing this bill. There were several questions from the committee members which were answered by Senator Kerr and staff.

The following speakers were recognized and spoke in support of this bill:

Linda Rhimer, Assistant Secretary with DEHNR.

Billy Ray Hall, North Carolina Rural Center

Paul Lawler, North Carolina Economic Development Association

Arthur Buck Kennedy, Professional Engineers of North Carolina and the Consulting Engineers

John Soles, Rural Development Council

Bill Holman, Conservation Council of North Carolina and the North Carolina Chapter of the Sierra Club

Ellis Hankins, Executive Director of the North Carolina League of Municipalities

Ron Aycock, North Carolina Association of County Commissioners

Senator Albertson was recognized for a motion for a "favorable" report for the committee substitute and the motion carried. Copy of bill, committee substitute and information on this bill included in the minutes.

S.B. 529 - Hope Mills Annexations

Senator Rand was recognized to explain this bill and he moved for a "favorable" report. The motion carried. Copy of bill and fiscal note included in the minutes.

S.B. 253 - Telephone Consumer Protection /AB

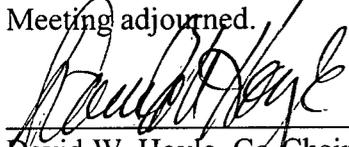
Senator Winner was recognized to explain S.B. 253. At the conclusion of Senator Winner's explanation, Senator Hartsell was recognized for a motion for a "favorable" report and the motion carried. Copy of bill and fiscal note included in the minutes.

S.B. 635 - Expand Interstate Highways

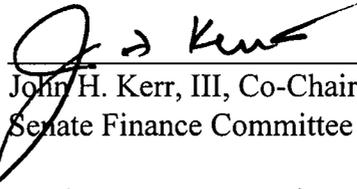
Senator Larry Shaw was recognized to explain this bill and at the beginning of his presentation, a video was shown. He then explained his bill and introduced Richard Bostic, Fiscal Staff, to comment on the fiscal note.

Dr. Larry Goode, DOT, was recognized and commented that there are other states who charge tolls. Senator Kerr commended Senator Larry Shaw for bringing this idea forward and commented that it is certainly an idea that needs to be considered in the right context. Senator Hoyle announced that this bill would not be voted on today. Copy of bill, committee substitute and fiscal note included in the minutes.

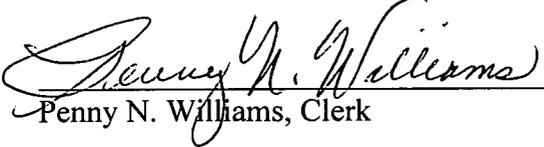
Meeting adjourned.



David W. Hoyle, Co-Chair
Senate Finance Committee



John H. Kerr, III, Co-Chair
Senate Finance Committee



Penny N. Williams, Clerk



Evelyn S. Hartsell, Clerk

NOTE:

Agenda is Attachment # 1
Visitors' Sign Up Sheet is Attachment # 2
Committee Report is Attachment # 3
(Report also includes bills from 4/17/97)

AGENDA

SENATE FINANCE COMMITTEE

TUESDAY, APRIL 15, 1997

12 Noon - Room 544

S.B. 232 - Clean Water Bonds. - Sen. Kerr

S.B. 253 - Telephone Consumer Protection 2/AB. - Sen. Winner

S.B. 529 - Hope Mills Annexations.- Sen. Rand

S.B. 635 - Expand Interstate Highways. - Sen. Larry Shaw

H.B. 488 - Increase Rabies Tag Fee/AB. - Rep. Barbee

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 232

Short Title: Clean Water Bonds.

(Public)

Sponsors: Senators Kerr; Albertson, Ballance, Ballantine, Carpenter, Conder, Cooper, Dalton, Horton, Hoyle, Jordan, Martin of Pitt, Odom, Perdue, Rand, Soles, Warren, Weinstein, and Wellons.

Referred to: Finance.

February 24, 1997

A BILL TO BE ENTITLED

1
2 AN ACT TO AUTHORIZE THE ISSUANCE OF GENERAL OBLIGATION
3 BONDS OF THE STATE, SUBJECT TO A VOTE OF THE QUALIFIED
4 VOTERS OF THE STATE, TO PROVIDE FUNDS FOR GRANTS, LOANS,
5 AND REVOLVING LOANS TO LOCAL GOVERNMENT UNITS FOR
6 WATER SUPPLY SYSTEMS, WASTEWATER COLLECTION SYSTEMS,
7 WASTEWATER TREATMENT WORKS, AND WATER CONSERVATION
8 PROJECTS.

9 The General Assembly of North Carolina enacts:

10 Section 1. Short title. This act shall be known as the "Clean Water
11 Bond Act of 1997".

12 Section 2. Purpose. It is the intent of the General Assembly by this act
13 to provide for the issuance of general obligation bonds of the State and to provide
14 that the proceeds realized from the sale of the bonds shall be allocated as follows:

15 (1) Two hundred million dollars (\$200,000,000) to provide State
16 matching funds required to receive federal wastewater or water
17 supply assistance funds and to provide additional funding for the
18 Clean Water Revolving Loan and Grant Fund established in
19 Chapter 159G of the General Statutes or to provide funding by
20 grants and loans to local government units; and

21 (2) Five hundred million dollars (\$500,000,000) to provide loans to
22 local government units to finance all or a portion of the cost of

1 construction, improvements, enlargements, extensions, and
2 reconstruction of water supply systems, wastewater collection
3 systems, wastewater treatment works, and water conservation
4 projects.

5 The funds to be derived from the sale of the Clean Water
6 Bonds authorized by this act are sufficient to meet no more than a
7 fraction of the needs which now exist and will arise in the
8 immediate future. For this reason, although public necessity and
9 the criteria established by Chapter 159G of the General Statutes
10 shall be the primary consideration in granting and loaning funds,
11 great emphasis shall also be placed on achieving stringent
12 reductions in the levels of nutrients and other pollutants discharged
13 into the State's waters, particularly in nutrient sensitive river
14 basins, in reducing the overall volume of effluent discharged to the
15 State's waters by using alternative methods of wastewater treatment
16 when feasible, on the creation of efficient systems of regional
17 wastewater disposal and regional water supply, and on the
18 willingness and ability of local government units to meet their
19 responsibilities through sound fiscal policies, creative planning, and
20 efficient operation and management.

21 Section 3. Definitions. As used in this act, unless the context otherwise

22 requires:

- 23 (1) "Bonds" means bonds issued under this act.
24 (2) "Clean Water Revolving Loan and Grant Act" means Chapter 796
25 of the 1987 Session Laws, as amended from time to time, codified
26 as Chapter 159G of the General Statutes.
27 (3) "Clean Water Revolving Loan and Grant Fund" means the Clean
28 Water Revolving Loan and Grant Fund as defined in the Clean
29 Water Revolving Loan and Grant Act.
30 (4) "Cost" means, without intending thereby to limit or restrict any
31 proper definition of this term in financing the cost of facilities or
32 purposes authorized by this act:
33 a. The cost of constructing, reconstructing, enlarging,
34 acquiring, and improving facilities, and acquiring equipment
35 and land therefor,
36 b. The cost of engineering, architectural, and other consulting
37 services as may be required,
38 c. Administrative expenses and charges,
39 d. Finance charges and interest prior to and during
40 construction and, if deemed advisable by the State
41 Treasurer, for a period not exceeding two years after the
42 estimated date of completion of construction,
43 e. The cost of bond insurance, investment contracts, credit
44 enhancement and liquidity facilities, interest-rate swap

- 1 agreements or other derivative products, financial and legal
2 consultants, and related costs of bond and note issuance, to
3 the extent and as determined by the State Treasurer,
4 f. The cost of reimbursing the State for any payments made for
5 any cost described above, and
6 g. Any other costs and expenses necessary or incidental to the
7 purposes of this act.
- 8 Allocations in this act of proceeds of bonds to the costs of a project
9 or undertaking in each case may include allocations to pay the
10 costs set forth in items c., d., e., f., and g. in connection with the
11 issuance of bonds for the project or undertaking.
- 12 (5) "Credit facility" means an agreement entered into by the State
13 Treasurer on behalf of the State with a bank, savings and loan
14 association, or other banking institution, an insurance company,
15 reinsurance company, surety company, or other insurance
16 institution, a corporation, investment banking firm, or other
17 investment institution, or any financial institution or other similar
18 provider of a credit facility, which provider may be located within
19 or without the United States of America, such agreement providing
20 for prompt payment of all or any part of the principal or purchase
21 price (whether at maturity, presentment or tender for purchase,
22 redemption or acceleration), redemption premium, if any, and
23 interest on any bonds or notes payable on demand or tender by the
24 owner, in consideration of the State agreeing to repay the provider
25 of the credit facility in accordance with the terms and provisions of
26 such agreement.
- 27 (6) "Local government units" means local government units as defined
28 in the Clean Water Revolving Loan and Grant Act.
- 29 (7) "Notes" means notes issued under this act.
- 30 (8) "Par formula" means any provision or formula adopted by the
31 State to provide for the adjustment, from time to time, of the
32 interest rate or rates borne by any bonds or notes, including:
- 33 a. A provision providing for such adjustment so that the
34 purchase price of such bonds or notes in the open market
35 would be as close to par as possible,
36 b. A provision providing for such adjustment based upon a
37 percentage or percentages of a prime rate or base rate,
38 which percentage or percentages may vary or be applied for
39 different periods of time, or
40 c. Such other provision as the State Treasurer may determine
41 to be consistent with this act and will not materially and
42 adversely affect the financial position of the State and the
43 marketing of bonds or notes at a reasonable interest cost to
44 the State.

- 1 (9) "State" means the State of North Carolina.
2 (10) "Wastewater collection systems" means wastewater collection
3 systems as defined in the Clean Water Revolving Loan and Grant
4 Act.
5 (11) "Wastewater treatment works" means wastewater treatment works
6 as defined in the Clean Water Revolving Loan and Grant Act.
7 (12) "Water conservation projects" include but are not limited to any
8 construction, repair, renovation, expansion, replacement of
9 components, or other capital improvement, including related
10 equipment and land acquisition, designed to:
11 a. Eliminate the wasteful or unnecessary use or loss of water in
12 the operations of a wastewater collection system, wastewater
13 treatment works, or water supply system; or
14 b. Enhance the operation of a wastewater collection system,
15 wastewater treatment works, or water supply system to
16 provide a more efficient use of water.
17 (13) "Water Pollution Control Revolving Fund" means the fund
18 described by G.S. 159G-4(a) and G.S. 159G-5(c).
19 (14) "Water supply systems" means water supply systems as defined in
20 the Clean Water Revolving Loan and Grant Act.

21 Section 4. Authorization of bonds and notes. Subject to a favorable vote
22 of a majority of the qualified voters of the State who vote on the question of issuing
23 Clean Water Bonds in the election called and held as provided in this act, the State
24 Treasurer is hereby authorized, by and with the consent of the Council of State, to
25 issue and sell, at one time or from time to time, general obligation bonds of the State
26 to be designated "State of North Carolina Clean Water Bonds", with any additional
27 designations as may be determined to indicate the issuance of bonds from time to
28 time, or notes of the State as provided in this act, in an aggregate principal amount
29 not exceeding seven hundred million dollars (\$700,000,000) for the purpose of
30 providing funds, with any other available funds, for the purposes authorized in this
31 act.

32 Section 5. Uses of bond and note proceeds. The proceeds of Clean
33 Water Bonds and notes shall be used for the purpose of making loans and grants to
34 local governments as follows:

- 35 (1) The proceeds of two hundred million dollars (\$200,000,000) of
36 Clean Water Bonds shall be used and allocated for the same
37 purposes for which funds in the Clean Water Revolving Loan and
38 Grant Fund may be used including, without limitation, to provide
39 funds to be used to make revolving loans and grants to local
40 government units. The revolving loans and grants shall be made
41 for the purpose of paying the cost of water supply systems,
42 wastewater collection systems, and wastewater treatment works.

43 The first priority for use of these proceeds shall be to
44 provide State funds necessary for the 1998-99 and 1999-2000 fiscal

1 years to match the federal wastewater or water supply assistance
2 funds deposited in the Clean Water Pollution Control Revolving
3 Fund, the State Revolving Water Fund account, or another fund
4 that are available from year to year, unless the General Assembly
5 has provided other funds for this purpose, in which event this
6 priority shall cease to exist to the extent of the availability of those
7 other funds. For the purpose of implementing this priority, the
8 Department of Environment, Health, and Natural Resources shall
9 certify to the State Treasurer the amount of funds required for the
10 State match for each of the fiscal years ending June 30, 1999, and
11 June 30, 2000, and the extent to which the General Assembly has
12 provided other funds for this purpose. Upon certification to the
13 State Treasurer of the amount of funds required for the State
14 match for the fiscal year ending June 30, 1999, the State may issue
15 up to one hundred million dollars (\$100,000,000) of Clean Water
16 Bonds authorized by this subdivision for the purpose of funding
17 the State match for that fiscal year and for any other purposes
18 authorized by this subdivision. Upon certification to the State
19 Treasurer of the amount of funds required for the State match for
20 the fiscal year ending June 30, 2000, the State may issue the
21 remaining balance of Clean Water Bonds authorized by this
22 subdivision for the purpose of funding the State match for that
23 fiscal year and for any other purposes authorized by this
24 subdivision. The proceeds of the bonds necessary for the State
25 match for each fiscal year shall be deposited in the Clean Water
26 Pollution Control Revolving Fund, the State Revolving Water
27 Fund account, or any other fund or account determined by the
28 State Treasurer.

29 The proceeds may be (i) transferred directly to the Clean
30 Water Revolving Loan and Grant Fund to make revolving loans or
31 grants, (ii) used to make revolving loans or grants directly to the
32 appropriate local government qualifying for a revolving loan or
33 grant from the Clean Water Revolving Loan and Grant Fund, (iii)
34 used for any combination of (i) and (ii), or (iv) used in such other
35 manner as shall effectuate the purposes of this act. Although
36 public necessity and the criteria established by Chapter 159G of
37 the General Statutes shall be the primary consideration in granting
38 and loaning funds, great emphasis shall also be placed on achieving
39 stringent reductions in the levels of nutrients and other pollutants
40 discharged into the State's waters, particularly in nutrient sensitive
41 river basins, in reducing the overall volume of effluent discharged
42 to the State's waters by using alternative methods of wastewater
43 treatment when feasible, on the creation of efficient systems of
44 regional wastewater disposal and regional water supply, and on the

1 willingness and ability of local government units to meet their
2 responsibilities through sound fiscal policies, creative planning, and
3 efficient operation and management. Loans and grants made from
4 bond proceeds transferred from the Clean Water Bonds Fund to
5 the Clean Water Revolving Loan and Grant Fund shall be made
6 and administered in accordance with the provisions of the Clean
7 Water Revolving Loan and Grant Act. Loans and grants made
8 from bond proceeds directly to local government units and any
9 loan repayments shall, to the extent applicable, be made,
10 administered, and applied in accordance with the provisions of the
11 Clean Water Revolving Loan and Grant Act. Repayments of any
12 direct loans may be initially placed into any fund or account as
13 may be determined by the State Treasurer for the purpose of
14 determining compliance with the applicable requirements of the
15 federal tax law and shall be expended and disbursed therefrom
16 under the direction and supervision of the Director of the Budget.

- 17 (2) The proceeds of five hundred million dollars (\$500,000,000) of
18 Clean Water Bonds shall be used for the purpose of making loans
19 to local government units to pay the cost of water supply systems,
20 water conservation projects, wastewater collection systems, and
21 wastewater treatment works. Sixty-nine percent (69%) of the
22 proceeds of the bonds and notes shall be allocated for loans to
23 local government units for wastewater collection systems and
24 wastewater treatment works. Thirty-one percent (31%) of the
25 proceeds of the bonds and notes shall be allocated for loans to
26 local government units for water supply systems and water
27 conservation projects.

28 The proceeds shall be used to make loans directly to local
29 government units qualifying for a loan from the Clean Water
30 Revolving Loan and Grant Fund or loaned in such other manner
31 as shall effectuate the purposes of this act. To qualify for a loan
32 from the Clean Water Bonds Fund for the purpose of paying the
33 cost of water supply systems, a local government unit must have a
34 water supply facility plan approved by the Department of
35 Environment, Health, and Natural Resources. A water supply
36 facility plan submitted by a local government unit to the
37 Department under G.S. 143-355(i) will be sufficient to meet this
38 requirement. To qualify for a loan from the Clean Water Bonds
39 Fund for the purpose of paying the cost of wastewater collection
40 systems or wastewater treatment works, a local government unit
41 must have a wastewater facility plan approved by the Department
42 of Environment, Health, and Natural Resources. A wastewater
43 facility plan must project future wastewater treatment needs, must
44 present a long-range plan to meet those needs, and must include

1 plans for system operations and maintenance of the facilities being
2 built with the bond proceeds.

3 The Department of Environment, Health, and Natural
4 Resources shall set the priorities and determine the eligibility of
5 local government units for these loans in accordance with Section
6 10 of this act. The form of the loans and the details thereof
7 including, without limitation, the maturity, interest rate, and
8 amortization schedule, shall be determined, from time to time, by
9 the State Treasurer. In making these determinations, the State
10 Treasurer shall consider the purpose of the loans, the ability of
11 local government units to repay the loans, and the security for the
12 loans. The interest rates on these loans shall reflect the self-
13 supporting nature of the loan program and shall be sufficient to
14 cover substantially all payments of debt service on the five hundred
15 million dollars (\$500,000,000) of Clean Water Bonds and the
16 issuance costs and administrative expenses associated with the
17 issuance of these bonds and the making of these loans, subject to
18 any applicable requirements of the federal tax law.

19 Repayments of the loans shall be credited to the General
20 Fund and may be used to pay, directly or indirectly, debt service
21 on the bonds and notes issued. Repayments may be initially
22 placed into such fund or account as may be determined by the
23 State Treasurer for the purpose of determining compliance with
24 applicable requirements of the federal tax law and shall be
25 expended and disbursed therefrom under the direction and
26 supervision of the Director of the Budget.

27 Any additional moneys which may be received by means of a grant or
28 grants from the United States of America or any agency or department thereof or
29 from any other source for deposit to the Clean Water Bonds Fund may be placed in
30 the Clean Water Bonds Fund or in a separate account or fund and shall be disbursed,
31 to the extent permitted by the terms of the grant or grants, without regard to any
32 limitations imposed by this act.

33 The proceeds of bonds and notes may be used with any other moneys
34 made available by the General Assembly for making grants and loans authorized by
35 this act, including the proceeds of any other State bond issues, whether heretofore
36 made available or which may be made available at the session of the General
37 Assembly at which this act is ratified or any subsequent sessions. The proceeds of
38 bonds and notes shall be expended and disbursed under the direction and supervision
39 of the Director of the Budget. The funds provided by this act shall be disbursed for
40 the purposes provided in this act upon warrants drawn on the State Treasurer by the
41 State Controller, which warrants shall not be drawn until requisition has been
42 approved by the Director of the Budget and which requisition shall be approved only
43 after full compliance with the Executive Budget Act, Article 1 of Chapter 143 of the
44 General Statutes.

1 Section 6. Allocation of proceeds. The proceeds of Clean Water Bonds
2 and notes, including premium thereon, if any, except the proceeds of bonds the
3 issuance of which has been anticipated by bond anticipation notes or the proceeds of
4 refunding bonds or notes, shall be placed by the State Treasurer in a special fund to
5 be designated "Clean Water Bonds Fund", which may include such appropriate
6 special accounts therein as may be determined by the State Treasurer, and shall be
7 disbursed as provided in this act. Moneys in the Clean Water Bonds Fund shall be
8 allocated and expended as provided in this act.

9 Allocations to the costs of a capital improvement or undertaking in each
10 case may include allocations to pay the costs set forth in Section 3(4)c., d., e., f., and
11 g. of this act in connection with the issuance of bonds for that capital improvement or
12 undertaking.

13 Section 7. Election. The questions of the issuance of the bonds
14 authorized by this act shall be submitted to the qualified voters of the State at the
15 next statewide election or statewide primary election, whichever comes first. Any
16 other primary, election, or referendum validly called or scheduled by law at the time
17 the election on the bond questions provided for in this section is held, may be held as
18 called or scheduled. Notice of the election shall be given in the manner and at the
19 times required by G.S. 163-33(8). The election and the registration of voters therefor
20 shall be held under and in accordance with the general laws of the State. Absentee
21 ballots shall be authorized in the election.

22 The State Board of Elections shall reimburse the counties of the State for
23 all necessary expenses incurred in holding the election that are in addition to those
24 that would have otherwise been incurred, the same to be paid out of the Contingency
25 and Emergency Fund or other funds available to the State Board of Elections.

26 Ballots, voting systems authorized by Article 14 of Chapter 163 of the
27 General Statutes, or both may be used in accordance with rules prescribed by the
28 State Board of Elections. The bond question to be used in the ballots or voting
29 systems shall be in substantially the following form:

30 "[] FOR the issuance of seven hundred million dollars (\$700,000,000)
31 State of North Carolina Clean Water Bonds constituting general
32 obligation bonds of the State secured by a pledge of the faith and
33 credit and taxing power of the State for the purpose of providing
34 funds, with any other available funds, to make loans, revolving
35 loans, and grants to local government units to pay all or a portion
36 of the cost of clean water projects.

37 [] AGAINST the issuance of seven hundred million dollars
38 (\$700,000,000) State of North Carolina Clean Water Bonds
39 constituting general obligation bonds of the State secured by a
40 pledge of the faith and credit and taxing power of the State for the
41 purpose of providing funds, with any other available funds, to
42 make loans, revolving loans, and grants to local government units
43 to pay all or a portion of the cost of clean water projects."

1 If a majority of those voting on the Clean Water Bond question in the
2 election vote in favor of the issuance of the bonds, the bonds may be issued as
3 provided in this act. If a majority of those voting on the Clean Water Bond question
4 in the election vote against the issuance of the bonds, the bonds shall not be issued.

5 The results of the election shall be canvassed and declared as provided by
6 law for elections for State officers; the results of the election shall be certified by the
7 State Board of Elections to the Secretary of State, in the manner and at the time
8 provided by the general election laws of the State.

9 Section 8. Issuance of bonds and notes. (a) Terms and Conditions.
10 Bonds or notes may bear such date or dates, may be serial or term bonds or notes, or
11 any combination thereof, may mature in such amounts and at such time or times, not
12 exceeding 40 years from their date or dates, may be payable at such place or places,
13 either within or without the United States of America, in such coin or currency of the
14 United States of America as at the time of payment is legal tender for payment of
15 public and private debts, may bear interest at such rate or rates, which may vary from
16 time to time, and may be made redeemable before maturity, at the option of the State
17 or otherwise as may be provided by the State, at such price or prices, including a
18 price less than the face amount of the bonds or notes, and under such terms and
19 conditions, all as may be determined by the State Treasurer, by and with the consent
20 of the Council of State.

21 (b) Signatures; Form and Denomination; Registration. Bonds or notes
22 may be issued as certificated or uncertificated obligations. If issued as certificated
23 obligations, bonds or notes shall be signed on behalf of the State by the Governor or
24 shall bear his facsimile signature, shall be signed by the State Treasurer or shall bear
25 his facsimile signature, and shall bear the Great Seal of the State or a facsimile
26 thereof shall be impressed or imprinted thereon. If bonds or notes bear the facsimile
27 signatures of the Governor and the State Treasurer, the bonds or notes shall also bear
28 a manual signature which may be that of a bond registrar, trustee, paying agent, or
29 designated assistant of the State Treasurer. Should any officer whose signature or
30 facsimile signature appears on bonds or notes cease to be such officer before the
31 delivery of the bonds or notes, the signature or facsimile signature shall nevertheless
32 have the same validity for all purposes as if the officer had remained in office until
33 delivery and bonds or notes may bear the facsimile signatures of persons who at the
34 actual time of the execution of the bonds or notes shall be the proper officers to sign
35 any bond or note although at the date of the bond or note such persons may not have
36 been such officers. The form and denomination of bonds or notes, including the
37 provisions with respect to registration of the bonds or notes and any system for their
38 registration, shall be as the State Treasurer may determine in conformity with this act;
39 provided, however, that nothing in this act shall prohibit the State Treasurer from
40 proceeding, with respect to the issuance and form of the bonds or notes, under the
41 provisions of Chapter 159E of the General Statutes, the Registered Public Obligations
42 Act, as well as under this act.

43 (c) Manner of Sale; Expenses. Subject to determination by the Council
44 of State as to the manner in which bonds or notes shall be offered for sale, whether at

1 public or private sale, whether within or without the United States of America, and
2 whether by publishing notices in certain newspapers and financial journals, mailing
3 notices, inviting bids by correspondence, negotiating contracts of purchase or
4 otherwise, the State Treasurer is authorized to sell bonds or notes at one time or from
5 time to time at such rate or rates of interest, which may vary from time to time, and
6 at such price or prices, including a price less than the face amount of the bonds or
7 the notes, as the State Treasurer may determine. All expenses incurred in
8 preparation, sale, and issuance of bonds or notes shall be paid by the State Treasurer
9 from the proceeds of bonds or notes or other available moneys.

10 (d) Notes; Repayment.

11 (1) By and with the consent of the Council of State, the State
12 Treasurer is hereby authorized to borrow money and to execute
13 and issue notes of the State for the same, but only in the following
14 circumstances and under the following conditions:

15 a. For anticipating the sale of bonds to the issuance of which
16 the Council of State shall have given consent, if the State
17 Treasurer shall deem it advisable to postpone the issuance of
18 the bonds;

19 b. For the payment of interest on or any installment of
20 principal of any bonds then outstanding, if there shall not be
21 sufficient funds in the State treasury with which to pay the
22 interest or installment of principal as they respectively
23 become due;

24 c. For the renewal of any loan evidenced by notes herein
25 authorized;

26 d. For the purposes authorized in this act; and

27 e. For refunding bonds or notes as herein authorized.

28 (2) Funds derived from the sale of bonds or notes may be used in the
29 payment of any bond anticipation notes issued under this act.
30 Funds provided by the General Assembly for the payment of
31 interest on or principal of bonds shall be used in paying the
32 interest on or principal of any notes and any renewals thereof, the
33 proceeds of which shall have been used in paying interest on or
34 principal of the bonds.

35 (e) Refunding Bonds and Notes. By and with the consent of the Council
36 of State, the State Treasurer is authorized to issue and sell refunding bonds and notes
37 pursuant to the provisions of the State Refunding Bond Act for the purpose of
38 refunding bonds or notes issued pursuant to this act. The refunding bonds and notes
39 may be combined with any other issues of State bonds and notes similarly secured.

40 (f) Tax Exemption. Bonds and notes shall be exempt from all State,
41 county, and municipal taxation or assessment, direct or indirect, general or special,
42 whether imposed for the purpose of general revenue or otherwise, excluding
43 inheritance and gift taxes, income taxes on the gain from the transfer of bonds and

1 notes, and franchise taxes. The interest on bonds and notes shall not be subject to
2 taxation as to income.

3 (g) Investment Eligibility. Bonds and notes are hereby made securities in
4 which all public officers, agencies, and public bodies of the State and its political
5 subdivisions, all insurance companies, trust companies, investment companies, banks,
6 savings banks, savings and loan associations, credit unions, pension or retirement
7 funds, other financial institutions engaged in business in the State, executors,
8 administrators, trustees, and other fiduciaries may properly and legally invest funds,
9 including capital in their control or belonging to them. Bonds and notes are hereby
10 made securities which may properly and legally be deposited with and received by
11 any officer or agency of the State or political subdivision of the State for any purpose
12 for which the deposit of bonds, notes, or obligations of the State or any political
13 subdivision is now or may hereafter be authorized by law.

14 (h) Faith and Credit. The faith and credit and taxing power of the State
15 are hereby pledged for the payment of the principal of and the interest on bonds and
16 notes. In addition to the State's right to amend any provision of this act to the extent
17 it does not impair any contractual right of a bond owner, the State expressly reserves
18 the right to amend any provision of this act with respect to the making and
19 repayment of loans, the disposition of any repayments of loans, and any intercept
20 provisions relating to the failure of a local government unit to repay a loan, the bonds
21 not being secured in any respect by loans, any repayments thereof, or any intercept
22 provisions with respect thereto.

23 Section 9. Variable interest rates. In fixing the details of bonds and
24 notes, the State Treasurer may provide that any of the bonds or notes may:

25 (1) Be made payable from time to time on demand or tender for
26 purchase by the owner thereof provided a credit facility supports
27 the bonds or notes, unless the State Treasurer specifically
28 determines that a credit facility is not required upon a finding and
29 determination by the State Treasurer that the absence of a credit
30 facility will not materially or adversely affect the financial position
31 of the State and the marketing of the bonds or notes at a
32 reasonable interest cost to the State;

33 (2) Be additionally supported by a credit facility;

34 (3) Be made subject to redemption or a mandatory tender for
35 purchase prior to maturity;

36 (4) Bear interest at a rate or rates that may vary for such period or
37 periods of time, all as may be provided in the proceedings
38 providing for the issuance of the bonds or notes, including, without
39 limitation, such variations as may be permitted pursuant to a par
40 formula; and

41 (5) Be made the subject of a remarketing agreement whereby an
42 attempt is made to remarket bonds or notes to new purchasers
43 prior to their presentment for payment to the provider of the credit
44 facility or to the State.

1 If the aggregate principal amount repayable by the State under a credit
2 facility is in excess of the aggregate principal amount of bonds or notes secured by
3 the credit facility, whether as a result of the inclusion in the credit facility of a
4 provision for the payment of interest for a limited period of time or the payment of a
5 redemption premium or for any other reason, then the amount of authorized but
6 unissued bonds or notes during the term of such credit facility shall not be less than
7 the amount of such excess, unless the payment of such excess is otherwise provided
8 for by agreement of the State executed by the State Treasurer.

9 Section 10. Special provisions governing clean water loans. (a) Scope.
10 The provisions of this section shall apply to loans being made from the proceeds of
11 bonds authorized by this act for clean water projects, other than from funds deposited
12 in the Clean Water Revolving Loan and Grant Fund.

13 (b) Clean Water Bonds Loan Fund. There is established in the
14 Department of State Treasurer a fund to be known as the Clean Water Bonds Loan
15 Fund, which may include any special or segregated accounts the State Treasurer
16 considers appropriate. There shall be deposited in the Clean Water Bonds Loan
17 Fund proceeds of the Clean Water Bonds and notes to be used to make loans, other
18 than loans to be made through the Clean Water Revolving Loan and Grant Fund, to
19 local government units for clean water projects as provided in this act. Funds in the
20 various accounts may be invested from time to time by the State Treasurer in the
21 same manner permitted for investments of funds belonging to the State or held in the
22 State treasury. Any investment earnings shall be credited to the particular account
23 from which the investment was made.

24 All moneys accruing to the credit of the Clean Water Bonds Loan Fund,
25 other than funds set aside for administrative expenses, including expenses related to
26 determining compliance with applicable requirements of the federal tax law and costs
27 of issuance, shall be used to make loans for the purposes provided in this act. The
28 State Treasurer shall be responsible for making and administering all loans pursuant
29 to the provisions of this section.

30 (c) Application for Loans; Hearings.

31 (1) Eligibility/Initial Hearing.

32 a. Prior to filing an application for a loan, a local government
33 unit shall hold a public hearing. A notice of the public
34 hearing shall be published once at least 10 days before the
35 date fixed for the hearing.

36 b. All applications for loans shall be filed with the Department
37 of Environment, Health, and Natural Resources. The form
38 of the application shall be prescribed by the Department
39 and shall require any information necessary to determine the
40 eligibility for a loan under the provisions of this section. All
41 applications approved by the Department of Environment,
42 Health, and Natural Resources shall be filed with the Local
43 Government Commission. Each applicant shall furnish to
44 the Department of Environment, Health, and Natural

- 1 Resources and the Local Government Commission
2 information in addition or supplemental to the information
3 contained in its application, upon request.
- 4 c. A local government unit shall not be eligible for a loan
5 unless it demonstrates to the satisfaction of the Department
6 of Environment, Health, and Natural Resources and the
7 Local Government Commission that:
- 8 1. The applicant is a local government unit;
 - 9 2. The applicant has the financial capacity to pay the
10 principal of and interest on its proposed loan as
11 evidenced by the approval of the Local Government
12 Commission;
 - 13 3. The applicant has substantially complied or will
14 substantially comply with all applicable laws, rules,
15 regulations, and ordinances, whether federal, State, or
16 local; and
 - 17 4. The applicant has agreed by official resolution to
18 adopt and place into effect a schedule of fees and
19 charges or the application of other sources of revenue
20 which will provide adequate funds for proper
21 operation, maintenance, and administration of the
22 project and repayment of all principal and interest on
23 the loan.
- 24 (2) Assessment. The Department of Environment, Health, and Natural
25 Resources may require any applicant to file with its application an
26 assessment of the impact the project for which the funds are sought
27 will have upon meeting the facility needs of the area within which
28 the project is to be located.
- 29 (3) Hearing by the Department of Environment, Health, and Natural
30 Resources or the Local Government Commission. A public
31 hearing may be held by the Department of Environment, Health,
32 and Natural Resources or the Local Government Commission at
33 any time on any application. Public hearings may also be held by
34 the Department of Environment, Health, and Natural Resources in
35 its discretion upon written request from any citizen or taxpayer
36 who is a resident of the county or counties in which the project is
37 to be located or a resident of the local government unit that
38 proposes to borrow moneys under this act, if it appears that the
39 public interest will be served by the hearing. The written request
40 shall set forth each objection to the proposed project or other
41 reason for requesting a hearing on the application and shall
42 contain the name and address of the persons submitting it. The
43 Department of Environment, Health, and Natural Resources may
44 consider all written objections to the proposed project and other

1 statements along with the application including any significant
2 considerations on facility needs and shall determine if the public
3 interest will be served by a hearing. The determination by the
4 Department of Environment, Health, and Natural Resources shall
5 be conclusive and all written requests for a hearing shall be
6 retained as a permanent part of the records pertaining to the
7 application.

8 (4) Petition for Vote. A petition, demanding that the question of
9 whether to enter into a loan agreement with the State under this
10 act be submitted to voters, may be filed with the clerk of the local
11 government unit applying for the loan within 15 days after the
12 public hearing required by this section. The petition's sufficiency
13 shall be determined and a referendum, if any, shall be conducted,
14 according to the standards, procedures, and limitations set out in
15 G.S. 159-60 through G.S. 159-62.

16 (d) Priorities.

17 (1) Determination. Determination of priorities to be assigned each
18 eligible project shall be made semiannually by the Department of
19 Environment, Health, and Natural Resources during each fiscal
20 year. Every eligible project shall be considered by the Department
21 of Environment, Health, and Natural Resources with every other
22 project eligible during this same priority period.

23 (2) Priority Factors. All applications for loans under this act shall be
24 assigned a priority by the Department of Environment, Health, and
25 Natural Resources. The Department of Environment, Health, and
26 Natural Resources shall establish by rule the priority factors
27 criteria.

28 (3) Assignment of Priority. A written statement relative to each
29 priority assigned shall be prepared by the Department of
30 Environment, Health, and Natural Resources and shall be attached
31 to the application. The priority assigned shall be conclusive.

32 (4) Failure to Qualify. If an application does not qualify for a loan as
33 of the prior period in which the application was eligible for
34 consideration by reason of the priority assigned, the application
35 shall be considered during the next succeeding priority period
36 upon request of the applicant. If the application again fails to
37 qualify for a loan during the second priority period by reason of
38 the priority assigned, the application shall receive no further
39 consideration. An applicant may file a new application at any time
40 and may amend any pending application to include additional data
41 or information.

42 (5) Withdrawal of Commitment. Failure of an applicant within one
43 year after the date of acceptance of the loan to arrange for
44 necessary financing of the proposed project or award of the

1 contract of the construction of the proposed project shall constitute
2 sufficient cause for withdrawal of the commitment. Prior to
3 withdrawal of a commitment, the Department of Environment,
4 Health, and Natural Resources shall give due consideration to any
5 extenuating circumstances presented by the applicant as reasons for
6 failure to arrange necessary financing or to award a contract, and
7 the commitment may be extended for an additional period of time
8 if, in the judgment of the Department of Environment, Health, and
9 Natural Resources, the extension is justified.

10 (e) Disbursement. To be eligible to receive the loans provided for in this
11 section, a local government unit must arrange to borrow the amounts necessary
12 pursuant to rules adopted by the Local Government Commission. No funds shall be
13 disbursed until the Department of Environment, Health, and Natural Resources gives
14 a certificate of eligibility to the effect that the applicant meets all eligibility criteria
15 and that all procedural requirements of this act have been met. The maximum
16 principal amount of a loan shall be one hundred percent (100%) of the cost of any
17 eligible project.

18 (f) Intercept. The governing body of a local government unit shall by
19 resolution authorize to be included in its loan agreement a provision authorizing the
20 State Treasurer, upon failure of the local government unit to make a scheduled
21 repayment of the loan, to withhold from the local government unit any State funds
22 that would otherwise be distributed to the local government unit in an amount
23 sufficient to pay all sums then due and payable to the State as a repayment of the
24 loan. In such event, notwithstanding any other provision of law, the State Treasurer
25 is authorized to withhold and apply such funds to the repayment of the loan, except
26 that such funds shall not be withheld if (i) before the execution of the loan
27 agreement, such funds have been legally pledged to secure special obligation bonds or
28 other obligations of the local government unit, or (ii) after the execution of the loan
29 agreement, such funds are legally pledged to secure special obligation bonds or other
30 obligations of the local government unit as authorized in this subsection. After the
31 execution of a loan agreement, all or any portion of the State funds specified in the
32 loan agreement to be so withheld may be pledged to secure special obligation bonds
33 or other obligations of the local government unit only with the prior written consent
34 of the State Treasurer.

35 The State Treasurer shall notify the Secretary of Revenue and the State
36 Controller of the amount to be withheld from the local government unit, and the
37 Secretary of Revenue and the State Controller shall transfer to the State Treasurer
38 the amount so requested to be applied by the State Treasurer to the repayment of the
39 loan.

40 (g) Inspection. Inspection of a project for which a loan has been made
41 under this act may be performed by qualified personnel of the Department of
42 Environment, Health, and Natural Resources or may be performed by qualified
43 engineers registered in this State approved by the Department of Environment,
44 Health, and Natural Resources. No person shall be approved to perform inspections

1 who is an officer employed by the local government unit to which the loan was made
2 or who is an owner, officer, employer, or agent of a contractor or subcontractor
3 engaged in the construction of the project for which the loan was made. For the
4 purpose of payment of inspection fees, inspection services shall be included in the
5 term "cost" as used in this act.

6 (h) Rules. The State Treasurer, the Local Government Commission, and
7 the Department of Environment, Health, and Natural Resources may adopt, modify,
8 and repeal rules necessary for the administration of their respective duties under this
9 act. Uniform rules may be jointly adopted where feasible and desirable, and no rule,
10 jointly adopted, may be modified or revoked except upon concurrence of all agencies
11 involved.

12 (i) Federal Grants and Loans. In order to carry out the purposes of this
13 act to secure the greatest possible benefits to the citizens of this State of the funds
14 appropriated, the State Treasurer, the Local Government Commission, and the
15 Department of Environment, Health, and Natural Resources shall adopt rules and
16 criteria, not inconsistent with provisions of this act, as are necessary and appropriate
17 to conform to regulations for federal grants and loans for any of the purposes set
18 forth in this act.

19 (j) Reports. The Department of Environment, Health, and Natural
20 Resources shall prepare and file each year on or before July 31 with the Joint
21 Legislative Commission on Governmental Operations a report for the preceding fiscal
22 year concerning the allocation and making of loans authorized by this act. The
23 report shall set forth for the preceding fiscal year:

- 24 (1) Itemized and total allocations of loans authorized and unallocated
25 funds for the loan program as of the end of the preceding fiscal
26 year;
- 27 (2) Identification of each loan agreement entered into by the State
28 during the preceding fiscal year and the total amount of loans
29 authorized by such loan agreements;
- 30 (3) The amount disbursed to each local government unit pursuant to
31 such loan agreements during the preceding fiscal year and the total
32 amount of such disbursements;
- 33 (4) The loan repayments made by each local government unit
34 pursuant to such loan agreements and the total amount of such
35 loan repayments during the preceding fiscal year; and
- 36 (5) A summary for the five preceding years of the information
37 required by subdivisions (1) through (4).

38 The report shall be signed by the Secretary of Environment, Health, and Natural
39 Resources.

40 (k) Local Government Commission.

- 41 (1) Local government units may execute debt instruments payable to
42 the State in order to obtain loans provided for in this act. Local
43 government units shall pledge or agree to apply as security for such
44 obligations:

- 1 a. Any available source of revenues of the local government
2 unit, including revenues from benefitted facilities or systems,
3 provided that (i) the local government unit has not
4 otherwise pledged the revenues as security for, or
5 contractually agreed to apply the revenues to, the payment
6 of any other obligations of the local government unit, (ii)
7 the use of the revenues is not otherwise restricted by law, or
8 (iii) the revenues are not derived from the exercise of the
9 local government unit's taxing power; or
10 b. Their faith and credit; or
11 c. Any combination of a. or b. above.

12 The faith and credit of a local government unit shall not be
13 pledged or be deemed to have been pledged unless the
14 requirements of Article 4 of Chapter 159 of the General Statutes
15 have been met. The State Treasurer, with the assistance of the
16 Local Government Commission, shall develop and adopt
17 appropriate debt instruments for use under this act.

18 (2) Nothing contained in this act shall prohibit any local government
19 unit from applying any funds of the local government unit not
20 otherwise restricted as to use by law to the payment of any debt
21 instrument payable to the State incurred pursuant to the provisions
22 of this act.

23 (3) The Local Government Commission shall review and approve
24 proposed loans to local government units under this act under the
25 provisions of Articles 4 and 5 of Chapter 159 of the General
26 Statutes. The Local Government Commission in considering the
27 ability of a local government unit to repay a loan may regard as a
28 source of revenue for repayment of a loan revenue sources that
29 may not be available other than on an annual discretionary basis
30 and that may not be subject to a pledge or agreement to apply.
31 Loans under this act shall be outstanding debts for the purposes of
32 Article 10 of Chapter 159 of the General Statutes.

33 (4) The State Treasurer shall annually certify to the General Assembly
34 the financial condition of the loan program and identify existing
35 delinquencies.

36 Section 11. Minority business participation. The goals set by G.S. 143-
37 128 for participation in projects by minority businesses apply to projects funded by
38 the proceeds of bonds or notes issued under this act. The Department of
39 Environment, Health, and Natural Resources shall monitor compliance with this
40 requirement and shall report to the General Assembly by January 1 of each year on
41 the participation by minority businesses in these projects.

42 Section 12. Interpretation of act. (a) Additional Method. The foregoing
43 sections of this act shall be deemed to provide an additional and alternative method
44 for the doing of the things authorized thereby and shall be regarded as supplemental

1 and additional to powers conferred by other laws, and shall not be regarded as in
2 derogation of any powers now existing.

3 (b) Statutory References. References in this act to specific sections or
4 Chapters of the General Statutes or to specific acts are intended to be references to
5 these sections, Chapters, or acts as they may be amended from time to time by the
6 General Assembly.

7 (c) Liberal Construction. This act, being necessary for the health and
8 welfare of the people of the State, shall be liberally construed to effect the purposes
9 thereof.

10 (d) Inconsistent Provisions. Insofar as the provisions of this act are
11 inconsistent with the provisions of any general laws, or parts thereof, the provisions of
12 this act shall be controlling.

13 (e) Severability. If any provision of this act or the application thereof to
14 any person or circumstance is held invalid, such invalidity shall not affect other
15 provisions or applications of the act which can be given effect without the invalid
16 provision or application, and to this end the provisions of this act are declared to be
17 severable.

18 Section 13. Authorize regional planning loans and grants. G.S. 159G-
19 3(4) reads as rewritten:

20 "(4) 'Construction costs' means the actual costs of planning, designing
21 and constructing any project for which a revolving loan or grant is
22 made under this Chapter including planning; environmental
23 assessment; wastewater system analysis, evaluation and
24 rehabilitation; engineering; legal, fiscal, administrative and
25 contingency costs for water supply systems, wastewater collection
26 systems, wastewater treatment works and any extensions,
27 improvements, remodeling, additions, or alterations to existing
28 systems. Construction costs may include excess or reserve capacity
29 costs, attributable to no more than 20-year projected domestic
30 growth, plus ten percent (10%) unspecified industrial growth. In
31 addition, construction costs shall include any fees payable to the
32 Environmental Management Commission or the Division of
33 Environmental Health for review of applications and grant of
34 permits, and fees for inspections under G.S. 159G-14. Construction
35 costs may also include the costs for purchase or acquisition of real
36 property. The term may also include the costs for planning and
37 designing a regional project or small town project. Funds for
38 planning and designing a regional project or small town project
39 may be advanced prior to construction of the project and may be
40 paid even though the project is never actually constructed. A
41 small town is defined as a municipality with a population of 1,000
42 or less."

43 Section 14. G.S. 159G-4(b) reads as rewritten:

1 "(b) Of the appropriations made from the General Fund to the Clean Water
 2 Revolving Loan and Grant Fund for use of the Department of Environment, Health,
 3 and Natural Resources as provided in this Chapter, allocations are made as follows
 4 after first subtracting the amounts allocated under subsection (a) of this section, to the
 5 extent that there are any excess funds available:

6	Wastewater Accounts		
7	General Wastewater Revolving		
8	Loan Account	39.00%	<u>38.00%</u>
9	Emergency Wastewater Revolving		
10	Loan Account	10.00%	<u>9.00%</u>
11	High-Unit Cost Wastewater		
12	Account	20.00%	<u>22.00%</u>
13	Water Supply Accounts		
14	General Water Supply		
15	Revolving Loan Account	21.00%	<u>20.00%</u>
16	High-Unit Cost Water Supply		
17	Account	-5.00%	<u>7.00%</u>
18	Emergency Water Supply Revolving		
19	Loan Account	-5.00%	<u>4.00%</u> ".

20 Section 15. Effective date. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

D

SENATE BILL 232
Proposed Committee Substitute S232-PCS2705

Short Title: Clean Water Bonds.

(Public)

Sponsors:

Referred to:

February 24, 1997

A BILL TO BE ENTITLED

1 AN ACT TO AUTHORIZE THE ISSUANCE OF GENERAL OBLIGATION
2 BONDS OF THE STATE, SUBJECT TO A VOTE OF THE QUALIFIED
3 VOTERS OF THE STATE, TO PROVIDE FUNDS FOR GRANTS, LOANS,
4 AND REVOLVING LOANS TO LOCAL GOVERNMENT UNITS FOR
5 WATER SUPPLY SYSTEMS, WASTEWATER COLLECTION SYSTEMS,
6 WASTEWATER TREATMENT WORKS, AND WATER CONSERVATION
7 PROJECTS.
8

9 The General Assembly of North Carolina enacts:

10 Section 1. Short title. This act shall be known as the "Clean Water
11 Bond Act of 1997".

12 Section 2. Purpose. It is the intent of the General Assembly by this act
13 to provide for the issuance of general obligation bonds of the State and to provide
14 that the proceeds realized from the sale of the bonds shall be allocated as follows:

- 15 (1) \$200,000,000 to provide State matching funds required to receive
16 federal wastewater or water supply assistance funds and to provide
17 additional funding for the Clean Water Revolving Loan and Grant
18 Fund established in Chapter 159G of the General Statutes or to
19 provide funding by grants and loans to local government units; and
20 (2) \$800,000,000 to provide loans to local government units to finance
21 all or a portion of the cost of construction, improvements,
22 enlargements, extensions, and reconstruction of water supply

1 systems, wastewater collection systems, wastewater treatment
2 works, and water conservation projects.

3 The funds to be derived from the sale of the Clean Water
4 Bonds authorized by this act are sufficient to meet no more than a
5 fraction of the needs that now exist and will arise in the immediate
6 future. For this reason, although public necessity and the criteria
7 established by Chapter 159G of the General Statutes shall be the
8 primary consideration in granting and loaning funds, great
9 emphasis shall also be placed on achieving stringent reductions in
10 the levels of nutrients and other pollutants discharged into the
11 State's waters, particularly in nutrient sensitive river basins, in
12 reducing the overall volume of effluent discharged to the State's
13 waters by using alternative methods of wastewater treatment when
14 feasible, on the creation of efficient systems of regional wastewater
15 disposal and regional water supply, and on the willingness and
16 ability of local government units to meet their responsibilities
17 through sound fiscal policies, creative planning, and efficient
18 operation and management.

19 Section 3. Definitions. As used in this act, unless the context otherwise

20 requires:

- 21 (1) "Bonds" means bonds issued under this act.
22 (2) "Clean Water Revolving Loan and Grant Act" means Chapter 796
23 of the 1987 Session Laws, as amended from time to time, codified
24 as Chapter 159G of the General Statutes.
25 (3) "Clean Water Revolving Loan and Grant Fund" means the Clean
26 Water Revolving Loan and Grant Fund as defined in the Clean
27 Water Revolving Loan and Grant Act.
28 (4) "Cost" means, without intending thereby to limit or restrict any
29 proper definition of this term in financing the cost of facilities or
30 purposes authorized by this act:
31 a. The cost of constructing, reconstructing, enlarging,
32 acquiring, and improving facilities, and acquiring equipment
33 and land therefor,
34 b. The cost of engineering, architectural, and other consulting
35 services as may be required,
36 c. Administrative expenses and charges,
37 d. Finance charges and interest prior to and during
38 construction and, if deemed advisable by the State
39 Treasurer, for a period not exceeding two years after the
40 estimated date of completion of construction,
41 e. The cost of bond insurance, investment contracts, credit
42 enhancement and liquidity facilities, interest-rate swap
43 agreements or other derivative products, financial and legal

- 1 consultants, and related costs of bond and note issuance, to
2 the extent and as determined by the State Treasurer,
3 f. The cost of reimbursing the State for any payments made for
4 any cost described above, and
5 g. Any other costs and expenses necessary or incidental to the
6 purposes of this act.

7 Allocations in this act of proceeds of bonds to the costs of a project
8 or undertaking in each case may include allocations to pay the
9 costs set forth in items c., d., e., f., and g. in connection with the
10 issuance of bonds for the project or undertaking.

- 11 (5) "Credit facility" means an agreement entered into by the State
12 Treasurer on behalf of the State with a bank, savings and loan
13 association, or other banking institution, an insurance company,
14 reinsurance company, surety company, or other insurance
15 institution, a corporation, investment banking firm, or other
16 investment institution, or any financial institution or other similar
17 provider of a credit facility, which provider may be located within
18 or without the United States of America, such agreement providing
19 for prompt payment of all or any part of the principal or purchase
20 price (whether at maturity, presentment or tender for purchase,
21 redemption or acceleration), redemption premium, if any, and
22 interest on any bonds or notes payable on demand or tender by the
23 owner, in consideration of the State agreeing to repay the provider
24 of the credit facility in accordance with the terms and provisions of
25 such agreement.
- 26 (6) "Local government units" means local government units as defined
27 in the Clean Water Revolving Loan and Grant Act.
- 28 (7) "Notes" means notes issued under this act.
- 29 (8) "Par formula" means any provision or formula adopted by the
30 State to provide for the adjustment, from time to time, of the
31 interest rate or rates borne by any bonds or notes, including:
32 a. A provision providing for such adjustment so that the
33 purchase price of such bonds or notes in the open market
34 would be as close to par as possible,
35 b. A provision providing for such adjustment based upon a
36 percentage or percentages of a prime rate or base rate,
37 which percentage or percentages may vary or be applied for
38 different periods of time, or
39 c. Such other provision as the State Treasurer may determine
40 to be consistent with this act and will not materially and
41 adversely affect the financial position of the State and the
42 marketing of bonds or notes at a reasonable interest cost to
43 the State.
- 44 (9) "State" means the State of North Carolina.

- 1 (10) "Wastewater collection systems" means wastewater collection
2 systems as defined in the Clean Water Revolving Loan and Grant
3 Act.
4 (11) "Wastewater treatment works" means wastewater treatment works
5 as defined in the Clean Water Revolving Loan and Grant Act.
6 (12) "Water conservation projects" include, but are not limited to, any
7 construction, repair, renovation, expansion, replacement of
8 components, or other capital improvement, including related
9 equipment and land acquisition, designed to:
10 a. Eliminate the wasteful or unnecessary use or loss of water in
11 the operations of a wastewater collection system, wastewater
12 treatment works, or water supply system; or
13 b. Enhance the operation of a wastewater collection system,
14 wastewater treatment works, or water supply system to
15 provide a more efficient use of water.
16 (13) "Water Pollution Control Revolving Fund" means the fund
17 described by G.S. 159G-4(a) and G.S. 159G-5(c).
18 (14) "Water supply systems" means water supply systems as defined in
19 the Clean Water Revolving Loan and Grant Act.

20 Section 4. Authorization of bonds and notes. Subject to a favorable vote
21 of a majority of the qualified voters of the State who vote on the question of issuing
22 Clean Water Bonds in the election called and held as provided in this act, the State
23 Treasurer is hereby authorized, by and with the consent of the Council of State, to
24 issue and sell, at one time or from time to time, general obligation bonds of the State
25 to be designated "State of North Carolina Clean Water Bonds", with any additional
26 designations as may be determined to indicate the issuance of bonds from time to
27 time, or notes of the State as provided in this act, in an aggregate principal amount
28 not exceeding one billion dollars (\$1,000,000,000) for the purpose of providing funds,
29 with any other available funds, for the purposes authorized in this act.

30 Section 5. Uses of bond and note proceeds. The proceeds of Clean
31 Water Bonds and notes shall be used for the purpose of making loans and grants to
32 local governments as follows:

- 33 (1) The proceeds of two hundred million dollars (\$200,000,000) of
34 Clean Water Bonds shall be used and allocated for the same
35 purposes for which funds in the Clean Water Revolving Loan and
36 Grant Fund may be used including, without limitation, to provide
37 funds to be used to make revolving loans and grants to local
38 government units. The revolving loans and grants shall be made
39 for the purpose of paying the cost of water supply systems,
40 wastewater collection systems, and wastewater treatment works.

41 The first priority for use of these proceeds shall be to
42 provide State funds necessary for the 1998-99 and 1999-2000 fiscal
43 years to match the federal wastewater or water supply assistance
44 funds deposited in the Water Pollution Control Revolving Fund or

1 another fund that is used to pay the cost of water supply systems,
2 wastewater collection systems, or wastewater treatment works and
3 is eligible to receive federal matching funds, unless the General
4 Assembly has provided the required match through other revenue,
5 in which event this priority shall cease to exist to the extent of the
6 availability of the other revenue. For the purpose of implementing
7 this priority, the Department of Environment, Health, and Natural
8 Resources shall certify to the State Treasurer the amount of funds
9 required for the State match for each of the fiscal years ending
10 June 30, 1999, and June 30, 2000, and the extent to which the
11 General Assembly has provided other funds for this purpose.
12 Upon certification to the State Treasurer of the amount of funds
13 required for the State match for the fiscal year ending June 30,
14 1999, the State may issue up to one hundred million dollars
15 (\$100,000,000) of Clean Water Bonds authorized by this
16 subdivision for the purpose of funding the State match for that
17 fiscal year and for any other purposes authorized by this
18 subdivision. Upon certification to the State Treasurer of the
19 amount of funds required for the State match for the fiscal year
20 ending June 30, 2000, the State may issue the remaining balance of
21 Clean Water Bonds authorized by this subdivision for the purpose
22 of funding the State match for that fiscal year and for any other
23 purposes authorized by this subdivision. The proceeds of the
24 bonds necessary for the State match for each fiscal year shall be
25 deposited in the Water Pollution Control Revolving Fund or
26 another appropriate fund or account determined by the State
27 Treasurer.

28 The proceeds may be (i) transferred directly to the Clean
29 Water Revolving Loan and Grant Fund to make revolving loans or
30 grants, (ii) used to make revolving loans or grants directly to the
31 appropriate local government qualifying for a revolving loan or
32 grant from the Clean Water Revolving Loan and Grant Fund, (iii)
33 used for any combination of (i) and (ii), or (iv) used in such other
34 manner as shall effectuate the purposes of this act. Although
35 public necessity and the criteria established by Chapter 159G of
36 the General Statutes shall be the primary consideration in granting
37 and loaning funds, great emphasis shall also be placed on achieving
38 stringent reductions in the levels of nutrients and other pollutants
39 discharged into the State's waters, particularly in nutrient sensitive
40 river basins, in reducing the overall volume of effluent discharged
41 to the State's waters by using alternative methods of wastewater
42 treatment when feasible, on the creation of efficient systems of
43 regional wastewater disposal and regional water supply, and on the
44 willingness and ability of local government units to meet their

1 responsibilities through sound fiscal policies, creative planning, and
2 efficient operation and management. Loans and grants made from
3 bond proceeds transferred from the Clean Water Bonds Fund to
4 the Clean Water Revolving Loan and Grant Fund shall be made
5 and administered in accordance with the provisions of the Clean
6 Water Revolving Loan and Grant Act. Loans and grants made
7 from bond proceeds directly to local government units and any
8 loan repayments shall, to the extent applicable, be made,
9 administered, and applied in accordance with the provisions of the
10 Clean Water Revolving Loan and Grant Act. Repayments of any
11 direct loans may be initially placed into any fund or account as
12 may be determined by the State Treasurer for the purpose of
13 determining compliance with the applicable requirements of the
14 federal tax law and shall be expended and disbursed therefrom
15 under the direction and supervision of the Director of the Budget.

- 16 (2) The proceeds of eight hundred million dollars (\$800,000,000) of
17 Clean Water Bonds shall be used for the purpose of making loans
18 to local government units to pay the cost of water supply systems,
19 water conservation projects, wastewater collection systems, and
20 wastewater treatment works. Sixty-nine percent (69%) of the
21 proceeds of the bonds and notes shall be allocated for loans to
22 local government units for wastewater collection systems and
23 wastewater treatment works. Thirty-one percent (31%) of the
24 proceeds of the bonds and notes shall be allocated for loans to
25 local government units for water supply systems and water
26 conservation projects.

27 The proceeds shall be used to make loans directly to local
28 government units qualifying for a loan from the Clean Water
29 Revolving Loan and Grant Fund or loaned in such other manner
30 as shall effectuate the purposes of this act. To qualify for a loan
31 from the Clean Water Bonds Fund for the purpose of paying the
32 cost of water supply systems, a local government unit must have a
33 water supply facility plan approved by the Department of
34 Environment, Health, and Natural Resources. A water supply
35 facility plan submitted by a local government unit to the
36 Department under G.S. 143-355(1) will be sufficient to meet this
37 requirement. To qualify for a loan from the Clean Water Bonds
38 Fund for the purpose of paying the cost of wastewater collection
39 systems or wastewater treatment works, a local government unit
40 must have a wastewater facility plan approved by the Department
41 of Environment, Health, and Natural Resources. A wastewater
42 facility plan must project future wastewater treatment needs, must
43 present a long-range plan to meet those needs, and must include

1 plans for system operations and maintenance of the facilities being
2 built with the bond proceeds.

3 The Department of Environment, Health, and Natural
4 Resources shall set the priorities and determine the eligibility of
5 local government units for these loans in accordance with Section
6 10 of this act. The form of the loans and the details thereof
7 including, without limitation, the maturity, interest rate, and
8 amortization schedule, shall be determined, from time to time, by
9 the State Treasurer. In making these determinations, the State
10 Treasurer shall consider the purpose of the loans, the ability of
11 local government units to repay the loans, and the security for the
12 loans. The interest rates on these loans shall reflect the self-
13 supporting nature of the loan program and shall be sufficient to
14 cover substantially all payments of debt service on the eight
15 hundred million dollars (\$800,000,000) of Clean Water Bonds and
16 the issuance costs and administrative expenses associated with the
17 issuance of these bonds and the making of these loans, subject to
18 any applicable requirements of the federal tax law.

19 Repayments of the loans shall be credited to the General
20 Fund and may be used to pay, directly or indirectly, debt service
21 on the bonds and notes issued. Repayments may be initially
22 placed into such fund or account as may be determined by the
23 State Treasurer for the purpose of determining compliance with
24 applicable requirements of the federal tax law and shall be
25 expended and disbursed therefrom under the direction and
26 supervision of the Director of the Budget.

27 Any additional moneys which may be received by means of a grant or
28 grants from the United States of America or any agency or department thereof or
29 from any other source for deposit to the Clean Water Bonds Fund may be placed in
30 the Clean Water Bonds Fund or in a separate account or fund and shall be disbursed,
31 to the extent permitted by the terms of the grant or grants, without regard to any
32 limitations imposed by this act.

33 The proceeds of bonds and notes may be used with any other moneys
34 made available by the General Assembly for making grants and loans authorized by
35 this act, including the proceeds of any other State bond issues, whether heretofore
36 made available or which may be made available at the session of the General
37 Assembly at which this act is ratified or any subsequent sessions. The proceeds of
38 bonds and notes shall be expended and disbursed under the direction and supervision
39 of the Director of the Budget. The funds provided by this act shall be disbursed for
40 the purposes provided in this act upon warrants drawn on the State Treasurer by the
41 State Controller, which warrants shall not be drawn until requisition has been
42 approved by the Director of the Budget and which requisition shall be approved only
43 after full compliance with the Executive Budget Act, Article 1 of Chapter 143 of the
44 General Statutes.

1 Section 6. Allocation of proceeds. The proceeds of Clean Water Bonds
2 and notes, including premium thereon, if any, except the proceeds of bonds the
3 issuance of which has been anticipated by bond anticipation notes or the proceeds of
4 refunding bonds or notes, shall be placed by the State Treasurer in a special fund to
5 be designated "Clean Water Bonds Fund", which may include such appropriate
6 special accounts therein as may be determined by the State Treasurer, and shall be
7 disbursed as provided in this act. Moneys in the Clean Water Bonds Fund shall be
8 allocated and expended as provided in this act.

9 Allocations to the costs of a capital improvement or undertaking in each
10 case may include allocations to pay the costs set forth in Section 3(4)c., d., e., f., and
11 g. of this act in connection with the issuance of bonds for that capital improvement or
12 undertaking.

13 Section 7. Election. The question of the issuance of the bonds
14 authorized by this act shall be submitted to the qualified voters of the State at the
15 next statewide election or statewide primary election, whichever comes first. Any
16 other primary, election, or referendum validly called or scheduled by law at the time
17 the election on the bond questions provided for in this section is held, may be held as
18 called or scheduled. Notice of the election shall be given in the manner and at the
19 times required by G.S. 163-33(8). The election and the registration of voters therefor
20 shall be held under and in accordance with the general laws of the State. Absentee
21 ballots shall be authorized in the election.

22 The State Board of Elections shall reimburse the counties of the State for
23 all necessary expenses incurred in holding the election that are in addition to those
24 that would have otherwise been incurred, the same to be paid out of the Contingency
25 and Emergency Fund or other funds available to the State Board of Elections.

26 Ballots, voting systems authorized by Article 14 of Chapter 163 of the
27 General Statutes, or both may be used in accordance with rules prescribed by the
28 State Board of Elections. The bond question to be used in the ballots or voting
29 systems shall be in substantially the following form:

30 FOR the issuance of one billion dollars (\$1,000,000,000) State of
31 North Carolina Clean Water Bonds constituting general obligation
32 bonds of the State secured by a pledge of the faith and credit and
33 taxing power of the State for the purpose of providing funds, with
34 any other available funds, to make loans, revolving loans, and
35 grants to local government units to pay all or a portion of the cost
36 of clean water projects.

37 AGAINST the issuance of one billion dollars (\$1,000,000,000)
38 State of North Carolina Clean Water Bonds constituting general
39 obligation bonds of the State secured by a pledge of the faith and
40 credit and taxing power of the State for the purpose of providing
41 funds, with any other available funds, to make loans, revolving
42 loans, and grants to local government units to pay all or a portion
43 of the cost of clean water projects."

1 If a majority of those voting on the Clean Water Bond question in the
2 election vote in favor of the issuance of the bonds, the bonds may be issued as
3 provided in this act. If a majority of those voting on the Clean Water Bond question
4 in the election vote against the issuance of the bonds, the bonds shall not be issued.

5 The results of the election shall be canvassed and declared as provided by
6 law for elections for State officers; the results of the election shall be certified by the
7 State Board of Elections to the Secretary of State, in the manner and at the time
8 provided by the general election laws of the State.

9 Section 8. Issuance of bonds and notes. (a) Terms and Conditions.
10 Bonds or notes may bear such date or dates, may be serial or term bonds or notes, or
11 any combination thereof, may mature in such amounts and at such time or times, not
12 exceeding 40 years from their date or dates, may be payable at such place or places,
13 either within or without the United States of America, in such coin or currency of the
14 United States of America as at the time of payment is legal tender for payment of
15 public and private debts, may bear interest at such rate or rates, which may vary from
16 time to time, and may be made redeemable before maturity, at the option of the State
17 or otherwise as may be provided by the State, at such price or prices, including a
18 price less than the face amount of the bonds or notes, and under such terms and
19 conditions, all as may be determined by the State Treasurer, by and with the consent
20 of the Council of State.

21 (b) Signatures; Form and Denomination; Registration. Bonds or notes
22 may be issued as certificated or uncertificated obligations. If issued as certificated
23 obligations, bonds or notes shall be signed on behalf of the State by the Governor or
24 shall bear his facsimile signature, shall be signed by the State Treasurer or shall bear
25 his facsimile signature, and shall bear the Great Seal of the State or a facsimile
26 thereof shall be impressed or imprinted thereon. If bonds or notes bear the facsimile
27 signatures of the Governor and the State Treasurer, the bonds or notes shall also bear
28 a manual signature which may be that of a bond registrar, trustee, paying agent, or
29 designated assistant of the State Treasurer. Should any officer whose signature or
30 facsimile signature appears on bonds or notes cease to be such officer before the
31 delivery of the bonds or notes, the signature or facsimile signature shall nevertheless
32 have the same validity for all purposes as if the officer had remained in office until
33 delivery and bonds or notes may bear the facsimile signatures of persons who at the
34 actual time of the execution of the bonds or notes shall be the proper officers to sign
35 any bond or note although at the date of the bond or note such persons may not have
36 been such officers. The form and denomination of bonds or notes, including the
37 provisions with respect to registration of the bonds or notes and any system for their
38 registration, shall be as the State Treasurer may determine in conformity with this act;
39 provided, however, that nothing in this act shall prohibit the State Treasurer from
40 proceeding, with respect to the issuance and form of the bonds or notes, under the
41 provisions of Chapter 159E of the General Statutes, the Registered Public Obligations
42 Act, as well as under this act.

43 (c) Manner of Sale; Expenses. Subject to determination by the Council
44 of State as to the manner in which bonds or notes shall be offered for sale, whether at

1 public or private sale, whether within or without the United States of America, and
2 whether by publishing notices in certain newspapers and financial journals, mailing
3 notices, inviting bids by correspondence, negotiating contracts of purchase or
4 otherwise, the State Treasurer is authorized to sell bonds or notes at one time or from
5 time to time at such rate or rates of interest, which may vary from time to time, and
6 at such price or prices, including a price less than the face amount of the bonds or
7 the notes, as the State Treasurer may determine. All expenses incurred in
8 preparation, sale, and issuance of bonds or notes shall be paid by the State Treasurer
9 from the proceeds of bonds or notes or other available moneys.

10 (d) Notes; Repayment.

11 (1) By and with the consent of the Council of State, the State
12 Treasurer is hereby authorized to borrow money and to execute
13 and issue notes of the State for the same, but only in the following
14 circumstances and under the following conditions:

15 a. For anticipating the sale of bonds to the issuance of which
16 the Council of State shall have given consent, if the State
17 Treasurer shall deem it advisable to postpone the issuance of
18 the bonds;

19 b. For the payment of interest on or any installment of
20 principal of any bonds then outstanding, if there shall not be
21 sufficient funds in the State treasury with which to pay the
22 interest or installment of principal as they respectively
23 become due;

24 c. For the renewal of any loan evidenced by notes herein
25 authorized;

26 d. For the purposes authorized in this act; and

27 e. For refunding bonds or notes as herein authorized.

28 (2) Funds derived from the sale of bonds or notes may be used in the
29 payment of any bond anticipation notes issued under this act.
30 Funds provided by the General Assembly for the payment of
31 interest on or principal of bonds shall be used in paying the
32 interest on or principal of any notes and any renewals thereof, the
33 proceeds of which shall have been used in paying interest on or
34 principal of the bonds.

35 (e) Refunding Bonds and Notes. By and with the consent of the Council
36 of State, the State Treasurer is authorized to issue and sell refunding bonds and notes
37 pursuant to the provisions of the State Refunding Bond Act for the purpose of
38 refunding bonds or notes issued pursuant to this act. The refunding bonds and notes
39 may be combined with any other issues of State bonds and notes similarly secured.

40 (f) Tax Exemption. Bonds and notes shall be exempt from all State,
41 county, and municipal taxation or assessment, direct or indirect, general or special,
42 whether imposed for the purpose of general revenue or otherwise, excluding
43 inheritance and gift taxes, income taxes on the gain from the transfer of bonds and

1 notes, and franchise taxes. The interest on bonds and notes shall not be subject to
2 taxation as to income.

3 (g) Investment Eligibility. Bonds and notes are hereby made securities in
4 which all public officers, agencies, and public bodies of the State and its political
5 subdivisions, all insurance companies, trust companies, investment companies, banks,
6 savings banks, savings and loan associations, credit unions, pension or retirement
7 funds, other financial institutions engaged in business in the State, executors,
8 administrators, trustees, and other fiduciaries may properly and legally invest funds,
9 including capital in their control or belonging to them. Bonds and notes are hereby
10 made securities which may properly and legally be deposited with and received by
11 any officer or agency of the State or political subdivision of the State for any purpose
12 for which the deposit of bonds, notes, or obligations of the State or any political
13 subdivision is now or may hereafter be authorized by law.

14 (h) Faith and Credit. The faith and credit and taxing power of the State
15 are hereby pledged for the payment of the principal of and the interest on bonds and
16 notes. In addition to the State's right to amend any provision of this act to the extent
17 it does not impair any contractual right of a bond owner, the State expressly reserves
18 the right to amend any provision of this act with respect to the making and
19 repayment of loans, the disposition of any repayments of loans, and any intercept
20 provisions relating to the failure of a local government unit to repay a loan, the bonds
21 not being secured in any respect by loans, any repayments thereof, or any intercept
22 provisions with respect thereto.

23 Section 9. Variable interest rates. In fixing the details of bonds and
24 notes, the State Treasurer may provide that any of the bonds or notes may:

- 25 (1) Be made payable from time to time on demand or tender for
26 purchase by the owner thereof provided a credit facility supports
27 the bonds or notes, unless the State Treasurer specifically
28 determines that a credit facility is not required upon a finding and
29 determination by the State Treasurer that the absence of a credit
30 facility will not materially or adversely affect the financial position
31 of the State and the marketing of the bonds or notes at a
32 reasonable interest cost to the State;
- 33 (2) Be additionally supported by a credit facility;
- 34 (3) Be made subject to redemption or a mandatory tender for
35 purchase prior to maturity;
- 36 (4) Bear interest at a rate or rates that may vary for such period or
37 periods of time, all as may be provided in the proceedings
38 providing for the issuance of the bonds or notes, including, without
39 limitation, such variations as may be permitted pursuant to a par
40 formula; and
- 41 (5) Be made the subject of a remarketing agreement whereby an
42 attempt is made to remarket bonds or notes to new purchasers
43 prior to their presentment for payment to the provider of the credit
44 facility or to the State.

1 If the aggregate principal amount repayable by the State under a credit
2 facility is in excess of the aggregate principal amount of bonds or notes secured by
3 the credit facility, whether as a result of the inclusion in the credit facility of a
4 provision for the payment of interest for a limited period of time or the payment of a
5 redemption premium or for any other reason, then the amount of authorized but
6 unissued bonds or notes during the term of such credit facility shall not be less than
7 the amount of such excess, unless the payment of such excess is otherwise provided
8 for by agreement of the State executed by the State Treasurer.

9 Section 10. Special provisions governing clean water loans. (a) Scope.
10 The provisions of this section shall apply to loans being made from the proceeds of
11 bonds authorized by this act for clean water projects, other than from funds deposited
12 in the Clean Water Revolving Loan and Grant Fund.

13 (b) Clean Water Bonds Loan Fund. There is established in the
14 Department of State Treasurer a fund to be known as the Clean Water Bonds Loan
15 Fund, which may include any special or segregated accounts the State Treasurer
16 considers appropriate. There shall be deposited in the Clean Water Bonds Loan
17 Fund proceeds of the Clean Water Bonds and notes to be used to make loans, other
18 than loans to be made through the Clean Water Revolving Loan and Grant Fund, to
19 local government units for clean water projects as provided in this act. Funds in the
20 various accounts may be invested from time to time by the State Treasurer in the
21 same manner permitted for investment of funds belonging to the State or held in the
22 State treasury. Any investment earnings shall be credited to the particular account
23 from which the investment was made.

24 All moneys accruing to the credit of the Clean Water Bonds Loan Fund,
25 other than funds set aside for administrative expenses, including expenses related to
26 determining compliance with applicable requirements of the federal tax law and costs
27 of issuance, shall be used to make loans for the purposes provided in this act. The
28 State Treasurer shall be responsible for making and administering all loans pursuant
29 to the provisions of this section.

30 (c) Application for Loans; Hearings.

31 (1) Eligibility/Initial Hearing.

32 a. Prior to filing an application for a loan, a local government
33 unit shall hold a public hearing. A notice of the public
34 hearing shall be published once at least 10 days before the
35 date fixed for the hearing.

36 b. All applications for loans shall be filed with the Department
37 of Environment, Health, and Natural Resources. The form
38 of the application shall be prescribed by the Department
39 and shall require any information necessary to determine the
40 eligibility for a loan under the provisions of this section. All
41 applications approved by the Department of Environment,
42 Health, and Natural Resources shall be filed with the Local
43 Government Commission. Each applicant shall furnish to
44 the Department of Environment, Health, and Natural

- 1 Resources and the Local Government Commission
2 information in addition or supplemental to the information
3 contained in its application, upon request.
- 4 c. A local government unit shall not be eligible for a loan
5 unless it demonstrates to the satisfaction of the Department
6 of Environment, Health, and Natural Resources and the
7 Local Government Commission that:
- 8 1. The applicant is a local government unit;
 - 9 2. The applicant has the financial capacity to pay the
10 principal of and interest on its proposed loan as
11 evidenced by the approval of the Local Government
12 Commission;
 - 13 3. The applicant has substantially complied or will
14 substantially comply with all applicable laws, rules,
15 regulations, and ordinances, whether federal, State, or
16 local; and
 - 17 4. The applicant has agreed by official resolution to
18 adopt and place into effect a schedule of fees and
19 charges or the application of other sources of revenue
20 which will provide adequate funds for proper
21 operation, maintenance, and administration of the
22 project and repayment of all principal and interest on
23 the loan.
- 24 (2) Assessment. The Department of Environment, Health, and Natural
25 Resources may require any applicant to file with its application an
26 assessment of the impact the project for which the funds are sought
27 will have upon meeting the facility needs of the area within which
28 the project is to be located.
- 29 (3) Hearing by the Department of Environment, Health, and Natural
30 Resources or the Local Government Commission. A public
31 hearing may be held by the Department of Environment, Health,
32 and Natural Resources or the Local Government Commission at
33 any time on any application. Public hearings may also be held by
34 the Department of Environment, Health, and Natural Resources in
35 its discretion upon written request from any citizen or taxpayer
36 who is a resident of the county or counties in which the project is
37 to be located or a resident of the local government unit that
38 proposes to borrow moneys under this act, if it appears that the
39 public interest will be served by the hearing. The written request
40 shall set forth each objection to the proposed project or other
41 reason for requesting a hearing on the application and shall
42 contain the name and address of the persons submitting it. In
43 deciding whether to grant a request for a hearing on an
44 application, the Department of Environment, Health, and Natural

1 Resources may consider the application, the written objections to
2 the proposed project, and the facility needs and shall determine if
3 the public interest will be served by a hearing. The determination
4 by the Department of Environment, Health, and Natural Resources
5 shall be conclusive, and all written requests for a hearing shall be
6 retained as a permanent part of the records pertaining to the
7 application.

- 8 (4) Petition for Vote. A petition, demanding that the question of
9 whether to enter into a loan agreement with the State under this
10 act be submitted to voters, may be filed with the clerk of the local
11 government unit applying for the loan within 15 days after the
12 public hearing required by this section. The petition's sufficiency
13 shall be determined and a referendum, if any, shall be conducted,
14 according to the standards, procedures, and limitations set out in
15 G.S. 159-60 through G.S. 159-62.

16 (d) Priorities.

- 17 (1) Determination. Determination of priorities to be assigned each
18 eligible project shall be made semiannually by the Department of
19 Environment, Health, and Natural Resources during each fiscal
20 year. Every eligible project shall be considered by the Department
21 of Environment, Health, and Natural Resources with every other
22 project eligible during this same priority period.

- 23 (2) Priority Factors. All applications for loans under this act shall be
24 assigned a priority by the Department of Environment, Health, and
25 Natural Resources. Having a comprehensive land-use plan that
26 meets the requirements of G.S. 159G-10(e) shall be a priority
27 factor, and having a plan that meets the requirements of that
28 subsection and exceeds the minimum State standards for protection
29 of the State's water resources shall receive greater priority than
30 having a plan that does not exceed those standards. The
31 Department of Environment, Health, and Natural Resources shall
32 establish other priority factors criteria by rule.

- 33 (3) Assignment of Priority. A written statement relative to each
34 priority assigned shall be prepared by the Department of
35 Environment, Health, and Natural Resources and shall be attached
36 to the application. The priority assigned shall be conclusive.

- 37 (4) Failure to Qualify. If an application does not qualify for a loan as
38 of the prior period in which the application was eligible for
39 consideration by reason of the priority assigned, the application
40 shall be considered during the next succeeding priority period
41 upon request of the applicant. If the application again fails to
42 qualify for a loan during the second priority period by reason of
43 the priority assigned, the application shall receive no further
44 consideration. An applicant may file a new application at any time

1 and may amend any pending application to include additional data
2 or information.

3 (5) Withdrawal of Commitment. Failure of an applicant within one
4 year after the date of acceptance of the loan to arrange for
5 necessary financing of the proposed project or award of the
6 contract of the construction of the proposed project shall constitute
7 sufficient cause for withdrawal of the commitment. Prior to
8 withdrawal of a commitment, the Department of Environment,
9 Health, and Natural Resources shall give due consideration to any
10 extenuating circumstances presented by the applicant as reasons for
11 failure to arrange necessary financing or to award a contract, and
12 the commitment may be extended for an additional period of time
13 if, in the judgment of the Department of Environment, Health, and
14 Natural Resources, the extension is justified.

15 (e) Disbursement. To be eligible to receive the loans provided for in this
16 section, a local government unit must arrange to borrow the amounts necessary
17 pursuant to rules adopted by the Local Government Commission. No funds shall be
18 disbursed until the Department of Environment, Health, and Natural Resources gives
19 a certificate of eligibility to the effect that the applicant meets all eligibility criteria
20 and that all procedural requirements of this act have been met. The maximum
21 principal amount of a loan shall be one hundred percent (100%) of the cost of any
22 eligible project.

23 (f) Intercept. The governing body of a local government unit shall by
24 resolution authorize to be included in its loan agreement a provision authorizing the
25 State Treasurer, upon failure of the local government unit to make a scheduled
26 repayment of the loan, to withhold from the local government unit any State funds
27 that would otherwise be distributed to the local government unit in an amount
28 sufficient to pay all sums then due and payable to the State as a repayment of the
29 loan. In such event, notwithstanding any other provision of law, the State Treasurer
30 is authorized to withhold and apply such funds to the repayment of the loan, except
31 that such funds shall not be withheld if (i) before the execution of the loan
32 agreement, such funds have been legally pledged to secure special obligation bonds or
33 other obligations of the local government unit, or (ii) after the execution of the loan
34 agreement, such funds are legally pledged to secure special obligation bonds or other
35 obligations of the local government unit as authorized in this subsection. After the
36 execution of a loan agreement, all or any portion of the State funds specified in the
37 loan agreement to be so withheld may be pledged to secure special obligation bonds
38 or other obligations of the local government unit only with the prior written consent
39 of the State Treasurer.

40 The State Treasurer shall notify the Secretary of Revenue and the State
41 Controller of the amount to be withheld from the local government unit, and the
42 Secretary of Revenue and the State Controller shall transfer to the State Treasurer
43 the amount so requested to be applied by the State Treasurer to the repayment of the
44 loan.

1 (g) Inspection. Inspection of a project for which a loan has been made
2 under this act may be performed by qualified personnel of the Department of
3 Environment, Health, and Natural Resources or may be performed by qualified
4 engineers registered in this State approved by the Department of Environment,
5 Health, and Natural Resources. No person shall be approved to perform inspections
6 who is an officer employed by the local government unit to which the loan was made
7 or who is an owner, officer, employer, or agent of a contractor or subcontractor
8 engaged in the construction of the project for which the loan was made. For the
9 purpose of payment of inspection fees, inspection services shall be included in the
10 term "cost" as used in this act.

11 (h) Rules. The State Treasurer, the Local Government Commission, and
12 the Department of Environment, Health, and Natural Resources may adopt, modify,
13 and repeal rules necessary for the administration of their respective duties under this
14 act. Uniform rules may be jointly adopted where feasible and desirable, and no rule,
15 jointly adopted, may be modified or revoked except upon concurrence of all agencies
16 involved.

17 (i) Federal Grants and Loans. In order to carry out the purposes of this
18 act to secure the greatest possible benefits to the citizens of this State of the funds
19 appropriated, the State Treasurer, the Local Government Commission, and the
20 Department of Environment, Health, and Natural Resources shall adopt rules and
21 criteria, not inconsistent with provisions of this act, as are necessary and appropriate
22 to conform to regulations for federal grants and loans for any of the purposes set
23 forth in this act.

24 (j) Reports. The Department of Environment, Health, and Natural
25 Resources shall prepare and file each year on or before July 31 with the Joint
26 Legislative Commission on Governmental Operations a report for the preceding fiscal
27 year concerning the allocation and making of loans authorized by this act. The
28 report shall set forth for the preceding fiscal year:

- 29 (1) Itemized and total allocations of loans authorized and unallocated
30 funds for the loan program as of the end of the preceding fiscal
31 year;
- 32 (2) Identification of each loan agreement entered into by the State
33 during the preceding fiscal year and the total amount of loans
34 authorized by such loan agreements;
- 35 (3) The amount disbursed to each local government unit pursuant to
36 such loan agreements during the preceding fiscal year and the total
37 amount of such disbursements;
- 38 (4) The loan repayments made by each local government unit
39 pursuant to such loan agreements and the total amount of such
40 loan repayments during the preceding fiscal year; and
- 41 (5) A summary for the five preceding years of the information
42 required by subdivisions (1) through (4) of this subsection.

43 The report shall be signed by the Secretary of Environment, Health, and Natural
44 Resources.

1 (k) Local Government Commission.

2 (1) Local government units may execute debt instruments payable to
3 the State in order to obtain loans provided for in this act. Local
4 government units shall pledge or agree to apply as security for such
5 obligations:

6 a. Any available source of revenues of the local government
7 unit, including revenues from benefitted facilities or systems,
8 provided that (i) the local government unit has not
9 otherwise pledged the revenues as security for, or
10 contractually agreed to apply the revenues to, the payment
11 of any other obligations of the local government unit, (ii)
12 the use of the revenues is not otherwise restricted by law, or
13 (iii) the revenues are not derived from the exercise of the
14 local government unit's taxing power; or

15 b. Their faith and credit; or

16 c. Any combination of a. or b. above.

17 The faith and credit of a local government unit shall not be
18 pledged or be deemed to have been pledged unless the
19 requirements of Article 4 of Chapter 159 of the General Statutes
20 have been met. The State Treasurer, with the assistance of the
21 Local Government Commission, shall develop and adopt
22 appropriate debt instruments for use under this act.

23 (2) Nothing contained in this act shall prohibit any local government
24 unit from applying any funds of the local government unit not
25 otherwise restricted as to use by law to the payment of any debt
26 instrument payable to the State incurred pursuant to the provisions
27 of this act.

28 (3) The Local Government Commission shall review and approve
29 proposed loans to local government units under this act under the
30 provisions of Articles 4 and 5 of Chapter 159 of the General
31 Statutes. The Local Government Commission in considering the
32 ability of a local government unit to repay a loan may regard as a
33 source of revenue for repayment of a loan revenue sources that
34 may not be available other than on an annual discretionary basis
35 and that may not be subject to a pledge or agreement to apply.
36 Loans under this act shall be outstanding debts for the purposes of
37 Article 10 of Chapter 159 of the General Statutes.

38 (4) The State Treasurer shall annually certify to the General Assembly
39 the financial condition of the loan program and identify existing
40 delinquencies.

41 Section 11. Minority business participation. The goals set by G.S. 143-
42 128 for participation in projects by minority businesses apply to projects funded by
43 the proceeds of bonds or notes issued under this act. The Department of
44 Environment, Health, and Natural Resources shall monitor compliance with this

1 requirement and shall report to the General Assembly by January 1 of each year on
2 the participation by minority businesses in these projects.

3 Section 12. Interpretation of act. (a) Additional Method. The foregoing
4 sections of this act shall be deemed to provide an additional and alternative method
5 for the doing of the things authorized thereby and shall be regarded as supplemental
6 and additional to powers conferred by other laws, and shall not be regarded as in
7 derogation of any powers now existing.

8 (b) Statutory References. References in this act to specific sections or
9 Chapters of the General Statutes or to specific acts are intended to be references to
10 these sections, Chapters, or acts as they may be amended from time to time by the
11 General Assembly.

12 (c) Liberal Construction. This act, being necessary for the health and
13 welfare of the people of the State, shall be liberally construed to effect the purposes
14 thereof.

15 (d) Inconsistent Provisions. Insofar as the provisions of this act are
16 inconsistent with the provisions of any general laws, or parts thereof, the provisions of
17 this act shall be controlling.

18 (e) Severability. If any provision of this act or the application thereof to
19 any person or circumstance is held invalid, such invalidity shall not affect other
20 provisions or applications of the act which can be given effect without the invalid
21 provision or application, and to this end the provisions of this act are declared to be
22 severable.

23 Section 13. Authorize regional planning loans and grants. G.S. 159G-
24 3(4) reads as rewritten:

25 "(4) 'Construction costs' means the actual costs of planning, designing
26 and constructing any project for which a revolving loan or grant is
27 made under this Chapter including planning; environmental
28 assessment; wastewater system analysis, evaluation and
29 rehabilitation; engineering; legal, fiscal, administrative and
30 contingency costs for water supply systems, wastewater collection
31 systems, wastewater treatment works and any extensions,
32 improvements, remodeling, additions, or alterations to existing
33 systems. Construction costs may include excess or reserve capacity
34 costs, attributable to no more than 20-year projected domestic
35 growth, plus ten percent (10%) unspecified industrial growth. In
36 addition, construction costs shall include any fees payable to the
37 Environmental Management Commission or the Division of
38 Environmental Health for review of applications and grant of
39 permits, and fees for inspections under G.S. 159G-14. Construction
40 costs may also include the costs for purchase or acquisition of real
41 property. The term may also include the costs for planning and
42 designing a regional project or small town project. Funds for
43 planning and designing a regional project or small town project
44 may be advanced prior to construction of the project and may be

paid even though the project is never actually constructed. A small town is defined as a municipality with a population of 1,000 or less, based on the most recent annual estimate of population certified by the State Planning Officer."

Section 14. G.S. 159G-4(b) reads as rewritten:

"(b) Of the appropriations made from the General Fund to the Clean Water Revolving Loan and Grant Fund for use of the Department of Environment, Health, and Natural Resources as provided in this Chapter, allocations are made as follows after first subtracting the amounts allocated under subsection (a) of this section, to the extent that there are any excess funds available:

11	Wastewater Accounts		
12	General Wastewater Revolving		
13	Loan Account	39.00%	<u>38.00%</u>
14	Emergency Wastewater Revolving		
15	Loan Account	10.00%	<u>9.00%</u>
16	High-Unit Cost Wastewater		
17	Account	20.00%	<u>22.00%</u>
18	Water Supply Accounts		
19	General Water Supply		
20	Revolving Loan Account	21.00%	<u>20.00%</u>
21	High-Unit Cost Water Supply		
22	Account	-5.00%	<u>7.00%</u>
23	Emergency Water Supply Revolving		
24	Loan Account	-5.00%	<u>4.00%</u> ".

Section 15. G.S. 159G-6 reads as rewritten:

"§ 159G-6. Distribution of funds.

(a) Revolving loans and grants.

- (1) All funds appropriated or accruing to the Clean Water Revolving Loan and Grant Fund, other than funds set aside for administrative expenses, shall be used for revolving loans and grants to local government units for construction costs of wastewater treatment works, wastewater collection systems and water supply systems and other assistance as provided in this Chapter.
- (2) The maximum principal amount of a revolving loan or a grant may be one hundred percent (100%) of the nonfederal share of the construction costs of any eligible project. ~~The maximum principal amount of revolving loans made to any one local government unit during any fiscal year shall be three million dollars (\$3,000,000). The maximum principal amount of grants made to any one local government unit during any fiscal year shall be one million dollars (\$1,000,000).~~ The Department may establish maximum principal amounts for revolving loans and for grants made to the same local government unit in a fiscal year.

1 (3) The State Treasurer shall be responsible for investing and
2 distributing all funds appropriated or accruing to the Clean Water
3 Revolving Loan and Grant Fund for revolving loans and grants
4 under this Chapter. In fulfilling his responsibilities under this
5 section, the State Treasurer shall make a written request to the
6 Department of Environment, Health, and Natural Resources to
7 arrange for the appropriated funds to be (i) transferred from the
8 appropriate accounts to a local government unit to provide funds
9 for one or more revolving loans or grants or (ii) invested as
10 authorized by this Chapter with the interest on and the principal of
11 such investments to be transferred to the local government unit to
12 provide funds for one or more revolving loans or grants.

13 (b) Wastewater Accounts. -- The sums allocated in G.S. 159G-4 and accruing to
14 the various Wastewater Accounts in each fiscal year shall be used to make revolving
15 loans and grants to local government units as provided below. The Department of
16 Environment, Health, and Natural Resources shall disburse no funds from the
17 Wastewater Accounts except upon receipt of written approval of the disbursement
18 from the Environmental Management Commission.

19 (1) General Wastewater Revolving Loan and Grant Account. -- The
20 funds in the General Wastewater Revolving Loan and Grant
21 Account shall be used exclusively for the purpose of providing for
22 revolving construction loans or grants in connection with approved
23 wastewater treatment work or wastewater collection system
24 projects.

25 (2) High-Unit Cost Wastewater Account. -- The funds in the High-Unit
26 Cost Wastewater Account shall be available for grants to applicants
27 for high-unit cost wastewater projects. Eligibility of an applicant for
28 such a grant shall be determined by comparing estimated average
29 household user fees for water and sewer service, for debt service
30 and operation and maintenance costs, to one and one-half percent
31 (1.5%) of the median household income in the ~~county~~ local
32 government unit in which the project is located. The projects
33 which would require estimated average household water and sewer
34 user fees greater than one and one-half percent (1.5%) of the
35 median household income are defined as high-unit cost wastewater
36 projects and will be eligible for a grant equal to the excess cost,
37 subject to the limitations in ~~subsection~~ subdivision (a)(2) of this
38 section.

39 (3) Emergency Wastewater Revolving Loan Account. -- The funds in
40 the Emergency Wastewater Revolving Loan Account shall be
41 available for revolving emergency loans to applicants in the event
42 the Environmental Management Commission certifies that a serious
43 public health hazard, related to the inadequacy of existing
44 wastewater facilities, is present or imminent in a community.

1 (c) Water Supply Accounts. -- The sums allocated in G.S. 159G-4 and accruing to
2 the various Water Supply Accounts in each fiscal year shall be used to provide
3 revolving loans and grants to local government units as provided below. The
4 Department of Environment, Health, and Natural Resources shall disburse no funds
5 from the Water Supply Accounts except upon receipt of written approval of the
6 disbursement from the Division of Environmental Health.

7 (1) General Water Supply Revolving Loan and Grant Account. -- The
8 funds in the General Water Supply Revolving Loan and Grant
9 Account shall be used exclusively for the purpose of providing for
10 revolving construction loans and grants in connection with water
11 supply systems generally and not upon a county allotment basis.

12 (2) High-Unit Cost Water Supply Account. -- The funds in the High-
13 Unit Cost Water Supply Account shall be available for grants to
14 applicants for high-unit cost water supply systems, on the same
15 basis as provided in G.S. 159G-6(b)(2) for high-unit cost
16 wastewater projects.

17 (3) Emergency Water Supply Revolving Loan Account. -- The funds
18 in the Emergency Water Supply Revolving Loan Account shall be
19 available for revolving emergency loans to applicants in the event
20 the Division of Environmental Health certifies that a serious public
21 health hazard, related to the water supply system, is present or
22 imminent in a community.

23 (d) Repealed by Session Laws 1991, c. 186, s. 4.

24 (e) Notwithstanding any other provision of this Chapter, funds in the Water
25 Pollution Control Revolving Fund shall not be available as grants except to the extent
26 permitted by Title VI of the Federal Water Quality Act of 1987 and the regulations
27 thereunder."

28 Section 16. G.S. 159G-10 reads as rewritten:

29 "**§ 159G-10. Priorities.**

30 (a) Determination. -- Determination of priorities to be assigned each eligible
31 application shall be made semiannually by each receiving agency during each fiscal
32 year. Every eligible application filed under G.S. 159G-5(c), G.S. 159G-6(b)(1) or G.S.
33 159G-6(c)(1) shall be considered by the receiving agency with every other application
34 filed under G.S. 159G-5(c), G.S. 159G-6(b)(1) or G.S. 159G-6(c)(1), respectively, and
35 eligible for consideration during the same priority period, to determine the priority to
36 be assigned to each application. The same procedure shall apply to every eligible
37 application filed under G.S. 159G-6(b)(3) and G.S. 159G-6(c)(3) of this Chapter. Any
38 application which does not contain the information required by this Chapter or
39 regulations adopted by the receiving agency(s) shall not be deemed received until
40 such information is furnished by the applicant to the receiving agency.

41 (a1) (See note) Expired.

42 (b) Priority Factors. -- All applications for revolving loans or grants under this
43 Chapter eligible for consideration during each priority period shall be assigned a
44 priority for such funds by the receiving agency. The priority factors ~~shall~~ to be used

1 are listed below; many of these factors are similar to those developed under the North
2 Carolina Clean Water Bond Act of 1977, as provided in this subsection. 1977:

3 (1) General Criteria. -- The existence of a comprehensive land-use
4 plan that meets the requirements of subsection (e) of this section is
5 a general criterion for determining which local government units
6 will receive a loan or grant. A comprehensive land-use plan that
7 meets the requirements of that subsection and exceeds the
8 minimum State standards for protection of the State's water
9 resources shall receive more points than a plan that does not
10 exceed those standards.

11 The general criteria provided in 1 NCAC 22.0401 through .0403
12 on January 1, 1987, shall also apply, except that 1 NCAC
13 22.0401(c) shall apply only to State funds appropriated to match
14 available federal funds.

15 (2) Wastewater Treatment Work Projects. -- The priority criteria
16 provided in 1 NCAC 22.0501 through .0506 on January 1, 1987,
17 shall apply to applications for wastewater treatment work projects,
18 except that 1 NCAC 22.0503 shall not apply.

19 (3) Wastewater Collection System Projects. -- The priority criteria
20 provided in 1 NCAC 22.0601 through .0606 on January 1, 1987,
21 shall apply to applications for wastewater collection system
22 projects, except that 1 NCAC 22.0601(2)(a) and (3), and 1 NCAC
23 22.0605(2), (3) and (4) shall not apply.

24 (4) Water Supply System Projects. -- The priority criteria provided in
25 1 NCAC 22.0701 through .0704 on January 1, 1987, shall apply to
26 applications for water supply system projects.

27 (5) The total number of points available in the respective categories
28 shall be deemed adjusted in accordance with the provisions of
29 subdivisions (1) through (4) of this subsection.

30 (c) Assignment of Priority. -- A written statement relative to each priority assigned
31 shall be prepared by the receiving agency and shall be attached to the application.
32 The priority assigned shall be conclusive.

33 (d) Failure to Qualify. -- Any application filed under G.S. 159G-5(c), G.S. 159G-
34 6(b) or G.S. 159G-6(c) that does not qualify for a revolving loan or grant as of the
35 priority period in which the application was eligible for consideration by reason of
36 the priority assigned the application shall be considered for a revolving loan or grant
37 during the next succeeding priority period upon request of the applicant. If such
38 application should again fail to qualify for a revolving loan or grant during the
39 second priority period by reason of the priority assigned, the application shall receive
40 no further consideration. An applicant may file a new application at any time, and
41 may amend any pending application to include additional data or information.

42 (e) Land-Use Plan. -- Local units of government are encouraged to adopt
43 comprehensive land-use plans. To qualify as a comprehensive land-use plan, a plan
44 must meet all of the following requirements:

- 1 (1) Be adopted by the governing body of the local government unit
2 covered by the plan.
3 (2) Promote economically and environmentally sustainable
4 development.
5 (3) Establish verifiable goals to be met through compliance with the
6 plan.
7 (4) Be approved by the Office of State Planning."

8 Section 17. Effective date. Sections 13 through 16 of this act become
9 effective only if the voters approve the issuance of the Clean Water Bonds authorized
10 by this act in the election required by Section 7 of this act. The remaining sections of
11 this act are effective when the act becomes law.

RURAL WATER & SEWER NEEDS FAR SURPASS AVAILABLE FUNDS

Water and sewer problems reach crisis stage.

North Carolina citizens and water experts alike have become increasingly alarmed at the seriousness of water and sewer problems in the state. Reports indicate that

- the state is ranked third in the number of rural households without indoor plumbing;
- 10% of wells in eastern and piedmont North Carolina have unsafe nitrate levels;
- 80% of septic tanks along the coast are prone to failure from old age and high water tables;
- groundwater levels in the eastern piedmont are falling as much as eight feet per year;
- algae blooms from high nitrogen levels killed 14 million fish in the Neuse River in 1995.

New study doubles estimate of state water & sewer needs.

A study now being conducted by the Rural Economic Development Center, Inc. and the Rural Development Council estimates **\$11.34 billion in clean water needs in North Carolina over the next 20 years** — \$4 billion for drinking water and \$7.34 billion for wastewater. This estimate is double the most recent estimates by state and federal sources. (See "About the Study" on reverse side.)

Rural water & sewer needs total \$4.3 billion.

Projected water needs for the 85 rural counties of the state amount to \$1.75 billion or 43 percent of the state total. Projected sewer needs in rural counties amount to \$2.58 billion or 35 percent of the total.

Public funds for water & sewer improvements shrinking.

Government loans and grants for water and wastewater improvements have been on the decline since the 1970s.

- Through the 1960s and 70s, federal programs funded a considerable portion of the water and sewer needs in North Carolina.
- Funding from those programs, however, has been on the decline in recent years. From 1981 to 1994, the federal share of total spending on water and sewer declined from 43 to 22 percent.
- Just in the last two years, water and sewer grants have decreased by half in North Carolina, from \$64 million to \$32 million.
- The State has made real attempts to offset that decline, most noteworthy, through the 1993 Clean Water Bond Issue for \$135 million. Demand, however, outstrips supply.

Urban areas able to access private market funds.

Many urban areas, with their strong economic base, have been successful in accessing funds for water and sewer improvements through the state's extensive system of banks and investment houses.

- In FY96, almost a half billion dollars of local water and sewer project debt was placed in the private market.

- ❑ This represented more than 80 percent of all statewide water & sewer financing in that year.
- ❑ Of this total, 79 percent was targeted to the water and sewer needs of seven of the state's 15 urban counties.

Many rural areas, however, are losing out.

Rural communities, with their smaller tax bases and debt limitations, often are unable to access funds from the private market. In North Carolina, local governments with ratings of 75 or better are considered acceptable for portfolio investment by banks.

- ❑ Of the 527 municipalities in North Carolina, 402 (76%) have no bond rating or have ratings below 75. Five counties have ratings below 75.
- ❑ Of these five counties, all are rural; 93 percent of the 402 municipalities are rural.
- ❑ Not one of the 100 rural local governments with the lowest ability to pay, as defined by the N.C. Department of Commerce, has a credit rating high enough to be acceptable in the marketplace.
- ❑ Rural areas were able to access only 33 percent of total public and private funds during the last fiscal year.

The State should take vitally important steps now to respond to the water and sewer crisis in rural North Carolina.

If North Carolina's rural communities are to be safe, desirable places to live and work, state leadership must respond with bold, creative solutions for financing water and sewer needs. **These solutions should focus specifically on economically distressed rural areas.** Solutions should emphasize:

- ❑ A Regional Approach to Design and Construction — that decreases the total number of treatment plants and lowers duplicative operating costs.
- ❑ A Two-Tiered Financing Approach — that allocates a percentage of funds for all communities at market rates and a percentage for loan and grant packages to serve the specific needs of low wealth counties and municipalities.

About the study ...

- ❑ A primary component of the North Carolina Water/Sewer Initiative is the computerized mapping of public water and sewer systems in the state.
- ❑ To date, mapping has been completed in 30 western counties. An analysis of these counties reveals \$711 million in water improvement needs.
- ❑ Based on this analysis, initiative staff have been able to project \$11.34 billion in clean water needs for the entire state.
- ❑ Mapping of eastern and piedmont counties will be completed by October 1, 1997.
- ❑ The result will be the state's first comprehensive, accurate data set on water and sewer locations and needs — a sound basis for future policy directions and funding decisions.
- ❑ The data set will become part of the State of North Carolina's Geographical Information System and will be accessible by computer.

SB 232 (PCS)-State Clean Water Bonds

- This act would authorize the issuance of \$1 billion State general obligation bonds for local government water and sewer projects. Because the debt service on \$800 million of bonds would be ultimately be paid by local governments receiving loans, the net State responsibility would be for the remaining \$200 million. Based on a 6% average interest rate assumption, the State's debt service on the \$200 million would average \$17.0 million a year for 20 years. Current rates are around 5.25%.
- The bond proceeds will be used by local governments for water supply systems, wastewater collection systems, wastewater treatment works, and water conservation projects. The bonds would be submitted to the voters for approval at the next Statewide election, either November 1997 or May 1998.
- \$200 million of bonds would be used for revolving loans and grants under the Clean Water Revolving Loan and Grant Fund and for matching funds for federal wastewater or water supply assistance funds for the 1998-99 and 1999-2000 fiscal years. The debt service on this portion of the bonds would be paid from the General Fund.
- The Clean Water Revolving Loan and Grant Fund is an existing fund that helps communities, particularly smaller, poorer communities, obtain low-interest loans and grants to fund clean water projects. There is currently insufficient money in the Fund to meet existing needs.
- The bill amends the Clean Water Revolving Loan and Grant Fund to increase the percentage of money used for grants to poorer units of local governments and to authorize funds for regional planning and planning by small towns.
- The remaining \$800 million of the bonds would be used for loans to local governments. The repayments by the local governments would provide the funds for debt service for this portion of the bonds.
- The loans would be allocated 69% for wastewater projects and 31% for water supply systems and water conservation projects. These percentages are based on the allocations in the existing revolving fund.
- Local government units that may apply for loans include counties, cities, towns, sanitary districts, and water and sewer districts, as well as two or more of these units acting jointly. Priorities for the loans would be determined by the Department of Environment, Health, and Natural Resources, based on the priority factors for the existing revolving fund, on achieving reductions in nutrient levels and overall effluent volume discharged into the State's waters, regional systems, and on adoption by the local unit of a comprehensive land use plan.
- The Department of Environment, Health, and Natural Resources will administer the loans, and the State Treasurer will determine the interest rate and maturity of the loans at rates such that repayments will be sufficient to cover the State's debt service and costs of issuing and administering the bonds. The Department of Environment, Health, and Natural Resources is required to report annually in detail on this loan program to the Joint Legislative Commission on Governmental Operations.
- Local government units may submit applications on a semiannual basis but, before submitting an application, the unit must hold a public hearing. The Department of Environment, Health, and Natural Resources may hold additional public hearings.
- To be eligible for a loan, a local government unit must demonstrate that it has the financial capacity to repay the loan. In addition, in its loan agreement, the unit must authorize the State Treasurer to intercept any of its State funds distributions if it fails to make timely payments on a loan.

**Summary of EPA Needs and Separate State-Estimated Needs
(HAs through 12/7/96)**

	MU	ME	MI	MN	MO	MS.	MT	NC	ND
EPA Cal. 1	293,606	112,593	635,192	470,838	507,709	234,389	48,119	280,620	64,850
EPA Cal. 2	215,754	4,280	12,430	40,993	29,530	01,925	4,108	1,147,365	0
EPA Cal. 3A	0,285	26,182	13,929	34,869	258,726	00,215	5,560	137,256	0
EPA Cal. 3B	141,742	11,095	78,701	70,619	230,340	67,647	19,226	81,089	20,111
EPA Cal. 4A	206,229	90,012	152,007	101,624	138,108	190,178	28,438	1,220,955	0
EPA Cal. 4B	222,742	64,322	328,476	84,247	132,604	134,304	9,716	924,969	768
EPA Cal. 5 (Duc.)	9,228	205,321	2,906,724	0	474,003	0	1,100	948	0
EPA Cal. 5 (Mod.)	158,075	333,958	936,139	4,345	711,388	0	0,760	13,719	0
EPA Cal. 6	37,908	333	0	0	19,283	0	3,268	101,293	50
EPA Cal. 7A	0	0	0	13,632	5,969	0	0	0	0
EPA Cal. 7B	0	0	0	10,086	14,739	0	0	0	0
EPA Cal. 7C	0	0	0	0	4,823	0	0	0	0
EPA Cal. 7D	860	0	0	1,110	3,852	500	0	6,530	4,800
EPA Cal. 7E	105,598	0	0	626	190,366	0	7,380	0	3,185
EPA Cal. 7F	0	0	0	0	0	0	0	11,103	0
EPA Cal. 7G	0	0	0	958	91	0	0	0	0
Total	1,400,805	840,196	5,063,598	843,847	2,735,611	797,130	127,749	3,986,819	93,572

NEEDS IN THOUSANDS OF DOLLARS

Table 1-1. Types of Waste Water Treatment and Water Pollution Control Projects Supported in the CWNS.

CATEGORY I	--	Secondary Treatment
CATEGORY II	--	Advanced Treatment
CATEGORY IIIA	--	Infiltration/Inflow Correction
CATEGORY IIIB	--	Replacement/Rehabilitation of Sewers
CATEGORY IVA	--	New Collector Sewers
CATEGORY IVB	--	New Interceptor Sewers
CATEGORY V	--	Combined Sewer Overflows
CATEGORY VI	--	Stormwater
CATEGORY VIIA	--	Nonpoint Source - Agriculture (cropland)
CATEGORY VIIB	--	Nonpoint Source - Agriculture (animals)
CATEGORY VIIC	--	Nonpoint Source - Silviculture
CATEGORY VIID	--	Nonpoint Source - Urban
CATEGORY VIIE	--	Nonpoint Source - Ground Water
CATEGORY VIIF	--	Nonpoint Source - Estuaries
CATEGORY VIIG	--	Nonpoint Source - Wetlands

as of 12/10/96.

database 11/2/10/96 14:23

PAGE 4

FACID	CNTYNAM	FACNAME	CITYNAM	AUTHNAM	NEDI	NEDII	NEDIIIA	NEDIIIB	NEDIVA	NEDIVB	NEDV	NEDVI	NEDTOT	ST
NORHT CAROLINA - 1996 CWNS														
371313001	CABARRUS	MIDLAND LAGOO	MIDLAND	CARBARRUS CO.	1406					1449			2855	NC
371301001	CABARRUS	BREY MCNAR CO	CONCORD	CONCORD BOARD										NC
371305001	CABARRUS	HARRISBURG CO	HARRISBURG	HARRISBURG, TO				2334		1353			3687	NC
371309001	CABARRUS	JACKSON PARK C	JACKSON PARK	JACKSON PARK SA					7521				7521	NC
371303001	CABARRUS	KANNAPOLIS COL	KANNAPOLIS	KANNAPOLIS SANI										NC
371303002	CABARRUS	KANNAPOLIS SAN	KANNAPOLIS	KANNAPOLIS SANI										NC
371306001	CABARRUS	MT. PLEASANT W	MOUNT PLEAS	MT. PLEASANT, T										NC
371310001	CABARRUS	PARKWOOD COLL	NORTH CONCO	PARKWOOD SANIT										NC
371304001	CABARRUS	ROYAL OAKS SAN	KANNAPOLIS	ROYAL OAKS SANI										NC
371301002	CABARRUS	ROCKY RIVER WT	CONCORD	WATER/SEWER AU		32000				78331			110331	NC
					1406	32000			9855	81133			124394	

11

371408107	CALDWELL	COLLETSVILLE	COLLETSVILLE	CALDWELL COUNT										NC
371408108	CALDWELL	GAMEWELL SCHS	GAMEWELL	CALDWELL COUNT										NC
371409001	CALDWELL	SAW MILLS COLL	GRANITE FALL	CALDWELL COUNT				7514		716			8230	NC
371408106	CALDWELL	KINGS CK	ELEM	KINGS CREEK										NC
371408109	CALDWELL	OAK HILL WTS	OAK HILL	CALDWELL COUNT										NC
371408105	CALDWELL	HAP. VALLEY EL	PATTERSON	CALDWELL COUNT										NC
371402001	CALDWELL	GRANITE FALLS	GRANITE FALL	GRANITE FALLS,								250	250	NC
371403001	CALDWELL	HUDSON COLL	SY HUDSON	HUDSON, TOWN O										NC
371401001	CALDWELL	LOWER CK WW T	LENOIR	LENOIR, CITY OF	937		718		161	325			2141	NC
371401002	CALDWELL	GUNPOWDER CR	LENOIR	LENOIR, CITY OF		500							500	NC
371404001	CALDWELL	RHODISS WWTP	RHODISS	RHODISS, TOWN	821					561			1382	NC
					1758	500	718		7675	1602			12503	

11

371408001	CALDWELL COU	CALDWELL CO. C		CALDWELL COUNT					3304	2748			6052	NC
									3304	2748			6052	

1

371502001	CAMDEN	CAMDEN-BELCRO	CAMDEN	CAMDEN CO										NC
371501001	CAMDEN	CAMDEN CO REG		CAMDEN CO REG										NC
371501102	CAMDEN	GRANDY ELEMEN	CAMDEN	CAMDEN CO.										NC
371501101	CAMDEN	CAMDEN CO. HIG	ELIZABETH CI	CAMDEN CO.										NC
371504001	CAMDEN	SHILOH SEPTICS	SHILOH	SHILOH, TN OF										NC
371503001	CAMDEN	SOUTH MILLS SE	SOUTH MILLS	SOUTH MILLS, TN										NC

6

371602001	CARTERET	BEAUFORT WWT	BEAUFORT	BEAUFORT, TOWN		3750				3065			6815	NC
371603001	CARTERET	CAPE CARTERET	CAPE CARTER	CAPE CARTERET,					7656	2613			10269	NC
371611002	CARTERET	MOREHEAD WWT	MOREHEAD C/T	CARTERET CO WA	7178	3077							10255	NC
371604001	CARTERET	ATLANTIC BEACH	ATLANTIC BEA	CARTERET COUNT					13950	4522			18472	NC
371609001	CARTERET	CARTERET CO. R	BEAUFORT	CARTERET COUNT									41460	NC
371614001	CARTERET	CARTERET CO. R	BEAUFORT	CARTERET COUNT		53248			77000	23000			153248	NC
371613001	CARTERET	CEDAR ISLAND		CEDAR ISLAND		812							812	NC
371607001	CARTERET	CEDAR POINT CO	CEDAR POINT	CEDAR POINT					5254	726			5980	NC

FACID	CNTYNAM	FACNAME	CITYNAM	AUTHNAM	NEDI	NEDII	NEDIIA	NEDIIB	NEDIVA	NEDIVB	NEDV	NEDVI	NEDTOT	ST
NORHT CAROLINA - 1996 CWNS														
372903001	DAVIDSON	DENTON COLL SY DENTON	DENTON, TOWN O	DENTON, TOWN O	167	790	763	1720	NC				1720	NC
372903002	DAVIDSON	DENTON, WWTP DENTON	DENTON, TOWN O	DENTON, TOWN O	230	280	1135	NC					1135	NC
372901001	DAVIDSON	SWEARING CR W LEXINGTON	LEXINGTON, CITY	LEXINGTON, CITY										NC
372901002	DAVIDSON	ABBOTTS CK WT LEXINGTON	LEXINGTON, CITY	LEXINGTON, CITY	9700			9700	NC					NC
372901003	DAVIDSON	LEXINGTON WWTP LEXINGTON	LEXINGTON, CITY	LEXINGTON, CITY	3520	10200		21932	NC					NC
372902001	DAVIDSON	HAMBY CK WAST THOMASVILLE	THOMASVILLE, CI	THOMASVILLE, CI	8212	13845	397	38939						
					8212	13845	790	15695						
9														
373001001	DAVIE	COOLEEMEE STP COOLEEMEE	BURLINGTON INDU	BURLINGTON INDU										NC
373004001	DAVIE	COOLEEMEE COOLEEMEE	COOLEEMEE	COOLEEMEE	557			557	NC					NC
373004100	DAVIE	DAVIE COUNTY S	DAVIE COUNTY SC	DAVIE COUNTY SC										NC
373002001	DAVIE	MOCKSVILLE E. MOCKSVILLE	MOCKSVILLE, TOW	MOCKSVILLE, TOW										NC
373002002	DAVIE	DUTCHMAN CREE MOCKSVILLE	MOCKSVILLE, TOW	MOCKSVILLE, TOW										NC
373002003	DAVIE	MOCKSVILLE WE MOCKSVILLE	MOCKSVILLE, TOW	MOCKSVILLE, TOW	1422		521	1943	NC					NC
					1422	557	521	2500						
6														
373105001	DUPLIN	BEULAVILLE WW BEULAVILLE	BEULAVILLE, TOW	BEULAVILLE, TOW										NC
373112001	DUPLIN	BURNING BUSH	BURNING BUSH	BURNING BUSH	1113			1113	NC					NC
373104001	DUPLIN	CALYPSO SEPTIC CALYPSO	CALYPSO TOWN O	CALYPSO TOWN O		1880		1880	NC					NC
373111001	DUPLIN	CHINQUAPIN	CHINQUAPIN	CHINQUAPIN	1670			1670	NC					NC
373102001	DUPLIN	FAISON WWTF FAISON	FAISON, TOWN OF	FAISON, TOWN OF										NC
373106001	DUPLIN	GREENEVERS CO GREENEVERS	GREENEVERS, TO	GREENEVERS, TO										NC
373107001	DUPLIN	KENANSVILLE W KENANSVILLE	KENANSVILLE, TO	KENANSVILLE, TO	1275			1275	NC					NC
373108001	DUPLIN	MAGNOLIA MUN. MAGNOLIA	MAGNOLIA, TOWN	MAGNOLIA, TOWN										NC
373109001	DUPLIN	ROSE HILL WWTP ROSE HILL	ROSE HILL, TOWN	ROSE HILL, TOWN										NC
373113001	DUPLIN	TEACHEY	TEACHEY	TEACHEY	1670			1670	NC					NC
373110001	DUPLIN	WALLACE WWTP WALLACE	WALLACE, TOWN	WALLACE, TOWN	4000			4000	NC					NC
373101001	DUPLIN	WARSAW STP WARSAW	WARSAW, TOWN	WARSAW, TOWN	1000			1700	NC					NC
					10728	6015	4000	4000						
					1880	1880								
12														
373201001	DURHAM	NORTHSIDE WWTP DURHAM	DURHAM,	DURHAM,	6230	2670	9415	10290	33478	NC				NC
373201002	DURHAM	ENO WASTE TRE DURHAM	DURHAM,	DURHAM,										NC
373201003	DURHAM	LITTLE LICK WW DURHAM	DURHAM,	DURHAM,										NC
373201004	DURHAM	NEW HOPE WWTP DURHAM	DURHAM,	DURHAM,		2357	796							3153
373201005	DURHAM	SANDY CREEK W DURHAM	DURHAM,	DURHAM,										NC
373201006	DURHAM	THIRD FORK WW DURHAM	DURHAM,	DURHAM,										791
373201007	DURHAM	HOPE VALLEY W DURHAM	DURHAM,	DURHAM,										2052
373201008	DURHAM	FARRINGTON RD DURHAM	DURHAM,	DURHAM,	2380	1020	4272	10290	27987	NC				NC
373202001	DURHAM	TRIANGLE WWTP DURHAM	DURHAM,	DURHAM,										NC
					8610	12180	796	18830	2755			20580	67441	
9														
373303001	EDGECOMBE	CONETOE WWTP CONETOE	CONETOE, TOWN O	CONETOE, TOWN O	130									130
373305001	EDGECOMBE	LEGGETT SEPTIC LEGGETT	LEGGETT, TOWN O	LEGGETT, TOWN O										NC
373306001	EDGECOMBE	MACCLESFIELD MACCLESFIELD	MACCLESFIELD, T	MACCLESFIELD, T			69							69

112/10/96 14:23
 0
 NORHT CAROLINA - 1996 CWNS
 FACID CNTYNAM FACNAME CITYNAM AUTHNAM NEDI NEDII NEDIIIA NEDIIIB NEDIVA NEDIVB NEDV NEDVI NEDTOT ST
 374107001 GUILFORD SEDGEFIELD WWT SEDGEFIELD SEDGEFIELD, SAN 1000 8600 2250 13231 10144 21080 56305 -- NC

11
 374202001 HALIFAX ENFIELD WWTP ENFIELD ENFIELD, TOWN O -- -- -- -- -- -- -- -- -- NC
 374212102 HALIFAX PITTMAN ELEM W ENFIELD HALIFAX COUNTY -- -- -- -- -- -- -- -- -- NC
 374212108 HALIFAX EASTMAN HIGH ENFIELD HALIFAX COUNTY -- -- -- -- -- -- -- -- -- NC
 374212111 HALIFAX T. SHIELDS ELE HOBGOOD HALIFAX COUNTY -- -- -- -- -- -- -- -- -- NC
 374212103 HALIFAX MCIVER ELEM. W LITTLETON HALIFAX COUNTY -- -- -- -- -- -- -- -- -- NC
 374212106 HALIFAX AURELIAN SPS. LITTLETON HALIFAX COUNTY -- -- -- -- -- -- -- -- -- NC
 374212101 HALIFAX TILLERY CHAPEL TILLERY HALIFAX COUNTY -- -- -- -- -- -- -- -- -- NC
 374203001 HALIFAX HALIFAX WTP HALIFAX HALIFAX, TOWN O -- -- -- -- -- -- -- -- -- NC
 374204001 HALIFAX HOBGOOD WWTP HOBGOOD HOBGOOD, TOWN -- -- -- -- -- -- -- -- -- NC
 374205001 HALIFAX LITTLETON WWTP LITTLETON LITTLETON, TOWN -- -- -- -- -- -- -- -- -- NC
 374201001 HALIFAX ROANOKE RAPID ROANOKE RAPIROANKE RPD SA 1893 4417 1000 1500 1541 78 300 8310 NC
 374207001 HALIFAX SCOTLAND NECK SCOTLAND NE SCOTLAND NECK, 1584 30 563 2177 NC
 374208001 HALIFAX WELDON WTP WELDON WELDON, TOWN O -- -- -- -- -- -- -- -- -- NC

 2556 7735 1211 1500 5319 1056 19377

13
 374301001 HARNETT ANGIER WWTP ANGIER ANGIER, TOWN OF -- -- -- -- -- -- -- -- -- NC
 374307001 HARNETT BUIES CREEK W BUIES CREEK, TO -- -- -- -- -- -- -- -- -- NC
 374302001 HARNETT BUNNLEVEL WTP BUNNLEVEL BUNNLEVEL, TOW 64 -- -- -- -- -- -- -- -- -- NC
 374304001 HARNETT DUNN WESTSIDE DUNN DUNN, CITY OF -- -- -- -- -- -- -- -- -- NC
 374304002 HARNETT DUNN COLL SYS DUNN DUNN, CITY OF 1026 191 -- -- -- -- -- -- -- -- -- NC
 374305001 HARNETT ERWIN COLL SYS ERWIN ERWIN, TOWN OF -- -- -- -- -- -- -- -- -- NC
 374305002 HARNETT ERWIN WWTP ERWIN ERWIN, TOWN OF 2985 963 -- -- -- -- -- -- -- -- -- NC
 374308001 HARNETT HARNETT REGIO -- HARNETT COUNTY -- -- -- -- -- -- -- -- -- NC
 374303001 HARNETT COATS C.S. COATS HARNETT COUNTY -- -- -- -- -- -- -- -- -- NC
 374306001 HARNETT LILLINGTON WTP LILLINGTON LILLINGTON, TOW -- -- -- -- -- -- -- -- -- NC

 1392 1026 5492 4593 12503

10
 374402001 HAYWOOD CANTON S.D. CANTON CANTON, CITY OF -- -- -- -- -- -- -- -- -- NC
 374403001 HAYWOOD CLYDE STP CLYDE CLYDE, TOWN OF 75 347 -- -- -- -- -- -- -- -- -- NC
 374408001 HAYWOOD HAYWOOD CO RE HAYWOOD CO RE 64 240 -- -- -- -- -- -- -- -- -- NC
 374408104 HAYWOOD HAYWOOD TECH CLYDE HAYWOOD CO. -- -- -- -- -- -- -- -- -- NC
 374409001 HAYWOOD HAYWOOD COUN -- HAYWOOD COUNT -- -- -- -- -- -- -- -- -- NC
 374401001 HAYWOOD HAZELWOOD SW HAZELWOOD HAZELWOOD, CITY 96 1314 -- -- -- -- -- -- -- -- -- NC
 374407001 HAYWOOD JUNALUSKA S.D. JUNALUSKA JUNALUSKA S.D. 3355 824 -- -- -- -- -- -- -- -- -- NC
 374404001 HAYWOOD MAGGIE VALLEY MAGGIE VALLE MAGGIE VALLEY S 2413 762 -- -- -- -- -- -- -- -- -- NC
 374405001 HAYWOOD WAYNESVILLE ST WAYNESVILLE WAYNESVILLE, CI 1333 181 -- -- -- -- -- -- -- -- -- NC

 1408 96 15635 6031 23170

9
 374509001 HENDERSON FLETCHER, TOWN TOWN OF FLET FLETCHER, TOWN -- -- -- -- -- -- -- -- -- NC
 374507001 HENDERSON HENDERSON CO HENDERSONVI HENDERSON COUNT -- -- -- -- -- -- -- -- -- NC
 374508100 HENDERSON HENDERSON COU -- HENDERSON COUNT 67509 -- -- -- -- -- -- -- -- -- NC

 2753 14942 67509 -- -- -- -- -- -- -- -- -- NC
 82451 NC -- -- -- -- -- -- -- -- -- NC
 --NC

NORHT CAROLINA - 1996 CWNS

FACID	CNTYNAM	FACNAME	CITYNAM	AUTHNAM	NEDI	NEDII	NEDIIIA	NEDIIB	NEDIVA	NEDIVB	NEDV	NEDVI	NEDTOT	ST
375102001	JOHNSTON	CLAYTON WWTP	CLAYTON	CLAYTON, TOWN O	-	1250	250	250	500	250	-	-	2500	NC
375104001	JOHNSTON	FOUR OAKS COLL	FOUR OAKS	FOUR OAKS, TOW	-	-	-	-	225	-	-	-	225	NC
375113001	JOHNSTON	SMITHFIELD REG	SMITHFIELD	JOHNSTON CO. BD	7899	-	-	-	22877	-	-	-	30776	NC
375113105	JOHNSTON	CLEVELAND ELE	CLAYTON	JOHNSTON COUNT	-	-	-	-	-	-	-	-	-	NC
375113107	JOHNSTON	N. JOHNSTON HS	KENLY	JOHNSTON COUNT	-	-	-	-	-	-	-	-	-	NC
375105001	JOHNSTON	KENLY WWTP	KENLY	KENLY, TOWN OF	-	1123	1000	-	-	-	-	-	2123	NC
375106001	JOHNSTON	MICRO COLLECTI	MICRO	MICRO, TOWN OF	-	-	-	-	-	-	-	-	-	NC
375107001	JOHNSTON	PINE LEVEL COL	PINE LEVEL	PINE LEVEL, TOW	-	-	-	-	80	-	-	-	80	NC
375108001	JOHNSTON	PRINCETON WWT	PRINCETON	PRINCETON, TOW	-	-	-	-	-	-	-	-	-	NC
375109001	JOHNSTON	SELMA STP	SELMA	SELMA, TOWN OF	-	-	-	-	-	-	-	-	-	NC
375110001	JOHNSTON	SMITHFIELD STP	SMITHFIELD	SMITHFIELD, TOW	-	-	50	38	3973	1659	-	-	5720	NC
375112001	JOHNSTON	W. SMITHFIELD	SMITHFIELD	W. SMITHFIELD S	-	-	-	-	376	-	-	-	376	NC
					7899	4986	1300	288	5154	24786	-	-	44413	
376709001	JONES	JONES CO HEALT	-	JONES CO HEALTH	-	-	-	-	-	-	-	-	-	NC
376709105	JONES	TABERNACLE WT	MAYSVILLE	JONES COUNTY	-	-	-	-	-	-	-	-	-	NC
375201001	JONES	MAYSVILLE WAST	MAYSVILLE	MAYSVILLE, TOWN	-	176	-	-	-	208	-	-	384	NC
375202001	JONES	POLLOCKSVILLE	POLLOCKSVILLE	POLLOCKSVILLE	-	-	-	-	-	-	-	-	-	NC
375203001	JONES	TRENTON STP	TRENTON	TRENTON, TOWN	-	-	-	-	-	-	-	-	-	NC
						176				208			384	
375301003	LEE	BIG BUFFALO ST	SANFORD	SANFORD, CITY O	-	-	-	-	-	-	-	-	-	NC
375401002	LENOIR	NORTH SIDE WTP	KINSTON	KINSTON DEPT OF	7350	10114	-	-	-	1940	-	-	19404	NC
375401001	LENOIR	SOUTH SIDE WTP	KINSTON	KINSTON, CITY O	7312	3134	5000	-	-	7045	-	-	22491	NC
375403001	LENOIR	LA GRANGE WTP	LAGRANGE	LA GRANGE, TOWN	-	-	73	-	714	338	-	-	1125	NC
375405104	LENOIR	SOUTH LENOIR H	DEEP RUN	LENOIR CO	-	-	-	-	-	-	-	-	-	NC
375405106	LENOIR	SAVANNAH JR. H	GRIFTON	LENOIR CO	-	-	-	-	-	-	-	-	-	NC
375406001	LENOIR	DEEP RUN WWTP	DEEP RUN	LENOIR CO.	260	116	-	-	206	105	-	-	687	NC
375404001	LENOIR	PINKHILL WWTF	PINK HILL	PINK HILL, TOWN	-	-	-	-	-	-	-	-	-	NC
					14922	13364	5073		920	9428			43707	
375502001	LINCOLN	BOGER CITY COL	BOGER CITY	BOGER CITY SANI	-	-	-	-	2119	91	-	-	2210	NC
375503001	LINCOLN	EAST LINCOLN	-	EAST LINCOLN W	-	5685	-	-	10233	1137	-	-	17055	NC
375501001	LINCOLN	LINCOLNTON WW	LINCOLNTON	LINCOLNTON, CIT	7669	17893	500	700	4581	281	-	-	31624	NC
					7669	23578	500	700	16933	1509			50889	
375701001	MACON	FRANKLIN WWTP	FRANKLIN	FRANKLIN, CITY	-	-	-	-	350	2726	-	-	3171	NC
375702001	MACON	HIGHLANDS MUN.	HIGHLANDS	HIGHLANDS, TOWN	-	-	95	-	-	-	-	-	-	NC
						95			350	2726			3171	

FACID	CNTYNAM	FACNAME	CITYNAM	AUTHNAM	NEDI	NEDII	NEDIIA	NEDIIIB	NEDIVA	NEDIVB	NEDV	NEDVI	NEDTOT	ST
NORHT CAROLINA - 1996 CWNS														
376007001	MECKLENBUR	PINEVILLE WCS	PINEVILLE	PINEVILLE, TOWN	32612	110116	14603	8000	120520	103198		38817	427866	70 NC
14														
376101001	MITCHELL	BAKERSVILLE MU	BAKERSVILLE	BAKERSVILLE, TO			42							42 NC
376103102	MITCHELL	LEDGER SCHOOL	BAKERSVILLE	MITCHELL CO										-NC
376103103	MITCHELL	MITCHELL CO HI	BAKERSVILLE	MITCHELL CO										-NC
376103101	MITCHELL	TIPTON HILL SC	BAKERSVILLE	MITCHELL CO.										-NC
376103100	MITCHELL	MITCHELL COUNT		MITCHELL COUNTY										-NC
376102001	MITCHELL	SPRUCE PINE W	SPRUCE PINE	SPRUCE PINE, TO										-NC
6														
376202001	MONTGOMERY	BISCOE WWTP	BISCOE	BISCOE, TOWN OF	171	68	431			1377				2047 NC
376203001	MONTGOMERY	CANDOR WWTP	CANDOR	CANDOR, TOWN O										-NC
376206103	MONTGOMERY	HIGHLAND ELEM	MT GILEAD	MONTGOMERY CO										-NC
376206104	MONTGOMERY	W. MONTGOMER	MT. GILEAD	MONTGOMERY CO										-NC
376204001	MONTGOMERY	MOUNT GILEAD W	MOUNT GILEAD	MOUNT GILEAD, T		950	250	2000	1100					4300 NC
376205001	MONTGOMERY	STAR	WWTP	STAR, TOWN OF						168				2397
376201001	MONTGOMERY	TROY	OXID. DIT	TROY, TOWN OF										
7														
376306001	MOORE	ABERDEEN COLL	ABERDEEN	ABERDEEN, TOWN	171	1018	849	2000	1100	3774				8912
376313001	MOORE	MOORE CO REGI	ADDOR	MOORE COUNTY										-NC
376313003	MOORE	ADDOR COLL SYS	ADDOR	MOORE COUNTY					660					660 NC
376313002	MOORE	PINEBLUFF COLL	PINEBLUFF	BOARD OF COUNT					376					376 NC
376313005	MOORE	TAYLORTOWN CO	TAYLORTOWN	BOARD OF COUNT					1462	281				1743 NC
376313004	MOORE	VINA VISTA COL	VINA VISTA	BOARD OF COUNT					534	249				783 NC
376305001	MOORE	CARTHAGE WWTP	CARTHAGE	CARTHAGE, TOWN			136							136 NC
376312001	MOORE	FOX FIRE VILLA	FOX FIRE VIL	FOX FIRE VILLAG		791								791 NC
376313106	MOORE	UNION PINE H.	CAMERON	MOORE COUNTY										-NC
376313103	MOORE	SAND HILLS ELE	CARTHAGE	MOORE COUNTY										-NC
376313101	MOORE	HIGH FALLS ELE	HIGH FALLS	MOORE COUNTY										-NC
376313102	MOORE	N. MOORE HIGH	ROBBINS	MOORE COUNTY										-NC
376313104	MOORE	W. MOORE ELEM	SEAGROVE	MOORE COUNTY										-NC
376303001	MOORE	PINEHURST COLL	PINEHURST	PINEHURST, TOWN										-NC
376302001	MOORE	ROBBINS WWTF	ROBBINS	ROBBINS, TOWN O		4248								4248 NC
376301001	MOORE	SOUTHERN PINES	SOUTHERN PIN	SOUTHERN PINES,					2900					2900 NC
376304002	MOORE	VASS STABILIZA	VASS	VASS-WHIS PIN M										-NC
376304001	MOORE	WHISPERING PIN	WHISPERING P	VASS-WHIS PIN M					1393	2761				4154 NC
18														
376402001	NASH	BAILEY WWTP	BAILEY	BAILEY, TOWN OF				500						500 NC
376403001	NASH	BATTLEBORO CO	BATTLEBORO	BATTLEBORO, TO										-NC
376404001	NASH	CASTALIA WWTP	CASTALIA	CASTALIA, TOWN			974		1506					2480 NC
376405001	NASH	MIDDLESEX WWTP	MIDDLESEX	MIDDLESEX, TOWN				516		1934				2450 NC

FACID	CNTYNAM	FACNAME	CITYNAM	AUTHNAM	NORTHT CAROLINA - 1996 CWNS	NEDVI	NEDIIA	NEDIIIB	NEDIVA	NEDIVB	NEDV	NEDVI	NEDTOT	ST
376409105	NASH	S. NASH HIGH W	BAILEY	NASH COUNTY										NC
376409103	NASH	SWIFT CK. ELEM	WHITAKERS	NASH COUNTY										NC
376406001	NASH	NASHVILLE WTP	NASHVILLE	NASHVILLE, TOWN	2770			180					2950	NC
376407001	NASH	RED OAK WWTP	RED OAK	RED OAK, TOWN O										NC
376401001	NASH	SHARPSBURG SE	SHARPSBURG	SHARPSBURG, TO	315								315	NC
376408001	NASH	SPRING HOPE ST	SPRING HOPE	SPRING HOPE, TO	65								65	NC
					974	3150	1016	1686	1934				8760	
10														
376503001	NEW HANOVER	CAROLINA BEACH	CAROLINA BEA	CAROLINA BEACH,										NC
376504001	NEW HANOVER	KURE BEACH COL	KURE BEACH	KURE BEACH, TOW	3923					297			4220	NC
376501001	NEW	HANOVER	J A LOUGHLIN	WILMINGTON	7060									NC
376501002	NEW	HANOVER	MKEAN MAFFIT	WILMINGTON	3036						750			14950
376502001	NEW	HANOVER	WRIGHTSVILLE	WRIGHTSVILLE	4296									8082
					10096	16109				1047			27252	
5														
376604001	NORTHAMPTO	CONWAY WWTP	CONWAY	CONWAY, TOWN O										NC
376605001	NORTHAMPTO	GARYSBURG COL	GARYSBURG	GARYSBURG, TOW										NC
376601001	NORTHAMPTO	GASTON COLLEC	GASTON	GASTON, TOWN O										NC
376602001	NORTHAMPTO	JACKSON W TP	JACKSON	JACKSON, TOWN O	220			1237					1537	NC
376603001	NORTHAMPTO	LASKER SEPTIC	LASKER	LASKER, THE TOW										NC
376611001	NORTHAMPTO	MILWAUKEE COL	MILWAUKEE	MILWAUKEE, TOW										NC
376612103	NORTHAMPTO	GUMBERRY ELEM	JACKSON	NORTHAMPTON C										NC
376606001	NORTHAMPTO	RICH SQUARE W	RICH SQUARE	RICH SQUARE, TO	500								500	NC
376607001	NORTHAMPTO	SEABOARD WWT	SEABOARD	SEABOARD, TOWN	560		501						1061	NC
376608001	NORTHAMPTO	SEVERN WWT	SEVERN	SEVERN, TOWN OF										NC
376609001	NORTHAMPTO	WOODLAND WWT	WOODLAND	WOODLAND, TOW									66	NC
					1280	146	501	1237					3164	
11														
376703001	ONSLOW	CHADWICK ACRE	CHADWICK AC	CHADWICK ACRES										NC
376704001	ONSLOW	HOLLY RIDGE W	HOLLY RIDGE	HOLLY RIDGE					250				250	NC
376701002	ONSLOW	HICKORY GROVE	JACKSONVILLE	JACKSONVILLE, C										NC
376701001	ONSLOW	WILSON BAY PLA	JACKSONVILLE	JACKSONVILLE, T										NC
376706001	ONSLOW	ONSLOW CO. WW	NEW RIVER-GI	ONSLOW CO (BRY										NC
377606002	ONSLOW	ONSLOW CO REG		ONSLOW CO REG	45640				174000	42000			261640	NC
376708001	ONSLOW	RICHLANDS MUN.	RICHLANDS	RICHLANDS, TOWN										NC
376702001	ONSLOW	SWANBORO STP	SWANBORO	SWANBORO, TO	4000	282							4282	NC
					49640	282		174250	42000				266172	
8														
376806001	ORANGE	CHEEKS CS	CHEEKS-EFLAN	CHEEKS TWP										NC
376802001	ORANGE	HILLSBOROUGH	HILLSBOROUGH	HILLSBOROUGH, T										NC
376805002	ORANGE	CARRBORO COLL	CARRBORO	ORANGE WAT AND										NC
376805001	ORANGE	MASON FARM WTP	CHAPEL HILL	ORANGE WAT AND	47500	7382	5372	27405	18020				105679	NC
					47500	7382	5372	27405	18020				105679	

NORHT CAROLINA - 1996 CWNS

FACID	CNTYNAM	FACNAME	CITYNAM	AUTHNAM	NEDI	NEDI	NEDIIIA	NEDIIB	NEDIIV	NEDIIB	NEDIIV	NEDIIB	NEDIIV	NEDV	NEDVI	NEDTOT	ST
4		ARAPAHOE WWTP	ARAPAHOE	ARAPAHOE, TOWN	337	131			607	282						1357	NC
		BAYBORO COLL.	BAYBORO	BAY RIVER M.S.D		2567			900	2000						2900	NC
		BAY RIVER REGI	BAYBORO	BAY RIVER M.S.D		138			464	216						5000	NC
		HOBUCKEN WWTP	HOBUCKEN	HOBUCKEN, TOWN	150	75			125	84						968	NC
		MERRITT WWTP	MERRITT	MERRITT, TOWN O	165											449	NC
		MINNESOTT BEAC	MINNESOTT BE	MINNESOTT BEAC													NC
		ORIENTAL WWTP	ORIENTAL	ORIENTAL, TOWN			100	200								300	NC
		PAMLICO/GOOSE		PAMLICO/GOOSE C													NC
		WHORTONSVILLE	WHORTONSVIL	WHORTONSVILLE,													NC
9		PASQUOTANK	ELIZABETH CITY	ELIZABETH	652	2911	100	200	2096	5015						10974	
		PASQUOTANK	WASTEWATER TR	ELIZABETH				300	200							500	1000
		PASQUOTANK	NORTH EASTERN	ELIZABETH													
3		BURGAW MUN. W	BURGAW	BURGAW, TOWN O	2500	1437			350	664						3814	NC
		ROCKY POINT	ROCKY POINT	PENDER COUNTY		2051			6924							8361	NC
		SURF CITY-TOPS	SURF CITY	SURF CITY, TOWN												2051	NC
3		HERTFORD WWTP	HERTFORD	HERTFORD, TOWN	2500	3488			7274	664						14226	
		PERQUIMANS UNI	WINFALL	PERQUIMANS CO.			94									94	NC
		PERQUIMANS CN	WINFALL	PERQUIMANS CO.													NC
		WINFALL CS	WINFALL	WINFALL, TOWN O		1543			2625							4168	NC
4		ROXBORO WWTP	ROXBORO	ROXBORO, TOWN		1543			2625							4262	
1		AYDEN MUN. WW	AYDEN	AYDEN, TOWN OF													NC
		BELVOIR SEPTIC	BELVOIR	BELVOIR, TOWN O													NC
		BETHEL MUN. W	BETHEL	BETHEL, TOWN OF			456		309							765	NC
		CHICOD SEPTIC	CHICOD	CHICOD, TOWN OF													NC
		S PITT CO INT	GRIFTON	CONTENTNA METR		3170										3670	NC
		FALKLAND LAGO	FALKLAND	FALKLAND, TOWN		308			78							386	NC
		FARMVILLE CS N	FARMVILLE	FARMVILLE, TOWN			500	750		4330						5580	NC
		FARMVILLE CS N	FARMVILLE	FARMVILLE, TOWN													NC
		FARMVILLE WWT	FARMVILLE	FARMVILLE, TOWN				500	750							1250	NC
		FOUNTAIN WWTP	FOUNTAIN	FOUNTAIN, TOWN					556							556	NC

FACID	CNTYNAM	FACNAME	CITYNAM	AUTHNAM	NEDI	NEDII	NEDIIIA	NEDIIB	NEDIVA	NEDIVB	NEDV	NEDVI	NEDTOT	ST	
NORHT CAROLINA - 1996 CWNS															
377401001	PITT	GREENVILLE WW GREENVILLE	GREENVILLE	GREENVILLE UTIL	5000	3030	16315	10195	22245	4245			61030	NC	
377401002	PITT	ALCOHOLIC REHA GREENVILLE	GREENVILLE	GREENVILLE UTIL										NC	
377401003	PITT	PROPOSED NORT GREENVILLE	GREENVILLE	GREENVILLE UTIL										NC	
377410001	PITT	GRIMESLAND LAG GRIMESLAND	GRIMESLAND	GRIMESLAND, TO				1473	893				2366	NC	
377412106	PITT	STOKES ELEMEN STOKES	PITT CO.	PITT CO.										NC	
377403001	PITT	WINTERVILLE MU WINTERVILLE	WINTERVILLE	WINTERVILLE, TO				401					401	NC	
					5000	6508	17771	11445	25812	9468			76004		
16															
377502001	POLK	COLUMBUS MUN. COLUMBUS	COLUMBUS	COLUMBUS, TOWN		60		50						110	NC
377504100	POLK	POLK COUNTY SC		POLK COUNTY SC											NC
377503001	POLK	SALUDA WWTP	SALUDA	SALUDA, TOWN OF			197	189						386	NC
377501001	POLK	TRYON MUN. WW TRYON	TRYON	TRYON, TOWN OF			290			647				937	NC
						60	487	239		647				1433	
4															
377606001	RANDOLPH	ARCHDALE SEWE ARCHDALE	ARCHDALE	ARCHDALE, CITY					2354					2354	NC
377601001	RANDOLPH	ASHEBORO WWT ASHEBORO	ASHEBORO	ASHEBORO, CITY											NC
377604001	RANDOLPH	LIBERTY WWTP, LIBERTY	LIBERTY	LIBERTY, TOWN O											NC
377602001	RANDOLPH	RAMSEUR WWTF, RAMSEUR	RAMSEUR	RAMSEUR, TOWN						406					NC
377603001	RANDOLPH	RANDLEMAN STP RANDLEMAN	RANDLEMAN	RANDLEMAN, CITY			68							474	NC
377609103	RANDOLPH	COLRIDGE SCHO COLERIDGE	COLRIDGE	RANDOLPH COUNT											NC
377609107	RANDOLPH	GRAYS CHAPEL FRANKLINVILL	FRANKLINVILL	RANDOLPH COUNT											NC
377609104	RANDOLPH	E. HIGH WTS RAMSEUR	RAMSEUR	RANDOLPH COUNT											NC
377609102	RANDOLPH	BROWER ELEM W SEAGROVE	SEAGROVE	RANDOLPH COUNT											NC
377609110	RANDOLPH	SEAGROVE SCHO SEAGROVE	SEAGROVE	RANDOLPH COUNT											NC
377609109	RANDOLPH	NEW MARKET WT SOPHIA	NEW MARKET	RANDOLPH COUNT											NC
377609001	RANDOLPH	TRINITY COLL S TRINITY	TRINITY	RANDOLPH COUNT											NC
377609100	RANDOLPH	RANDOLPH COUN		RANDOLPH COUNT											NC
377607001	RANDOLPH	MUNICIPAL WTP SEAGROVE	SEAGROVE	SEAGROVE, TOWN		563			135					698	NC
						563	68		2489	406				3526	
14															
377708002	RICHMOND	CORDOVA COLL S CORDOVA	CORDOVA	BOARD OF COUNT										1344	NC
377706001	RICHMOND	DOBBS HEIGHT DOBBS HEIG	DOBBS HEIGHT	DOBBS HEIGHTS			918			426					NC
377702001	RICHMOND	ELLERBE WWTP ELLERBE	ELLERBE	ELLERBE, TOWN O											NC
377701002	RICHMOND	HAMLET WWTP # HAMLET	HAMLET	HAMLET, TOWN OF											NC
377701003	RICHMOND	HAMLET CS HAMLET	HAMLET	HAMLET, TOWN OF						2860				2860	NC
377705001	RICHMOND	ROCKINGHAM W ROCKINGHAM	ROCKINGHAM	ROCKINGHAM, CIT											NC
							918			3286				4204	
6															
377803001	ROBESON	FAIRMONT WWTP FAIRMONT	FAIRMONT	FAIRMONT, TOWN		3500			2828					6659	NC
377804001	ROBESON	LUMBER BRIDGE LUMBER BRIDG	LUMBER BRIDGE	LUMBER BRIDGE,		402			72					474	NC
377801001	ROBESON	LUMBERTON MUN LUMBERTON	LUMBERTON	LUMBERTON, DEPT				2000		2000		946		18665	NC
377807001	ROBESON	MAXTON MUN. W MAXTON	MAXTON	MAXTON, TOWN O											NC
377808001	ROBESON	PARKTON WWTP PARKTON	PARKTON	PARKTON, TOWN			300							300	NC
377809001	ROBESON	PEMBROKE WWTP PEMBROKE	PEMBROKE	PEMBROKE, TOWN			133		1413	907				3297	NC

FACID	CNTYNAM	FACNAME	CITYNAM	AUTHNAM	NEDI	NEDII	NEDIIA	NEDIIB	NEDIIV	NEDIVB	NEDV	NEDVI	NEDTOT	ST
377810001	ROBESON	PROCTORVILLE C	PROCTORVILL	PROCTORVILLE, T			486			112			588	NC
377812001	ROBESON	MUNICIPAL STP	RED SPRINGS	RED SPRINGS, TO		1695	320	1000		647			3662	NC
377817001	ROBESON	ROBESON CO HE		ROBESON CO HEA										NC
377815001	ROBESON	ROBESON CO RE		ROBESON CO REG										NC
377815104	ROBESON	FAIR GROVE WTS	FAIRMONT	ROBESON COUNTY										NC
377815105	ROBESON	GREEN GROVE E	FAIRMONT	ROBESON COUNTY										NC
377815106	ROBESON	HILLY BRANCH E	FAIRMONT	ROBESON COUNTY										NC
377815101	ROBESON	ALLENTON ELEM	LUMBERTON	ROBESON COUNTY										NC
377815103	ROBESON	DEEP BRANCH EL	LUMBERTON	ROBESON COUNTY										NC
377815107	ROBESON	LITTLEFIELD H	LUMBERTON	ROBESON COUNTY										NC
377815109	ROBESON	MAGNOLIA HIGH	LUMBERTON	ROBESON COUNTY										NC
377815113	ROBESON	PINEY GROVE EL	LUMBERTON	ROBESON COUNTY										NC
377815118	ROBESON	SMITH ELEM. WT	LUMBERTON	ROBESON COUNTY										NC
377815110	ROBESON	ORRUM HIGH WT	ORRUM	ROBESON COUNTY										NC
377815120	ROBESON	UNION CHAPEL W	PEMBROKE	ROBESON COUNTY										NC
377815114	ROBESON	PROCTORVILLE E	PROCTORVILL	ROBESON COUNTY										NC
377815102	ROBESON	ASHPOLE ELEM.	ROWLAND	ROBESON COUNTY										NC
377815116	ROBESON	PURVIS ELEM. W	ROWLAND	ROBESON COUNTY										NC
377815119	ROBESON	UNION ELEM WTS	ROWLAND	ROBESON COUNTY										NC
377815117	ROBESON	REX-REN. WTS	SHANNON	ROBESON COUNTY										NC
377813001	ROBESON	ROWLAND WWTP	ROWLAND	ROWLAND, TOWN		647	2554						3201	NC
377814001	ROBESON	SAINT PAULS WW	SAINT PAULS	SAINT PAULS, TO			14			567			581	NC
					844	6730	3652	3000	5072	3474	946		37437	
377901001	ROCKINGHAM	MEBANE BRIDGE	EDEN	EDEN, CITY OF										NC
377901002	ROCKINGHAM	DAN RIVER WWT	EDEN	EDEN, CITY OF										NC
377901003	ROCKINGHAM	DRY CREEK STP	EDEN	EDEN, CITY OF										NC
377903001	ROCKINGHAM	MADISON WWTP	MADISON	MADISON, TOWN O						450			450	NC
377904001	ROCKINGHAM	MAYODAN WWTP	MAYODAN	MAYODAN, TOWN		2059	397		957	1350			4763	NC
377904002	ROCKINGHAM	NEW MAYODAN	MAYODAN	MAYODAN, TOWN										NC
377907100	ROCKINGHAM	REIDSVILLE CIT	REIDSVILLE	REIDSVILLE CITY										NC
377902001	ROCKINGHAM	ROCKINGHAM CO	REIDSVILLE	REIDSVILLE, CIT										NC
377906001	ROCKINGHAM	ROCKINGHAM CO		ROCKINGHAM CO										NC
377906102	ROCKINGHAM	HAPPY HOME WT	RUFFIN	ROCKINGHAM COU										NC
377906103	ROCKINGHAM	LINCOLN WTS	RUFFIN	ROCKINGHAM COU										NC
377906106	ROCKINGHAM	RUFFIN HIGH WT	RUFFIN	ROCKINGHAM COU										NC
377906105	ROCKINGHAM	ROCK CO. COM.	WENTWORTH	ROCKINGHAM COU										NC
377906110	ROCKINGHAM	WENTWORTH H.	WENTWORTH	ROCKINGHAM COU										NC
377909001	ROCKINGHAM	ROCKINGHAM CO	WENTWORTH	ROCKINGHAM COU					1881	2015			3896	NC
377908100	ROCKINGHAM	ROCKINGHAM CO		ROCKINGHAM COU										NC
377905001	ROCKINGHAM	STONEVILLE WW	STONEVILLE	STONEVILLE, TOW			561			907			1468	NC
					7893		958	2838	4722	16411				
378005001	ROWAN	CHINA GROVE ST	CHINA GROVE	CHINA GROVE, TO			304			152			456	NC
378004001	ROWAN	CLEVELAND WWT	CLEVELAND	CLEVELAND, TOW										NC
378007001	ROWAN	ENOCHVILLE COL	ENOCHVILLE	ENOCHVILLE, TOW										NC
378008001	ROWAN	FAITH STP	FAITH	FAITH, TOWN OF		495		2475					2970	NC
378009001	ROWAN	GRANITE QUARR	GRANITE QUAR	GRANITE QUAR GRANITE QUARRY				2238					2238	NC

FACID	CNTYNAM	FACNAME	CITYNAM	AUTHNAM	NEDI	NEDII	NEDIIA	NEDIIB	NEDIVA	NEDIVB	NEDV	NEDVI	NEDTOT	ST
NORRT CAROLINA - 1996 CWNS														
378002001	ROWAN	LANDIS STP	LANDIS	LANDIS, TOWN OF	176	3087	60	1295	1012	2737	176	176	NC	176
378003001	ROWAN	ROCKWELL SOULT	ROCKWELL	ROCKWELL, TOWN	60	7259	122	1012	2737	176	176	176	NC	176
378003002	ROWAN	ROCKWELL NORT	ROCKWELL	ROCKWELL, TOWN	60	46592	122	1012	2737	176	176	176	NC	176
378001001	ROWAN	TOWN CREEK ST	SALISBURY	SALISBURY, CITY	122	46592	122	1012	2737	176	176	176	NC	176
378001002	ROWAN	GRANT CREEK ST	SALISBURY	SALISBURY, CITY	122	46592	122	1012	2737	176	176	176	NC	176
378010001	ROWAN	SPENCER STP	SPENCER	SPENCER, TOWN	495	56938	540	6008	3901	3901	68126	68126	NC	68126
=====														
11					495	56938	540	244	6008	3901	68126	68126	NC	68126
378103001	RUTHERFORD	ALEXANDER MILL	ALEXANDER MI	ALEXANDER MILLS	1196	1196	50	1246	75	1246	1246	1246	NC	1246
378111001	RUTHERFORD	CHIMNEY ROCK V	CHIMNEY ROC	CHIMNEY ROCK VI	548	548	853	397	397	397	1798	1798	NC	1798
378110001	RUTHERFORD	CLIFFSIDE STP	CLIFFSIDE	CLIFFSIDE S.D.	905	905	105	5506	5506	5506	1010	1010	NC	1010
378105001	RUTHERFORD	ELLENBORO WW	ELLENBORO	ELLENBORO, TOW	905	905	105	5506	5506	5506	5506	5506	NC	5506
378106001	RUTHERFORD	FOREST CITY WW	FOREST CITY	FOREST CITY, TO	905	905	105	5506	5506	5506	5506	5506	NC	5506
378107001	RUTHERFORD	LAKE LURE WW	LAKE LURE	LAKE LURE, TOW	905	905	105	5506	5506	5506	5506	5506	NC	5506
378108100	RUTHERFORD	RUTHERFORD CO	---	RUTHERFORD CO.	905	905	105	5506	5506	5506	5506	5506	NC	5506
378109001	RUTHERFORD	HENRIETTA-AVON	HENRIETTA-AV	RUTHERFORD COU	905	905	105	5506	5506	5506	5506	5506	NC	5506
378102001	RUTHERFORD	RUTHERFORDTO	RUTHERFORDT	RUTHERFORDT	4612	4612	123	696	324	324	1020	1020	NC	1020
378101001	RUTHERFORD	SPINDALE WWTP	SPINDALE	SPINDALE, TOWN	7261	123	161	7105	721	721	4735	4735	NC	4735
=====														
10					7261	123	161	7105	721	721	4735	4735	NC	4735
378203001	SAMPSON	AUTRYVILLE SEP	AUTRYVILLE	AUTRYVILLE, TOW	938	938	1063	4395	4395	4395	7326	7326	NC	7326
378201001	SAMPSON	CLINTON WTP	CLINTON	CLINTON, WATER	938	938	1063	4395	4395	4395	7326	7326	NC	7326
378204001	SAMPSON	GARLAND WWTP	GARLAND	GARLAND, TOWN	938	938	1063	4395	4395	4395	7326	7326	NC	7326
378202001	SAMPSON	HARRELLS SEPT	HARRELLS	HARRELLS, TOWN	938	938	1063	4395	4395	4395	7326	7326	NC	7326
378205001	SAMPSON	NEWTON GROVE	NEWTON GRO	NEWTON GROVE,	678	678	3883	320	320	320	4561	4561	NC	4561
378206001	SAMPSON	ROSEBORO STP	ROSEBORO	ROSEBORO, TOWN	678	678	3883	320	320	320	4561	4561	NC	4561
378207001	SAMPSON	SALEMBOURG WW	SALEMBOURG	SALEMBOURG, TOW	678	678	3883	320	320	320	4561	4561	NC	4561
378210101	SAMPSON	PLAIN VIEW WTS	DUNN	SAMPSON COUNTY	678	678	3883	320	320	320	4561	4561	NC	4561
378208001	SAMPSON	TURKEY WWTP	TURKEY	TURKEY, TOWN OF	678	678	3883	320	320	320	4561	4561	NC	4561
=====														
9					678	678	3883	320	320	320	4561	4561	NC	4561
378301001	SCOTLAND	E. LAURINBERG	EAST LAURINB	EAST LAURINBERG	938	938	1813	5833	7765	7765	17027	17027	NC	17027
378302001	SCOTLAND	GIBSON WWTP	GIBSON	GIBSON, TOWN OF	938	938	1813	5833	7765	7765	17027	17027	NC	17027
378303001	SCOTLAND	LEITH CREEK WW	LAURINBURG	LAURINBURG, CIT	620	620	337	1953	1953	1953	8263	8263	NC	8263
378303002	SCOTLAND	BRIDGE CREEK W	LAURINBURG	LAURINBURG, CIT	620	620	337	1953	1953	1953	8263	8263	NC	8263
378307001	SCOTLAND	LAUR./MAX. AIR	LAURINBURG	LAURINBURG, CIT	620	620	337	1953	1953	1953	8263	8263	NC	8263
378304001	SCOTLAND	WAGRAM LAGOO	WAGRAM	WAGRAM, TOWN O	2427	2427	513	2940	2940	2940	2940	2940	NC	2940
=====														
6					2562	620	566	6459	1953	1953	12160	12160	NC	12160
378401001	STANLY	ALBEMARLE STP	ALBEMARLE	ALBEMARLE, WA	3154	3154	2000	1300	615	615	3915	3915	NC	3915
378401101	STANLY	EAST BADIN WTP	BADIN	BADIN WATER/SE	506	506	1816	2724	578	578	3302	3302	NC	3302
378403001	STANLY	LOCUST COLLEC	LOCUST	LOCUST, TOWN OF	506	506	1816	2724	578	578	3302	3302	NC	3302
378411001	STANLY	NEW LONDON CO	NEW LONDON	NEW LONDON, TO	1994	1994	4237	277	977	977	277	277	NC	277
378402001	STANLY	NORWOOD STP	NORWOOD	NORWOOD, TOWN	1994	1994	4237	277	977	977	277	277	NC	277

database

11/20/96 14:23

as of 12/10/96.

PAGE 23

NORHT CAROLINA - 1996 CWNS

FACID	CNTYNAM	FACNAME	CITYNAM	AUTHNAM	NEDI	NEDII	NEDIIIA	NEDIIB	NEDIIC	NEDIVA	NEDIVB	NEDV	NEDVI	NEDTOT	ST
37000001	WAKE	NC GROUNDWAT	NC	DIVISION OF ENV											NC
37000006	WAKE	N C DEPT OF TR		DOT									2073	2073	NC
379204001	WAKE	MUNICIPAL PLAN	FUQUAY-VARIN	FUQUAY VARINA,											NC
379210001	WAKE	GARNER WW COL	GARNER	GARNER, TOWN O	24281						14972			39253	NC
379212001	WAKE	HOLLY SPRINGS	HOLLY SPRING	HOLLY SPRINGS,	24000				2380		6084			32464	NC
379205001	WAKE	KNIGHTDALE WA	KNIGHTDALE	KNIGHTDALE, TOW							8056			8056	NC
379201001	WAKE	NEUSE RIVER RE	RALEIGH	RALEIGH CITY OF	5642	2418	4274		50659		243		12068	75061	NC
379206001	WAKE	AIRPORT WWTP	RALEIGH	RALEIGH DURHAM	198									441	NC
379213001	WAKE	ROLESVILLE WW	ROLESVILLE	ROLESVILLE, TOW	17160									33000	NC
379203004	WAKE	WEST CARY WWTP	CARY, TOWN O	TOWN OF CARY	15840									21602	NC
379203003	WAKE	SOUTH CARY WW	CARY, TOWN OF	CARY	17320						4282			8620	NC
379203002	WAKE	NORTH CARY WW	TOWN OF CARY	TOWN OF CARY	5766						2854			12371	NC
379215001	WAKE	MORRISVILLE W	MORRISVILLE	TOWN OF MORRIS	6649				3439		2283				NC
379211001	WAKE	GRESHAM LAKE		WAKE CO											NC
379211001	WAKE	VANCE ELEM		WAKE CO											NC
379207001	WAKE	WAKE FOREST ST	WAKE FOREST	WAKE FOREST, TO							500			500	NC
379207002	WAKE	RICHLAND CREEK	WAKE FOREST	WAKE FOREST, TO							251			251	NC
379208001	WAKE	WENDELL WWTP	WENDELL	WENDELL, TOWN							3813			3813	NC
379209001	WAKE	ZEBULON WWTP	ZEBULON	ZEBULON, TOWN O	325			370	775					1470	NC
=====															
					23325	101074	4274	370	57253	44468			14141	256008	

25

379302001	WARREN	MACON SEPTIC T	MACON	MACON, TOWN OF											NC
379301001	WARREN	NORLINA LAGOON	NORLINA	NORLINA, TOWN O			499	576	922					1997	NC
379305001	WARREN	SOUL CITY S.D.	SOUL CITY	SOUL CITY S.D.											NC
379303001	WARREN	WARRENTON WW	WARRENTON	WARRENTON, TO		113	86							199	NC
=====															
					113	585	576	922						2196	

4

379401001	WASHINGTON	CRESWELL STP	CRESWELL	CRESWELL, TOWN											NC
379402001	WASHINGTON	PLYMOUTH WWTP	PLYMOUTH	PLYMOUTH, TOWN			332	500	14					1401	NC
379403001	WASHINGTON	ROPER WWTP	ROPER	ROPER, TOWN OF											NC
379404102	WASHINGTON	CRESWELL HIGH	CRESWELL	WASHINGTON CO.											NC
=====															
					555	332	500	14						1401	

4

379501001	WATAUGA	BLOWING ROCK	BLOWING ROC	BLOWING ROCK, T											NC
379502001	WATAUGA	BOONE STP	BOONE	BOONE, TOWN OF			11350							11350	NC
379508001	WATAUGA	FOSCOE-GRANDF		FOSCOE-GRANDFA	619				1516		248			2383	NC
379505101	WATAUGA	PARKWAY SCHO		WATAUGA COUNT											NC
=====															
					619	11350			1516	248				13733	

4

379604001	WAYNE	EUREKA WWTP	EUREKA	EUREKA, TOWN OF											NC
379605001	WAYNE	FREMONT WWTP	FREMONT	FREMONT, TOWN	575		2000		638		193			5000	NC
379602001	WAYNE	SOUTH GOLDSBO	GOLDSBORO	GOLDSBORO, CITY					1179		549			1728	NC
379601001	WAYNE	GOLDSBORO WA	GOLDSBORO	GOLDSBORO, DEP											NC
379606001	WAYNE	MOUNT OLIVE W	MOUNT OLIVE	MOUNT OLIVE, TO		474	59	705						1238	NC
=====															

NORHT CAROLINA - 1996 CWNS

FACID	CNTYNAM	FACNAME	CITYNAM	AUTHNAM	NEDI	NEDII	NEDIHA	NEDIHB	NEDIVA	NEDIVB	NEDV	NEDVI	NEDTOT	ST
					2849		1472		5832	5358			15511	
10							267							
370001001	YANCEY	BURNSVILLE MON	BURNSVILLE	BURNSVILLE, TOW										267 NC
370002100	YANCEY	YANCEY COUNTY		YANCEY COUNTY S										-NC
							267							267

2

Grand Totals														
280620	1147365	137256	81869	1220955	924963	946	161293	3986619						
Number of Observations														
853	853	797	853	121	199	137	62	265	254	1	16	478	53	

ANNUAL DEBT SERVICE REQUIREMENTS		
\$200 MILLION OF BONDS		

Fiscal Year	Total Principal	Total Interest	Total Debt Service
1998-1999	\$1.8	\$6.0	\$7.8
1999-2000	5.3	11.9	17.2
2000-2001	5.3	11.6	16.9
2001-2002	5.7	11.3	16.9
2002-2003	6.2	10.9	17.1
2003-2004	9.4	10.7	20.2
2004-2005	9.4	10.0	19.4
2005-2006	9.6	9.4	19.0
2006-2007	9.6	8.8	18.4
2007-2008	9.6	8.3	17.8
2008-2009	10.6	7.7	18.2
2009-2010	12.0	7.1	19.1
2010-2011	13.7	6.2	19.8
2011-2012	13.7	5.5	19.2
2012-2013	13.7	4.7	18.4
2013-2014	15.3	3.9	19.2
2014-2015	19.9	3.0	22.8
2015-2016	19.9	1.8	21.7
2016-2017	9.4	0.6	10.0
Total	\$200.0	\$139.1	\$339.1

Based on modification of \$1.8 billion school bond schedule of State Treasurer by FRD. Assumes voter approval in November 1997.

Assumes bonds issued according to following schedule:

Date of Issuance	Issuance Amount	Interest Rate
3/1/98	\$100 mill.	6.00%
3/1/99	\$100 mill.	6.00%

NORTH CAROLINA RURAL WATER ASSOCIATION

Resolution of Support

For SB 232 (Short Title: Clean Water Bonds)

Whereas, North Carolina Rural Water Association (NCRWA) is an affiliate member of the National Rural Water Association (NRWA), thus comprising the nation's largest non-profit membership organization representing the interest of rural utilities, and;

Whereas, the NCRWA presently has over 500 member utilities across North Carolina providing water and wastewater services to rural residents, and;

Whereas, the present needs for infrastructure funding to meet customer demands and regulatory requirements far exceeds the ability of small rural utilities to increase rates, and;

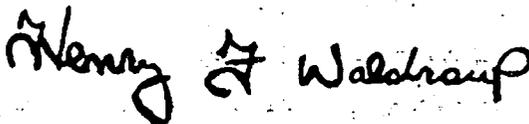
Whereas, adequate and safe drinking water and proper disposal of waste is the corner stone of public health and economic development, and;

Whereas, the issuance of bonds has proven to be a viable method of assuring the citizens of a dependable and cost effective source of revenue to meet present and future needs;

Now, therefore be it resolved, that the North Carolina Rural Water Association Board of Directors, on behalf of the members of the NCRWA, do hereby support the passage of SB 232, and;

Further hereby resolves, to support the passage of this bill by sponsoring educational material for utilities to use in making their customers aware of the importance of accepting this measure to assure the continued provision of safe and affordable water and waste disposal.

This the 10th day of April, 1997 by:



Henry Waldroup, President

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 529

Short Title: Hope Mills Annexations.

(Local)

Sponsors: Senators Rand; and Weinstein.

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

March 26, 1997

1 A BILL TO BE ENTITLED
2 AN ACT CONCERNING THE ANNEXATION OF NONCONTIGUOUS AREAS
3 BY THE TOWN OF HOPE MILLS.
4 The General Assembly of North Carolina enacts:
5 Section 1. G.S. 160A-58.1(b)(5) reads as rewritten:
6 "(5) The area within the proposed satellite corporate limits, when
7 added to the area within all other satellite corporate limits, may
8 not exceed ~~ten percent (10%)~~ twenty percent (20%) of the area
9 within the primary corporate limits of the annexing city."
10 Section 2. This act applies only to the Town of Hope Mills.
11 Section 3. This act is effective when it becomes law.

FISCAL ANALYSIS MEMORANDUM

DATE: April 14, 1997

TO: Senate Finance Committee

FROM: Richard Bostic
Fiscal Research Division

RE: SB 529 - Hope Mills Annexations

FISCAL IMPACT

	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 1997-98</u>	<u>FY 1998-99</u>	<u>FY 1999-00</u>	<u>FY 2000-01</u>	<u>FY 2001-02</u>
REVENUES	\$36,000	\$36,000	\$36,000	\$36,000	\$36,000
EXPENDITURES	\$500,000				
EFFECTIVE DATE:	Effective upon ratification				

BILL SUMMARY: The bill allows the Town of Hope Mills to annex a noncontiguous area that is up to 20% of the size of the current town.

ASSUMPTIONS AND METHODOLOGY: The town will acquire 500 acres with a real property value of \$4.5 million. Base on the current property tax rate, the town will earn \$36,000 in property taxes each year from the annexed land. In cooperation with Cumberland County, the Fayetteville Public Works Commission and the property owners, a \$2 million water and sewer project will be built for the annexed land. The town's portion of this project is 25% of the total project cost or \$500,000.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1997

S

2

SENATE BILL 253
Commerce Committee Substitute Adopted 4/8/97

Short Title: Telephone Consumer Protection/AB. (Public)

Sponsors:

Referred to: Finance.

February 27, 1997

- 1 A BILL TO BE ENTITLED
2 AN ACT TO REQUIRE THE REGISTRATION OF TELEPHONIC SELLERS IN
3 NORTH CAROLINA, AND TO MAKE THE OFFERING OF TELEPHONE
4 SALES RECOVERY SERVICES A CRIMINAL OFFENSE.
5 The General Assembly of North Carolina enacts:
6 Section 1. Chapter 66 of the General Statutes is amended by adding a
7 new Article to read:
8 "ARTICLE 33.
9 "Telephonic Seller Registration and Bond Requirement.
10 "§ 66-260. Definitions.
11 As used in this Article, unless the context requires otherwise:
12 (1) 'Gift or prize' means any premium, bonus, award, or any other
13 thing of value.
14 (2) 'Item' means any good or any service. 'Item' includes coupon
15 books, vouchers, or certificates that are to be used with businesses
16 other than the seller's business.
17 (3) 'Owner' means a person who owns or controls ten percent (10%)
18 or more of the equity of, or otherwise has a claim to ten percent
19 (10%) or more of the net income of, a telephonic seller.
20 (4) 'Person' includes any individual, firm, association, corporation,
21 partnership, joint venture, or any other business entity.
22 (5) 'Principal' means an owner, an executive officer of a corporation,
23 a general partner of a partnership, a sole proprietor of a sole

- 1 proprietorship, a trustee of a trust, or any other individual with
2 similar supervisory functions with respect to any person.
- 3 (6) 'Purchaser' or 'prospective purchaser' means a person who is
4 solicited to become obligated to a telephonic seller or to make any
5 donation or gift to any person represented by the telephonic seller.
- 6 (7) 'Room operator' means any principal, employee, or agent
7 responsible for the operational management and supervision of
8 facilities from which telephonic sales calls are made or received.
- 9 (8) 'Salesperson' means any individual employed, appointed, or
10 authorized by a telephonic seller, whether referred to by the
11 telephonic seller as an agency, representative, or independent
12 contractor, who attempts to solicit or solicits a sale on behalf of the
13 telephonic seller.
- 14 (9) 'Secretary' means the Office of the Secretary of State.
- 15 (10) 'Telephone solicitation' or 'attempted telephone solicitation'
16 means any telephonic communication designed to persuade any
17 person to purchase goods or services, to enter a contest, or to
18 contribute to a charity or a person represented to be a charity,
19 regardless of whether the telephone call initiating the solicitation is
20 placed by the (i) telephonic seller or (ii) a person responding to
21 any unsolicited notice or notices sent or provided by or on behalf
22 of the seller, which notice or notices represents to the recipient
23 that he or she has won a gift or prize, that the recipient may obtain
24 or qualify for credit by contacting the seller, or that the seller has
25 buyers interested in purchasing the recipient's property.
- 26 (11) 'Telephonic seller' or 'seller' means a person who, directly or
27 through salespersons, causes a telephone solicitation or attempted
28 telephone solicitation to occur. 'Telephonic seller' and 'seller'
29 does not include any of the following:
- 30 a. A securities 'dealer' within the meaning of G.S. 78A-2(2) or
31 a person excluded from the definition of 'dealer' by that
32 provision; a 'salesman' within the meaning of G.S. 78A-
33 2(9); an 'investment adviser' within the meaning of G.S.
34 78C-2(1) or a person excluded from the definition of
35 'investment adviser' by that provision; or an 'investment
36 adviser representative' within the meaning of G.S. 78C-2(3);
37 provided that such persons shall be excluded from the terms
38 'telephonic seller' and 'seller' only with respect to activities
39 regulated by Chapters 78A and 78C.
- 40 b. Any person conducting sales or solicitations on behalf of a
41 licensee of the Federal Communications Commission or
42 holder of a franchise or certificate of public convenience
43 and necessity from the North Carolina Utilities Commission.

- 1 c. Any insurance agent or broker who is properly licensed by
2 the Department of Insurance and who is soliciting within the
3 scope of the agent's or broker's license or any employee or
4 independent contractor of an insurance company licensed by
5 the Department of Insurance conducting sales or
6 solicitations on behalf of that company.
- 7 d. Any federally chartered bank or savings institution or any
8 bank or savings institution properly licensed by the State or
9 subject to federal regulating authorities.
- 10 e. Any organization that is exempt under section 501(c)(3) of
11 the Internal Revenue Code of 1986 or any successor section,
12 or that is organized exclusively for one or more of the
13 purposes specified in section 501(c)(3) of the Internal
14 Revenue Code of 1986 or any successor section and that
15 upon dissolution shall distribute its assets to an entity that is
16 exempt under section 501(c)(3) of the Internal Revenue
17 Code of 1986 or any successor section, the United States, or
18 a state; any 'charitable solicitor' properly licensed under
19 Article 2 of Chapter 131F of the General Statutes, or any
20 person exempt from Chapter 131F of the General Statutes
21 under G.S. 131F-3.
- 22 f. A person who periodically issues and delivers catalogs to
23 potential purchasers and the catalog:
- 24 1. Includes a written description or illustration and the
25 sales price of each item offered for sale;
- 26 2. Includes at least 24 full pages of written material or
27 illustrations;
- 28 3. Is distributed in more than one state; and
- 29 4. Has an annual circulation of not less than 250,000
30 customers.
- 31 g. A person engaging in a commercial telephone solicitation
32 where the solicitation is an isolated transaction and not done
33 in the course of a pattern of repeated transactions of a like
34 nature.
- 35 h. A person primarily soliciting the sale of a newspaper of
36 general circulation, a publisher of a magazine or other
37 periodical of general circulation, or an agent of such a
38 publisher acting pursuant to a written agency agreement.
- 39 i. A person soliciting the sale of services provided by a cable
40 television system operating under the authority of a local
41 franchise.
- 42 j. Any passenger airline licensed by the Federal Aviation
43 Administration.

- 1 k. Any person holding a real estate broker's or Sales agent's
2 license under Chapter 93A of the General Statutes and who
3 is soliciting within the scope of the broker's or agent's
4 license.
- 5 l. Any person soliciting a transaction regulated by the
6 Commodities Futures Trading Commission, provided the
7 person is registered or temporarily licensed by the
8 Commodities Futures Trading Commission under the
9 Commodity Exchange Act, 7 U.S.C. § 1, et seq.
- 10 m. Any person soliciting a purchase from a business, provided
11 the person soliciting makes reasonable efforts to ensure that
12 the person solicited has actual authority to bind the business
13 to a purchase agreement.
- 14 n. A foreign corporation, limited liability company, or limited
15 partnership that has obtained and maintained a certificate of
16 authority to transact business or conduct affairs in this State
17 pursuant to Chapter 55, 55A, or 57C or Article 5 of Chapter
18 59 of the General Statutes and that only transacts business
19 or conducts affairs in this State using the name set forth in
20 the certificate of authority.
- 21 o. An issuer or a subsidiary of an issuer that has a class of
22 securities which is subject to section 12 of the Securities
23 Exchange Act of 1934 (15 U.S.C. § 781) and which is either
24 registered or exempt from registration under paragraph (A),
25 paragraph (B), paragraph (C), paragraph (E), paragraph (F),
26 paragraph (G), or paragraph (H) of subsection (g)(2) of that
27 section.
- 28 p. A person soliciting the sale of food, seeds, or plants when a
29 sale does not involve an amount in excess of one hundred
30 dollars (\$100.00) directed to a single address.
- 31 q. A person soliciting:
- 32 1. Without intent to complete or obtain provisional
33 acceptance of a sale during the telephone solicitation;
- 34 2. Who does not make the major sales presentation
35 during the telephone solicitation but arranges for the
36 major sales presentation to be made at a later face-to-
37 face meeting between the salesperson and the
38 purchaser;
- 39 3. Who does not cause an individual to go to the
40 prospective purchaser to collect payment for the
41 purchase or to deliver any item purchased directly
42 following the telephone solicitation; or

- 1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
4. Who offers to send the purchaser descriptive literature and does not require payment prior to the purchaser's review of the descriptive literature.
- r. A person soliciting the purchase of contracts for the maintenance or repair of items previously purchased from the person making the solicitation or on whose behalf the solicitation is made.
- s. A book, video, recording or multimedia club or contractual plan or arrangement:
1. Under which the seller provides the consumer with a form with which the consumer can instruct the seller not to ship the offered merchandise.
 2. Which is regulated by the Federal Trade Commission trade regulation concerning 'use of negative option plans by sellers in commerce'.
 3. Which provides for the sale of books, recordings, multimedia products or goods, or videos which are not covered under paragraphs 1. or 2. of this sub-subdivision, including continuity plans, subscription arrangements, standing order arrangements, supplements, and series arrangements under which the seller periodically ships merchandise to a consumer who has consented in advance to receive such merchandise on a periodic basis.
- t. A person who for at least two years has been operating under the same name as that used in connection with its telemarketing operations and retail establishment in North Carolina where consumer goods are displayed and offered for sale on a continuing basis if a majority of the person's business involves the buyers obtaining services or products at the person's retail establishment.
- u. A person:
1. Who provides telephone solicitation services under contract to sellers;
 2. Who has been operating continuously for at least three years under the same business name; and
 3. For whom at least seventy-five percent (75%) of the person's contracts are performed on behalf of other persons exempt under this section.
- v. A person soliciting political contributions in accordance with Article 22A of Chapter 163 of the General Statutes.
- w. The seller of a 'business opportunity' as defined in G.S. 66-94, while engaged in activities subject to regulation under Article 19 of Chapter 66 of the General Statutes, provided

1 that such seller has complied with the provisions of G.S. 66-
2 97.

3 x. A 'loan broker' as defined in G.S. 66-106, while engaged in
4 activities subject to regulation under Article 20 of Chapter
5 66 of the General Statutes, provided that such loan broker
6 has complied with the provisions of G.S. 66-109.

7 y. A 'membership camping operator' as defined in G.S. 66-
8 232(10) or a 'salesperson' as defined in G.S. 66-232(16),
9 while engaged in activities subject to regulation under
10 Article 31 of Chapter 66 of the General Statutes, provided
11 that such persons have complied with the provisions of G.S.
12 66-234 and G.S. 66-237, as applicable.

13 **"§ 66-261. Registration of telephonic sellers.**

14 (a) Not less than 10 days before commencing telephone solicitations in this State,
15 a telephonic seller shall register with the Secretary by filing the information required
16 in G.S. 66-262 and paying a filing fee of one hundred dollars (\$100.00). A telephonic
17 seller is doing business in this State if it solicits or attempts to solicit prospective
18 purchasers from locations in this State or solicits or attempts to solicit prospective
19 purchasers who are located in this State.

20 (b) The information required in G.S. 66-262 shall be submitted on a form
21 provided by the Secretary and shall contain the notarized signatures of each principal
22 of the telephonic seller.

23 (c) Registration of a telephonic seller shall be valid for one year from the effective
24 date thereof and may be annually renewed by making the filing required in G.S. 66-
25 262 and paying the filing fee of one hundred dollars (\$100.00). Registration shall not
26 be deemed effective unless all required information is provided and any deficiencies
27 or errors noted by the Secretary have been corrected to the satisfaction of the
28 Secretary.

29 (d) Whenever, prior to expiration of a seller's annual registration, there is a
30 change in the information required by G.S. 66-262, the seller shall, within 10 days
31 after the change, file an addendum with the Secretary updating the information.

32 **"§ 66-262. Filing information.**

33 (a) Each filing submitted to the Secretary shall contain all of the following
34 information:

35 (1) The name or names, including any assumed names, under which
36 the telephonic seller is doing or intends to do business in this State.

37 (2) The telephonic seller's business form and place of organization
38 and, if the seller is a corporation, copies of its articles of
39 incorporation and bylaws and amendments thereto, or if a
40 partnership, a copy of the partnership agreement.

41 (3) Complete street address of the telephonic seller's principal place of
42 business.

43 (4) The complete street address of each location from which telephone
44 solicitations are placed by the telephonic seller.

- 1 (5) A listing of all telephone numbers to be used by the telephonic
2 seller, including area codes, and the complete street address of the
3 business premises served by each number.
4 (6) The name and title of each principal.
5 (7) The complete street address of the residence, the date of birth, and
6 the social security number of each principal.
7 (8) The true name, street address, date of birth, and the social security
8 number of each room operator, together with the room operator's
9 full employment history during the preceding two years.
10 (9) The name and address of all banks or savings institutions where
11 the telephonic seller maintains deposit accounts.
12 (10) The name and address of each long-distance telephone carrier used
13 by the telephonic seller.
14 (11) A summary of each civil or criminal proceeding brought against
15 the telephonic seller, any of its principals, or any of its room
16 operators during the preceding five years by federal, State, or local
17 officials relating to telephonic sales practices of each. The
18 summary shall include the date each action was commenced, the
19 criminal or civil charges alleged, the case caption, the court file
20 number, the court venue, and the disposition of the action. For
21 purposes of this section, a 'civil proceeding includes' means
22 assurances of voluntary compliance, assurances of discontinuance,
23 consent judgments, and similar agreements executed with federal,
24 State, or local officials.

25 (b) For purposes of this section, 'street address' does not include a private mail
26 service address.

27 **"§ 66-263. Bond requirement; prizes and gifts.**

28 (a) At least 10 days before the commencement of any promotion offering any gift
29 or prize with an actual or represented market value of five hundred dollars (\$500.00)
30 or more, the telephonic seller shall notify the Secretary in writing of the details of the
31 promotion, fully describing the nature and number of all gifts or prizes and their
32 current market value, the seller's rules and regulations governing the promotion, and
33 the date the gifts or prizes are to be awarded. All gifts or prizes offered shall be
34 awarded. Concurrent with notifying the Secretary under this subsection, the
35 telephonic seller shall post a bond with the Secretary for the market value or the
36 represented value, whichever is greater, of all gifts or prizes represented as available
37 under the promotion. The bond must be issued by a surety company authorized to
38 do business in this State. The bond shall be in favor of the State of North Carolina
39 for the benefit of any person entitled to receive a gift or prize under the promotion
40 who did not receive it within 30 days of the specified date of award. The amount
41 recoverable by any person under the bond shall not exceed the market value, the
42 represented value of the gift or prize, or the amount of any consideration or
43 contribution paid by that person in response to the telephone solicitation, whichever
44 is greatest.

1 (b) Within 45 days after the specified date of the award of the gift or prize, the
2 seller shall provide, in writing, to the Secretary, proof that the gifts or prizes were
3 awarded. The writing shall include the name, address, and telephone number of all
4 persons receiving awards or prizes. The bond shall be maintained until the Secretary
5 receives reliable proof that the gifts or prizes have been delivered to the intended
6 recipients.

7

8 (c) The Attorney General, on behalf of any injured purchaser, or any purchaser
9 who is injured by the bankruptcy of the telephonic seller or its breach of any
10 agreement entered into in its capacity as a telephonic seller, may initiate a civil action
11 to recover against the bond.

12 "§ 66-264. Calls made to minors.

13 A telephonic seller must inquire as to whether the prospective purchaser it is
14 contacting is under 18 years of age. If the prospective purchaser is under 18 years of
15 age, the telephonic seller must discontinue the call immediately.

16 "§ 66-265. Offers of gifts or prizes.

17 (a) It shall be unlawful for any telephonic seller to make a telephone solicitation or
18 attempted telephone solicitation involving any gift or prize when the solicitation or
19 attempted solicitation:

20 (1) Requests or directs the consumer to further the transaction by
21 calling a 900 number or a pay per call number.

22 (2) Requests or directs the consumer to send any payment or make a
23 donation in order to collect the gift or prize.

24 (3) Does not comply fully with G.S. 75-30, 75-32, 75-33, or 75-34.

25 (b) Notwithstanding subsection (a) of this section, a telephonic seller may offer a
26 gift or prize in connection with the bona fide sale of a product or service.

27 "§ 66-266. Penalties.

28 (a) Any violation of this Article shall constitute an unfair and deceptive trade
29 practice in violation of G.S. 75-1.1.

30 (b) In an action by the Attorney General against a telephonic seller for violation
31 of this Article, or for any other act or practice by a telephonic seller constituting a
32 violation of G.S. 75-1.1, the court may impose civil penalties of up to twenty-five
33 thousand dollars (\$25,000) for each violation involving North Carolina purchasers or
34 prospective purchasers who are 65 years of age or older.

35 (c) The remedies and penalties available under this section shall be supplemental
36 to others available under the law, both civil and criminal.

37 (d) Compliance with this Article does not satisfy or substitute for any other
38 requirements for license, registration, or conduct imposed by law.

39 (e) In any civil proceeding alleging a violation of this Article, the burden of
40 proving an exemption or an exception from a definition is upon the person claiming
41 it, and in any criminal proceeding alleging a violation of this Article, the burden of
42 producing evidence to support a defense based upon an exemption or an exception
43 from a definition is upon the person claiming it."

- 1 Section 2. Article 52 of Chapter 14 of the General Statutes is amended
2 by adding a new section to read:
3 "§ 14-401.15. Telephone sales recovery services.
4 (a) Except as provided in subsection (c) of this section, it shall be unlawful for any
5 person or firm to solicit or require payment of money or other consideration in
6 exchange for recovering or attempting to recover:
7 (1) Money or other valuable consideration previously tendered to a
8 telephonic seller, as defined in G.S. 66-260; or
9 (2) Prizes, awards, or other things of value that the telephonic seller
10 represented would be delivered.
11 (b) A violation of this section shall be punishable as a Class 1 misdemeanor. Any
12 violation involving actual collection of money or other consideration from a customer
13 shall be punishable as a Class H felony.
14 (c) This section does not apply to attorneys licensed to practice law in this State,
15 to persons licensed by the North Carolina Private Protective Services Board, or to
16 any collection agent properly holding a permit issued by the Department of Insurance
17 to do business in this State."
18 Section 3. Section 2 of this act becomes effective January 1, 1998, and
19 applies to offenses committed on or after that date. The remaining sections of this
20 act become effective October 1, 1997, and apply to violations occurring on or after
21 that date.

NORTH CAROLINA GENERAL ASSEMBLY

FISCAL MEMORANDUM

From: Elisa Wolper, Fiscal Research Division

To: Senate Finance Committee

Re: Senate Bill 253 (Senate Commerce Committee Substitute
S253-PCS8626)

SHORT TITLE: Telephone Consumer Protection 2/AB

SPONSOR(S): Senators Winner, Gulley, Lee and Odom

FISCAL IMPACT

	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 1997-98</u>	<u>FY 1998-99</u>	<u>FY 1999-00</u>	<u>FY 2000-01</u>	<u>FY 2001-02</u>
REVENUES	\$ 500	\$ 500	\$ 500	\$ 500	\$ 500
EXPENDITURES		none			

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Office of the Secretary of State, Judicial Branch, Department of Justice Office of Consumer Protection

EFFECTIVE DATE: Except as noted below, act is effective Oct. 1, 1997, and applies to violations on or after that date.

BILL SUMMARY: S 253. TELEPHONE CONSUMER PROTECTION. TO REQUIRE THE REGISTRATION OF TELEPHONIC SELLERS IN NORTH CAROLINA, TO MAKE THE OFFERING OF TELEPHONE SALES RECOVERY SERVICES A CRIMINAL OFFENSE, AND TO RESTRICT THE TIME PERIOD WITHIN WHICH UNSOLICITED AUTOMATIC DIALING AND RECORDED MESSAGES MAY BE MADE BY PHONE. Adds new Art. 33 to GS Ch. 66. Requires that telephonic sellers register with, and pay annual \$100 registration fee to, the Secretary of State not less than 10 days before commencing telephone solicitations from within the state or before soliciting purchasers residing in the state. Specifies required filing information, which includes a summary of any civil or criminal proceedings concerning telephonic sales brought against the registrant in the preceding five years. Registration is not effective until

all required information is provided. Requires that telephonic sellers who promote or offer prizes with a value of \$500 or more provide information about that prize to the Secretary of State, post a bond for the value of the prize, and provide the Secretary with proof that the prize was awarded within 45 days after the date of award. The bond is maintained until the Secretary is provided with reliable proof that the prize has been delivered. Prohibits telephone solicitation calls to minors.

Makes it unlawful for a telephonic seller to make a telephone solicitation call involving any gift or prize if the solicitation requests that a consumer further the transaction by calling a 900 number or a pay per call number, or requests a consumer to send payment or make a donation in order to collect a gift or prize, or fails to comply with provisions of GS Ch. 75 regarding automated dialing and recorded messages and representations regarding prizes.

Violation of act is an unfair and deceptive trade practice. Allows court, in civil action brought by Atty. Gen. for violation of act, to impose civil penalty of up to \$25,000 per violation.

Defines "telephone solicitation" as any telephonic communication designed to persuade any person to purchase goods or services, to enter a contest, or to contribute to a charity regardless of whether the telephone call is placed by (a) the telephonic seller or (b) a person responding to an unsolicited notice provided by seller representing to the recipient that the recipient has won a gift or prize or may qualify for credit by contacting the seller, or that the seller has buyers interested in purchasing recipient's property. Excludes from the definition of "telephonic seller" the following persons and entities: (1) nonprofit (501(c)(3)) organizations and charitable solicitors licensed under GS Ch. 131F or exempt from licensure under GS Ch. 131F; (2) licensed persons offering or selling registered securities; (3) persons conducting sales or solicitations on behalf of licensee of NC Utilities Comm'n or Federal Communications Comm'n; (4) licensed insurance agent or broker conducting sales or solicitations on behalf of insurance company; (5) banks or savings institutions; (6) persons who deliver sales catalogs with annual circulation of at least 250,000 to potential purchasers in more than one state; (7) persons soliciting sales on behalf of newspaper or cable television company; (8) persons soliciting purchases from a business; (9) book, video, or record clubs that meet certain requirements; (10) persons soliciting political contributions in accordance with Art. 22A of GS Ch. 163; and (11) sellers of business opportunities, loan brokers and membership camping operators and other persons and entities specified in act.

Effective Jan. 1, 1998, makes it a class 1 misdemeanor for a person, other than an attorney licensed in NC, a collection agent holding permit issued by Dep't of Insurance, or a person licensed by NC Protective Services Board, to solicit or require money or other consideration in exchange for recovering or attempting to recover (1) money or valuable consideration previously tendered to telephonic seller, or (2) prizes, awards, or other things of value that telephonic seller has previously represented would be delivered. A violation involving actual collection of money or consideration from a customer is a class H felony.¹

ASSUMPTIONS AND METHODOLOGY: The Sentencing Commission does not expect the bill to have a significant impact on prison populations since only a handful of cases involving the conduct described in the bill were initiated in state court last year.

The Judicial Branch does not anticipate any substantial impact on this bill because only a minimal increase in lawsuits and prosecutions are anticipated by the Department of Justice.

The Department of Justice does not anticipate any fiscal impact of this bill because they anticipate only a handful of cases will be litigated and that answering inquiries about the bill's requirements can be handled within existing resources.

The Office of the Secretary of State would be responsible for receiving registration by telephonic sellers and for collecting the \$100 registration fee. They project an average of 5 registrants per year or \$500 in revenues. The Office of the Secretary of State can perform this function within existing resources. Thus the only fiscal impact of the bill is the projected revenue from registrations,

¹ *Daily Bulletin*, Institute of Government, UNC-Chapel Hill, 1997

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 635

Short Title: Expand Interstate Highways.

(Public)

Sponsors: Senator Shaw of Cumberland.

Referred to: Transportation.

April 1, 1997

- 1 A BILL TO BE ENTITLED
2 AN ACT TO CHANGE THE NAME OF THE NORTH CAROLINA BRIDGE
3 AUTHORITY TO THE NORTH CAROLINA TOLL ROAD AND BRIDGE
4 AUTHORITY, TO AUTHORIZE THE AUTHORITY TO CHARGE A TOLL
5 ON A NORTH-SOUTH PRIMARILY RURAL INTERSTATE HIGHWAY, AND
6 DIRECT USE OF INTERSTATE TOLL PROCEEDS TO EXPANSION AND
7 MAINTENANCE OF THAT INTERSTATE AND FOR OTHER
8 TRANSPORTATION PURPOSES.
9 The General Assembly of North Carolina enacts:
10 Section 1. Article 6F of Chapter 136 reads as rewritten:
11 "ARTICLE 6F.
12 "North Carolina Toll Road and Bridge Authority.
13 "§ 136-89.159. Toll road and Bridge bridge projects.
14 (a) The creation of the North Carolina Toll Road and Bridge Authority is
15 necessitated by:
16 (1) The high cost of constructing long bridges;
17 (2) The need for providing better access to areas of a peninsula of the
18 mainland where egress has been blocked by federal acquisition of
19 property; and
20 (3) The need for providing additional critically needed evacuation
21 routes from the Outer Banks during hurricanes and in the event of
22 other natural disasters.
23 (4) The need to expand and maintain rural interstate highways in the
24 State.

1 (b) The North Carolina Toll Road and Bridge Authority shall construct, maintain,
2 repair, and operate a bridge of more than two miles in length going from the
3 mainland to a peninsula from which land egress is through property of the United
4 States.

5 (c) The North Carolina Toll Road and Bridge Authority may charge a toll to
6 expand or maintain any major north-south interstate route in the State that does not
7 pass through a municipality with a population greater than 250,000, according to the
8 latest decennial census.

9 "§ 136-89.160. Funding for projects.

10 All expenses incurred in carrying out the provisions of this Article shall be payable
11 solely from funds, including federal funds, that are now or may become available to
12 the Authority in the future for projects. Any fees collected under this Article from
13 bridge tolls shall be credited to the Highway Trust Fund and used to offset the costs
14 of building, maintaining, or operating the bridge and other related projects. Any fees
15 collected under this Article from an interstate toll road shall be used for expanding
16 or maintaining that interstate, or for other transportation related purposes.

17 "§ 136-89.161. North Carolina Toll Road and Bridge Authority.

18 (a) There is created a body politic and corporate to be known as the 'North
19 Carolina Toll Road and Bridge Authority' The Authority is constituted a public
20 agency, and the exercise by the Authority of the powers conferred by this Article in
21 the construction, operation, and maintenance of the bridge ~~project~~ project, or
22 interstate expansion or maintenance project, shall be deemed and held to be the
23 performance of an essential governmental function.

24 (b) The North Carolina Toll Road and Bridge Authority shall consist of eight
25 members:

26 (1) The Secretary of Transportation.

27 (2) Three members shall be appointed by the Governor, one for a
28 term expiring on July 1, 1996, one for a term expiring on July 1,
29 1997, and one for a term expiring on July 1, 1998. Each subsequent
30 appointment shall be for a term of four years.

31 (3) Four members shall be appointed by the General Assembly, two
32 upon the recommendation of the President Pro Tempore of the
33 Senate and two upon the recommendation of the Speaker of the
34 House of Representatives, in accordance with G.S. 120-121.

35 a. The President Pro Tempore of the Senate shall recommend
36 the appointment of two members, one of whom shall serve a
37 term expiring June 30, 1997, and one of whom shall serve a
38 term expiring June 30, 1999. Each subsequent regular
39 appointment shall be for a term of four years.

40 b. The Speaker of the House shall recommend the
41 appointment of two members, one of whom shall serve a
42 term expiring June 30, 1997, and one of whom shall serve a
43 term expiring June 30, 1999. Each subsequent regular
44 appointment shall be for a term of four years.

1 (c) The successor of each of the appointed members shall be appointed for a term
2 of four years, but any person appointed to fill a vacancy shall be appointed to serve
3 only for the unexpired term, and a member of the Authority shall be eligible for
4 reappointment. Each appointed member of the Authority may be removed by the
5 appointing authority for misfeasance, malfeasance, or willful neglect of duty. Each
6 appointed member of the Authority before entering upon the member's duties shall
7 take an oath to administer the duties of the office faithfully and impartially, and a
8 record of each oath shall be filed in the Office of the Secretary of State.

9 (d) At its first meeting after July 1, 1995, and every two years thereafter, the
10 Authority shall elect from its appointed membership a chair and a vice-chair. The
11 Authority shall also elect a secretary who need not be a member of the Authority.
12 The secretary shall serve as an officer at the pleasure of the Authority. Five members
13 of the Authority shall constitute a quorum, and the affirmative vote of five members
14 shall be necessary for any action taken by the Authority. No vacancy in the
15 membership of the Authority shall impair the right of a quorum to exercise all the
16 rights and perform all the duties of the Authority.

17 (e) The appointed members of the Authority shall receive no salary for their
18 services but shall be entitled to receive per diem and allowances in accordance with
19 the provisions of G.S. 138-5.

20 (f) The Authority shall be located within the Department of Transportation for
21 administrative purposes but shall exercise all of its powers independently of the
22 Department of Transportation.

23 (g) The Authority shall adopt bylaws with respect to the calling of meetings,
24 quorums, voting procedures, the keeping of records, and other organizational and
25 administrative matters as the Authority may determine.

26 (h) Upon completion of any bridge constructed pursuant to this Article, or
27 institution of any toll on an interstate, the Authority shall appoint an executive
28 director, whose salary shall be fixed by the Authority, to serve at its pleasure. Prior to
29 appointing an Executive Director, the Authority shall confer with the Governor
30 regarding the proposed salary to be paid to the Executive Director. The Executive
31 Director shall be responsible for the daily administration of toll roads and bridges
32 constructed, maintained, or operated, pursuant to this Article.

33 "§ 136-89.162. Powers of the Authority.

34 (a) The Authority shall have all of the powers necessary to execute the provisions
35 of this Article which shall include at least the following powers:

- 36 (1) The powers of a corporate body, including the power to sue and
37 be sued, to make contracts, to adopt and use a common seal, and
38 to alter the adopted seal as needed.
- 39 (2) To establish, purchase, construct, operate, and regulate toll roads
40 and bridges and to own, lease, sell, or manage real or personal
41 property.
- 42 (3) To charge and collect tolls and fees for the use of the toll roads
43 and bridges, for services rendered in the operation of the toll roads
44 and bridges, or to offset the costs of building the ~~bridges.~~ bridges.

1 or expansion or maintenance of interstate toll roads. A toll shall
2 not exceed ten dollars (\$10.00) and an annual fee for a single
3 vehicle to use the bridge during a year shall not exceed five
4 hundred dollars (\$500.00). Tolls for interstate highways shall be in
5 the discretion of the Authority, but shall not exceed (\$*.00). The
6 Authority shall report its schedule of tolls and fees to the Joint
7 Legislative Transportation Oversight Committee.

- 8 (4) To rent, lease, purchase, acquire, own, encumber, or dispose of
9 real or personal property.
- 10 (5) To establish, construct, purchase, maintain, equip, and operate any
11 structure or facilities associated with a toll road or bridge.
- 12 (6) To pay all necessary costs and expenses in the formation,
13 organization, administration, and operation of the Authority.
- 14 (7) To apply for, accept, and administer loans and grants of money
15 from any federal agency, from the State or its political subdivisions,
16 or from any other public or private sources available.
- 17 (8) To adopt, alter, or repeal its own bylaws or rules implementing the
18 provisions of this Article.
- 19 (9) To employ consulting engineers, architects, attorneys, real estate
20 counselors, appraisers, and other consultants and employees as may
21 be required in the judgment of the Authority and to fix and pay
22 their compensation from funds available to the Authority.
- 23 (10) To procure and maintain adequate insurance or otherwise provide
24 for adequate protection to indemnify the Authority and its officers,
25 directors, agents, employees, adjoining property owners, or the
26 general public against loss or liability resulting from any act or
27 omission by or on behalf of the Authority.
- 28 (11) To receive and use appropriations from the State, including an
29 appropriation from the proceeds of State general obligation bonds
30 or notes.

31 (b) To execute the powers provided in subsection (a) of this section, the Authority
32 shall determine its policies by majority vote of the members of the Authority present
33 and voting, a quorum having been established.

34 **"§ 136-89.163. Taxation of property of Authority.**

35 Property owned by the Authority is exempt from taxation in accordance with
36 Article V, Section 2 of the North Carolina Constitution.

37 **"§ 136-89.164. Acquisition, disposition, or exchange of real property.**

38 The Authority may acquire real property by purchase, negotiation, gift, or devise.
39 When the Authority acquires real property owned by the State, the Secretary of the
40 Department of Administration shall execute and deliver to the Authority a deed
41 transferring fee simple title to the property to the Authority.

42 **"§ 136-89.165. Cooperation by other State agencies.**

43 All State officers and agencies shall render the services to the Authority within
44 their respective functions as may be requested by the Authority.

1 **"§ 136-89.166. Annual and quarterly reports.**

2 The Authority shall, promptly following the close of each fiscal year, submit an
3 annual report of its activities for the preceding year to the Governor, the General
4 Assembly, and the Department of Transportation. Each report shall be accompanied
5 by an audit of its books and accounts. The costs of all audits, whether conducted by
6 the State Auditor's staff or contracted with a private auditing firm, shall be paid from
7 funds of the Authority.

8 The Authority shall submit quarterly reports to the Joint Legislative Transportation
9 Oversight Committee. The reports shall summarize the Authority's activities during
10 the quarter and contain any information about the Authority's activities that is
11 requested by the Committee.

12 **§ 136-89.167. Dissolution.**

13 Whenever the Authority, by resolution, determines that the purposes for which the
14 Authority was formed have been substantially fulfilled, the Authority may declare
15 itself dissolved. On the effective date of the resolution, the title to all property owned
16 by the Authority at the time of the dissolution shall vest in the State, and possession
17 of the property shall be delivered to the State."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

D

SENATE BILL 635
Proposed Committee Substitute S635-PCS1735

Short Title: Expand Interstate Highways.

(Public)

Sponsors:

Referred to:

April 1, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO CHANGE THE NAME OF THE NORTH CAROLINA BRIDGE
3 AUTHORITY TO THE NORTH CAROLINA TOLL ROAD AND BRIDGE
4 AUTHORITY, TO AUTHORIZE THE AUTHORITY TO CHARGE A TOLL
5 ON A NORTH-SOUTH PRIMARILY RURAL INTERSTATE HIGHWAY, AND
6 DIRECT USE OF INTERSTATE TOLL PROCEEDS TO EXPANSION AND
7 MAINTENANCE OF THAT INTERSTATE AND FOR OTHER
8 TRANSPORTATION PURPOSES.

9 The General Assembly of North Carolina enacts:

10 Section 1. Article 6F of Chapter 136 reads as rewritten:

11 "ARTICLE 6F.

12 "North Carolina Toll Road and Bridge Authority.

13 "§ 136-89.159. Toll road and Bridge bridge projects.

14 (a) The creation of the North Carolina Toll Road and Bridge Authority is
15 necessitated by:

- 16 (1) The high cost of constructing long bridges;
17 (2) The need for providing better access to areas of a peninsula of the
18 mainland where egress has been blocked by federal acquisition of
19 property; ~~and~~
20 (3) The need for providing additional critically needed evacuation
21 routes from the Outer Banks during hurricanes and in the event of
22 other natural ~~disasters.~~ disasters; and

1 (4) The need to expand and maintain rural interstate highways in the
2 State.

3 (b) The North Carolina Toll Road and Bridge Authority shall construct, maintain,
4 repair, and operate a bridge of more than two miles in length going from the
5 mainland to a peninsula from which land egress is through property of the United
6 States.

7 (c) The North Carolina Toll Road and Bridge Authority may charge a toll to
8 expand or maintain any major north-south interstate route in the State that does not
9 pass through a municipality with a population greater than 250,000, according to the
10 latest federal decennial census. Any interstate expansion undertaken by the
11 Authority shall include high occupancy vehicle (HOV) lanes, if appropriate, based on
12 traffic engineering analysis.

13 **"§ 136-89.160. Funding for projects.**

14 All expenses incurred in carrying out the provisions of this Article shall be payable
15 solely from funds, including federal funds, that are now or may become available to
16 the Authority in the future for projects. Any fees collected under this Article from
17 bridge tolls shall be credited to the Highway Trust Fund and used to offset the costs
18 of building, maintaining, or operating the bridge and other related projects. Any fees
19 collected under this Article from an interstate toll road shall be used for expanding
20 or maintaining that interstate, or for other transportation related purposes.

21 **"§ 136-89.161. North Carolina Toll Road and Bridge Authority.**

22 (a) There is created a body politic and corporate to be known as the 'North
23 Carolina Toll Road and Bridge Authority'. The Authority is constituted a public
24 agency, and the exercise by the Authority of the powers conferred by this Article in
25 the construction, operation, and maintenance of the bridge project project, or
26 interstate expansion or maintenance project, shall be deemed and held to be the
27 performance of an essential governmental function.

28 (b) The North Carolina Toll Road and Bridge Authority shall consist of eight
29 members:

30 (1) The Secretary of Transportation.

31 (2) Three members shall be appointed by the Governor, one for a
32 term expiring on July 1, 1996, one for a term expiring on July 1,
33 1997, and one for a term expiring on July 1, 1998. Each subsequent
34 appointment shall be for a term of four years.

35 (3) Four members shall be appointed by the General Assembly, two
36 upon the recommendation of the President Pro Tempore of the
37 Senate and two upon the recommendation of the Speaker of the
38 House of Representatives, in accordance with G.S. 120-121.

39 a. The President Pro Tempore of the Senate shall recommend
40 the appointment of two members, one of whom shall serve a
41 term expiring June 30, 1997, and one of whom shall serve a
42 term expiring June 30, 1999. Each subsequent regular
43 appointment shall be for a term of four years.

1 b. The Speaker of the House shall recommend the
2 appointment of two members, one of whom shall serve a
3 term expiring June 30, 1997, and one of whom shall serve a
4 term expiring June 30, 1999. Each subsequent regular
5 appointment shall be for a term of four years.

6 (c) The successor of each of the appointed members shall be appointed for a term
7 of four years, but any person appointed to fill a vacancy shall be appointed to serve
8 only for the unexpired term, and a member of the Authority shall be eligible for
9 reappointment. Each appointed member of the Authority may be removed by the
10 appointing authority for misfeasance, malfeasance, or willful neglect of duty. Each
11 appointed member of the Authority before entering upon the member's duties shall
12 take an oath to administer the duties of the office faithfully and impartially, and a
13 record of each oath shall be filed in the Office of the Secretary of State.

14 (d) At its first meeting after July 1, 1995, and every two years thereafter, the
15 Authority shall elect from its appointed membership a chair and a vice-chair. The
16 Authority shall also elect a secretary who need not be a member of the Authority.
17 The secretary shall serve as an officer at the pleasure of the Authority. Five members
18 of the Authority shall constitute a quorum, and the affirmative vote of five members
19 shall be necessary for any action taken by the Authority. No vacancy in the
20 membership of the Authority shall impair the right of a quorum to exercise all the
21 rights and perform all the duties of the Authority.

22 (e) The appointed members of the Authority shall receive no salary for their
23 services but shall be entitled to receive per diem and allowances in accordance with
24 the provisions of G.S. 138-5.

25 (f) The Authority shall be located within the Department of Transportation for
26 administrative purposes but shall exercise all of its powers independently of the
27 Department of Transportation.

28 (g) The Authority shall adopt bylaws with respect to the calling of meetings,
29 quorums, voting procedures, the keeping of records, and other organizational and
30 administrative matters as the Authority may determine.

31 (h) Upon completion of any bridge constructed pursuant to this Article, or
32 institution of any toll on an interstate, the Authority shall appoint an executive
33 director, whose salary shall be fixed by the Authority, to serve at its pleasure. Prior to
34 appointing an Executive Director, the Authority shall confer with the Governor
35 regarding the proposed salary to be paid to the Executive Director. The Executive
36 Director shall be responsible for the daily administration of toll roads and bridges
37 constructed, maintained, or operated, pursuant to this Article.

38 **"§ 136-89.162. Powers of the Authority.**

39 (a) The Authority shall have all of the powers necessary to execute the provisions
40 of this Article which shall include at least the following powers:

41 (1) The powers of a corporate body, including the power to sue and
42 be sued, to make contracts, to adopt and use a common seal, and
43 to alter the adopted seal as needed.

- 1 (2) To establish, purchase, construct, operate, and regulate toll roads
2 and bridges and to own, lease, sell, or manage real or personal
3 property.
- 4 (3) To charge and collect tolls and fees for the use of the toll roads
5 and bridges, for services rendered in the operation of the toll roads
6 and bridges, or to offset the costs of building the ~~bridges~~ bridges,
7 or expansion or maintenance of interstate toll roads. A toll for the
8 bridge shall not exceed ten dollars (\$10.00) and an annual fee for a
9 single vehicle to use the bridge during a year shall not exceed five
10 hundred dollars (\$500.00). Tolls for interstate highways shall be in
11 the discretion of the Authority, but shall not exceed two dollars
12 (\$2.00) for vehicles with three or fewer axles, and six dollars
13 (\$6.00) for vehicles with four or more axles per trip on the entire
14 length of an interstate. The Authority may only construct and
15 operate interstate toll collection areas located within two miles of
16 the North Carolina state border, and shall not construct interstate
17 toll collection areas in any other location without authorization
18 from the General Assembly. The Authority shall report its
19 schedule of tolls and fees to the Joint Legislative Transportation
20 Oversight Committee.
- 21 (4) To rent, lease, purchase, acquire, own, encumber, or dispose of
22 real or personal property.
- 23 (5) To establish, construct, purchase, maintain, equip, and operate any
24 structure or facilities associated with a toll road or bridge.
- 25 (6) To pay all necessary costs and expenses in the formation,
26 organization, administration, and operation of the Authority.
- 27 (7) To apply for, accept, and administer loans and grants of money
28 from any federal agency, from the State or its political subdivisions,
29 or from any other public or private sources available.
- 30 (8) To adopt, alter, or repeal its own bylaws or rules implementing the
31 provisions of this Article.
- 32 (9) To employ consulting engineers, architects, attorneys, real estate
33 counselors, appraisers, and other consultants and employees as may
34 be required in the judgment of the Authority and to fix and pay
35 their compensation from funds available to the Authority.
- 36 (10) To procure and maintain adequate insurance or otherwise provide
37 for adequate protection to indemnify the Authority and its officers,
38 directors, agents, employees, adjoining property owners, or the
39 general public against loss or liability resulting from any act or
40 omission by or on behalf of the Authority.
- 41 (11) To receive and use appropriations from the State, including an
42 appropriation from the proceeds of State general obligation bonds
43 or notes.

1 (b) To execute the powers provided in subsection (a) of this section, the Authority
2 shall determine its policies by majority vote of the members of the Authority present
3 and voting, a quorum having been established.

4 **"§ 136-89.163. Taxation of property of Authority.**

5 Property owned by the Authority is exempt from taxation in accordance with
6 Article V, Section 2 of the North Carolina Constitution.

7 **"§ 136-89.164. Acquisition, disposition, or exchange of real property.**

8 The Authority may acquire real property by purchase, negotiation, gift, or devise.
9 When the Authority acquires real property owned by the State, the Secretary of the
10 Department of Administration shall execute and deliver to the Authority a deed
11 transferring fee simple title to the property to the Authority.

12 **"§ 136-89.165. Cooperation by other State agencies.**

13 All State officers and agencies shall render the services to the Authority within
14 their respective functions as may be requested by the Authority.

15 **"§ 136-89.166. Annual and quarterly reports.**

16 The Authority shall, promptly following the close of each fiscal year, submit an
17 annual report of its activities for the preceding year to the Governor, the General
18 Assembly, and the Department of Transportation. Each report shall be accompanied
19 by an audit of its books and accounts. The costs of all audits, whether conducted by
20 the State Auditor's staff or contracted with a private auditing firm, shall be paid from
21 funds of the Authority.

22 The Authority shall submit quarterly reports to the Joint Legislative Transportation
23 Oversight Committee. The reports shall summarize the Authority's activities during
24 the quarter and contain any information about the Authority's activities that is
25 requested by the Committee.

26 **§ 136-89.167. Dissolution.**

27 Whenever the Authority, by resolution, determines that the purposes for which the
28 Authority was formed have been substantially fulfilled, the Authority may declare
29 itself dissolved. On the effective date of the resolution, the title to all property owned
30 by the Authority at the time of the dissolution shall vest in the State, and possession
31 of the property shall be delivered to the State."

32 Section 2. This act is effective when it becomes law and expires
33 December 31, 2001.

flow, the Department of Transportation (DOT) says eight toll booths are needed at each site. DOT estimates the cost to construct these toll booths and widen the road at the toll site will cost between \$1.5 to \$3 million for each toll facility. DOT projects it will take \$1 million a year to operate a manual toll facility. FHWA encourages automated tolling, but the one-time or infrequent travel on I - 95 does not make it conducive to automation.

If the bill were approved and the work began today (4/14/97), it would take until the summer of 2001 to open the toll booths. According to DOT, the environmental study would take a minimum of two years to complete. After the environmental study is finished, the design could be completed within 6 months. Right-of-way acquisition would take 6 months to a year and construction would take approximately a year to complete. In sum, a total of at least four years is required before the toll booths could be opened. This pushes the opening of the facilities close to the December 31, 2001 expiration of the bill.

Toll Revenue

The bill sets a maximum \$2 toll for a vehicle with three or fewer axles and a maximum \$6 toll for a vehicle with four or more axles. Of the 35,000 vehicles per day at the Virginia border and the 29,000 vehicles per day at the South Carolina border, it is estimated that 23% of the traffic is trucks. The growth rate in traffic is projected to be 3.5% a year. Assuming the toll facilities are ready for operation in the year 2001, the following revenues will be generated for the first fiscal year:

I. Virginia Border

35,000 vehicles per day (VPD) X 3.5% growth over four years = 40,163 VPD
40,163 VPD X .23 (trucks) = 9,237 VPD X 365 days X \$6 (Max. toll) = \$20,229,030
40,163 VPD X .77 (cars) = 30,925 VPD X 365 days X \$2 (Max. toll) = 22,575,250
\$42,804,280

II. South Carolina Border

29,000 vehicles per day (VPD) X 3.5% growth over four years = 33,278 VPD
33,278 VPD X .23 (trucks) = 7,653 VPD X 365 days X \$6 (Max. toll) = \$16,760,070
33,278 VPD X .77 (cars) = 25,624 VPD X 365 days X \$2 (Max. toll) = 18,705,520
\$35,465,590

III. Total Estimated Revenue in FY 2001-02 \$78,269,870

Federal Law on Toll Facilities

The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) does not allow interstate highways to be converted to toll highways. ISTEA ends on September 30, 1997 and President Clinton's proposed NEXTEA (National Economic Crossroads Transportation Efficiency Act of 1997) is now being debated in Congress and may not be approved until the spring of 1998. This proposed surface transportation reauthorization bill will allow the tolling of interstate highways if the state performs major reconstruction on the roadway. Examples of reconstruction are adding new lanes, resurfacing, or rehabilitating existing lanes. NEXTEA would reimburse states 80% of their construction cost, but the funds would come out of the

states' regular apportionment. A toll cannot be imposed until the reconstruction is finished. The FHWA must sign a toll agreement with the state before a toll facility can be constructed.

I-95 Projects

The Federal Highway Administration (FHWA) has been asked to define the amount of work that North Carolina would have to do before it is eligible to toll I-95. The Transportation Improvement Program (TIP) for 1997 to 2003 has the following projects programmed for I-95:

Halifax & Northampton Counties - \$32.6 million has been committed to rehab 9.9 miles of pavement and bridges over the Roanoke River to be completed in 1999. (Project I-905)

Robeson County - \$19.3 million is authorized for rehab of 5.6 miles of pavement between US 74 and US 301 by 2000. (Project I- 2305)

Halifax County - The state is finishing a \$21.1 million project for pavement rehabilitation and bridge and safety improvements on 11.7 miles of roadway. (Project I-2512)

Johnston County - Two projects are scheduled to modify an interchange (Project I -2704) and to revise an interchange (Project I- 2812) by 2001 for a cost of \$11.1 million.

Johnston County - \$10 million is authorized to begin pavement and bridge rehab in 1997 on 10.7 miles of roadway. (Project I - 3318)

Wilson County - \$3 million is programmed to convert a grade separation into an interchange by 2001. (Project I - 3321)

Nash and Wilson Counties - \$9.3 million is programmed to rehab 8 miles of pavement by 2001. (Project I - 3606)

Federal and State Funding

Is the \$106.4 million for the above projects enough to qualify for tolling I-95? FHWA will make that determination. If the toll agreement with North Carolina says that more is needed to meet the reconstruction standard, don't look to the federal government for help. Based on projections of federal funding for NEXTEA, there will be little or no increase in federal funding for North Carolina over the next 6 years. All available federal funds are programmed until 2003. To do more work on I-95 will require the Board of Transportation to delay and delete projects in the TIP to free up funding. Despite being a politically difficult thing to do, there is also a state funding formula that may hinder the effort. Since 1989, state law requires DOT to spend state and federal highway funds programmed in the TIP according to a regional formula that accounts for population (50%), miles of road to complete (25%), and equal share to each region (25%). The amount expended in a region in a seven year period must be between 90% and 110% of the amount calculated for the region by formula. Additional funding for I-95 above that already programmed in the TIP might violate the regional funding distribution.

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

4-15-97

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Donna E. Winn	EBH&S
R. Paul Wilans	NCHBA
Scott Tompton	Secretary of State
Bonnie Allen	Secy. of State
JOHN SOLES	NC RURAL DEV. COUNCIL
BILL McQUEEN	NC RURAL WATER ASSOCIATION
Les Twible	NC RURAL CENTER
Arthur Kennedy	The Wooten Co (PENC & CEC-NC)
Bill Ray	NC RAPP CO.
Danny Rogers	NC DOT
Bill Pate	NC DEHNR
Lee Hunter Ron Aycock Carmel Wynn	County Com. Assoc NCRSA

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

4-15-97

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Henry Jones	Attorney NCVMA
Paul Ziser	CSBM
Ode Mithel	SCENIC NC
Jeff Mann	NCRR
Jean-Claude Klein	NC Rural Center
Harold Stant	interco
Bobby Blane	DEHNR - DWQ
Tom Fehnestock	" "
Jim Behmer	" "
Don Evans	" "
Ed Regan	N.C.A.C.C.

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

4-15-97

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

VL McBride	NRPA
Ann Holm	Genl / Sierra Club
Jane P. Gray	DOJ
Paul Lambert	Lambert Consulting
Mac Boxley	M.C. Aggregates Assoc.
Alice Garland	Electricity
Datchel Paige	
Ben Smith	IBM
Jerry Perkins	Public Water Supply DEN UC DEN NR
Sid Harvell	" " " " "
Link Sewall	DEH / DEH NR

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

4-15-97

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Jessica Miles	DEHUR / DEH - Public Water Supply
Ann Case	DEHNR
Bob Jackson	AARP
Dick Hatch	AARP
John Long	Martin Marietta
Cam Cook	BPMHL
Paula Long	Martin Marietta
Winston Churchill	DOE
Andy Romanet	N.C.L.M.
Andy [Signature]	McFann Business
Paula [Signature]	NFB

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT

John H. Kerr, III, Co-Chair

David W. Hoyle, Co-Chair

Thursday, April 17, 1997

SENATOR JOHN KERR,

submits the following with recommendations as to passage:

FAVORABLE

S.B.(CS #1)253	Telephone Consumer Protection/AB. Sequential Referral: Appropriations Recommended Referral: None
S.B. 356	Reidsville Annexations. Sequential Referral: None Recommended Referral: None
S.B. 441	Handgun Fee Reallocation Sequential Referral: None Recommended Referral: Appropriations
S.B. 529	Hope Mills Annexations. Sequential Referral: None Recommended Referral: None
S.B. 615	Kernersville Vehicle Tax. Sequential Referral: None Recommended Referral: None

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B. 232	Clean Water Bonds Draft Number: PCS2705 Sequential Referral: Appropriations Recommended Referral: None Long Title Amended: No
----------	---

April 17, 1997

**UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL**

H.B.(CS) 57

Withholding for Nonresidents.

Draft Number: PCS7246
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

TOTAL REPORTED: 7

Committee Clerk Comment: None

SENATE FINANCE COMMITTEE

WEDNESDAY, APRIL 16, 1997

8:30 A.M. - ROOM 544 LOB

The Senate Finance Committee met. There were 21 members of the committee present. Senator John H. Kerr, III, Co-Chairman, presided. He introduced the Page, Kathryn Roebuck from Elizabeth City, N. C., sponsored by Senator Marc Basnight.

S. B. 585 - Increase Lumberton Occupancy Tax

Senator Weinstein explained the bill. Senator Conder moved for a "favorable" report, motion passed.

H. B. 488 - Increase Rabies Tag Fee/AB

Representative Barbee explained the bill. Senator Lee moved for a "favorable" report, motion passed. Dr. Michael Moser, Director of the Division of Epidemiology and Dr. Lee Hunter, Public Health Veterinarian, both with the Department of Human and Natural Resources, spoke on the bill.

S. B. 578 -Mount Airy Occupancy Tax

Senator Foxx explained the bill. Senator Dannelly made a motion for a "favorable" report, motion passed.

H.B 59 - Update IRC Reference

Representative Neely explained the bill. Senator Hoyle made a motion for a "favorable" report, motion passed.

H.B. 57 - Withholding for Nonresidents

Representative Neely explained the bill. Senator Phillips moved for adoption of proposed committee substitute to bill for the purpose of discussion, motion passed. Senator Hoyle sent forth an amendment to bill which as it effects the bill would change the date to

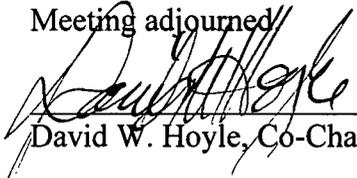
SENATE FINANCE COMMITTEE

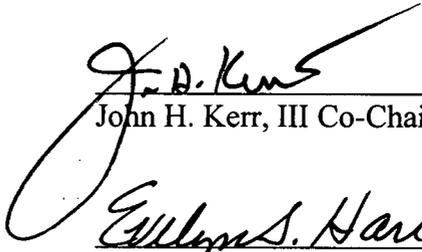
Wednesday, April 16, 1997

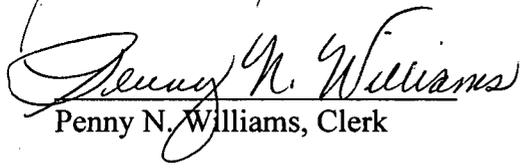
Page -2-

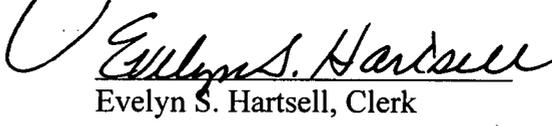
January 1, 1998 effecting farmers and moved for adoption of same, motion passed. Mr. Julian Philpott with N. C. Farm Bureau spoke on the bill. Senator McDaniel moved for a "favorable" report on proposed committee substitute with amendment rolled into a new committee substitute, motion passed. NOTE: Bill was reported out of Committee on April 22, 1997 "unfavorable as to committee substitute bill, but favorable as to senate committee substitute bill".

Meeting adjourned


David W. Hoyle, Co-Chair


John H. Kerr, III Co-Chair


Penny N. Williams, Clerk


Evelyn S. Hartsell, Clerk

NOTE:

Agenda is Attachment # 1

Visitor's Registration is Attachment # 2

Committee Report is Attachment # 3 and # 4

AGENDA

FOR

SENATE FINANCE COMMITTEE

MEETING

WEDNESDAY, APRIL 16, 1997

AT 8:30 A. M.

H. B. 488 - Increase Rabies Tag Fee/AB. - Rep. Barbee

S. B. 578 - Mount Airy Occupancy Tax - Sen. Foxx

S. B. 585 - Increase Lumberton Occupancy Tax - Sen. Weinstein

H. B. 57(com. sub.) - Withholding for Nonresidents - Rep. Neely

H. B. 59 - Update IRC Reference - Rep. Neely

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 585

Short Title: Increase Lumberton Occupancy Tax.

(Local)

Sponsors: Senator Weinstein.

Referred to: Finance.

April 1, 1997

- 1 A BILL TO BE ENTITLED
2 AN ACT TO INCREASE THE MAXIMUM RATE OF THE LUMBERTON ROOM
3 OCCUPANCY TAX FROM THREE PERCENT TO SIX PERCENT.
4 The General Assembly of North Carolina enacts:
5 Section 1. Part IX of Chapter 908 of the 1983 Session Laws, as amended
6 by Chapter 1028 of the 1983 Session Laws and Chapter 935 of the 1987 Session Laws,
7 as it relates to the City of Lumberton only, is recodified and rewritten as Section 2 of
8 this act.
9 Section 2. Lumberton Occupancy Tax. (a) Authorization and scope.
10 The Lumberton City Council may levy a room occupancy tax of up to three percent
11 (3%) of the gross receipts derived from the rental of any room, lodging, or
12 accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within
13 the city that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3).
14 This tax is in addition to any State or local sales tax.
15 (b) Authorization of additional tax. In addition to the tax authorized by
16 subsection (a) of this section, the Lumberton City Council may levy an additional
17 room occupancy tax of up to three percent (3%) of the gross receipts derived from
18 the rental of accommodations taxable under subsection (a). The levy, collection,
19 administration, and repeal of the tax authorized by this subsection shall be in
20 accordance with the provisions of this section. The Lumberton City Council may not
21 levy a tax under this subsection unless it also levies the tax authorized under
22 subsection (a) of this section.

1 (c) Administration. A tax levied under this section shall be levied,
2 administered, collected, and repealed as provided in G.S. 160A-215. The penalties
3 provided in G.S. 160A-215 apply to a tax levied under this section.

4 The tax collector may collect any unpaid taxes levied under this act
5 through the use of attachment and garnishment proceedings as provided in G.S.
6 105-368 for collection of property taxes. The tax collector has the same enforcement
7 powers concerning the tax imposed by this act as does the Secretary of Revenue in
8 enforcing the State sales tax under G.S. 105-164.30.

9 (d) Distribution and use of tax revenue. The City of Lumberton shall
10 use the net proceeds of the tax only for tourism-related expenditures.

11 The following definitions apply in this subsection:

12 (1) Net proceeds. -- Gross proceeds less the cost to the city of
13 administering and collecting the tax, as determined by the finance
14 officer, not to exceed seven percent (7%) of the gross proceeds.

15 (2) Tourism-related expenditures. -- Any of the following
16 expenditures: sponsoring tourist-oriented events, encouraging
17 tourism through advertising and promotion, establishing a visitors'
18 center, and other expenditures that directly enhance tourism. The
19 term also includes any of the following expenditures: criminal
20 justice system, fire protection, public facilities and utilities, health
21 facilities, and solid waste and sewage treatment. The term does
22 not include, however, expenditures for services normally provided
23 by the city on behalf of its citizens unless these services promote
24 tourism and enlarge its economic benefits by enhancing the ability
25 of the city to attract and provide for tourists.

26 Section 3. (a) Article 9 of Chapter 160A of the General Statutes is
27 amended by adding a new section to read:

28 "§ 160A-215. Uniform provisions for room occupancy taxes.

29 (a) Scope. -- This section applies only to municipalities the General Assembly has
30 authorized to levy room occupancy taxes. For the purpose of this section, the term
31 'city' means a municipality.

32 (b) Levy. -- A room occupancy tax may be levied only by resolution, after not less
33 than 10 days' public notice and after a public hearing held pursuant thereto. A room
34 occupancy tax shall become effective on the date specified in the resolution levying
35 the tax. That date must be the first day of a calendar month, however, and may not
36 be earlier than the first day of the second month after the date the resolution is
37 adopted.

38 (c) Collection. -- Every operator of a business subject to a room occupancy tax
39 shall, on and after the effective date of the levy of the tax, collect the tax. The tax
40 shall be collected as part of the charge for furnishing a taxable accommodation. The
41 tax shall be stated and charged separately from the sales records and shall be paid by
42 the purchaser to the operator of the business as trustee for and on account of the
43 taxing city. The tax shall be added to the sales price and shall be passed on to the
44 purchaser instead of being borne by the operator of the business. The taxing city

1 shall design, print, and furnish to all appropriate businesses and persons in the city
2 the necessary forms for filing returns and instructions to ensure the full collection of
3 the tax. An operator of a business who collects a room occupancy tax may deduct
4 from the amount remitted to the taxing city a discount equal to the discount the State
5 allows the operator for State sales and use tax.

6 (d) Administration. -- The taxing city shall administer a room occupancy tax it
7 levies. A room occupancy tax is due and payable to the city finance officer in
8 monthly installments on or before the fifteenth day of the month following the month
9 in which the tax accrues. Every person, firm, corporation, or association liable for
10 the tax shall, on or before the fifteenth day of each month, prepare and render a
11 return on a form prescribed by the taxing city. The return shall state the total gross
12 receipts derived in the preceding month from rentals upon which the tax is levied. A
13 room occupancy tax return filed with the city finance officer is not a public record
14 and may not be disclosed except in accordance with G.S. 153A-148.1 or G.S. 160A-
15 208.1.

16 (e) Penalties. -- A person, firm, corporation, or association who fails or refuses to
17 file a room occupancy tax return or pay a room occupancy tax as required by law is
18 subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file
19 a return for State sales and use taxes. The governing board of the taxing city has the
20 same authority to waive the penalties for a room occupancy tax that the Secretary of
21 Revenue has to waive the penalties for State sales and use taxes.

22 (f) Repeal or Reduction. -- A room occupancy tax levied by a city may be
23 repealed or reduced by a resolution adopted by the governing body of the city.
24 Repeal or reduction of a room occupancy tax shall become effective on the first day
25 of a month and may not become effective until the end of the fiscal year in which the
26 resolution was adopted. Repeal or reduction of a room occupancy tax does not affect
27 a liability for a tax that was attached before the effective date of the repeal or
28 reduction, nor does it affect a right to a refund of a tax that accrued before the
29 effective date of the repeal or reduction."

30 (b) This section applies only to the City of Lumberton.

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

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: Senate Bill 585

SHORT TITLE: Increase Lumberton Occupancy Tax

SPONSOR(S): Senator Weinstein

FISCAL IMPACT

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

FY 1997-98 FY 1998-99 FY 1999-00 FY 2000-01 FY 2001-02

REVENUES \$250,000 to \$350,000 gain in additional revenue a year

**PRINCIPAL DEPARTMENT(S) &
PROGRAM(S) AFFECTED:** The City of Lumberton

EFFECTIVE DATE: When it become law.

BILL SUMMARY:

The proposed act increases the occupancy tax for the city of Lumberton from 3% to 6%. The act does not change the current uniform provisions under Chapter 1028 of the 1983 Session Laws. The administrative provisions are codified under this act.

ASSUMPTIONS AND METHODOLOGY:

Under the current tax rate, the revenues for fiscal year 1995-96 were \$341,000. The maximum gain in revenue expected for budgetary purposes for fiscal year 1997-98 is \$350,000. The Finance Officer for the City of Lumberton provided the revenue information.

FISCAL RESEARCH DIVISION

733-4910

PREPARED BY: Warren Plonk

APPROVED BY:

DATE: April 15, 1997

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 488

Short Title: Increase Rabies Tag Fee/AB.

(Public)

Sponsors: Representative Barbee.

Referred to: Finance.

March 10, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE AN INCREASE IN THE FEE CHARGED FOR
3 RABIES TAGS.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 130A-190 reads as rewritten:

6 "**§ 130A-190. Rabies vaccination tags.**

7 A licensed veterinarian or a certified rabies vaccinator who administers rabies
8 vaccine to a dog or cat shall issue a rabies vaccination tag to the owner of the animal.
9 The rabies vaccination tag shall show the year issued, a vaccination number, the
10 words 'North Carolina' or the initials 'N.C.' and the words 'rabies vaccine.' Dogs and
11 cats shall wear rabies vaccination tags at all times. However, cats may be exempted
12 from wearing the tags by local ordinance. Rabies vaccination tags, links and rivets
13 may be obtained from the Department. The Secretary is authorized to establish by
14 rule a fee for the rabies tags, links and rivets. ~~The~~ Except as otherwise authorized in
15 this section, the fee shall not exceed the actual cost of the rabies tags, links and rivets,
16 plus transportation costs. The Secretary may increase the fee beyond the actual cost
17 plus transportation, by an amount not to exceed five cents (5¢) per tag, to fund rabies
18 education and prevention programs."

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

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: House Bill 488 (First Edition)

SHORT TITLE: Increase Rabies Tag Fee/AB

SPONSOR(S): Representative Barbee

FISCAL IMPACT

	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 1997-98</u>	<u>FY 1998-99</u>	<u>FY 1999-00</u>	<u>FY 2000-01</u>	<u>FY 2001-02</u>
TOTAL EXPENDITURES	\$100,000	\$100,000	\$100,000	\$100,000	\$100,000
REVENUES (.05)	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000
GENERAL FUND APPROPRIATION	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000
POSITIONS:	1.0	1.0	1.0	1.0	1.0

PRINCIPAL DEPARTMENT(S) &

PROGRAM(S) AFFECTED: Department, of Environment, Health, and Natural Resources
Division of Epidemiology, Communicable Disease Control

EFFECTIVE DATE: When the act becomes law.

BILL SUMMARY: The proposed act authorizes the Secretary of Environment, Health, and Natural Resources to increase the rabies tag fee one half cent. The per tag price is \$.022 and an increase of \$.05 increases the price to \$.072.

ASSUMPTIONS AND METHODOLOGY:

Revenue

Private veterinarians purchase most of their rabies tags from the Veterinary Public Health Program. The Department reports that an estimated 1,000,000 tags will be sold by the program each year for the next five years.

[Equation: $1,000,000 * .05 \text{ cent} = \$50,000 \text{ a year}$]

Expenditures

The increased revenue from this fee increase will be used to offset the costs of expanding the state's rabies education and prevention program as recommended in the Governor's expansion budget for the 1997-99 biennium.

According to the Department of Environment, Health, and Natural Resources, Division of Epidemiology, three separate rabies epidemics have occurred in North Carolina during the 1990's. The number of animal rabies cases has risen from 10 in 1990 to 741 in 1996.

The state currently employs one public health veterinarian to assist physicians, veterinarians, local health departments, hospitals and the general public with questions pertaining to zoonotic diseases (diseases that can be transmitted from animals to humans), such as rabies. This person responds to approximately 45 requests daily for telephone consultations. In 1993 the rabies program receive approximately 10 to 15 calls per day. The public health veterinarian also conducts an average of 50 educational seminars annually, including presentations to veterinary societies, hospitals and the Area Health Education Centers.

To meet the increased demand for professional consultation, education and prevention services resulting from the dramatic increase in rabies cases, the Governor is recommending an additional \$100,000 be spent annually (\$50,000 to be funded through the fee increase and \$50,000 funded through a general fund appropriation). The funds will be used to employ one additional public health veterinarian to provide professional consultations and educational seminars. The division expects to respond to an additional 15 to 20 phone calls daily and to conduct an additional 30 seminars annually, primarily to local medical societies with the increased staff.

The balance of the funds recommended will be used to develop and distribute educational materials, including pamphlets, videos, public announcements and training materials. The materials will focus on the manifestation of rabies in various species, methods of transmission, precautions to avoid exposure and seeking medical attention in the case of bites.

FISCAL RESEARCH DIVISION

733-4910

PREPARED BY: Mona Moon & Warren Plonk

APPROVED BY:

DATE: March 18, 1997

EXPLANATION OF HOUSE BILL 488:
Increase Rabies Tag Fee/AB

TO: Senate Finance Committee
FROM: Sabra Faires, Committee Counsel
DATE: April 15, 1997
SPONSOR: Representative Barbee
Agency Bill

House Bill 488 increases the cost of a rabies vaccination tag purchased from the Veterinary Public Health Program by an amount not to exceed 5 cents. The receipts generated by this bill would offset part of the costs associated with one of the Governor's budget recommendations. The Governor's budget includes a request for one additional public health veterinarian and for increased funding for the production of educational materials about rabies for various segments of health care professionals.

Every dog and cat over four months old must be vaccinated against rabies. Every dog and cat vaccinated is issued a vaccination tag that should be worn at all times. The cost of a vaccination tag purchased from the Veterinary Public Health Program is approximately 2 cents. This bill will allow the cost of the tag to be increased to 7 cents. The cost of a similar tag on the open market is estimated to be 12 cents.

Animal rabies cases in North Carolina have increased steadily and dramatically over the past ten years. Ten cases of rabid animals were reported in 1990; that number increased to 741 in 1996. The Governor's budget recommendation indicates that the demand for professional consultation and education services far exceeds current capacity. At the present time, the Veterinary Public Health Program has one veterinarian. He is responsible for answering questions, providing materials, and conducting seminars pertaining to zoonotic diseases. Rabies is one type of zoonotic disease.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1997

S

1

SENATE BILL 578

Short Title: Mount Airy Occupancy Tax.

(Local)

Sponsors: Senator Foxx.

Referred to: Finance.

April 1, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE THE CITY OF MOUNT AIRY TO LEVY A ROOM
3 OCCUPANCY AND TOURISM DEVELOPMENT TAX.
4 The General Assembly of North Carolina enacts:
5 Section 1. Occupancy tax. (a) Authorization and scope. The Mount
6 Airy Board of Commissioners may by resolution, after not less than 10 days' public
7 notice and after a public hearing held pursuant thereto, levy a room occupancy tax of
8 up to three percent (3%) of the gross receipts derived from the rental of any room,
9 lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar
10 place within the city that is subject to sales tax imposed by the State under G.S.
11 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does
12 not apply to accommodations furnished by nonprofit charitable, educational, or
13 religious organizations or by nonprofit summer camps when the accommodations are
14 furnished in furtherance of their nonprofit purpose.
15 (b) Collection. Every operator of a business subject to the tax levied
16 under this section shall, on and after the effective date of the levy of the tax, collect
17 the tax. This tax shall be collected as part of the charge for furnishing a taxable
18 accommodation. The tax shall be stated and charged separately from the sales
19 records, and shall be paid by the purchaser to the operator of the business as trustee
20 for and on account of the city. The tax shall be added to the sales price and shall be
21 passed on to the purchaser instead of being borne by the operator of the business.
22 The city shall design, print, and furnish to all appropriate businesses and persons in
23 the city the necessary forms for filing returns and instructions to ensure the full
24 collection of the tax. An operator of a business who collects the occupancy tax

1 levied under this section may deduct from the amount remitted to the city a discount
2 equal to the discount the State allows the operator for State sales and use tax.

3 (c) Administration. The city shall administer a tax levied under this
4 section. A tax levied under this section is due and payable to the city finance officer
5 in monthly installments on or before the fifteenth day of the month following the
6 month in which the tax accrues. Every person, firm, corporation, or association liable
7 for the tax shall, on or before the fifteenth day of each month, prepare and render a
8 return on a form prescribed by the city. The return shall state the total gross receipts
9 derived in the preceding month from rentals upon which the tax is levied.

10 A return filed with the city finance officer under this section is not a
11 public record and may not be disclosed except in accordance with G.S. 160A-208.1.

12 (d) Penalties. A person, firm, corporation, or association who fails or
13 refuses to file the return or pay the tax required by this section is subject to the civil
14 and criminal penalties set by G.S. 105-236 for failure to pay or file a return for State
15 sales and use taxes. The Mount Airy Board of Commissioners has the same authority
16 to waive the penalties for a room occupancy tax that the Secretary of Revenue has to
17 waive the penalties for State sales and use taxes.

18 (e) Distribution and use of tax revenue. The City of Mount Airy shall,
19 on a quarterly basis, remit the net proceeds of the occupancy tax to the Mount Airy
20 Tourism Development Authority. The Authority shall use the funds remitted to it
21 under this subsection only to promote travel and tourism in the Mount Airy area.
22 The following definitions apply in this section:

23 (1) Net proceeds. -- Gross proceeds less the cost to the city of
24 administering and collecting the tax, as determined by the finance
25 officer, not to exceed seven percent (7%) of the gross proceeds.

26 (2) Promote travel and tourism. -- Advertise and market activities,
27 develop and distribute promotional materials, conduct market
28 research, and engage in other similar promotional activities that
29 attract tourists or business travelers to the area. The term also
30 includes administration of the Mount Airy Tourism Development
31 Authority.

32 (f) Effective date of levy. A tax levied under this section shall become
33 effective on the date specified in the resolution levying the tax. That date must be
34 the first day of a calendar month, however, and may not be earlier than the first day
35 of the second month after the date the resolution is adopted.

36 (g) Repeal. A tax levied under this section may be repealed by a
37 resolution adopted by the Mount Airy Board of Commissioners. Repeal of a tax
38 levied under this section shall become effective on the first day of a month and may
39 not become effective until the end of the fiscal year in which the repeal resolution
40 was adopted. Repeal of a tax levied under this section does not affect a liability for a
41 tax that was attached before the effective date of the repeal, nor does it affect a right
42 to a refund of a tax that accrued before the effective date of the repeal.

43 Section 2. Tourism Development Authority. (a) Appointment and
44 membership. When the board of commissioners adopts a resolution levying a room

1 occupancy tax under this act, it shall also adopt a resolution creating a Mount Airy
2 Tourism Development Authority, which shall be a public authority under the Local
3 Government Budget and Fiscal Control Act. The board of commissioners shall
4 appoint the following eight members to the Authority:

- 5 (1) Two individuals who are owners or operators of taxable tourist
6 accommodations in the city.
- 7 (2) Two residents of the city who have experience in the promotion of
8 travel and tourism.
- 9 (3) Two residents of the city who are members of the Mount Airy
10 Chamber of Commerce, selected by the Mount Airy Chamber of
11 Commerce.
- 12 (4) One member of the board of commissioners.
- 13 (5) The city finance officer, who shall serve as an ex officio, nonvoting
14 member.

15 Members of the Authority shall serve without compensation and shall
16 serve for a term of three years. Vacancies shall be filled in the same manner as the
17 original appointment. Members appointed to fill vacancies shall serve for the
18 remainder of the unexpired term. An individual may serve as a member for no more
19 than two consecutive terms. The members shall elect a chair from among the
20 membership, who shall serve for three years. The Authority shall meet at the call of
21 the chair and shall adopt rules of procedure to govern its meetings.

22 (b) Duties. The Authority shall expend the net proceeds of the tax
23 levied under this act for the purposes provided in Section 1 of this act. The
24 Authority shall promote travel and tourism in the Mount Airy area. In performing its
25 duties, the Authority may contract with any person, firm, or agency to advise and
26 assist it, and may recommend to the board of commissioners that city staff be
27 employed for this advice and assistance. Any city staff employed upon a
28 recommendation of the Authority shall be hired and supervised by the Authority,
29 which shall pay the salaries and expenses of this staff.

30 (c) Reports. The Authority shall report quarterly and at the close of the
31 fiscal year to the board of commissioners on its receipts and expenditures for the
32 preceding quarter and for the year in such detail as the board may require.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 59

Short Title: Update IRC Reference.

(Public)

Sponsors: Representatives Neely, Blue, Cansler, Capps, Church, Shubert; Mosley and Hill.

Referred to: Finance.

February 5, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO UPDATE THE REFERENCE TO THE INTERNAL REVENUE
3 CODE USED IN DEFINING AND DETERMINING CERTAIN STATE TAX
4 PROVISIONS.

5 The General Assembly of North Carolina enacts:

6 Section 1. G.S. 105-228.90(b)(1a) reads as rewritten:

7 "(1a) Code. -- The Internal Revenue Code as enacted as of ~~March 20,~~
8 ~~1996,~~ January 1, 1997, including any provisions enacted as of that
9 date which become effective either before or after that date."

10 Section 2. Notwithstanding Section 1 of this bill, amendments to sections
11 101(b), 104, and 877 of the Internal Revenue Code as enacted as of January 1, 1997,
12 and any other amendments to the Internal Revenue Code enacted in 1996 that
13 increase North Carolina taxable income for the tax year 1996, become effective for
14 taxable years beginning on or after January 1, 1997.

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

EXPLANATION OF HOUSE BILL 59:
Update IRC Code

TO: Senate Finance Committee
FROM: Sabra Faires, Committee Counsel
DATE: April 16, 1997
SPONSOR: Representative Neely
Recommendation of the Revenue Laws Study Committee

House Bill 59 rewrites the definition of the Internal Revenue Code used in State tax statutes to change the reference date from March 20, 1996, to January 1, 1997. Updating the Internal Revenue Code reference makes recent amendments to the Code applicable to the State to the extent that State tax law previously tracked federal law. Congress made significant changes to the Code last year that will impact federal taxable income. Since the State corporate and individual income tax is based upon federal taxable income, these changes, if adopted, will impact State policies and revenues.

The Small Business Job Protection Act made two tax changes that will impact the General Fund proportionately more than the other tax changes: the Code Sec. 179 business expense deduction is increased from \$17,500 to \$25,000 over a period of 5 years and the amount a self-employed person may deduct for health insurance costs is increased from 30% to 80% over a period of 10 years. The Act made major changes to the S Corporation rules, introduced a new type of retirement plan (SIMPLE), and narrowed the exclusion for punitive damages received on account of personal injury or sickness. It also created a new adoption credit and exclusion and increased the amount a nonworking spouse could contribute to an IRA.

The Health Insurance Portability and Accountability Act creates a pilot test program for tax-favored medical savings accounts (MSAs) and adds two new exceptions to the 10% penalty for premature withdrawals from IRAs. It treats costs of long-term care services and some long-term care insurance premiums as medical expenses for itemized deduction purposes. The Act also allows an income tax exclusion for long-term care benefits to chronically ill insureds and extends the income tax exclusion for life insurance death benefits to benefits paid during life to the terminally ill.

The bill provides that the federal tax law changes that could increase an individual's or corporation's North Carolina taxable income for the 1996 tax year

will not become effective until January 1, 1997. Under Article 1, Sec. 16 of the North Carolina Constitution, the legislature cannot pass a law that will retroactively increase the tax liability of an individual. There are a few provisions in the federal tax law changes that could increase taxable income for the 1996 tax year. Since this bill could not be acted upon until the 1997 General Assembly convened, these changes were given a delayed effective date.

Since the State corporate income tax was changed to a percentage of federal taxable income in 1967, the reference date to the Internal Revenue Code has been updated periodically. In discussing bills to update the Code reference, the question frequently arises as to why the statutes refer to the Code on a particular date instead of referring to the Code and any future amendments to it, thereby eliminating the necessity of bills like this one. The answer to the question lies in both a policy decision and a potential legal restraint.

First, the policy reason for specifying a particular date is that, in light of the many changes made in federal tax law from year to year, the State may not want to adopt automatically federal changes, particularly when these changes result in large revenue losses. By pinning references to the Code to a certain date, the State ensures that it can examine any federal changes before making the changes effective for the State.

Secondly, and more importantly, however, the North Carolina Constitution imposes an obstacle to a statute that automatically adopts any changes in federal tax law. Article V, Section 2(1) of the Constitution provides in pertinent part that the "power of taxation ... shall never be surrendered, suspended, or contracted away." Relying on this provision, the North Carolina court decisions on delegation of legislative power to administrative agencies, and an analysis of the few federal cases on this issue, the Attorney General's Office concluded in a memorandum issued in 1977 to the Director of the Tax Research Division of the Department of Revenue that a "statute which adopts by reference future amendments to the Internal Revenue Code would ... be invalidated as an unconstitutional delegation of legislative power."

**1996 FEDERAL TAX LAW CHANGES
THAT IMPACT STATE TAXABLE INCOME**

PROVISIONS	PREVIOUS FEDERAL LAW	1996 FEDERAL TAX LAW CHANGES	EFFECTIVE DATE	IMPACT ON STATE REVENUES
Long-term Care Insurance	No prior law.	Amounts received by a chronically ill individual under a long-term care insurance contract are excluded from gross income. The exclusion is capped at \$175 per day for per diem contracts.	Effective for tax years beginning after December 31, 1996.	The exclusion will decrease taxable income.
Medical Expense Deduction for Long-term Care Services and Premiums	A taxpayer may deduct medical expenses that exceed 7.5% of the taxpayer's adjusted gross income.	Unreimbursed amounts paid for qualified long-term care services are treated as medical care for purposes of the medical expense deduction. Eligible long-term care insurance premiums that do not exceed	Effective for tax years beginning after December 31, 1996.	The increased deduction will decrease taxable income.

PROVISIONS	PREVIOUS FEDERAL LAW	1996 FEDERAL TAX LAW CHANGES	EFFECTIVE DATE	IMPACT ON STATE REVENUES
Long-term Care Insurance	No prior law.	Amounts received by a chronically ill individual under a long-term care insurance contract are excluded from gross income. The exclusion is capped at \$175 per day for per diem contracts.	Effective for tax years beginning after December 31, 1996.	The exclusion will decrease taxable income.
Spousal IRA	If one spouse has no income, a married couple was allowed a maximum annual deductible IRA contribution of \$2,250.	Allows a spouse who has no income to contribute up to \$2,000 per year to a deductible IRA, rather than \$250.	Effective for tax years beginning after December 31, 1996.	An increase in the amount of a spousal IRA will decrease taxable income.
Increase in Small Business Expensing	Eligible taxpayers may elect to	The expense limitation is	Effective for tax years beginning	The increase in the expense limitation of depreciable

PROVISIONS	PREVIOUS FEDERAL LAW	1996 FEDERAL TAX LAW CHANGES	EFFECTIVE DATE	IMPACT ON STATE REVENUES
	deduct, rather than depreciate, up to \$17,500 of the cost of qualified business property in the year that the property is placed into service.	increased from \$17,500 to \$25,000 over a seven year period.	after December 1, 1996.	property will decrease taxable income.
Medical Savings Accounts	No prior law.	<p>PILOT PROGRAM.</p> <p>MSAs will be available to qualified individuals on a first-come, first-serve basis until a national limit of 750,000 is reached. MSAs are a new type of savings vehicle similar to an IRA. Within limits, contributions to a MSA will be deductible from gross income if made by an eligible</p>	Effective on a pilot basis in tax years beginning after December 31, 1996.	MSAs will reduce taxable income.

PROVISIONS	PREVIOUS FEDERAL LAW	1996 FEDERAL TAX LAW CHANGES	EFFECTIVE DATE	IMPACT ON STATE REVENUES
		<p>individual and will be excluded from gross income if made by an employer on behalf of an eligible individual. Distributions from an MSA that are used to pay health care expenses are excludable from income. Distributions for other purposes are taxed. An additional 15% penalty tax applies unless the distribution is made after age 65 or upon death or disability. To be eligible to participate in the pilot group, an individual must be</p>		

PROVISIONS	PREVIOUS FEDERAL LAW	1996 FEDERAL TAX LAW CHANGES	EFFECTIVE DATE	IMPACT ON STATE REVENUES
Employer-provided Educational Assistance	Under prior law, an employee's gross income did not include amounts paid or incurred by the	either self-employed or employed by a small employer having 50 or fewer employees. The individual must also elect coverage under a high deductible plan. The maximum contribution to an MSA for a year is 65% of the deductible under the high-deductible plan for individual coverage and 75% of the deductible in the case of family coverage.	The exclusion is restored, effective with respect to tax years beginning after December 31, 1994, and before	The restoration of the exclusion will decrease taxable income.

PROVISIONS	PREVIOUS FEDERAL LAW	1996 FEDERAL TAX LAW CHANGES	EFFECTIVE DATE	IMPACT ON STATE REVENUES
	<p>employer for educational assistance provided to the employee under a qualified employee educational assistance program. The exclusion of up to \$5,250 per calendar year expired for taxable years beginning after December 31, 1994.</p>	<p>The exclusion will not apply to expenses related to graduate level courses beginning after June 30, 1996. The IRS is required to establish expedited procedures for the refund of any taxes overpaid because excludable amounts were included in income after this exclusion lapsed on December 31, 1994. Employers who have previously filed Forms W-2 reporting excludable educational assistance as taxable</p>	<p>June 1, 1997. The provision denying the exclusion for graduate-level studies applies to expenses related to courses beginning after June 30, 1996.</p>	

PROVISIONS	PREVIOUS FEDERAL LAW	1996 FEDERAL TAX LAW CHANGES	EFFECTIVE DATE	IMPACT ON STATE REVENUES
Exclusion for Adoption Expenses	There is no current law.	<p>wages must file corrected Forms W-2c.</p> <p>An employee's gross income will not include amounts paid or expenses incurred by an employer for the employee's qualified adoption expenses pursuant to an adoption assistance program. The total amount excludable, for all tax years, with respect to the adoption of a single child cannot exceed \$5,000. The limitation is increased to \$6,000 in the case of a child with special needs. The exclusion</p>	Effective for tax years beginning after December 31, 1996.	Exclusion decreases taxable income.

PROVISIONS	PREVIOUS FEDERAL LAW	1996 FEDERAL TAX LAW CHANGES	EFFECTIVE DATE	IMPACT ON STATE REVENUES
<p>Early IRA Withdrawals for Medical Expenses and Health Insurance Premiums</p>	<p>Early withdrawals from IRA for medical expenses result in a 10% additional tax on the withdrawal.</p>	<p>amount is phased out for taxpayers with adjusted gross incomes between \$75,000 and \$115,000. An adoption assistance program is a separate written plan of an employer for the exclusive benefit of its employees, which provides adoption assistance.</p>	<p>Effective for distributions after December 31, 1996.</p>	<p>No impact on taxable income. Eliminates a tax penalty.</p>

PROVISIONS	PREVIOUS FEDERAL LAW	1996 FEDERAL TAX LAW CHANGES	EFFECTIVE DATE	IMPACT ON STATE REVENUES
Taxation of Expatriates		The provisions imposing an expatriation tax are expanded to include individuals who are long-term residents of the United States, not just citizens; to presume a tax-avoidance motive for the termination of citizenship or residency if the person meets either a net income test or a net worth test; and to treat additional items of gain and income as US-source income for purposes of the expatriation tax.	These amendments apply to individuals who lose US citizenship and to long-term residents who terminate US residency on or after February 6, 1995.	These amendments will increase taxable income.
Home Office Deduction	A taxpayer can deduct from gross	The deduction has been expanded to	Effective for tax years beginning	The expanded deduction will decrease taxable income.

PROVISIONS	PREVIOUS FEDERAL LAW	1996 FEDERAL TAX LAW CHANGES	EFFECTIVE DATE	IMPACT ON STATE REVENUES
	income expenses related to a storage unit in the taxpayer's home that is regularly used for inventory of the taxpayer's business of selling products where the home is the sole fixed location of the business.	include product samples so that a taxpayer need not attempt to distinguish between inventory and product samples.	after December 31, 1996.	
Accelerated Death Benefit Exclusion	Some confusion under prior law.	Clarifies that accelerated death benefits received under a life insurance contract on the life of an insured, terminally or chronically ill individual may be excluded from gross income.	Effective for amounts received after December 31, 1996.	The exclusion will decrease taxable income.
Self-Employed Health Insurance Deduction	Thirty percent of the health insurance expenses	The 30% limit is increased to 80%, phased in over a 10	Effective for tax years beginning after December 31,	The increased deduction will decrease taxable income.

PROVISIONS	PREVIOUS FEDERAL LAW	1996 FEDERAL TAX LAW CHANGES	EFFECTIVE DATE	IMPACT ON STATE REVENUES
	of self-employed individuals and their spouses and dependents are deductible from the individual's gross income. The health insurance deduction is available to general partners in a partnership and to shareholders owning more than 2% of the outstanding stock of an S-corporation.	year period.	1996.	
Self-Insured Plans	Payments for personal injury or sickness through health or accident insurance is excludable from gross income.	Payments for personal injury or sickness through arrangements having the effect of health or accident insurance is excludable from	Effective for tax years beginning after December 31, 1996.	The exclusion will decrease taxable income.

PROVISIONS	PREVIOUS FEDERAL LAW	1996 FEDERAL TAX LAW CHANGES	EFFECTIVE DATE	IMPACT ON STATE REVENUES
		gross income. This provision equalizes the tax treatment of payments from self-insured plans with payments receive from commercial insurance.		
S Corporation Simplification		The maximum number of shareholders of an S corporation is increased from 35 to 75. Certain trusts may hold S corporation stock. The provision permits broader estate planning opportunities for S corporation shareholder by allowing trusts to be funded with S	Effective for tax years beginning after December 31, 1996. Effective for tax years beginning after December 31, 1996.	Negligible

PROVISIONS	PREVIOUS FEDERAL LAW	1996 FEDERAL TAX LAW CHANGES	EFFECTIVE DATE	IMPACT ON STATE REVENUES
		<p>corporation stock.</p> <p>Certain exempt organizations allowed to be shareholders.</p> <p>Allows domestic building and loan associations, any mutual savings bank and any cooperative bank without capital stock organized and operated for mutual purposes and without profit to qualify as an S corporation.</p> <p>S corporations allowed to own 80% or more of the stock of a C corporation and to own a</p>	<p>Effective for tax years beginning after December 31, 1997.</p> <p>Effective for tax years beginning after December 31, 1996.</p> <p>Effective for tax years beginning after December 31, 1996.</p>	

PROVISIONS	PREVIOUS FEDERAL LAW	1996 FEDERAL TAX LAW CHANGES	EFFECTIVE DATE	IMPACT ON STATE REVENUES
SIMPLE Retirement Plans	No prior law.	Employers with 100 or fewer employees who received at least \$5,000 in compensation from the employer in the preceding year may adopt a new simplified retirement plan - the Savings Incentive Match Plan for Employees. The plan allows employees to make elective contributions of up to \$6,000 per year and requires employers to make matching contributions.	Effective for tax years beginning after December 31, 1996.	Excluded contributions decrease taxable income.
Damages Exclusion	The amount of	Generally, punitive	Effective with	Additional restrictions placed

PROVISIONS	PREVIOUS FEDERAL LAW	1996 FEDERAL TAX LAW CHANGES	EFFECTIVE DATE	IMPACT ON STATE REVENUES
Limited	damages received on account of <u>personal injuries</u> or sickness was excluded from gross income. The courts have interpreted this provision broadly to include personal injuries that do not relate to a physical injury. The courts have reached differing results in determining how the exclusion applies to punitive damages received in connection with a case involving physical injury or physical sickness.	damages are not excludable from gross income. Damages received on account of a <u>nonphysical injury</u> or sickness are not excludable from gross income except to the extent the nonphysical injury or sickness is attributable to a physical injury or sickness.	respect to amounts received after August 20, 1996, unless the amounts were received under a written binding agreement, court decree, or mediation award in effect on September 13 1995.	on the exclusion from income of punitive damages and compensatory damages awarded on account of a nonphysical personal injury or sickness will increase taxable income.
Lump Sum Distributions	Allowed recipients of a lump sum distribution from a	The five year averaging for lump sum distributions is	Effective for tax years beginning after December 31,	Increases taxable income.

PROVISIONS	PREVIOUS FEDERAL LAW	1996 FEDERAL TAX LAW CHANGES	EFFECTIVE DATE	IMPACT ON STATE REVENUES
	pension plan to pay the tax liability over a five year period by averaging the liability.	repealed. This provision means the recipient of a lump sum distribution must either pay tax on the entire amount at ordinary income tax rates or defer tax on the distribution by rolling part of all of it into an IRA or another qualified plan.	1999.	
Death Benefit Exclusion	The beneficiary or estate of a deceased employee could exclude up to \$5,000 in benefits paid by or on behalf of an employer by reason of the employee's death.	The exclusion is repealed.	Applies with respect to decedents dying after August 20, 1996.	The repeal of the exclusion will increase taxable income.

**NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE**

BILL NUMBER: House Bill 59
SHORT TITLE: Update Internal Revenue Code
SPONSOR(S): Representatives Neely, Blue, Cansler, Capps, Church, Shubert, Mosley, and Hill

ESTIMATE (\$ MILLIONS) FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 1997-98</u>	<u>FY 1998-99</u>	<u>FY 1999-00</u>	<u>FY 2000-01</u>	<u>FY 2001-02</u>
REVENUES					
General Fund *	(\$8.48)	(\$16.75)	(\$11.52)	(\$12.97)	(\$17.03)
* For revenue impact by policy see spreadsheet page 8.					
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue Personal Tax Division					
EFFECTIVE DATE: See specific act under the bill summaries.					

BILL SUMMARY: Section 1 rewrites the definitions of the Internal Revenue Code used in State tax structures to change the reference date from March 20, 1996 to January 1, 1997.

BACKGROUND: An update to the Internal Revenue Code is brought to the General Assembly annually as both a policy decision and a response to a legal restraint. The policy reason for specifying a particular date is that, in light of continuous changes made to the federal tax law, the State may not want to automatically adopt federal changes, particularly when they result in large revenue losses.

The legal restraint involves Article V, Section 2(1) of the North Carolina State Constitution which states in pertinent part that the "power of taxation shall never be surrendered, suspended, or contracted away". A 1977, memorandum from the State Attorney General's Office to the Tax Research Division of the Department of Revenue concluded that a "statute which adopts by reference future amendments to the Internal Revenue code would be

invalidated as an unconstitutional delegation of legislative powers".

Legislation enacted by Congress affecting the Internal Revenue Code is as follows:

Taxpayer Bill of Rights 2

Joint Return Contemporaneous Payment Requirement

The requirement that taxpayers who file separate returns pay the full tax liability when filing an amended joint return is repealed. In the past, taxpayers were required to pay the full amount of the joint tax liability at the time of filing an amended joint return or within three years of filing.

Effective for tax years beginning after July 30, 1996.

Small Business Job Protection Act of 1996

Increase in Small Business Expensing

The amount of tangible business property that may be expensed rather than depreciated over time is increased from \$17,500 to \$18,000 for tax year beginning in 1997, and increased every year thereafter until 2003 when the expense deduction will be \$25,000.

Effective for tax years beginning after December 31, 1996.

Extension of Employer-Provided Education Assistance

The exclusion from an employer's gross income for employee educational assistance that expired for tax years beginning December 31, 1994, is retroactively extended. The maximum amount allowed under a qualified employer educational assistance program is \$5,250 per employee. The exclusion is not available for expenses related to graduate courses beginning after June 30, 1996. The prohibited courses include any graduate level course leading to advanced academic or professional degrees.

The exclusion will expire effective for tax years beginning after May 31, 1997. Expenses paid for courses beginning before July 1, 1997, are excludable for tax year 1997.

Extension of Expired Provisions

- The 20% tax credit for research and experimentation that expired for amounts paid or incurred after June 30, 1995, is extended. Effective for amounts paid or incurred from July 1, 1996 through May 31, 1997.
- The orphan drug tax credit is extended for amounts paid between July 1, 1996, through May 31, 1997. Prior to January 1, 1995, a 50% tax credit was allowed for qualified clinical

testing expenses incurred in testing certain drugs for rare disease conditions, generally referred to as "orphan drugs".

Qualified expenses are cost incurred after the FDA has approved a drug for human testing but before it has been approved for sale.

- The special treatment for contributions of appreciated stock to private foundations is extended for contributions made between July 1, 1996, through May 31, 1997. Qualified appreciated stock is publicly traded stock that is capital gain property.

*was put
in it for
clarification
to be removed
from the
code*

The targeted jobs credit is replaced by the work opportunity credit and is effective for individuals starting work for an employer after September 31, 1996. The credit will not apply to individuals beginning work for an employer after September 30, 1997. The work opportunity credit has fewer targeted jobs, an increased minimum period in which a targeted group member must work for an employer, and a credit percent of 35% rather than 40% of the first \$6,000 of wages paid to each targeted group member during the first year of employment.

S Corporation Simplification Provisions

- The number of eligible S corporation shareholders is increased from 35 to 75.
- Allows certain trust to hold S corporation stock. The beneficiaries of an "electing small business trust" may participate so long as they are individuals or estates and their interest in the trust must have been acquired by gift or bequest.
- An S corporation is allowed to own S or C subsidiaries. An S corporation is allowed to own 80% or more of the stock of a C corporation and can own a qualified subchapter S subsidiary in tax years beginning after 1996.
- Base adjustments for distributions made by an S corporation during the tax year are taken into account before applying the loss limitation for the year. As a result, distributions reduce the adjusted basis for determining the allowable loss for the year, but that loss does not reduce the adjusted basis for purposes of determining the tax status of the distribution. This provision provides the same tax treatment of distributions by S corporation during a (loss) year as allowed for partnerships.

All provisions effective for tax years beginning after December 31, 1996.

Lump-sum Distributions

The five year averaging option for lump-sum distributions from a qualified pension plan is repealed for individuals born after 1935; for tax years beginning after December 31, 1999. Individuals born before 1936 can elect a 10 year averaging option based on 1986 tax rates for a single person or a five year averaging method based on the single person tax rate in effect for the year in which the lump-sum distribution was taken. Individuals born after 1935 can elect a five year averaging if the distribution was made after they reached the age of 59 ½. (Under current law, the ten year averaging option is disallowed for this group.) After the effective date, the rules affecting those born before 1935 will not change. Those born after 1935 will not be allowed to average.

Effective for tax years beginning after December 31, 1999.

Special Employer-Provided Death Benefit Exclusion

The exclusion allowed the beneficiary or estate of a deceased employee to exclude up to \$5,000 in benefits paid by or on behalf of an employer by reasons of the employee's death is repealed.

Effective for decedents dying after August 20, 1996.

Simplified Method of Determining Annuity Recovery Basis

The number of anticipated payments by age group used in calculating the nontaxable portion of each annuity payment from a qualified retirement plan, qualified annuity, or tax-sheltered annuity are increased. The nontaxable portion of an annuity payment, generally, is equal to the employee's total investment in the contract as of the annuity starting date, divided by the number of anticipated monthly payments, which are determined by reference to the age of the participant. The "new law" increases the number of monthly payments to be used in figuring the tax-free portion of each annuity payment. The age categories remain the same.

Effective with annuities commencing after November 17, 1996.

New Required Beginning Date for Distribution of Retirement Plans

Participants in qualified retirement plans, other than five-percent owners and IRA holders, are no longer required to begin receiving distributions from the fund after attaining the age of 70 ½ if they are still employed.

Distributions must begin by April 1, of the calendar year following the later of : (1) the calendar year in which the participant reaches age 70 ½, or (2) the calendar year in which the employee retires.

Effective January 1, 1997

Deductible Contributions to Spousal IRAs

The maximum amount a married individual may contribute to a spousal IRA for a non-working spouse is increased from \$250 to \$2,000 a year. Prior to this change the maximum amount a couple filing jointly could contribute to an IRA was \$2,250. Under the new law, a couple filing jointly can contribute \$2,000 each for a total of \$4,000.

Effective for tax years beginning after December 31, 1996

Adoption Assistance Credit and Expansion

Employees are allowed to exclude "qualified adoption expenses" from income if such amounts are paid or incurred by their employer. Qualified adoption expenses include adoption fees, court costs, attorney fees, and other expenses related to the legal adoption of an eligible child.

Effective for tax years beginning after December 31, 1996

Personal Injury or Sickness Damages Received; Limited Exclusion

The exclusion from income for damages received on account of personal injury or sickness is restricted to non-punitive damages. The exclusion from gross income only applies to damages received on account of a personal physical injury or physical sickness. Punitive damages awarded in wrongful death actions may be excluded from gross income where applicable State law only allows punitive damages to be awarded.

Effective with respect to amounts received after August 20, 1996, unless the amounts were received under a written binding agreement, court decree, or mediation award in effect on September 30, 1995.

Depreciation of Water Utility Property.

Under prior law, property used in the gathering, treating, and distribution of commercial water and municipal sewers systems was depreciated over 20 years using the 150% declining balance method. This method ensures a rate of depreciation that depreciated the asset exactly to salvage value over the period. The change allows for such property to be depreciated over a 25 year period using the straight-line method. The straight-line method is customarily used on assets where creeping obsolescence is the primary reason for a limited service life.

The act is effective for property placed in service June 12, 1996, other than property placed in service pursuant to a binding contract in effect before June 10, 1996.

Health Insurance Portability and Accountability Act of 1996

Medical Savings Accounts

Medical Savings Accounts are created for the purpose of defraying the un-reimbursed health care expenses on a tax-favored basis. A MSA is a trust or custodial account created exclusively for the benefit of the account holder and subject to rules similar to individual retirement accounts. Earnings on an MSA are not subject to tax, however, distributions for expenses other than medical are to be included as income and subject to penalty unless made after the participant reaches age 65, dies, or is disabled. Upon death, if the beneficiary is the individual's spouse, the spouse may continue the MSA as their own. Otherwise, the beneficiary must include the MSA balance in income in the year of death. If there is no beneficiary, the MSA balance is to be included on the final return of the decedent. In any case, no federal estate tax applies. Distributions from an MSA for medical expenses can be excluded from income.

Contributions made by an "eligible" employee or self-employed individual are deductible. Contributions made by an employer on behalf of an employee are excludable from the employee's income and wage for social security tax purposes. An "eligible" employee is one covered under an employer sponsored high deductible plan of a small employer and self-employed individuals. A high deductible health plan is one having an annual deductible of at least \$1,500 and no more than \$2,250 for individual coverage and at least \$3,000 and no more than \$4,500 for family coverage. An employer is a small employer if it employed, on average, no more than 50 employees during either the preceding or the second preceding years.

Effective for taxable years beginning on or after December 31, 1996.

Health Insurance Deduction Allowed to Self-employed Individuals

Self-employed individuals are allowed annual increases in health insurance premiums paid on behalf of self-employed individual, a spouse, and dependents. In 1993, the maximum deduction allowed was 25% of the qualified premiums and increased to 30% for tax years beginning after December 31, 1994.

The deduction is increased by the following amounts by tax year:

<u>Tax Year</u>	<u>% Allowed Deduction</u>
1997	40%
1998-2002	45
2003	50
2004	60
2005	70
2006	80

Medical Expenses Deduction for Long-term Care

Un-reimbursed amounts paid for qualified long-term care services are treated as medical care for purposes of the medical expense deduction. Eligible long-term care insurance premiums that do not exceed certain limits are deductible from gross income.

Effective for tax years beginning after December 31, 1996

Insurance Proceeds Received by the Chronically or Terminally Ill

The following are excluded from gross income:

- Proceeds received by the chronically ill from long-term care insurance.
- Proceeds received by the terminally ill from life insurance.

Effective for tax years beginning after December 13, 1996.

SOURCES OF DATA:

- Federal Tax Guide Reports
 - Taxpayer Bill of Rights 2
 - Small Business Job Protection Bill of 1996
 - Health Insurance Portability and Accountability Bill
 - Personal Responsibility and Work Opportunity Reconciliation Bill; 1996
 - 1996 Tax Legislation: Law and Explanation

ASSUMPTIONS AND METHODOLOGY:

Estimates prepared using federal and neighboring state computed impacts. The basic assumption used assumes that the State's cost will be .65% of the federal predicted cost. The State's personal income is approximately 2.5% of the U.S. total and the State's average tax rate is 25% of the federal.

FISCAL RESEARCH DIVISION

733-4910

PREPARED BY: H. Warren Plonk

APPROVED BY: Tom Covington TomC

DATE: February 21, 1997

House Bill 59; First Edition

Internal Revenue Code Up-Date

February 21, 1997

Estimates (\$ IN MILLIONS)

Federal Legislation Affecting NC.	Tax Year 1997	Tax Year 1998	Tax Year 1999	Tax Year 2000	Tax Year 2001
1. Small Business Expensing	(\$0.43)	(\$1.17)	(\$1.69)	(\$2.15)	(\$4.96)
2. Employer Educational Assistance	(\$6.00)	(\$6.70)			
3. S Corporation Simplification	(\$0.11)	(\$0.33)	(\$0.33)	(\$0.44)	(\$0.44)
4. Lump-Sum Distributions	\$0.33	\$0.66	\$0.77	\$0.66	\$0.55
5. Employer Provided Death Benefits	\$0.15	\$0.45	\$0.45	\$0.56	\$0.74
6. Simplify Annuity Recovery	(\$0.11)	(\$0.22)	(\$0.22)	(\$0.22)	(\$0.22)
7. Simplify Retirement Plans	(\$0.32)	(\$0.49)	(\$0.51)	(\$0.52)	(\$0.55)
8. Spousal IRAs	(\$0.37)	(\$1.10)	(\$1.20)	(\$1.26)	(\$1.34)
9. Personal Injury, Limit Exclusion	\$0.33	\$0.36	\$0.40	\$0.40	\$0.42
10. Medical Savings Accounts	(\$0.77)	(\$1.62)	(\$1.72)	(\$1.85)	(\$2.00)
11. Increase Insurance Deduction; Self-Employed	(\$0.42)	(\$1.55)	(\$2.20)	(\$2.45)	(\$2.70)
12. Long Term Medical Care Expense Deduction	(\$0.70)	(\$4.34)	(\$4.20)	(\$4.30)	(\$4.83)
13. Accelerated Death Benefits	(\$0.06)	(\$0.70)	(\$1.07)	(\$1.40)	(\$1.70)
Total	(\$8.48)	(\$16.75)	(\$11.52)	(\$12.97)	(\$17.03)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

4

HOUSE BILL 57
Committee Substitute Favorable 3/6/97
Third Edition Engrossed 3/17/97
Fourth Edition Engrossed 3/20/97

Short Title: Withholding for Nonresidents.

(Public)

Sponsors:

Referred to:

February 5, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO REQUIRE WITHHOLDING FROM CERTAIN PAYMENTS TO
3 NONRESIDENTS IN ORDER TO PREVENT NONRESIDENTS FROM
4 AVOIDING NORTH CAROLINA INCOME TAXES.

5 The General Assembly of North Carolina enacts:

6 Section 1. G. S. 105-134.6(b)(11) reads as rewritten:

7 "(11) The amount paid to the taxpayer as severance wages during the
8 taxable year as the result of the permanent closure of a
9 manufacturing or processing plant, a business location, not to
10 exceed a maximum of thirty-five thousand dollars (\$35,000) for the
11 taxable year. when added to the amount of such severance wages
12 paid to the taxpayer by the same employer during the two
13 preceding taxable years. A business closure is not permanent if the
14 business opens within a 12-month period as substantially the same
15 business within 100 miles of the closed location and employs the
16 same employee."

17 Section 2. G. S. 105-163.1(15) reads as rewritten:

18 "(15) Wages. -- The term has the same meaning as in section 3401 of the
19 Code except it does not include ~~remuneration paid by a farmer for~~
20 ~~services performed on the farmer's farm in producing or harvesting~~
21 ~~agricultural products or in transporting the agricultural products to~~

1 market. the amount of severance wages paid to an employee
2 during the taxable year that is exempt from State income tax for
3 that taxable year under G.S. 105-134.6(b)(11)."

4 Section 3. Article 4A of Chapter 105 of the General Statutes, as
5 amended by Section 1 of this act, reads as rewritten:

6 "ARTICLE 4A.

7 "~~Withholding of Income Taxes from Wages and Payment of Income~~

8 ~~Tax by~~ Withholding; Estimated Income Tax for Individuals.

9 "§ 105-163.1. Definitions.

10 The following definitions apply in this Article:

11 (1) Compensation. -- Consideration a payer pays a nonresident
12 individual or nonresident entity for personal services performed in
13 this State.

14 (2) Contractor. -- Either of the following:

15 a. A nonresident individual who performs personal services in
16 this State for compensation other than wages.

17 b. A nonresident entity that provides for the performance of
18 personal services in this State for compensation.

19 (3) Dependent. -- An individual with respect to whom an income tax
20 exemption is allowed under the Code.

21 (4) Employee. -- An individual, whether a resident or a nonresident of
22 this State, who performs services in this State for wages or an
23 individual who is a resident of this State and performs services
24 outside this State for wages. The term includes an ordained or
25 licensed member of the clergy who elects to be considered an
26 employee under G.S. 105-163.1A, an officer of a corporation, and
27 an elected public official.

28 (5) Employer. -- A person for whom an individual performs services
29 for wages. In applying the requirements to withhold income taxes
30 from wages and pay the withheld taxes, the term includes a person
31 who:

32 a. Controls the payment of wages to an individual for services
33 performed for another.

34 b. Pays wages on behalf of a person who is not engaged in
35 trade or business in this State.

36 c. Pays wages on behalf of a unit of government that is not
37 located in this State.

38 d. Pays wages for any other reason.

39 (6) Individual. -- Defined in G.S. 105-134.1.

40 (7) Miscellaneous payroll period. -- A payroll period other than a
41 daily, weekly, biweekly, semimonthly, monthly, quarterly,
42 semiannual, or annual payroll period.

43 (8) Nonresident entity. -- Any of the following:

- 1 a. A foreign limited liability company, as defined in G.S. 57C-
2 1-03, that has not obtained a certificate of authority from the
3 Secretary of State pursuant to Article 7 of Chapter 57C of
4 the General Statutes.
- 5 b. A foreign limited partnership as defined in G.S. 59-102 or a
6 general partnership formed under the laws of any
7 jurisdiction other than this State, unless the partnership
8 maintains a permanent place of business in this State.
- 9 c. A foreign corporation, as defined in G.S. 55-1-40, that has
10 not obtained a certificate of authority from the Secretary of
11 State pursuant to Article 15 of Chapter 55 of the General
12 Statutes.
- 13 (9) Pass-through entity. -- Defined in G.S. 105-163.010.
- 14 (10) Payer. -- A person who, in the course of a trade or business, pays a
15 nonresident individual or a nonresident entity compensation for
16 personal services performed in this State.
- 17 (11) Payroll period. -- A period for which an employer ordinarily pays
18 wages to an employee of the employer.
- 19 (12) Taxable year. -- Defined in section 441(b) of the Code.
- 20 (13) Wages. -- The term has the same meaning as in section 3401 of the
21 Code except it does not include either of the following:
- 22 a. The amount of severance wages paid to an employee during
23 the taxable year that is exempt from State income tax for
24 that taxable year under G.S. 105-134.6(b)(11).
- 25 b. The amount an employer pays an employee as
26 reimbursement for ordinary and necessary expenses incurred
27 by the employee on behalf of the employer and in the
28 furtherance of the business of the employer."
- 29 (14) Withholding agent. -- An employer or a payer.
- 30 (1) ~~Code. -- Defined in G.S. 105-228.90.~~
- 31 (2) ~~Repealed by Session Laws 1989 (Regular Session, 1990), e. 945, s.~~
32 ~~5.~~
- 33 (3) ~~Dependent. -- An individual with respect to whom an income tax~~
34 ~~exemption is allowed under the Code.~~
- 35 (4) ~~Employee. -- An individual, whether a resident or a nonresident of~~
36 ~~this State, who performs services in this State for wages or an~~
37 ~~individual who is a resident of this State and performs services~~
38 ~~outside this State for wages. The term includes an ordained or~~
39 ~~licensed clergyman who elects to be considered an employee under~~
40 ~~G.S. 105-163.1A, an officer of a corporation, and an elected public~~
41 ~~official.~~
- 42 (5) ~~Employer. -- A person for whom an individual performs services~~
43 ~~for wages. In applying the requirements to withhold income taxes~~

1 from wages and pay the withheld taxes, the term includes a person
2 who:

3 a. ~~Controls the payment of wages to an individual for services~~
4 ~~performed for another.~~

5 b. ~~Pays wages on behalf of a person who is not engaged in~~
6 ~~trade or business in this State.~~

7 e. ~~Pays wages on behalf of a unit of government that is not~~
8 ~~located in this State.~~

9 d. ~~Pays wages for any other reason.~~

10 (6), (7) ~~Repealed by Session Laws 1989 (Regular Session, 1990), c.~~
11 ~~945, s. 5.~~

12 (8) ~~Fiduciary. — A guardian, a trustee, an executor, an administrator, a~~
13 ~~receiver, a conservator, or other person acting in a fiduciary~~
14 ~~capacity for another.~~

15 (9) ~~Fiscal year. — Defined in section 441(e) of the Code.~~

16 (10) ~~Individual. — A natural person.~~

17 (11) ~~Miscellaneous payroll period. — A payroll period other than a~~
18 ~~daily, weekly, biweekly, semimonthly, monthly, quarterly,~~
19 ~~semiannual, or annual payroll period.~~

20 (12) ~~Payroll period. — A period for which an employer ordinarily pays~~
21 ~~wages to an employee of the employer.~~

22 (13) ~~Person. — Defined in G.S. 105-228.90.~~

23 (14) ~~Taxable year. — Defined in section 441(b) of the Code.~~

24 (14a) ~~Secretary. — The Secretary of Revenue.~~

25 (15) ~~Wages. — The term has the same meaning as in section 3401 of the~~
26 ~~Code except it does not include either of the following:~~

27 a. ~~Remuneration paid by a farmer for services performed on~~
28 ~~the farmer's farm in producing or harvesting agricultural~~
29 ~~products or in transporting the agricultural products to~~
30 ~~market.~~

31 b. ~~The first thirty five thousand dollars (\$35,000) of severance~~
32 ~~wages paid to an employee during the taxable year as the~~
33 ~~result of the permanent closure of a manufacturing or~~
34 ~~processing plant.~~

35 **"§ 105-163.2. Withholding. Employers must withhold taxes.**

36 (a) Withholding Required. -- An employer shall deduct and withhold from the
37 wages of each employee the State income taxes payable by the employee on the
38 wages. For each payroll period, the employer shall withhold from the employee's
39 wages an amount that would approximate the employee's income tax liability under
40 Article 4 of this Chapter if the employer withheld the same amount from the
41 employee's wages for each similar payroll period in a calendar year. In calculating
42 an employee's anticipated income tax liability, the employer shall allow for the
43 exemptions, deductions, and credits to which the employee is entitled under Article 4

1 of this Chapter. The amount of State income taxes withheld by an employer is held
2 in trust for the Secretary.

3 (b) Withholding Tables. -- The manner of withholding and the amount to be
4 withheld shall be determined in accordance with tables and rules adopted by the
5 Secretary. The withholding exemption allowed by these tables and rules shall, as
6 nearly as possible, approximate the exemptions, deductions, and credits to which an
7 employee would be entitled under Article 4 of this Chapter. The Secretary shall
8 ~~cause to be prepared and shall~~ promulgate tables for computing amounts to be
9 withheld with respect to different rates of wages for different payroll periods
10 applicable to the various combinations of exemptions to which an employee may be
11 entitled and taking into account the appropriate standard deduction. The tables may
12 provide for the same amount to be withheld within reasonable salary brackets or
13 ranges so designed as to result in the withholding during a year of approximately the
14 amount of an employee's indicated income tax liability for that year. The
15 withholding of wages pursuant to and in accordance with these tables shall be
16 deemed as a matter of law to constitute compliance with the provisions of subsection
17 (a) of this section, notwithstanding any other provisions of this Article.

18 (c) Withholding if No Payroll Period. -- If wages are paid with respect to a period
19 ~~which that~~ is not a payroll period, the amount to be deducted and withheld shall be
20 that applicable in the case of a miscellaneous payroll period containing a number of
21 days, excluding Sundays and holidays, equal to the number of days in the period with
22 respect to which such wages are ~~paid.~~ paid. In any case in which wages are
23 paid by an employer without regard to any payroll period or other period, the
24 amount to be deducted and withheld shall be that applicable in the case of a
25 miscellaneous payroll period containing a number of days equal to the number of
26 days, excluding Sundays and holidays, which have elapsed since the date of the last
27 payment of such wages by such employer during the calendar year, or the date of
28 commencement of employment with such employer during such year, or January 1 of
29 such year, whichever is the later.

30 (d) Estimated Withholding. -- The Secretary may, by rule, authorize employers to
31 estimate the wages to be paid to an employee during a calendar quarter, calculate the
32 amount to be withheld for each period based on the estimated wages, and, upon
33 payment of wages to the employee, adjust the withholding so that the amount actually
34 withheld is the amount that would be required to be withheld if the employee's
35 payroll period were quarterly.

36 (e) Alternatives to Tables. -- If the Secretary determines that use of the
37 withholding tables would be impractical, would impose an unreasonable burden on
38 an employer, or would produce substantially incorrect results, the Secretary may
39 authorize or require an employer to use some other method of determining the
40 amounts to be withheld under this Article. The alternative method authorized by the
41 Secretary must reasonably approximate the predicted income tax liability of the
42 affected employees. In addition, with the agreement of the employer and employee,
43 the Secretary may authorize an employer to use an alternative method that results in
44 withholding of a greater amount than otherwise required under this section.

1 The Secretary's authorization of an alternative method is discretionary and may be
2 cancelled at any time without advance notice if the Secretary finds that the method is
3 being abused or is not resulting in the withholding of an amount reasonably
4 approximating the predicted income tax liability of the affected employees. The
5 Secretary shall give an employer written notice of any cancellation and the findings
6 upon which the cancellation is based. The cancellation becomes effective upon the
7 employer's receipt of this notice or on the third day after the notice was mailed to
8 the employer, whichever occurs first. If the employer requests a hearing on the
9 cancellation within 30 days after the cancellation, the Secretary shall grant a hearing.
10 After a hearing, the Secretary's findings are conclusive.

11 ~~(e) The Secretary may, by regulations, authorize employers:~~

- 12 ~~(1) To estimate the wages which will be paid to any employee in any~~
13 ~~quarter of the calendar year;~~
14 ~~(2) To determine the amount to be deducted and withheld upon each~~
15 ~~payment of wages to such employee during such quarter as if the~~
16 ~~appropriate average of the wages so estimated constituted the~~
17 ~~actual wages paid; and~~
18 ~~(3) To deduct and withhold upon any payment of wages to such~~
19 ~~employee during such quarter such amount as may be necessary to~~
20 ~~adjust the amount actually deducted and withheld upon the wages~~
21 ~~of such employee during such quarter to the amount that would be~~
22 ~~required to be deducted and withheld during such quarter if the~~
23 ~~payroll period of the employee was quarterly.~~

24 ~~(f) The Secretary is authorized in unusual circumstances wherein he finds that the~~
25 ~~use of the prescribed tables is impracticable or constitutes an unreasonable~~
26 ~~requirement of the employer to authorize such employer to use some other method of~~
27 ~~determining the amounts to be withheld under this Article, provided the amounts~~
28 ~~withheld under such other method will reasonably approximate the indicated income~~
29 ~~tax liability of his employees. Further, the Secretary may authorize an employer to~~
30 ~~use another method for determining the amounts to be withheld under the provisions~~
31 ~~of this Article from the wages or salaries of groups of employees or individual~~
32 ~~employees if the circumstances are such that the use of the tables would produce~~
33 ~~substantially incorrect results. Any authorization of the use of a different method~~
34 ~~shall be subject to review and cancellation or alteration by the Secretary every twelfth~~
35 ~~month, and the Secretary may cancel such authorization or order an alteration of~~
36 ~~such method at any time upon a finding by him that such authorization is being~~
37 ~~abused or that such method is not resulting in the withholding of a sum reasonably~~
38 ~~approximating the indicated income tax liability of the employees, which finding may~~
39 ~~be made by the Secretary with or without notice or a hearing and shall be conclusive~~
40 ~~except as hereinafter provided. The Secretary shall notify the employer in writing of~~
41 ~~his finding and order thereon, and such notice shall be deemed to have been received~~
42 ~~by the employer on the third day after having been deposited in the mail and the~~
43 ~~employer shall thereafter abide by such order. Any employer feeling aggrieved by~~
44 ~~such order may thereafter apply for a hearing thereon before the Secretary, unless a~~

1 ~~hearing has been previously held, and upon such hearing the findings of the Secretary~~
2 ~~shall be deemed conclusive.~~

3 ~~(g) The Secretary is authorized to provide by regulation, under such conditions~~
4 ~~and to such extent as he deems proper, for withholding in addition to that otherwise~~
5 ~~required under this section in cases in which the employer and the employee agree to~~
6 ~~such additional withholding. Such additional withholding shall for all purposes be~~
7 ~~treated as other withholding amounts required to be deducted and withheld under~~
8 ~~this Article.~~

9 ~~(h) The act of compliance with any of the provisions of this Article by a~~
10 ~~nonresident employer shall not constitute an act in evidence of and shall not be~~
11 ~~deemed to be evidence that such nonresident is doing business in this State.~~

12 ~~"§ 105-163.3. Withholding in accordance with regulations. Certain payers must~~
13 ~~withhold taxes.~~

14 ~~(a) Requirement. -- Every payer who pays a contractor more than six hundred~~
15 ~~dollars (\$600.00) during a calendar year shall deduct and withhold from~~
16 ~~compensation paid to a contractor the State income taxes payable by the contractor~~
17 ~~on the compensation as provided in this section. The amount of taxes to be withheld~~
18 ~~is four percent (4%) of the compensation paid to the contractor. The taxes a payer~~
19 ~~withholds are held in trust for the Secretary.~~

20 ~~(b) Exemptions. -- The withholding requirement does not apply to the following:~~

21 ~~(1) Compensation that is subject to the withholding requirement of~~
22 ~~G.S. 105-163.2.~~

23 ~~(2) Compensation paid to an ordained or licensed member of the~~
24 ~~clergy.~~

25 ~~(c) Returns; Due Date. -- A payer shall file a return with the Secretary on a form~~
26 ~~prepared by the Secretary and shall provide any information required by the~~
27 ~~Secretary. For a payer that is an employer subject to the withholding requirement of~~
28 ~~G.S. 105-163.2, the return is due and the withheld taxes are payable at the same time~~
29 ~~the employer is required to file a return and pay withheld taxes under G.S. 105-163.6.~~
30 ~~For other payers, the return is due and the withheld taxes are payable 15 days after~~
31 ~~the end of each month during which the payer pays compensation to a contractor.~~
32 ~~The Secretary may extend the time for filing the return or paying the tax as provided~~
33 ~~in G.S. 105-263.~~

34 ~~(d) Annual Statement; Report to Secretary. -- A payer required to deduct and~~
35 ~~withhold from a contractor's compensation under this section shall furnish to the~~
36 ~~contractor duplicate copies of a written statement showing the following:~~

37 ~~(1) The payer's name, address, and taxpayer identification number.~~

38 ~~(2) The contractor's name, address, and taxpayer identification~~
39 ~~number.~~

40 ~~(3) The total amount of compensation paid during the calendar year.~~

41 ~~(4) The total amount deducted and withheld under this section during~~
42 ~~the calendar year.~~

43 ~~This statement is due by January 31 following the calendar year or, if the personal~~
44 ~~services for which the payer is paying are completed before the end of the calendar~~

1 year, within 45 days after the payer's last payment of compensation to the contractor.
2 The Secretary may require the payer to include additional information on the
3 statement.

4 Each payer shall file with the Secretary an annual report that compiles the
5 information contained in each of the payer's statements to contractors and any other
6 information required by the Secretary. This report is due on the date prescribed by
7 the Secretary and is in lieu of the information report required by G.S. 105-154.

8 (e) Records. -- If a payer does not withhold from payments to a nonresident
9 corporation or a nonresident limited liability company because the entity has
10 obtained a certificate of authority from the Secretary of State, the payer shall obtain
11 from the entity its corporate identification number issued by the Secretary of State. If
12 a payer does not withhold from payments to an individual because the individual is a
13 resident, the payer shall obtain the individual's address and social security number.
14 If a payer does not withhold from a partnership because the partnership has a
15 permanent place of business in this State, the payer shall obtain the partnership's
16 address and taxpayer identification number. The payer shall retain this information
17 with its records.

18 ~~The manner of withholding and the amount to be deducted and withheld under~~
19 ~~G.S. 105-163.2 shall be determined in accordance with tables, rules, and regulations~~
20 ~~adopted by the Secretary. The withholding exemption allowed by these tables, rules,~~
21 ~~and regulations shall, as nearly as possible, approximate the exemptions, deductions,~~
22 ~~and credits to which an employee would be entitled under Article 4 of this Chapter.~~
23 **§ 105-163.4. Withholding does not create nexus.**

24 A nonresident withholding agent's act in compliance with this Article does not in
25 itself constitute evidence that the nonresident is doing business in this State.

26 ~~No withholding from reimbursement for expenses.~~

27 ~~The amount an employer pays an employee as reimbursement for ordinary and~~
28 ~~necessary expenses incurred by the employee on behalf of the employer and in the~~
29 ~~furtherance of the business of the employer is not wages and is not subject to~~
30 ~~withholding under this Article.~~

31 **§ 105-163.5. Exemptions Employee exemptions allowable; certificates.**

32 (a) An employee receiving wages ~~shall be~~ is entitled to the exemptions for which
33 ~~such~~ the employee qualifies under ~~the provisions of~~ Article 4 of this Chapter.

34 (b) Every employee shall, ~~on or before January 1, 1960, or~~ at the time of
35 commencing employment, ~~whichever is later,~~ furnish his or her employer with a
36 signed withholding exemption certificate informing the employer of the exemptions
37 the employee claims, which in no event shall exceed the amount of exemptions to
38 which the employee is entitled under the ~~Code; but, in the event that~~ Code. If the
39 employee fails to file the exemption certificate the employer, in computing amounts
40 to be withheld from the employee's wages, shall allow the employee the exemption
41 accorded a single person with no dependents.

42 (c) Withholding exemption certificates shall take effect as of the beginning of the
43 first payroll period ~~which~~ that ends on or after the date on which ~~such~~ the certificate
44 is furnished, or if payment of wages is made without regard to a payroll period, then

1 ~~such~~ the certificate shall take effect as of the beginning of the miscellaneous payroll
2 period for which the first payment of wages is made on or after the date on which
3 ~~such~~ the certificate is ~~furnished; provided, that certificates furnished before January 1,~~
4 ~~1960, shall be deemed to have been furnished on that date.~~ furnished.

5 (d) If, on any day during the calendar year, the amount of withholding exemptions
6 to which the employee is entitled is less than the amount of withholding exemptions
7 claimed by the employee on the withholding exemption certificate then in effect with
8 respect to ~~him~~, the employee, the employee shall, within 10 days thereafter, furnish
9 the employer with a new withholding exemption certificate ~~relating to~~ stating the
10 amount of withholding exemptions which the employee then claims, which shall in
11 no event exceed the amount to which ~~he~~ the employee is entitled on ~~such~~ that day. If,
12 on any day during the calendar year, the amount of withholding exemptions to which
13 the employee is entitled is greater than the amount of withholding exemptions
14 claimed, the employee may furnish the employer with a new withholding exemption
15 certificate ~~relating to~~ stating the amount of withholding exemptions which the
16 employee then claims, which shall in no event exceed the amount to which ~~he~~ the
17 employee is entitled on ~~such~~ that day.

18 (e) Withholding exemption certificates ~~shall be in such form and contain such~~
19 ~~information as the Secretary may prescribe, but, insofar~~ must be in the form and
20 contain the information required by the Secretary. As far as practicable, the Secretary
21 shall cause the form of ~~such~~ the certificates to be substantially similar to federal
22 exemption certificates.

23 (f) In addition to any criminal penalty provided by law, if an individual furnishes
24 his or her employer ~~with~~ an exemption certificate that contains information which
25 has no reasonable basis and that results in a lesser amount of tax being withheld
26 under this Article than would have been withheld if the individual had furnished
27 reasonable information, the individual is subject to a penalty of fifty percent (50%) of
28 the amount not properly withheld.

29 "**§ 105-163.6. When employer must file returns and pay withheld taxes.**

30 (a) General. -- A return is due quarterly or monthly as specified in this section. A
31 return shall be filed with the Secretary on a form prepared by the Secretary, shall
32 report any payments of withheld taxes made during the period covered by the return,
33 and shall contain any other information required by the Secretary.

34 Withheld taxes are payable quarterly, monthly, or semiweekly, as specified in this
35 section. If the Secretary finds that collection of the amount of taxes this Article
36 requires an employer to withhold is in jeopardy, the Secretary may require the
37 employer to file a return or pay withheld taxes at a time other than that specified in
38 this section.

39 (b) Quarterly. -- An employer who withholds an average of less than five hundred
40 dollars (\$500.00) of State income taxes from wages each month shall file a return and
41 pay the withheld taxes on a quarterly basis. A quarterly return covers a calendar
42 quarter and is due by the last day of the month following the end of the quarter.

43 (c) Monthly. -- An employer who withholds an average of at least five hundred
44 dollars (\$500.00) but less than two thousand dollars (\$2,000) from wages each month

1 shall file a return and pay the withheld taxes on a monthly basis. A return for the
2 months of January through November is due by the 15th day of the month following
3 the end of the month covered by the return. A return for the month of December is
4 due the following January 31.

5 (d) Semiweekly. -- An employer who withholds an average of at least two
6 thousand dollars (\$2,000) of State income taxes from wages each month shall file a
7 return by the date set under the Code for filing a return for federal employment taxes
8 attributable to the same wages and shall pay the withheld State taxes by the date set
9 under the Code for depositing or paying federal employment taxes attributable to the
10 same wages. The date set by the Code for depositing or paying federal employment
11 taxes shall be determined without regard to § 6302(g) of the Code.

12 An extension of time granted to file a return for federal employment taxes
13 attributable to wages is an automatic extension of time for filing a return for State
14 income taxes withheld from the same wages, and an extension of time granted to pay
15 federal employment taxes attributable to wages is an automatic extension of time for
16 paying State income taxes withheld from the same wages. An employer who pays
17 withheld State income taxes under this subsection is not subject to interest on or
18 penalties for a shortfall in the amount due if the employer would not be subject to a
19 failure-to-deposit penalty had the shortfall occurred in a deposit of federal
20 employment taxes attributable to the same wages and the employer pays the shortfall
21 by the date the employer would have to deposit a shortfall in the federal employment
22 taxes.

23 (e) Category. -- The Secretary shall monitor the amount of taxes withheld by an
24 employer or estimate the amount of taxes to be withheld by a new employer and
25 shall direct each employer to pay withheld taxes in accordance with the appropriate
26 schedule. An employer shall file a return and pay withheld taxes in accordance with
27 the Secretary's direction until notified in writing to file and pay under a different
28 schedule.

29 **"§ 105-163.7. Statement to employees; information to Secretary.**

30 (a) Every employer required to deduct and withhold from an employee's wages
31 under G.S. 105-163.2 shall furnish to ~~each such~~ the employee in respect to the
32 remuneration paid by ~~such the~~ the employer to such employee during the calendar year,
33 on or before January 31 of the succeeding year, or, if ~~his~~ the employment is
34 terminated before the close of ~~such the~~ the calendar year, within 30 days ~~from~~ after the
35 date on which the last payment of remuneration is made, duplicate copies of a
36 written statement showing the following:

- 37 (1) ~~The name of such person;~~ employer's name, address, and taxpayer
38 identification number.
- 39 (2) ~~The name of the employee and his~~ employee's name and social
40 security account number; number.
- 41 (3) The total amount of ~~wages;~~ wages.
- 42 (4) The total amount deducted and withheld under G.S. 105-163.2.

43 (b) The Secretary may require an employer to include information not listed in
44 subsection (a) on the employer's written statement to an employee and to file the

1 statement at a time not required by subsection (a). Every employer shall file an
2 annual report with the Secretary that contains the information given on each of the
3 employer's written statements to an employee and other information required by the
4 Secretary. The annual report is due on the same date the employer's federal
5 information return of federal income taxes withheld from wages is due under the
6 Code. The report required by this subsection is in lieu of the report required by G.S.
7 105-154.

8 (c) An employer who is required to file an annual report under subsection (b) of
9 this section must report to the Secretary the following information concerning
10 compliance with Article 1 of Chapter 97 of the General Statutes, the Workers'
11 Compensation Act:

- 12 (1) Whether the employer is required to maintain insurance or qualify
13 as a self-insured employer under the provisions of G.S. 97-93.
- 14 (2) Whether the employer is insured, self-insured through a group, or
15 individually self-insured.
- 16 (3) The name of the employer's workers' compensation insurance
17 carrier and the number and expiration date of the insurance policy
18 if the employer has workers' compensation insurance.
- 19 (4) The name of the self-insured group, the group's third-party
20 administrator, and the group's or employer's self-insured code
21 number used by the Department of Insurance, if the employer is a
22 member of a self-insured group.
- 23 (5) The name of the employer's third-party administrator and the
24 employer's self-insured code number used by the Department of
25 Insurance, if the employer is individually self-insured.
- 26 (6) Whether any information reported to the Secretary on a previous
27 return has changed.

28 The Secretary must compile the information concerning workers' compensation
29 reported by employers on an annual report and must give the compiled data to the
30 Industrial Commission.

31 **"§ 105-163.8. Liability of employer withholding agents and others.**

32 (a) ~~Employer.~~ Withholding Agents. -- A withholding agent who
33 withholds the proper amount of income taxes under ~~G.S. 105-163.2~~ this Article and
34 pays the withheld amount to the Secretary is not liable to any person for the amount
35 paid. ~~An employer~~ A withholding agent who fails to withhold the proper amount of
36 income taxes or pay the amount withheld to the Secretary is liable for the amount of
37 tax not withheld or not paid. ~~An employer~~ A withholding agent who fails to
38 withhold the amount of income taxes required by this Article or who fails to pay
39 withheld taxes by the due date for paying the taxes is subject to ~~a penalty equal to~~
40 ~~twenty five percent (25%) of the amount of taxes not withheld or not timely paid to~~
41 ~~the Secretary.~~ the penalties provided in Article 9 of this Chapter.

42 (b) Others. -- A person who has a duty to deduct, account for, or pay taxes
43 required to be withheld under ~~G.S. 105-163.2~~ this Article and who fails to do so is
44 liable for the amount of tax not deducted, not accounted for, or not paid.

1 **"§ 105-163.9. Refund of overpayment to ~~employer.~~ withholding agent.**

2 ~~An employer A withholding agent~~ who pays the Secretary more under this Article
3 than the Article requires the ~~employer agent~~ to pay may obtain a refund of the
4 overpayment by filing an application for a refund with the Secretary. No refund is
5 allowed, however, if the ~~employer withholding agent~~ withheld the amount of the
6 overpayment from the ~~wages of the employer's employees.~~ wages or compensation of
7 the agent's employees or contractors. ~~An employer A withholding agent~~ must file an
8 application for a refund within the time period set in G.S. 105-266. Interest accrues
9 on a refund as provided in G.S. 105-266.

10 **"§ 105-163.10. Withheld amounts credited to ~~individual taxpayer~~ for calendar year.**

11 The amount deducted and withheld under ~~G.S. 105-163.2~~ this Article during any
12 calendar year from the wages or compensation of ~~any an~~ individual shall be allowed
13 as a credit to that individual against the tax imposed by ~~G.S. 105-134.2~~ Article 4 of
14 this Chapter for taxable years beginning in that calendar year. The amount deducted
15 and withheld under this Article during any calendar year from the compensation of a
16 nonresident entity shall be allowed as a credit to that entity against the tax imposed
17 by Article 4 of this Chapter for taxable years beginning in that calendar year. If the
18 nonresident entity is a pass-through entity, the entity shall pass through and allocate
19 to each owner the owner's share of the credit.

20 If more than one taxable year begins in ~~that calendar year~~ the calendar year during
21 which the withholding occurred, the amount shall be allowed as a credit against the
22 tax for the last taxable year so beginning. To obtain the credit allowed in this section,
23 the individual or nonresident entity must file with the Secretary one copy of the
24 withholding statement required by G.S. 105-163.3 or G.S. 105-163.7 and any other
25 information the Secretary requires.

26 **"§ 105-163.11 to 105-163.14.** Repealed by Session Laws 1985, c. 443, s. 1, effective
27 for taxable years beginning on or after January 1, 1986.

28 **"§ 105-163.15. Failure by individual to pay estimated income tax; penalty.**

29 (a) In the case of any underpayment of the estimated tax by an individual, there
30 shall be added to the tax imposed under Article 4 for the taxable year an amount
31 determined by applying the applicable annual rate established under G.S. 105-241.1(i)
32 to the amount of the underpayment for the period of the underpayment.

33 (b) For purposes of subsection (a), the amount of the underpayment shall be the
34 excess of the required installment, over the amount, if any, of the installment paid on
35 or before the due date for the installment. The period of the underpayment shall run
36 from the due date for the installment to whichever of the following dates is the
37 earlier: (i) the fifteenth day of the fourth month following the close of the taxable
38 year, or (ii) with respect to any portion of the underpayment, the date on which such
39 portion is paid. A payment of estimated tax shall be credited against unpaid required
40 installments in the order in which such installments are required to be paid.

41 (c) For purposes of this section there shall be four required installments for each
42 taxable year with the time for payment of the installments as follows:

- 43 (1) First installment -- April 15 of taxable year;
44 (2) Second installment -- June 15 of taxable year;

- 1 (3) Third installment -- September 15 of taxable year; and
2 (4) Fourth installment -- January 15 of following taxable year.
- 3 (d) Except as provided in subsection (e), the amount of any required installment
4 shall be twenty-five percent (25%) of the required annual payment. The term
5 'required annual payment' means the lesser of:
- 6 (1) Ninety percent (90%) of the tax shown on the return for the
7 taxable year, or, if no return is filed, ninety percent (90%) of the
8 tax for that year; or
9 (2) One hundred percent (100%) of the tax shown on the return of the
10 individual for the preceding taxable year, if the preceding taxable
11 year was a taxable year of 12 months and the individual filed a
12 return for that year.
- 13 (e) In the case of any required installment, if the individual establishes that the
14 annualized income installment is less than the amount determined under subsection
15 (d), the amount of the required installment shall be the annualized income
16 installment, and any reduction in a required installment resulting from the
17 application of this subsection shall be recaptured by increasing the amount of the
18 next required installment determined under subsection (d) by the amount of the
19 reduction and by increasing subsequent required installments to the extent that the
20 reduction has not previously been recaptured.
- 21 In the case of any required installment, the annualized income installment is the
22 excess, if any, of (i) an amount equal to the applicable percentage of the tax for the
23 taxable year computed by placing on an annualized basis the taxable income for
24 months in the taxable year ending before the due date for the installment, over (ii)
25 the aggregate amount of any prior required installments for the taxable year. The
26 taxable income shall be placed on an annualized basis under rules prescribed by the
27 Secretary. The applicable percentages for the required installments are as follows:
- 28 (1) First installment -- twenty-two and one-half percent (22.5%);
29 (2) Second installment -- forty-five percent (45%);
30 (3) Third installment -- sixty-seven and one-half percent (67.5%); and
31 (4) Fourth installment -- ninety percent (90%).
- 32 (f) No addition to the tax shall be imposed under subsection (a) if the tax shown
33 on the return for the taxable year reduced by the tax withheld under ~~Article 4A~~ this
34 Article is less than the amount set in section 6654(e) of the Code or if the individual
35 did not have any liability for tax under Division II of Article 4 for the preceding
36 taxable year.
- 37 (g) For purposes of this section, the term 'tax' means the tax imposed by Division
38 II of Article 4 minus the credits against the tax allowed by ~~Article 4~~ this Chapter
39 other than the credit allowed by this Article. The amount of the credit allowed
40 under ~~Article 4A~~ this Article for withheld income tax for the taxable year is
41 considered a payment of estimated tax, and an equal part of that amount is
42 considered to have been paid on each due date of the taxable year, unless the
43 taxpayer establishes the dates on which all amounts were actually withheld, in which

1 case the amounts so withheld are considered payments of estimated tax on the dates
2 on which ~~such~~ the amounts were actually withheld.

3 (h) If, on or before January 31 of the following taxable year, the taxpayer files a
4 return for the taxable year and pays in full the amount computed on the return as
5 payable, no addition to tax shall be imposed under subsection (a) with respect to any
6 underpayment of the fourth required installment for the taxable year.

7 (i) Notwithstanding the other provisions of this section, an individual who is a
8 farmer or fisherman for a taxable year is required to make only one installment
9 payment of tax for that year. This installment is due on or before January 15 of the
10 following taxable year but may be paid without penalty or interest on or before
11 March 1 of that year. The amount of the installment payment shall be the lesser of:

12 (1) Sixty-six and two-thirds percent (66 2/3%) of the tax shown on the
13 return for the taxable year, or, if no return is filed, sixty-six and
14 two-thirds percent (66 2/3%) of the tax for that year; or

15 (2) One hundred percent (100%) of the tax shown on the return of the
16 individual for the preceding taxable year, if the preceding taxable
17 year was a taxable year of 12 months and the individual filed a
18 return for that year.

19 An individual is a farmer or fisherman for any taxable year if the individual's gross
20 income from farming or fishing, including oyster farming, for the taxable year is at
21 least sixty-six and two-thirds percent (66 2/3%) of the total gross income from all
22 sources for the taxable year, or the individual's gross income from farming or fishing,
23 including oyster farming, shown on the return of the individual for the preceding
24 taxable year is at least sixty-six and two-thirds percent (66 2/3%) of the total gross
25 income from all sources shown on the return.

26 (j) In applying this section to a taxable year beginning on any date other than
27 January 1, there shall be substituted, for the months specified in this section, the
28 months that correspond thereto. This section shall be applied to taxable years of less
29 than 12 months in accordance with rules prescribed by the Secretary.

30 (k) This section shall not apply to any estate or trust.

31 **"§ 105-163.16. Overpayment refunded.**

32 If the amount of wages or compensation withheld at the source under ~~G.S.~~
33 ~~105-163.2~~ this Article exceeds the tax imposed by Article 4 of this Chapter against
34 which the withheld tax is credited under G.S. 105-163.10, the excess is considered an
35 overpayment by the ~~employee.~~ employee or contractor. If the amount of estimated
36 tax paid under G.S. 105-163.15 exceeds the taxes imposed by Article 4 of this
37 Chapter against which the estimated tax is credited under the provisions of this
38 Article, the excess is considered an overpayment by the taxpayer. An overpayment
39 shall be refunded as provided in Article 9 of this Chapter.

40 ~~"§ 105-163.17. Administration.~~

41 ~~The provisions of Article 9 of this Chapter apply to the amount of State income~~
42 ~~taxes this Article requires an employer to withhold and pay to the Secretary.~~

43 ~~"§ 105-163.18. Rules and regulations.~~

1 ~~The Secretary is hereby authorized to prescribe forms and make all rules and~~
2 ~~regulations which he deems necessary in order to achieve effective and efficient~~
3 ~~enforcement of this Article.~~

4 "§ 105-163.19 to 105-163.21. Repealed by Session Laws 1967, c. 1110, s. 4.

5 "§ 105-163.22. Reciprocity.

6 The Secretary ~~of Revenue~~ may, with the approval of the Attorney General, enter
7 into agreements with the taxing authorities of states having income tax withholding
8 statutes with such agreements to govern the amounts to be withheld from the wages
9 and salaries of residents of such other state or states under the provisions of this
10 Article when such other state or states grant similar treatment to the residents of this
11 State. Such agreements may provide for recognition of the anticipated tax credits
12 allowed under the provisions of G.S. 105-151 in determining the amounts to be
13 withheld.

14 "§ 105-163.23. Withholding from federal employees.

15 The Secretary ~~of Revenue is hereby~~ is designated as the proper official to make
16 request for and enter into agreements with the Secretary of the Treasury of the
17 United States to provide for the compliance with this Article by the head of each
18 department or agency of the United States in withholding of State income taxes from
19 wages of federal employees and paying the same to this State. The Secretary is ~~hereby~~
20 authorized, ~~empowered~~ empowered, and directed to ~~make request for request~~ and
21 enter into ~~such~~ these agreements.

22 "§ 105-163.24. Construction of Article.

23 This Article shall be liberally construed in pari materia with Article 4 of this
24 Chapter to the end that taxes levied by Article 4 shall be collected with respect to
25 wages and compensation by withholding ~~from wages by employers agents'~~
26 withholding of the appropriate amounts ~~herein provided for~~ and by individuals'
27 payments in installments ~~by individuals~~ of income tax with respect to income ~~other~~
28 ~~than wages.~~ not subject to withholding."

29 Section 4. G.S. 105-236(4) reads as rewritten:

30 "(4) Failure to Withhold or Pay Tax When Due. -- In the case of failure
31 to withhold or pay any tax when due, without intent to evade the
32 tax, there shall be an additional tax, as a penalty, of ten percent
33 (10%) of the tax; provided, that such penalty shall in no event be
34 less than five dollars (\$5.00). This penalty does not apply in any of
35 the following circumstances:

- 36 a. When the amount of tax shown as due on an amended
37 return is paid when the return is filed.
- 38 b. When a tax due but not shown on a return is assessed by the
39 Secretary and is paid within 30 days after the date of the
40 proposed notice of assessment of the tax."

41 Section 5. Section 1 of this act is effective for taxable years beginning on
42 or after January 1, 1998. Section 2 of this act is effective when this act becomes law.
43 The remainder of this act becomes effective January 1, 1998.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

HOUSE BILL 57
Committee Substitute Favorable 3/6/97
Third Edition Engrossed 3/17/97
Fourth Edition Engrossed 3/20/97
Proposed Senate Finance Committee Substitute
H57-CSLCX-4/16

ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Withholding for Nonresidents.

(Public)

Sponsors:

Referred to:

February 5, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO REQUIRE WITHHOLDING FROM CERTAIN PAYMENTS TO
3 NONRESIDENTS IN ORDER TO PREVENT NONRESIDENTS FROM AVOIDING
4 NORTH CAROLINA INCOME TAXES AND TO CONFORM TO FEDERAL RULES ON
5 WAGE WITHHOLDING BY FARMERS.
6 The General Assembly of North Carolina enacts:
7 Section 1. G.S. 105-163.1(15) reads as rewritten:
8 "(15) Wages. -- The term has the same meaning as in
9 section 3401 of the Code except it does not include
10 ~~remuneration paid by a farmer for services~~
11 ~~performed on the farmer's farm in producing or~~
12 ~~harvesting agricultural products or in transporting~~
13 ~~the agricultural products to market. the amount of~~
14 ~~severance wages paid to an employee during the~~
15 ~~taxable year that is exempt from State income tax~~
16 ~~for that taxable year under G.S. 105-134.6(b)(11)."~~
17 Section 2. Article 4A of Chapter 105 of the General
18 Statutes, as amended by Section 1 of this act, reads as
19 rewritten:

"ARTICLE 4A.

~~"Withholding of Income Taxes from Wages and Payment of Income Tax by Withholding; Estimated Income Tax for Individuals.~~

"§ 105-163.1. Definitions.

The following definitions apply in this Article:

- (1) Compensation. -- Consideration a payer pays a nonresident individual or nonresident entity for personal services performed in this State.
- (2) Contractor. -- Either of the following:
 - a. A nonresident individual who performs personal services in this State for compensation other than wages.
 - b. A nonresident entity that provides for the performance of the following personal services in this State for compensation: services in connection with a performance, an entertainment, an athletic event, the creation of a film or television program, or the construction or repair of a building or highway.
- (3) Dependent. -- An individual with respect to whom an income tax exemption is allowed under the Code.
- (4) Employee. -- An individual, whether a resident or a nonresident of this State, who performs services in this State for wages or an individual who is a resident of this State and performs services outside this State for wages. The term includes an ordained or licensed member of the clergy who elects to be considered an employee under G.S. 105-163.1A, an officer of a corporation, and an elected public official.
- (5) Employer. -- A person for whom an individual performs services for wages. In applying the requirements to withhold income taxes from wages and pay the withheld taxes, the term includes a person who:
 - a. Controls the payment of wages to an individual for services performed for another.
 - b. Pays wages on behalf of a person who is not engaged in trade or business in this State.
 - c. Pays wages on behalf of a unit of government that is not located in this State.
 - d. Pays wages for any other reason.
- (6) Individual. -- Defined in G.S. 105-134.1.

- 1 (7) Miscellaneous payroll period. -- A payroll period
2 other than a daily, weekly, biweekly, semimonthly,
3 monthly, quarterly, semiannual, or annual payroll
4 period.
- 5 (8) Nonresident entity. -- Any of the following:
6 a. A foreign limited liability company, as
7 defined in G.S. 57C-1-03, that has not
8 obtained a certificate of authority from the
9 Secretary of State pursuant to Article 7 of
10 Chapter 57C of the General Statutes.
11 b. A foreign limited partnership as defined in
12 G.S. 59-102 or a general partnership formed
13 under the laws of any jurisdiction other than
14 this State, unless the partnership maintains
15 a permanent place of business in this State.
16 c. A foreign corporation, as defined in G.S.
17 55-1-40, that has not obtained a certificate
18 of authority from the Secretary of State
19 pursuant to Article 15 of Chapter 55 of the
20 General Statutes.
- 21 (9) Pass-through entity. -- Defined in G.S.
22 105-163.010.
- 23 (10) Payer. -- A person who, in the course of a trade or
24 business, pays a nonresident individual or a
25 nonresident entity compensation for personal
26 services performed in this State.
- 27 (11) Payroll period. -- A period for which an employer
28 ordinarily pays wages to an employee of the
29 employer.
- 30 (12) Taxable year. -- Defined in section 441(b) of the
31 Code.
- 32 (13) Wages. -- The term has the same meaning as in
33 section 3401 of the Code except it does not include
34 either of the following:
35 a. The amount of severance wages paid to an
36 employee during the taxable year that is
37 exempt from State income tax for that taxable
38 year under G.S. 105-134.6(b)(11).
39 b. The amount an employer pays an employee as
40 reimbursement for ordinary and necessary
41 expenses incurred by the employee on behalf of
42 the employer and in the furtherance of the
43 business of the employer."
- 44 (14) Withholding agent. -- An employer or a payer.

- 1 ~~(1) Code. -- Defined in G.S. 105-228.90.~~
- 2 ~~(2) Repealed by Session Laws 1989 (Regular Session,~~
- 3 ~~1990), c. 945, s. 5.~~
- 4 ~~(3) Dependent. -- An individual with respect to whom an~~
- 5 ~~income tax exemption is allowed under the Code.~~
- 6 ~~(4) Employee. -- An individual, whether a resident or a~~
- 7 ~~nonresident of this State, who performs services in~~
- 8 ~~this State for wages or an individual who is a~~
- 9 ~~resident of this State and performs services~~
- 10 ~~outside this State for wages. The term includes an~~
- 11 ~~ordained or licensed clergyman who elects to be~~
- 12 ~~considered an employee under G.S. 105-163.1A, an~~
- 13 ~~officer of a corporation, and an elected public~~
- 14 ~~official.~~
- 15 ~~(5) Employer. -- A person for whom an individual~~
- 16 ~~performs services for wages. In applying the~~
- 17 ~~requirements to withhold income taxes from wages~~
- 18 ~~and pay the withheld taxes, the term includes a~~
- 19 ~~person who:~~
- 20 ~~a. Controls the payment of wages to an individual~~
- 21 ~~for services performed for another.~~
- 22 ~~b. Pays wages on behalf of a person who is not~~
- 23 ~~engaged in trade or business in this State.~~
- 24 ~~c. Pays wages on behalf of a unit of government~~
- 25 ~~that is not located in this State.~~
- 26 ~~d. Pays wages for any other reason.~~
- 27 ~~(6), (7) Repealed by Session Laws 1989 (Regular~~
- 28 ~~Session, 1990), c. 945, s. 5.~~
- 29 ~~(8) Fiduciary. -- A guardian, a trustee, an executor,~~
- 30 ~~an administrator, a receiver, a conservator, or~~
- 31 ~~other person acting in a fiduciary capacity for~~
- 32 ~~another.~~
- 33 ~~(9) Fiscal year. -- Defined in section 441(e) of the~~
- 34 ~~Code.~~
- 35 ~~(10) Individual. -- A natural person.~~
- 36 ~~(11) Miscellaneous payroll period. -- A payroll period~~
- 37 ~~other than a daily, weekly, biweekly, semimonthly,~~
- 38 ~~monthly, quarterly, semiannual, or annual payroll~~
- 39 ~~period.~~
- 40 ~~(12) Payroll period. -- A period for which an employer~~
- 41 ~~ordinarily pays wages to an employee of the~~
- 42 ~~employer.~~
- 43 ~~(13) Person. -- Defined in G.S. 105-228.90.~~

1 ~~(14) Taxable year. -- Defined in section 441(b) of the~~
2 ~~Code.~~

3 ~~(14a) Secretary. -- The Secretary of Revenue.~~

4 ~~(15) Wages. -- The term has the same meaning as in~~
5 ~~section 3401 of the Code except it does not include~~
6 ~~the amount of severance wages paid to an employee~~
7 ~~during the taxable year that is exempt from State~~
8 ~~income tax for that taxable year under G.S.~~
9 ~~105-134.6(b)(11).~~

10 "§ 105-163.2. Withholding. Employers must withhold taxes.

11 (a) Withholding Required. -- An employer shall deduct and
12 withhold from the wages of each employee the State income taxes
13 payable by the employee on the wages. For each payroll period,
14 the employer shall withhold from the employee's wages an amount
15 that would approximate the employee's income tax liability under
16 Article 4 of this Chapter if the employer withheld the same
17 amount from the employee's wages for each similar payroll period
18 in a calendar year. In calculating an employee's anticipated
19 income tax liability, the employer shall allow for the
20 exemptions, deductions, and credits to which the employee is
21 entitled under Article 4 of this Chapter. The amount of State
22 income taxes withheld by an employer is held in trust for the
23 Secretary.

24 (b) Withholding Tables. -- The manner of withholding and the
25 amount to be withheld shall be determined in accordance with
26 tables and rules adopted by the Secretary. The withholding
27 exemption allowed by these tables and rules shall, as nearly as
28 possible, approximate the exemptions, deductions, and credits to
29 which an employee would be entitled under Article 4 of this
30 Chapter. The Secretary shall ~~cause to be prepared and shall~~
31 promulgate tables for computing amounts to be withheld with
32 respect to different rates of wages for different payroll periods
33 applicable to the various combinations of exemptions to which an
34 employee may be entitled and taking into account the appropriate
35 standard deduction. The tables may provide for the same amount
36 to be withheld within reasonable salary brackets or ranges so
37 designed as to result in the withholding during a year of
38 approximately the amount of an employee's indicated income tax
39 liability for that year. The withholding of wages pursuant to
40 and in accordance with these tables shall be deemed as a matter
41 of law to constitute compliance with the provisions of subsection
42 (a) of this section, notwithstanding any other provisions of this
43 Article.

1 (c) Withholding if No Payroll Period. -- If wages are paid with
2 respect to a period ~~which~~ that is not a payroll period, the
3 amount to be deducted and withheld shall be that applicable in
4 the case of a miscellaneous payroll period containing a number of
5 days, excluding Sundays and holidays, equal to the number of days
6 in the period with respect to which such wages are ~~paid.~~ ~~(d)~~ In
7 paid. In any case in which wages are paid by an employer without
8 regard to any payroll period or other period, the amount to be
9 deducted and withheld shall be that applicable in the case of a
10 miscellaneous payroll period containing a number of days equal to
11 the number of days, excluding Sundays and holidays, which have
12 elapsed since the date of the last payment of such wages by such
13 employer during the calendar year, or the date of commencement of
14 employment with such employer during such year, or January 1 of
15 such year, whichever is the later.

16 (d) Estimated Withholding. -- The Secretary may, by rule,
17 authorize employers to estimate the wages to be paid to an
18 employee during a calendar quarter, calculate the amount to be
19 withheld for each period based on the estimated wages, and, upon
20 payment of wages to the employee, adjust the withholding so that
21 the amount actually withheld is the amount that would be required
22 to be withheld if the employee's payroll period were quarterly.

23 (e) Alternatives to Tables. -- If the Secretary determines
24 that use of the withholding tables would be impractical, would
25 impose an unreasonable burden on an employer, or would produce
26 substantially incorrect results, the Secretary may authorize or
27 require an employer to use some other method of determining the
28 amounts to be withheld under this Article. The alternative
29 method authorized by the Secretary must reasonably approximate
30 the predicted income tax liability of the affected employees. In
31 addition, with the agreement of the employer and employee, the
32 Secretary may authorize an employer to use an alternative method
33 that results in withholding of a greater amount than otherwise
34 required under this section.

35 The Secretary's authorization of an alternative method is
36 discretionary and may be cancelled at any time without advance
37 notice if the Secretary finds that the method is being abused or
38 is not resulting in the withholding of an amount reasonably
39 approximating the predicted income tax liability of the affected
40 employees. The Secretary shall give an employer written notice
41 of any cancellation and the findings upon which the cancellation
42 is based. The cancellation becomes effective upon the employer's
43 receipt of this notice or on the third day after the notice was
44 mailed to the employer, whichever occurs first. If the employer

1 requests a hearing on the cancellation within 30 days after the
2 cancellation, the Secretary shall grant a hearing. After a
3 hearing, the Secretary's findings are conclusive.

4 ~~(e) The Secretary may, by regulations, authorize employers:~~

5 ~~(1) To estimate the wages which will be paid to any~~
6 ~~employee in any quarter of the calendar year;~~

7 ~~(2) To determine the amount to be deducted and withheld~~
8 ~~upon each payment of wages to such employee during~~
9 ~~such quarter as if the appropriate average of the~~
10 ~~wages so estimated constituted the actual wages~~
11 ~~paid; and~~

12 ~~(3) To deduct and withhold upon any payment of wages~~
13 ~~to such employee during such quarter such amount as~~
14 ~~may be necessary to adjust the amount actually~~
15 ~~deducted and withheld upon the wages of such~~
16 ~~employee during such quarter to the amount that~~
17 ~~would be required to be deducted and withheld~~
18 ~~during such quarter if the payroll period of the~~
19 ~~employee was quarterly.~~

20 ~~(f) The Secretary is authorized in unusual circumstances~~
21 ~~wherein he finds that the use of the prescribed tables is~~
22 ~~impracticable or constitutes an unreasonable requirement of the~~
23 ~~employer to authorize such employer to use some other method of~~
24 ~~determining the amounts to be withheld under this Article,~~
25 ~~provided the amounts withheld under such other method will~~
26 ~~reasonably approximate the indicated income tax liability of his~~
27 ~~employees. Further, the Secretary may authorize an employer to~~
28 ~~use another method for determining the amounts to be withheld~~
29 ~~under the provisions of this Article from the wages or salaries~~
30 ~~of groups of employees or individual employees if the~~
31 ~~circumstances are such that the use of the tables would produce~~
32 ~~substantially incorrect results. Any authorization of the use of~~
33 ~~a different method shall be subject to review and cancellation or~~
34 ~~alteration by the Secretary every twelfth month, and the~~
35 ~~Secretary may cancel such authorization or order an alteration of~~
36 ~~such method at any time upon a finding by him that such~~
37 ~~authorization is being abused or that such method is not~~
38 ~~resulting in the withholding of a sum reasonably approximating~~
39 ~~the indicated income tax liability of the employees, which~~
40 ~~finding may be made by the Secretary with or without notice or a~~
41 ~~hearing and shall be conclusive except as hereinafter provided.~~
42 ~~The Secretary shall notify the employer in writing of his finding~~
43 ~~and order thereon, and such notice shall be deemed to have been~~
44 ~~received by the employer on the third day after having been~~

~~1 deposited in the mail and the employer shall thereafter abide by
2 such order. Any employer feeling aggrieved by such order may
3 thereafter apply for a hearing thereon before the Secretary,
4 unless a hearing has been previously held, and upon such hearing
5 the findings of the Secretary shall be deemed conclusive.~~

~~6 (g) The Secretary is authorized to provide by regulation, under
7 such conditions and to such extent as he deems proper, for
8 withholding in addition to that otherwise required under this
9 section in cases in which the employer and the employee agree to
10 such additional withholding. Such additional withholding shall
11 for all purposes be treated as other withholding amounts required
12 to be deducted and withheld under this Article.~~

~~13 (h) The act of compliance with any of the provisions of this
14 Article by a nonresident employer shall not constitute an act in
15 evidence of and shall not be deemed to be evidence that such
16 nonresident is doing business in this State.~~

~~17 "§ 105-163.3. Withholding in accordance with regulations.
18 Certain payers must withhold taxes.~~

~~19 (a) Requirement. -- Every payer who pays a contractor more
20 than six hundred dollars (\$600.00) during a calendar year shall
21 deduct and withhold from compensation paid to a contractor the
22 State income taxes payable by the contractor on the compensation
23 as provided in this section. The amount of taxes to be withheld
24 is four percent (4%) of the compensation paid to the contractor.
25 The taxes a payer withholds are held in trust for the Secretary.~~

~~26 (b) Exemptions. -- The withholding requirement does not apply
27 to the following:~~

~~28 (1) Compensation that is subject to the withholding
29 requirement of G.S. 105-163.2.~~

~~30 (2) Compensation paid to an ordained or licensed member
31 of the clergy.~~

~~32 (c) Returns; Due Date. -- A payer shall file a return with the
33 Secretary on a form prepared by the Secretary and shall provide
34 any information required by the Secretary. The return is due and
35 the withheld taxes are payable by the last day of the first month
36 after the end of each calendar quarter during which the payer
37 pays compensation to a contractor. The Secretary may extend the
38 time for filing the return or paying the tax as provided in G.S.
39 105-263.~~

~~40 (d) Annual Statement; Report to Secretary. -- A payer
41 required to deduct and withhold from a contractor's compensation
42 under this section shall furnish to the contractor duplicate
43 copies of a written statement showing the following:~~

- 1 (1) The payer's name, address, and taxpayer
2 identification number.
- 3 (2) The contractor's name, address, and taxpayer
4 identification number.
- 5 (3) The total amount of compensation paid during the
6 calendar year.
- 7 (4) The total amount deducted and withheld under this
8 section during the calendar year.

9 This statement is due by January 31 following the calendar year.
10 If the personal services for which the payer is paying are
11 completed before the end of the calendar year and the contractor
12 requests the statement, the statement is due within 45 days after
13 the payer's last payment of compensation to the contractor. The
14 Secretary may require the payer to include additional information
15 on the statement.

16 Each payer shall file with the Secretary an annual report that
17 compiles the information contained in each of the payer's
18 statements to contractors and any other information required by
19 the Secretary. This report is due on the date prescribed by the
20 Secretary and is in lieu of the information report required by
21 G.S. 105-154.

22 (e) Records. -- If a payer does not withhold from payments to a
23 nonresident corporation or a nonresident limited liability
24 company because the entity has obtained a certificate of
25 authority from the Secretary of State, the payer shall obtain
26 from the entity its corporate identification number issued by the
27 Secretary of State. If a payer does not withhold from payments
28 to an individual because the individual is a resident, the payer
29 shall obtain the individual's address and social security number.
30 If a payer does not withhold from a partnership because the
31 partnership has a permanent place of business in this State, the
32 payer shall obtain the partnership's address and taxpayer
33 identification number. The payer shall retain this information
34 with its records.

35 (f) Payer May Repay Amounts Withheld Improperly. -- A payer may
36 refund to a person any amount the payer withheld improperly from
37 the person under this section, if the refund is made before the
38 end of the calendar year and before the payer furnishes the
39 person the annual statement required by subsection (d). An
40 amount is withheld improperly if it is withheld from a payment to
41 a person who is not a contractor, if it is withheld from a
42 payment that is not compensation, or if it is in excess of the
43 amount required to be withheld under this section. A payer who
44 makes a refund under this section must:

- 1 (1) Not report the amount refunded on the annual
2 statement required by subsection (d); and
3 (2) Either not pay to the Secretary the amount refunded
4 or, if the amount refunded has already been paid to
5 the Secretary, reduce by the amount refunded the
6 next payments to the Secretary of taxes withheld
7 from the person.

8 ~~The manner of withholding and the amount to be deducted and~~
9 ~~withheld under G.S. 105-163.2 shall be determined in accordance~~
10 ~~with tables, rules, and regulations adopted by the Secretary.~~
11 ~~The withholding exemption allowed by these tables, rules, and~~
12 ~~regulations shall, as nearly as possible, approximate the~~
13 ~~exemptions, deductions, and credits to which an employee would be~~
14 ~~entitled under Article 4 of this Chapter.~~

15 "§ 105-163.4. Withholding does not create nexus.

16 A nonresident withholding agent's act in compliance with this
17 Article does not in itself constitute evidence that the
18 nonresident is doing business in this State.

19 ~~No withholding from reimbursement for expenses.~~

20 ~~The amount an employer pays an employee as reimbursement for~~
21 ~~ordinary and necessary expenses incurred by the employee on~~
22 ~~behalf of the employer and in the furtherance of the business of~~
23 ~~the employer is not wages and is not subject to withholding under~~
24 ~~this Article.~~

25 "§ 105-163.5. Exemptions Employee exemptions allowable;
26 certificates.

27 (a) An employee receiving wages ~~shall be~~ is entitled to the
28 exemptions for which ~~such~~ the employee qualifies under the
29 ~~provisions of~~ Article 4 of this Chapter.

30 (b) Every employee shall, ~~on or before January 1, 1960, or at~~
31 the time of commencing employment, ~~whichever is later,~~ furnish
32 his or her employer with a signed withholding exemption
33 certificate informing the employer of the exemptions the employee
34 claims, which in no event shall exceed the amount of exemptions
35 to which the employee is entitled under the Code; ~~but, in the~~
36 ~~event that~~ Code. If the employee fails to file the exemption
37 certificate the employer, in computing amounts to be withheld
38 from the employee's wages, shall allow the employee the exemption
39 accorded a single person with no dependents.

40 (c) Withholding exemption certificates shall take effect as of
41 the beginning of the first payroll period ~~which~~ that ends on or
42 after the date on which ~~such~~ the certificate is furnished, or if
43 payment of wages is made without regard to a payroll period, then
44 ~~such~~ the certificate shall take effect as of the beginning of the

1 miscellaneous payroll period for which the first payment of wages
2 is made on or after the date on which such the certificate is
3 ~~furnished; provided, that certificates furnished before January~~
4 ~~1, 1960, shall be deemed to have been furnished on that date.~~
5 furnished.

6 (d) If, on any day during the calendar year, the amount of
7 withholding exemptions to which the employee is entitled is less
8 than the amount of withholding exemptions claimed by the employee
9 on the withholding exemption certificate then in effect with
10 respect to ~~him,~~ the employee, the employee shall, within 10 days
11 thereafter, furnish the employer with a new withholding exemption
12 certificate ~~relating to~~ stating the amount of withholding
13 exemptions which the employee then claims, which shall in no
14 event exceed the amount to which ~~he~~ the employee is entitled on
15 such that day. If, on any day during the calendar year, the
16 amount of withholding exemptions to which the employee is
17 entitled is greater than the amount of withholding exemptions
18 claimed, the employee may furnish the employer with a new
19 withholding exemption certificate ~~relating to~~ stating the amount
20 of withholding exemptions which the employee then claims, which
21 shall in no event exceed the amount to which ~~he~~ the employee is
22 entitled on such that day.

23 (e) Withholding exemption certificates ~~shall be in such form~~
24 ~~and contain such information as the Secretary may prescribe, but,~~
25 insofar must be in the form and contain the information required
26 by the Secretary. As far as practicable, the Secretary shall
27 cause the form of such the certificates to be substantially
28 similar to federal exemption certificates.

29 (f) In addition to any criminal penalty provided by law, if an
30 individual furnishes his or her employer with an exemption
31 certificate that contains information which has no reasonable
32 basis and that results in a lesser amount of tax being withheld
33 under this Article than would have been withheld if the
34 individual had furnished reasonable information, the individual
35 is subject to a penalty of fifty percent (50%) of the amount not
36 properly withheld.

37 "§ 105-163.6. When employer must file returns and pay withheld
38 taxes.

39 (a) General. -- A return is due quarterly or monthly as
40 specified in this section. A return shall be filed with the
41 Secretary on a form prepared by the Secretary, shall report any
42 payments of withheld taxes made during the period covered by the
43 return, and shall contain any other information required by the
44 Secretary.

1 Withheld taxes are payable quarterly, monthly, or semiweekly,
2 as specified in this section. If the Secretary finds that
3 collection of the amount of taxes this Article requires an
4 employer to withhold is in jeopardy, the Secretary may require
5 the employer to file a return or pay withheld taxes at a time
6 other than that specified in this section.

7 (b) Quarterly. -- An employer who withholds an average of less
8 than five hundred dollars (\$500.00) of State income taxes from
9 wages each month shall file a return and pay the withheld taxes
10 on a quarterly basis. A quarterly return covers a calendar
11 quarter and is due by the last day of the month following the end
12 of the quarter.

13 (c) Monthly. -- An employer who withholds an average of at
14 least five hundred dollars (\$500.00) but less than two thousand
15 dollars (\$2,000) from wages each month shall file a return and
16 pay the withheld taxes on a monthly basis. A return for the
17 months of January through November is due by the 15th day of the
18 month following the end of the month covered by the return. A
19 return for the month of December is due the following January 31.

20 (d) Semiweekly. -- An employer who withholds an average of at
21 least two thousand dollars (\$2,000) of State income taxes from
22 wages each month shall file a return by the date set under the
23 Code for filing a return for federal employment taxes
24 attributable to the same wages and shall pay the withheld State
25 taxes by the date set under the Code for depositing or paying
26 federal employment taxes attributable to the same wages. The date
27 set by the Code for depositing or paying federal employment taxes
28 shall be determined without regard to § 6302(g) of the Code.

29 An extension of time granted to file a return for federal
30 employment taxes attributable to wages is an automatic extension
31 of time for filing a return for State income taxes withheld from
32 the same wages, and an extension of time granted to pay federal
33 employment taxes attributable to wages is an automatic extension
34 of time for paying State income taxes withheld from the same
35 wages. An employer who pays withheld State income taxes under
36 this subsection is not subject to interest on or penalties for a
37 shortfall in the amount due if the employer would not be subject
38 to a failure-to-deposit penalty had the shortfall occurred in a
39 deposit of federal employment taxes attributable to the same
40 wages and the employer pays the shortfall by the date the
41 employer would have to deposit a shortfall in the federal
42 employment taxes.

43 (e) Category. -- The Secretary shall monitor the amount of
44 taxes withheld by an employer or estimate the amount of taxes to

1 be withheld by a new employer and shall direct each employer to
2 pay withheld taxes in accordance with the appropriate schedule.
3 An employer shall file a return and pay withheld taxes in
4 accordance with the Secretary's direction until notified in
5 writing to file and pay under a different schedule.

6 "§ 105-163.7. Statement to employees; information to Secretary.

7 (a) Every employer required to deduct and withhold from an
8 employee's wages under G.S. 105-163.2 shall furnish to ~~each such~~
9 the employee in respect to the remuneration paid by ~~such the~~
10 employer to such employee during the calendar year, on or before
11 January 31 of the succeeding year, or, if ~~his~~ the employment is
12 terminated before the close of ~~such the~~ calendar year, within 30
13 days ~~from~~ after the date on which the last payment of
14 remuneration is made, duplicate copies of a written statement
15 showing the following:

- 16 (1) ~~The name of such person;~~ employer's name, address,
17 and taxpayer identification number.
- 18 (2) ~~The name of the employee and his~~ employee's name
19 and social security account number; number.
- 20 (3) The total amount of ~~wages;~~ wages.
- 21 (4) The total amount deducted and withheld under G.S.
22 105-163.2.

23 (b) The Secretary may require an employer to include
24 information not listed in subsection (a) on the employer's
25 written statement to an employee and to file the statement at a
26 time not required by subsection (a). Every employer shall file an
27 annual report with the Secretary that contains the information
28 given on each of the employer's written statements to an employee
29 and other information required by the Secretary. The annual
30 report is due on the same date the employer's federal information
31 return of federal income taxes withheld from wages is due under
32 the Code. The report required by this subsection is in lieu of
33 the report required by G.S. 105-154.

34 (c) An employer who is required to file an annual report under
35 subsection (b) of this section must report to the Secretary the
36 following information concerning compliance with Article 1 of
37 Chapter 97 of the General Statutes, the Workers' Compensation
38 Act:

- 39 (1) Whether the employer is required to maintain
40 insurance or qualify as a self-insured employer
41 under the provisions of G.S. 97-93.
- 42 (2) Whether the employer is insured, self-insured
43 through a group, or individually self-insured.

- 1 (3) The name of the employer's workers' compensation
2 insurance carrier and the number and expiration
3 date of the insurance policy if the employer has
4 workers' compensation insurance.
- 5 (4) The name of the self-insured group, the group's
6 third-party administrator, and the group's or
7 employer's self-insured code number used by the
8 Department of Insurance, if the employer is a
9 member of a self-insured group.
- 10 (5) The name of the employer's third-party
11 administrator and the employer's self-insured code
12 number used by the Department of Insurance, if the
13 employer is individually self-insured.
- 14 (6) Whether any information reported to the Secretary
15 on a previous return has changed.

16 The Secretary must compile the information concerning workers'
17 compensation reported by employers on an annual report and must
18 give the compiled data to the Industrial Commission.

19 "§ 105-163.8. Liability of ~~employer~~ withholding agents and
20 others.

21 (a) ~~Employer.~~ An employer Withholding Agents. -- A withholding
22 agent who withholds the proper amount of income taxes under G.S.
23 ~~105-163.2~~ this Article and pays the withheld amount to the
24 Secretary is not liable to any person for the amount paid. ~~An~~
25 ~~employer~~ A withholding agent who fails to withhold the proper
26 amount of income taxes or pay the amount withheld to the
27 Secretary is liable for the amount of tax not withheld or not
28 paid. ~~An employer~~ A withholding agent who fails to withhold the
29 amount of income taxes required by this Article or who fails to
30 pay withheld taxes by the due date for paying the taxes is
31 subject to a ~~penalty equal to twenty-five percent (25%) of the~~
32 ~~amount of taxes not withheld or not timely paid to the Secretary.~~
33 the penalties provided in Article 9 of this Chapter.

34 (b) Others. -- A person who has a duty to deduct, account for,
35 or pay taxes required to be withheld under G.S. ~~105-163.2~~ this
36 Article and who fails to do so is liable for the amount of tax
37 not deducted, not accounted for, or not paid.

38 "§ 105-163.9. Refund of overpayment to ~~employer~~ withholding
39 agent.

40 ~~An employer~~ A withholding agent who pays the Secretary more
41 under this Article than the Article requires the ~~employer agent~~
42 to pay may obtain a refund of the overpayment by filing an
43 application for a refund with the Secretary. No refund is
44 allowed, however, if the ~~employer~~ withholding agent withheld the

1 amount of the overpayment from the ~~wages of the employer's~~
2 ~~employees, wages or compensation of the agent's employees or~~
3 contractors. ~~An employer~~ A withholding agent must file an
4 application for a refund within the time period set in G.S.
5 105-266. Interest accrues on a refund as provided in G.S.
6 105-266.

7 "§ 105-163.10. Withheld amounts credited to individual taxpayer
8 for calendar year.

9 The amount deducted and withheld under ~~G.S. 105-163.2~~ this
10 Article during any calendar year from the wages or compensation
11 of ~~any an~~ an individual shall be allowed as a credit to that
12 individual against the tax imposed by ~~G.S. 105-134.2~~ Article 4 of
13 this Chapter for taxable years beginning in that calendar year.
14 The amount deducted and withheld under this Article during any
15 calendar year from the compensation of a nonresident entity shall
16 be allowed as a credit to that entity against the tax imposed by
17 Article 4 of this Chapter for taxable years beginning in that
18 calendar year. If the nonresident entity is a pass-through
19 entity, the entity shall pass through and allocate to each owner
20 the owner's share of the credit.

21 If more than one taxable year begins in ~~that calendar year~~ the
22 calendar year during which the withholding occurred, the amount
23 shall be allowed as a credit against the tax for the last taxable
24 year so beginning. To obtain the credit allowed in this section,
25 the individual or nonresident entity must file with the Secretary
26 one copy of the withholding statement required by G.S. 105-163.3
27 or G.S. 105-163.7 and any other information the Secretary
28 requires.

29 "§ 105-163.11 to 105-163.14. Repealed by Session Laws 1985, c.
30 443, s. 1, effective for taxable years beginning on or after
31 January 1, 1986.

32 "§ 105-163.15. Failure by individual to pay estimated income
33 tax; penalty.

34 (a) In the case of any underpayment of the estimated tax by an
35 individual, there shall be added to the tax imposed under Article
36 4 for the taxable year an amount determined by applying the
37 applicable annual rate established under G.S. 105-241.1(i) to the
38 amount of the underpayment for the period of the underpayment.

39 (b) For purposes of subsection (a), the amount of the
40 underpayment shall be the excess of the required installment,
41 over the amount, if any, of the installment paid on or before the
42 due date for the installment. The period of the underpayment
43 shall run from the due date for the installment to whichever of
44 the following dates is the earlier: (i) the fifteenth day of the

1 fourth month following the close of the taxable year, or (ii)
2 with respect to any portion of the underpayment, the date on
3 which such portion is paid. A payment of estimated tax shall be
4 credited against unpaid required installments in the order in
5 which such installments are required to be paid.

6 (c) For purposes of this section there shall be four required
7 installments for each taxable year with the time for payment of
8 the installments as follows:

- 9 (1) First installment -- April 15 of taxable year;
- 10 (2) Second installment -- June 15 of taxable year;
- 11 (3) Third installment -- September 15 of taxable year;
- 12 and
- 13 (4) Fourth installment -- January 15 of following
- 14 taxable year.

15 (d) Except as provided in subsection (e), the amount of any
16 required installment shall be twenty-five percent (25%) of the
17 required annual payment. The term 'required annual payment' means
18 the lesser of:

- 19 (1) Ninety percent (90%) of the tax shown on the return
20 for the taxable year, or, if no return is filed,
21 ninety percent (90%) of the tax for that year; or
- 22 (2) One hundred percent (100%) of the tax shown on the
23 return of the individual for the preceding taxable
24 year, if the preceding taxable year was a taxable
25 year of 12 months and the individual filed a return
26 for that year.

27 (e) In the case of any required installment, if the individual
28 establishes that the annualized income installment is less than
29 the amount determined under subsection (d), the amount of the
30 required installment shall be the annualized income installment,
31 and any reduction in a required installment resulting from the
32 application of this subsection shall be recaptured by increasing
33 the amount of the next required installment determined under
34 subsection (d) by the amount of the reduction and by increasing
35 subsequent required installments to the extent that the reduction
36 has not previously been recaptured.

37 In the case of any required installment, the annualized income
38 installment is the excess, if any, of (i) an amount equal to the
39 applicable percentage of the tax for the taxable year computed by
40 placing on an annualized basis the taxable income for months in
41 the taxable year ending before the due date for the installment,
42 over (ii) the aggregate amount of any prior required installments
43 for the taxable year. The taxable income shall be placed on an
44 annualized basis under rules prescribed by the Secretary. The

1 applicable percentages for the required installments are as
2 follows:

- 3 (1) First installment -- twenty-two and one-half
4 percent (22.5%);
- 5 (2) Second installment -- forty-five percent (45%);
- 6 (3) Third installment -- sixty-seven and one-half
7 percent (67.5%); and
- 8 (4) Fourth installment -- ninety percent (90%).

9 (f) No addition to the tax shall be imposed under subsection
10 (a) if the tax shown on the return for the taxable year reduced
11 by the tax withheld under ~~Article 4A~~ this Article is less than
12 the amount set in section 6654(e) of the Code or if the
13 individual did not have any liability for tax under Division II
14 of Article 4 for the preceding taxable year.

15 (g) For purposes of this section, the term 'tax' means the tax
16 imposed by Division II of Article 4 minus the credits against the
17 tax allowed by ~~Article 4~~ this Chapter other than the credit
18 allowed by this Article. The amount of the credit allowed under
19 ~~Article 4A~~ this Article for withheld income tax for the taxable
20 year is considered a payment of estimated tax, and an equal part
21 of that amount is considered to have been paid on each due date
22 of the taxable year, unless the taxpayer establishes the dates on
23 which all amounts were actually withheld, in which case the
24 amounts so withheld are considered payments of estimated tax on
25 the dates on which ~~such~~ the amounts were actually withheld.

26 (h) If, on or before January 31 of the following taxable year,
27 the taxpayer files a return for the taxable year and pays in full
28 the amount computed on the return as payable, no addition to tax
29 shall be imposed under subsection (a) with respect to any
30 underpayment of the fourth required installment for the taxable
31 year.

32 (i) Notwithstanding the other provisions of this section, an
33 individual who is a farmer or fisherman for a taxable year is
34 required to make only one installment payment of tax for that
35 year. This installment is due on or before January 15 of the
36 following taxable year but may be paid without penalty or
37 interest on or before March 1 of that year. The amount of the
38 installment payment shall be the lesser of:

- 39 (1) Sixty-six and two-thirds percent (66 2/3%) of the
40 tax shown on the return for the taxable year, or,
41 if no return is filed, sixty-six and two-thirds
42 percent (66 2/3%) of the tax for that year; or
- 43 (2) One hundred percent (100%) of the tax shown on the
44 return of the individual for the preceding taxable

1 year, if the preceding taxable year was a taxable
2 year of 12 months and the individual filed a return
3 for that year.

4 An individual is a farmer or fisherman for any taxable year if
5 the individual's gross income from farming or fishing, including
6 oyster farming, for the taxable year is at least sixty-six and
7 two-thirds percent (66 2/3%) of the total gross income from all
8 sources for the taxable year, or the individual's gross income
9 from farming or fishing, including oyster farming, shown on the
10 return of the individual for the preceding taxable year is at
11 least sixty-six and two-thirds percent (66 2/3%) of the total
12 gross income from all sources shown on the return.

13 (j) In applying this section to a taxable year beginning on
14 any date other than January 1, there shall be substituted, for
15 the months specified in this section, the months that correspond
16 thereto. This section shall be applied to taxable years of less
17 than 12 months in accordance with rules prescribed by the
18 Secretary.

19 (k) This section shall not apply to any estate or trust.

20 "~~§ 105-163.16. Overpayment refunded.~~

21 If the amount of wages or compensation withheld at the source
22 under ~~G.S. 105-163.2~~ this Article exceeds the tax imposed by
23 Article 4 of this Chapter against which the withheld tax is
24 credited under G.S. 105-163.10, the excess is considered an
25 overpayment by the ~~employee, employee or contractor.~~ If the
26 amount of estimated tax paid under G.S. 105-163.15 exceeds the
27 taxes imposed by Article 4 of this Chapter against which the
28 estimated tax is credited under the provisions of this Article,
29 the excess is considered an overpayment by the taxpayer. An
30 overpayment shall be refunded as provided in Article 9 of this
31 Chapter.

32 "~~§ 105-163.17. Administration.~~

33 ~~The provisions of Article 9 of this Chapter apply to the amount~~
34 ~~of State income taxes this Article requires an employer to~~
35 ~~withhold and pay to the Secretary.~~

36 "~~§ 105-163.18. Rules and regulations.~~

37 ~~The Secretary is hereby authorized to prescribe forms and make~~
38 ~~all rules and regulations which he deems necessary in order to~~
39 ~~achieve effective and efficient enforcement of this Article.~~

40 "~~§ 105-163.19 to 105-163.21. Repealed by Session Laws 1967, c.~~
41 ~~1110, s. 4.~~

42 "~~§ 105-163.22. Reciprocity.~~

43 The Secretary ~~of Revenue~~ may, with the approval of the Attorney
44 General, enter into agreements with the taxing authorities of

1 states having income tax withholding statutes with such
2 agreements to govern the amounts to be withheld from the wages
3 and salaries of residents of such other state or states under the
4 provisions of this Article when such other state or states grant
5 similar treatment to the residents of this State. Such agreements
6 may provide for recognition of the anticipated tax credits
7 allowed under the provisions of G.S. 105-151 in determining the
8 amounts to be withheld.

9 "§ 105-163.23. Withholding from federal employees.

10 The Secretary of ~~Revenue is hereby~~ is designated as the proper
11 official to make request for and enter into agreements with the
12 Secretary of the Treasury of the United States to provide for the
13 compliance with this Article by the head of each department or
14 agency of the United States in withholding of State income taxes
15 from wages of federal employees and paying the same to this
16 State. The Secretary is ~~hereby~~ authorized, ~~empowered~~ empowered,
17 and directed to ~~make request for~~ request and enter into ~~such~~
18 these agreements.

19 "§ 105-163.24. Construction of Article.

20 This Article shall be liberally construed in pari materia with
21 Article 4 of this Chapter to the end that taxes levied by Article
22 4 shall be collected with respect to wages and compensation by
23 withholding ~~from wages by employers agents'~~ withholding of the
24 appropriate amounts ~~herein provided for~~ and by individuals'
25 payments in installments ~~by individuals~~ of income tax with
26 respect to income ~~other than wages.~~ not subject to withholding."

27 Section 3. G.S. 105-236(4) reads as rewritten:

28 "(4) Failure to Withhold or Pay Tax When Due. -- In the
29 case of failure to withhold or pay any tax when
30 due, without intent to evade the tax, there shall
31 be an additional tax, as a penalty, of ten percent
32 (10%) of the tax; provided, that such penalty shall
33 in no event be less than five dollars (\$5.00). This
34 penalty does not apply in any of the following
35 circumstances:

36 a. When the amount of tax shown as due on an
37 amended return is paid when the return is
38 filed.

39 b. When a tax due but not shown on a return is
40 assessed by the Secretary and is paid within
41 30 days after the date of the proposed notice
42 of assessment of the tax."

43 Section 4. G.S. 105-163.1(2), as amended by this act,
44 reads as rewritten:

- 1 "(2) Contractor. -- Either of the following:
2 a. A nonresident individual who performs personal
3 services in this State for compensation other
4 than wages.
5 b. A nonresident entity that provides for the
6 performance of ~~the following~~ personal services
7 in this State for ~~compensation: services in~~
8 ~~connection with a performance, an~~
9 ~~entertainment, an athletic event, the creation~~
10 ~~of a film or television program, or the~~
11 ~~construction or repair of a building or~~
12 ~~highway.~~ compensation."

13 Section 5. Section 1 of this act is effective when this
14 act becomes law. Section 4 of this act becomes effective January
15 1, 1999. The remainder of this act becomes effective January 1,
16 1998.

EXPLANATION OF HOUSE BILL 57
Proposed Senate Finance Committee Substitute
Tax Withholding on Nonresidents

TO: Senate Finance Committee
FROM: Sabra Faires, Committee Counsel
DATE: April 16, 1997
SPONSOR: Representative Neely
Recommendation of the Revenue Laws Study Committee

House Bill 57 would require withholding from compensation paid to nonresident individuals and nonresident entities for personal services performed in North Carolina. For services paid to individuals and for athletic, entertainment, and construction services paid to partnerships, corporations, or limited liability companies, the change becomes effective January 1, 1998. For all other personal services paid to these business entities, the change becomes effective January 1, 1999. The bill requires 4% of the amount paid to be withheld. The bill was suggested by the Department of Revenue.

North Carolina taxes the income of its residents and also that income derived by nonresidents from businesses, trades, and occupations carried on in this State. Most other states that have an income tax apply the tax to nonresidents' income in this way. Like North Carolina, these states generally give their residents a credit for income tax paid to other states on income derived from those states.

Many nonresidents who derive income from North Carolina do not pay the North Carolina tax due on this income. This problem is particularly troublesome with respect to single event performers such as athletes or entertainers who may be paid large amounts for their work in North Carolina. It is difficult, expensive, and inefficient for the Department of Revenue to trace and pursue these nonresidents who do not pay the tax they owe.

This bill will impose a withholding requirement on payments made to nonresidents for services performed in this state. This requirement is similar to the current law which requires employers to withhold taxes from wages paid their employees. The new requirement will not apply to wages, which are already covered under the current law; the new requirement applies to payments to independent contractors.

Examples of nonresidents targeted by the proposed withholding requirement are musicians, actors, and individual athletes. Because these individuals may be paid through a partnership, limited liability company, or corporation that does not have ties to this State, the withholding requirement will apply to payments to these entities as well. If the entity is registered in this State or maintains a permanent office in this State, payments to it are not subject to withholding. Payments it makes to nonresidents for their services will, however, be subject to withholding, under either the new requirement for contract payments or the current requirement for wages.

Under this bill, a person or entity who, in the course of a trade or business, pays a nonresident more than \$600 for personal services in this State will be required to withhold 4% of the payment and deposit the withheld taxes with the Department of Revenue. The withholding agent must register with the Department of Revenue. The withheld taxes are due by the last day of the first month after the end of the calendar quarter in which the withholding agent paid the nonresident. As is the case with employers who withhold from employees' wages, the withholding agent will be required to give each nonresident a statement similar to a W-2 form in January and to provide a compilation of these statements to the Department of Revenue. Filing these documents relieves the agent of the existing information reporting requirement of G.S. 105-154.

The withheld taxes will be credited to the nonresident individual or entity from which they were withheld. If the entity is a pass-through entity such as a partnership, Subchapter S corporation, or limited liability company, the credit will pass through to the partners or other owners of the entity. The nonresident will receive credit for the withheld taxes by filing a North Carolina income tax return; any excess will be refunded to the taxpayer.

A number of other states have instituted withholding programs and special audit programs to close the loophole that allows nonresidents to avoid paying state income taxes they owe. California, Connecticut, Minnesota, New Jersey, and South Carolina have withholding requirements. Michigan, Missouri, and New York have special audit programs.

The Proposed Committee Substitute differs from the 4th edition of the bill primarily by deleting the expansion of the income tax exclusion for severance wages that was in the 4th edition and by adding a two-step phase-in. The proposed committee substitute also makes clarifying and administrative changes.

ASSUMPTIONS AND METHODOLOGY: The Department of Revenue requests this legislation to increase the collection of income taxes owed by nonresident companies and individuals. The revenue impact is estimated to be approximately \$8 to \$10 million each year, but the exact dollar amount is unknown due to the lack of data on revenue earned by nonresidents working in the state. The proposed bill would increase General Fund revenues from increased withholding, from increased collections from registered firms now complying with state tax law (Revenue will be better able to track these firms), and from corporate registration fees with the Secretary of State (\$200 for each foreign corporation). Some industries are examined below to gauge the potential revenue gain from nonresident withholding.

GENERAL CONTRACTORS

In 1995, the North Carolina Licensing Board for General Contractors had 1,765 out of state companies licensed to work in the state. These firms sought licensing to work on projects greater than \$30,000 on buildings, highways, public utilities, grading, and improvement of structures. The majority of these firms are from southeastern states such as South Carolina (426), Georgia (205), Virginia (174), Tennessee (155), and Florida (152). However, the Licensing Board stated that other contractors work in the state without a license because of the contract size (< \$30,000) or because they are doing federal jobs.

From 1993 to 1996, 48 out-of-state firms, representing both design and construction, did business with the State Construction Office. The Department of Revenue was asked to check on whether these firms filed income tax returns in North Carolina. Of the 48 firms, only 58.3% or 28 filed returns. If firms working directly for the state are filing only 58.3% of the time, one may assume those contractors working for private customers file at lower rates or not at all.

If it is assumed that each licensed nonresident contractor earned \$100,000 in North Carolina in 1995, what would the state have earned from the proposed withholding law? Assuming these 1,765 firms paid no income tax to the state that year, the 4% withholding on the \$100,000 contract payments would have yielded \$7.06 million in 1995.

PROFESSIONAL GOLF

Passage of this bill would require professional golf tournaments to withhold payment from nonresident golfers. By scanning residence information from the various golf associations, it appeared many of the golfers lived in Florida (no income tax), California and Texas (no income tax). If this requirement were in effect in 1996, the state would have earned \$243,764 from nonresidents in the following tournaments:

<u>Tour</u>	<u>Tournament</u>	<u>Nonresident Winnings</u>
PGA	Greater Greensboro Classic	\$1,800,000
LPGA	Fieldcrest Cannon Classic*	449,142
LPGA	U.S. Women's Open*	1,180,336
Senior PGA	Paine Webber Invitational	800,000
Senior PGA	Vantage Championship	1,500,000
Nike Tour	Carolina Classic	196,935
Hooters Tour	Charlotte*	94,631
Hooters Tour	Fayetteville*	<u>73,058</u>
		\$6,094,102

*Known N. C. residents were deducted from winnings.

NASCAR

Most of the NASCAR race winnings in North Carolina are already being taxed because 32 racing teams are based in the state. Withholding 4% of the prize money earned by nonresident Winston Cup racers in 1996 (shown below) would have earned the state \$57,910.

Winston Cup	GM Goodwrench 400	\$287,780
Winston Cup	Tyson/Holly Farms 400	178,190
Winston Cup	First Union 400	194,580
Winston Cup	Coca Cola 600	286,030
Winston Cup	UAW/GM Teamwork 500	274,085
Winston Cup	AC-Delco 400	<u>227,075</u>
		\$1,447,740

Information was not available for all Busch and Craftsman racing teams, but known state resident winnings were subtracted from the race purses below. These races in 1996 would have yielded a maximum withholding of \$47,561.

Busch Grand Natl.	Red Dog 300	188,495
Busch Grand Natl	All Pro Bumper to Bumper 300	276,245
Busch Grand Natl	AC-Delco 200	191,610
Busch Grand Natl	Sun Drop 400	125,335
Busch Grand Natl	Goodwrench 200	228,205
Craftsman Truck	Lowe's 250	<u>179,140</u>
		\$1,189,030

The total expected withholding from NASCAR events in 1996 would have been \$105,471.

CONCERTS

Revenue information for 1996 was obtained from two major venues and one major concert promoter. To estimate the withholding amount for concert acts, gross revenues must be reduced by the state gross receipts tax, local taxes, personnel expenses such as ticket sales and security, facility leases, and promotional expenses. One promoter estimated the entertainer's check would be about 60% of the gross revenues. Of course the artist must then pay his or her expenses to produce the show.

The following gross revenues are for 1996. Walnut Creek and Cellar Door are actual, but Blockbuster is an estimate.

Walnut Creek (Raleigh)	\$7,542,000	
Blockbuster (Charlotte)	5,028,000	
Cellar Door (NC concerts)	<u>1,639,000</u>	
	\$14,209,000	X 60% = \$8,525,400
		\$8,525,400 X 4% withholding = \$341,016

OTHER

- 1. Film Industry** - In 1995, the 54 feature films produced in North Carolina generated an estimated \$391 million in revenues in the state. According to Bill Arnold with the North Carolina Film Office in the Department of Commerce, these film revenues do not include payments made to producers, directors and the movie stars themselves. Tax withholding has significant revenue potential in this industry.
- 2. DOT Contracts** - In 1996, the Department of Transportation spent \$284.5 million with out of state firms. Many of these contracts were purchase orders for goods. The largest contracts were for highway construction. The Department of Revenue will be asked to look at the filing status of the top recipients of DOT funds.
- 3. Misc.** - North Carolina's major fishing tournaments attracts anglers from across the nation due to their large cash prizes. Professional dance and theater groups perform in the many of the state's cities throughout the year earning income that is taxable. There are many other examples.



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 57

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

H57-ALC-4/16

Date _____, 199

Comm. Sub. [YES]
Amends Title []
Proposed Committee Substitute

Senator Hoyle

1 moves to amend the bill on page 1, lines 13 - 16,
2 by rewriting the lines to read:

3 ~~"the agricultural products to market.~~
4 ~~either of the following:~~

5 a. Remuneration paid by a farmer for services performed
6 on the farmer's farm in producing or harvesting
7 agricultural products or in transporting the
8 agricultural products to market.

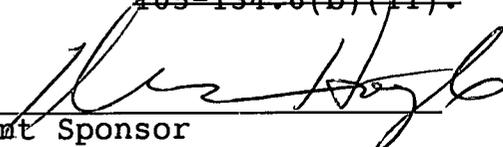
9 b. The amount of severance wages paid to an employee
10 during the taxable year that is exempt from State
11 income tax for that taxable year under G.S.
12 105-134.6(b)(11).";
13

14 and on page 5, lines 6 - 9,
15 by rewriting the lines to read:

16 ~~"either of the following:~~

17 ~~a. Remuneration paid by a farmer for services performed~~
18 ~~on the farmer's farm in producing or harvesting~~
19 ~~agricultural products or in transporting the~~
20 ~~agricultural products to market.~~

21 ~~b. The amount of severance wages paid to an employee~~
22 ~~during the taxable year that is exempt from State~~
23 ~~income tax for that taxable year under G.S.~~
24 ~~105-134.6(b)(11)."~~
25

SIGNED 
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

HOUSE BILL 57
Committee Substitute Favorable 3/6/97
Third Edition Engrossed 3/17/97
Fourth Edition Engrossed 3/20/97
Proposed Senate Committee Substitute H57-PCS7246

Short Title: Withholding for Nonresidents.

(Public)

Sponsors:

Referred to:

February 5, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO REQUIRE WITHHOLDING FROM CERTAIN PAYMENTS TO
3 NONRESIDENTS IN ORDER TO PREVENT NONRESIDENTS FROM
4 AVOIDING NORTH CAROLINA INCOME TAXES AND TO CONFORM TO
5 FEDERAL RULES ON WAGE WITHHOLDING BY FARMERS.

6 The General Assembly of North Carolina enacts:

7 Section 1. G.S. 105-163.1(15) reads as rewritten:

8 "(15) Wages. -- The term has the same meaning as in section 3401 of the
9 Code except it does not include ~~remuneration paid by a farmer for~~
10 ~~services performed on the farmer's farm in producing or harvesting~~
11 ~~agricultural products or in transporting the agricultural products to~~
12 ~~market.~~ either of the following:

13 a. Remuneration paid by a farmer for services performed on
14 the farmer's farm in producing or harvesting agricultural
15 products or in transporting the agricultural products to
16 market.

17 b. The amount of severance wages paid to an employee during
18 the taxable year that is exempt from State income tax for
19 that taxable year under G.S. 105-134.6(b)(11)."

20 Section 2. Article 4A of Chapter 105 of the General Statutes, as
21 amended by Section 1 of this act, reads as rewritten:

"ARTICLE 4A.

~~"Withholding of Income Taxes from Wages and Payment of Income
Tax by Withholding; Estimated Income Tax for Individuals.~~

"§ 105-163.1. Definitions.

The following definitions apply in this Article:

- (1) Compensation. -- Consideration a payer pays a nonresident individual or nonresident entity for personal services performed in this State.
- (2) Contractor. -- Either of the following:
 - a. A nonresident individual who performs personal services in this State for compensation other than wages.
 - b. A nonresident entity that provides for the performance of the following personal services in this State for compensation: services in connection with a performance, an entertainment, an athletic event, the creation of a film or television program, or the construction or repair of a building or highway.
- (3) Dependent. -- An individual with respect to whom an income tax exemption is allowed under the Code.
- (4) Employee. -- An individual, whether a resident or a nonresident of this State, who performs services in this State for wages or an individual who is a resident of this State and performs services outside this State for wages. The term includes an ordained or licensed member of the clergy who elects to be considered an employee under G.S. 105-163.1A, an officer of a corporation, and an elected public official.
- (5) Employer. -- A person for whom an individual performs services for wages. In applying the requirements to withhold income taxes from wages and pay the withheld taxes, the term includes a person who:
 - a. Controls the payment of wages to an individual for services performed for another.
 - b. Pays wages on behalf of a person who is not engaged in trade or business in this State.
 - c. Pays wages on behalf of a unit of government that is not located in this State.
 - d. Pays wages for any other reason.
- (6) Individual. -- Defined in G.S. 105-134.1.
- (7) Miscellaneous payroll period. -- A payroll period other than a daily, weekly, biweekly, semimonthly, monthly, quarterly, semiannual, or annual payroll period.
- (8) Nonresident entity. -- Any of the following:
 - a. A foreign limited liability company, as defined in G.S. 57C-1-03, that has not obtained a certificate of authority from the

- 1 Secretary of State pursuant to Article 7 of Chapter 57C of
2 the General Statutes.
- 3 b. A foreign limited partnership as defined in G.S. 59-102 or a
4 general partnership formed under the laws of any
5 jurisdiction other than this State, unless the partnership
6 maintains a permanent place of business in this State.
- 7 c. A foreign corporation, as defined in G.S. 55-1-40, that has
8 not obtained a certificate of authority from the Secretary of
9 State pursuant to Article 15 of Chapter 55 of the General
10 Statutes.
- 11 (9) Pass-through entity. -- Defined in G.S. 105-163.010.
- 12 (10) Payer. -- A person who, in the course of a trade or business, pays a
13 nonresident individual or a nonresident entity compensation for
14 personal services performed in this State.
- 15 (11) Payroll period. -- A period for which an employer ordinarily pays
16 wages to an employee of the employer.
- 17 (12) Taxable year. -- Defined in section 441(b) of the Code.
- 18 (13) Wages. -- The term has the same meaning as in section 3401 of the
19 Code except it does not include either of the following:
- 20 a. The amount of severance wages paid to an employee during
21 the taxable year that is exempt from State income tax for
22 that taxable year under G.S. 105-134.6(b)(11).
- 23 b. The amount an employer pays an employee as
24 reimbursement for ordinary and necessary expenses incurred
25 by the employee on behalf of the employer and in the
26 furtherance of the business of the employer.
- 27 (14) Withholding agent. -- An employer or a payer.
- 28 (1) Code. -- Defined in G.S. 105-228.90.
- 29 (2) ~~Repealed by Session Laws 1989 (Regular Session, 1990), c. 945, s.~~
30 ~~5.~~
- 31 (3) ~~Dependent. -- An individual with respect to whom an income tax~~
32 ~~exemption is allowed under the Code.~~
- 33 (4) ~~Employee. -- An individual, whether a resident or a nonresident of~~
34 ~~this State, who performs services in this State for wages or an~~
35 ~~individual who is a resident of this State and performs services~~
36 ~~outside this State for wages. The term includes an ordained or~~
37 ~~licensed clergyman who elects to be considered an employee under~~
38 ~~G.S. 105-163.1A, an officer of a corporation, and an elected public~~
39 ~~official.~~
- 40 (5) ~~Employer. -- A person for whom an individual performs services~~
41 ~~for wages. In applying the requirements to withhold income taxes~~
42 ~~from wages and pay the withheld taxes, the term includes a person~~
43 ~~who:~~

- 1 a. ~~Controls the payment of wages to an individual for services~~
 2 ~~performed for another.~~
- 3 b. ~~Pays wages on behalf of a person who is not engaged in~~
 4 ~~trade or business in this State.~~
- 5 e. ~~Pays wages on behalf of a unit of government that is not~~
 6 ~~located in this State.~~
- 7 d. ~~Pays wages for any other reason.~~
- 8 (6), (7) ~~Repealed by Session Laws 1989 (Regular Session, 1990), c.~~
 9 ~~945, s. 5.~~
- 10 (8) ~~Fiduciary. -- A guardian, a trustee, an executor, an administrator, a~~
 11 ~~receiver, a conservator, or other person acting in a fiduciary~~
 12 ~~capacity for another.~~
- 13 (9) ~~Fiscal year. -- Defined in section 441(e) of the Code.~~
- 14 (10) ~~Individual. -- A natural person.~~
- 15 (11) ~~Miscellaneous payroll period. -- A payroll period other than a~~
 16 ~~daily, weekly, biweekly, semimonthly, monthly, quarterly,~~
 17 ~~semiannual, or annual payroll period.~~
- 18 (12) ~~Payroll period. -- A period for which an employer ordinarily pays~~
 19 ~~wages to an employee of the employer.~~
- 20 (13) ~~Person. -- Defined in G.S. 105-228.90.~~
- 21 (14) ~~Taxable year. -- Defined in section 441(b) of the Code.~~
- 22 (14a) ~~Secretary. -- The Secretary of Revenue.~~
- 23 (15) ~~Wages. -- The term has the same meaning as in section 3401 of the~~
 24 ~~Code except it does not include either of the following:~~
- 25 a. ~~Remuneration paid by a farmer for services performed on~~
 26 ~~the farmer's farm in producing or harvesting agricultural~~
 27 ~~products or in transporting the agricultural products to~~
 28 ~~market.~~
- 29 b. ~~The amount of severance wages paid to an employee during~~
 30 ~~the taxable year that is exempt from State income tax for~~
 31 ~~that taxable year under G.S. 105-134.6(b)(11).~~

32 **§ 105-163.2. Withholding. Employers must withhold taxes.**

33 (a) Withholding Required. -- An employer shall deduct and withhold from the
 34 wages of each employee the State income taxes payable by the employee on the
 35 wages. For each payroll period, the employer shall withhold from the employee's
 36 wages an amount that would approximate the employee's income tax liability under
 37 Article 4 of this Chapter if the employer withheld the same amount from the
 38 employee's wages for each similar payroll period in a calendar year. In calculating
 39 an employee's anticipated income tax liability, the employer shall allow for the
 40 exemptions, deductions, and credits to which the employee is entitled under Article 4
 41 of this Chapter. The amount of State income taxes withheld by an employer is held
 42 in trust for the Secretary.

43 (b) Withholding Tables. -- The manner of withholding and the amount to be
 44 withheld shall be determined in accordance with tables and rules adopted by the

1 Secretary. The withholding exemption allowed by these tables and rules shall, as
2 nearly as possible, approximate the exemptions, deductions, and credits to which an
3 employee would be entitled under Article 4 of this Chapter. The Secretary shall
4 ~~cause to be prepared and shall~~ promulgate tables for computing amounts to be
5 withheld with respect to different rates of wages for different payroll periods
6 applicable to the various combinations of exemptions to which an employee may be
7 entitled and taking into account the appropriate standard deduction. The tables may
8 provide for the same amount to be withheld within reasonable salary brackets or
9 ranges so designed as to result in the withholding during a year of approximately the
10 amount of an employee's indicated income tax liability for that year. The
11 withholding of wages pursuant to and in accordance with these tables shall be
12 deemed as a matter of law to constitute compliance with the provisions of subsection
13 (a) of this section, notwithstanding any other provisions of this Article.

14 (c) Withholding if No Payroll Period. -- If wages are paid with respect to a period
15 ~~which that~~ is not a payroll period, the amount to be deducted and withheld shall be
16 that applicable in the case of a miscellaneous payroll period containing a number of
17 days, excluding Sundays and holidays, equal to the number of days in the period with
18 respect to which such wages are paid. ~~(d) In paid.~~ In any case in which wages are
19 paid by an employer without regard to any payroll period or other period, the
20 amount to be deducted and withheld shall be that applicable in the case of a
21 miscellaneous payroll period containing a number of days equal to the number of
22 days, excluding Sundays and holidays, which have elapsed since the date of the last
23 payment of such wages by such employer during the calendar year, or the date of
24 commencement of employment with such employer during such year, or January 1 of
25 such year, whichever is the later.

26 (d) Estimated Withholding. -- The Secretary may, by rule, authorize employers to
27 estimate the wages to be paid to an employee during a calendar quarter, calculate the
28 amount to be withheld for each period based on the estimated wages, and, upon
29 payment of wages to the employee, adjust the withholding so that the amount actually
30 withheld is the amount that would be required to be withheld if the employee's
31 payroll period were quarterly.

32 (e) Alternatives to Tables. -- If the Secretary determines that use of the
33 withholding tables would be impractical, would impose an unreasonable burden on
34 an employer, or would produce substantially incorrect results, the Secretary may
35 authorize or require an employer to use some other method of determining the
36 amounts to be withheld under this Article. The alternative method authorized by the
37 Secretary must reasonably approximate the predicted income tax liability of the
38 affected employees. In addition, with the agreement of the employer and employee,
39 the Secretary may authorize an employer to use an alternative method that results in
40 withholding of a greater amount than otherwise required under this section.

41 The Secretary's authorization of an alternative method is discretionary and may be
42 cancelled at any time without advance notice if the Secretary finds that the method is
43 being abused or is not resulting in the withholding of an amount reasonably
44 approximating the predicted income tax liability of the affected employees. The

1 Secretary shall give an employer written notice of any cancellation and the findings
2 upon which the cancellation is based. The cancellation becomes effective upon the
3 employer's receipt of this notice or on the third day after the notice was mailed to
4 the employer, whichever occurs first. If the employer requests a hearing on the
5 cancellation within 30 days after the cancellation, the Secretary shall grant a hearing.
6 After a hearing, the Secretary's findings are conclusive.

7 ~~(e) The Secretary may, by regulations, authorize employers:~~

8 ~~(1) To estimate the wages which will be paid to any employee in any~~
9 ~~quarter of the calendar year;~~

10 ~~(2) To determine the amount to be deducted and withheld upon each~~
11 ~~payment of wages to such employee during such quarter as if the~~
12 ~~appropriate average of the wages so estimated constituted the~~
13 ~~actual wages paid; and~~

14 ~~(3) To deduct and withhold upon any payment of wages to such~~
15 ~~employee during such quarter such amount as may be necessary to~~
16 ~~adjust the amount actually deducted and withheld upon the wages~~
17 ~~of such employee during such quarter to the amount that would be~~
18 ~~required to be deducted and withheld during such quarter if the~~
19 ~~payroll period of the employee was quarterly.~~

20 ~~(f) The Secretary is authorized in unusual circumstances wherein he finds that the~~
21 ~~use of the prescribed tables is impracticable or constitutes an unreasonable~~
22 ~~requirement of the employer to authorize such employer to use some other method of~~
23 ~~determining the amounts to be withheld under this Article, provided the amounts~~
24 ~~withheld under such other method will reasonably approximate the indicated income~~
25 ~~tax liability of his employees. Further, the Secretary may authorize an employer to~~
26 ~~use another method for determining the amounts to be withheld under the provisions~~
27 ~~of this Article from the wages or salaries of groups of employees or individual~~
28 ~~employees if the circumstances are such that the use of the tables would produce~~
29 ~~substantially incorrect results. Any authorization of the use of a different method~~
30 ~~shall be subject to review and cancellation or alteration by the Secretary every twelfth~~
31 ~~month, and the Secretary may cancel such authorization or order an alteration of~~
32 ~~such method at any time upon a finding by him that such authorization is being~~
33 ~~abused or that such method is not resulting in the withholding of a sum reasonably~~
34 ~~approximating the indicated income tax liability of the employees, which finding may~~
35 ~~be made by the Secretary with or without notice or a hearing and shall be conclusive~~
36 ~~except as hereinafter provided. The Secretary shall notify the employer in writing of~~
37 ~~his finding and order thereon, and such notice shall be deemed to have been received~~
38 ~~by the employer on the third day after having been deposited in the mail and the~~
39 ~~employer shall thereafter abide by such order. Any employer feeling aggrieved by~~
40 ~~such order may thereafter apply for a hearing thereon before the Secretary, unless a~~
41 ~~hearing has been previously held, and upon such hearing the findings of the Secretary~~
42 ~~shall be deemed conclusive.~~

43 ~~(g) The Secretary is authorized to provide by regulation, under such conditions~~
44 ~~and to such extent as he deems proper, for withholding in addition to that otherwise~~

1 ~~required under this section in cases in which the employer and the employee agree to~~
2 ~~such additional withholding. Such additional withholding shall for all purposes be~~
3 ~~treated as other withholding amounts required to be deducted and withheld under~~
4 ~~this Article.~~

5 ~~(h) The act of compliance with any of the provisions of this Article by a~~
6 ~~nonresident employer shall not constitute an act in evidence of and shall not be~~
7 ~~deemed to be evidence that such nonresident is doing business in this State.~~

8 ~~"§ 105-163.3. Withholding in accordance with regulations. Certain payers must~~
9 ~~withhold taxes.~~

10 ~~(a) Requirement. -- Every payer who pays a contractor more than six hundred~~
11 ~~dollars (\$600.00) during a calendar year shall deduct and withhold from~~
12 ~~compensation paid to a contractor the State income taxes payable by the contractor~~
13 ~~on the compensation as provided in this section. The amount of taxes to be withheld~~
14 ~~is four percent (4%) of the compensation paid to the contractor. The taxes a payer~~
15 ~~withholds are held in trust for the Secretary.~~

16 ~~(b) Exemptions. -- The withholding requirement does not apply to the following:~~

- 17 ~~(1) Compensation that is subject to the withholding requirement of~~
18 ~~G.S. 105-163.2.~~
19 ~~(2) Compensation paid to an ordained or licensed member of the~~
20 ~~clergy.~~

21 ~~(c) Returns; Due Date. -- A payer shall file a return with the Secretary on a form~~
22 ~~prepared by the Secretary and shall provide any information required by the~~
23 ~~Secretary. The return is due and the withheld taxes are payable by the last day of the~~
24 ~~first month after the end of each calendar quarter during which the payer pays~~
25 ~~compensation to a contractor. The Secretary may extend the time for filing the~~
26 ~~return or paying the tax as provided in G.S. 105-263.~~

27 ~~(d) Annual Statement; Report to Secretary. -- A payer required to deduct and~~
28 ~~withhold from a contractor's compensation under this section shall furnish to the~~
29 ~~contractor duplicate copies of a written statement showing the following:~~

- 30 ~~(1) The payer's name, address, and taxpayer identification number.~~
31 ~~(2) The contractor's name, address, and taxpayer identification~~
32 ~~number.~~
33 ~~(3) The total amount of compensation paid during the calendar year.~~
34 ~~(4) The total amount deducted and withheld under this section during~~
35 ~~the calendar year.~~

36 ~~This statement is due by January 31 following the calendar year. If the personal~~
37 ~~services for which the payer is paying are completed before the end of the calendar~~
38 ~~year and the contractor requests the statement, the statement is due within 45 days~~
39 ~~after the payer's last payment of compensation to the contractor. The Secretary may~~
40 ~~require the payer to include additional information on the statement.~~

41 ~~Each payer shall file with the Secretary an annual report that compiles the~~
42 ~~information contained in each of the payer's statements to contractors and any other~~
43 ~~information required by the Secretary. This report is due on the date prescribed by~~
44 ~~the Secretary and is in lieu of the information report required by G.S. 105-154.~~

1 (e) Records. -- If a payer does not withhold from payments to a nonresident
2 corporation or a nonresident limited liability company because the entity has
3 obtained a certificate of authority from the Secretary of State, the payer shall obtain
4 from the entity its corporate identification number issued by the Secretary of State. If
5 a payer does not withhold from payments to an individual because the individual is a
6 resident, the payer shall obtain the individual's address and social security number.
7 If a payer does not withhold from a partnership because the partnership has a
8 permanent place of business in this State, the payer shall obtain the partnership's
9 address and taxpayer identification number. The payer shall retain this information
10 with its records.

11 (f) Payer May Repay Amounts Withheld Improperly. -- A payer may refund to a
12 person any amount the payer withheld improperly from the person under this section,
13 if the refund is made before the end of the calendar year and before the payer
14 furnishes the person the annual statement required by subsection (d) of this section.
15 An amount is withheld improperly if it is withheld from a payment to a person who
16 is not a contractor, if it is withheld from a payment that is not compensation, or if it
17 is in excess of the amount required to be withheld under this section. A payer who
18 makes a refund under this section must:

19 (1) Not report the amount refunded on the annual statement required
20 by subsection (d); and

21 (2) Either not pay to the Secretary the amount refunded or, if the
22 amount refunded has already been paid to the Secretary, reduce by
23 the amount refunded the next payments to the Secretary of taxes
24 withheld from the person.

25 ~~The manner of withholding and the amount to be deducted and withheld under~~
26 ~~G.S. 105-163.2 shall be determined in accordance with tables, rules, and regulations~~
27 ~~adopted by the Secretary. The withholding exemption allowed by these tables, rules,~~
28 ~~and regulations shall, as nearly as possible, approximate the exemptions, deductions,~~
29 ~~and credits to which an employee would be entitled under Article 4 of this Chapter.~~

30 **"§ 105-163.4. Withholding does not create nexus.**

31 A nonresident withholding agent's act in compliance with this Article does not in
32 itself constitute evidence that the nonresident is doing business in this State.

33 ~~No withholding from reimbursement for expenses.~~

34 ~~The amount an employer pays an employee as reimbursement for ordinary and~~
35 ~~necessary expenses incurred by the employee on behalf of the employer and in the~~
36 ~~furtherance of the business of the employer is not wages and is not subject to~~
37 ~~withholding under this Article.~~

38 **"§ 105-163.5. Exemptions Employee exemptions allowable; certificates.**

39 (a) ~~An employee receiving wages shall be~~ is entitled to the exemptions for which
40 ~~such~~ the employee qualifies under ~~the provisions of~~ Article 4 of this Chapter.

41 (b) Every employee shall, ~~on or before January 1, 1960, or~~ at the time of
42 commencing employment, ~~whichever is later,~~ furnish his or her employer with a
43 signed withholding exemption certificate informing the employer of the exemptions
44 the employee claims, which in no event shall exceed the amount of exemptions to

1 which the employee is entitled under the ~~Code; but, in the event that~~ Code. If the
2 employee fails to file the exemption certificate the employer, in computing amounts
3 to be withheld from the employee's wages, shall allow the employee the exemption
4 accorded a single person with no dependents.

5 (c) Withholding exemption certificates shall take effect as of the beginning of the
6 first payroll period ~~which that~~ ends on or after the date on which ~~such the~~ the certificate
7 is furnished, or if payment of wages is made without regard to a payroll period, then
8 ~~such the~~ certificate shall take effect as of the beginning of the miscellaneous payroll
9 period for which the first payment of wages is made on or after the date on which
10 ~~such the~~ certificate is furnished; ~~provided, that certificates furnished before January 1,~~
11 ~~1960, shall be deemed to have been furnished on that date.~~ furnished.

12 (d) If, on any day during the calendar year, the amount of withholding exemptions
13 to which the employee is entitled is less than the amount of withholding exemptions
14 claimed by the employee on the withholding exemption certificate then in effect with
15 respect to ~~him,~~ the employee, the employee shall, within 10 days thereafter, furnish
16 the employer with a new withholding exemption certificate ~~relating to~~ stating the
17 amount of withholding exemptions which the employee then claims, which shall in
18 no event exceed the amount to which ~~he~~ the employee is entitled on ~~such that~~ that day. If,
19 on any day during the calendar year, the amount of withholding exemptions to which
20 the employee is entitled is greater than the amount of withholding exemptions
21 claimed, the employee may furnish the employer with a new withholding exemption
22 certificate ~~relating to~~ stating the amount of withholding exemptions which the
23 employee then claims, which shall in no event exceed the amount to which ~~he~~ the
24 employee is entitled on ~~such that~~ that day.

25 (e) Withholding exemption certificates ~~shall be in such form and contain such~~
26 ~~information as the Secretary may prescribe, but, insofar~~ must be in the form and
27 contain the information required by the Secretary. As far as practicable, the Secretary
28 shall cause the form of ~~such the~~ the certificates to be substantially similar to federal
29 exemption certificates.

30 (f) In addition to any criminal penalty provided by law, if an individual furnishes
31 his or her employer ~~with~~ an exemption certificate that contains information which
32 has no reasonable basis and that results in a lesser amount of tax being withheld
33 under this Article than would have been withheld if the individual had furnished
34 reasonable information, the individual is subject to a penalty of fifty percent (50%) of
35 the amount not properly withheld.

36 **"§ 105-163.6. When employer must file returns and pay withheld taxes.**

37 (a) General. -- A return is due quarterly or monthly as specified in this section. A
38 return shall be filed with the Secretary on a form prepared by the Secretary, shall
39 report any payments of withheld taxes made during the period covered by the return,
40 and shall contain any other information required by the Secretary.

41 Withheld taxes are payable quarterly, monthly, or semiweekly, as specified in this
42 section. If the Secretary finds that collection of the amount of taxes this Article
43 requires an employer to withhold is in jeopardy, the Secretary may require the

1 employer to file a return or pay withheld taxes at a time other than that specified in
2 this section.

3 (b) Quarterly. -- An employer who withholds an average of less than five hundred
4 dollars (\$500.00) of State income taxes from wages each month shall file a return and
5 pay the withheld taxes on a quarterly basis. A quarterly return covers a calendar
6 quarter and is due by the last day of the month following the end of the quarter.

7 (c) Monthly. -- An employer who withholds an average of at least five hundred
8 dollars (\$500.00) but less than two thousand dollars (\$2,000) from wages each month
9 shall file a return and pay the withheld taxes on a monthly basis. A return for the
10 months of January through November is due by the 15th day of the month following
11 the end of the month covered by the return. A return for the month of December is
12 due the following January 31.

13 (d) Semiweekly. -- An employer who withholds an average of at least two
14 thousand dollars (\$2,000) of State income taxes from wages each month shall file a
15 return by the date set under the Code for filing a return for federal employment taxes
16 attributable to the same wages and shall pay the withheld State taxes by the date set
17 under the Code for depositing or paying federal employment taxes attributable to the
18 same wages. The date set by the Code for depositing or paying federal employment
19 taxes shall be determined without regard to § 6302(g) of the Code.

20 An extension of time granted to file a return for federal employment taxes
21 attributable to wages is an automatic extension of time for filing a return for State
22 income taxes withheld from the same wages, and an extension of time granted to pay
23 federal employment taxes attributable to wages is an automatic extension of time for
24 paying State income taxes withheld from the same wages. An employer who pays
25 withheld State income taxes under this subsection is not subject to interest on or
26 penalties for a shortfall in the amount due if the employer would not be subject to a
27 failure-to-deposit penalty had the shortfall occurred in a deposit of federal
28 employment taxes attributable to the same wages and the employer pays the shortfall
29 by the date the employer would have to deposit a shortfall in the federal employment
30 taxes.

31 (e) Category. -- The Secretary shall monitor the amount of taxes withheld by an
32 employer or estimate the amount of taxes to be withheld by a new employer and
33 shall direct each employer to pay withheld taxes in accordance with the appropriate
34 schedule. An employer shall file a return and pay withheld taxes in accordance with
35 the Secretary's direction until notified in writing to file and pay under a different
36 schedule.

37 **"§ 105-163.7. Statement to employees; information to Secretary.**

38 (a) Every employer required to deduct and withhold from an employee's wages
39 under G.S. 105-163.2 shall furnish to ~~each such~~ the employee in respect to the
40 remuneration paid by ~~such the~~ employer to such employee during the calendar year,
41 on or before January 31 of the succeeding year, or, if ~~his~~ the employment is
42 terminated before the close of ~~such the~~ calendar year, within 30 days ~~from~~ after the
43 date on which the last payment of remuneration is made, duplicate copies of a
44 written statement showing the following:

- 1 (1) ~~The name of such person;~~ employer's name, address, and taxpayer
2 identification number.
3 (2) ~~The name of the employee and his~~ employee's name and social
4 security account number; number.
5 (3) The total amount of ~~wages;~~ wages.
6 (4) The total amount deducted and withheld under G.S. 105-163.2.

7 (b) The Secretary may require an employer to include information not listed in
8 subsection (a) on the employer's written statement to an employee and to file the
9 statement at a time not required by subsection (a). Every employer shall file an
10 annual report with the Secretary that contains the information given on each of the
11 employer's written statements to an employee and other information required by the
12 Secretary. The annual report is due on the same date the employer's federal
13 information return of federal income taxes withheld from wages is due under the
14 Code. The report required by this subsection is in lieu of the report required by G.S.
15 105-154.

16 (c) An employer who is required to file an annual report under subsection (b) of
17 this section must report to the Secretary the following information concerning
18 compliance with Article 1 of Chapter 97 of the General Statutes, the Workers'
19 Compensation Act:

- 20 (1) Whether the employer is required to maintain insurance or qualify
21 as a self-insured employer under the provisions of G.S. 97-93.
22 (2) Whether the employer is insured, self-insured through a group, or
23 individually self-insured.
24 (3) The name of the employer's workers' compensation insurance
25 carrier and the number and expiration date of the insurance policy
26 if the employer has workers' compensation insurance.
27 (4) The name of the self-insured group, the group's third-party
28 administrator, and the group's or employer's self-insured code
29 number used by the Department of Insurance, if the employer is a
30 member of a self-insured group.
31 (5) The name of the employer's third-party administrator and the
32 employer's self-insured code number used by the Department of
33 Insurance, if the employer is individually self-insured.
34 (6) Whether any information reported to the Secretary on a previous
35 return has changed.

36 The Secretary must compile the information concerning workers' compensation
37 reported by employers on an annual report and must give the compiled data to the
38 Industrial Commission.

39 **"§ 105-163.8. Liability of employer withholding agents and others.**

40 (a) ~~Employer.~~ Withholding Agents. -- A withholding agent who
41 withholds the proper amount of income taxes under ~~G.S. 105-163.2~~ this Article and
42 pays the withheld amount to the Secretary is not liable to any person for the amount
43 paid. ~~An employer~~ A withholding agent who fails to withhold the proper amount of
44 income taxes or pay the amount withheld to the Secretary is liable for the amount of

1 tax not withheld or not paid. ~~An employer~~ A withholding agent who fails to
2 withhold the amount of income taxes required by this Article or who fails to pay
3 withheld taxes by the due date for paying the taxes is subject to ~~a penalty equal to~~
4 ~~twenty five percent (25%) of the amount of taxes not withheld or not timely paid to~~
5 ~~the Secretary.~~ the penalties provided in Article 9 of this Chapter.

6 (b) Others. -- A person who has a duty to deduct, account for, or pay taxes
7 required to be withheld under ~~G.S. 105-163.2~~ this Article and who fails to do so is
8 liable for the amount of tax not deducted, not accounted for, or not paid.

9 **"§ 105-163.9. Refund of overpayment to ~~employer.~~ withholding agent.**

10 ~~An employer~~ A withholding agent who pays the Secretary more under this Article
11 than the Article requires the ~~employer~~ agent to pay may obtain a refund of the
12 overpayment by filing an application for a refund with the Secretary. No refund is
13 allowed, however, if the ~~employer~~ withholding agent withheld the amount of the
14 overpayment from the ~~wages of the employer's employees.~~ wages or compensation of
15 the agent's employees or contractors. ~~An employer~~ A withholding agent must file an
16 application for a refund within the time period set in G.S. 105-266. Interest accrues
17 on a refund as provided in G.S. 105-266.

18 **"§ 105-163.10. Withheld amounts credited to ~~individual taxpayer~~ for calendar year.**

19 The amount deducted and withheld under ~~G.S. 105-163.2~~ this Article during any
20 calendar year from the wages or compensation of ~~any an~~ an individual shall be allowed
21 as a credit to that individual against the tax imposed by ~~G.S. 105-134.2~~ Article 4 of
22 this Chapter for taxable years beginning in that calendar year. The amount deducted
23 and withheld under this Article during any calendar year from the compensation of a
24 nonresident entity shall be allowed as a credit to that entity against the tax imposed
25 by Article 4 of this Chapter for taxable years beginning in that calendar year. If the
26 nonresident entity is a pass-through entity, the entity shall pass through and allocate
27 to each owner the owner's share of the credit.

28 If more than one taxable year begins in ~~that calendar year~~ the calendar year during
29 which the withholding occurred, the amount shall be allowed as a credit against the
30 tax for the last taxable year so beginning. To obtain the credit allowed in this section,
31 the individual or nonresident entity must file with the Secretary one copy of the
32 withholding statement required by G.S. 105-163.3 or G.S. 105-163.7 and any other
33 information the Secretary requires.

34 **"§ 105-163.11 to 105-163.14. Repealed by Session Laws 1985, c. 443, s. 1, effective**
35 **for taxable years beginning on or after January 1, 1986.**

36 **"§ 105-163.15. Failure by individual to pay estimated income tax; penalty.**

37 (a) In the case of any underpayment of the estimated tax by an individual, there
38 shall be added to the tax imposed under Article 4 for the taxable year an amount
39 determined by applying the applicable annual rate established under G.S. 105-241.1(i)
40 to the amount of the underpayment for the period of the underpayment.

41 (b) For purposes of subsection (a), the amount of the underpayment shall be the
42 excess of the required installment, over the amount, if any, of the installment paid on
43 or before the due date for the installment. The period of the underpayment shall run
44 from the due date for the installment to whichever of the following dates is the

1 earlier: (i) the fifteenth day of the fourth month following the close of the taxable
2 year, or (ii) with respect to any portion of the underpayment, the date on which such
3 portion is paid. A payment of estimated tax shall be credited against unpaid required
4 installments in the order in which such installments are required to be paid.

5 (c) For purposes of this section there shall be four required installments for each
6 taxable year with the time for payment of the installments as follows:

- 7 (1) First installment -- April 15 of taxable year;
- 8 (2) Second installment -- June 15 of taxable year;
- 9 (3) Third installment -- September 15 of taxable year; and
- 10 (4) Fourth installment -- January 15 of following taxable year.

11 (d) Except as provided in subsection (e), the amount of any required installment
12 shall be twenty-five percent (25%) of the required annual payment. The term
13 'required annual payment' means the lesser of:

- 14 (1) Ninety percent (90%) of the tax shown on the return for the
15 taxable year, or, if no return is filed, ninety percent (90%) of the
16 tax for that year; or
- 17 (2) One hundred percent (100%) of the tax shown on the return of the
18 individual for the preceding taxable year, if the preceding taxable
19 year was a taxable year of 12 months and the individual filed a
20 return for that year.

21 (e) In the case of any required installment, if the individual establishes that the
22 annualized income installment is less than the amount determined under subsection
23 (d), the amount of the required installment shall be the annualized income
24 installment, and any reduction in a required installment resulting from the
25 application of this subsection shall be recaptured by increasing the amount of the
26 next required installment determined under subsection (d) by the amount of the
27 reduction and by increasing subsequent required installments to the extent that the
28 reduction has not previously been recaptured.

29 In the case of any required installment, the annualized income installment is the
30 excess, if any, of (i) an amount equal to the applicable percentage of the tax for the
31 taxable year computed by placing on an annualized basis the taxable income for
32 months in the taxable year ending before the due date for the installment, over (ii)
33 the aggregate amount of any prior required installments for the taxable year. The
34 taxable income shall be placed on an annualized basis under rules prescribed by the
35 Secretary. The applicable percentages for the required installments are as follows:

- 36 (1) First installment -- twenty-two and one-half percent (22.5%);
- 37 (2) Second installment -- forty-five percent (45%);
- 38 (3) Third installment -- sixty-seven and one-half percent (67.5%); and
- 39 (4) Fourth installment -- ninety percent (90%).

40 (f) No addition to the tax shall be imposed under subsection (a) if the tax shown
41 on the return for the taxable year reduced by the tax withheld under ~~Article 4A~~ this
42 Article is less than the amount set in section 6654(e) of the Code or if the individual
43 did not have any liability for tax under Division II of Article 4 for the preceding
44 taxable year.

1 (g) For purposes of this section, the term 'tax' means the tax imposed by Division
2 II of Article 4 minus the credits against the tax allowed by ~~Article 4.~~ this Chapter
3 other than the credit allowed by this Article. The amount of the credit allowed
4 under ~~Article 4A~~ this Article for withheld income tax for the taxable year is
5 considered a payment of estimated tax, and an equal part of that amount is
6 considered to have been paid on each due date of the taxable year, unless the
7 taxpayer establishes the dates on which all amounts were actually withheld, in which
8 case the amounts so withheld are considered payments of estimated tax on the dates
9 on which ~~such~~ the amounts were actually withheld.

10 (h) If, on or before January 31 of the following taxable year, the taxpayer files a
11 return for the taxable year and pays in full the amount computed on the return as
12 payable, no addition to tax shall be imposed under subsection (a) with respect to any
13 underpayment of the fourth required installment for the taxable year.

14 (i) Notwithstanding the other provisions of this section, an individual who is a
15 farmer or fisherman for a taxable year is required to make only one installment
16 payment of tax for that year. This installment is due on or before January 15 of the
17 following taxable year but may be paid without penalty or interest on or before
18 March 1 of that year. The amount of the installment payment shall be the lesser of:

- 19 (1) Sixty-six and two-thirds percent (66 2/3%) of the tax shown on the
20 return for the taxable year, or, if no return is filed, sixty-six and
21 two-thirds percent (66 2/3%) of the tax for that year; or
22 (2) One hundred percent (100%) of the tax shown on the return of the
23 individual for the preceding taxable year, if the preceding taxable
24 year was a taxable year of 12 months and the individual filed a
25 return for that year.

26 An individual is a farmer or fisherman for any taxable year if the individual's gross
27 income from farming or fishing, including oyster farming, for the taxable year is at
28 least sixty-six and two-thirds percent (66 2/3%) of the total gross income from all
29 sources for the taxable year, or the individual's gross income from farming or fishing,
30 including oyster farming, shown on the return of the individual for the preceding
31 taxable year is at least sixty-six and two-thirds percent (66 2/3%) of the total gross
32 income from all sources shown on the return.

33 (j) In applying this section to a taxable year beginning on any date other than
34 January 1, there shall be substituted, for the months specified in this section, the
35 months that correspond thereto. This section shall be applied to taxable years of less
36 than 12 months in accordance with rules prescribed by the Secretary.

37 (k) This section shall not apply to any estate or trust.

38 **"§ 105-163.16. Overpayment refunded.**

39 If the amount of wages or compensation withheld at the source under ~~G.S.~~
40 ~~105-163.2~~ this Article exceeds the tax imposed by Article 4 of this Chapter against
41 which the withheld tax is credited under G.S. 105-163.10, the excess is considered an
42 overpayment by the ~~employee.~~ employee or contractor. If the amount of estimated
43 tax paid under G.S. 105-163.15 exceeds the taxes imposed by Article 4 of this
44 Chapter against which the estimated tax is credited under the provisions of this

1 Article, the excess is considered an overpayment by the taxpayer. An overpayment
2 shall be refunded as provided in Article 9 of this Chapter.

3 ~~"§ 105-163.17. Administration.~~

4 ~~The provisions of Article 9 of this Chapter apply to the amount of State income~~
5 ~~taxes this Article requires an employer to withhold and pay to the Secretary.~~

6 ~~"§ 105-163.18. Rules and regulations.~~

7 ~~The Secretary is hereby authorized to prescribe forms and make all rules and~~
8 ~~regulations which he deems necessary in order to achieve effective and efficient~~
9 ~~enforcement of this Article.~~

10 "§ 105-163.19 to 105-163.21. Repealed by Session Laws 1967, c. 1110, s. 4.

11 "§ 105-163.22. Reciprocity.

12 The Secretary of Revenue may, with the approval of the Attorney General, enter
13 into agreements with the taxing authorities of states having income tax withholding
14 statutes with such agreements to govern the amounts to be withheld from the wages
15 and salaries of residents of such other state or states under the provisions of this
16 Article when such other state or states grant similar treatment to the residents of this
17 State. Such agreements may provide for recognition of the anticipated tax credits
18 allowed under the provisions of G.S. 105-151 in determining the amounts to be
19 withheld.

20 "§ 105-163.23. Withholding from federal employees.

21 The Secretary of Revenue ~~is hereby~~ is designated as the proper official to make
22 request for and enter into agreements with the Secretary of the Treasury of the
23 United States to provide for the compliance with this Article by the head of each
24 department or agency of the United States in withholding of State income taxes from
25 wages of federal employees and paying the same to this State. The Secretary is hereby
26 authorized, ~~empowered~~ empowered, and directed to ~~make request for~~ request and
27 enter into ~~such~~ these agreements.

28 "§ 105-163.24. Construction of Article.

29 This Article shall be liberally construed in pari materia with Article 4 of this
30 Chapter to the end that taxes levied by Article 4 shall be collected with respect to
31 wages and compensation by withholding ~~from wages by employers~~ agents'
32 withholding of the appropriate amounts ~~herein provided for~~ and by individuals'
33 payments in installments ~~by individuals~~ of income tax with respect to income ~~other~~
34 ~~than wages.~~ not subject to withholding."

35 Section 3. G.S. 105-236(4) reads as rewritten:

36 "(4) Failure to Withhold or Pay Tax When Due. -- In the case of failure
37 to withhold or pay any tax when due, without intent to evade the
38 tax, there shall be an additional tax, as a penalty, of ten percent
39 (10%) of the tax; provided, that such penalty shall in no event be
40 less than five dollars (\$5.00). This penalty does not apply in any of
41 the following circumstances:

- 42 a. When the amount of tax shown as due on an amended
43 return is paid when the return is filed.

1 b. When a tax due but not shown on a return is assessed by the
2 Secretary and is paid within 30 days after the date of the
3 proposed notice of assessment of the tax."

4 Section 4. G.S. 105-163.1(2), as amended by this act, reads as rewritten:

5 "(2) Contractor. -- Either of the following:

6 a. A nonresident individual who performs personal services in
7 this State for compensation other than wages.

8 b. A nonresident entity that provides for the performance of
9 ~~the following~~ personal services in this State for
10 ~~compensation: services in connection with a performance, an~~
11 ~~entertainment, an athletic event, the creation of a film or~~
12 ~~television program, or the construction or repair of a~~
13 ~~building or highway.~~ compensation."

14 Section 5. Section 1 of this act is effective when this act becomes law.

15 Section 4 of this act becomes effective January 1, 1999. The remainder of this act
16 becomes effective January 1, 1998.

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

4-16-97

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

LEE Hunter	DEHNR
Malcolm George	Graham Co.
Ruth George	Graham Co.
Henry Young	Buncombe Co.
Wayne Miller	Farm Bureau McDowell
Jary M. Wilson	FARM BUREAU - MCDOWELL COUNTY
Michael Moser	DEHNR
Priscilla Savitt	_____
Kate M'An	NCCNP
David Ferrell	Hafner, McNamee, Caldwell, McElroy + Cutler, PA.
Ann Case	DEHNR

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

4-16-97

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Samy Beuley

Lawrence Beuley and Assoc.

John Polioct

Lawrence Beuley and Assoc.

Brenda Summers

NC Equity

Doni Schmidt

NCJCDC

Rob Schofield

NCJOD

Paula Wolf

Coalition for NC's Kids

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT

Senator David Hoyle, Co-Chair
Senator John Kerr, Co-Chair

Wednesday, April 16, 1997

SENATOR KERR,

submits the following with recommendations as to passage:

FAVORABLE

H.B.	59	Update IRC Reference	
		Sequential Referral:	None
		Recommended Referral:	None
H.B.	488	Increase Rabies Tag Fee/AB	
		Sequential Referral:	None
		Recommended Referral:	None
S.B.	578	Mount Airy Occupancy Tax	
		Sequential Referral:	None
		Recommended Referral:	None
S.B.	585	Increase Lumberton Occupancy Tax	
		Sequential Referral:	None
		Recommended Referral:	None

TOTAL REPORTED: 4

Committee Clerk Comment: None

CORRECTED COPY

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

FINANCE COMMITTEE REPORT

John H. Kerr, III, Co-Chair

David W. Hoyle, Co-Chair

Tuesday, April 22, 1997

SENATOR JOHN KERR,

submits the following with recommendations as to passage:

FAVORABLE

S.B.(CS #1)253	Telephone Consumer Protection/AB. Sequential Referral: Appropriations Recommended Referral: None
S.B. 356	Reidsville Annexations. Sequential Referral: None Recommended Referral: None
S.B. 441	Handgun Fee Reallocation Sequential Referral: None Recommended Referral: Appropriations
S.B. 615	Kernersville Vehicle Tax. Sequential Referral: None Recommended Referral: None

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B. 232	Clean Water Bonds .Draft Number: PCS2705 Sequential Referral: Appropriations Recommended Referral: None Long Title Amended: No
----------	--

**UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL**

H.B.(CS) 57

Withholding for Nonresidents.

Draft Number: PCS7246
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

TOTAL REPORTED: 6

Committee Clerk Comment:

Corrected Report

SENATE FINANCE COMMITTEE

THURSDAY, APRIL 17, 1997

9 O'CLOCK - ROOM 643 LOB

The Finance Committee met on April 17, 1997 with Senator Hoyle presiding. There were 24 committee members present.

S.B. 615 - Kernersville Vehicle Tax

Senator Horton was recognized to explain S.B. 615. On motion by Senator Weinstein, this bill was given a "favorable" report. Copy of bill and fiscal note included in the minutes.

S.B. 356 - Reidsville Annexations

Senator Foxx was recognized to explain S.B. 356. On motion by Senator Albertson, this bill was given a "favorable" report. Copy of bill included in the minutes.

Mr. Bob Capel, Town Commissioner from Holly Springs, was recognized as a guest of Senator Reeves.

S.B. 441 - Handgun Fee Reallocation

Senator Conder was recognized to explain S.B. 441 for Senator Plyler. On motion by Senator Dannelly, this bill was given a "favorable" report by the committee. Ms. Jane Gray, Attorney General's Office, was recognized to speak in support of this bill. Copy of bill included in the minutes.

S.B. 176 - Conservation Easements/Tax Credit

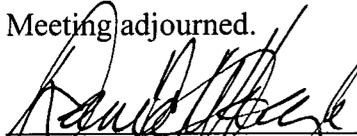
Senator Kinnaird was recognized to explain S.B. 176. Senator Conder moved for the adoption of a proposed committee substitute for this bill and the motion carried. Mr. Bill Flourney, DEHNR, spoke in support of this bill. After a lengthy discussion on this bill with questions from the committee members to the bill sponsor, Senator Lee moved that this committee substitute be given a "favorable" report and the motion carried. Senator Hoyle informed the committee that H.B. 260 - companion bill to S.B. 176 - had been sent to the Senate.

S.B. 323 - Historic Rehabilitation Tax Credits

Senator Horton was recognized to explain S.B. 323 and Senator Kerr sent forth an amendment. Upon motion by Senator Kerr, the amendment was adopted. Senator Shaw was recognized and moved for a "favorable" report as amended and the motion carried. Bill will be rolled into committee substitute. Copy of bill, amendment, committee substitute and fiscal note included in the minutes.

Before adjourning, Senator Hoyle recognized students and teachers from The Williams High School and The Western Alamance High School in Burlington who were visiting to study the Senate. Also recognized and welcomed was former Senator Goldston.

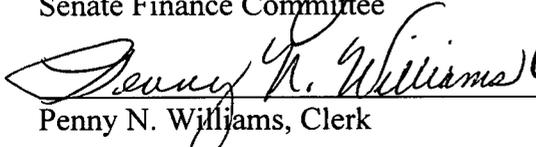
Meeting adjourned.



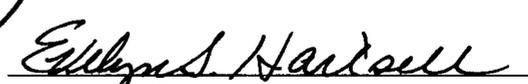
David W. Hoyle, Co-Chair
Senate Finance Committee



John H. Kerr, III, Co-Chair
Senate Finance Committee



Penny N. Williams, Clerk



Evelyn S. Hartsell, Clerk

NOTE:

Agenda is Attachment # 1
Visitors' Sign Up Sheet is Attachment # 2
Committee Report is Attachment # 3

AGENDA

SENATE FINANCE

THURSDAY, APRIL 17, 1997

ROOM 643 - 9 A.M.

- S.B. 93 - Remove Sunset/Ports Tax Credit - Sen. Hoyle
- S.B. 176 - Conservation Easements/Tax Credit - Sen. Kinnaird
- S.B. 197 - Repeal Sunset on FICA Savings Use - Sen. Wellons
- S.B. 323 - Historic Rehabilitation Tax Credits - Sen. Horton
- S.B. 356 - Reidsville Annexations. (Rockingham) Sen. Foxx
- S.B. 441 - Handgun Fee Reallocation - Sen. Plyler
- S.B. 615 - Kernersville Vehicle Tax - Sen. Horton
- S.B. 687 - Reduce Farm/Industry Fuel Tax - Sen. Rand

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 615

Short Title: Kernersville Vehicle Tax.

(Local)

Sponsors: Senators Horton and McDaniel.

Referred to: Finance.

April 1, 1997

A BILL TO BE ENTITLED

1
2 AN ACT TO PERMIT THE TOWN OF KERNERSVILLE TO LEVY A MOTOR
3 VEHICLE TAX OF UP TO TEN DOLLARS.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 20-97(a) reads as rewritten:

6 "(a) All taxes levied under the provisions of this Article are intended as
7 compensatory taxes for the use and privileges of the public highways of this State,
8 and shall be paid by the Commissioner to the State Treasurer, to be credited by him
9 to the State Highway Fund; and no county or municipality shall levy any license or
10 privilege tax upon any motor vehicle licensed by the State of North Carolina, except
11 that cities and towns may levy not more than ~~five dollars (\$5.00)~~ ten dollars (\$10.00)
12 per year upon any vehicle resident therein. Provided, further, that cities and towns
13 may levy, in addition to the amounts hereinabove provided for, a sum not to exceed
14 fifteen dollars (\$15.00) per year upon each vehicle operated in such city or town as a
15 taxicab."

16 Section 2. This act applies to the Town of Kernersville only.

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

FISCAL ANALYSIS MEMORANDUM

DATE: April 16, 1997

TO: Senate Finance Committee

FROM: Richard Bostic
Fiscal Research Division

RE: SB 615 - Kernersville Vehicle Tax

FISCAL IMPACT

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

FY 1997-98 FY 1998-99 FY 1999-00 FY 2000-01 FY 2001-02

REVENUES \$51,000 \$51,000 \$51,000 \$51,000 \$51,000

**PRINCIPAL DEPARTMENT(S) &
PROGRAM(S) AFFECTED:** Town of Kernersville

EFFECTIVE DATE: Effective upon ratification.

BILL SUMMARY: The bill allows the Town of Kernersville to levy a motor vehicle tax of up to \$10.

ASSUMPTIONS AND METHODOLOGY: The Town of Kernersville currently earns \$51,000 a year from its \$5 motor vehicle tax. This note assumes the town will increase the tax to \$10 beginning in FY 1997-98.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 356

Short Title: Reidsville Annexations (Rockingham).

(Local)

Sponsors: Senators Foxx; and East.

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

March 11, 1997

A BILL TO BE ENTITLED

1 AN ACT TO ALLOW THE CITY OF REIDSVILLE TO DELAY THE
2 EFFECTIVE DATE OF ANNEXATIONS AS TO A SPECIFIED TRACT AND
3 TO EXEMPT THE ANNEXATION OF TWO CITY LAKES FROM THE
4 CEILING ON SATELLITE ANNEXATIONS.
5

6 The General Assembly of North Carolina enacts:

7 Section 1. The Charter of the City of Reidsville, being Chapter 957,
8 Session Laws of 1989, is amended by adding the following new sections:

9 "Sec. 1.4. **Effective date of annexation ordinances.**

10 (a) The provisions of G.S. 160A-31(d), 160A-58.2, and 160A-58.7 notwithstanding,
11 the city council may make annexation ordinances adopted pursuant to Part 1 or 4 of
12 Article 4A of Chapter 160A of the General Statutes effective on any specified date
13 within four years from the date of passage of the annexation ordinance.

14 (b) The provisions of G.S. 160A-49(e)(4) notwithstanding, the city council may fix
15 the effective date of annexation ordinances adopted pursuant to Part 3 of Article 4A
16 of Chapter 160A of the General Statutes for any date not less than 40 days nor more
17 than four years from the date of passage of the ordinances.

18 (c) This section applies only to the following described area:

19 Being a tract of land located in Reidsville Township, Rockingham County, North
20 Carolina.

21 BEGINNING at a concrete right-of-way monument at the southwest quadrant
22 intersection of N.C. Highway 87 and U.S. Highway 29; specifically, said beginning
23 monument being located by North Carolina Grid system tie North 69 deg. 13 min. 47
24 sec. West 416.92 feet from North Carolina Grid monument 'Holiday Inn,' a brass disc

1 set in concrete on the north side of the N. C. Highway 87 bridge over U.S. Highway
2 29 and approximately situated over the western edge of the east lane of U. S.
3 Highway 29; thence, from said beginning monument along and with the western
4 controlled access right-of-way of U. S. Highway 29 the following courses and
5 distances:

6 South 10 deg. 29 min. 32 sec. West 329.37 feet to a concrete monument, South 02
7 deg. 25 min. 31 sec. West 214.10 feet to a concrete monument, South 02 deg. 27 min.
8 59 sec. East 109.57 feet to a concrete monument, South 01 deg. 05 min. 19 sec. East
9 192.01 feet to a concrete monument, South 05 deg. 26 min. 27 sec. West 243.44 feet
10 to a concrete monument, South 16 deg. 37 min. 08 sec. West 1,242.82 feet to an
11 existing iron pipe, a corner with Laidlaw Environmental Services, Inc.; thence leaving
12 the controlled access right-of-way of U. S. Highway 29 and with the line of Laidlaw
13 Environmental Services North 80 deg. 35 min. 23 sec. West 952.84 feet to an existing
14 iron pipe in the east right-of-way of Watlington Industrial Drive (SR 2664); thence
15 continuing with said right-of-way, North 00 deg. 27 min. 49 sec. East 632.38 feet to an
16 iron pipe set at the P. C. of a curve; thence continuing with said right-of-way along
17 the arc of a curve right with a radius of 1,442.45 feet, a distance of 456.49 feet to an
18 iron pipe set; said curve having a chord of North 09 deg. 31 min. 47 sec. East 454.59
19 feet; thence North 18 deg. 35 min. 45 sec East 754.96 feet to an iron pipe set in said
20 right-of-way of Watlington Industrial Drive and being the P. C. of a curve; thence
21 continuing along with said right-of-way the arc of said curve right with a radius of
22 1,424.90 feet, a distance of 393.88 feet to an iron pipe set, said curve having a chord
23 of North 26 deg. 30 min. 54 sec. East 392.63 feet; thence continuing said right-of-way
24 North 34 deg. 25 min. 31 sec. East 544.62 feet to an iron pipe set in the right-of-way
25 at the southeast quadrant intersection of Watlington Industrial Drive and N. C.
26 Highway 87; thence along and with the right-of-way of N. C. Highway 87 at the
27 following courses and distances: South 51 deg. 21 min. 01 sec. East 386.10 feet to a
28 concrete right-of-way monument, South 48 deg. 48 min. 36 sec. East 247.82 feet to a
29 concrete right-of-way monument, South 48 deg. 54 min. 44 sec. East 115.28 feet to a
30 concrete right-of-way monument, the point of beginning and containing 60.269 Acres
31 as per survey dated May 24, 1993, by Obie M. Chambers and Associates, R. L. S.,
32 Reidsville, North Carolina.

33 "Sec. 1.5. **Satellite annexations.** The area annexed by an annexation ordinance
34 adopted by the City of Reidsville on April 13, 1995, shall not be included in any
35 calculations made under G.S. 160A-58.1(b)(5)."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 441

Short Title: Handgun Fee Reallocation.

(Public)

Sponsors: Senators Plyler, Conder; Rand and Soles.

Referred to: Finance.

March 20, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO INCREASE THE AMOUNT ALLOCATED TO SHERIFFS FROM
3 THE FEES CHARGED FOR CONCEALED HANDGUN APPLICATIONS AND
4 RENEWALS.

5 The General Assembly of North Carolina enacts:

6 Section 1. G.S 14-415.19(a) reads as rewritten:

7 "(a) The permit fees assessed under this Article are payable to the sheriff. The
8 sheriff shall transmit the proceeds of these fees to the county finance officer to be
9 remitted or credited by the county finance officer in accordance with the provisions
10 of this subsection. The permit fees are as follows:

11	Application fee	\$80.00
12	Renewal fee	\$80.00
13	Duplicate permit fee.....	\$15.00

14 The county finance officer shall remit ~~sixty dollars (\$60.00)~~ forty-five dollars
15 (\$45.00) of each application or renewal fee to the North Carolina Department of
16 Justice for the costs of State and federal criminal record checks performed in
17 connection with processing applications and for the implementation of the provisions
18 of this Article. The remaining ~~twenty dollars (\$20.00)~~ thirty-five dollars (\$35.00) of
19 each application or renewal fee shall be used by the sheriff to pay the costs of
20 administering this Article and for other law enforcement purposes. The county shall
21 expend the restricted funds for these purposes only."

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

1 historic structure has been rehabilitated in accordance with this subsection. The
2 following definitions apply in this subsection:

3 (1) Certified historic structure. -- A structure that is individually listed
4 in the National Register of Historic Places or is certified by the
5 State Historic Preservation Officer as contributing to the historic
6 significance of a National Register Historic District or a locally
7 designated historic district certified by the United States
8 Department of the Interior.

9 (2) Certified rehabilitation. -- Repairs or alterations consistent with the
10 Secretary of the Interior's Standards for Rehabilitation and
11 certified as such by the State Historic Preservation Officer prior to
12 the commencement of the work. The expenditures must, within a
13 24-month period, exceed ten thousand dollars (\$10,000). The
14 North Carolina Historical Commission, in consultation with the
15 State Historic Preservation Officer, may adopt rules needed to
16 administer the certification process.

17 (3) Qualifying rehabilitation expenditures. -- Expenses incurred in the
18 certified rehabilitation of a certified historic structure and added to
19 the property's basis. The term does not include the cost of
20 acquiring the property, the cost attributable to the enlargement of
21 an existing building, the cost of sitework expenditures, or the cost
22 of personal property.

23 (4) State Historic Preservation Officer. -- The Director of the Division
24 of Archives and History or the Director's designee who acts to
25 administer the historic preservation programs within the State.

26 (c) Credit Limitations. -- The entire credit may not be taken for the taxable year
27 in which the property is placed in service but must be taken in five equal installments
28 beginning with the taxable year in which the property is placed in service. Any
29 unused portion of the credit may be carried forward for the succeeding five years.
30 The credit allowed under this section may not exceed the amount of tax imposed by
31 this Division for the taxable year reduced by the sum of all credits allowed under this
32 Division, except payments of tax made by or on behalf of the taxpayer."

33 Section 2. G.S. 105-151.23 reads as rewritten:

34 "**§ 105-151.23. Credit for rehabilitating an historic structure.**

35 (a) Income-Producing Historic Structure. -- A taxpayer who makes qualifying
36 rehabilitation expenditures as defined in section 47 of the Code with respect to a
37 certified historic structure located in this State is allowed as a credit against the tax
38 imposed by this Division an amount equal to ~~one-fourth of the federal income tax~~
39 ~~credit under the Code for which the taxpayer is eligible for those rehabilitation~~
40 ~~expenditures.~~ twenty percent (20%) of the qualifying rehabilitation expenditures.

41 (b) Nonincome-Producing Historic Structure. -- A taxpayer who makes qualifying
42 rehabilitation expenditures with respect to a certified historic structure located in this
43 State is allowed as a credit against the tax imposed by this Division an amount equal
44 to thirty percent (30%) of the qualifying rehabilitation expenditures. To claim the

1 credit allowed by this subsection, the taxpayer must attach to the return a copy of the
2 certification obtained from the State Historic Preservation Officer verifying that the
3 historic structure has been rehabilitated in accordance with this subsection. The
4 following definitions apply in this subsection:

5 (1) Certified historic structure. -- A structure that is individually listed
6 in the National Register of Historic Places or is certified by the
7 State Historic Preservation Officer as contributing to the historic
8 significance of a National Register Historic District or a locally
9 designated historic district certified by the United States
10 Department of the Interior.

11 (2) Certified rehabilitation. -- Repairs or alterations consistent with the
12 Secretary of the Interior's Standards for Rehabilitation and
13 certified as such by the State Historic Preservation Officer prior to
14 the commencement of the work. The expenditures must, within a
15 24-month period, exceed ten thousand dollars (\$10,000). The
16 North Carolina Historical Commission, in consultation with the
17 State Historic Preservation Officer, may adopt rules needed to
18 administer the certification process.

19 (3) Qualifying rehabilitation expenditures. -- Expenses incurred in the
20 certified rehabilitation of a certified historic structure and added to
21 the property's basis. The term does not include the cost of
22 acquiring the property, the cost attributable to the enlargement of
23 an existing building, the cost of sitework expenditures, or the cost
24 of personal property.

25 (4) State Historic Preservation Officer. -- The Director of the Division
26 of Archives and History or the Director's designee who acts to
27 administer the historic preservation programs within the State.

28 (c) Credit Limitations. -- The entire credit may not be taken for the taxable year
29 in which the property is placed in service but must be taken in five equal installments
30 beginning with the taxable year in which the property is placed in service. Any
31 unused portion of the credit may be carried forward for the succeeding five years.

32 The credit allowed under this section may not exceed the amount of tax imposed by
33 this Division for the taxable year reduced by the sum of all credits allowed under this
34 Division, except payments of tax made by or on behalf of the taxpayer."

35 Section 3. This act is effective for taxable years beginning on or after
36 January 1, 1998.



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 323

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

S323-ALJ-4/17

Date _____, 1997

Comm. Sub. []
Amends Title []

Senator _____

1 moves to amend the bill on page 2, line 13, by rewriting that line
2 to read:

3 ~~"24-month period, exceed twenty-five thousand dollars~~
4 ~~(\$25,000). The";~~

5
6 and on page 3, lines 33-34, by rewriting those lines to read:
7 "this Division for the taxable year reduced by the sum of all
8 credits ~~allowed under this Division, allowed,~~ except payments of tax
9 made by or on behalf of the taxpayer."

SIGNED *J. Allen*
Amendment sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

H. B. No. _____

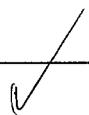
DATE April 17 1987

S. B. No. 323

Amendment No. _____

(to be filled in by
Principal Clerk)

Rep.) _____
Sen.) _____



moves to amend the bill on page 3, line 15

by changing "ten thousand dollars (\$10,000)"

to read

"Twenty Five Thousand dollars (\$25,000)"

and

on page 2 line 13

by changing "ten thousand dollars (\$10,000)"

to read

"Twenty Five Thousand dollars (\$25,000)".

Changes a amount of
expenditures that must be made
to take the credit from U F 25K

SIGNED J. H. Ken

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

D

SENATE BILL 323
Proposed Committee Substitute S323-PCS2724

Short Title: Historic Rehabilitation Tax Credits.

(Public)

Sponsors:

Referred to:

March 6, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW AN INCOME TAX CREDIT FOR EXPENDITURES TO
3 REHABILITATE HISTORIC STRUCTURES.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 105-130.42 reads as rewritten:

6 "**§ 105-130.42. Credit for rehabilitating an historic structure.**

7 (a) Income-Producing Historic Structure. -- A taxpayer who makes qualifying
8 rehabilitation expenditures as defined in section 47 of the Code with respect to a
9 certified historic structure located in this State is allowed as a credit against the tax
10 imposed by this Division an amount equal to ~~one-fourth of the federal income tax~~
11 ~~credit under the Code for which the taxpayer is eligible for those rehabilitation~~
12 ~~expenditures.~~ twenty percent (20%) of the qualifying rehabilitation expenditures.

13 (b) Nonincome-Producing Historic Structure. -- A taxpayer who makes qualifying
14 rehabilitation expenditures with respect to a certified historic structure located in this
15 State is allowed as a credit against the tax imposed by this Division an amount equal
16 to thirty percent (30%) of the qualifying rehabilitation expenditures. To claim the
17 credit allowed by this subsection, the taxpayer must attach to the return a copy of the
18 certification obtained from the State Historic Preservation Officer verifying that the
19 historic structure has been rehabilitated in accordance with this subsection. The
20 following definitions apply in this subsection:

21 (1) Certified historic structure. -- A structure that is individually listed
22 in the National Register of Historic Places or is certified by the
23 State Historic Preservation Officer as contributing to the historic

1 significance of a National Register Historic District or a locally
2 designated historic district certified by the United States
3 Department of the Interior.

4 (2) Certified rehabilitation. -- Repairs or alterations consistent with the
5 Secretary of the Interior's Standards for Rehabilitation and
6 certified as such by the State Historic Preservation Officer prior to
7 the commencement of the work. The expenditures must, within a
8 24-month period, exceed twenty-five thousand dollars (\$25,000).
9 The North Carolina Historical Commission, in consultation with
10 the State Historic Preservation Officer, may adopt rules needed to
11 administer the certification process.

12 (3) Qualifying rehabilitation expenditures. -- Expenses incurred in the
13 certified rehabilitation of a certified historic structure and added to
14 the property's basis. The term does not include the cost of
15 acquiring the property, the cost attributable to the enlargement of
16 an existing building, the cost of sitework expenditures, or the cost
17 of personal property.

18 (4) State Historic Preservation Officer. -- The Director of the Division
19 of Archives and History or the Director's designee who acts to
20 administer the historic preservation programs within the State.

21 (c) Credit Limitations. -- The entire credit may not be taken for the taxable year
22 in which the property is placed in service but must be taken in five equal installments
23 beginning with the taxable year in which the property is placed in service. Any
24 unused portion of the credit may be carried forward for the succeeding five years.
25 The credit allowed under this section may not exceed the amount of tax imposed by
26 this Division for the taxable year reduced by the sum of all credits allowed under this
27 Division, except payments of tax made by or on behalf of the taxpayer."

28 Section 2. G.S. 105-151.23 reads as rewritten:

29 "**§ 105-151.23. Credit for rehabilitating an historic structure.**

30 (a) Income-Producing Historic Structure. -- A taxpayer who makes qualifying
31 rehabilitation expenditures as defined in section 47 of the Code with respect to a
32 certified historic structure located in this State is allowed as a credit against the tax
33 imposed by this Division an amount equal to ~~one-fourth of the federal income tax~~
34 ~~credit under the Code for which the taxpayer is eligible for those rehabilitation~~
35 ~~expenditures. twenty percent (20%) of the qualifying rehabilitation expenditures.~~

36 (b) Nonincome-Producing Historic Structure. -- A taxpayer who makes qualifying
37 rehabilitation expenditures with respect to a certified historic structure located in this
38 State is allowed as a credit against the tax imposed by this Division an amount equal
39 to thirty percent (30%) of the qualifying rehabilitation expenditures. To claim the
40 credit allowed by this subsection, the taxpayer must attach to the return a copy of the
41 certification obtained from the State Historic Preservation Officer verifying that the
42 historic structure has been rehabilitated in accordance with this subsection. The
43 following definitions apply in this subsection:

- 1 (1) Certified historic structure. -- A structure that is individually listed
2 in the National Register of Historic Places or is certified by the
3 State Historic Preservation Officer as contributing to the historic
4 significance of a National Register Historic District or a locally
5 designated historic district certified by the United States
6 Department of the Interior.
- 7 (2) Certified rehabilitation. -- Repairs or alterations consistent with the
8 Secretary of the Interior's Standards for Rehabilitation and
9 certified as such by the State Historic Preservation Officer prior to
10 the commencement of the work. The expenditures must, within a
11 24-month period, exceed twenty-five thousand dollars (\$25,000).
12 The North Carolina Historical Commission, in consultation with
13 the State Historic Preservation Officer, may adopt rules needed to
14 administer the certification process.
- 15 (3) Qualifying rehabilitation expenditures. -- Expenses incurred in the
16 certified rehabilitation of a certified historic structure and added to
17 the property's basis. The term does not include the cost of
18 acquiring the property, the cost attributable to the enlargement of
19 an existing building, the cost of sitework expenditures, or the cost
20 of personal property.
- 21 (4) State Historic Preservation Officer. -- The Director of the Division
22 of Archives and History or the Director's designee who acts to
23 administer the historic preservation programs within the State.
- 24 (c) Credit Limitations. -- The entire credit may not be taken for the taxable year
25 in which the property is placed in service but must be taken in five equal installments
26 beginning with the taxable year in which the property is placed in service. Any
27 unused portion of the credit may be carried forward for the succeeding five years.
28 The credit allowed under this section may not exceed the amount of tax imposed by
29 this Division for the taxable year reduced by the sum of all credits ~~allowed under this~~
30 ~~Division~~, allowed, except payments of tax made by or on behalf of the taxpayer."
31 Section 3. This act is effective for taxable years beginning on or after
32 January 1, 1998.

**NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE**

BILL NUMBER: SB 323 (Senate Finance Committee Substitute)

SHORT TITLE: Historic Rehabilitation Tax Credits

SPONSOR(S): Senator Horton, et al

FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 1997-98</u>	<u>FY 1998-99</u>	<u>FY 1999-00</u>	<u>FY 2000-01</u>	<u>FY 2001-02</u>
REVENUES					
General Fund (G.F.)					
Income Producing Credit	-	25,000	(775,000)	(1,775,000)	(2,875,000)
Non-Income Producing Credit	-	(81,600)	(201,600)	(403,200)	(724,800)
Total Historic Credits		(\$56,600)	(\$976,600)	(\$2,178,200)	(\$3,599,800)
EXPENDITURES					
General Fund (G.F.)					
Dept. of Cultural Resources	\$54,344	\$212,298	\$201,226	\$208,431	\$215,924
NET G.F. IMPACT	(\$54,344)	(\$268,898)	(\$1,177,826)	(\$2,386,631)	(\$3,815,724)
POSITIONS:	1	5	5	5	5
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Cultural Resources/ State Historic Preservation Office					
EFFECTIVE DATE: Effective for taxable years beginning on or after January 1, 1998.					

BILL SUMMARY: The 1993 General Assembly provided investors with a 5% corporate and individual income tax credit for rehabilitating historic structures (GS 105-130.42 & GS 105-151.23). The state credit piggybacks on the 20% Federal Rehabilitation Investment Tax Credit. To be eligible for the credit, the building must be income-producing, the rehabilitation must be substantial, and the rehab costs must be incurred within 24 months. The bill increases the individual and corporate income tax credits from 5% to 20% for income producing properties. The bill creates a new 30% credit for non-income producing historic structures. To earn this credit, the expenditures on a non-income producing project must exceed \$25,000 over a 24 month period.

ASSUMPTIONS AND METHODOLOGY: North Carolina has 2,000 listings of historic buildings, structures, sites, objects, and districts on the National Register of Historic Places. However, of the approximately 35,000 structures represented by the listings, only 6% are income producing and eligible for the existing federal and state credit. Since the credit became available in tax year 1994, the North Carolina State Historic Preservation Office reported the following building activity to the National Park Service:

Year	Projects	Rehab Costs	5% Credit
1994	26	\$ 9,608,766	\$ 480,438
1995	34	13,769,094	688,455
1996	32	22,102,493	1,105,125

SB 323 will expand the state historic rehab tax credit by :

- (1) Increasing the income producing credit value to 20%,
- (2) Establishing a 30% credit for owner-occupied residences (non-income producing) and,
- (3) Lengthening the time to take the credit from 1 year to 5 years.

In the last seven years, the average number of **income producing projects** earning the federal credit each year was 29. The average project cost for the state 5% credit in the last three years was \$500,000 per project. The NC State Historic Preservation Office (SHPO) anticipates the new tax credit will be attractive to taxpayers and thus the number of renovation projects will grow. SHPO estimates the number of projects and the total project amounts (using \$500,000 per project) will be as follows:

1998	35	\$17,500,000
1999	40	20,000,000
2000	50	25,000,000
2001	55	27,500,000
2002	60	30,000,000

Although new to North Carolina, a rehabilitation tax credit for homeowners or **non-income producing projects** has been available to citizens of Colorado, Maryland, New Mexico, Rhode Island, Utah, and Wisconsin. The State Historical Society of Wisconsin reports a 50 to 75% growth rate over the last four years of its program. SHPO believes this tax credit will also prove to be popular in North Carolina as reflected in their numbers below. The numbers below show completed projects and total project cost each year (based on \$40,000 per project). However, these numbers are 1/3 lower than original projections because the expenditure threshold was raised from \$10,000 to \$25,000.

1998	34	\$1,360,000
1999	50	2,000,000
2000	84	3,360,000
2001	134	5,360,000

Using the SHPO estimates, a chart below was produced to cost out the rehabilitation tax credit. For income producing projects, the total project amount for each year shown on page two is multiplied by 20% then allocated over a five year period. For example, in 1998-99 it is estimated that 35 projects valued at \$17.5 million will qualify for the credit. By multiplying the \$17.5 million by the 20% credit you get \$3.5 million. When this \$3.5 million credit is allocated over five years, the revenue loss is \$700,000 per year. Similarly, for non-income producing projects, the total project amount for each year on page two is multiplied by 30% then allocated over a five year period. It is assumed that the credits will be taken on the annual tax return and not be subtracted from the estimated payments to the State Department of Revenue. In the first year of the credit, it is assumed that taxpayers will submit their paperwork to the SHPO in 1997 in order to get their projects underway and completed in tax year 1998. The current 5% tax credit is kept at a flat rate based on 29 projects and \$500,000 per project. The current tax credit must be subtracted from the proposed credit to get the net impact to the General Fund.

I. Income Producing Projects

	<u>FY 97-98</u>	<u>FY 98-99</u>	<u>FY 99-00</u>	<u>FY 00-01</u>	<u>FY 01-02</u>
Tax Year					
1998		(700,000)	(700,000)	(700,000)	(700,000)
1999			(800,000)	(800,000)	(800,000)
2000				(1,000,000)	(1,000,000)
2001					(1,100,000)
2002					
Total	-	(700,000)	(1,500,000)	(2,500,000)	(3,600,000)
Current 5% Credit		725,000	725,000	725,000	725,000
Net Change in Credit		25,000	(775,000)	(1,775,000)	(2,875,000)

II. Non-Income Producing Projects

	<u>FY 97-98</u>	<u>FY 98-99</u>	<u>FY 99-00</u>	<u>FY 00-01</u>	<u>FY 01-02</u>
Tax Year					
1998		(81,600)	(81,600)	(81,600)	(81,600)
1999			(120,000)	(120,000)	(120,000)
2000				(201,600)	(201,600)
2001					(321,600)
2002					
Total	-	(81,600)	(201,600)	(403,200)	(724,800)

Historic Credit Administrative Expense

The State Historic Preservation Office (SHPO) has stated to the Fiscal Research Division that it will need additional personnel to handle the proposed historic rehabilitation tax credit program. In FY 97-98, the Department requests a Facility Architect I to handle the increase in application reviews and technical consultations. Salary and fringes for this position are \$36,744 with an additional \$4,500 for furniture and equipment (one time expense) and \$2,000 for travel. The request also includes \$11,100 each year for printing tax credit guidelines (\$1,500), for travel and telephone expenses in providing technical services to applicants (\$3,500), for postage and supplies (\$2,100), and for the appeals process for denied projects (\$4,000).

In FY 98-99, the Department requests a Historic Preservation / Survey Specialist I to function as a National Register Reviewer for the increase in Register nominations. Salary, fringes and expenses for this position total \$40,426 minus \$4,500 in one time cost of furniture and equipment. Also in FY 98-99, three Historic Preservation/ Restoration Specialist I's will be needed in the regional offices in Asheville , Greenville, and Raleigh. These specialists will provide rehabilitation technical services and do preliminary reviews of applications. The salary, fringes and expenses for these positions also equals \$40,426 each.

For estimating purposes, the salaries and fringes are increased 4% each year to project future year cost. All administrative expenses are kept constant.

FISCAL RESEARCH DIVISION

733-4910

PREPARED BY: Richard Bostic

APPROVED BY:

DATE: April 17, 1997

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

4-17-97

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

<i>David M. Mink</i>	<i>Payson & Smith</i>
<i>AB Amick &</i>	<i>BFI</i>
<i>Bill Flournoy</i>	<i>DEHNR</i>
<i>Wendy Mills</i>	<i>SEANC</i>
<i>CARL GOODMAN</i>	<i>OSP</i>
<i>Kitty McLaughlin</i>	<i>UNC General Administration</i>
<i>Pam Toderick</i>	<i>OSP</i>
<i>John Holman</i>	<i>Carol Service Co</i>
<i>James E. Lee</i>	<i>Intl. Paper</i>
<i>Robert L. Joynes</i>	<i>Intl Paper</i>
<i>J. Coleman</i>	<i>Intl Paper</i>

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

George P. Long	NC DOR
Lennie Collins	NC DOR
Greg Radford	NC DOR
Did Underwood	NC DOR
TIM SIMMONS	NC DCR, HPO
Al Honeycutt	NC DCR, HPO
David Wood	NC DCR, State Historic Pres. Office ^(HPO)
Julie Campbell	NCASA
Jan P. Gray	DOJ
El Regan	N.C.A.C.E.
Julian Ruffin	SCFFS

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

VLMcBride	NCTA
Satchel Paige	NCAAC
KRACHINSKY	JONES COUNTY
Amy Williams	Huntor ; Williams
Ann Case	DEHNR
Nancy Bradley	NCCBS
David Simmons	zeb Alley, PA
Kim Smith	NCLM
Laura Hatchell	MCIC
Joe Neff	NTO
Meredith Lanier	Alamance-Burlington Schools
apx = 40 member school class	

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

FINANCE COMMITTEE REPORT

John H. Kerr, III, Co-Chair

David W. Hoyle, Co-Chair

Thursday, April 17, 1997

SENATOR JOHN KERR,

submits the following with recommendations as to passage:

FAVORABLE

S.B.(CS #1)253	Telephone Consumer Protection/AB. Sequential Referral: Appropriations Recommended Referral: None
S.B. 356	Reidsville Annexations. Sequential Referral: None Recommended Referral: None
S.B. 441	Handgun Fee Reallocation Sequential Referral: None Recommended Referral: Appropriations
S.B. 529	Hope Mills Annexations. Sequential Referral: None Recommended Referral: None
S.B. 615	Kernersville Vehicle Tax. Sequential Referral: None Recommended Referral: None

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B. 232	Clean Water Bonds Draft Number: PCS2705 Sequential Referral: Appropriations Recommended Referral: None Long Title Amended: No
----------	---

April 17, 1997

**UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL**

H.B.(CS) 57

Withholding for Nonresidents.

Draft Number: PCS7246
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

TOTAL REPORTED: 7

Committee Clerk Comment: None

SENATE FINANCE COMMITTEE

TUESDAY, APRIL 22, 11997

12:00 NOON - ROOM 544 LOB

The Senate Finance Committee met. There were 23 members of the committee present. Senator John H. Kerr, III, Co- Chairman, called the meeting to order and introduced the Pages, Casey Stafford from Oak Ridge, N. C., sponsored by Senator Basnight and Chris Martz from Kernersville, N. C., sponsored by Senator Basnight.

S. B 245 - Installment Purchase/Sewer District

Senator Ledbetter came to explain the bill. Senator Albertson moved for adoption of proposed committee substitute for the purpose of discussion, motion passed. Senator Hoyle moved for a "favorable" report, motion passed.

S. B. 421 - Local Option Homestead Relief

Senator Cooper explain the bill. Senator Albertson made a motion for a "favorable" report, motion passed.

H. B. 260 - Conservation Easements/Tax Credit

Representative Lyons Gray came to explain the bill. Senator Albertson moved for adoption of committee substitute, motion passed. Senator Foxx moved for a "favorable" report, motion passed.

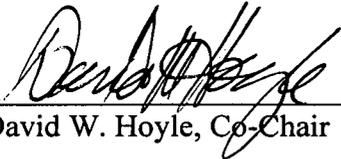
S. B. 93 - Remove Sunset/Ports Tax Credit

Senator Hoyle came to explain the bill. He moved for adoption of committee substitute, motion passed. Senator Conder moved for a "favorable" report, motion passed with note that bill would be re-referred to the Appropriations Committee. Former Senator Goldston spoke on the bill as well as Mr. James E. Lee with International Paper. They both stated that the bill as agreed to should move in the House of Representatives.

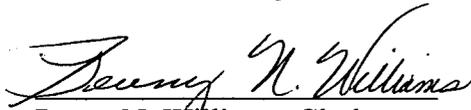
Meeting was adjourned.

SENATE FINANCE COMMITTEE
Tuesday, April 22, 1997
Page -2-

NOTE: S. B. 466 and S. B. 784 both were removed from the Agenda and will be placed on the Agenda for the next meeting.


David W. Hoyle, Co-Chair


John H. Kerr, III Co-Chair


Penny N. Williams, Clerk


Evelyn S. Hartsell, Clerk

NOTE:

Agenda is Attachment # 1
Visitor's Registration is Attachment # 1
Committee Report is Attachment # 3

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

D

SENATE BILL 245
Proposed Committee Substitute S245-PCS6660

Short Title: Sewer/Sanitary District Financing.

(Public)

Sponsors:

Referred to:

February 26, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE METROPOLITAN SEWERAGE DISTRICTS AND
3 CERTAIN SANITARY DISTRICTS TO USE INSTALLMENT PURCHASE
4 FINANCING TO THE SAME EXTENT AS OTHER UNITS OF LOCAL
5 GOVERNMENT.

6 The General Assembly of North Carolina enacts:

7 Section 1. G.S. 160A-20(h) reads as rewritten:

8 "(h) As used in this section, the term 'unit of local government' means any of the
9 following:

- 10 (1) A county.
11 (2) A city.
12 (3) A water and sewer authority created under Article 1 of Chapter
13 162A of the General Statutes.
14 (3a) A metropolitan sewerage district created under Article 5 of
15 Chapter 162A of the General Statutes.
16 (3b) A sanitary district created under Part 2 of Article 2 of Chapter
17 130A of the General Statutes.
18 (4) An airport authority whose situs is entirely within a county that
19 has (i) a population of over 120,000 according to the most recent
20 federal decennial census and (ii) an area of less than 200 square
21 miles.

- 1 (5) An airport authority in a county in which there are two
2 incorporated municipalities with a population of more than 65,000
3 according to the most recent federal decennial census.
- 4 (5a) An airport board or commission authorized by agreement between
5 two cities pursuant to G.S. 63-56, one of which is located partially
6 but not wholly in the county in which the jointly owned airport is
7 located, and where the board or commission provided water and
8 wastewater services off the airport premises before January 1, 1995;
9 provided that the authority granted by this section may be
10 exercised by such a board or commission with respect to water and
11 wastewater systems or improvements only.
- 12 (6) A local school administrative unit (i) that is located in a county
13 that has a population of over 90,000 according to the most recent
14 federal decennial census and (ii) whose board of education is
15 authorized to levy a school tax.
- 16 (7) An area mental health, developmental disabilities, and substance
17 abuse authority, acting in accordance with G.S. 122C-147.
- 18 (8) A consolidated city-county, as defined by G.S. 160B-2(1)."
19 Section 2. This act is effective when it becomes law.

PUBLIC BILL

S.B. 245

CHAP. _____

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE METROPOLITAN SEWERAGE DISTRICTS TO USE INSTALLMENT PURCHASE FINANCING TO THE SAME EXTENT AS OTHER UNITS OF LOCAL GOVERNMENT.

Introduced by Senator(s) _____

Kincaid _____

Buchoy _____

Woods _____

Ledbetter _____

Jarvis _____

Woods _____

Clark _____

Beust _____

Anglen _____

Fox _____

Horton
Principal Clerk's Use Only

FILED FEB 25 1997

PASSED 1st READING

FEB 26 1997

AND REFERRED TO COMMITTEE

ON *Finance*

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

D

SENATE BILL 245
Proposed Senate Finance Committee Substitute
S245-CSLJX-4/22

Short Title: Sewer/Sanitary District Financing. (Public)

Sponsors:

Referred to: Finance.

February 26, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE METROPOLITAN SEWERAGE DISTRICTS AND CERTAIN
3 SANITARY DISTRICTS TO USE INSTALLMENT PURCHASE FINANCING TO THE
4 SAME EXTENT AS OTHER UNITS OF LOCAL GOVERNMENT.
5 The General Assembly of North Carolina enacts:
6 Section 1. G.S. 160A-20(h) reads as rewritten:
7 "(h) As used in this section, the term "unit of local
8 government" means any of the following:
9 (1) A county.
10 (2) A city.
11 (3) A water and sewer authority created under Article 1
12 of Chapter 162A of the General Statutes.
13 (3a) A metropolitan sewerage district created under
14 Article 5 of Chapter 162A of the General Statutes.
15 (3b) A sanitary district created under Part 2 of Article
16 2 of Chapter 130A of the General Statutes.
17 (4) An airport authority whose situs is entirely within
18 a county that has (i) a population of over 120,000
19 according to the most recent federal decennial
20 census and (ii) an area of less than 200 square
21 miles.

- 1 (5) An airport authority in a county in which there are
2 two incorporated municipalities with a population
3 of more than 65,000 according to the most recent
4 federal decennial census.
5 (5a) An airport board or commission authorized by
6 agreement between two cities pursuant to G.S. 63-
7 56, one of which is located partially but not
8 wholly in the county in which the jointly owned
9 airport is located, and where the board or
10 commission provided water and wastewater services
11 off the airport premises before January 1, 1995;
12 provided that the authority granted by this section
13 may be exercised by such a board or commission with
14 respect to water and wastewater systems or
15 improvements only.
16 (6) A local school administrative unit (i) that is
17 located in a county that has a population of over
18 90,000 according to the most recent federal
19 decennial census and (ii) whose board of education
20 is authorized to levy a school tax.
21 (7) An area mental health, developmental disabilities,
22 and substance abuse authority, acting in accordance
23 with G.S. 122C-147.
24 (8) A consolidated city-county, as defined by G.S.
25 160B-2(1)."
26 Section 2. This act is effective when it becomes law.

EXPLANATION OF SENATE BILL 245
Proposed Senate Finance Committee Substitute
Sewer/Sanitary District Financing

TO: Senate Finance Committee
FROM: Sabra Faires, Committee Counsel
DATE: April 22, 1997
SPONSOR: Senator Ledbetter

Senate Bill 245 adds two types of local governmental units to the list of local governmental units that can use installment purchase financing under G.S. 160A-20. The two types added by the bill are metropolitan sewerage districts and sanitary districts. The bill as introduced added metropolitan sewerage districts and the proposed committee substitute adds sanitary districts. The bill is effective upon ratification. Current law authorizes water and sewer authorities to use this type of financing.

Metropolitan sewerage districts are created by resolution of the Environmental Management Commission after a public hearing and after a request from the local units affected. A sewerage district is governed by a board appointed by the governing bodies of the local units whose area is included in the district. The district can issue general obligation bonds and revenue bonds, levy property taxes in the district, and set and collect fees for sewerage service. There are few of these districts in the State. The most active one is in Buncombe County.

Sanitary districts are created by resolution of the Health Services Commission after a public hearing and after a petition of at least 51% of the property owners in the proposed district. A sanitary district is governed by a board elected by the residents of the district. Like a sewerage district, a sanitary district can issue general obligation bonds and revenue bonds, levy property taxes in the district, and set and collect fees for services. Sanitary districts can provide a broad range of services, such as water, sewer, fire protection, garbage disposal, and rescue services.

G.S. 160A-20 authorizes a listed unit to finance the purchase of real or personal property by an installment contract that pledges the asset financed as security. If the unit defaults on the loan, the sole recourse is to repossess or foreclose the pledged asset. Many financings under this statute are accomplished with certificates of participation. All financings under the statute that involve real property must be approved by the Local Government

Commission. All financings that involve personal property must be approved by the Local Government Commission if they are for at least five years and for at least \$500,000 or 1/10th of 1% of the assessed value of property in the district.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 245

Short Title: Installment Purchase/Sewer District.

(Public)

Sponsors: Senators Ledbetter; Blust, Carrington, Clark, East, Foxx, Garwood, Horton, Kincaid, Rucho, Shaw of Guilford, and Webster.

Referred to: Finance.

February 26, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE METROPOLITAN SEWERAGE DISTRICTS TO USE
3 INSTALLMENT PURCHASE FINANCING TO THE SAME EXTENT AS
4 OTHER UNITS OF LOCAL GOVERNMENT.

5 The General Assembly of North Carolina enacts:

6 Section 1. G.S. 160A-20(h) reads as rewritten:

7 "(h) As used in this section, the term "unit of local government" means any of the
8 following:

- 9 (1) A county.
10 (2) A city.
11 (3) A water and sewer authority created under Article 1 of Chapter
12 162A of the General ~~Statutes~~. Statutes or a metropolitan sewerage
13 district created under Article 5 of Chapter 162A of the General
14 Statutes.
15 (4) An airport authority whose situs is entirely within a county that
16 has (i) a population of over 120,000 according to the most recent
17 federal decennial census and (ii) an area of less than 200 square
18 miles.
19 (5) An airport authority in a county in which there are two
20 incorporated municipalities with a population of more than 65,000
21 according to the most recent federal decennial census.
22 (5a) An airport board or commission authorized by agreement between
23 two cities pursuant to G.S. 63-56, one of which is located partially

- 1 but not wholly in the county in which the jointly owned airport is
2 located, and where the board or commission provided water and
3 wastewater services off the airport premises before January 1, 1995;
4 provided that the authority granted by this section may be
5 exercised by such a board or commission with respect to water and
6 wastewater systems or improvements only.
- 7 (6) A local school administrative unit (i) that is located in a county
8 that has a population of over 90,000 according to the most recent
9 federal decennial census and (ii) whose board of education is
10 authorized to levy a school tax.
- 11 (7) An area mental health, developmental disabilities, and substance
12 abuse authority, acting in accordance with G.S. 122C-147.
- 13 (8) A consolidated city-county, as defined by G.S. 160B-2(1)."
14 Section 2. This act is effective when it becomes law.

EXPLANATION OF SENATE BILL 245
Proposed Senate Finance Committee Substitute
Sewer/Sanitary District Financing

TO: Senate Finance Committee
FROM: Sabra Faires, Committee Counsel
DATE: April 22, 1997
SPONSOR: Senator Ledbetter

Senate Bill 245 adds two types of local governmental units to the list of local governmental units that can use installment purchase financing under G.S. 160A-20. The two types added by the bill are metropolitan sewerage districts and sanitary districts. The bill as introduced added metropolitan sewerage districts and the proposed committee substitute adds sanitary districts. The bill is effective upon ratification. Current law authorizes water and sewer authorities to use this type of financing.

Metropolitan sewerage districts are created by resolution of the Environmental Management Commission after a public hearing and after a request from the local units affected. A sewerage district is governed by a board appointed by the governing bodies of the local units whose area is included in the district. The district can issue general obligation bonds and revenue bonds, levy property taxes in the district, and set and collect fees for sewerage service. There are few of these districts in the State. The most active one is in Buncombe County.

Sanitary districts are created by resolution of the Health Services Commission after a public hearing and after a petition of at least 51% of the property owners in the proposed district. A sanitary district is governed by a board elected by the residents of the district. Like a sewerage district, a sanitary district can issue general obligation bonds and revenue bonds, levy property taxes in the district, and set and collect fees for services. Sanitary districts can provide a broad range of services, such as water, sewer, fire protection, garbage disposal, and rescue services.

G.S. 160A-20 authorizes a listed unit to finance the purchase of real or personal property by an installment contract that pledges the asset financed as security. If the unit defaults on the loan, the sole recourse is to repossess or foreclose the pledged asset. Many financings under this statute are accomplished with certificates of participation. All financings under the statute that involve real property must be approved by the Local Government

Commission. All financings that involve personal property must be approved by the Local Government Commission if they are for at least five years and for at least \$500,000 or 1/10th of 1% of the assessed value of property in the district.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 421

Short Title: Local Option Homestead Relief.

(Public)

Sponsors: Senators Cooper; Albertson, Allran, Ballance, Ballantine, Blust, Carpenter, Carrington, Cochrane, Conder, Dalton, Dannelly, Forrester, Foxx, Hartsell, Hoyle, Jenkins, Kinnaird, Ledbetter, Lee, Lucas, Martin of Pitt, Martin of Guilford, McDaniel, Miller, Odom, Perdue, Phillips, Plyler, Rand, Reeves, Shaw of Cumberland, Shaw of Guilford, Soles, Weinstein, Wellons, and Winner.

Referred to: Finance.

March 18, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE CONSTITUTION OF NORTH CAROLINA TO
3 AUTHORIZE THE GENERAL ASSEMBLY TO ENACT LEGISLATION
4 ALLOWING EACH COUNTY TO (I) INCREASE THE AMOUNT OF THE
5 PROPERTY TAX HOMESTEAD EXEMPTION FOR LOW-INCOME ELDERLY
6 AND DISABLED INDIVIDUALS IN THAT COUNTY AND (II) RAISE THE
7 DEFINITION OF "LOW-INCOME" SO THAT MORE ELDERLY AND
8 DISABLED INDIVIDUALS CAN QUALIFY FOR THE EXEMPTION.
9 The General Assembly of North Carolina enacts:
10 Section 1. Section 2 of Article V of the North Carolina Constitution is
11 amended by adding a new subdivision to read:
12 "(8) Property tax homestead exclusion. If the General Assembly enacts legislation
13 classifying and excluding from ad valorem taxation part of the value of the residence
14 of each elderly or disabled individual whose income is below a maximum amount
15 and who satisfies other conditions, the General Assembly may, notwithstanding
16 subdivision (2) of this section, enact a general law uniformly applicable throughout
17 the State authorizing each county to increase the portion of a classified residence's
18 value that is excluded in that county and to increase the maximum income threshold
19 to qualify for the exclusion in that county."

1 Section 2. G.S. 105-277.1 is amended by adding a new subsection to
2 read:

3 "(a1) Local Option Increase. -- The board of commissioners of a county may, by
4 resolution, increase the amount of the exclusion provided in subsection (a) of this
5 section, increase the maximum income threshold provided in subdivision (a)(2) of
6 this section, or both. An increase adopted under this subsection shall apply
7 uniformly within the county. The board of commissioners of a county may, by
8 resolution, repeal or reduce an increase adopted under this subsection, but may not
9 reduce the exclusion or the income threshold provided in subsection (a) of this
10 section. A resolution changing the exclusion amount or the income threshold within
11 a county pursuant to this subsection shall become effective no earlier than for the
12 taxable year beginning July 1 following adoption of the resolution."

13 Section 3. G.S. 105-309(f) reads as rewritten:

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

20
21 **'PROPERTY TAX RELIEF FOR ELDERLY AND**
22 **PERMANENTLY DISABLED PERSONS.**
23

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

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

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

44 Section 4. G.S. 105-328 reads as rewritten:

1 "§ 105-328. Listing, appraisal, and assessment of property subject to taxation by cities
2 and towns situated in more than one county.

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

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

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

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

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

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

42 (4) The governing body shall, with respect to property subject to city
43 or town taxation, be vested with the powers and duties vested by
44 this Subchapter in boards of county commissioners and boards of

1 equalization and review. Appeals may be taken from the municipal
2 board of equalization and review or governing body to the
3 Property Tax Commission in the manner provided in this
4 Subchapter for appeals from county boards of equalization and
5 review and boards of county commissioners.

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

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

20 Section 5. The amendment set out in Section 1 of this act shall be
21 submitted to the qualified voters of the State at the general election in November
22 1998. The election shall be conducted under the laws then governing elections in the
23 State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of
24 the General Statutes. The question to be used in the voting systems and ballots shall
25 be:

26 "[] FOR [] AGAINST

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

31 Section 6. If a majority of the votes cast on the question are in favor of
32 the amendment set out in Section 1 of this act, the State Board of Elections shall
33 certify the amendment to the Secretary of State. The amendment becomes effective
34 upon this certification. The Secretary of State shall enroll the amendment so
35 certified among the permanent records of that office.

36 Section 7. Sections 2, 3, and 4 of this act become effective only if the
37 constitutional amendment proposed by Section 1 of this act is approved as provided
38 in Sections 5 and 6 of this act. If the constitutional amendment is approved, Sections
39 2, 3, and 4 of this act become effective when the State Board of Elections certifies the
40 amendment to the Secretary of State.

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

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: Senate Bill 421

SHORT TITLE: Local Option Homestead Relief

SPONSOR(S): Senators Cooper, et al.

FISCAL IMPACT

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

FY 1997-98 FY 1998-99 FY 1999-00 FY 2000-01 FY 2001-02

REVENUES

See section on assumption and methodology

**PRINCIPAL DEPARTMENT(S) &
PROGRAM(S) AFFECTED:**

County units of governments that levy a property tax.

EFFECTIVE DATE: When it becomes law.

BILL SUMMARY:

The proposed act amends Section 2, Article V of the North Carolina Constitution, allowing General Assembly to enact a general law authorizing each county to increase the portion of the value of a residence of a low-income elderly or disabled individual from property tax that is excluded from property tax and to increase the maximum income threshold to qualify for the property tax exclusion. Provides that proposed constitutional amendment will be submitted to the voters at the November 1998 general election. If constitutional amendment is approved, adds new GS 105-277.1(a1) to authorize a county to increase the amount of the property tax exclusion, to increase the maximum income threshold, or to do both. Prohibits a county from reducing the exclusion or the income threshold. Change in amount of exclusion or income threshold is effective no earlier than taxable year beginning July 1, following adoption of resolution by county board of commissioners. Makes additional conforming changes to G. S. 105-309(f) and G. S. 105-328.

Summary: Institute of Government

ASSUMPTIONS AND METHODOLOGY:

In past legislative sessions the topic of indexing the homestead exemption has been discussed. The prevailing methodology is to index the amount of the exemption to the proportionate increase or decrease in the appraised value of property in a county resulting from either a

horizontal adjustment or reappraisal of real property. The income threshold could be indexed to the federal cost-of-living increase given to recipients of social security.

If the increase were made based on the reappraisal of real property the annual increase in cost would range between \$1.5 million and \$2 million. The estimate assumes one fourth of the counties annually re-value real property at a 30% increase. The federal increase in social security is around 3% a year. A 3% increase in the exemption and the income threshold annually is estimated to cost between \$800,000 and \$1,000,000 statewide.

This proposed act does not establish a methodology for county commissioners to adhere to when making increases in the amount of the exemption or the income threshold.

FISCAL RESEARCH DIVISION

733-4910

PREPARED BY: Warren Plonk

APPROVED BY:

DATE: April 21, 1997

EXPLANATION OF SENATE BILL 421
Local Option Homestead Exemption

TO: Senate Finance Committee
FROM: Sabra Faires, Committee Counsel
DATE: April 22, 1997
SPONSOR: Senator Cooper

Senate Bill 421 authorizes a constitutional amendment to be considered by the voters in November, 1998, that would give counties the option of increasing the property tax homestead exemption amount and the property tax homestead income ceiling amount. The homestead exemption is a partial exemption from property taxes for the residence of a person who is at least 65 years old or totally disabled and has an income of less than \$15,000. The current homestead exemption amount is \$20,000.

Section 2 of Article V of the North Carolina Constitution authorizes the General Assembly to classify property for taxation on a State-wide basis. Property that is classified must be taxed by a general law that is uniformly applicable in every city, county, or other local government unit. This bill would amend this section of the Constitution to give the General Assembly the authority to permit counties, on a local option basis, to adopt a higher homestead exemption amount and to apply higher maximum income levels for eligibility determination than are authorized by the General Assembly on a uniform, State-wide basis.

Neither the homestead exemption amount nor the income eligibility amount could be set lower than the amount set by statute. The exemption amount was last increased in 1996, when it was increased from \$15,000 to \$20,000 effective July 1, 1997. The exemption amount had last been increased in 1993 from \$12,000 to \$15,000. The income eligibility amount was last increased in 1996, when it was increased from \$11,000 to \$15,000 effective July 1, 1997. Before then, the income threshold had last been increased in 1987, when it was increased from \$10,000 to \$11,000.

Sections 2, 3, and 4 of this bill make conforming changes to implement the constitutional amendment. Section 2 establishes the procedure for county commissioners to adopt a resolution increasing the amount of the exclusion and the maximum income threshold for the homestead exemption greater than the amounts set in G.S. 105-277.1(a). It also authorizes the Board to repeal or reduce any such increase, so long as the reduction is not below the uniform State-wide

limits. Section 3 authorizes notice of the adopted levels. Section 4 would provide that for municipalities that lie in two or more counties, the municipalities may not adjust values because of different homestead exclusions adopted by the various counties.

This constitutional amendment would be submitted to the voters in the general election in November, 1998 and, if passed by the voters, would be applicable for tax years beginning July 1, 1999. The statutory changes would only be effective if the constitutional amendment is approved by the voters.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

2

HOUSE BILL 260*
Committee Substitute Favorable 4/8/97

Short Title: Conservation Easements/Tax Credit.

(Public)

Sponsors:

Referred to:

February 17, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH A CONSERVATION EASEMENTS PROGRAM THAT
3 USES CONSERVATION TAX CREDITS FOR THE PROTECTION OF
4 NATURAL RESOURCES AND THAT FURTHERS APPROPRIATE PUBLIC
5 USE OF NATURAL RESOURCES, TO CREATE THE FACILITATION AND
6 ASSISTANCE GRANT FUND TO SUPPORT COOPERATIVE
7 CONSERVATION EFFORTS, AND TO INCREASE THE CAP ON THE
8 INCOME TAX CREDIT FOR REAL PROPERTY DONATED FOR
9 CONSERVATION PURPOSES, AS RECOMMENDED BY THE
10 ENVIRONMENTAL REVIEW COMMISSION.

11 The General Assembly of North Carolina enacts:

12 Section 1. Chapter 113A of the General Statutes is amended by adding a
13 new Article to read:

14 "ARTICLE 16.

15 "Conservation Easements Program.

16 "**§ 113A-230. Legislative findings; intent.**

17 The General Assembly finds that past efforts to protect natural resources and to
18 provide for the appropriate public use of natural resources through the provision of
19 income tax credits for the donation of real property interests is fiscally prudent but
20 too limited to meet increasing needs. The General Assembly finds that a statewide
21 network of protected riparian buffers and greenways can best be accomplished
22 through a conservation easements program that entails the cooperative effort of all
23 levels of government, nonprofit organizations, and individuals. It is clear that a more

1 comprehensive approach is required to accomplish riparian buffers and greenways, as
2 well as this program's other conservation purposes, than was previously envisioned
3 and set in place. Other public conservation and use programs, such as natural area
4 protection, beach access, trail systems, historic landscape protection, and agricultural
5 preservation, also can benefit from increased attention and improved conservation
6 tools. Recognizing that flexibility is essential to the success of this effort, the
7 conservation easements program utilizes a broad range of nonregulatory approaches
8 and involves all interested parties in its activities. Because public understanding and
9 acceptance is crucial to a nonregulatory program, activities include education about
10 the purpose of and methods for conservation, as well as opportunities to use such
11 knowledge through involvement in efforts to conserve ecological systems. Potential
12 exists to accomplish multiple public purposes on conserved lands, and every
13 reasonable effort should be made to accommodate compatible uses without
14 diminishing their natural resource value. In those cases where potential conservation
15 lands have been previously degraded, partnerships should be sought to restore these
16 lands so that they again will serve a viable role in the ecological system. The General
17 Assembly intends to extend the ability of the Department of Environment, Health,
18 and Natural Resources to achieve these purposes and to strengthen the capability of
19 private nonprofit land trusts to participate in land and water conservation.

20 "§ 113A-231. Duties of the Department.

21 The Department of Environment, Health, and Natural Resources shall develop a
22 nonregulatory program that uses conservation tax credits as a prominent tool to
23 accomplish conservation purposes, including the maintenance of ecological systems.
24 The Secretary of Environment, Health, and Natural Resources shall:

- 25 (1) Adopt a plan guiding efforts to educate involved parties, focus on
26 attainable conservation objectives, and achieve ecological benefits
27 for the State.
- 28 (2) Set goals for education and communication designed to reach the
29 broadest and most involved audience so that the conservation tax
30 credit may develop into a significant tool for environmental
31 protection and for furthering appropriate public use of natural
32 resources.
- 33 (3) Adopt guidelines, criteria, and rules for program operation to
34 ensure maximum effectiveness and long-term efficiency.
- 35 (4) Award grants and execute contracts and other agreements as
36 necessary to conduct the nonregulatory program and achieve its
37 goals.
- 38 (5) Facilitate acquisition through donation and facilitate the holding
39 and the transferring of interests in land necessary to establish a
40 network of riparian buffers and greenways, as well as natural areas
41 and other conservation benefits.
- 42 (6) Facilitate acceptance of donations that are eligible for tax credits
43 under G.S. 105-130.34 or G.S. 105-151.12 or that constitute a
44 charitable deduction under federal or State law.

- 1 (7) Cooperate with federal, State, or local government agencies,
2 nonprofit organizations, corporations, and individuals.
- 3 (8) Involve professional associations, business leagues, community
4 groups, and other volunteer groups in program activities.
- 5 (9) Facilitate public education regarding the function and importance
6 of ecological systems and the methods available for their
7 protection.
- 8 (10) Coordinate with other programs involved with the conservation of
9 lands and waters to gain the most public benefit while protecting
10 the environment.
- 11 (11) Pursue cooperative efforts to restore previously degraded lands
12 brought under the public trust to reestablish their ecological
13 function.

14 **"§ 113A-232. Facilitation and Assistance Grant Fund.**

15 (a) Fund Created. -- The Facilitation and Assistance Grant Fund is created. The
16 Fund shall be administered by the Department of Environment, Health, and Natural
17 Resources to stipulate use of the conservation easements for other conservation
18 purposes, to improve the capacity of private nonprofit land trusts to successfully
19 accomplish conservation projects, to better equip real estate related professionals to
20 pursue opportunities for conservation, to increase citizen participation in land and
21 water conservation, and to provide an opportunity to leverage private and other
22 public monies for conservation easements.

23 (b) Fund Sources. -- The Facilitation and Assistance Grant Fund shall consist of
24 any monies appropriated to it by the General Assembly and any monies received
25 from public or private sources. Unexpended monies in the Fund that were
26 appropriated from the General Fund by the General Assembly shall revert at the end
27 of the biennium unless the General Assembly otherwise provides. Unexpended
28 monies in the Fund from other sources shall not revert and shall remain available
29 until such time as they are expended consistent with this Article.

30 (c) Administration of Fund. -- The Secretary of Environment, Health, and Natural
31 Resources shall adopt rules that set forth the process for awarding grants and
32 administering the Facilitation and Assistance Grant Fund, using the best available
33 information to focus grants activity on those areas, approaches, and techniques that
34 are likely to provide the optimum positive effect on environmental protection. The
35 Secretary may contract for administrative services to assist in administering the
36 program under this Article.

37 (d) Eligibility. -- In order to be the subject of a grant under this Article, lands
38 must possess or have a high potential to possess ecological value, must be reasonably
39 restorable, and must qualify for tax credits under G.S. 105-151.12 and G.S. 105-
40 130.34. To be eligible to receive a grant under this Article, a grantee must be a
41 private nonprofit land trust organization that is organized to receive and administer
42 lands for conservation purposes and that is qualified to receive charitable
43 contributions under the Code. For the purposes of this subsection, the term 'Code'
44 has the same meaning as defined in G.S. 105-228.90.

1 "§ 113A-233. Uses of the Facilitation and Assistance Grant Fund.

2 (a) The Facilitation and Assistance Grant Fund shall be used to pay costs
3 reasonably necessary to administer the grants program. After these administrative
4 costs are paid, the Fund may be used for:

5 (1) Reimbursement for total or partial transaction costs for donations
6 from individuals or corporations satisfying either of the following:

7 a. Insufficient financial ability to pay all costs or insufficient
8 taxable income to allow these costs to be included in the
9 donated value.

10 b. Insufficient tax burdens to allow these costs to be offset by
11 the value of tax credits under G.S. 105-130.34 or G.S. 105-
12 151.12 or by charitable deductions.

13 (2) Management support, including initial baseline inventory and
14 planning.

15 (3) Monitoring compliance with conservation easements; the related
16 use of riparian buffers, natural areas, and greenways; and the
17 presence of ecological integrity.

18 (4) Education, including information materials intended for
19 landowners and education for staff and volunteers.

20 (5) Direct stewardship and stewardship as provided in subsection (b)
21 of this section.

22 (6) Transaction costs, including legal expenses, closing and title costs,
23 and unusual direct costs, such as overnight travel.

24 (7) Administrative costs for short-term growth or for building capacity.

25 (b) The Secretary may allocate up to ten percent (10%) of available funds after
26 reasonably necessary administrative costs have been paid to a protected endowment
27 account, the interest from which shall be available to accomplish the ongoing
28 activities provided in subdivisions (3) and (5) of subsection (a) of this section.

29 (c) The Fund shall not be used to pay the purchase price for any interest in land.

30 "§ 113A-234. Administration of grants.

31 (a) The Department of Environment, Health, and Natural Resources may
32 administer the grants under this Article or may contract for selected activities under
33 this Article. If administrative services are contracted, the Department shall establish
34 guidance and criteria for its operation and contract with a statewide nonprofit land
35 trust service organization.

36 (b) The Secretary of Environment, Health, and Natural Resources shall adopt
37 rules for the award of grants. The rules may address, but are not limited to, the
38 following considerations:

39 (1) Application and award frequency.

40 (2) Organizational capability of the grantees.

41 (3) Viability of the donor.

42 (4) Location of the natural resources.

43 (5) Ecological and conservation value.

44 (6) Legal parameters of protective instruments.

- 1 (7) Procedural considerations.
- 2 (8) Management policies.
- 3 (9) Stewardship expectations.
- 4 (10) Requirements for matching funds.

5 (c) The Secretary of Environment, Health, and Natural Resources shall make the
6 final decision on the award of grants and shall announce the award publicly in a
7 timely manner.

8 **"§ 113A-235. Conservation easements.**

9 Ecological systems and appropriate public use of these systems may be protected
10 through conservation easements, including conservation agreements under Article 4
11 of Chapter 121 of the General Statutes, the Conservation and Historic Preservation
12 Agreements Act. A conservation easement or conservation agreement secured with
13 assistance from the Facilitation and Assistance Grant Fund shall provide that all
14 rights under the easement or conservation agreement may be transferred to the
15 Department of Environment, Health and Natural Resources. As a condition of
16 receiving funds under this Article, the holder of the conservation easement or
17 conservation agreement shall grant to the Department of Environment, Health, and
18 Natural Resources, as trustee for the State, a first right of refusal to acquire all rights
19 in the conservation easement or conservation agreement under such terms and
20 conditions as agreed to between the holder of the conservation easement or
21 conservation agreement and the Department of Environment, Health and Natural
22 Resources. Any holder of a conservation easement or conservation agreement
23 secured under this Article shall assume responsibility for the management of the
24 protected interests created by the easement. The Department of Environment,
25 Health, and Natural Resources shall work cooperatively with State and local agencies
26 and qualified nonprofit organizations to monitor compliance with conservation
27 easements and conservation agreements and to ensure the continued viability of the
28 protected ecosystems."

29 Section 2. G.S. 105-130.34 reads as rewritten:

30 **"§ 105-130.34. Credit for certain real property donations.**

31 (a) Any corporation that makes a qualified donation of an interest in real property
32 located in North Carolina during the taxable year that is useful for public beach
33 access or use, public access to public waters or trails, fish and wildlife conservation,
34 or other similar land conservation purposes, ~~shall be~~ is allowed a credit against the
35 ~~taxes tax~~ tax imposed by this Division equal to twenty-five percent (25%) of the fair
36 market value of the donated property interest. To be eligible for this credit, the
37 interest in real property must be donated to and accepted by either the State, ~~local~~
38 ~~government~~ a local government, or a body that is both organized to receive and
39 administer lands for conservation purposes and ~~is~~ is qualified to receive charitable
40 contributions pursuant to G.S. ~~405-130.9; provided, however, that lands~~ 105-130.9.
41 Lands required to be dedicated pursuant to local governmental regulation or
42 ordinance and dedications made to increase building density levels permitted under
43 ~~such regulations or ordinances shall not be~~ the regulation or ordinance are not
44 eligible for this credit. The credit allowed under this section may not exceed

1 ~~twenty-five thousand dollars (\$25,000).~~ two hundred fifty thousand dollars (\$250,000).

2 To support the credit allowed by this section, the taxpayer shall file with its income
3 tax return for the taxable year in which the credit is claimed, a certification by the
4 Department of Environment, Health, and Natural Resources that the property
5 donated is suitable for one or more of the valid public benefits set forth in this
6 subsection.

7 (b) The credit allowed by this section may not exceed the amount of tax imposed
8 by this Division for the taxable year reduced by the sum of all credits ~~allowed under~~
9 ~~this Division,~~ allowed, except payments of tax made by or on behalf of the taxpayer.

10 (c) Any unused portion of this credit may be carried forward for the next
11 succeeding five years.

12 ~~The fair market value, or any portion thereof, of a~~ That portion of a
13 ~~qualifying donation that is not eligible for a credit pursuant to this section may be~~
14 ~~considered as a charitable contribution pursuant to G.S. 105-130.9. That portion of~~
15 ~~the donation~~ the basis for a credit allowed as a credit pursuant to under this section
16 ~~shall not be~~ is not eligible for deduction as a charitable contribution. contribution
17 under G.S. 105-130.9."

18 Section 3. G.S. 105-151.12 reads as rewritten:

19 "**§ 105-151.12. Credit for certain real property donations.**

20 (a) A person who makes a qualified donation of ~~interests~~ an interest in real
21 property located in North Carolina during the taxable year that is useful for (i) public
22 beach access or use, (ii) public access to public waters or trails, (iii) fish and wildlife
23 conservation, or (iv) other similar land conservation purposes, ~~shall be~~ is allowed as a
24 credit against the tax imposed by this Division an amount equal to twenty-five
25 percent (25%) of the fair market value of the donated property interest. To be
26 eligible for this credit, the interest in property must be donated to and accepted by
27 either the State, a local government, or a body that is both organized to receive and
28 administer lands for conservation purposes and ~~is~~ qualified to receive charitable
29 contributions under the ~~Code,~~ provided, however, that lands Code. Lands required
30 to be dedicated pursuant to local governmental regulation or ordinance and
31 dedications made to increase building density levels permitted under ~~such~~ the
32 regulations or ordinances are not eligible for this credit. The credit allowed under
33 this section may not exceed ~~twenty-five thousand dollars (\$25,000).~~ one hundred
34 thousand dollars (\$100,000). To support the credit allowed by this section, the
35 taxpayer shall file with the income tax return for the taxable year in which the credit
36 is claimed a certification by the Department of Environment, Health, and Natural
37 Resources that the property donated is suitable for one or more of the valid public
38 benefits set forth by this subsection.

39 (b) The credit allowed by this section may not exceed the amount of tax imposed
40 by this Division for the taxable year reduced by the sum of all credits ~~allowed under~~
41 ~~this Division,~~ allowed, except payments of tax made by or on behalf of the taxpayer.

42 Any unused portion of this credit may be carried forward for the next succeeding
43 five years.

1 (c) In order to claim the credit allowed under this section, the taxpayer must add
2 the fair market value of the donated property interest, up to a maximum of ~~one~~
3 ~~hundred thousand dollars (\$100,000)~~, four hundred thousand dollars (\$400,000), to
4 taxable income as provided in G.S. 105-134.6(c).

5 (d) In the case of property owned by a married couple, if both spouses are
6 required to file North Carolina income tax returns, the credit allowed by this section
7 may be claimed only if the spouses file a joint return. If only one spouse is required
8 to file a North Carolina income tax return, that spouse may claim the credit allowed
9 by this section on a separate return.

10 (e) In the case of marshland for which a claim has been filed pursuant to G.S.
11 113-205, the offer of donation must be made before December 31, 1998, to qualify for
12 the credit allowed by this section."

13 Section 4. G.S. 105-134.6(c)(5) reads as rewritten:

14 "(5) The fair market value, up to a maximum of ~~one hundred thousand~~
15 ~~dollars (\$100,000)~~, four hundred thousand dollars (\$400,000), of
16 the donated property interest for which the taxpayer claims a
17 credit for the taxable year under G.S. 105-151.12 and the market
18 price of the gleaned crop for which the taxpayer claims a credit for
19 the taxable year under G.S. 105-151.14."

20 Section 5. G.S. 105-287(a) reads as rewritten:

21 "(a) In a year in which a general reappraisal or horizontal adjustment of real
22 property in the county is not made, the assessor shall increase or decrease the
23 appraised value of real property, as determined under G.S. 105-286, ~~to~~ to accomplish
24 any one or more of the following:

- 25 (1) Correct a clerical or mathematical ~~error~~; error.
26 (2) Correct an appraisal error resulting from a misapplication of the
27 schedules, standards, and rules used in the county's most recent
28 general reappraisal or horizontal ~~adjustment~~; or adjustment.
29 (2a) Recognize changes in value resulting from agreements made
30 pursuant to Article 4 of Chapter 121 of the General Statutes, the
31 Conservation and Historic Preservation Agreements Act.
32 (3) Recognize an increase or decrease in the value of the property
33 resulting from a factor other than one listed in subsection (b)."

34 Section 6. G.S. 105-317(a) reads as rewritten:

35 "(a) Whenever any real property is appraised it shall be the duty of the persons
36 making appraisals:

- 37 (1) In determining the true value of land, to consider as to each tract,
38 parcel, or lot separately listed at least its advantages and
39 disadvantages as to location; zoning; quality of soil; waterpower;
40 water privileges; dedication as a nature preserve; conservation
41 easements; historic preservation agreements; mineral, quarry, or
42 other valuable deposits; fertility; adaptability for agricultural,
43 timber-producing, commercial, industrial, or other uses; past
44 income; probable future income; and any other factors that may

- 1 affect its value except growing crops of a seasonal or annual
2 nature.
- 3 (2) In determining the true value of a building or other improvement,
4 to consider at least its location; type of construction; age;
5 replacement cost; cost; adaptability for residence, commercial,
6 industrial, or other uses; past income; probable future income; and
7 any other factors that may affect its value.
- 8 (3) To appraise partially completed buildings in accordance with the
9 degree of completion on January 1."
- 10 Section 7. Sections 2 through 4 of this act are effective for taxable years
11 beginning on or after 1 January 1997. The remaining sections of this act become
12 effective 1 July 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

HOUSE BILL 260*
Committee Substitute Favorable 4/8/97
Proposed Senate Finance Committee Substitute
H260-CSLJ-4/22

Short Title: Increase Conservation Tax Credit.

(Public)

Sponsors:

Referred to:

February 17, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO INCREASE THE CAP ON THE INCOME TAX CREDIT FOR REAL
3 PROPERTY DONATED FOR CONSERVATION PURPOSES AND TO ENSURE THAT
4 CONSERVATION AND PRESERVATION AGREEMENTS ARE CONSIDERED IN
5 DETERMINING THE APPRAISED VALUE OF LAND AND IMPROVEMENTS.
6 The General Assembly of North Carolina enacts:
7 Section 1. G.S. 105-130.34 reads as rewritten:
8 "§ 105-130.34. Credit for certain real property donations.
9 (a) Any corporation that makes a qualified donation of an
10 interest in real property located in North Carolina during the
11 taxable year that is useful for public beach access or use,
12 public access to public waters or trails, fish and wildlife
13 conservation, or other similar land conservation ~~purposes, shall~~
14 ~~be purposes~~ is allowed a credit against the ~~taxes~~ tax imposed by
15 this Division equal to twenty-five percent (25%) of the fair
16 market value of the donated property interest. To be eligible
17 for this credit, the interest in real property must be donated to
18 and accepted by either the State, ~~local government~~ a local
19 government, or a body that is both organized to receive and
20 administer lands for conservation purposes and ~~is~~ qualified to

1 receive charitable contributions pursuant to G.S. ~~105-130.9;~~
2 ~~provided, however, that lands~~ 105-130.9. Lands required to be
3 dedicated pursuant to local governmental regulation or ordinance
4 and dedications made to increase building density levels
5 permitted under ~~such regulations or ordinances shall not be a~~
6 regulation or ordinance are not eligible for this credit. The
7 credit allowed under this section may not exceed ~~twenty-five~~
8 ~~thousand dollars (\$25,000).~~ two hundred fifty thousand dollars
9 (\$250,000). To support the credit allowed by this section, the
10 taxpayer shall must file with its income tax ~~return~~ return, for
11 the taxable year in which the credit is claimed, a certification
12 by the Department of Environment, Health, and Natural Resources
13 that the property donated is suitable for one or more of the
14 valid public benefits set forth in this subsection.

15 (b) The credit allowed by this section may not exceed the
16 amount of tax imposed by this Division for the taxable year
17 reduced by the sum of all credits ~~allowed under this Division,~~
18 allowed, except payments of tax made by or on behalf of the
19 taxpayer.

20 (c) Any unused portion of this credit may be carried forward
21 for the next succeeding five years.

22 (d) ~~The fair market value, or any portion thereof, of a That~~
23 portion of a qualifying donation that is not eligible for a
24 credit pursuant to this section may be considered as a charitable
25 contribution pursuant to G.S. 105-130.9. That portion of the
26 donation the basis for a credit allowed as a credit pursuant to
27 under this section shall not be is not eligible for deduction as
28 a charitable contribution, contribution under G.S. 105-130.9."

29 Section 2. G.S. 105-151.12 reads as rewritten:

30 "\$ 105-151.12. Credit for certain real property donations.

31 (a) A person who makes a qualified donation of ~~interests~~ an
32 interest in real property located in North Carolina during the
33 taxable year that is useful for (i) public beach access or use,
34 (ii) public access to public waters or trails, (iii) fish and
35 wildlife conservation, or (iv) other similar land conservation
36 ~~purposes, shall be~~ purposes is allowed as a credit against the
37 tax imposed by this Division ~~an amount~~ equal to twenty-five
38 percent (25%) of the fair market value of the donated property
39 interest. To be eligible for this credit, the interest in
40 property must be donated to and accepted by either the State, a
41 local government, or a body that is both organized to receive and
42 administer lands for conservation purposes and ~~is~~ qualified to
43 receive charitable contributions under the Code; ~~provided,~~
44 ~~however, that lands~~ Code. Lands required to be dedicated

1 pursuant to local governmental regulation or ordinance and
2 dedications made to increase building density levels permitted
3 under ~~such regulations or ordinances~~ a regulation or ordinance
4 are not eligible for this credit. The credit allowed under this
5 section may not exceed ~~twenty-five thousand dollars (\$25,000)~~,
6 one hundred thousand dollars (\$100,000). To support the credit
7 allowed by this section, the taxpayer ~~shall~~ must file with the
8 income tax return for the taxable year in which the credit is
9 claimed a certification by the Department of Environment, Health,
10 and Natural Resources that the property donated is suitable for
11 one or more of the valid public benefits set forth by in this
12 subsection.

13 (b) The credit allowed by this section may not exceed the
14 amount of tax imposed by this Division for the taxable year
15 reduced by the sum of all credits ~~allowed under this Division,~~
16 allowed, except payments of tax made by or on behalf of the
17 taxpayer.

18 Any unused portion of this credit may be carried forward for
19 the next succeeding five years.

20 (c) In order to claim the credit allowed under this section,
21 the taxpayer must add the fair market value of the donated
22 property interest, up to a maximum of ~~one hundred thousand~~
23 ~~dollars (\$100,000)~~, four hundred thousand dollars (\$400,000), to
24 taxable income as provided in G.S. 105-134.6(c).

25 (d) In the case of property owned by a married couple, if both
26 spouses are required to file North Carolina income tax returns,
27 the credit allowed by this section may be claimed only if the
28 spouses file a joint return. If only one spouse is required to
29 file a North Carolina income tax return, that spouse may claim
30 the credit allowed by this section on a separate return.

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

35 Section 3. G.S. 105-134.6(c)(5) reads as rewritten:

36 "(5) The fair market value, up to a maximum of ~~one~~
37 ~~hundred thousand dollars (\$100,000)~~, four hundred
38 thousand dollars (\$400,000), of the donated
39 property interest for which the taxpayer claims a
40 credit for the taxable year under G.S. 105-151.12
41 and the market price of the gleaned crop for which
42 the taxpayer claims a credit for the taxable year
43 under G.S. 105-151.14."

44 Section 4. G.S. 105-287(a) reads as rewritten:

1 "(a) In a year in which a general reappraisal or horizontal
2 adjustment of real property in the county is not made, the
3 assessor shall increase or decrease the appraised value of real
4 property, as determined under G.S. 105-286, ~~to~~ to accomplish any
5 one or more of the following:

- 6 (1) Correct a clerical or mathematical ~~error~~; error.
7 (2) Correct an appraisal error resulting from a
8 misapplication of the schedules, standards, and
9 rules used in the county's most recent general
10 reappraisal or horizontal adjustment; ~~or~~
11 adjustment.
12 (2a) Recognize an increase or decrease in the value of
13 the property resulting from a conservation or
14 preservation agreement subject to Article 4 of
15 Chapter 121 of the General Statutes, the
16 Conservation and Historic Preservation Agreements
17 Act.
18 (3) Recognize an increase or decrease in the value of
19 the property resulting from a factor other than one
20 listed in subsection (b)."

21 Section 5. G.S. 105-317(a) reads as rewritten:

22 "(a) Whenever any real property is appraised it shall be the
23 duty of the persons making appraisals:

- 24 (1) In determining the true value of land, to consider
25 as to each tract, parcel, or lot separately listed
26 at least its advantages and disadvantages as to
27 location; zoning; quality of soil; waterpower;
28 water privileges; dedication as a nature preserve;
29 conservation or preservation agreements; mineral,
30 quarry, or other valuable deposits; fertility;
31 adaptability for agricultural, timber-producing,
32 commercial, industrial, or other uses; past income;
33 probable future income; and any other factors that
34 may affect its value except growing crops of a
35 seasonal or annual nature.
36 (2) In determining the true value of a building or
37 other improvement, to consider at least its
38 location; type of construction; age; replacement
39 cost; cost; adaptability for residence, commercial,
40 industrial, or other uses; past income; probable
41 future income; and any other factors that may
42 affect its value.

1 (3) To appraise partially completed buildings in
2 accordance with the degree of completion on January
3 1."

4 Section 6. Sections 1 through 3 of this act are
5 effective for taxable years beginning on or after January 1,
6 1998. The remaining sections of this act become effective July
7 1, 1997.

**NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE**

BILL NUMBER: House Bill 260 (Second Version)
SHORT TITLE: Conservation Easements/Tax Credit
SPONSOR(S): Proposed Committee Substitute

(\$ Million)					
FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 1997-98</u>	<u>FY 1998-99</u>	<u>FY 1999-00</u>	<u>FY 2000-01</u>	<u>FY 2001-02</u>
General Fund					
REVENUES					
Individual		\$1.5 million (loss) a year in additional income tax credits certified			
Corporation		\$1.7 million (loss) a year in additional income tax credits certified			
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:	Department of Revenue Personal Tax Division Department of Revenue Corporate Tax Division Department of Environment, Health, and Natural Resources				
EFFECTIVE DATE:	For tax years beginning on or after January 1, 1998.				

BILL SUMMARY:

The proposed act increases the income tax credit for donations of real property made to the State, a unit of local government, or to a body organized to receive land for conservation purposes. The corporate credit under G. S. 105-130.34 is increased from \$25,000 to \$250,000. The individual credit under G. S. 105-151.12 is increased from \$25,000 to \$100,000. Makes a clarifying change to the property tax statutes under G. S. 105-287(a) and G. S. 105-317(a).

ASSUMPTIONS AND METHODOLOGY:

It is impossible to determine how much real property will be donated in a given year under this act. Donors are motivated to make such gifts for many different reasons. However, it is logical to assume that the greater the tax credit received from the donation, the more real property individuals and corporations are willing to donate. This assumption is evident in the increase in donations and their characteristics when the credit was increased from a \$5,000 cap to the current \$25,000. (The percentage increase in the cap effective tax year 1989 was 500% or five times the 1983 cap.)

For tax years 1983 through 1988, 37 donations were made by 169 donors. Each donor gave an average of 66 acres for a total acreage of 2,383. The estimated value of this acreage is \$5.6 million. For tax years 1989 through 1995, 95 donations were made by 215 donors. Each donor gave an average of 252 acres for a total acreage of 23,714. The estimated value of this acreage is \$34.5 million. The cumulative credit for the period 1983 to 1988 was \$574,151 and for the period 1989 to 1995 was \$2,805,488. The percentage increase over this period is 488% or almost five times the cumulative credit for 1983 through 1988. The ratio of the increase in the credit cap to the increase in certified credits is almost 1 to 1; 488% increase in credits to a 500% increase in the cap.

This act raises the credit cap 1000% for corporations and 400% for individuals. If this ratio continues the level of additional certified credit, on average, for the next five years is expected to be \$1.7 million a year for corporations and \$1.5 million a year for individuals.

Equations shown below:

Corporations

The base data for credits certified to corporations is the seven year average of cumulative credits for the period 1989 to 1995 times 30%, the corporate share of total credits for the period; \$841,646. This value times 10 divided by five years equals \$1.7 million a year in new credits.

- $\$2,805,488 * .30 = \$841,646$
- $(\$841,646 * 10) / 5 = \1.7 million

Individuals

The base data for credits certified to individuals is the seven year average of cumulative credits for the period 1989 to 1995 times 69%, the individual share of total credits for the period; \$1,935,787. This value times 4 divided by five years equals \$1.5 million a year in new credits.

- $\$2,805,488 * .69 = \$1,935,787$
- $(\$1,935,787 * 4) / 5 = \1.5 million

FISCAL RESEARCH DIVISION

733-4910

PREPARED BY: H. Warren Plonk

APPROVED BY:

DATE: April 22, 1997

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

HOUSE BILL 260*
Committee Substitute Favorable 4/8/97
Proposed Senate Committee Substitute H260-PCSA353

Short Title: Increase Conservation Tax Credit.

(Public)

Sponsors:

Referred to:

February 17, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO INCREASE THE CAP ON THE INCOME TAX CREDIT FOR REAL
3 PROPERTY DONATED FOR CONSERVATION PURPOSES AND TO
4 ENSURE THAT CONSERVATION AND PRESERVATION AGREEMENTS
5 ARE CONSIDERED IN DETERMINING THE APPRAISED VALUE OF LAND
6 AND IMPROVEMENTS.
7 The General Assembly of North Carolina enacts:
8 Section 1. G.S. 105-130.34 reads as rewritten:
9 "**§ 105-130.34. Credit for certain real property donations.**
10 (a) Any corporation that makes a qualified donation of an interest in real property
11 located in North Carolina during the taxable year that is useful for public beach
12 access or use, public access to public waters or trails, fish and wildlife conservation,
13 or other similar land conservation ~~purposes, shall be~~ purposes is allowed a credit
14 against the ~~taxes~~ tax imposed by this Division equal to twenty-five percent (25%) of
15 the fair market value of the donated property interest. To be eligible for this credit,
16 the interest in real property must be donated to and accepted by either the State,
17 ~~local government~~ a local government, or a body that is both organized to receive and
18 administer lands for conservation purposes and ~~is~~ qualified to receive charitable
19 contributions pursuant to G.S. ~~105-130.9; provided, however, that lands~~ 105-130.9.
20 Lands required to be dedicated pursuant to local governmental regulation or
21 ordinance and dedications made to increase building density levels permitted under
22 ~~such regulations or ordinances shall not be~~ a regulation or ordinance are not eligible

1 for this credit. The credit allowed under this section may not exceed ~~twenty-five~~
2 ~~thousand dollars (\$25,000).~~ two hundred fifty thousand dollars (\$250,000). To
3 support the credit allowed by this section, the taxpayer ~~shall~~ must file with its income
4 tax ~~return~~ return, for the taxable year in which the credit is claimed, a certification by
5 the Department of Environment, Health, and Natural Resources that the property
6 donated is suitable for one or more of the valid public benefits set forth in this
7 subsection.

8 (b) The credit allowed by this section may not exceed the amount of tax imposed
9 by this Division for the taxable year reduced by the sum of all credits ~~allowed under~~
10 ~~this Division,~~ allowed, except payments of tax made by or on behalf of the taxpayer.

11 (c) Any unused portion of this credit may be carried forward for the next
12 succeeding five years.

13 (d) ~~The fair market value, or any portion thereof, of a~~ That portion of a
14 qualifying donation that is not eligible for a credit pursuant to this section may be
15 ~~considered as a charitable contribution pursuant to G.S. 105-130.9. That portion of~~
16 ~~the donation~~ the basis for a credit allowed as a credit pursuant to under this section
17 ~~shall not be~~ is not eligible for deduction as a charitable contribution. contribution
18 under G.S. 105-130.9."

19 Section 2. G.S. 105-151.12 reads as rewritten:

20 "**§ 105-151.12. Credit for certain real property donations.**

21 (a) A person who makes a qualified donation of ~~interests~~ an interest in real
22 property located in North Carolina during the taxable year that is useful for (i) public
23 beach access or use, (ii) public access to public waters or trails, (iii) fish and wildlife
24 conservation, or (iv) other similar land conservation ~~purposes, shall be~~ purposes is
25 ~~allowed as~~ a credit against the tax imposed by this Division ~~an amount~~ equal to
26 twenty-five percent (25%) of the fair market value of the donated property interest.
27 To be eligible for this credit, the interest in property must be donated to and
28 accepted by either the State, a local government, or a body that is both organized to
29 receive and administer lands for conservation purposes and ~~is~~ qualified to receive
30 charitable contributions under the ~~Code, provided, however, that lands~~ Code. Lands
31 required to be dedicated pursuant to local governmental regulation or ordinance and
32 dedications made to increase building density levels permitted under such regulations
33 ~~or ordinances~~ a regulation or ordinance are not eligible for this credit. The credit
34 allowed under this section may not exceed ~~twenty-five thousand dollars (\$25,000).~~
35 one hundred thousand dollars (\$100,000). To support the credit allowed by this
36 section, the taxpayer ~~shall~~ must file with the income tax return for the taxable year in
37 which the credit is claimed a certification by the Department of Environment, Health,
38 and Natural Resources that the property donated is suitable for one or more of the
39 valid public benefits set forth ~~by~~ in this subsection.

40 (b) The credit allowed by this section may not exceed the amount of tax imposed
41 by this Division for the taxable year reduced by the sum of all credits ~~allowed under~~
42 ~~this Division,~~ allowed, except payments of tax made by or on behalf of the taxpayer.

43 Any unused portion of this credit may be carried forward for the next succeeding
44 five years.

1 (c) In order to claim the credit allowed under this section, the taxpayer must add
2 the fair market value of the donated property interest, up to a maximum of ~~one~~
3 ~~hundred thousand dollars (\$100,000)~~, four hundred thousand dollars (\$400,000), to
4 taxable income as provided in G.S. 105-134.6(c).

5 (d) In the case of property owned by a married couple, if both spouses are
6 required to file North Carolina income tax returns, the credit allowed by this section
7 may be claimed only if the spouses file a joint return. If only one spouse is required
8 to file a North Carolina income tax return, that spouse may claim the credit allowed
9 by this section on a separate return.

10 (e) In the case of marshland for which a claim has been filed pursuant to G.S.
11 113-205, the offer of donation must be made before December 31, 1998, to qualify for
12 the credit allowed by this section."

13 Section 3. G.S. 105-134.6(c)(5) reads as rewritten:

14 "(5) The fair market value, up to a maximum of ~~one hundred thousand~~
15 ~~dollars (\$100,000)~~, four hundred thousand dollars (\$400,000), of
16 the donated property interest for which the taxpayer claims a
17 credit for the taxable year under G.S. 105-151.12 and the market
18 price of the gleaned crop for which the taxpayer claims a credit for
19 the taxable year under G.S. 105-151.14."

20 Section 4. G.S. 105-287(a) reads as rewritten:

21 "(a) In a year in which a general reappraisal or horizontal adjustment of real
22 property in the county is not made, the assessor shall increase or decrease the
23 appraised value of real property, as determined under G.S. 105-286, ~~to~~ to accomplish
24 any one or more of the following:

- 25 (1) Correct a clerical or mathematical ~~error~~, error.
- 26 (2) Correct an appraisal error resulting from a misapplication of the
27 schedules, standards, and rules used in the county's most recent
28 general reappraisal or horizontal ~~adjustment~~, or adjustment.
- 29 (2a) Recognize an increase or decrease in the value of the property
30 resulting from a conservation or preservation agreement subject to
31 Article 4 of Chapter 121 of the General Statutes, the Conservation
32 and Historic Preservation Agreements Act.
- 33 (3) Recognize an increase or decrease in the value of the property
34 resulting from a factor other than one listed in subsection (b)."

35 Section 5. G.S. 105-317(a) reads as rewritten:

36 "(a) Whenever any real property is appraised it shall be the duty of the persons
37 making appraisals:

- 38 (1) In determining the true value of land, to consider as to each tract,
39 parcel, or lot separately listed at least its advantages and
40 disadvantages as to location; zoning; quality of soil; waterpower;
41 water privileges; dedication as a nature preserve; conservation or
42 preservation agreements; mineral, quarry, or other valuable
43 deposits; fertility; adaptability for agricultural, timber-producing,
44 commercial, industrial, or other uses; past income; probable future

- 1 income; and any other factors that may affect its value except
2 growing crops of a seasonal or annual nature.
- 3 (2) In determining the true value of a building or other improvement,
4 to consider at least its location; type of construction; age;
5 replacement cost; cost; adaptability for residence, commercial,
6 industrial, or other uses; past income; probable future income; and
7 any other factors that may affect its value.
- 8 (3) To appraise partially completed buildings in accordance with the
9 degree of completion on January 1."
- 10 Section 6. Sections 1 through 3 of this act are effective for taxable years
11 beginning on or after January 1, 1998. The remaining sections of this act become
12 effective July 1, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

D

SENATE BILL 93*
Proposed Senate Finance Committee Substitute
S93-CSLC-4/22

Short Title: Modify & Extend Ports Tax Credit.

(Public)

Sponsors:

Referred to: Finance.

February 12, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO EXTEND THE SUNSET ON THE STATE PORTS TAX CREDIT AND TO
3 RAISE THE MAXIMUM CUMULATIVE CREDIT TO TWO MILLION DOLLARS.
4 The General Assembly of North Carolina enacts:
5 Section 1. Section 4 of Chapter 977 of the 1991 Session
6 Laws, as amended by Section 3 of Chapter 495 of the 1995 Session
7 Laws, reads as rewritten:
8 "Sec. 4. This act is effective for taxable years beginning on
9 or after March 1, 1992, and ending on or before February 28,
10 ~~1998~~, 2001."
11 Section 2. Section 4 of Chapter 681 of the 1993 Session
12 Laws, as amended by Section 17 of Chapter 17 of the 1995 Session
13 Laws and by Section 4 of Chapter 495 of the 1995 Session Laws,
14 reads as rewritten:
15 "Sec. 4. This act is effective for taxable years beginning on
16 or after January 1, 1994, and ending on or before February 28,
17 ~~1998~~, 2001."
18 Section 3. G.S. 105-130.41(b) reads as rewritten:
19 "(b) Limitations. -- This credit may not exceed fifty percent
20 (50%) of the amount of tax imposed by this Division for the
21 taxable year reduced by the sum of all credits allowable, except

1 tax payments made by or on behalf of the corporation. Any unused
2 portion of the credit may be carried forward for the succeeding
3 five years. The maximum cumulative credit that may be claimed by
4 a corporation under this section is ~~one~~ two million dollars
5 ~~(\$1,000,000)~~ (\$2,000,000)."

6 Section 4. G.S. 105-151.22(b) reads as rewritten:

7 "(b) Limitations. -- This credit may not exceed fifty percent
8 (50%) of the amount of tax imposed by this Division for the
9 taxable year reduced by the sum of all credits allowable, except
10 tax payments made by or on behalf of the taxpayer. Any unused
11 portion of the credit may be carried forward for the succeeding
12 five years. The maximum cumulative credit that may be claimed by
13 a taxpayer under this section is ~~one~~ two million dollars
14 ~~(\$1,000,000)~~ (\$2,000,000)."

15 Section 5. This act is effective for taxable years
16 beginning on or after January 1, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

D

SENATE BILL 93*
Proposed Senate Finance Committee Substitute
S93-CSLC-4/22

Short Title: Modify & Extend Ports Tax Credit.

(Public)

Sponsors:

Referred to: Finance.

February 12, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO EXTEND THE SUNSET ON THE STATE PORTS TAX CREDIT AND TO
3 RAISE THE MAXIMUM CUMULATIVE CREDIT TO TWO MILLION DOLLARS.
4 The General Assembly of North Carolina enacts:
5 Section 1. Section 4 of Chapter 977 of the 1991 Session
6 Laws, as amended by Section 3 of Chapter 495 of the 1995 Session
7 Laws, reads as rewritten:
8 "Sec. 4. This act is effective for taxable years beginning on
9 or after March 1, 1992, and ending on or before February 28,
10 ~~1998~~, 2001."
11 Section 2. Section 4 of Chapter 681 of the 1993 Session
12 Laws, as amended by Section 17 of Chapter 17 of the 1995 Session
13 Laws and by Section 4 of Chapter 495 of the 1995 Session Laws,
14 reads as rewritten:
15 "Sec. 4. This act is effective for taxable years beginning on
16 or after January 1, 1994, and ending on or before February 28,
17 ~~1998~~, 2001."
18 Section 3. G.S. 105-130.41(b) reads as rewritten:
19 "(b) Limitations. -- This credit may not exceed fifty percent
20 (50%) of the amount of tax imposed by this Division for the
21 taxable year reduced by the sum of all credits allowable, except

1 tax payments made by or on behalf of the corporation. Any unused
2 portion of the credit may be carried forward for the succeeding
3 five years. The maximum cumulative credit that may be claimed by
4 a corporation under this section is ~~one~~ two million dollars
5 ~~(\$1,000,000)~~ (\$2,000,000)."

6 Section 4. G.S. 105-151.22(b) reads as rewritten:

7 "(b) Limitations. -- This credit may not exceed fifty percent
8 (50%) of the amount of tax imposed by this Division for the
9 taxable year reduced by the sum of all credits allowable, except
10 tax payments made by or on behalf of the taxpayer. Any unused
11 portion of the credit may be carried forward for the succeeding
12 five years. The maximum cumulative credit that may be claimed by
13 a taxpayer under this section is ~~one~~ two million dollars
14 ~~(\$1,000,000)~~ (\$2,000,000)."

15 Section 5. This act is effective for taxable years
16 beginning on or after January 1, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 93*

Short Title: Remove Sunset/Ports Tax Credit.

(Public)

Sponsors: Senators Hoyle, Perdue (Cosponsors); Ballantine and Rand.

Referred to: Finance.

February 12, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO IMPLEMENT THE RECOMMENDATION OF THE STATE PORTS
3 STUDY COMMISSION TO REMOVE THE SUNSET ON THE STATE PORTS
4 TAX CREDIT AND TO RAISE THE MAXIMUM CUMULATIVE CREDIT TO
5 FIVE MILLION DOLLARS.

6 The General Assembly of North Carolina enacts:

7 Section 1. Section 4 of Chapter 977 of the 1991 Session Laws, as
8 amended by Section 3 of Chapter 495 of the 1995 Session Laws, reads as rewritten:

9 "Sec. 4. This act is effective for taxable years beginning on or after March 1, ~~1992,~~
10 ~~and ending on or before February 28, 1998.~~ 1992."

11 Section 2. Section 4 of Chapter 681 of the 1993 Session Laws, as
12 amended by Section 17 of Chapter 17 of the 1995 Session Laws and by Section 4 of
13 Chapter 495 of the 1995 Session Laws, reads as rewritten:

14 "Sec. 4. This act is effective for taxable years beginning on or after January 1,
15 ~~1994, and ending on or before February 28, 1998.~~ 1994."

16 Section 3. G.S. 105-151.22(b) reads as rewritten:

17 "(b) Limitations. -- This credit may not exceed fifty percent (50%) of the amount
18 of tax imposed by this Division for the taxable year reduced by the sum of all credits
19 allowable, except tax payments made by or on behalf of the taxpayer. Any unused
20 portion of the credit may be carried forward for the succeeding five years. The
21 maximum cumulative credit that may be claimed by a taxpayer under this section is
22 ~~one five million dollars (\$1,000,000).~~ (\$5,000,000)."

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



North Carolina General Assembly

Legislative Services Office
Legislative Office Building
300 N. Salisbury Street, Raleigh, N. C. 27603-5925

GEORGE R. HALL, JR., Legislative Administrative Officer
(919) 733-7044

M. GLENN NEWKIRK, Director
Automated Systems Division
Suite 400, (919) 733-6834

GERRY F. COHEN, Director
Bill Drafting Division
Suite 100, (919) 733-6660

THOMAS L. COVINGTON, Director
Fiscal Research Division
Suite 619, (919) 733-4910

TERRENCE D. SULLIVAN, Director
Research Division
Suite 545, (919) 733-2578

MEMORANDUM

TO: Senate Finance Committee
FROM: Warren Plonk
DATE: April 22, 1997
RE: SB 93 Modify and Extend Ports Tax Credit

1. Current Credit:

Three year average of annual wharfage and handling fees (less the current year's fees paid).

$$\frac{\text{Year 1} + \text{Year 2} + \text{Year 3}}{3} \quad (\text{less}) \quad 3^{\text{rd}} \text{ year fees paid} = \$ \text{ credit}$$
$$\frac{\$50,000 + \$100,000 + \$100,000}{3} = \$83,000 \text{ (less) } \$100,000 = \$16,000 \text{ credit}$$

Actions of SB 93: *Does not change the way the credit is calculated.*

2. Eligible Cargo:

Break-bulk and container cargo shipped into and out of the Wilmington and Morehead City Ports. Import and export shippers are eligible.

Actions of SB 93: *Does not change the way the credit is calculated, the type of eligible cargo, or the type of eligible shipper.*

3. Limitations of Credit:

- * The credit may not exceed 50% of the amount of corporate income tax a taxpayer owes the State in a single tax year.
- * Any unused credit may be carried forward for 5 years.
- * A maximum cumulative credit a corporation can claim is \$1,000,000.
- * All credits are certified by the State Port's Authority.
- * Certified credit is to accompany State corporate income tax return.

Actions of SB 93: *The cumulative credit is increased to \$2,000,000.*

4. Sunset Provision:

The authorizing legislation effective March of 1992 had a sunset provision effective February of 1998.

Actions of SB 93: *Extends the sunset to February 28, 2001.*



NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: Senate Bill 93

SHORT TITLE: Modify and Extend Ports Tax Credit

SPONSOR(S): Proposed Committee Substitute

(\$ LOSS MILLIONS)					
FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 1997-98</u>	<u>FY 1998-99</u>	<u>FY 1999-00</u>	<u>FY 2000-01</u>	<u>FY 2001-02</u>
REVENUES					
General Fund (loss)	(\$1.1)	(\$1.5)	(\$2.0)	(\$2.7)	(\$3.6)
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:	Department of Revenue Corporate Tax Division N. C. State Ports Authority				
EFFECTIVE DATE:	Tax years beginning on or after January 1, 1997.				

BILL SUMMARY: The proposed act extends the sunset effective February 28, 1998 to February 28, 2001. The maximum cumulative credit a taxpayer may claim under current law is \$1,000,000; under this act the maximum cumulative credit is increased to \$2,000,000 per taxpayer.

ASSUMPTIONS AND METHODOLOGY:

The cumulative credit certified by the State Ports Authority for tax years 1993 through 1996 is \$2,054,038. The information on page 2 was provided by the State Ports Authority.

FISCAL RESEARCH DIVISION

733-4910

PREPARED BY: Warren Plonk

APPROVED BY:

DATE: April 22, 1997

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1997

S

D

SENATE BILL 93*
Proposed Committee Substitute S93-PCS6661

Short Title: Modify & Extend Ports Tax Credit.

(Public)

Sponsors:

Referred to:

February 12, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO EXTEND THE SUNSET ON THE STATE PORTS TAX CREDIT
3 AND TO RAISE THE MAXIMUM CUMULATIVE CREDIT TO TWO
4 MILLION DOLLARS.
5 The General Assembly of North Carolina enacts:
6 Section 1. Section 4 of Chapter 977 of the 1991 Session Laws, as
7 amended by Section 3 of Chapter 495 of the 1995 Session Laws, reads as rewritten:
8 "Sec. 4. This act is effective for taxable years beginning on or after March 1, 1992,
9 and ending on or before February 28, ~~1998~~. 2001."
10 Section 2. Section 4 of Chapter 681 of the 1993 Session Laws, as
11 amended by Section 17 of Chapter 17 of the 1995 Session Laws and by Section 4 of
12 Chapter 495 of the 1995 Session Laws, reads as rewritten:
13 "Sec. 4. This act is effective for taxable years beginning on or after January 1,
14 1994, and ending on or before February 28, ~~1998~~. 2001."
15 Section 3. G.S. 105-130.41(b) reads as rewritten:
16 "(b) Limitations. -- This credit may not exceed fifty percent (50%) of the amount
17 of tax imposed by this Division for the taxable year reduced by the sum of all credits
18 allowable, except tax payments made by or on behalf of the corporation. Any unused
19 portion of the credit may be carried forward for the succeeding five years. The
20 maximum cumulative credit that may be claimed by a corporation under this section
21 is ~~one two~~ million dollars (~~\$1,000,000~~). (\$2,000,000)."
22 Section 4. G.S. 105-151.22(b) reads as rewritten:

1 "(b) Limitations. -- This credit may not exceed fifty percent (50%) of the amount
2 of tax imposed by this Division for the taxable year reduced by the sum of all credits
3 allowable, except tax payments made by or on behalf of the taxpayer. Any unused
4 portion of the credit may be carried forward for the succeeding five years. The
5 maximum cumulative credit that may be claimed by a taxpayer under this section is
6 ~~one~~ two million dollars (~~\$1,000,000~~). (\$2,000,000)." 

7 Section 5. This act is effective for taxable years beginning on or after
8 January 1, 1997. 

AGENDA

SENATE FINANCE COMMITTEE MEETING

TUESDAY, APRIL 22, 1997

AT

12:00 NOON, ROOM 544 LOB

H. B. 260 - CONSERVATION EASEMENTS/TAX CREDIT-REP. GRAY

✓ S. B. 245 - INSTALLMENT PURCHASE/SEWER DISTRICT-
SEN. LEDBETTER

S. B. 421 - LOCAL OPTION HOMESTEAD RELIEF-SEN. COOPER

*Done -
to Kneely*

S. B. 466 - TAX EXEMPT PARENTAL SAVINGS TRUST FUND-
SEN. HARTSELL

*Done -
to Kneely.*

S. B. 784 - CONFORM TAX EXTENSION RULES-SEN. WEBSTER

✓

S. B. 93 - REMOVE SUNSET/PORTS TAX CREDIT-SEN. HOYLE

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

4-22-97

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

R. Paul Wilms	NCHBA
Bill Flournoy	DEHNR
Bonnie Albritton	NC STATE Poets Authority
Molly Diggins	NC Sierra Club
Twila Nelson	MFC
Steve Brooks	NC SEAA
Guy Radford	DOR
D Powell	DOR
B Daniel	DOR
L Collins	DOR
James Lee	IP

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

4-22-97

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Rodney Maddox	Sec of STATE'S OFFICE
John Briley	D. O. R.
Paul Lamb	Lamb Consult.
Ray Aycock	County Com. Assoc
Don Kirkman	Carteret County EDC
John Holm	conc (Lynn Hill) INC
Charles Roe	Conservation Trust For NC
Dick Henderson	NC Dept of Revenue
Levy Douglas	Bertie Co. Ministers Assoc.
Winnie Riddick	DOR

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

4-22-97

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

TANJA VUSIC	NC EDF
Patty Berry	CCNC
Kim Smith	NCLH
Reshi Belong	NCCBI
Alice Farsana	Autulita
Bernard Allen	SOS
Charline Durbin	SOS
Natalie Haskins	Charlotte Chamber of Commerce
LOUTH HUNDEY	WELFARE
Mark Murchant	Payne + Spill
El Regan	N.C.A.C.C.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT

Senator David Hoyle, Co-Chair
Senator John Kerr, Co-Chair

Wednesday, April 23, 1997

SENATOR KERR,

submits the following with recommendations as to passage:

FAVORABLE

S.B. 421 Local Option Homestead Relief
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B. 93 Remove Sunset/Ports Tax Credit
Draft Number: PCS6661
Sequential Referral: None
Recommended Referral: Appropriations
Long Title Amended: Yes

S.B. 245 Installment Purchase/Sewer District
Draft Number: PCS6660
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

**UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL**

H.B.(CS)260 Conservation Easements/Tax Credit
Draft Number: PCSA353
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

TOTAL REPORTED: 4

Committee Clerk Comment: None

SENATE FINANCE COMMITTEE

WEDNESDAY, APRIL 23, 1997

8:30 A.M. - ROOM 544 LOB

The Senate Finance Committee met on April 23, 1997 with Senator Hoyle presiding. There were 21 committee members present.

S.B. 833 - UNC Nonappropriated Capital Projects

Senator Kerr was recognized to explain S.B. 833 and moved that a proposed committee substitute for this bill be adopted. The motion carried. Jeff Daves, UNC, spoke in support of this bill. Upon motion by Senator Albertson, the committee substitute was given a "favorable" report. Copy of bill, committee substitute and information on the bill included in the minutes.

S.B. 940 - Local Gov. Funding Agreements

Senator Odom was recognized to explain this bill. At the conclusion of Senator Odom's explanation, Bob Price, Attorney for TransAmerica Life Insurance Company was introduced and spoke in support of this bill. There were questions by the committee members to the bill sponsor and to Mr. Price. After discussion, Senator Hoyle informed the committee that this bill would not be voted on today. Copy of bill and fiscal note included in the minutes.

S.B. 585 - Lumberton, Shelby Room Tax Changes

Senator Hoyle explained this bill and moved for the adoption of a proposed committee substitute. The motion carried. Upon motion by Senator Ballantine, this committee substitute was given a "favorable" report by the committee. Copy of committee substitute included in the minutes.

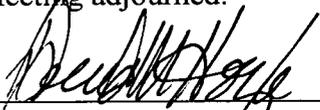
S.B. 34 - Adjust City Receipts Tax Share

Senator Cochrane was recognized to explain this bill and moved for the adoption of a proposed committee substitute. The motion carried. Senator Webster offered an amendment which was adopted by the committee on his motion. After discussion, the committee substitute, as amended, was given a "favorable" report on motion by Senator Dalton and will be rolled into a new committee substitute. Copy of bill, amendment, committee substitute and information on the bill included in the minutes.

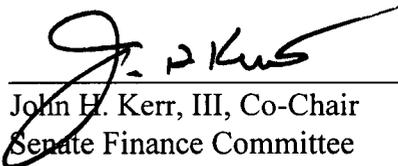
S.B. 816 - Alligator/Yellow Perch Production

Senator Conder was recognized to explain this bill. After his explanation there was general discussion on this bill and Senator Hoyle announced that this bill would not be voted on today and would be further discussed at a later date. Copy of bill included in the minutes.

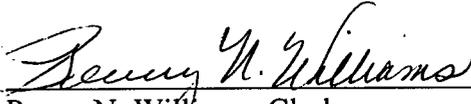
Meeting adjourned.



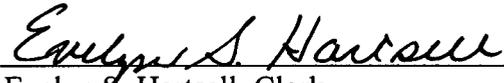
David W. Hoyle, Co-Chair
Senate Finance Committee



John H. Kerr, III, Co-Chair
Senate Finance Committee



Penny N. Williams, Clerk



Evelyn S. Hartsell, Clerk

NOTE:

Agenda is Attachment # 1
Visitors' Sign Up Sheet is Attachment # 2
Committee Reports are Attachment # 3

SENATE FINANCE AGENDA

WEDNESDAY, APRIL 23, 1997

8:30 A.M. - ROOM 544

S.B. 34 - Adjust City Receipts Tax Share - Sen. Cochrane

S.B. 124 - Amend White Goods Tax - Sen. Odom

S.B. 833 - UNC Nonappropriated Capital Projects - Sen. Kerr

S.B. 940 - Local Gov. Funding Agreements. - Sen. Odom

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 833*

Short Title: UNC Nonappropriated Capital Projects.

(Public)

Sponsors: Senators Kerr; and Hoyle.

Referred to: Finance.

April 14, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE THE CONSTRUCTION AND THE FINANCING,
3 WITHOUT APPROPRIATIONS FROM THE GENERAL FUND, OF CERTAIN
4 CAPITAL IMPROVEMENTS PROJECTS OF THE CONSTITUENT
5 INSTITUTIONS OF THE UNIVERSITY OF NORTH CAROLINA.

6 The General Assembly of North Carolina enacts:

7 Section 1. The purpose of this act is (i) to authorize the construction by
8 certain constituent institutions of The University of North Carolina and the University
9 of North Carolina - General Administration, of the capital improvements projects
10 listed in the act for the respective institutions, and (ii) to authorize the financing of
11 these projects with funds available to the institutions from gifts, grants, receipts, self-
12 liquidating indebtedness, or other funds, or any combination of these funds, but not
13 including funds appropriated from the General Fund of the State.

14 Section 2. The capital improvements projects authorized by this act to be
15 constructed and financed as provided in Section 1 of this act are as follows:

16
17 1. Appalachian State University
18 Small Group Housing \$10,748,300
19 Bookstore Renovation and Expansion 3,710,200
20 2. East Carolina University
21 Renovations to Jarvis Residence Hall 4,644,800
22 Life Safety Improvements in Nonacademic Facilities 3,550,500
23 Repairs to Dowdy-Ficklen Stadium 3,467,100
24 3. North Carolina A & T State University

1	Parking Deck	6,528,000
2	4. North Carolina State University	
3	Installation of Air Conditioning and Sprinkler	
4	Systems - Five Residence Halls	14,187,000
5	Partners Building IV	16,200,000
6	Centennial Campus Infrastructure	8,164,000
7	5. The University of North Carolina at Chapel Hill	
8	Replace Coal Silos at the Cogeneration Facility	7,358,200
9	Residence Hall Video Network & Communications	
10	Wiring	6,646,800
11	Renovation of Graham Memorial (Center for	
12	Undergraduate Excellence)	5,208,400
13	Building for the Institute for the Arts and	
14	Humanities	4,096,700
15	Paul J. Rizzo Conference Center	15,507,700
16	6. The University of North Carolina at Charlotte	
17	Student Housing Phase VII Apartments	18,851,000
18	Student Recreation Fields	1,355,700
19	7. The University of North Carolina at Wilmington	
20	200-Bed Housing	6,351,100
21	Parking Deck	7,069,500
22	8. The University of North Carolina - General	
23	Administration	
24	Systemwide Sprinkler and Fire Detection Systems	18,402,000.

25
 26 Section 3. With respect to three projects at the University of North
 27 Carolina at Chapel Hill among those identified in Section 2 of this act, the institution
 28 is authorized, in addition to those means of construction and financing authorized
 29 under Section 2 of this act, to accomplish construction and financing through lease
 30 arrangements to and from nonprofit corporations, as follows:

- 31 1. Renovation of Graham Memorial through lease with the University of North
 32 Carolina at Chapel Hill Arts and Sciences Foundation, Incorporated
- 33 2. Building for the Institute for Arts and Humanities through lease with the J.R.
 34 Hyde, III Family Foundation
- 35 3. Renovation and buildings for the Paul J. Rizzo Conference Center through
 36 lease with the Kenan-Flagler Business School Foundation.

37 The term of each lease may be for such duration as the parties agree, including the
 38 period of capital improvement, and, if the nonprofit corporation incurs indebtedness
 39 to finance construction, including the period required to retire the indebtedness. For
 40 the purposes of contracting for the design, construction, and equipping of these
 41 facilities, the University of North Carolina at Chapel Hill may enter into an
 42 agreement that provides for the leasing nonprofit corporation to serve as the
 43 construction management agent, having general supervision of the construction and
 44 equipping of the facility. Each leasing nonprofit corporation and the University of

1 North Carolina at Chapel Hill may enter into combined contracts for project design,
2 construction, and construction management. For purposes of financing construction,
3 the University of North Carolina at Chapel Hill may enter into a long-term lease
4 from the leasing nonprofit corporation. When a lease to a nonprofit corporation
5 authorized by this section ends, the University of North Carolina at Chapel shall have
6 the option (i) to receive the premises as improved, unencumbered facilities of the
7 institution if the premises as improved, meet all applicable standards for possession
8 and use by the institution as a State facility, or (ii) to receive the premises and to
9 remove or demolish the improvements made under the prior lease.

10 Section 4. At the request of The University of North Carolina Board of
11 Governors and upon determining that it is in the best interest of the State to do so,
12 the Director of the Budget may authorize an increase or decrease in the scope of, or
13 a change in the method of funding, the project authorized by this act. In determining
14 whether to authorize a change in scope or funding, the Director of the Budget may
15 consult with the Joint Legislative Commission on Governmental Operations. In no
16 event may appropriations from the General Fund be used for a project authorized by
17 this act.

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

1	3.	North Carolina A & T State University	
2		Parking Deck	6,528,000
3	4.	North Carolina State University	
4		Installation of Air Conditioning and Sprinkler	
5		Systems - Five Residence Halls	14,187,000
6		Partners Building IV	16,200,000
7		Centennial Campus Infrastructure	8,164,000
8	5.	The University of North Carolina at Chapel Hill	
9		Replace Coal Silos at the Cogeneration Facility	7,358,200
10		Residence Hall Video Network & Communications	
11		Wiring	6,646,800
12		Renovation of Graham Memorial (Center for	
13		Undergraduate Excellence)	5,208,400
14		Building for the Institute for the Arts and	
15		Humanities	4,096,700
16		Paul J. Rizzo Conference Center	15,507,700
17	6.	The University of North Carolina at Charlotte	
18		Student Housing Phase VII Apartments	18,851,000
19		Student Recreation Fields	1,355,700
20	7.	The University of North Carolina at Wilmington	
21		200-Bed Housing	6,351,100
22		Parking Deck	7,069,500
23	8.	The University of North Carolina - General	
24		Administration	
25		Systemwide Sprinkler and Fire Detection Systems	18,402,000.
26			

27 Section 3. With respect to three projects at the University of North
28 Carolina at Chapel Hill among those identified in Section 2 of this act, the institution
29 is authorized, in addition to those means of construction and financing authorized
30 under Section 2 of this act, to accomplish construction and financing through lease
31 arrangements to and from nonprofit corporations, as follows:

- 32 1. Renovation of Graham Memorial through lease with the University of North
33 Carolina at Chapel Hill Arts and Sciences Foundation, Incorporated
- 34 2. Building for the Institute for Arts and Humanities through lease with the J.R.
35 Hyde, III Family Foundation
- 36 3. Renovation and buildings for the Paul J. Rizzo Conference Center through
37 lease with the Kenan-Flagler Business School Foundation.

38 The term of each lease may be for such duration as the parties agree, not to exceed
39 the longer of the period of capital improvement, and, if the nonprofit corporation
40 incurs indebtedness to finance construction, the period required to retire the
41 indebtedness. For the purposes of contracting for the design, construction, and
42 equipping of these facilities, the University of North Carolina at Chapel Hill may
43 enter into an agreement that provides for the leasing nonprofit corporation to serve as
44 the construction management agent, having general supervision of the construction

1 and equipping of the facility. Each leasing nonprofit corporation and the University
2 of North Carolina at Chapel Hill may enter into combined contracts for project
3 design, construction, and construction management. For purposes of financing
4 construction, the University of North Carolina at Chapel Hill may enter into a long-
5 term lease from the leasing nonprofit corporation. When a lease to a nonprofit
6 corporation authorized by this section ends, the University of North Carolina at
7 Chapel shall have the option (i) to receive the premises as improved, unencumbered
8 facilities of the institution if the premises as improved, meet all applicable standards
9 for possession and use by the institution as a State facility, or (ii) to receive the
10 premises and to remove or demolish the improvements made under the prior lease.

11 Section 4. At the request of The University of North Carolina Board of
12 Governors and upon determining that it is in the best interest of the State to do so,
13 the Director of the Budget may authorize an increase or decrease in the scope of, or
14 a change in the method of funding, the project authorized by this act. In determining
15 whether to authorize a change in scope or funding, the Director of the Budget may
16 consult with the Joint Legislative Commission on Governmental Operations. In no
17 event may appropriations from the General Fund be used for a project authorized by
18 this act.

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

SB 833 - UNC NONAPPROPRIATED CAPITAL PROJECTS

Project	Cost	Increase in Annual Operating Cost	Increase in Mandatory Debt Fee per Student	Increase in Mandatory Operating Fee per Student	Other Costs or Comments
ASU Small Group Housing	\$10,748,300	\$375,000 (receipts)	--	--	Residence hall rates will increase \$100 per year.
ASU Bookstore Renovation and Expansion	\$3,710,200	\$110,000 (receipts)	--	--	Larger sales space will help generate more revenue to pay bond.
ECU Renovations to Jarvis Residence Hall	\$4,644,800	no	--	--	Residence hall rates will increase \$50 per year.
ECU Life Safety Improvements in Nonacademic Facilities	\$3,550,500	no	--	--	No borrowing; use existing funds over 5 or 6 years.
ECU Repairs to Dowdy-Ficklen Stadium	\$3,467,100	no	--	--	Paid from athletic receipts and private contributions.
NCA&T Parking Deck	\$6,528,000	\$75,000 (parking fees)	--	--	Parking rate will increase \$100 per year. (\$80 for debt and \$20 for operating expense)
NCSU Air Conditioning & Sprinkler Systems - 5 Residence Halls	\$14,187,000	\$680,000 (receipts)	--	--	Residence hall rates will increase to rate currently charged those with AC.
NCSU Partners Building IV	\$16,200,000	\$372,000 (lease receipts)	--	--	Debt to be repaid by rent of building.

SB 833 - UNC NONAPPROPRIATED CAPITAL PROJECTS

Project	Cost	Increase in Annual Operating Cost	Increase in Mandatory Debt Fee per Student	Increase in Mandatory Operating Fee per Student	Other Costs or Comments
NCSU Centennial Campus Infrastructure	\$8,164,000	no	--	--	Debt to be repaid by rent of buildings.
UNC-CH Replace Coal Silos at the Cogeneration Facility	\$7,358,200	no	--	--	Financed from the Utilities Trust Fund.
UNC-CH Residence Hall Video Network & Communications Wiring	\$6,646,800	\$923,000 (receipts)	--	--	Residence hall rates will increase \$180 per year.
UNC-CH Renovation of Graham Memorial (Center for Undergraduate Excellence)	\$5,208,400	\$15,600 (G.F.)	--	--	Financed by contributions to the Arts and Sciences Foundation.
UNC-CH Building for the Institute for the Arts and Humanities	\$4,096,700	\$150,500 (G.F.)	--	--	Financed by gift from J. R. Hyde III Family Foundation.
UNC-CH Paul J. Rizzo Conference Center	\$15,507,700	\$435,300 + \$189,399 (receipts) (G.F.)	--	--	Financed by Kenan-Flagler Business School Foundation, Inc.
UNC-Charlotte Student Housing Phase VII Apartments	\$18,851,000	\$251,800 (receipts)	--	--	No increase in room rates. Retire debt with current housing and parking receipts.
UNC-Charlotte Student Recreation Fields	\$1,355,700	\$32,000 (student fees)	\$6	\$2	Bank loan to be repaid with \$6 fee per year.
UNC-W 200-Bed Housing	\$6,351,100	\$127,700 (receipts)	--	--	Financed by current housing receipts.

SB 833 - UNC NONAPPROPRIATED CAPITAL PROJECTS

Project	Cost	Increase in Annual Operating Cost	Increase in Mandatory		Other Costs or Comments
			Debt Fee per Student	Operating Fee per Student	
UNC-W Parking Deck	\$7,069,500	\$10,000 (receipts)	--	--	Parking rates will increase \$90 per year for operating expense and debt service.
UNC General Administration Systemwide Sprinkler & Fire Detection Systems	\$18,402,000	NA	--	--	Financed by residence hall receipts. Residence hall rates may increase at each campus from \$26 at ASU to \$172 at WSSU.
Total Costs	\$162,047,000	\$3,747,299	\$2,912,800	Receipts	
			\$75,000	Parking Fees	
			\$372,000	Lease Receipts	
			\$355,499	General Fund	
			\$32,000	Student Fees	

IMPACT OF FEE/RATE INCREASES ON UNC SYSTEM STUDENTS

UNC Potential Fee Increases for 97-98

SCHOOL	FEE FROM BILL	ROOM RATE INCREASES FROM BILL (PER YEAR)	PARKING FEE INCREASES FROM BILL (PER YEAR)	TOTAL IMPACT ON RESIDENT STUDENTS	OTHER PROPOSED FEE INCREASES BEFORE THE UNC BOG
ASU	\$0	\$100	\$0	\$100	\$14
ECU	\$0	\$50	\$0	\$50	\$34
ECSU	\$0	\$0	\$0	\$0	\$32
FSU	\$0	\$0	\$0	\$0	\$46
NC A&T	\$0	\$0	\$100	\$100	\$35
NCCU	\$0	\$0	\$0	\$0	\$155
NCSA	\$0	\$0	\$0	\$0	\$24
NCSU	\$0	\$0	\$0	\$0	\$28
UNC-A	\$0	\$0	\$0	\$0	\$44
UNC-CH	\$0	\$180	\$0	\$180	\$21
UNC-C	\$8	\$0	\$0	\$8	\$27
UNC-G	\$0	\$0	\$0	\$0	\$16
UNC-P	\$0	\$0	\$0	\$0	\$43
UNC-W	\$0	\$0	\$90	\$90	\$22
WCU	\$0	\$0	\$0	\$0	\$34
WSSU	\$0	\$0	\$0	\$0	\$205

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 940

Short Title: Local Gov. Funding Agreements.

(Public)

Sponsors: Senator Odom.

Referred to: Finance.

April 17, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE INVESTMENTS BY LOCAL GOVERNMENTS IN
3 FUNDING AGREEMENTS.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 159-30(c) is amended by adding a new subdivision to
6 read:

7 "(14) In connection with funds held by or on behalf of a local
8 government or public authority, which funds are subject to the
9 arbitrage and rebate provisions of the Internal Revenue Code of
10 1986, as amended, a funding agreement, as defined in G.S. 58-7-16,
11 issued by an insurer incorporated in the State of North Carolina (i)
12 having a commercial paper rating that is the highest rating of at
13 least one nationally recognized rating service and does not have a
14 commercial paper rating below the highest by any nationally
15 recognized rating service which rates the particular obligation or a
16 long-term or claims-paying rating which is one of the two highest
17 ratings of at least one nationally recognized rating service and
18 which is not below one of the two highest ratings by any nationally
19 recognized rating service which rates the particular company, or
20 both; and (ii) whose funding agreements require that if the issuer's
21 commercial paper rating or long-term or claims-paying rating is
22 downgraded below that described in this subsection, the issuer
23 shall offer the three following alternatives within 20 business days:

- 1 a. Payment of the principal balance of the funding
- 2 agreement and accrued interest without penalty or
- 3 adjustment;
- 4 b. Upon mutual agreement, assignment of the funding
- 5 agreement to another issuer authorized under this
- 6 section which is rated consistent with the
- 7 requirements of this section; or
- 8 c. Upon mutual agreement, full collateralization of the
- 9 principal balance of the funding agreement, consistent
- 10 with applicable insurance and investment laws,
- 11 including the requirements of G.S. 159-30(c)(12)
- 12 regarding the obligations that are subject to
- 13 repurchase agreements."

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

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: Senate Bill 940

SHORT TITLE: Local Government Funding Agreement

SPONSOR(S): Senator Odom

FISCAL IMPACT

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

FY 1997-98 FY 1998-99 FY 1999-00 FY 2000-01 FY 2001-02

REVENUES See section on assumptions and methodology

**PRINCIPAL DEPARTMENT(S) & Local units of government that issue debt
PROGRAM(S) AFFECTED:**

EFFECTIVE DATE: When it becomes law.

BILL SUMMARY: Adds new GS 159-30(c)(14) to authorize the investment of funds held by or on behalf of local government or public authority (if funds are subject to arbitrage and rebate provisions of Internal Revenue Code of 1986, as amended) in a funding agreement (as defined in GS 58-7-16) issued by insurer incorporated in NC that (a) has commercial paper rating that is highest rating of at least one nationally recognized rating service and does not have commercial paper rating below highest by any nationally recognized rating service that rates the particular obligation or a long-term or claims-paying rating which is one of the two highest ratings by any nationally recognized rating service which rates the particular company, or both; and (b) whose funding agreements require that if issuer's commercial paper rating or long-term or claims-paying rating is downgraded below that described in this subsection, the issuer within 20 business days (1) pay the principal balance of funding agreement and accrued interest without penalty or adjustment; (2) on mutual agreement, assign the funding agreement to another issuer authorized under section that is rated consistent with requirements of section; or (3) on mutual agreement, provide full collateralization of principal balance of funding agreement, consistent with applicable insurance and investment laws, including requirements of GS 159-30(c)(12) regarding obligations that are subject to repurchase agreements.

Summary Source: Institute of Government

ASSUMPTIONS AND METHODOLOGY:

Local units of government choosing to invest in funding agreements could experience a gain in investment income from investing in long term agreements. It is assumed that this type of investment would have a more favorable interest rate. Funding agreements as defined in G.S. 58-7-16 are not required to be guaranteed. If the risk premium of an investment is removed or minimized then, the assumed trade-off is a higher rate-of-return on investment.

As authorized under G.S. 159-30(c)(6), local units of government can invest in “short term” commercial paper and other financial instruments such as bankers acceptance. Short term commercial paper has a maturity of 270 days or less and bankers acceptance has a maturity of 180 days or less. Under G.S. 159-31(b), security or collateralization of these types of instruments , when placed with certain institutions, is not required. Long term investments, instruments maturing over a 15 or 30 year period, are required to be secured by deposit insurance, surety bonds, or investment securities such as U. S. Treasury Securities.

Under this act, the full collateralization of the principal balance is one of three options the issuer may offer the investor but only in the event the issuer’s commercial paper rating is downgraded below the highest of at least one nationally recognized rating service. The other two options the issuer must offer the investor when their paper is downgraded are: one, the payment of the principal balance of the funding agreement with interest and; two, the balance of the investment may be assigned to another issuer.

**FISCAL RESEARCH DIVISION
733-4910**

PREPARED BY: Warren Plonk

APPROVED BY:

DATE: April 22, 1997

1 levy a tax under this subsection unless it also levies the tax authorized under
2 subsection (a) of this section.

3 (c) Administration. A tax levied under this section shall be levied,
4 administered, collected, and repealed as provided in G.S. 160A-215. The penalties
5 provided in G.S. 160A-215 apply to a tax levied under this section.

6 The tax collector may collect any unpaid taxes levied under this section
7 through the use of attachment and garnishment proceedings as provided in G.S.
8 105-368 for collection of property taxes. The tax collector has the same enforcement
9 powers concerning the tax imposed by this section as does the Secretary of Revenue
10 in enforcing the State sales tax under G.S. 105-164.30.

11 (d) Distribution and use of tax revenue. The City of Lumberton shall
12 use the net proceeds of the tax only for tourism-related expenditures.

13 The following definitions apply in this subsection:

14 (1) Net proceeds. -- Gross proceeds less the cost to the city of
15 administering and collecting the tax, as determined by the finance
16 officer, not to exceed seven percent (7%) of the gross proceeds.

17 (2) Tourism-related expenditures. -- Any of the following
18 expenditures: sponsoring tourist-oriented events, encouraging
19 tourism through advertising and promotion, establishing a visitors'
20 center, and other expenditures that directly enhance tourism. The
21 term also includes any of the following expenditures: criminal
22 justice system, fire protection, public facilities and utilities, health
23 facilities, and solid waste and sewage treatment. The term does
24 not include, however, expenditures for services normally provided
25 by the city on behalf of its citizens unless these services promote
26 tourism and enlarge its economic benefits by enhancing the ability
27 of the city to attract and provide for tourists.

28 Section 3. (a) Article 9 of Chapter 160A of the General Statutes is
29 amended by adding a new section to read:

30 "§ 160A-215. Uniform provisions for room occupancy taxes.

31 (a) Scope. -- This section applies only to municipalities the General Assembly has
32 authorized to levy room occupancy taxes. For the purpose of this section, the term
33 'city' means a municipality.

34 (b) Levy. -- A room occupancy tax may be levied only by resolution, after not less
35 than 10 days' public notice and after a public hearing held pursuant thereto. A room
36 occupancy tax shall become effective on the date specified in the resolution levying
37 the tax. That date must be the first day of a calendar month, however, and may not
38 be earlier than the first day of the second month after the date the resolution is
39 adopted.

40 (c) Collection. -- Every operator of a business subject to a room occupancy tax
41 shall, on and after the effective date of the levy of the tax, collect the tax. The tax
42 shall be collected as part of the charge for furnishing a taxable accommodation. The
43 tax shall be stated and charged separately from the sales records and shall be paid by
44 the purchaser to the operator of the business as trustee for and on account of the

1 taxing city. The tax shall be added to the sales price and shall be passed on to the
2 purchaser instead of being borne by the operator of the business. The taxing city
3 shall design, print, and furnish to all appropriate businesses and persons in the city
4 the necessary forms for filing returns and instructions to ensure the full collection of
5 the tax. An operator of a business who collects a room occupancy tax may deduct
6 from the amount remitted to the taxing city a discount equal to the discount the State
7 allows the operator for State sales and use tax.

8 (d) Administration. -- The taxing city shall administer a room occupancy tax it
9 levies. A room occupancy tax is due and payable to the city finance officer in
10 monthly installments on or before the fifteenth day of the month following the month
11 in which the tax accrues. Every person, firm, corporation, or association liable for
12 the tax shall, on or before the fifteenth day of each month, prepare and render a
13 return on a form prescribed by the taxing city. The return shall state the total gross
14 receipts derived in the preceding month from rentals upon which the tax is levied. A
15 room occupancy tax return filed with the city finance officer is not a public record
16 and may not be disclosed except in accordance with G.S. 153A-148.1 or G.S. 160A-
17 208.1.

18 (e) Penalties. -- A person, firm, corporation, or association who fails or refuses to
19 file a room occupancy tax return or pay a room occupancy tax as required by law is
20 subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file
21 a return for State sales and use taxes. The governing board of the taxing city has the
22 same authority to waive the penalties for a room occupancy tax that the Secretary of
23 Revenue has to waive the penalties for State sales and use taxes.

24 (f) Repeal or Reduction. -- A room occupancy tax levied by a city may be
25 repealed or reduced by a resolution adopted by the governing body of the city.
26 Repeal or reduction of a room occupancy tax shall become effective on the first day
27 of a month and may not become effective until the end of the fiscal year in which the
28 resolution was adopted. Repeal or reduction of a room occupancy tax does not affect
29 a liability for a tax that was attached before the effective date of the repeal or
30 reduction, nor does it affect a right to a refund of a tax that accrued before the
31 effective date of the repeal or reduction."

32 (b) This section applies only to the Cities of Lumberton and Shelby.

33 Section 4. Shelby Occupancy Tax. (a) Referendum. The City Council
34 of the City of Shelby may direct the county board of elections to conduct an advisory
35 referendum on the question of whether a room occupancy tax of up to three percent
36 (3%) shall be levied in accordance with this section. The election shall be held on a
37 date jointly agreed upon by the city council and the board of elections, which must
38 be the date of a regular municipal election under Subchapter IX of Chapter 163 of
39 the General Statutes. The election shall be held in accordance with the procedures
40 of G.S. 163-287.

41 The form of the question to be presented on a ballot for the referendum
42 concerning the levy of the tax authorized by this section shall be:

43 [] FOR [] AGAINST

1 Room occupancy tax of up to three percent (3%) on the rental of accommodations
2 by hotels, motels, camps, and similar businesses within the city.

3 (b) Authorization and scope. If the majority of those voting in a
4 referendum held pursuant to this section vote for the levy of the tax, the City Council
5 of the City of Shelby may levy a room occupancy tax of up to three percent (3%) of
6 the gross receipts derived from the rental of any room, lodging, or accommodation
7 furnished by a hotel, motel, inn, tourist camp, or similar place within the city that is
8 subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in
9 addition to any State or local sales tax. This tax does not apply to accommodations
10 furnished by nonprofit charitable, educational, or religious organizations when
11 furnished in furtherance of their nonprofit purpose.

12 (c) Administration. The city may contract with Cleveland County for
13 tax collection services relating to the occupancy tax levied under this section. Such a
14 contract shall be under terms and conditions agreed to by the city and the county and
15 may be modified from time to time. Except as provided in this section, a tax levied
16 under this section shall be levied, administered, collected, and repealed as provided
17 in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied
18 under this section.

19 (d) Use of tax revenue. The City of Shelby may use the net proceeds of
20 the occupancy tax only for tourism and economic development for the city. The
21 following definitions apply in this subsection:

22 (1) Net proceeds. -- Gross proceeds less the cost to the city of
23 administering and collecting the tax, as determined by the city, not
24 to exceed seven percent (7%) of the gross proceeds.

25 (2) Tourism and economic development. -- Services and other
26 expenditures that will enhance travel, tourism, or economic
27 development in the city.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 34*

Short Title: Adjust City Receipts Tax Share.

(Public)

Sponsors: Senators Cochrane, Cooper, Kerr, Shaw of Cumberland, and Soles.

Referred to: Finance.

February 3, 1997

A BILL TO BE ENTITLED

1 AN ACT TO ADJUST THE SHARE THE CITIES RECEIVE FROM THE STATE
2 GROSS RECEIPTS TAX TO MAKE THE DISTRIBUTION MORE
3 EQUITABLE.
4

5 The General Assembly of North Carolina enacts:

6 Section 1. Article 3 of Chapter 105 of the General Statutes is amended
7 by adding a new section to read:

8 "§ 105-116.1. Distribution of gross receipts taxes to cities.

9 (a) Distribution. -- The Secretary shall distribute to the cities part of the taxes
10 collected under this Article on electric power companies, natural gas companies, and
11 telephone companies. Each city's share for a calendar quarter is the percentage
12 distribution amount for that city minus one-fourth of the hold-back amount for that
13 city. The Secretary shall make the distribution within 75 days after the end of each
14 calendar quarter.

15 (b) Percentage Amount. -- The percentage distribution amount for a city is three
16 and nine hundredths percent (3.09%) of the gross receipts derived during the
17 preceding quarter by an electric power company, a natural gas company, or a
18 telephone company from sales within the city that are taxable under G.S. 105-116 or
19 G.S. 105-120.

20 (c) Hold-back Amount. -- The hold-back amount reflects the amount of growth in
21 the gross receipts taxes that occurred during the 1991-92 through 1994-95 fiscal years,
22 the 'freeze' years. The total amount distributed to cities during that period was fixed
23 at the total amount that would have been distributed during the 1990-91 fiscal year if
24 the Governor had not reduced the distribution for that year as part of the effort to

1 balance the State budget. During the freeze years, cities received a part of the fixed
2 amount based on taxable sales within the cities. For the 1995-96 fiscal year and
3 subsequent years, the limit on the amount distributed was removed and the
4 distribution reverted to its prior percentage basis with the added requirement of
5 deducting the growth that occurred in the freeze years.

6 The hold-back amount for a city is determined by comparing the amount each city
7 received from gross receipts taxes in the 1995-96 fiscal year and in the 1990-91 fiscal
8 year and then adjusting that amount, if required, in accordance with this subsection.
9 If, in the 1995-96 fiscal year, a city received at least ninety-five percent (95%) of the
10 amount it received in the 1990-91 fiscal year, the hold-back amount for that city is
11 the amount by which the city's 1995-96 percentage distribution amount was reduced.
12 If, in the 1995-96 fiscal year, a city received less than ninety-five percent (95%) of the
13 amount it received in the 1990-91 fiscal year, the hold-back amount for that city is
14 the amount determined by the following calculation:

- 15 (1) Increase the city's 1990-91 distribution by adding the amount by
16 which the city's 1995-96 percentage distribution amount was
17 reduced.
- 18 (2) Compare the increased 1990-91 amount with the city's 1995-96
19 distribution.
- 20 (3) If the increased 1990-91 distribution is less than or equal to the
21 city's 1995-96 distribution, the hold-back amount for the city is the
22 amount by which the city's 1995-96 distribution amount was
23 reduced.
- 24 (4) If the increased 1990-91 distribution is more than the city's 1995-96
25 distribution, the hold-back amount for the city is the difference
26 between the increased 1990-91 distribution and the 1995-96
27 distribution."

28 Section 2. G.S. 105-116 reads as rewritten:

29 "**§ 105-116. Franchise or privilege tax on electric power, natural gas, water, and**
30 **sewerage companies.**

31 (a) Tax. -- An annual franchise or privilege tax is imposed on a person, firm, or
32 corporation, other than a municipal corporation, that is:

- 33 (1) An electric power company engaged in the business of furnishing
34 electricity, electric lights, current, or power.
- 35 (2) A natural gas company engaged in the business of furnishing piped
36 natural gas.
- 37 (3) A water company engaged in owning or operating a water system
38 subject to regulation by the North Carolina Utilities Commission.
- 39 (4) A public sewerage company engaged in owning or operating a
40 public sewerage system.

41 The tax on an electric power company is three and twenty-two hundredths percent
42 (3.22%) of the company's taxable gross receipts from the business of furnishing
43 electricity, electric lights, current, or power. The tax on a natural gas company is
44 three and twenty-two hundredths percent (3.22%) of the company's taxable gross

1 receipts from the business of furnishing piped natural gas. The tax on a water
2 company is four percent (4%) of the company's taxable gross receipts from owning or
3 operating a water system subject to regulation by the North Carolina Utilities
4 Commission. The tax on a public sewerage company is six percent (6%) of the
5 company's taxable gross receipts from owning or operating a public sewerage
6 company. A company's taxable gross receipts are its gross receipts from business
7 inside the State less the amount of gross receipts from sales reported under
8 subdivision (b)(2). A company that engages in more than one business taxed under
9 this section shall pay tax on each business. A company is allowed a credit against the
10 tax imposed by this section for the company's investments in certain entities in
11 accordance with Division V of Article 4 of this Chapter.

12 (b) Report and Payment. -- The tax imposed by this section is payable monthly or
13 quarterly as specified in this subsection. A report is due quarterly. An electric power
14 company or a natural gas company shall pay tax monthly. A monthly tax payment is
15 due by the last day of the month that follows the month in which the tax accrues,
16 except the payment for tax that accrues in May. The payment for tax that accrues in
17 May is due by June 25. An electric power company or a natural gas company is not
18 subject to interest on or penalties for an underpayment of a monthly amount due if
19 the company timely pays at least ninety-five percent (95%) of the amount due and
20 includes the underpayment with the next report the company files. A water company
21 or a public sewerage company shall pay tax quarterly when filing a report.

22 A quarterly report covers a calendar quarter and is due by the last day of the
23 month that follows the quarter covered by the report. A company shall submit a
24 report on a form provided by the Secretary. The report shall include the company's
25 gross receipts from all property it owned or operated during the reporting period in
26 connection with its business taxed under this section and shall contain the following
27 information:

- 28 (1) The company's gross receipts for the reporting period from
29 business inside and outside this State, stated separately.
- 30 (2) The company's gross receipts from commodities or services
31 described in subsection (a) that are sold to a vendee subject to the
32 tax levied by this section or to a joint agency established under
33 G.S. Chapter 159B or a municipality city having an ownership
34 share in a project established under that Chapter.
- 35 (3) The amount of and price paid by the company for commodities or
36 services described in subsection (a) that are purchased from others
37 engaged in business in this State and the name of each vendor.
- 38 (4) For an electric power company or a natural gas company, the
39 company's gross receipts from the sale within each municipality
40 city of the commodities and services described in subsection (a).

41 A company shall report its gross receipts on an accrual basis. If a company's report
42 does not state the company's taxable gross receipts derived within a city, the
43 Secretary must determine a practical method of allocating part of the company's
44 taxable gross receipts to the city.

1 (c) Gas Special Charges. -- Gross receipts of a natural gas company do not
2 include the following:

3 (1) Special charges collected within this State by the company
4 pursuant to drilling and exploration surcharges approved by the
5 North Carolina Utilities Commission, if the surcharges are
6 segregated from the other receipts of the company and are devoted
7 to drilling, exploration, and other means to acquire additional
8 supplies of natural gas for the account of natural gas customers in
9 North Carolina and the beneficial interest in the surcharge
10 collections is preserved for the natural gas customers paying the
11 surcharges under rules established by the Commission.

12 (2) Natural gas expansion surcharges imposed under G.S. 62-158.

13 (d) Distribution. -- ~~For the purpose of this subsection, the term "distribution~~
14 ~~amount" means three and nine hundredths percent (3.09%) of the taxable gross~~
15 ~~receipts derived during a period by an electric power company and a natural gas~~
16 ~~company from sales within a municipality of the commodities and services described~~
17 ~~in subsection (a) of this section. The Secretary shall distribute to each municipality~~
18 ~~the distribution amount for that municipality for the preceding calendar quarter less~~
19 ~~an amount equal to one fourth of the excess of the distribution amount for that~~
20 ~~municipality for the period April 1, 1994, to March 31, 1995, over the distribution~~
21 ~~amount for that municipality for the period April 1, 1990, to March 31, 1991, as~~
22 ~~certified by the Secretary. The Secretary shall distribute the revenue within 75 days~~
23 ~~after the end of each quarter. If a company's report does not state the company's~~
24 ~~taxable gross receipts derived within a municipality, the Secretary shall determine a~~
25 ~~practical method of allocating part of the company's taxable gross receipts to the~~
26 ~~municipality.~~

27 ~~As used in this subsection, the term "municipality" includes an urban service~~
28 ~~district defined by the governing board of a consolidated city county. The amount~~
29 ~~due an urban service district shall be distributed to the governing board of the~~
30 ~~consolidated city county. Part of the taxes imposed by this section on electric power~~
31 ~~companies and natural gas companies is distributed to cities under G.S. 105-116.1.~~

32 (e) Local Tax. -- So long as there is a distribution to ~~municipalities of the amount~~
33 ~~herein provided~~ cities from the tax imposed by this section, no municipality city shall
34 impose or collect any greater franchise, privilege or license taxes, in the aggregate, on
35 the businesses taxed under this section, than was imposed and collected on or before
36 January 1, 1947. If any municipality shall have collected any privilege, license or
37 franchise tax between January 1, 1947, and April 1, 1949, in excess of the tax
38 collected by it prior to January 1, 1947, then upon distribution of the taxes imposed
39 by this section to municipalities, the amount distributable to any municipality shall
40 be credited with such excess payment."

41 Section 3. G.S. 105-120 reads as rewritten:

42 "§ 105-120. Franchise or privilege tax on telephone companies.

43 (a) Tax. -- An annual franchise or privilege tax is imposed on a person, firm, or
44 corporation, that owns or operates a business entity for the provision of local

1 telecommunications service. The tax is three and twenty-two hundredths percent
2 (3.22%) of the company's taxable gross receipts. A company's taxable gross receipts
3 are its receipts from providing local telecommunications service, including receipts
4 from rentals and other similar charges, less its receipts from telecommunications
5 access charges. A company is allowed a credit against the tax imposed by this section
6 for the company's investments in certain entities in accordance with Division V of
7 Article 4 of this Chapter.

8 (b) Report and Payment. -- The tax imposed by this section is payable monthly or
9 quarterly as specified in this subsection. A report is due quarterly. A company that
10 is liable for an average of less than three thousand dollars (\$3,000) a month in tax
11 imposed by this section may, with the approval of the Secretary of Revenue, pay tax
12 quarterly when filing a report. All other companies shall pay tax monthly. A
13 monthly tax payment is due by the last day of the month that follows the month in
14 which the tax accrues, except the payment for tax that accrues in May. The payment
15 for tax that accrues in May is due by June 25. A company is not subject to interest
16 on or penalties for an underpayment of a monthly amount due if the company timely
17 pays at least ninety-five percent (95%) of the amount due and includes the
18 underpayment with the next report the company files.

19 A quarterly report covers a calendar quarter and is due by the last day of the
20 month that follows the quarter covered by the report. A company shall submit a
21 report on a form provided by the Secretary. The report shall state the company's
22 gross receipts for the reporting period from providing local telecommunications
23 service and from providing local telecommunications service within each municipality
24 city served. If a company's report does not state the company's taxable gross receipts
25 derived within a city, the Secretary must determine a practical method of allocating
26 part of the company's taxable gross receipts to the city. A company shall report its
27 gross receipts on an accrual basis.

28 (c) Distribution. -- ~~For the purpose of this subsection, the term "distribution~~
29 ~~amount" means three and nine hundredths percent (3.09%) of the taxable gross~~
30 ~~receipts derived during a period from local telecommunications service provided~~
31 ~~within a municipality. The Secretary shall distribute to each municipality the~~
32 ~~distribution amount for that municipality for the preceding calendar quarter less an~~
33 ~~amount equal to one-fourth of the excess of the distribution amount for that~~
34 ~~municipality for the period April 1, 1994, to March 31, 1995, over the distribution~~
35 ~~amount for that municipality for the period April 1, 1990, to March 31, 1991, as~~
36 ~~certified by the Secretary. The Secretary shall distribute the revenue within 75 days~~
37 ~~after the end of each quarter. If a company's report does not state the company's~~
38 ~~taxable gross receipts derived within a municipality, the Secretary shall determine a~~
39 ~~practical method of allocating part of the company's taxable gross receipts to the~~
40 ~~municipality.~~

41 ~~As used in this subsection, the term "municipality" includes an urban service~~
42 ~~district defined by the governing board of a consolidated city county. The amount~~
43 ~~due an urban service district shall be distributed to the governing board of the~~

1 ~~consolidated city-county.~~ Part of the tax imposed by this section is distributed to
2 cities under G.S. 105-116.1.

3 (d) No Local Tax. -- Counties and cities may not impose a license, franchise, or
4 privilege tax on a company taxed under this section or under G.S. 105-164.4(a)(4c).

5 (e) Definitions. -- For purposes of this section:

6 (1) 'Local telecommunications service' means telecommunications
7 service provided wholly within a LATA entitling the user to access
8 to a local telephone exchange for the privilege of telephonic
9 quality communication with substantially all persons in the local
10 telephone exchange. Provided, however, local telecommunications
11 service does not include intraLATA or interLATA toll
12 telecommunications service, or private telecommunications service.

13 (2) 'LATA' is a Local Access and Transport Area representing a
14 geographical area comprising one or more telephone exchange
15 areas.

16 (3) 'InterLATA telecommunications' is telecommunications service
17 provided between two or more LATAs.

18 (4) 'Toll telecommunications service' means:

19 a. A telephonic quality communication for which:

20 1. There is a toll charge that varies in amount with the
21 distance and elapsed transmission time of each
22 individual communication; and

23 2. The charge is paid within the United States.

24 b. A service that entitles the subscriber, upon payment of a
25 periodic charge (determined as a flat amount or upon the
26 basis of total elapsed transmission time), to the privilege of
27 an unlimited number of telephonic communications to or
28 from all or a substantial portion of the persons having
29 telephone or radiotelephone stations in a specified area that
30 is outside the local telephone exchange.

31 (5) 'Private telecommunications service' means a service furnished to a
32 subscriber that entitles the subscriber to exclusive or priority use of
33 a communications channel or group of channels.

34 (6) 'Telecommunications access charges' means charges paid to a
35 provider of local telecommunications service for access to an
36 interconnection with the local telephone exchange."

37 Section 4. If the hold-back amount of a city is adjusted under G.S. 105-
38 116.1(c), as enacted by this act, the Secretary must distribute two times the amount of
39 the adjustment to the city by July 15, 1997. This distribution is made to restore to the
40 affected cities the amount by which their hold-back would have been reduced if the
41 adjustment had been in effect since the 1995-96 fiscal year. The amount needed to
42 make the distribution required by this section shall be drawn from the amount of
43 gross receipts taxes imposed by G.S. 105-116 and otherwise retained by the State.

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

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 34

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

S34-ALJ-2/26

Date 4-23, 1997

Comm. Sub. [YES]
Amends Title [YES]

Senator Webster

- 1 moves to amend the bill on page 1, line 3, by rewriting that line to
2 read:
3 "GROSS RECEIPTS TAX TO MAKE THE DISTRIBUTION MORE EQUITABLE AND TO
4 ALLOW THE DEPARTMENT OF REVENUE TO GIVE CITY FINANCE OFFICIALS
5 INFORMATION NEEDED TO VERIFY THE ACCURACY OF A CITY'S
6 DISTRIBUTION.";
7
8 and on page 8, lines 37-38, by inserting a new section between those
9 lines to read:
10 "Section 6. G.S. 105-259(b) is amended by inserting a new
11 subsection to read:
12 "(5b) To furnish to the finance officials of a city a
13 list of the utility taxable gross receipts that
14 were derived from sales within the city and used
15 to determine the city's distribution under G.S.
16 105-116. and ~~105-120,~~'";
17
18 and on page 8, line 38, by changing "Section 6." to "Section 7."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

D

SENATE BILL 34*
Proposed Senate Finance Committee Substitute
S34-CSLJ-4/22

Short Title: Adjust City Receipts Tax Share.

(Public)

Sponsors:

Referred to: Finance.

February 3, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO ADJUST THE SHARE THE CITIES RECEIVE FROM THE STATE
3 GROSS RECEIPTS TAX TO MAKE THE DISTRIBUTION MORE EQUITABLE.
4 The General Assembly of North Carolina enacts:
5 Section 1. Article 3 of Chapter 105 of the General
6 Statutes is amended by adding a new section to read:
7 "§ 105-116.1. Distribution of gross receipts taxes to cities.
8 (a) Distribution. -- The Secretary must distribute to the
9 cities part of the taxes collected under this Article on electric
10 power companies, natural gas companies, and telephone companies.
11 Each city's share for a calendar quarter is the percentage
12 distribution amount for that city for that quarter minus one-
13 fourth of the city's hold-back amount. The Secretary must make
14 the distribution within 75 days after the end of each calendar
15 quarter.
16 (b) Definitions. -- The following definitions apply in this
17 section:
18 (1) Freeze deduction. -- The amount by which the
19 percentage distribution amount of a city was
20 required to be reduced in fiscal year 1995-96 in
21 determining the amount to distribute to the city.

1 (2) Percentage distribution amount. -- Three and nine
2 hundredths percent (3.09%) of the gross receipts
3 derived by an electric power company, a natural gas
4 company, and a telephone company from sales within
5 a city that are taxable under G.S. 105-116 or G.S.
6 105-120.

7 (c) Limited Hold-Harmless Adjustment. -- The hold-back amount
8 for a city that, in the 1995-96 fiscal year, received from gross
9 receipts taxes less than ninety-five percent (95%) of the amount
10 it received in the 1990-91 fiscal year is the amount determined
11 by the following calculation:

12 (1) Adjust the city's 1995-96 distribution by adding
13 the city's freeze deduction to the amount
14 distributed to the city for that year.

15 (2) Compare the adjusted 1995-96 amount with the city's
16 1990-91 distribution.

17 (3) If the adjusted 1995-96 amount is less than or
18 equal to the city's 1990-91 distribution, the hold-
19 back amount for the city is zero.

20 (4) If the adjusted 1995-96 amount is more than the
21 city's 1990-91 distribution, the hold-back amount
22 for the city is the city's freeze deduction minus
23 the difference between the city's adjusted 1995-96
24 amount and the city's 1990-91 distribution.

25 (d) Allocation of Hold-Harmless Adjustment. -- The hold-back
26 amount for a city that, in the 1995-96 fiscal year, received from
27 gross receipts taxes at least ninety-five percent (95%) of the
28 amount it received in the 1990-91 fiscal year is the amount
29 determined by the following calculation:

30 (1) Determine the amount by which the freeze deduction
31 is reduced for all cities whose hold-back amount is
32 determined under subsection (c) of this section.
33 This amount is the total hold-harmless adjustment.

34 (2) Determine the amount of gross receipts taxes that
35 would be distributed for the quarter to cities
36 whose hold-back amount is determined under this
37 subsection if these cities received their
38 percentage distribution amount minus one-fourth of
39 their freeze deduction.

40 (3) For each city included in the calculation in
41 subdivision (2) of this subsection, determine that
42 city's percentage share of the amount determined
43 under that subdivision.

1 (4) Add to the city's freeze deduction an amount equal
2 to the city's percentage share under subdivision
3 (3) of this section multiplied by the total hold-
4 harmless adjustment."

5 Section 2. G.S. 105-116 reads as rewritten:

6 "§ 105-116. Franchise or privilege tax on electric power,
7 natural gas, water, and sewerage companies.

8 (a) Tax. -- An annual franchise or privilege tax is imposed on
9 a person, firm, or corporation, other than a municipal
10 corporation, that is:

11 (1) An electric power company engaged in the business
12 of furnishing electricity, electric lights,
13 current, or power.

14 (2) A natural gas company engaged in the business of
15 furnishing piped natural gas.

16 (3) A water company engaged in owning or operating a
17 water system subject to regulation by the North
18 Carolina Utilities Commission.

19 (4) A public sewerage company engaged in owning or
20 operating a public sewerage system.

21 The tax on an electric power company is three and twenty-two
22 hundredths percent (3.22%) of the company's taxable gross
23 receipts from the business of furnishing electricity, electric
24 lights, current, or power. The tax on a natural gas company is
25 three and twenty-two hundredths percent (3.22%) of the company's
26 taxable gross receipts from the business of furnishing piped
27 natural gas. The tax on a water company is four percent (4%) of
28 the company's taxable gross receipts from owning or operating a
29 water system subject to regulation by the North Carolina
30 Utilities Commission. The tax on a public sewerage company is six
31 percent (6%) of the company's taxable gross receipts from owning
32 or operating a public sewerage company. A company's taxable gross
33 receipts are its gross receipts from business inside the State
34 less the amount of gross receipts from sales reported under
35 subdivision (b)(2). A company that engages in more than one
36 business taxed under this section shall pay tax on each business.
37 A company is allowed a credit against the tax imposed by this
38 section for the company's investments in certain entities in
39 accordance with Division V of Article 4 of this Chapter.

40 (b) Report and Payment. -- The tax imposed by this section is
41 payable monthly or quarterly as specified in this subsection. A
42 report is due quarterly. An electric power company or a natural
43 gas company shall pay tax monthly. A monthly tax payment is due
44 by the last day of the month that follows the month in which the

1 tax accrues, except the payment for tax that accrues in May. The
2 payment for tax that accrues in May is due by June 25. An
3 electric power company or a natural gas company is not subject to
4 interest on or penalties for an underpayment of a monthly amount
5 due if the company timely pays at least ninety-five percent (95%)
6 of the amount due and includes the underpayment with the next
7 report the company files. A water company or a public sewerage
8 company shall pay tax quarterly when filing a report.

9 A quarterly report covers a calendar quarter and is due by the
10 last day of the month that follows the quarter covered by the
11 report. A company shall submit a report on a form provided by the
12 Secretary. The report shall include the company's gross receipts
13 from all property it owned or operated during the reporting
14 period in connection with its business taxed under this section
15 and shall contain the following information:

- 16 (1) The company's gross receipts for the reporting
17 period from business inside and outside this State,
18 stated separately.
- 19 (2) The company's gross receipts from commodities or
20 services described in subsection (a) that are sold
21 to a vendee subject to the tax levied by this
22 section or to a joint agency established under G.S.
23 Chapter 159B or a ~~municipality~~ city having an
24 ownership share in a project established under that
25 Chapter.
- 26 (3) The amount of and price paid by the company for
27 commodities or services described in subsection (a)
28 that are purchased from others engaged in business
29 in this State and the name of each vendor.
- 30 (4) For an electric power company or a natural gas
31 company, the company's gross receipts from the sale
32 within each ~~municipality~~ city of the commodities
33 and services described in subsection (a).

34 A company shall report its gross receipts on an accrual basis.
35 If a company's report does not state the company's taxable gross
36 receipts derived within a city, the Secretary must determine a
37 practical method of allocating part of the company's taxable
38 gross receipts to the city.

39 (c) Gas Special Charges. -- Gross receipts of a natural gas
40 company do not include the following:

- 41 (1) Special charges collected within this State by the
42 company pursuant to drilling and exploration
43 surcharges approved by the North Carolina Utilities
44 Commission, if the surcharges are segregated from

1 the other receipts of the company and are devoted
2 to drilling, exploration, and other means to
3 acquire additional supplies of natural gas for the
4 account of natural gas customers in North Carolina
5 and the beneficial interest in the surcharge
6 collections is preserved for the natural gas
7 customers paying the surcharges under rules
8 established by the Commission.

9 (2) Natural gas expansion surcharges imposed under G.S.
10 62-158.

11 (d) ~~Distribution. -- For the purpose of this subsection, the~~
12 ~~term "distribution amount" means three and nine hundredths~~
13 ~~percent (3.09%) of the taxable gross receipts derived during a~~
14 ~~period by an electric power company and a natural gas company~~
15 ~~from sales within a municipality of the commodities and services~~
16 ~~described in subsection (a) of this section. The Secretary shall~~
17 ~~distribute to each municipality the distribution amount for that~~
18 ~~municipality for the preceding calendar quarter less an amount~~
19 ~~equal to one-fourth of the excess of the distribution amount for~~
20 ~~that municipality for the period April 1, 1994, to March 31,~~
21 ~~1995, over the distribution amount for that municipality for the~~
22 ~~period April 1, 1990, to March 31, 1991, as certified by the~~
23 ~~Secretary. The Secretary shall distribute the revenue within 75~~
24 ~~days after the end of each quarter. If a company's report does~~
25 ~~not state the company's taxable gross receipts derived within a~~
26 ~~municipality, the Secretary shall determine a practical method of~~
27 ~~allocating part of the company's taxable gross receipts to the~~
28 ~~municipality.~~

29 ~~As used in this subsection, the term "municipality" includes an~~
30 ~~urban service district defined by the governing board of a~~
31 ~~consolidated city-county. The amount due an urban service~~
32 ~~district shall be distributed to the governing board of the~~
33 ~~consolidated city-county. Part of the taxes imposed by this~~
34 ~~section on electric power companies and natural gas companies is~~
35 ~~distributed to cities under G.S. 105-116.1.~~

36 (e) Local Tax. -- So long as there is a distribution to
37 ~~municipalities of the amount herein provided~~ cities from the tax
38 imposed by this section, no ~~municipality~~ city shall impose or
39 collect any greater franchise, privilege or license taxes, in the
40 aggregate, on the businesses taxed under this section, than was
41 imposed and collected on or before January 1, 1947. If any
42 municipality shall have collected any privilege, license or
43 franchise tax between January 1, 1947, and April 1, 1949, in
44 excess of the tax collected by it prior to January 1, 1947, then

1 upon distribution of the taxes imposed by this section to
2 municipalities, the amount distributable to any municipality
3 shall be credited with such excess payment."

4 Section 3. G.S. 105-120 reads as rewritten:

5 "§ 105-120. Franchise or privilege tax on telephone companies.

6 (a) Tax. -- An annual franchise or privilege tax is imposed on
7 a person, firm, or ~~corporation~~, corporation that owns or operates
8 a business entity for the provision of local telecommunications
9 service. The tax is three and twenty-two hundredths percent
10 (3.22%) of the company's taxable gross receipts. A company's
11 taxable gross receipts are its receipts from providing local
12 telecommunications service, including receipts from rentals and
13 other similar charges, less its receipts from telecommunications
14 access charges. A company is allowed a credit against the tax
15 imposed by this section for the company's investments in certain
16 entities in accordance with Division V of Article 4 of this
17 Chapter.

18 (b) Report and Payment. -- The tax imposed by this section is
19 payable monthly or quarterly as specified in this subsection. A
20 report is due quarterly. A company that is liable for an average
21 of less than three thousand dollars (\$3,000) a month in tax
22 imposed by this section may, with the approval of the Secretary
23 of Revenue, pay tax quarterly when filing a report. All other
24 companies shall pay tax monthly. A monthly tax payment is due by
25 the last day of the month that follows the month in which the tax
26 accrues, except the payment for tax that accrues in May. The
27 payment for tax that accrues in May is due by June 25. A company
28 is not subject to interest on or penalties for an underpayment of
29 a monthly amount due if the company timely pays at least ninety-
30 five percent (95%) of the amount due and includes the
31 underpayment with the next report the company files.

32 A quarterly report covers a calendar quarter and is due by the
33 last day of the month that follows the quarter covered by the
34 report. A company shall submit a report on a form provided by
35 the Secretary. The report shall state the company's gross
36 receipts for the reporting period from providing local
37 telecommunications service and from providing local
38 telecommunications service within each municipality city served.
39 If a company's report does not state the company's taxable gross
40 receipts derived within a city, the Secretary must determine a
41 practical method of allocating part of the company's taxable
42 gross receipts to the city. A company shall report its gross
43 receipts on an accrual basis.

~~1 (c) Distribution. -- For the purpose of this subsection, the
2 term "distribution amount" means three and nine hundredths
3 percent (3.09%) of the taxable gross receipts derived during a
4 period from local telecommunications service provided within a
5 municipality. The Secretary shall distribute to each
6 municipality the distribution amount for that municipality for
7 the preceding calendar quarter less an amount equal to one-fourth
8 of the excess of the distribution amount for that municipality
9 for the period April 1, 1994, to March 31, 1995, over the
10 distribution amount for that municipality for the period April 1,
11 1990, to March 31, 1991, as certified by the Secretary. The
12 Secretary shall distribute the revenue within 75 days after the
13 end of each quarter. If a company's report does not state the
14 company's taxable gross receipts derived within a municipality,
15 the Secretary shall determine a practical method of allocating
16 part of the company's taxable gross receipts to the municipality.
17 As used in this subsection, the term "municipality" includes an
18 urban service district defined by the governing board of a
19 consolidated city-county. The amount due an urban service
20 district shall be distributed to the governing board of the
21 consolidated city-county. Part of the tax imposed by this
22 section is distributed to cities under G.S. 105-116.1.~~

~~23 (d) No Local Tax. -- Counties and cities may not impose a
24 license, franchise, or privilege tax on a company taxed under
25 this section or under G.S. 105-164.4(a)(4c).~~

~~26 (e) Definitions. -- For purposes of this section:~~

~~27 (1) 'Local telecommunications service' means
28 telecommunications service provided wholly within a
29 LATA entitling the user to access to a local
30 telephone exchange for the privilege of telephonic
31 quality communication with substantially all
32 persons in the local telephone exchange. Provided,
33 however, local telecommunications service does not
34 include intraLATA or interLATA toll
35 telecommunications service, or private
36 telecommunications service.~~

~~37 (2) 'LATA' is a Local Access and Transport Area
38 representing a geographical area comprising one or
39 more telephone exchange areas.~~

~~40 (3) 'InterLATA telecommunications' is
41 telecommunications service provided between two or
42 more LATAs.~~

~~43 (4) 'Toll telecommunications service' means:
44 a. A telephonic quality communication for which:~~

- 1 1. There is a toll charge that varies in
2 amount with the distance and elapsed
3 transmission time of each individual
4 communication; and
5 2. The charge is paid within the United
6 States.
7 b. A service that entitles the subscriber, upon
8 payment of a periodic charge (determined as a
9 flat amount or upon the basis of total elapsed
10 transmission time), to the privilege of an
11 unlimited number of telephonic communications
12 to or from all or a substantial portion of the
13 persons having telephone or radiotelephone
14 stations in a specified area that is outside
15 the local telephone exchange.
16 (5) 'Private telecommunications service' means a
17 service furnished to a subscriber that entitles the
18 subscriber to exclusive or priority use of a
19 communications channel or group of channels.
20 (6) 'Telecommunications access charges' means charges
21 paid to a provider of local telecommunications
22 service for access to an interconnection with the
23 local telephone exchange."
24 Section 4. G.S. 105-114(b) is amended by adding a new
25 subdivision in the appropriate alphabetical order to read:
26 "(01) City. -- Defined in G.S. 105-228.90."
27 Section 5. If a city's hold-back amount calculated
28 under G.S. 105-116.1(c), as enacted by this act, is less than the
29 amount deducted from the city's 1995-96 franchise tax
30 distribution, the Secretary must distribute two times the amount
31 of the difference to the city by July 15, 1997. This
32 distribution is made to adjust retroactively the city's 1995-96
33 and 1996-97 franchise tax distributions. The amount needed to
34 make the distribution required by this section shall be drawn
35 from the amount of gross receipts taxes distributed to the cities
36 that do not receive a distribution under this section in
37 proportion to the amount received.
38 Section 6. This act is effective when it becomes law.

**Additional
Distribution
Under
SB 34**

County	Minicipality	
Davidson	Denton	\$32,366
Rutherford	Spindale	19,240
Alamance	Haw River	15,530
Swain	Bryson City	13,617
Rockingham	Madison	12,901
Cabarrus	Mount Pleasant	11,124
Polk	Tryon	10,832
Haywood	Canton	10,620
Union	Stallings	8,888
Gaston	Ranlo	6,941
Cleveland	Polkville	6,316
Stokes	King	5,925
Clay	Hayesville	5,621
	13 Cities With Largest Gain	\$159,921
Graham	Robbinsville	4,745
Madison	Marshall	4,452
Ashe	West Jefferson	3,906
Rowan	Cleveland	3,335
Yadkin	Boonville	3,063
Franklin	Franklinton	2,646
Rutherford	Alexander Mills	2,535
Alamance	Alamance	1,668
Cumberland	Wade	1,399
Buncombe	Woodfin	963
Ashe	Jefferson	785
Caldwell	Rhodhiss	766
Avery	Newland	699
Brunswick	Bolivia	671
Wilkes	Ronda	550
Brunswick	Belville	535
Randolph	Staley	473
Moore	Robbins	457
Cumberland	Linden	384
Scotland	East Laurinburg	241
Vance	Middleburg	226
	Spencer Mountain	106
Jackson	Webster	88
Granville	Stem	79
Warren	Macon	55
Wayne	Seven Springs	55
Edgecombe	Leggett	38
	Remaining Cities	\$34,920
	Total for All Cities Affected	\$194,841

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 816

Short Title: Alligator/Yellow Perch Production.

(Public)

Sponsors: Senator Conder.

Referred to: Finance.

April 14, 1997

- 1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE THE PRODUCTION AND SALE OF
3 COMMERCIALY RAISED ALLIGATORS AND YELLOW PERCH AND TO
4 PROVIDE FOR THE INSPECTION OF ALLIGATOR MEAT.
5 The General Assembly of North Carolina enacts:
6 Section 1. G.S. 106-761(c) reads as rewritten:
7 "(c) Species with special restrictions.
8 (1) Hybrid striped bass. The hybrid striped bass shall be subject to
9 rules adopted by the Board of Agriculture in all river basins of the
10 State except for the Neuse, Roanoke, and Tar/Pamlico River
11 basins. In these basins production, propagation, and holding
12 facilities shall comply with additional escapement prevention
13 measures as prescribed by the Wildlife Resources Commission.
14 (2) Yellow perch. The yellow perch may be held or grown on all
15 licensed facilities east of Interstate Highway 77. Permission shall
16 be obtained from the Wildlife Resources Commission before
17 yellow perch may be held or raised pursuant to this subsection.
18 For purposes of this subsection, 'yellow perch' means perca
19 flavescens.
20 (3) Alligators. American alligators may be held or grown if all of the
21 following requirements are satisfied:
22 a. Only hatchlings that have been permanently tagged and are
23 permitted for export from their state of origin may be
24 possessed. The farmer shall maintain records of the

1 hatchlings that have been permanently tagged and make
 2 these records available for inspection by the Wildlife
 3 Resources Commission and the Department upon request.

4 b. All production facilities shall prepare and implement a
 5 confinement plan prior to stocking the facility. Confinement
 6 plans shall comply with guidelines developed and adopted
 7 by the Wildlife Resources Commission. The Department
 8 may inspect the confinement area to determine whether the
 9 farmer is complying with the confinement plan. As used in
 10 this sub-subdivision, confinement includes production within
 11 a building (or similar structure) and a perimeter fence.

12 c. The use of swine, poultry, or other livestock for feed shall
 13 comply with a disease management plan that has received
 14 the approval of the State Veterinarian.

15 d. All activities shall be in compliance with the Endangered
 16 Species Act and the Convention on International Trade in
 17 Endangered Species. The Department is the State agency
 18 responsible for the administration of this program for farm-
 19 raised alligators.

20 e. Possession of untagged or undocumented alligators is a Class
 21 H felony. Possession or taking of alligators from the wild in
 22 North Carolina shall also result in a license revocation for
 23 the facility and operator for a period of five years."

24 Section 2. Article 49 of Chapter 106 of the General Statutes reads as
 25 rewritten:

26 "ARTICLE 49H.

27 "Production and Sale of Fallow ~~Deer~~ Deer and American Alligator.

28 "§ 106-549.97. Regulation of fallow deer and American alligator by Department of
 29 Agriculture; certain authority of North Carolina Wildlife Resources Commission not
 30 affected.

31 (a) The Department of Agriculture shall regulate the production and sale of
 32 fallow deer and American alligator for food purposes. The Board of Agriculture
 33 shall adopt rules for the production and sale of fallow deer and American alligator
 34 for food purposes in such a manner as to provide for close supervision of any person,
 35 firm, or corporation producing and selling fallow deer or American alligator, or both,
 36 for food purposes.

37 As used in this section, 'fallow deer' (*Dama dama* spp.) means a small European
 38 deer raised commercially for production and sale for food purposes.

39 (b) The North Carolina Wildlife Resources Commission shall regulate the
 40 possession and transportation of live fallow deer and live American alligators and
 41 may adopt rules to prevent the release or escape of fallow deer or American
 42 alligators, or both, upon finding that it is necessary to protect live fallow deer or live
 43 American alligators, or both, or to prevent damage to ~~the~~ either or both of these
 44 native deer population populations or its habitat. their habitats."

1 **"§ 106-549.98. Inspection fees.**

2 The Commissioner may establish a fee at an hourly rate to be paid by the owner,
3 proprietor, or operator of each slaughtering, meat-canning, salting, packing,
4 rendering, or similar establishment for the purpose of defraying the expenses incurred
5 in the inspection of fallow deer as required by Article 49B of Chapter 106 of the
6 General Statutes. The Commissioner may establish a fee at an hourly rate to be paid
7 by the owner, proprietor, or operator of each slaughtering, meat-canning, salting,
8 packing, rendering, or similar establishment for the purpose of defraying the expenses
9 incurred in the inspection of American alligators as required by Article 49B of
10 Chapter 106 of the General Statutes."

11 Section 3. G.S. 106-549.15(14) reads as rewritten:

12 "(14) 'Meat food product' means any product capable of use as human
13 food that is made wholly or in part from any meat or other portion
14 of the carcass of any cattle, sheep, swine, goats, bison, ~~or~~ fallow
15 deer, or American alligator excepting products that contain meat
16 or other portions of such carcasses only in a relatively small
17 proportion or historically have not been considered by consumers
18 as products of the meat food industry, and that are exempted from
19 definition as a meat food product by the Board under such
20 conditions as it may prescribe to assure that the meat or other
21 portions of such carcasses contained in such product are not
22 adulterated and that such products are not represented as meat
23 food products. This term as applied to food products of equines
24 shall have a meaning comparable to that provided in this
25 subdivision with respect to cattle, sheep, swine, goats, and bison."

26 Section 4. G.S. 106-549.15(22) reads as rewritten:

27 "(22) 'Renderer' means any person, firm, or corporation engaged in the
28 business of rendering carcasses, or parts or products of the
29 carcasses, of cattle, sheep, swine, goats, fallow deer, American
30 alligator, horses, mules, or other equines, except rendering
31 conducted under inspection under this Article."

32 Section 5. G.S. 106-549.17 reads as rewritten:

33 **"§ 106-549.17. Inspection of animals before slaughter; humane methods of**
34 **slaughtering.**

35 (a) For the purpose of preventing the use in intrastate commerce, as hereinafter
36 provided, of meat and meat food products which are adulterated, the Commissioner
37 shall cause to be made, by inspectors appointed for that purpose, an examination and
38 inspection of all cattle, sheep, swine, goats, fallow deer, American alligator, bison,
39 horses, mules, and other equines before they shall be allowed to enter into any
40 slaughtering, packing, meat-canning, rendering, or similar establishment in this State
41 in which slaughtering and preparation of meat and meat food products of such
42 animals are conducted for intrastate commerce; and all cattle, sheep, swine, goats,
43 fallow deer, American alligator, bison, horses, mules, and other equines found on
44 such inspection to show symptoms of disease shall be set apart and slaughtered

1 separately from all other cattle, sheep, swine, goats, fallow deer, American alligator,
2 bison, horses, mules, or other equines, and when so slaughtered, the carcasses of said
3 cattle, sheep, swine, goats, fallow deer, American alligator, bison, horses, mules, or
4 other equines shall be subject to a careful examination and inspection, all as provided
5 by the rules and regulations to be prescribed by the Board as herein provided for.

6 (b) For the purpose of preventing the inhumane slaughtering of livestock, the
7 Commissioner shall cause to be made, by inspectors appointed for that purpose, an
8 examination and inspection of the method by which cattle, sheep, swine, goats, fallow
9 deer, American alligator, bison, horses, mules, and other equines are slaughtered and
10 handled in connection with slaughter in the slaughtering establishments inspected
11 under this law. The Commissioner may refuse to provide inspection to a new
12 slaughtering establishment or may cause inspection to be temporarily suspended at a
13 slaughtering establishment if the Commissioner finds that any cattle, sheep, swine,
14 goats, fallow deer, American alligator, bison, horses, mules, or other equines have
15 been slaughtered or handled in connection with slaughter at such establishment by
16 any method not in accordance with subsection (c) of this section until the
17 establishment furnishes assurances satisfactory to the Commissioner that all
18 slaughtering and handling in connection with slaughter of livestock shall be in
19 accordance with such a method.

20 (c) Either of the following two methods of slaughtering of livestock and handling
21 of livestock in connection with slaughter are found to be humane:

22 (1) In the case of cattle, calves, fallow deer, American alligator, bison,
23 horses, mules, sheep, swine, and other livestock, all animals are
24 rendered insensible to pain by a single blow or gunshot or an
25 electrical, chemical, or other means that is rapid and effective,
26 before being shackled, hoisted, thrown, cast, or cut; or

27 (2) By slaughtering in accordance with the ritual requirements of the
28 Jewish faith or any other religious faith that prescribes a method of
29 slaughter whereby the animal suffers loss of consciousness by
30 anemia of the brain caused by the simultaneous and instantaneous
31 severance of the carotid arteries with a sharp instrument and
32 handling in connection with such slaughtering.

33 Section 6. G.S. 106-549.18 reads as rewritten:

34 "**§ 106-549.18. Inspection; stamping carcass.**

35 For the purposes hereinbefore set forth the Commissioner shall cause to be made
36 by inspectors appointed for that purpose, as hereinafter provided, a post mortem
37 examination and inspection of the carcasses and parts thereof of all cattle, sheep,
38 swine, goats, fallow deer, American alligator, bison, horses, mules, and other equines,
39 capable of use as human food, to be prepared at any slaughtering, meat-canning,
40 salting, packing, rendering, or similar establishment in this State in which such
41 articles are prepared for intrastate commerce; and the carcasses and parts thereof of
42 all such animals found to be not adulterated shall be marked, stamped, tagged, or
43 labeled, as 'Inspected and Passed'; and said inspectors shall label, mark, stamp, or tag
44 as 'Inspected and Condemned,' all carcasses and parts thereof of animals found to be

1 adulterated; and all carcasses and parts thereof thus inspected and condemned shall
2 be destroyed for food purposes by the said establishment in the presence of an
3 inspector, and the Commissioner or his authorized representative may remove
4 inspectors from any such establishment which fails to so destroy any such condemned
5 carcass or part thereof, and said inspectors, after said first inspection shall, when they
6 deem it necessary, reinspect said carcasses or parts thereof to determine whether
7 since the first inspection the same have become adulterated and if any carcass or any
8 part thereof shall, upon examination and inspection subsequent to the first
9 examination and inspection, be found to be adulterated, it shall be destroyed for food
10 purposes by the said establishment in the presence of an inspector, and the
11 Commissioner or his authorized representative may remove inspectors from any
12 establishment which fails to [do] so destroy any such condemned carcass or part
13 thereof."

14 Section 7. G.S. 106-549.19 reads as rewritten:

15 "**§ 106-549.19. Application of Article; place of inspection.**

16 The foregoing provisions shall apply to all carcasses or parts of carcasses of cattle,
17 sheep, swine, goats, fallow deer, American alligator, bison, horses, mules, and other
18 equines or the meat or meat products thereof, capable of use as human food, which
19 may be brought into any slaughtering, meat-canning, salting, packing, rendering, or
20 similar establishment, where inspection under this Article is maintained, and such
21 examination and inspection shall be had before the said carcasses or parts thereof
22 shall be allowed to enter into any department wherein the same are to be treated and
23 prepared for meat food products; and the foregoing provisions shall also apply to all
24 such products which, after having been issued from any such slaughtering, meat-
25 canning, salting, packing, rendering, or similar establishment, shall be returned to the
26 same or to any similar establishment where such inspection is maintained. The
27 Commissioner or his authorized representative may limit the entry of carcasses, part
28 of carcasses, meat and meat food products, and other materials into any establishment
29 at which inspection under this Article is maintained, under such conditions as he may
30 prescribe to assure that allowing the entry of such articles into such inspected
31 establishments will be consistent with the purposes of this and the subsequent
32 Article."

33 Section 8. G.S. 106-549.22 reads as rewritten:

34 "**§ 106-549.22. Rules and regulations of Board.**

35 The Commissioner or his authorized representative shall cause to be made, by
36 experts in sanitation, or by other competent inspectors, such inspection of all
37 slaughtering, meat-canning, salting, packing, rendering, or similar establishments in
38 which cattle, sheep, swine, goats, fallow deer, American alligator, bison, horses,
39 mules, and other equines are slaughtered and the meat and meat food products
40 thereof are prepared for intrastate commerce as may be necessary to inform himself
41 concerning the sanitary conditions of the same, and the Board shall prescribe the
42 rules and regulations of sanitation under which such establishments shall be
43 maintained; and where the sanitary conditions of any such establishment are such that
44 the meat or meat food products are rendered adulterated, the Commissioner or his

1 authorized representative shall refuse to allow said meat or meat food products to be
2 labeled, marked, stamped, or tagged as 'North Carolina Department of Agriculture
3 Inspected and Passed.'

4 Section 9. G.S. 106-549.23 reads as rewritten:

5 "**§ 106-549.23. Prohibited slaughter, sale and transportation.**

6 No person, firm, or corporation shall, with respect to any cattle, sheep, swine,
7 goats, fallow deer, American alligator, bison, horses, mules, or other equines, or any
8 carcasses, parts of carcasses, meat or meat food products of any such animals:

- 9 (1) Slaughter any of these animals or prepare any of these articles
10 which are capable of use as human food, at any establishment
11 preparing any such articles for intrastate commerce except in
12 compliance with the requirements of this and the subsequent
13 Article;
- 14 (2) Slaughter, or handle in connection with slaughter, any such
15 animals in any manner not in accordance with G.S. 106-549.17(c)
16 of this Article;
- 17 (3) Sell, transport, offer for sale or transportation, or receive for
18 transportation, in intrastate commerce:
19 a. Any of these articles which (i) are capable of use as human
20 food and (ii) are adulterated or misbranded at the time of
21 sale, transportation, offer for sale or transportation, or
22 receipt for transportation; or
23 b. Any articles required to be inspected under this Article
24 unless they have been so inspected and passed; or
- 25 (4) Do, with respect to any of these articles which are capable of use
26 as human food, any act while they are being transported in
27 intrastate commerce or held for sale after such transportation,
28 which is intended to cause or has the effect of causing the articles
29 to be adulterated or misbranded."

30 Section 10. G.S. 106-549.25 reads as rewritten:

31 "**§ 106-549.25. Slaughter, sale and transportation of equine carcasses.**

32 No person, firm, or corporation shall sell, transport, offer for sale or transportation,
33 or receive for transportation, in intrastate commerce, any carcasses of horses, mules,
34 or other equines or parts of such carcasses, or the meat or meat food products
35 thereof, unless they are plainly and conspicuously marked or labeled or otherwise
36 identified as required by regulations prescribed by the Board to show the kinds of
37 animals from which they were derived. When required by the Commissioner or his
38 authorized representative, with respect to establishments at which inspection is
39 maintained under this Article, such animals and their carcasses, parts thereof, meat
40 and meat food products shall be prepared in establishments separate from those in
41 which cattle, sheep, swine, fallow deer, American alligator, bison, or goats are
42 slaughtered or their carcasses, parts thereof, meats or meat food products are
43 prepared."

44 Section 11. G.S. 106-549.26 reads as rewritten:

1 "§ 106-549.26. Inspection of establishment; bribery of or malfeasance of inspector.

2 The Commissioner or his authorized representative shall appoint from time to time
3 inspectors to make examination and inspection of all cattle, sheep, swine, goats,
4 fallow deer, American alligator, bison, horses, mules, and other equines the
5 inspection of which is hereby provided for, and of all carcasses and parts thereof, and
6 of all meats and meat food products thereof, and of the sanitary conditions of all
7 establishments in which such meat and meat food products hereinbefore described
8 are prepared; and said inspectors shall refuse to stamp, mark, tag or label any carcass
9 or any part thereof, or meat food product therefrom, prepared in any establishment
10 hereinbefore mentioned, until the same shall have actually been inspected and found
11 to be not adulterated; and shall perform such other duties as are provided by this and
12 the subsequent Article and by the rules and regulations to be prescribed by said
13 Board and said Board shall, from time to time, make such rules and regulations as
14 are necessary for the efficient execution of the provisions of this and the subsequent
15 Article, and all inspections and examinations made under this Article shall be such
16 and made in such manner as described in the rules and regulations prescribed by said
17 Board not inconsistent with the provisions of this Article and as directed by the
18 Commissioner or his authorized representative. Any person, firm, or corporation, or
19 any agent or employee of any person, firm, or corporation, who shall give, pay, or
20 offer, directly or indirectly, to any inspector, or any other officer or employee of this
21 State authorized to perform any of the duties prescribed by this and the subsequent
22 Article or by the rules and regulations of the Board or by the Commissioner or his
23 authorized representative any money or other thing of value, with intent to influence
24 said inspector, or other officer or employee of this State in the discharge of any duty
25 herein provided for, shall be deemed guilty of a Class I felony which may include a
26 fine not less than five hundred dollars (\$500.00) nor more than ten thousand dollars
27 (\$10,000); and any inspector, or other officer or employee of this State authorized to
28 perform any of the duties prescribed by this Article who shall accept any money, gift,
29 or other thing of value from any person, firm, or corporation, or officers, agents, or
30 employees thereof, given with intent to influence his official action, or who shall
31 receive or accept from any person, firm, or corporation engaged in intrastate
32 commerce any gift, money, or other thing of value given with any purpose or intent
33 whatsoever, shall be deemed guilty of a Class I felony and shall, upon conviction
34 thereof, be summarily discharged from office and may be punished by a fine not less
35 than five hundred dollars (\$500.00) nor more than ten thousand dollars (\$10,000)."

36 Section 12. G.S. 106-549.27(a) reads as rewritten:

37 "(a) The provisions of this Article requiring inspection of the slaughter of animals
38 and the preparation of the carcasses, parts thereof, meat and meat food products at
39 establishments conducting such operations shall not

40 (1) Apply to the slaughtering by any person of animals of his own
41 raising, and the preparation by him and transportation in intrastate
42 commerce of the carcasses, parts thereof, meat and meat food
43 products of such animals exclusively for use by him and members
44 of his household and his nonpaying guests and employees; nor

1 (2) To the custom slaughter by any person, firm, or corporation of
2 cattle, sheep, swine, fallow deer, American alligator, bison, or goats
3 delivered by the owner thereof for such slaughter, and the
4 preparation by such slaughter and transportation in intrastate
5 commerce of the carcasses, parts thereof, meat and meat food
6 products of such animals, exclusively for use, in the household of
7 such owner, by him, and members of his household and his
8 nonpaying guests and employees: Provided, that all carcasses, parts
9 thereof, meat and meat food products derived from custom
10 slaughter shall be identified as required by the Commissioner,
11 during all phases of slaughtering, chilling, cooling, freezing,
12 packing, meat canning, rendering, preparation, storage and
13 transportation; provided further, that the custom slaughter does not
14 engage in the business of buying or selling any carcasses, parts
15 thereof, meat or meat food products of any cattle, sheep, swine,
16 goats, fallow deer, American alligator, bison, or equines, capable of
17 use as human food, unless the carcasses, parts thereof, meat or
18 meat food products have been inspected and passed and are
19 identified as having been inspected and passed by the
20 Commissioner or the United States Department of Agriculture."

21 Section 13. G.S. 106-549.28 reads as rewritten:

22 **"§ 106-549.28. Regulation of storage of meat.**

23 The Board may by regulations prescribe conditions under which carcasses, parts of
24 carcasses, meat, and meat food products of cattle, sheep, swine, goats, fallow deer,
25 American alligator, bison, horses, mules, or other equines, capable of use as human
26 food, shall be stored or otherwise handled by any person, firm, or corporation
27 engaged in the business of buying, selling, freezing, storing, or transporting, in or for
28 intrastate commerce, such articles, whenever the Board deems such action necessary
29 to assure that such articles will not be adulterated or misbranded when delivered to
30 the consumer. Willful violation of any such regulation is a Class 2 misdemeanor."

31 Section 14. No later than October 31, 1997, the Department of
32 Agriculture shall adopt rules to implement this act.

33 Section 15. This act is effective when it becomes law.

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

4-23-97

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Bob High

State Treas.

Ken Durham

State Treasurer

Robert Pison

Jordan Pina Wall Gray Jones

David Ferrell

Hoffa, McManan, Caldwell, McElroy & White,

Eddie Caldwell

H Mc C Me + C, PA.

Michael Shure

NC DPPEA.

Walter Math

NC DEH/NR Solid Waste Section

R. ROGERS

EHNR-

Patty berry

CCNC

Don McPORDALE

NC Retail Merchants

Fran Preston

|| | | ||

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Natalie Stankin	Charlotte Chamber of Commerce
Jan Hy	DOR
D. Owen	DOR
B. Daniel	DOR
Nancy Pomeranz	DOR
Paul Gysin	OSBM
Patti Seawell	DOR
Ali Underwood	DOR
Lennie Collins	DOR
Rob Schfield	NCUCDC
Jim Ahler	NCA CRA

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Harold H. Webb

Johnson, Vaneja et al -

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

FINANCE COMMITTEE REPORT

John H. Kerr, III, Co-Chair
David W. Hoyle, Co-Chair

Wednesday, April 23, 1997

SENATOR JOHN KERR,

submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B.	585	Increase Lumberton Occupancy Tax.
		Draft Number: PCS7769
		Sequential Referral: None
		Recommended Referral: None
		Long Title Amended: Yes

TOTAL REPORTED: 1

Committee Clerk Comment: None

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

FINANCE COMMITTEE REPORT

John H. Kerr, III, Co-Chair
David W. Hoyle, Co-Chair

Monday, April 28, 1997

SENATOR JOHN KERR,

submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B. 34 Adjust City Receipts Tax Share.
 Draft Number: PCS8683
 Sequential Referral: None
 Recommended Referral: None
 Long Title Amended: Yes

S.B. 833 UNC Nonappropriated Capital Projects.
 Draft Number: PCS2731
 Sequential Referral: None
 Recommended Referral: None
 Long Title Amended: No

TOTAL REPORTED: 2

Committee Clerk Comment: None

SENATE FINANCE COMMITTEE

TUESDAY, APRIL 29, 1997

12:00 NOON - ROOM 544 LOB

The Senate Finance Committee met. There were 26 members of the Committee present. Senator David W. Hoyle, Co-Chairman, called the meeting to order and introduced the Pages. They are James W. Kimball from Peachland, North Carolina, sponsored by Senator Plyler and Ethan Denny from Madison, North Carolina, sponsored by Senator Foxx.

S. B. 816 Alligator/Yellow Perch Production

Senator Conder moved for adoption of committee substitute to this bill, motion passed. Senator Conder explained the bill. Senator Perdue moved for a "favorable" report, motion passed.

S. B. 872 - State Law Changes

Senator Kerr came to explain the bill. He also made a motion for adoption of committee substitute, motion passed. Senator Cooper moved for a "favorable" report, motion passed.

S. B. 940 - Local Gov. Funding Agreements

Senator Kerr moved for adoption of committee substitute, motion passed. Senator Odom came to explain the bill. Senator Dannelly moved for a "favorable" report, motion passed.

S. B. 699 - Manufacturer's Licensing Law

Senator Horton explained the bill. Senator Cooper moved for adoption of committee substitute, motion pass. Senator McDaniel moved for a "favorable" report, motion passed. Major Airwood from the Department of Motor Vehicles spoke in support of the bill.

SENATE FINANCE COMMITTEE

Tuesday, April 29, 1997

Page -2-

S. B. 826 - School Board "Quick Take"

Senator Brad Miller explained the bill. Senator Cooper moved for a "favorable" report, motion passed. A division of vote was called by Senator Allran. The vote was 15 for and 7 against, motion passed.

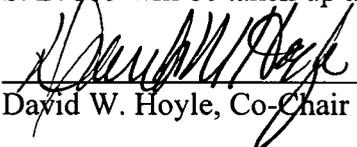
S. B. 427 - Wood Chips on Light Duty Roads

Senator Hoyle explained the bill. Senator Lee moved for a "favorable" report, motion passed. Mr. Bob Slocum with the N. C. Forestry Association spoke in support of the bill. Major Airwood with Department of Motor Vehicles spoke in support of the bill.

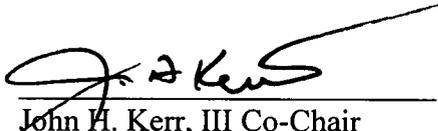
S. B. 516 - Lead-Based Paint Mgmt/AB

Senator Hoyle moved for adoption of committee substitute, motion passed. Senator Ballance explained the bill. Senator Kerr stated that we would not vote on this bill today. Ms. Mary Giguere with the Department of Human and Natural Resources spoke on the bill.

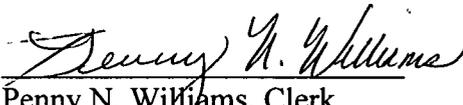
Time for meeting had expired, therefore, meeting was adjourned. NOTE: S. B. 124 and S. B. 339 will be taken up at a later meeting.



David W. Hoyle, Co-Chair



John H. Kerr, III Co-Chair



Penny N. Williams, Clerk



Evelyn S. Hartsell, Clerk

NOTE:

Agenda is Attachment # 1
Visitor's Registration is Attachment # 2
Committee Report is Attachment # 3

AGENDA

SENATE FINANCE COMMITTEE

MEETING

TUESDAY, APRIL 29, 1997

12:00 NOON-ROOM 544 LOB

- “ SB 816 - ALLIGATOR/YELLOW PERCH PRODUCTION -
SEN. CONDER
- “ SB 940 - LOCAL GOV. FUNDING AGREEMENTS -
SEN. ODOM
- “ SB 826 - SCHOOL BOARD “QUICK TAKE” - SEN. MILLER
- “ SB 427 - WOOD CHIPS ON LIGHT DUTY ROADS -
SEN. HOYLE
- “ SB 872 - STATE LAW CHANGES - SEN. KERR
- “ SB 699 - MANUFACTURER’S LICENSING LAW -
SEN. HORTON
- SB 516 - LEAD-BASED PAINT MGMT;/AB -
SEN. BALLANCE
- SB 124 - AMEND WHITE GOODS TAX - SEN. ODOM
- SB 339 - CREDIT FOR TIER ONE COUNTIES - SEN. CONDER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 816

Short Title: Alligator/Yellow Perch Production.

(Public)

Sponsors: Senator Conder.

Referred to: Finance.

April 14, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE THE PRODUCTION AND SALE OF
3 COMMERCIALY RAISED ALLIGATORS AND YELLOW PERCH AND TO
4 PROVIDE FOR THE INSPECTION OF ALLIGATOR MEAT.

5 The General Assembly of North Carolina enacts:

6 Section 1. G.S. 106-761(c) reads as rewritten:

7 "(c) Species with special restrictions.

8 (1) Hybrid striped bass. The hybrid striped bass shall be subject to
9 rules adopted by the Board of Agriculture in all river basins of the
10 State except for the Neuse, Roanoke, and Tar/Pamlico River
11 basins. In these basins production, propagation, and holding
12 facilities shall comply with additional escapement prevention
13 measures as prescribed by the Wildlife Resources Commission.

14 (2) Yellow perch. The yellow perch may be held or grown on all
15 licensed facilities east of Interstate Highway 77. Permission shall
16 be obtained from the Wildlife Resources Commission before
17 yellow perch may be held or raised pursuant to this subsection.
18 For purposes of this subsection, 'yellow perch' means perca
19 flavescens.

20 (3) Alligators. American alligators may be held or grown if all of the
21 following requirements are satisfied:

22 a. Only hatchlings that have been permanently tagged and are
23 permitted for export from their state of origin may be
24 possessed. The farmer shall maintain records of the

- 1 hatchlings that have been permanently tagged and make
2 these records available for inspection by the Wildlife
3 Resources Commission and the Department upon request.
4 b. All production facilities shall prepare and implement a
5 confinement plan prior to stocking the facility. Confinement
6 plans shall comply with guidelines developed and adopted
7 by the Wildlife Resources Commission. The Department
8 may inspect the confinement area to determine whether the
9 farmer is complying with the confinement plan. As used in
10 this sub-subdivision, confinement includes production within
11 a building (or similar structure) and a perimeter fence.
12 c. The use of swine, poultry, or other livestock for feed shall
13 comply with a disease management plan that has received
14 the approval of the State Veterinarian.
15 d. All activities shall be in compliance with the Endangered
16 Species Act and the Convention on International Trade in
17 Endangered Species. The Department is the State agency
18 responsible for the administration of this program for farm-
19 raised alligators.
20 e. Possession of untagged or undocumented alligators is a Class
21 H felony. Possession or taking of alligators from the wild in
22 North Carolina shall also result in a license revocation for
23 the facility and operator for a period of five years."

24 Section 2. Article 49 of Chapter 106 of the General Statutes reads as
25 rewritten:

26 "ARTICLE 49H.

27 "Production and Sale of Fallow ~~Deer~~ Deer and American Alligator.
28 "§ 106-549.97. Regulation of fallow deer and American alligator by Department of
29 Agriculture; certain authority of North Carolina Wildlife Resources Commission not
30 affected.

31 (a) The Department of Agriculture shall regulate the production and sale of
32 fallow deer and American alligator for food purposes. The Board of Agriculture
33 shall adopt rules for the production and sale of fallow deer and American alligator
34 for food purposes in such a manner as to provide for close supervision of any person,
35 firm, or corporation producing and selling fallow deer or American alligator, or both,
36 for food purposes.

37 As used in this section, 'fallow deer' (*Dama dama* spp.) means a small European
38 deer raised commercially for production and sale for food purposes.

39 (b) The North Carolina Wildlife Resources Commission shall regulate the
40 possession and transportation of live fallow deer and live American alligators and
41 may adopt rules to prevent the release or escape of fallow deer or American
42 alligators, or both, upon finding that it is necessary to protect live fallow deer or live
43 American alligators, or both, or to prevent damage to ~~the~~ either or both of these
44 native deer population populations or its habitat. their habitats."

1 **"§ 106-549.98. Inspection fees.**

2 The Commissioner may establish a fee at an hourly rate to be paid by the owner,
3 proprietor, or operator of each slaughtering, meat-canning, salting, packing,
4 rendering, or similar establishment for the purpose of defraying the expenses incurred
5 in the inspection of fallow deer as required by Article 49B of Chapter 106 of the
6 General Statutes. The Commissioner may establish a fee at an hourly rate to be paid
7 by the owner, proprietor, or operator of each slaughtering, meat-canning, salting,
8 packing, rendering, or similar establishment for the purpose of defraying the expenses
9 incurred in the inspection of American alligators as required by Article 49B of
10 Chapter 106 of the General Statutes."

11 Section 3. G.S. 106-549.15(14) reads as rewritten:

12 "(14) 'Meat food product' means any product capable of use as human
13 food that is made wholly or in part from any meat or other portion
14 of the carcass of any cattle, sheep, swine, goats, bison, ~~or~~ fallow
15 deer, or American alligator excepting products that contain meat
16 or other portions of such carcasses only in a relatively small
17 proportion or historically have not been considered by consumers
18 as products of the meat food industry, and that are exempted from
19 definition as a meat food product by the Board under such
20 conditions as it may prescribe to assure that the meat or other
21 portions of such carcasses contained in such product are not
22 adulterated and that such products are not represented as meat
23 food products. This term as applied to food products of equines
24 shall have a meaning comparable to that provided in this
25 subdivision with respect to cattle, sheep, swine, goats, and bison."

26 Section 4. G.S. 106-549.15(22) reads as rewritten:

27 "(22) 'Renderer' means any person, firm, or corporation engaged in the
28 business of rendering carcasses, or parts or products of the
29 carcasses, of cattle, sheep, swine, goats, fallow deer, American
30 alligator, horses, mules, or other equines, except rendering
31 conducted under inspection under this Article."

32 Section 5. G.S. 106-549.17 reads as rewritten:

33 **"§ 106-549.17. Inspection of animals before slaughter; humane methods of**
34 **slaughtering.**

35 (a) For the purpose of preventing the use in intrastate commerce, as hereinafter
36 provided, of meat and meat food products which are adulterated, the Commissioner
37 shall cause to be made, by inspectors appointed for that purpose, an examination and
38 inspection of all cattle, sheep, swine, goats, fallow deer, American alligator, bison,
39 horses, mules, and other equines before they shall be allowed to enter into any
40 slaughtering, packing, meat-canning, rendering, or similar establishment in this State
41 in which slaughtering and preparation of meat and meat food products of such
42 animals are conducted for intrastate commerce; and all cattle, sheep, swine, goats,
43 fallow deer, American alligator, bison, horses, mules, and other equines found on
44 such inspection to show symptoms of disease shall be set apart and slaughtered

1 separately from all other cattle, sheep, swine, goats, fallow deer, American alligator,
2 bison, horses, mules, or other equines, and when so slaughtered, the carcasses of said
3 cattle, sheep, swine, goats, fallow deer, American alligator, bison, horses, mules, or
4 other equines shall be subject to a careful examination and inspection, all as provided
5 by the rules and regulations to be prescribed by the Board as herein provided for.

6 (b) For the purpose of preventing the inhumane slaughtering of livestock, the
7 Commissioner shall cause to be made, by inspectors appointed for that purpose, an
8 examination and inspection of the method by which cattle, sheep, swine, goats, fallow
9 deer, American alligator, bison, horses, mules, and other equines are slaughtered and
10 handled in connection with slaughter in the slaughtering establishments inspected
11 under this law. The Commissioner may refuse to provide inspection to a new
12 slaughtering establishment or may cause inspection to be temporarily suspended at a
13 slaughtering establishment if the Commissioner finds that any cattle, sheep, swine,
14 goats, fallow deer, American alligator, bison, horses, mules, or other equines have
15 been slaughtered or handled in connection with slaughter at such establishment by
16 any method not in accordance with subsection (c) of this section until the
17 establishment furnishes assurances satisfactory to the Commissioner that all
18 slaughtering and handling in connection with slaughter of livestock shall be in
19 accordance with such a method.

20 (c) Either of the following two methods of slaughtering of livestock and handling
21 of livestock in connection with slaughter are found to be humane:

22 (1) In the case of cattle, calves, fallow deer, American alligator, bison,
23 horses, mules, sheep, swine, and other livestock, all animals are
24 rendered insensible to pain by a single blow or gunshot or an
25 electrical, chemical, or other means that is rapid and effective,
26 before being shackled, hoisted, thrown, cast, or cut; or

27 (2) By slaughtering in accordance with the ritual requirements of the
28 Jewish faith or any other religious faith that prescribes a method of
29 slaughter whereby the animal suffers loss of consciousness by
30 anemia of the brain caused by the simultaneous and instantaneous
31 severance of the carotid arteries with a sharp instrument and
32 handling in connection with such slaughtering.

33 Section 6. G.S. 106-549.18 reads as rewritten:

34 "**§ 106-549.18. Inspection; stamping carcass.**

35 For the purposes hereinbefore set forth the Commissioner shall cause to be made
36 by inspectors appointed for that purpose, as hereinafter provided, a post mortem
37 examination and inspection of the carcasses and parts thereof of all cattle, sheep,
38 swine, goats, fallow deer, American alligator, bison, horses, mules, and other equines,
39 capable of use as human food, to be prepared at any slaughtering, meat-canning,
40 salting, packing, rendering, or similar establishment in this State in which such
41 articles are prepared for intrastate commerce; and the carcasses and parts thereof of
42 all such animals found to be not adulterated shall be marked, stamped, tagged, or
43 labeled, as 'Inspected and Passed'; and said inspectors shall label, mark, stamp, or tag
44 as 'Inspected and Condemned,' all carcasses and parts thereof of animals found to be

1 adulterated; and all carcasses and parts thereof thus inspected and condemned shall
2 be destroyed for food purposes by the said establishment in the presence of an
3 inspector, and the Commissioner or his authorized representative may remove
4 inspectors from any such establishment which fails to so destroy any such condemned
5 carcass or part thereof, and said inspectors, after said first inspection shall, when they
6 deem it necessary, reinspect said carcasses or parts thereof to determine whether
7 since the first inspection the same have become adulterated and if any carcass or any
8 part thereof shall, upon examination and inspection subsequent to the first
9 examination and inspection, be found to be adulterated, it shall be destroyed for food
10 purposes by the said establishment in the presence of an inspector, and the
11 Commissioner or his authorized representative may remove inspectors from any
12 establishment which fails to [do] so destroy any such condemned carcass or part
13 thereof."

14 Section 7. G.S. 106-549.19 reads as rewritten:

15 "**§ 106-549.19. Application of Article; place of inspection.**

16 The foregoing provisions shall apply to all carcasses or parts of carcasses of cattle,
17 sheep, swine, goats, fallow deer, American alligator, bison, horses, mules, and other
18 equines or the meat or meat products thereof, capable of use as human food, which
19 may be brought into any slaughtering, meat-canning, salting, packing, rendering, or
20 similar establishment, where inspection under this Article is maintained, and such
21 examination and inspection shall be had before the said carcasses or parts thereof
22 shall be allowed to enter into any department wherein the same are to be treated and
23 prepared for meat food products; and the foregoing provisions shall also apply to all
24 such products which, after having been issued from any such slaughtering, meat-
25 canning, salting, packing, rendering, or similar establishment, shall be returned to the
26 same or to any similar establishment where such inspection is maintained. The
27 Commissioner or his authorized representative may limit the entry of carcasses, part
28 of carcasses, meat and meat food products, and other materials into any establishment
29 at which inspection under this Article is maintained, under such conditions as he may
30 prescribe to assure that allowing the entry of such articles into such inspected
31 establishments will be consistent with the purposes of this and the subsequent
32 Article."

33 Section 8. G.S. 106-549.22 reads as rewritten:

34 "**§ 106-549.22. Rules and regulations of Board.**

35 The Commissioner or his authorized representative shall cause to be made, by
36 experts in sanitation, or by other competent inspectors, such inspection of all
37 slaughtering, meat-canning, salting, packing, rendering, or similar establishments in
38 which cattle, sheep, swine, goats, fallow deer, American alligator, bison, horses,
39 mules, and other equines are slaughtered and the meat and meat food products
40 thereof are prepared for intrastate commerce as may be necessary to inform himself
41 concerning the sanitary conditions of the same, and the Board shall prescribe the
42 rules and regulations of sanitation under which such establishments shall be
43 maintained; and where the sanitary conditions of any such establishment are such that
44 the meat or meat food products are rendered adulterated, the Commissioner or his

1 authorized representative shall refuse to allow said meat or meat food products to be
2 labeled, marked, stamped, or tagged as 'North Carolina Department of Agriculture
3 Inspected and Passed.'

4 Section 9. G.S. 106-549.23 reads as rewritten:

5 **"§ 106-549.23. Prohibited slaughter, sale and transportation.**

6 No person, firm, or corporation shall, with respect to any cattle, sheep, swine,
7 goats, fallow deer, American alligator, bison, horses, mules, or other equines, or any
8 carcasses, parts of carcasses, meat or meat food products of any such animals:

- 9 (1) Slaughter any of these animals or prepare any of these articles
10 which are capable of use as human food, at any establishment
11 preparing any such articles for intrastate commerce except in
12 compliance with the requirements of this and the subsequent
13 Article;
- 14 (2) Slaughter, or handle in connection with slaughter, any such
15 animals in any manner not in accordance with G.S. 106-549.17(c)
16 of this Article;
- 17 (3) Sell, transport, offer for sale or transportation, or receive for
18 transportation, in intrastate commerce:
- 19 a. Any of these articles which (i) are capable of use as human
20 food and (ii) are adulterated or misbranded at the time of
21 sale, transportation, offer for sale or transportation, or
22 receipt for transportation; or
- 23 b. Any articles required to be inspected under this Article
24 unless they have been so inspected and passed; or
- 25 (4) Do, with respect to any of these articles which are capable of use
26 as human food, any act while they are being transported in
27 intrastate commerce or held for sale after such transportation,
28 which is intended to cause or has the effect of causing the articles
29 to be adulterated or misbranded."

30 Section 10. G.S. 106-549.25 reads as rewritten:

31 **"§ 106-549.25. Slaughter, sale and transportation of equine carcasses.**

32 No person, firm, or corporation shall sell, transport, offer for sale or transportation,
33 or receive for transportation, in intrastate commerce, any carcasses of horses, mules,
34 or other equines or parts of such carcasses, or the meat or meat food products
35 thereof, unless they are plainly and conspicuously marked or labeled or otherwise
36 identified as required by regulations prescribed by the Board to show the kinds of
37 animals from which they were derived. When required by the Commissioner or his
38 authorized representative, with respect to establishments at which inspection is
39 maintained under this Article, such animals and their carcasses, parts thereof, meat
40 and meat food products shall be prepared in establishments separate from those in
41 which cattle, sheep, swine, fallow deer, American alligator, bison, or goats are
42 slaughtered or their carcasses, parts thereof, meats or meat food products are
43 prepared."

44 Section 11. G.S. 106-549.26 reads as rewritten:

1 "§ 106-549.26. Inspection of establishment; bribery of or malfeasance of inspector.

2 The Commissioner or his authorized representative shall appoint from time to time
3 inspectors to make examination and inspection of all cattle, sheep, swine, goats,
4 fallow deer, American alligator, bison, horses, mules, and other equines the
5 inspection of which is hereby provided for, and of all carcasses and parts thereof, and
6 of all meats and meat food products thereof, and of the sanitary conditions of all
7 establishments in which such meat and meat food products hereinbefore described
8 are prepared; and said inspectors shall refuse to stamp, mark, tag or label any carcass
9 or any part thereof, or meat food product therefrom, prepared in any establishment
10 hereinbefore mentioned, until the same shall have actually been inspected and found
11 to be not adulterated; and shall perform such other duties as are provided by this and
12 the subsequent Article and by the rules and regulations to be prescribed by said
13 Board and said Board shall, from time to time, make such rules and regulations as
14 are necessary for the efficient execution of the provisions of this and the subsequent
15 Article, and all inspections and examinations made under this Article shall be such
16 and made in such manner as described in the rules and regulations prescribed by said
17 Board not inconsistent with the provisions of this Article and as directed by the
18 Commissioner or his authorized representative. Any person, firm, or corporation, or
19 any agent or employee of any person, firm, or corporation, who shall give, pay, or
20 offer, directly or indirectly, to any inspector, or any other officer or employee of this
21 State authorized to perform any of the duties prescribed by this and the subsequent
22 Article or by the rules and regulations of the Board or by the Commissioner or his
23 authorized representative any money or other thing of value, with intent to influence
24 said inspector, or other officer or employee of this State in the discharge of any duty
25 herein provided for, shall be deemed guilty of a Class I felony which may include a
26 fine not less than five hundred dollars (\$500.00) nor more than ten thousand dollars
27 (\$10,000); and any inspector, or other officer or employee of this State authorized to
28 perform any of the duties prescribed by this Article who shall accept any money, gift,
29 or other thing of value from any person, firm, or corporation, or officers, agents, or
30 employees thereof, given with intent to influence his official action, or who shall
31 receive or accept from any person, firm, or corporation engaged in intrastate
32 commerce any gift, money, or other thing of value given with any purpose or intent
33 whatsoever, shall be deemed guilty of a Class I felony and shall, upon conviction
34 thereof, be summarily discharged from office and may be punished by a fine not less
35 than five hundred dollars (\$500.00) nor more than ten thousand dollars (\$10,000)."

36 Section 12. G.S. 106-549.27(a) reads as rewritten:

37 "(a) The provisions of this Article requiring inspection of the slaughter of animals
38 and the preparation of the carcasses, parts thereof, meat and meat food products at
39 establishments conducting such operations shall not

40 (1) Apply to the slaughtering by any person of animals of his own
41 raising, and the preparation by him and transportation in intrastate
42 commerce of the carcasses, parts thereof, meat and meat food
43 products of such animals exclusively for use by him and members
44 of his household and his nonpaying guests and employees; nor

1 (2) To the custom slaughter by any person, firm, or corporation of
2 cattle, sheep, swine, fallow deer, American alligator, bison, or goats
3 delivered by the owner thereof for such slaughter, and the
4 preparation by such slaughter and transportation in intrastate
5 commerce of the carcasses, parts thereof, meat and meat food
6 products of such animals, exclusively for use, in the household of
7 such owner, by him, and members of his household and his
8 nonpaying guests and employees: Provided, that all carcasses, parts
9 thereof, meat and meat food products derived from custom
10 slaughter shall be identified as required by the Commissioner,
11 during all phases of slaughtering, chilling, cooling, freezing,
12 packing, meat canning, rendering, preparation, storage and
13 transportation; provided further, that the custom slaughter does not
14 engage in the business of buying or selling any carcasses, parts
15 thereof, meat or meat food products of any cattle, sheep, swine,
16 goats, fallow deer, American alligator, bison, or equines, capable of
17 use as human food, unless the carcasses, parts thereof, meat or
18 meat food products have been inspected and passed and are
19 identified as having been inspected and passed by the
20 Commissioner or the United States Department of Agriculture."

21 Section 13. G.S. 106-549.28 reads as rewritten:

22 "**§ 106-549.28. Regulation of storage of meat.**

23 The Board may by regulations prescribe conditions under which carcasses, parts of
24 carcasses, meat, and meat food products of cattle, sheep, swine, goats, fallow deer,
25 American alligator, bison, horses, mules, or other equines, capable of use as human
26 food, shall be stored or otherwise handled by any person, firm, or corporation
27 engaged in the business of buying, selling, freezing, storing, or transporting, in or for
28 intrastate commerce, such articles, whenever the Board deems such action necessary
29 to assure that such articles will not be adulterated or misbranded when delivered to
30 the consumer. Willful violation of any such regulation is a Class 2 misdemeanor."

31 Section 14. No later than October 31, 1997, the Department of
32 Agriculture shall adopt rules to implement this act.

33 Section 15. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1997

S

D

SENATE BILL 816
Proposed Committee Substitute S816-PCS1793

Short Title: Alligator/Yellow Perch Production.

(Public)

Sponsors:

Referred to:

April 14, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO ELIMINATE THE NEED TO OBTAIN PRIOR APPROVAL FROM
3 THE WILDLIFE RESOURCES COMMISSION TO RAISE YELLOW PERCH
4 COMMERCIALY IN SOME AREAS OF THE STATE AND TO ALLOW
5 ALLIGATORS TO BE RAISED COMMERCIALY.
6 The General Assembly of North Carolina enacts:
7 Section 1. G.S. 106-761(c) reads as rewritten:
8 "(c) Exceptions for Species Not Listed. -- The following fish species that are not
9 listed in subsection (b) of this section may be produced and sold as if they were listed
10 in that subsection with the following restrictions:
11 (1) Hybrid striped bass. striped bass. -- The hybrid striped bass shall
12 be subject to rules adopted by the Board of Agriculture in all river
13 basins of the State except for the Neuse, Roanoke, and Tar/Pamlico
14 River basins. In these basins production, Production, propagation,
15 and holding facilities in the Neuse, Roanoke, or Tar/Pamlico River
16 basins for the hybrid striped bass shall comply with additional
17 escapement prevention measures as prescribed by the Wildlife
18 Resources Commission.
19 (2) Yellow perch. -- A letter of approval from the Wildlife Resources
20 Commission is required before the yellow perch, perca flavescens,
21 may be raised at a facility located west of Interstate Highway 77."
22 Section 2. Article 63 of Chapter 106 of the General Statutes is amended
23 by adding a new section to read:

1 "§ 106-763.1. Propagation and production of American alligators.

2 (a) License Required. -- A person who intends to raise American alligators
3 commercially must first obtain an Aquaculture Propagation and Production Facility
4 License from the Department. The Board of Agriculture may regulate a facility that
5 raises American alligators to the same extent that it can regulate any other facility
6 licensed under this Article.

7 (b) Requirements. -- A facility that raises American alligators commercially must
8 comply with all of the following requirements:

9 (1) Before a facility begins operation, it must prepare and implement a
10 confinement plan. After a facility begins operation, it must adhere
11 to the confinement plan. A confinement plan must comply with
12 guidelines developed and adopted by the Wildlife Resources
13 Commission. The Department may inspect a facility to determine
14 if the facility is complying with the confinement plan. As used in
15 this subdivision, 'confinement' includes production within a
16 building or similar structure and a perimeter fence.

17 (2) A facility can possess only hatchlings that have been permanently
18 tagged and have an export permit from their state of origin. The
19 facility must keep records of all hatchlings it receives and must
20 make these records available for inspection by the Wildlife
21 Resources Commission and the Department upon request.

22 (3) If the facility uses swine, poultry, or other livestock for feed, it
23 must have a disease management plan that has been approved by
24 the State Veterinarian, and it must comply with the plan.

25 (4) The activities of the facility must comply with the Endangered
26 Species Act and the Convention on International Trade in
27 Endangered Species. The Department is the State agency
28 responsible for the administration of this program for farm-raised
29 alligators.

30 (c) Sanctions. -- The operator of a facility that possesses an untagged or
31 undocumented alligator commits a Class H felony if the operator knows the alligator
32 is untagged or undocumented. Conviction of an operator of a facility under this
33 section revokes the license of the facility for five years beginning on the date of the
34 conviction. An operator convicted under this section may not be the operator of any
35 other facility required to be licensed under this Article for five years beginning on the
36 date of the conviction."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1997

S

1

SENATE BILL 872

Short Title: State Law Changes.

(Public)

Sponsors: Senator Kerr.

Referred to: Rules and Operations of the Senate.

April 15, 1997

- 1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE LAWS OF NORTH CAROLINA.
3 The General Assembly of North Carolina enacts:
4 Section 1. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

D

SENATE BILL 872
Proposed Senate Finance Committee Substitute
S872-CSLJ-4/29

Short Title: Youth Workers At ABC Permittees. (Public)

Sponsors:

Referred to: Rules and Operations of the Senate.

April 15, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW TEENAGERS WHO ARE 14 OR 15 YEARS OLD TO WORK AT
3 CERTAIN PLACES THAT SELL ALCOHOLIC BEVERAGES.
4 The General Assembly of North Carolina enacts:
5 Section 1. G.S. 95-25.5(j) reads as rewritten:
6 "(j) No person who holds any ABC permit issued pursuant to the
7 provisions of Chapter 18B of the General Statutes for the on-
8 premises sale or consumption of alcoholic beverages, including
9 any mixed beverages, shall employ a youth:
10 (1) Under 16 years of age on the premises for any
11 ~~purpose;~~ purpose, unless the premises for which the
12 permit is issued is a restaurant, a hotel, or a
13 sports club. If the permit is issued for one of
14 these types of businesses, the person may employ a
15 youth who is 14 or 15 years old to work on the
16 premises under the same restrictions that apply
17 under subdivision (2) of this subsection to 16 and
18 17 year olds who work on the premises. The
19 definitions of 'restaurant,' 'hotel,' and 'sports
20 club' in G.S. 18B-1000 apply in this subdivision.

1 (2) Under 18 years of age to prepare, serve, dispense
2 or sell any alcoholic beverages, including mixed
3 beverages."

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

EXPLANATION OF SENATE BILL 872
Proposed Senate Finance Committee Substitute
Youth Workers At ABC Permittees

TO: Senate Finance Committee
FROM: Sabra Faires, Committee Counsel
DATE: April 29, 1997
SPONSOR: Senator John Kerr

Senate Bill 872, as introduced, is a blank bill. The proposed committee substitute provides the substance of the bill. The proposed committee substitute changes the law on the employment of 14 and 15 year olds by those who hold ABC permits authorizing the on-premises sale or consumption of alcoholic beverages. The proposed committee substitute allows these youths to be employed at some of these places in certain circumstances. Under current law, youths under 16 years old cannot work at these places under any circumstances. The bill is effective when it becomes law.

The bill allows persons who have an ABC permit for a restaurant, a hotel, or a sports club to hire youths who are 14 or 15 years old for a purpose for which they can currently hire a youth who is 16 or 17 years old. Youths who are 16 or 17 years old can be hired under current law at any place that has an ABC permit for on-premises consumption or sale of alcoholic beverages but cannot prepare, serve, dispense, or sell the alcoholic beverages. Thus, under the bill, a youth who is 14 or 15 years old can be hired at a restaurant, a hotel, or a sports club but cannot prepare, serve, dispense, or sell alcoholic beverages at these businesses.

Under the bill, 14 and 15 year olds can work at three types of businesses that have ABC permits for on-premises consumption or sale of alcoholic beverages. The three types are a restaurant, a hotel, and a sports club. A restaurant is an eating establishment that has a kitchen, an inside dining area with seating for at least 36 people, and gross receipts from food and nonalcoholic beverages that are at least 40% of its gross receipts from food, nonalcoholic beverages, and alcoholic beverages. A hotel is a lodging business with a restaurant. A sports club is an establishment with an 18-hole golf course, 2 or more tennis courts, or both, and gross receipts from club activities that exceed its gross receipts from alcoholic beverages. Club activities include membership fees and greens fees.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 940

Short Title: Local Gov. Funding Agreements.

(Public)

Sponsors: Senator Odom.

Referred to: Finance.

April 17, 1997

A BILL TO BE ENTITLED

1 AN ACT TO AUTHORIZE INVESTMENTS BY LOCAL GOVERNMENTS IN
2 FUNDING AGREEMENTS.

3 The General Assembly of North Carolina enacts:

4 Section 1. G.S. 159-30(c) is amended by adding a new subdivision to
5 read:

6
7 "(14) In connection with funds held by or on behalf of a local
8 government or public authority, which funds are subject to the
9 arbitrage and rebate provisions of the Internal Revenue Code of
10 1986, as amended, a funding agreement, as defined in G.S. 58-7-16,
11 issued by an insurer incorporated in the State of North Carolina (i)
12 having a commercial paper rating that is the highest rating of at
13 least one nationally recognized rating service and does not have a
14 commercial paper rating below the highest by any nationally
15 recognized rating service which rates the particular obligation or a
16 long-term or claims-paying rating which is one of the two highest
17 ratings of at least one nationally recognized rating service and
18 which is not below one of the two highest ratings by any nationally
19 recognized rating service which rates the particular company, or
20 both; and (ii) whose funding agreements require that if the issuer's
21 commercial paper rating or long-term or claims-paying rating is
22 downgraded below that described in this subsection, the issuer
23 shall offer the three following alternatives within 20 business days:

- 1 a. Payment of the principal balance of the funding
- 2 agreement and accrued interest without penalty or
- 3 adjustment;
- 4 b. Upon mutual agreement, assignment of the funding
- 5 agreement to another issuer authorized under this
- 6 section which is rated consistent with the
- 7 requirements of this section; or
- 8 c. Upon mutual agreement, full collateralization of the
- 9 principal balance of the funding agreement, consistent
- 10 with applicable insurance and investment laws,
- 11 including the requirements of G.S. 159-30(c)(12)
- 12 regarding the obligations that are subject to
- 13 repurchase agreements."

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

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: Senate Bill 940

SHORT TITLE: Local Government Funding Agreement

SPONSOR(S): Senator Odom

FISCAL IMPACT

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

FY 1997-98 FY 1998-99 FY 1999-00 FY 2000-01 FY 2001-02

REVENUES See section on assumptions and methodology

**PRINCIPAL DEPARTMENT(S) & Local units of government that issue debt
PROGRAM(S) AFFECTED:**

EFFECTIVE DATE: When it becomes law.

BILL SUMMARY: Adds new GS 159-30(c)(14) to authorize the investment of funds held by or on behalf of local government or public authority (if funds are subject to arbitrage and rebate provisions of Internal Revenue Code of 1986, as amended) in a funding agreement (as defined in GS 58-7-16) issued by insurer incorporated in NC that (a) has commercial paper rating that is highest rating of at least one nationally recognized rating service and does not have commercial paper rating below highest by any nationally recognized rating service that rates the particular obligation or a long-term or claims-paying rating which is one of the two highest ratings by any nationally recognized rating service which rates the particular company, or both; and (b) whose funding agreements require that if issuer's commercial paper rating or long-term or claims-paying rating is downgraded below that described in this subsection, the issuer within 20 business days (1) pay the principal balance of funding agreement and accrued interest without penalty or adjustment; (2) on mutual agreement, assign the funding agreement to another issuer authorized under section that is rated consistent with requirements of section; or (3) on mutual agreement, provide full collateralization of principal balance of funding agreement, consistent with applicable insurance and investment laws, including requirements of GS 159-30(c)(12) regarding obligations that are subject to repurchase agreements.

Summary Source: Institute of Government

ASSUMPTIONS AND METHODOLOGY:

Local units of government choosing to invest in funding agreements could experience a gain in investment income from investing in long term agreements. It is assumed that this type of investment would have a more favorable interest rate. Funding agreements as defined in G.S. 58-7-16 are not required to be guaranteed. If the risk premium of an investment is removed or minimized then, the assumed trade-off is a higher rate-of-return on investment.

As authorized under G.S. 159-30(c)(6), local units of government can invest in “short term” commercial paper and other financial instruments such as bankers acceptance. Short term commercial paper has a maturity of 270 days or less and bankers acceptance has a maturity of 180 days or less. Under G.S. 159-31(b), security or collateralization of these types of instruments , when placed with certain institutions, is not required. Long term investments, instruments maturing over a 15 or 30 year period, are required to be secured by deposit insurance, surety bonds, or investment securities such as U. S. Treasury Securities.

Under this act, the full collateralization of the principal balance is one of three options the issuer may offer the investor but only in the event the issuer’s commercial paper rating is downgraded below the highest of at least one nationally recognized rating service. The other two options the issuer must offer the investor when their paper is downgraded are: one, the payment of the principal balance of the funding agreement with interest and; two, the balance of the investment may be assigned to another issuer.

FISCAL RESEARCH DIVISION

733-4910

PREPARED BY: Warren Plonk

APPROVED BY:

DATE: April 22, 1997

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

D

SENATE BILL 699
Proposed Senate Finance Committee Substitute
S699-CSLJ-4/29

Short Title: Modify Vehicle Dealer Requirements. (Public)

Sponsors:

Referred to: Finance.

April 7, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE THAT THE PLACE OF BUSINESS OF A MOTOR VEHICLE
3 DEALER WHO SELLS ONLY TRAILERS OR SEMITRAILERS DOES NOT HAVE TO
4 MEET THE REQUIREMENTS SET FOR AN ESTABLISHED OFFICE OR
5 SALESROOM OF OTHER MOTOR VEHICLE DEALERS.
6 The General Assembly of North Carolina enacts:
7 Section 1. G.S. 20-288(d) reads as rewritten:
8 "(d) To obtain a license as a wholesaler, ~~the~~ an applicant who
9 intends to sell or distribute self-propelled vehicles must have
10 an established office in this State. ~~State,~~ and an applicant who
11 intends to sell or distribute only trailers or semitrailers must
12 have a place of business in this State where the records required
13 under this Article are kept.
14 To obtain a license as a motor vehicle dealer, an applicant who
15 intends to deal in self-propelled vehicles must have an
16 established salesroom in this State. ~~State,~~ and an applicant who
17 intends to deal in only trailers or semitrailers must have a
18 place of business in this State where the records required under
19 this Article are kept.
20 An applicant for a license as a manufacturer, a factory branch,
21 a distributor, a distributor branch, a wholesaler, or a motor

1 vehicle dealer must have a separate license for each established
2 office, established salesroom, or other place of business in this
3 State. An application for any of these licenses shall include a
4 list of the applicant's places of business in this State."
5 Section 2. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1997

S

1

SENATE BILL 826*

Short Title: School Board "Quick Take".

(Public)

Sponsors: Senator Miller.

Referred to: Finance.

April 14, 1997

1 A BILL TO BE ENTITLED

2 AN ACT TO PROVIDE "QUICK TAKE" PROCEDURES IN EMINENT DOMAIN
3 PROCEEDINGS BY SCHOOL BOARDS.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 40A-42(a) reads as rewritten:

6 "(a) When a local public condemnor is acquiring property by condemnation for a
7 purpose set out in G.S. 40A-3(b)(1), (4) or (7), or when a city is acquiring property
8 for a purpose set out in G.S. 160A-311(1), (2), (3), (4), (6), or (7), or when a county
9 is acquiring property for a purpose set out in G.S. 153A-274(1), (2) or (3), or when a
10 municipal or county board of education or any combination of those boards is
11 acquiring property for any purpose set forth in G.S. 115C-517, or when a condemnor
12 is acquiring property by condemnation as authorized by G.S. 40A-3(c)(8), (9), (10) or
13 (12), title to the property and the right to immediate possession shall vest pursuant to
14 this subsection. Unless an action for injunctive relief has been initiated, title to the
15 property specified in the complaint, together with the right to immediate possession
16 thereof, shall vest in the condemnor upon the filing of the complaint and the making
17 of the deposit in accordance with G.S. 40A-41."

18 Section 2. G.S. 115C-517 reads as rewritten:

19 "§ 115C-517. Acquisition of sites.

20 Local boards of education may acquire suitable sites for schoolhouses or other
21 school facilities either within or without the local school administrative unit; but no
22 school may be operated by a local school administrative unit outside its own
23 boundaries, although other school facilities such as repair shops, may be operated
24 outside the boundaries of the local school administrative unit. Whenever any such

1 board is unable to acquire or enlarge a suitable site or right-of-way for a school,
2 school building, school bus garage or for a parking area or access road suitable for
3 school buses or for other school facilities by gift or purchase, condemnation
4 proceedings to acquire same may be instituted by such board under the provisions of
5 Chapter 40A of the General Statutes, including the rights and procedures pursuant to
6 G.S. 40A-42, et seq., and the determination of the local board of education of the
7 land necessary for such purposes shall be conclusive."

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

1 the load within the vehicle from one axle to another to comply
2 with the weight limits where the single-axle weight does not exceed
3 the posted limit by 2,500 pounds.

4 (4) A truck or other motor vehicle shall be exempt from such light-
5 traffic road limitations provided for pursuant to G.S. 20-118(b)(4),
6 when transporting supplies, material or equipment necessary to
7 carry out a farming operation engaged in the production of meats
8 and agricultural crops and livestock or poultry by-products or a
9 business engaged in the harvest or processing of seafood when the
10 destination of such vehicle and load is located solely upon said
11 light-traffic road.

12 (5) The light-traffic road limitations provided for pursuant to
13 subdivision (b)(4) of this section do not apply to a vehicle while
14 that vehicle is transporting only the following from its point of
15 origin on a light-traffic road to the nearest highway that is not a
16 light-traffic road:

17 a. Processed or unprocessed seafood from boats or any other
18 point of origin to a processing plant or a point of further
19 distribution.

20 b. Meats or agricultural crop products originating from a farm
21 to first market.

22 c. Unprocessed forest products originating from a farm or from
23 woodlands to first market.

24 d. Livestock or poultry from their point of origin to first
25 market.

26 e. Livestock by-products or poultry by-products from their
27 point of origin to a rendering plant.

28 f. Recyclable material from its point of origin to a scrap-
29 processing facility for processing. As used in this subpart,
30 the terms 'recyclable' and 'processing' have the same
31 meaning as in G.S. 130A-290(a).

32 g. Garbage collected by the vehicle from residences or garbage
33 dumpsters if the vehicle is fully enclosed and is designed
34 specifically for collecting, compacting, and hauling garbage
35 from residences or from garbage dumpsters. As used in this
36 subpart, the term 'garbage' does not include hazardous
37 waste as defined in G.S. 130A-290(a), spent nuclear fuel
38 regulated under G.S. 20-167.1, low-level radioactive waste as
39 defined in G.S. 104E-5, or radioactive material as defined in
40 G.S. 104E-5.

41 h. Wood chips from the point of origin to a facility for
42 recycling or processing.

43 (6) A truck or other motor vehicle shall be exempt from such light-
44 traffic road limitations provided by G.S. 20-118(b)(4) when such

- 1 motor vehicles are owned, operated by or under contract to a
2 public utility, electric or telephone membership corporation or
3 municipality and such motor vehicles are used in connection with
4 installation, restoration or emergency maintenance of utility
5 services.
- 6 (7) A wrecker may tow a disabled vehicle or combination of vehicles
7 in an emergency to the nearest feasible point for parking or storage
8 without being in violation of G.S. 20-118 provided that the wrecker
9 and towed vehicle or combination of vehicles otherwise meet all
10 requirements of this section.
- 11 (8) A firefighting vehicle operated by any member of a municipal or
12 rural fire department in the performance of his duties, regardless of
13 whether members of that fire department are paid or voluntary and
14 any vehicle of a voluntary lifesaving organization, when operated
15 by a member of that organization while answering an official call
16 shall be exempt from such light-traffic road limitations provided by
17 G.S. 20-118(b)(4).
- 18 (9) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 12.
- 19 (10) Fully enclosed motor vehicles designed specifically for collecting,
20 compacting and hauling garbage from residences, or from garbage
21 dumpsters shall, when operating for those purposes, be allowed a
22 single axle weight not to exceed 23,500 pounds on the steering axle
23 on vehicles equipped with a boom, or on the rear axle on vehicles
24 loaded from the rear. This exemption shall not apply to vehicles
25 transporting hazardous waste as defined in G.S. 130A-290(a)(8),
26 spent nuclear fuel regulated under G.S. 20-167.1, low-level
27 radioactive waste as defined in G.S. 104E-5(9a), or radioactive
28 material as defined in G.S. 104E-5(14).
- 29 (11) A truck or other motor vehicle shall be exempt for light-traffic
30 road limitations issued under subdivision (b)(4) of this section
31 when transporting heating fuel for on-premises use at a destination
32 located on the light-traffic road.
- 33 (12) Subsections (b) and (e) of this section do not apply to a vehicle
34 that meets one of the following descriptions, is hauling agricultural
35 crops from the farm where they were grown to first market, is
36 within 35 miles of that farm, does not operate on an interstate
37 highway while hauling the crops, and does not exceed its registered
38 weight:
- 39 a. Is a five-axle combination with a gross weight of no more
40 than 88,000 pounds, a single-axle weight of no more than
41 22,000 pounds, a tandem-axle weight of no more than 42,000
42 pounds, and a length of at least 51 feet between the first and
43 last axles of the combination.

- 1 b. Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s.
- 2 13.
- 3 c. Is a four-axle combination with a gross weight that does not
- 4 exceed the limit set in subdivision (b)(3) of this section, a
- 5 single-axle weight of no more than 22,000 pounds, and a
- 6 tandem-axle weight of no more than 42,000 pounds."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 516

Short Title: Lead-Based Paint Mgmt/AB.

(Public)

Sponsors: Senators Ballance; Jordan, Kinnaird, Lee, Odom, and Winner.

Referred to: Finance.

March 26, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH A LEAD-BASED PAINT HAZARD MANAGEMENT
3 PROGRAM.

4 The General Assembly of North Carolina enacts:

5 Section 1. Chapter 130A of the General Statutes is amended by adding
6 the following new Article to read:

7 "ARTICLE 19A.

8 "Lead-Based Paint Hazard Management Program.

9 "§ 130A-453. Definitions.

10 As used in this Article:

- 11 (1) 'Abatement' means any set of measures designed to identify lead-
12 based paint or lead-based paint hazards or eliminate lead-based
13 paint hazards; it does not include measures designed to identify or
14 eliminate lead-based paint and lead-based paint hazards on
15 bridges, water towers, superstructures, and industrial structures.
16 (2) 'Elevated blood lead level' means a level established by the
17 Commission pursuant to G.S. 130A-131.5.
18 (3) 'Inspection' means an investigation to determine the presence of
19 lead-based paint.
20 (4) 'Lead-based paint' means paint or other surface coatings that
21 contain lead in excess of a level to be established by the
22 Commission.
23 (5) 'Lead-based paint hazard' means any condition that may cause
24 adverse human health effects as a result of exposure to lead from

1 lead-contaminated dust, lead-contaminated soil, or lead-
2 contaminated paint.

3 (6) 'Person' has the same meaning as in G.S. 130A-444.

4 (7) 'Risk assessment' means an on-site investigation to determine and
5 report the existence, nature, severity, and location of lead-based
6 paint hazards.

7 **"§ 130A-454. Certification of persons performing lead abatement; accreditation of**
8 **training courses and training providers.**

9 (a) No person shall commence or continue to perform abatement without first
10 obtaining certification from the Department. Persons who perform abatement within
11 a residential dwelling that they own and in which they reside are exempt from the
12 above certification requirement. The Commission shall adopt rules governing
13 certification including, but not limited to, categories of certification, education,
14 training, examination requirements, and an implementation schedule for certification
15 requirements. Any entity engaged in abatement activities shall only use persons
16 certified by the Department to perform abatements.

17 (b) No person shall commence or continue to provide certification training in
18 abatement unless the training and training provider have been accredited by the
19 Department. The Commission shall adopt rules governing accreditation of training
20 and training providers including, but not limited to, categories of training course
21 accreditation, standards for training, and an implementation schedule for
22 accreditation requirements.

23 **"§ 130A-454.1. Certification and accreditation fees.**

24 (a) The Department shall establish and collect certification fees and examination
25 fees. These fees shall be used to support the Lead-Based Paint Hazard Management
26 Program in the Department. The annual certification fees shall not exceed one
27 hundred fifty dollars (\$150.00) for each certified person for each category of
28 certification. The examination fees shall not exceed one hundred dollars (\$100.00)
29 for each examination.

30 (b) The Department shall establish and collect fees for the accreditation of lead
31 abatement training courses. These fees shall be used to support the Lead-Based Paint
32 Hazard Management Program in the Department. The fees shall not exceed two
33 thousand dollars (\$2,000) for initial accreditation for each course and shall not
34 exceed seven hundred fifty dollars (\$750.00) for annual renewal of each course.

35 (c) The fees established under this section shall not apply to any State, local
36 government, or nonprofit lead abatement training program.

37 (d) The fees established under this section shall not apply to governmental
38 regulatory personnel performing or inspecting abatement solely for the purpose of
39 determining compliance with applicable statutes or regulations.

40 **"§ 130A-454.2. Lead abatement permits.**

41 No person shall engage in lead abatement without a lead abatement permit issued
42 by the Department. The Commission shall adopt rules governing lead abatement
43 permits. No permit under this section shall be required for inspections or risk
44 assessments.

1 "§ 130A-454.3. Application fees for lead abatement permits.

2 (a) The Department shall establish and collect an application fee for lead
3 abatement permits. These fees shall be used to support the Lead-Based Paint Hazard
4 Management Program in the Department. The application fee shall not exceed two
5 percent (2%) of the contracted price.

6 (b) The owner of any single-family dwelling, in which the owner will reside after
7 the lead abatement is complete, is not required to pay an application fee under
8 subsection (a) of this section. The owner of any single-family dwelling that is not
9 occupied by the owner is required to pay the application fee under subsection (a) of
10 this section.

11 "§ 130A-454.4. Commission to adopt work practice standards.

12 The Commission shall adopt standards to ensure that abatements performed under
13 this Article result in the elimination of lead-based paint hazards.

14 "§ 130A-454.5. Commission to adopt rules.

15 The Commission shall adopt rules to implement this Article."

16 Section 2. G.S. 130A-22 is amended by adding a new subsection to read:

17 "(b3) The Secretary may impose an administrative penalty on a person
18 who violates Article 19A of this Chapter or any rules adopted
19 pursuant to Article 19A of this Chapter. Each day of a continuing
20 violation shall constitute a separate violation. The penalty shall
21 not exceed one thousand dollars (\$1,000) for each day the
22 violation continues."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

D

SENATE BILL 516
Proposed Senate Finance Committee Substitute
S516-CSLJX-4/29

Short Title: Lead-Based Paint Mgmt/AB.

(Public)

Sponsors:

Referred to: Finance.

March 26, 1997

- 1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH A LEAD-BASED PAINT HAZARD MANAGEMENT PROGRAM.
3 The General Assembly of North Carolina enacts:
4 Section 1. Chapter 130A of the General Statutes is
5 amended by adding the following new Article to read:
6 "ARTICLE 19A.
7 "Lead-Based Paint Hazard Management Program.
8 "§ 130A-453. Definitions.
9 The following definitions apply in this Article:
10 (1) Abatement. -- Any set of measures designed to
11 identify lead-based paint, identify lead-based
12 paint hazards, or eliminate lead-based paint
13 hazards in target housing or child-occupied
14 facilities.
15 (2) Child-occupied facility. -- Defined in 40 C.F.R.
16 745.223.
17 (3) Inspection. -- An investigation to determine the
18 presence of lead-based paint.
19 (4) Lead-based paint. -- Paint or other surface
20 coatings that contain lead in excess of a level to
21 be established by the Commission.

- 1 (5) Lead-based paint hazard. -- A condition that may
2 cause adverse human health effects as a result of
3 exposure to lead from lead-contaminated dust, lead-
4 contaminated soil, or lead-contaminated paint.
- 5 (6) Person. -- Defined in G.S. 130A-444.
- 6 (7) Risk assessment. -- An on-site investigation to
7 determine and report the existence, nature,
8 severity, and location of lead-based paint hazards.
- 9 (8) Target housing. -- Defined in 40 C.F.R. 745.223.
- 10 "§ 130A-454. Certification of persons performing lead abatement;
11 accreditation of training courses and training providers.
- 12 (a) No person shall commence or continue to perform abatement
13 without first obtaining certification from the Department.
14 Persons who perform abatement within a residential dwelling that
15 they own and in which they reside are exempt from this
16 certification requirement. The Commission shall adopt rules
17 governing certification, including categories of certification,
18 education, training, examination requirements, and an
19 implementation schedule for certification requirements. Any
20 entity engaged in abatement activities shall only use persons
21 certified by the Department to perform abatements.
- 22 (b) No person shall commence or continue to provide
23 certification training in abatement unless the training and
24 training provider have been accredited by the Department. The
25 Commission shall adopt rules governing accreditation of training
26 and training providers, including categories of training course
27 accreditation, standards for training, and an implementation
28 schedule for accreditation requirements.
- 29 "§ 130A-454.1. Certification and accreditation fees.
- 30 (a) The Department shall establish and collect certification
31 fees and examination fees. These fees shall be used to support
32 the Lead-Based Paint Hazard Management Program in the Department.
33 The annual certification fees shall not exceed one hundred fifty
34 dollars (\$150.00) for each certified person for each category of
35 certification. The examination fees shall not exceed one hundred
36 dollars (\$100.00) for each examination.
- 37 (b) The Department shall establish and collect fees for the
38 accreditation of lead abatement training courses. These fees
39 shall be used to support the Lead-Based Paint Hazard Management
40 Program in the Department. The fees shall not exceed two
41 thousand dollars (\$2,000) for initial accreditation for each
42 course and shall not exceed seven hundred fifty dollars (\$750.00)
43 for annual renewal of each course.

1 (c) The fees established under this section do not apply to
2 any State, local government, or nonprofit lead abatement training
3 program.

4 (d) The fees established under this section do not apply to
5 governmental regulatory personnel performing or inspecting
6 abatement solely for the purpose of determining compliance with
7 applicable statutes or rules.

8 "§ 130A-454.2. Lead abatement permits.

9 No person shall engage in lead abatement without a lead
10 abatement permit issued by the Department. The Commission shall
11 adopt rules governing lead abatement permits. No permit under
12 this section shall be required for inspections or risk
13 assessments.

14 "§ 130A-454.3. Application fees for lead abatement permits.

15 (a) The Department shall establish and collect an application
16 fee for lead abatement permits. These fees shall be used to
17 support the Lead-Based Paint Hazard Management Program in the
18 Department. The application fee shall not exceed two percent
19 (2%) of the contracted price.

20 (b) The owner of any single-family dwelling, in which the
21 owner will reside after the lead abatement is complete, is not
22 required to pay an application fee under subsection (a) of this
23 section. The owner of any single-family dwelling that is not
24 occupied by the owner is required to pay the application fee
25 under subsection (a) of this section.

26 "§ 130A-454.4. Commission to adopt work practice standards.

27 The Commission shall adopt standards to ensure that abatements
28 performed under this Article result in the elimination of lead-
29 based paint hazards.

30 "§ 130A-454.5. Commission to adopt rules.

31 The Commission shall adopt rules to implement this Article."

32 Section 2. G.S. 130A-22 is amended by adding a new
33 subsection to read:

34 "(b3) The Secretary may impose an administrative penalty on a
35 person who violates Article 19A of this Chapter or any rules
36 adopted pursuant to Article 19A of this Chapter. Each day of a
37 continuing violation is a separate violation. The penalty shall
38 not exceed one thousand dollars (\$1,000) for each day the
39 violation continues."

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

for each lead abatement project (excluding homeowners) at a price equal to 2% of the contracted price of the project. Violation of this statute carries a \$1,000 a day administrative penalty.

ASSUMPTIONS AND METHODOLOGY:

Revenue

I. Accreditation of Training Courses

The Department estimates that it will accredit 10 lead abatement training courses in each of the first two years of the program, then accredit only 4 each year thereafter. Each program will be charged \$2,000 for accreditation review and \$750 for annual renewal of their accreditation. In the first year, the Department will also verify the courses and instructors of programs accredited in 26 states such as Maryland, Virginia, Georgia, and Kentucky. The Department will charge \$750 for the course verification or the same as a renewal. It is anticipated that some training programs will drop out each year beginning in the year 2000.

FY 1997-98	10 Initial	X \$2,000 = \$20,000
	30 Verification	X \$750 = <u>\$22,500</u>
		\$42,500

FY 1998-99	10 Initial	X \$2,000 = \$20,000
	40 Renewals	X \$750 = <u>\$30,000</u>
		\$50,000

FY 1999-00	4 Initial	X \$2,000 = \$8,000
	50 Renewals	X \$750 = <u>\$37,500</u>
		\$45,500

FY 2000-01	4 Initial	X \$2,000 = \$8,000
	40 Renewals	X \$750 = <u>\$30,000</u>
		\$38,000

FY 2001-02	4 Initial	X \$2,000 = \$8,000
	40 Renewals	X \$750 = <u>\$30,000</u>
		\$38,000

II. Lead abatement certification

The Department may charge up to \$150 to certify a person to perform lead abatement. The Department has set the following rates for each category of personnel:

worker = \$25

supervisor = \$150

inspector = \$150

risk assessor = \$150

designer = \$150

firm = \$100

Due to rule-making and other startup delays, the program is anticipated to begin in January 1998. Revenue from lead abatement certification for the first fiscal year reflects only 6 months of program operation. Department officials expect certifications to rise until the year 2000 then level off as shown in the chart below.

	<u>1997-98</u>	<u>1998-99</u>	<u>1999-00</u>	<u>2000-01</u>	<u>2001-02</u>
Worker	300	500	800	800	800
Supervisor	75	100	150	150	150
Inspector	150	350	500	500	500
Risk Assessor	40	80	120	120	120
Designer	5	15	25	25	25
Firms	40	60	80	80	80
Total	610	1,105	1,675	1,675	1,675
Annual Fees	\$52,000	\$100,250	\$147,250	\$147,250	\$147,250

III. Lead certification exams

The Department projects the number of exams it will administer as follows (at \$75 per exam):

	<u>Exams</u>	<u>Revenues</u>
FY 1997-98	270	\$ 20,250
FY 1998-99	500	\$ 37,500
FY 1999-00	200	\$ 15,000
FY 2000-01	200	\$ 15,000
FY 2001-02	200	\$ 15,000

IV. Lead-based paint removal permits

The fee for lead-based paint removal permits is equal to 2% of the contract price. Half of the permits will be used by homeowners and will be exempt from the charge. The Department believes much of the permit activity in the first two years will be driven by federal HUD housing funds, but the work will decline in 1999 and beyond as the federal dollars end.

	<u>Permits</u>	<u>Revenues</u>
FY 1997-98	500	\$ 13,000
FY 1998-99	900	\$ 23,400
FY 1999-00	500	\$ 13,000
FY 2000-01	500	\$ 13,000
FY 2001-02	500	\$ 13,000

Expenditures

The Lead-Based Paint Hazard Management Program created by this act will be partially supported with revenues generated from the accreditation, certification, examination and permit fees to be established by the Department. A federal lead grant will be used to offset the remaining program costs.

Program responsibilities and activities include:

- ◆ certification of persons performing lead abatement activities to ensure that qualified persons conduct lead hazard reduction activities,
- ◆ accreditation of training courses and persons providing training to individuals seeking certification to assure adequacy of course materials and competency of instructors,
- ◆ regulatory guidance, oversight and compliance, including the establishment of a lead abatement notification system to facilitate monitoring of abatement activities by the state.

According to the Department, a total of six full-time positions will be required to administer the program with an initial startup cost of \$369,192, including \$4,500 for a nonrecurring equipment purchase. Since program revenues are expected to be less the first year because of rule-making and other startup delays, the federal grant will be used to fund four positions for the 1997-98 fiscal year. The remaining two positions will be supported with certification and other program receipts during the 1997-98 fiscal year. As program revenues increase, beginning with the 1998-99 fiscal year, federally funded positions will be shifted to certification, accreditation, examination and/or permit receipts. The department expects sufficient federal funds to be available to offset any costs not covered by program fees.

The total estimated budget requirements for the Lead-Based Paint Hazard Management Program are outlined in the following table:

	FY 1997-98	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
Personnel					
2 Industrial Hygiene Inspectors	102,995	106,379	109,878	113,602	117,567
2 Industrial Hygiene Consultants	117,213	121,080	125,079	129,335	133,866
1 Technical Trainer	53,867	55,640	57,472	59,423	61,500
1 Processing Assistant	26,617	27,463	28,337	29,269	30,260
Total Salaries & Benefits *	300,692	310,561	320,766	331,629	343,192
Positions	6	6	6	6	6
Operating Expenses	68,500	64,000	64,000	64,000	64,000
Total Requirements	\$369,192	\$374,561	\$384,766	\$395,629	\$407,192

* Beginning with the 1998-99 fiscal year, salaries are adjusted to reflect the projected growth estimated for average hourly earnings in manufacturing. The inflation rates used are based on forecasts by Data Resources, Inc.

FISCAL RESEARCH DIVISION

733-4910

PREPARED BY: *mm* Mona Moon & Richard Bostic *RB*

APPROVED BY: Tom Covington *TomC*

DATE: April 28, 1997

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

4/29/97

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Jensen Harrison	WC PSS
Bob Hight	Dept. of State Treas.
KEN DURHAM	Dept of State Treasurer
Alicia Garland	Electric Utility
Patricia Roeder	NAACE
David Ferrell	Hofer, McNamara, Caldwell, McElroy & Cutler
BILL SCOBG-IN	NCBO
Mary Glauser	NC DEHNR
Ed Norman	NC DEHNR
Malcolm Blalock	DEHNR / DEH
Michelle Cook	Weyerhaeuser

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

4/29/97
Date

Name of Committee

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Tom Ellis	NC Dept. of Agriculture
Bob Seaman	NC Forestry Association
Robert Pina	Jordan Pina well they + John
Tom Patton	Patton & Associates
Robert Faison	N.C. Community Action
Quida Shaw	NC Low Income Housing Coalition
Lori Ann Harris	Stanford Holshouser
Paula Wolf	Covenant w/ NC's Children
VLMcBride	NCA
James K. Polk	Nashville
Peter Miller	Miller Co

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

4/29/97
Date

Name of Committee

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Jay Anwar	Dmv
Mark Stahler	Dmv
Georgette Jones	NC DDR
Patty Berry	CCNC
Laura Hartzell	MCIC
	
Tom Ham	DOL
Scott Mouw	EHNR
Sumner	NC Division of Community Assistance Dept. of Commerce
Angie Harris	Commerce
Carolyn Allen	Opticians

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT

Senator David Hoyle, Co-Chair
Senator John Kerr, Co-Chair

Tuesday, April 29, 1997

SENATOR HOYLE,

submits the following with recommendations as to passage:

FAVORABLE

S.B. 427 Wood Chip Hauling Weight Exemption
Sequential Referral: None
Recommended Referral: None

S.B. 826 School Board "Quick Take"
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B. 699 Manufacturing's Licensing Law
Draft Number: PCS1796
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

S.B. 816 Alligator/Yellow Perch Production
Draft Number: PCS1793
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

S.B. 872 State Law Changes
Draft Number: PCS1795
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

April 29, 1997

S.B. 940

Local Gov. Funding Agreements

Draft Number: PCS7776
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

TOTAL REPORTED: 6

Committee Clerk Comment: None

SENATE FINANCE COMMITTEE

WEDNESDAY, MAY 7, 1997

8:30 A.M. - ROOM 643 LOB

The Senate Finance Committee met on May 7, 1997, with Senator Kerr presiding. There were 22 committee members present.

H.B. 236 - An Act to Incorporate the City of Trinity

Representative Dockham was recognized to explain H.B. 236. Mr. Dean Spinks with the steering committee for incorporation spoke in favor of the bill. Senator Lee moved for a "favorable" report and the motion carried. Copy of bill included in the minutes.

S.B. 508 - Turkey Grower Use Value Exception

Senator Plyler was recognized to explain S.B. 508. Senator Webster moved for a "favorable" report and the motion carried. Copy of bill and fiscal note included in the minutes.

S.B. 339 - Credit for Tier One Counties

Senator Plyler explained S.B. 339 for Senator Conder who was absent. After a lengthy discussion with questions from committee members to Senator Plyler and to staff, Senator Lee made a motion for a "favorable" report and the motion carried. Copy of bill, explanation, fiscal note and information included in the minutes.

Senator Kerr announced that S.B. 516 - Lead Based Paint Mgmt/AB - is being sent to a subcommittee for further study. The subcommittee members are as follows: Chairman: Senator Lee and Senators Dalton, Weinstein, Hartsell, and Ballantine serving on the committee.

S.B. 942 - Barbers

Senator Rand explained this bill and Senator Foxx moved for a "favorable" report. The motion carried. Copy of bill and fiscal note included in the minutes.

S.B. 630 - Carrboro Charter Amendments

Senator Kinnaird was recognized to explain S.B. 630. After explanation and discussion on this bill, Senator Kerr announced that this bill would not be voted on today. Copy of bill included in the minutes.

S.B. 613 - Insurance Company Audits and Exams

Senator Miller was recognized to explain S.B. 613. Mr. Bill Hale, Department of Insurance, was introduced and spoke in favor of the bill. Also speaking in support of the bill was Mr. Bob Price, representing the Association of North Carolina Life Insurance Companies. Senator Winner offered a technical amendment to the bill and the amendment was adopted. On motion by Senator Wellons, the bill, as amended, was given a "favorable" report by the committee. Copy of bill, amendment and fiscal note included in the minutes.

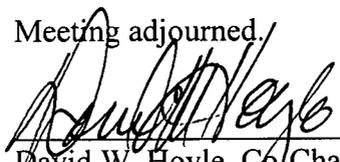
S.B. 974 - ESC Waive Interest

Senator Foxx was recognized to explain this bill and introduced Mr. Tom Whittaker with the Employment Security Commission to answer questions. On motion by Senator Ballantine, the bill was given a "favorable" report by the committee. Copy of bill and fiscal note included in the minutes.

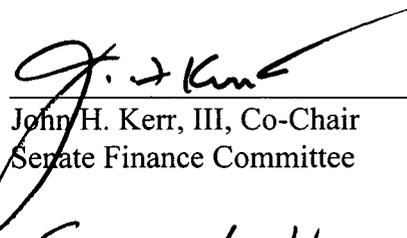
S.B. 1064 - Property Tax Interest/Study

Senator Hoyle explained this bill and Senator Rand offered an amendment which would change the interest rate in the bill. The amendment was adopted on motion by Senator Rand. (No copy of the amendment.) On motion by Senator Ballantine, the bill, as amended, will be rolled into a committee substitute and given a "favorable" report. Copy of bill, committee substitute and fiscal note included in the minutes.

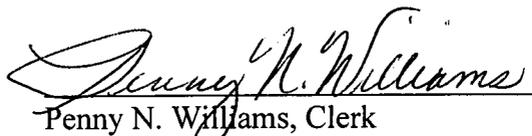
Meeting adjourned.



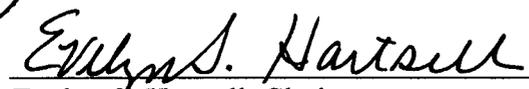
David W. Hoyle, Co-Chair
Senate Finance Committee



John H. Kerr, III, Co-Chair
Senate Finance Committee



Penny N. Williams, Clerk



Evelyn S. Hartsell, Clerk

NOTE:

Agenda is Attachment # 1
Visitors' Sign Up Sheet is Attachment # 2
Committee Report is Attachment # 3

SENATE FINANCE COMMITTEE

MAY 7, 1997

8:30 A.M. - ROOM 643

S.B. 339 - Credit For Tier One Counties - Sen. Conder

S.B. 508 - Turkey Grower Use Value Exemption - Sen. Plyler

S.B. 516 - Lead Based Paint - Sen. Ballance

S.B. 613 - Insurance Company Audits and Exams - Sen. Miller

S.B. 630 - Carrboro Charter Amendments - Sen. Kinnaird

S.B. 942 - Barbers - Sen. Rand

S.B. 974 - ESC Waive Interest - Sen. Foxx

S.B. 1064 - Property Tax Interest/Study - Sen. Hoyle

H.B. 236 - Trinity Incorporated - Rep. Dockham

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1997

H

2

HOUSE BILL 236
Committee Substitute Favorable 2/20/97

Short Title: Trinity Incorporated.

(Local)

Sponsors:

Referred to:

February 17, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO INCORPORATE THE CITY OF TRINITY.

3 The General Assembly of North Carolina enacts:

4 Section 1. (a) The Randolph County Board of Elections shall conduct
5 an election on July 8, 1997, for the purpose of submission to the qualified voters of
6 the area described in Section 2-1 of the Charter of the City of Trinity, the question of
7 whether or not such area shall be incorporated as the City of Trinity. Registration
8 for the election shall be conducted in accordance with G.S. 163-288.2.

9 (b) In the election, the question on the ballot shall be:

10 "[] FOR [] AGAINST
11 Incorporation of the City of Trinity".

12 Section 2. In the election, if a majority of the votes are cast "FOR
13 Incorporation of the City of Trinity", Sections 3 through 5 of this act become
14 effective on the date of the certification of the results of the election. Otherwise,
15 Sections 3 through 5 of this act have no force and effect.

16 Section 3. A Charter of the City of Trinity is enacted as follows:

17 "THE CHARTER OF THE CITY OF TRINITY.

18 "CHAPTER I.

19 "INCORPORATION AND CORPORATE POWERS.

20 "Section 1-1. The inhabitants of the City of Trinity are a body corporate and
21 politic under the name 'City of Trinity'. Under that name they have all the powers,
22 duties, rights, privileges, and immunities conferred and imposed on cities by the
23 general law of North Carolina.

1 "CHAPTER II.

2 "CORPORATE BOUNDARIES.

3 "Section 2-1. **City Boundaries.** Until modified in accordance with the law, the
4 boundaries of the City of Trinity are as follows:

5 That area set out as the corporate limits of the City of Trinity on a boundary map
6 recorded at Book 47, Page 98, Randolph County Registry.

7 "CHAPTER III.

8 "GOVERNING BODY.

9 "Section 3-1. **Structure of the Governing Body; Number of Members.** The
10 governing body of the City of Trinity is the City Council which has eight members.

11 "Section 3-2. **Manner of Electing Council.** The city is divided into four wards,
12 each with two members, and the qualified voters of the entire city elect candidates
13 who reside in that ward for the seats apportioned to that ward. Each ward shall have
14 the same number of persons as nearly as practicable.

15 "Section 3-3. **Term of Office of Council Members.** Members of the Council are
16 elected to four-year terms. In 1997, two persons shall be elected for each ward. The
17 candidate in each ward receiving the highest number of votes is elected to a four-year
18 term, and the candidate receiving the next highest number of votes is elected to a
19 two-year term. In 1999 and biennially thereafter, one member shall be elected from
20 each ward for a four-year term.

21 "Section 3-4. **Mayor; Term of Office.** In 1997 and quadrennially thereafter, the
22 Mayor shall be selected by the qualified voters of the city for a four-year term.

23 "Section 3-5. **Vacancies.** Notwithstanding G.S. 160A-63, any person appointed to
24 fill a vacancy in the City Council or as Mayor shall serve for the remainder of the
25 unexpired term.

26 "CHAPTER IV.

27 "ELECTIONS.

28 "Section 4-1. Election of the Mayor and Council members shall be on a
29 nonpartisan plurality basis and the results determined in accordance with G.S. 163-
30 292.

31 "Section 4-2. Election results shall be determined by the Randolph County Board
32 of Elections according to Chapter 163 of the General Statutes.

33 "CHAPTER V.

34 "ADMINISTRATION.

35 "Section 5-1. **Mayor-Council Plan.** The City of Trinity shall operate under the
36 Mayor-Council Plan as provided in Part 3 of Article 7 of Chapter 160A of the
37 General Statutes.

38 "CHAPTER VI.

39 "OTHER PROVISIONS.

40 "Section 6-1. **Open Meetings.** Notwithstanding Article 33C of Chapter 143 of the
41 General Statutes, the City Council may not hold a closed session.

42 "Section 6-2. **Council Votes.** The ayes and noes shall be recorded upon all
43 ordinances and resolutions and entered upon the minutes of the Council. The

1 ordaining clause of all ordinances shall be 'Be it ordained by the City Council of the
2 City of Trinity.'"

3 Section 4. From the effective date of this Charter until the organizational
4 meeting of the City Council after the 1997 municipal election, the members of the
5 Council shall be: Paul Guthrie, Jerry Royals, Barbara Ewings, Larry Overcash,
6 Kenneth Orr, Pam Goins, and Dean Spinks. They shall elect from among their
7 membership a Chairman, who shall have the powers of the Mayor until a Mayor is
8 elected and qualifies at the organizational meeting after the 1997 municipal election.

9 Section 5. (a) The City Council shall, no later than August 8, 1997,
10 adopt a plan to divide the city into four wards for the purpose of elections as
11 provided in Section 3-2 of the Charter. The plan shall immediately be transmitted to
12 the Randolph County Board of Elections.

13 (b) Notwithstanding G.S. 163-294.2, the filing period for Mayor and City
14 Council for the 1997 municipal election shall open at 12:00 noon on the business day
15 after the plan required by subsection (a) of this section is adopted and shall close at
16 12:00 noon on the third Friday thereafter.

17 Section 6. (a) From and after the effective date of the Charter, the
18 citizens and property in the City of Trinity shall be subject to municipal taxes levied
19 for the year beginning July 1, 1997, and for that purpose the City shall obtain from
20 Randolph County a record of property in the area herein incorporated which was
21 listed for taxes as of January 1, 1997; and the businesses in the City shall be liable for
22 privilege license tax from the effective date of the privilege license tax ordinance.

23 (b) The City may adopt a budget ordinance for fiscal year 1997-98
24 without following the timetable in the Local Government Budget and Fiscal Control
25 Act, but shall follow the sequence of actions in the spirit of the act insofar as is
26 practical. For fiscal year 1997-98, ad valorem taxes may be paid at par or face
27 amount within 90 days of adoption of the budget ordinance, and thereafter in
28 accordance with the schedule in G.S. 105-360 as if the taxes had been due and
29 payable on September 1, 1997.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

2

SENATE BILL 508

Rules and Operations of the Senate Committee Substitute Adopted 4/29/97

Short Title: Turkey Grower Use Value Exception.

(Public)

Sponsors:

Referred to: Finance.

March 25, 1997

A BILL TO BE ENTITLED

1 AN ACT TO PROVIDE THAT A TURKEY GROWER SHALL NOT BE
2 DISQUALIFIED FROM USE VALUE TAXATION FOR A TWO-YEAR
3 PERIOD IF THE GROWER'S LAND IS TAKEN OUT OF PRODUCTION
4 SOLELY BECAUSE OF THE PRESENCE OF TURKEY DISEASE IN THE
5 AREA.
6

7 The General Assembly of North Carolina enacts:

8 Section 1. G.S. 105-277.3 is amended by adding a new subsection to
9 read:

10 "(e) Notwithstanding the provisions of subsection (a) of this section, agricultural
11 land that meets all of the following conditions does not lose its eligibility for present
12 use value treatment solely on the grounds that it is no longer in actual production, it
13 no longer meets the minimum income requirements, or both:

14 (1) The land was in actual production in turkey growing within the
15 preceding two years and qualified for present use value treatment
16 while it was in actual production.

17 (2) The land was taken out of actual production in turkey growing
18 solely for health and safety considerations due to the presence of
19 Poult Enteritis Mortality Syndrome among turkeys in the same
20 county or a neighboring county.

21 (3) The land is otherwise eligible for present use value treatment."

22 Section 2. This act is effective for taxes imposed for taxable years
23 beginning on or after July 1, 1997.

**NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE**

BILL NUMBER: Senate Bill 508
SHORT TITLE: Turkey Grower Use Value Exemption
SPONSOR(S): Senate Committee substitute

FISCAL IMPACT						
Yes ()	No ()	No Estimate Available (X)				
		<u>FY 1997-98</u>	<u>FY 1998-99</u>	<u>FY 1999-00</u>	<u>FY 2000-01</u>	<u>FY 2001-02</u>
REVENUES		See section on assumption and methodology				
PRINCIPAL DEPARTMENT(S) & COUNTY UNITS OF LOCAL GOVERNMENT PROGRAM(S) AFFECTED:		County units of local government				
EFFECTIVE DATE:		July 1, 1997				

BILL SUMMARY: Agriculture property, as defined in G.S. 105-277.2, that meets certain income and ownership restrictions set forth in G.S. 105-277.3 is eligible for taxation on the basis of the value of the land in its present-use instead of its market value. If present-use property ever fails to meet one of these restrictions then the property loses its present-use eligibility. Once property is disqualified the deferred taxes are due for the three years immediately following the disqualification. The deferred tax, is the difference in the annual taxes paid at present-use and those that would have been paid if the property had been taxed at market value.

The proposed act allows property used in the production of poultry to continue to qualify for present-use taxation if it fails the income restriction for two consecutive years because of disease.

ASSUMPTIONS AND METHODOLOGY:

The impact on local governments is temporary. If the property does not qualify for use-value after two years the deferred taxes are due. It is expected that over a two year period the disease affecting the property would be eradicated and if not, the property would be used for some other eligible purpose.

FISCAL RESEARCH DIVISION

PREPARED BY: Warren Plonk

APPROVED BY:

DATE: May 5, 1997

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 339

Short Title: Credit for Tier One Counties.

(Public)

Sponsors: Senators Conder and Plyler.

Referred to: Finance.

March 10, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO INCREASE THE JOBS TAX CREDIT FOR TIER ONE COUNTIES.
3 The General Assembly of North Carolina enacts:

4 Section 1. G.S. 105-129.8(a) reads as rewritten:

5 "(a) Credit. -- A taxpayer that meets the eligibility requirements set out in G.S.
6 105-129.4, has five or more employees for at least 40 weeks during the taxable year,
7 and hires an additional full-time employee during that year to fill a position located
8 in this State is allowed a credit for creating a new full-time job. The amount of the
9 credit for each new full-time job created is set out in the table below and is based on
10 the enterprise tier of the area in which the position is located:

11 Area Enterprise Tier	Amount of Credit
12 Tier One	\$12,500 <u>\$25,000</u>
13 Tier Two	4,000
14 Tier Three	3,000
15 Tier Four	1,000
16 Tier Five	500

17 A position is located in an area if more than fifty percent (50%) of the employee's
18 duties are performed in the area. The credit may not be taken in the taxable year in
19 which the additional employee is hired. Instead, the credit shall be taken in equal
20 installments over the four years following the taxable year in which the additional
21 employee was hired and shall be conditioned on the continued employment by the
22 taxpayer of the number of full-time employees the taxpayer had upon hiring the
23 employee that caused the taxpayer to qualify for the credit.

1 If, in one of the four years in which the installment of a credit accrues, the number
2 of the taxpayer's full-time employees falls below the number of full-time employees
3 the taxpayer had in the year in which the taxpayer qualified for the credit, the credit
4 expires and the taxpayer may not take any remaining installment of the credit. The
5 taxpayer may, however, take the portion of an installment that accrued in a previous
6 year and was carried forward to the extent permitted under G.S. 105-129.5.

7 Jobs transferred from one area in the State to another area in the State shall not be
8 considered new jobs for purposes of this section. If, in one of the four years in which
9 the installment of a credit accrues, the position filled by the employee is moved to an
10 area in a higher- or lower-numbered enterprise tier, the remaining installments of the
11 credit shall be calculated as if the position had been created initially in the area to
12 which it was moved."

13 Section 2. This act is effective for taxable years beginning on or after
14 January 1, 1997.

EXPLANATION OF SENATE BILL 339
Credit for Tier One Counties

TO: Senate Finance Committee
FROM: Sabra Faires, Committee Counsel
DATE: May 7, 1997
SPONSOR: Senator Richard Conder

Senate Bill 339 doubles the income tax credit for creating a new full-time job in a Tier One County; it increases the credit from \$12,500 to \$25,000. The increase is effective for tax years beginning on or after January 1, 1997. The ten Tier One counties for the 1997 calendar year are Allegheny, Anson, Edgecombe, Graham, Halifax, Hertford, Northampton, Richmond, Swain, and Warren.

The jobs tax credit is available to certain employers in all 100 counties. To qualify for the credit, an employer must be engaged in manufacturing or processing, warehousing or distributing, or data processing and the wages of the job created must be at least 10% above the average weekly wage in the county where the job is created. The amount of the credit varies depending on the tier of the county where the job is created.

The tier of a county is determined each year by the Secretary of Commerce based on the county's rank in a ranking of counties by unemployment (from lowest to highest), by per capita income (from highest to lowest), and by population growth (from highest to lowest). The ten poorest counties are in tier one and the next fifteen counties are in tier two. The remaining seventy-five counties are divided evenly among tiers three, four, and five. The jobs tax credit is \$12,500 for each eligible new job created in an enterprise tier one area, \$4,000 in a tier two area, \$3,000 in a tier three area, \$1,000 in a tier four area, and \$500 in a tier five area.

The credit for creating a job is spread out over four years. The credit must be taken in four equal installments beginning the year after the new job was created. If the new job does not continue for this four-year period, the part of the credit not yet taken is forfeited. The credit may not exceed 50% of the tax due for a year; the part of a credit that cannot be used because of this limitation can be carried forward for five years. The credit is allowed against either the franchise tax or the income tax. The credit will expire January 1, 2002.

The jobs tax credit was created in 1987. When enacted, it applied to only 20 counties. These 20 counties were designated as severely distressed counties.

The credit was expanded in 1989 to include 25 counties, in 1991 to include 33 counties, and in 1993 to include 50 counties. The 1996 Second Extra Session of the General Assembly extended the jobs tax credit to all 100 counties and created the tier ranking of the counties. Until 1996, the credit was \$2,800 per job. The 1996 changes instituted the range based on tier ranking.

Another bill introduced in the 1997 Session affects tier one counties. That bill is Senate Bill 316, Amend Bill Lee Act. It makes two changes in the jobs tax credit for Tier One counties. First, it guarantees that a county that obtains Tier 1 status cannot lose that status for two years regardless of what the annual rankings would otherwise require. The guarantee of at least a two-year Tier 1 status applies to counties designated as Tier 1 for the 1996 year and all future years. If this provision is enacted, some counties that are currently designated at a higher tier in 1997 than they were in 1996 will be redesignated as a Tier 1 county for 1997.

Second, Senate Bill 316 replaces the existing wage standard for jobs in Tier 1 areas, which is at least 10% of the average wage in the county, with a standard that equals the lower of three figures: the average private sector wage in the county; the average private sector wage in the State; and the average private sector wage in the county multiplied by county per capita income ratio. This change would become effective for the 1997 tax year and later years.

DISTRESSED COUNTIES RANKING FOR DECEMBER, 1996
USING 1990 AND 1995 POPULATION

*** EXHIBIT I ***

COUNTY	POPULATION GROWTH 1990-1995	POPULATION GROWTH 1990-1995 RANK	PER CAPITA INCOME 1994	PER CAPITA INCOME RANK	UNEMPLOYMENT RATE	UNEMPLOYMENT RATE RANK	DISTRESSED COUNTY SUM 1995-1996	1997		DISTRESSED COUNTY RANK 1994-1995	TIER AREA	1995 AVERAGE WEEKLY WAGE	WAGE STAN. 110%
								DISTRESSED COUNTY RANK 1995-1996	DISTRESSED COUNTY RANK 1994-1995				
SWAIN	2.66%	82	\$12,716	97	17.40%	100	279	1	2	1	279.90	307.89	
RICHMOND	1.99%	87	\$14,966	90	10.15%	98	275	2	4	1	351.46	386.61	
GRAHAM	3.75%	71	\$12,579	99	13.06%	99	269	3	4	1	320.21	352.23	
NORTHAMPTON	-0.35%	96	\$15,284	82	7.41%	82	260	4	3	1	356.62	392.28	
HALIFAX	3.52%	73	\$15,016	89	9.41%	92	254	5	14	1	363.81	400.19	
WARREN	5.05%	60	\$12,591	98	10.03%	96	254	5	10	1	305.88	336.47	
EDGECOMBE	0.21%	94	\$16,280	63	9.87%	95	252	7	15	1	404.38	444.82	
ALLEGHANY	0.29%	93	\$15,881	72	8.01%	85	250	8	26	1	314.58	346.04	
ANSON	1.51%	90	\$15,897	71	8.33%	87	248	9	11	1	377.00	414.70	
HERTFORD	-0.24%	95	\$14,098	94	5.64%	59	248	9	9	1	335.92	369.51	
HYDE	-3.70%	100	\$16,646	56	9.26%	91	247	11	6	2	240.58	264.64	
BERTIE	1.23%	91	\$15,330	81	6.84%	74	246	12	8	2	307.79	338.57	
TYRRELL	-1.14%	97	\$16,825	51	10.05%	97	245	13	1	2	248.48	273.33	
MITCHELL	2.81%	80	\$15,271	84	6.88%	75	239	14	7	2	367.87	404.66	
WASHINGTON	-1.65%	99	\$16,853	50	9.06%	90	239	14	11	2	299.02	328.92	
ROBESON	5.53%	54	\$14,644	91	9.49%	93	238	16	17	2	357.75	393.53	
MONTGOMERY	2.04%	86	\$16,098	67	7.01%	78	231	17	16	2	347.54	382.29	
ASHE	3.53%	72	\$16,258	64	9.64%	94	230	18	31	2	330.54	363.59	
BEAUFORT	2.48%	84	\$16,899	54	8.98%	89	227	19	20	2	385.31	423.84	
VANCE	2.95%	78	\$16,332	61	8.29%	86	225	20	22	2	366.25	402.88	
SCOTLAND	2.83%	79	\$16,158	65	7.02%	79	223	21	22	2	434.40	477.84	
MARTIN	3.05%	77	\$16,374	60	7.87%	83	220	22	37	2	460.94	507.03	
ONslow	-1.29%	98	\$13,548	95	3.75%	25	218	23	18	2	290.46	319.51	
BLADEN	3.93%	67	\$15,851	73	6.97%	77	217	24	11	2	344.90	379.39	
YANCEY	4.70%	62	\$14,546	92	5.77%	60	214	25	18	2	340.46	374.51	
COLUMBUS	3.39%	74	\$16,528	57	7.13%	80	211	26	24	3	404.40	444.84	
MCDOWELL	4.38%	65	\$15,615	77	6.24%	68	210	27	28	3	390.87	429.96	
CHEROKEE	8.20%	32	\$13,435	96	7.19%	81	209	28	26	3	332.63	365.89	
PERQUIMANS	1.94%	88	\$15,827	74	4.76%	39	201	29	20	3	251.50	276.65	
RUTHERFORD	3.80%	70	\$16,491	58	6.75%	72	200	30	45	3	402.87	443.16	
CLAY	8.06%	33	\$14,248	93	6.72%	71	197	31	35	3	306.15	336.77	
MADISON	4.87%	61	\$15,140	86	5.03%	47	194	32	39	3	349.81	384.79	
PAMLICO	4.41%	64	\$15,807	75	5.20%	51	190	33	25	3	272.46	299.71	
STANLY	3.90%	68	\$16,799	52	6.54%	70	190	33	39	3	392.27	431.50	
CASWELL	3.28%	75	\$15,084	88	3.80%	26	189	35	33	3	346.67	381.34	
WILSON	2.69%	81	\$19,454	20	8.77%	88	189	35	30	3	419.02	460.92	
AVERY	2.15%	85	\$17,490	40	5.92%	62	187	37	28	3	312.85	344.14	
JACKSON	7.27%	39	\$15,253	85	6.06%	63	187	37	42	3	324.69	357.16	
CHOWAN	3.89%	69	\$16,931	49	6.17%	66	184	39	32	3	363.73	400.10	
LENOIR	3.16%	76	\$18,036	30	6.77%	73	179	40	35	3	400.40	440.40	

**NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL ESTIMATE**

BILL NUMBER: SENATE BILL 339
SHORT TITLE: CREDIT FOR TIER 1 COUNTIES
SPONSOR(S): SENATORS CONDER AND PLYLER

FISCAL IMPACT

	Yes (X)	No ()	No Estimate Available ()					
			<u>FY 1997-98</u>	<u>FY 1998-99</u>	<u>FY 1999-00</u>	<u>FY 2000-01</u>	<u>FY 2001-02</u>	
REVENUES (\$Million)								
State General Fund				-.4	-1.3	-2.7	-2.7	-2.7

PRINCIPAL DEPARTMENT AFFECTED: Department of Revenue and Department of Commerce

EFFECTIVE DATE: Tax years beginning on or after January 1, 1997.

BILL SUMMARY: The 1996 business incentive tax bill took the existing jobs tax credit (income tax) from 50 counties at a \$2,800 credit to 100 counties, with credits based on enterprise tiers that reflect population growth and economic conditions. The jobs credit for Tier 1, the 10 lowest counties, is \$12,500. The bill would raise the credit for Tier 1 to \$25,000.

ASSUMPTIONS AND METHODOLOGY: The cost estimate is based on the same methodology used in developing the estimates used for the 1996 tax package. This methodology looks at actual jobs created in each county.

FISCAL RESEARCH DIVISION (733-4910)

PREPARED BY: Dave Crotts

APPROVED BY:

DATE: April 29, 1997.

Census Tracts with Poverty Rates of 20% or More in Cities with over 20,000 in Population

COUNTY (Tract)	City/Town	V6001 Pop Cens (Uncor)	Tract pop/county pop (%)	1996 County Emp (Exp and New)	1996 Tract Emp (Exp and New) (Loc) High	1996 Tract Emp (Exp and New) (Loc) Low	1997 Enterprise Tier Designation	EZ Tax Credit	Difference	High	Low
ALAMANCE COUNTY											
TRACT 201.01	Burlington	108,213		1,034	4	2	5	\$ 12,500	\$ 12,000	\$ 48,000	\$ 24,000
BUNCOMBE COUNTY											
TRACT 1	Asheville	174,821	0.39	1,352	6	3	5	\$ 12,500	\$ 12,000	\$ 72,000	\$ 36,000
TRACT 10	Asheville	763	0.44		25	12	5	\$ 12,500	\$ 12,000	\$ 300,000	\$ 144,000
TRACT 13	Asheville	3,224	1.84		22	11	5	\$ 12,500	\$ 12,000	\$ 264,000	\$ 132,000
TRACT 2	Asheville	2,904	1.66		12	6	5	\$ 12,500	\$ 12,000	\$ 144,000	\$ 72,000
TRACT 20	Asheville	1,535	0.88		39	19	5	\$ 12,500	\$ 12,000	\$ 468,000	\$ 228,000
TRACT 3	Asheville	4,992	2.86		15	7	5	\$ 12,500	\$ 12,000	\$ 180,000	\$ 84,000
TRACT 4	Asheville	1,914	1.09		29	15	5	\$ 12,500	\$ 12,000	\$ 348,000	\$ 180,000
TRACT 6	Asheville	3,798	2.17		17	8	5	\$ 12,500	\$ 12,000	\$ 204,000	\$ 96,000
TRACT 7	Asheville	2,168	1.24		11	6	5	\$ 12,500	\$ 12,000	\$ 132,000	\$ 72,000
TRACT 9	Asheville	1,478	0.85		24	12	5	\$ 12,500	\$ 12,000	\$ 288,000	\$ 144,000
CABARRUS COUNTY											
TRACT 9	Asheville	3,101	1.77		5	2	5	\$ 12,500	\$ 12,000	\$ 60,000	\$ 24,000
CABARRUS COUNTY											
TRACT 418	Concord	98,935		1,368	72	36	5	\$ 12,500	\$ 12,000	\$ 864,000	\$ 432,000
TRACT 421	Concord	340	0.34		7	4	5	\$ 12,500	\$ 12,000	\$ 84,000	\$ 48,000
CATAWBA COUNTY											
TRACT 108	Hickory	5198	5.25	1,419	52	26	5	\$ 12,500	\$ 12,000	\$ 624,000	\$ 312,000
TRACT 109	Hickory	118,412			37	19	5	\$ 12,500	\$ 12,000	\$ 444,000	\$ 228,000
TRACT 110	Hickory	590	0.50		19	10	4	\$ 12,500	\$ 11,500	\$ 228,000	\$ 120,000
CRAVEN COUNTY											
BNA 9608	New Bern	4,317	3.65	352	9	5	1,000	\$ 12,500	\$ 11,500	\$ 108,000	\$ 60,000
BNA 9609	New Bern	3,091	2.61		4	2	1,000	\$ 12,500	\$ 11,500	\$ 48,000	\$ 24,000
CUMBERLAND COUNTY											
TRACT 1	Fayetteville	81,613		1,120	19	10	1,000	\$ 12,500	\$ 11,500	\$ 228,000	\$ 120,000
TRACT 10	Fayetteville	4,420	5.42		4	2	1,000	\$ 12,500	\$ 11,500	\$ 48,000	\$ 24,000
TRACT 11	Fayetteville	2,119	2.60		13	6	1,000	\$ 12,500	\$ 11,500	\$ 156,000	\$ 72,000
TRACT 12	Fayetteville	274,566			19	10	1,000	\$ 12,500	\$ 11,500	\$ 228,000	\$ 120,000
TRACT 13	Fayetteville	926	0.34		21	11	1,000	\$ 12,500	\$ 11,500	\$ 252,000	\$ 132,000
TRACT 14	Fayetteville	3,157	1.15		7	4	1,000	\$ 12,500	\$ 11,500	\$ 84,000	\$ 48,000
TRACT 16.02	Fayetteville	4,710	1.72		23	12	1,000	\$ 12,500	\$ 11,500	\$ 276,000	\$ 144,000
TRACT 2	Fayetteville	5,226	1.90		22	11	1,000	\$ 12,500	\$ 11,500	\$ 264,000	\$ 144,000
TRACT 22	Fayetteville	1,775	0.65		10	5	1,000	\$ 12,500	\$ 11,500	\$ 120,000	\$ 60,000
TRACT 24	Fayetteville	5,755	2.10		8	4	1,000	\$ 12,500	\$ 11,500	\$ 96,000	\$ 48,000
TRACT 29	Not Found	2,068	0.75		29	15	1,000	\$ 12,500	\$ 11,500	\$ 348,000	\$ 180,000
TRACT 3	Fayetteville	7,197	2.62		16	8	1,000	\$ 12,500	\$ 11,500	\$ 192,000	\$ 96,000
TRACT 4	Fayetteville	3,841	1.40		2	1	1,000	\$ 12,500	\$ 11,500	\$ 24,000	\$ 12,000
TRACT 5	Fayetteville	589	0.21		6	3	1,000	\$ 12,500	\$ 11,500	\$ 72,000	\$ 36,000
DURHAM COUNTY											
TRACT 10.01	Durham	1,571	0.57	3,317	11	5	1,000	\$ 12,500	\$ 11,500	\$ 132,000	\$ 60,000
TRACT 10.02	Durham	2,600	0.95		81	40	5	\$ 12,500	\$ 12,000	\$ 972,000	\$ 480,000
TRACT 11	Durham	181,835			89	45	500	\$ 12,500	\$ 12,000	\$ 1,068,000	\$ 540,000
TRACT 12.01	Durham	4,439	2.44		51	25	500	\$ 12,500	\$ 12,000	\$ 612,000	\$ 300,000
TRACT 12.02	Durham	4,897	2.69		19	9	500	\$ 12,500	\$ 12,000	\$ 228,000	\$ 108,000
TRACT 13.01	Durham	2,773	1.53		17	9	500	\$ 12,500	\$ 12,000	\$ 204,000	\$ 108,000
TRACT 13.04	Durham	1,019	0.56		28	14	500	\$ 12,500	\$ 12,000	\$ 336,000	\$ 168,000
		949	0.52		52	26	500	\$ 12,500	\$ 12,000	\$ 624,000	\$ 312,000
		1,562	0.86								
		2,853	1.57								

Census Tracts with Poverty Rates of 20% or More in Cities with over 20,000 in Population

COUNTY (Tract)	City/Town	V6001 Pop Cens (Uncor)	Tract pop/ county pop (%)	1996 County Emp (Exp and New Loc)	1996 Tract Emp (Exp and New Loc)	1996 Tract Emp (Exp and New Loc)	1997 Enterprise Tier Designation	EZ Tax Credit	Difference	High	Low
DURHAM COUNTY											
TRACT 14	Durham	3,080	1.69		56	28	\$ 500	\$ 12,500	\$ 12,000	\$ 672,000	\$ 336,000
TRACT 15.01	Durham	4,704	2.59		86	43	\$ 500	\$ 12,500	\$ 12,000	\$ 1,032,000	\$ 516,000
TRACT 15.02	Durham	5,086	2.80		93	46	\$ 500	\$ 12,500	\$ 12,000	\$ 1,116,000	\$ 552,000
TRACT 17.09	Durham	2,879	1.58		53	26	\$ 500	\$ 12,500	\$ 12,000	\$ 636,000	\$ 312,000
TRACT 3.01	Durham	2,267	1.25		41	21	\$ 500	\$ 12,500	\$ 12,000	\$ 492,000	\$ 252,000
TRACT 4.02	Durham	1,521	0.84		28	14	\$ 500	\$ 12,500	\$ 12,000	\$ 336,000	\$ 168,000
TRACT 5	Durham	4,209	2.31		77	38	\$ 500	\$ 12,500	\$ 12,000	\$ 924,000	\$ 456,000
TRACT 8.01	Durham	361	0.20		7	3	\$ 500	\$ 12,500	\$ 12,000	\$ 84,000	\$ 36,000
TRACT 8.02	Durham	862	0.47		16	8	\$ 500	\$ 12,500	\$ 12,000	\$ 192,000	\$ 96,000
TRACT 9	Durham	1,967	1.08		36	18	\$ 500	\$ 12,500	\$ 12,000	\$ 432,000	\$ 216,000
EDGECOMBE COUNTY											
TRACT 201	Rocky Mount	56,558	331	300	2	1	\$ 12,500	\$ 12,500	\$ -	\$ 24,000	\$ 12,000
TRACT 202	Rocky Mount	6,961	12.31		37	18	\$ 12,500	\$ 12,500	\$ -	\$ 444,000	\$ 216,000
TRACT 204	Rocky Mount	6,016	10.64		32	16	\$ 12,500	\$ 12,500	\$ -	\$ 384,000	\$ 192,000
TRACT 206	Rocky Mount	3,253	5.75		17	9	\$ 12,500	\$ 12,500	\$ -	\$ 204,000	\$ 108,000
FORSYTH COUNTY											
TRACT 1	Winston Salem	1,121	0.42	2,411	10	5	\$ 500	\$ 12,500	\$ 12,000	\$ 120,000	\$ 60,000
TRACT 15	Winston Salem	3,467	1.30		31	16	\$ 500	\$ 12,500	\$ 12,000	\$ 372,000	\$ 192,000
TRACT 16.02	Winston Salem	3,607	1.36		33	16	\$ 500	\$ 12,500	\$ 12,000	\$ 396,000	\$ 192,000
TRACT 17	Winston Salem	4,496	1.69		41	20	\$ 500	\$ 12,500	\$ 12,000	\$ 492,000	\$ 240,000
TRACT 2	Winston Salem	977	0.37		9	4	\$ 500	\$ 12,500	\$ 12,000	\$ 108,000	\$ 48,000
TRACT 3.01	Winston Salem	1,956	0.74		18	9	\$ 500	\$ 12,500	\$ 12,000	\$ 216,000	\$ 108,000
TRACT 3.02	Winston Salem	1,794	0.67		16	8	\$ 500	\$ 12,500	\$ 12,000	\$ 192,000	\$ 96,000
TRACT 4	Winston Salem	3,915	1.47		36	18	\$ 500	\$ 12,500	\$ 12,000	\$ 432,000	\$ 216,000
TRACT 5.01	Winston Salem	1,822	0.69		17	8	\$ 500	\$ 12,500	\$ 12,000	\$ 204,000	\$ 96,000
TRACT 5.02	Winston Salem	1,313	0.49		12	6	\$ 500	\$ 12,500	\$ 12,000	\$ 144,000	\$ 72,000
TRACT 6	Winston Salem	2,398	0.90		22	11	\$ 500	\$ 12,500	\$ 12,000	\$ 264,000	\$ 132,000
TRACT 7	Winston Salem	1,899	0.71		17	9	\$ 500	\$ 12,500	\$ 12,000	\$ 204,000	\$ 108,000
TRACT 8.01	Winston Salem	2,050	0.77		19	9	\$ 500	\$ 12,500	\$ 12,000	\$ 228,000	\$ 114,000
TRACT 8.02	Winston Salem	2,646	1.00		24	12	\$ 500	\$ 12,500	\$ 12,000	\$ 288,000	\$ 144,000
TRACT 9	Winston Salem	3,250	1.22		29	15	\$ 500	\$ 12,500	\$ 12,000	\$ 348,000	\$ 180,000
GASTON COUNTY											
TRACT 318	Gastonia	175,093		2,038	49	25	\$ 3,000	\$ 12,500	\$ 9,500	\$ 588,000	\$ 300,000
TRACT 319	Gastonia	4,215	2.41		35	17	\$ 3,000	\$ 12,500	\$ 9,500	\$ 420,000	\$ 204,000
TRACT 320	Gastonia	2,993	1.71		38	19	\$ 3,000	\$ 12,500	\$ 9,500	\$ 456,000	\$ 228,000
TRACT 330	Gastonia	3,283	1.88		8	4	\$ 3,000	\$ 12,500	\$ 9,500	\$ 96,000	\$ 48,000
GUILFORD COUNTY											
TRACT 101	Greensboro	347,420		4,928	23	12	\$ 500	\$ 12,500	\$ 12,000	\$ 276,000	\$ 144,000
TRACT 107.02	Greensboro	1,641	0.47		74	37	\$ 500	\$ 12,500	\$ 12,000	\$ 888,000	\$ 444,000
TRACT 108.01	Greensboro	5,209	1.50		11	5	\$ 500	\$ 12,500	\$ 12,000	\$ 132,000	\$ 60,000
TRACT 110	Greensboro	768	0.22		68	34	\$ 500	\$ 12,500	\$ 12,000	\$ 816,000	\$ 408,000
TRACT 111.01	Greensboro	4,759	1.37		31	15	\$ 500	\$ 12,500	\$ 12,000	\$ 756,000	\$ 372,000
TRACT 112	Greensboro	4,439	1.28		63	31	\$ 500	\$ 12,500	\$ 12,000	\$ 828,000	\$ 420,000
TRACT 114	Greensboro	4,895	1.41		69	35	\$ 500	\$ 12,500	\$ 12,000	\$ 876,000	\$ 432,000
TRACT 118	Greensboro	5,113	1.47		73	36	\$ 500	\$ 12,500	\$ 12,000	\$ 876,000	\$ 432,000
TRACT 138	High Point	3,931	1.13		56	28	\$ 500	\$ 12,500	\$ 12,000	\$ 672,000	\$ 336,000
TRACT 139	High Point	5,128	1.48		73	36	\$ 500	\$ 12,500	\$ 12,000	\$ 876,000	\$ 432,000
TRACT 143	High Point	3,374	0.97		48	24	\$ 500	\$ 12,500	\$ 12,000	\$ 576,000	\$ 288,000

Census Tracts with Poverty Rates of 20% or More in Cities with over 20,000 in Population

COUNTY (Tract)	City/Town	V6001 Pop Cens (Uncor)	Tract pop/ county pop (%)	1996 County Emp (Exp and New)	1996 Tract Emp (Exp and New Loc)	1996 Tract Emp (Exp and New Loc)	1997 Enterprise Tier Designation	EZ Tax Credit	Difference	High	Low
TRACT 144.08	High Point	1,374	0.40		19	10	\$ 500	\$ 12,500	\$ 12,000	\$ 228,000	\$ 120,000
TRACT 145.02	High Point	3,814	1.10		54	27	\$ 500	\$ 12,500	\$ 12,000	\$ 648,000	\$ 324,000
TRACT 146	High Point	559	0.16		8	4	\$ 500	\$ 12,500	\$ 12,000	\$ 96,000	\$ 48,000
IREDELL COUNTY		92,931		887			5				
TRACT 602	Statesville	2,072	2.23		20	10	\$ 500	\$ 12,500	\$ 12,000	\$ 240,000	\$ 120,000
TRACT 603	Statesville	3,053	3.29		29	15	\$ 500	\$ 12,500	\$ 12,000	\$ 348,000	\$ 180,000
TRACT 604	Statesville	4,682	5.04		45	22	\$ 500	\$ 12,500	\$ 12,000	\$ 540,000	\$ 264,000
LEE COUNTY		41,374		754			5				
TRACT 302	Sanford	3,182	7.69		58	29	\$ 500	\$ 12,500	\$ 12,000	\$ 696,000	\$ 348,000
TRACT 303	Sanford	2,531	6.12		46	23	\$ 500	\$ 12,500	\$ 12,000	\$ 552,000	\$ 276,000
LENOIR COUNTY		57,274		1,037			3				
TRACT 102	Kinston	3,526	6.16		64	32	\$ 3,000	\$ 12,500	\$ 9,500	\$ 768,000	\$ 384,000
TRACT 103	Kinston	3,638	6.35		66	33	\$ 3,000	\$ 12,500	\$ 9,500	\$ 792,000	\$ 396,000
TRACT 104	Kinston	2,016	3.52		37	18	\$ 3,000	\$ 12,500	\$ 9,500	\$ 444,000	\$ 216,000
TRACT 105	Kinston	4,547	7.94		82	41	\$ 3,000	\$ 12,500	\$ 9,500	\$ 984,000	\$ 492,000
TRACT 107	Kinston	2,377	4.15		43	22	\$ 3,000	\$ 12,500	\$ 9,500	\$ 516,000	\$ 264,000
MECKLENBURG COUNTY		511,433		4,658			5				
TRACT 1	Charlotte	919	0.18		8	4	\$ 500	\$ 12,500	\$ 12,000	\$ 96,000	\$ 48,000
TRACT 23	Charlotte	2,647	0.52		24	12	\$ 500	\$ 12,500	\$ 12,000	\$ 288,000	\$ 144,000
TRACT 25	Charlotte	1,719	0.34		16	8	\$ 500	\$ 12,500	\$ 12,000	\$ 192,000	\$ 96,000
TRACT 26	Charlotte	1,110	0.22		10	5	\$ 500	\$ 12,500	\$ 12,000	\$ 120,000	\$ 60,000
TRACT 3	Charlotte	507	0.10		5	2	\$ 500	\$ 12,500	\$ 12,000	\$ 60,000	\$ 24,000
TRACT 36	Charlotte	4,415	0.86		40	20	\$ 500	\$ 12,500	\$ 12,000	\$ 480,000	\$ 240,000
TRACT 37	Charlotte	2,244	0.44		20	10	\$ 500	\$ 12,500	\$ 12,000	\$ 240,000	\$ 120,000
TRACT 39.01	Charlotte	2,690	0.53		24	12	\$ 500	\$ 12,500	\$ 12,000	\$ 288,000	\$ 144,000
TRACT 39.02	Charlotte	5,456	1.07		50	25	\$ 500	\$ 12,500	\$ 12,000	\$ 600,000	\$ 300,000
TRACT 4	Charlotte	974	0.19		9	4	\$ 500	\$ 12,500	\$ 12,000	\$ 108,000	\$ 48,000
TRACT 41	Charlotte	3,899	0.76		36	18	\$ 500	\$ 12,500	\$ 12,000	\$ 432,000	\$ 216,000
TRACT 42	Charlotte	3,602	0.70		33	16	\$ 500	\$ 12,500	\$ 12,000	\$ 396,000	\$ 192,000
TRACT 45	Charlotte	5,014	0.98		46	23	\$ 500	\$ 12,500	\$ 12,000	\$ 552,000	\$ 276,000
TRACT 46	Charlotte	3,354	0.66		31	15	\$ 500	\$ 12,500	\$ 12,000	\$ 372,000	\$ 180,000
TRACT 47	Charlotte	1,525	0.30		14	7	\$ 500	\$ 12,500	\$ 12,000	\$ 168,000	\$ 84,000
TRACT 48	Charlotte	4,097	0.80		37	19	\$ 500	\$ 12,500	\$ 12,000	\$ 444,000	\$ 228,000
TRACT 5	Charlotte	2,218	0.43		20	10	\$ 500	\$ 12,500	\$ 12,000	\$ 240,000	\$ 120,000
TRACT 50	Charlotte	3,167	0.62		29	14	\$ 500	\$ 12,500	\$ 12,000	\$ 348,000	\$ 168,000
TRACT 51	Charlotte	2,630	0.51		24	12	\$ 500	\$ 12,500	\$ 12,000	\$ 288,000	\$ 144,000
TRACT 52	Charlotte	3,229	0.63		29	15	\$ 500	\$ 12,500	\$ 12,000	\$ 348,000	\$ 180,000
TRACT 56.01	Charlotte	11,479	2.24		105	52	\$ 500	\$ 12,500	\$ 12,000	\$ 1,260,000	\$ 624,000
TRACT 6	Charlotte	1,754	0.34		16	8	\$ 500	\$ 12,500	\$ 12,000	\$ 192,000	\$ 96,000
TRACT 7	Charlotte	862	0.17		8	4	\$ 500	\$ 12,500	\$ 12,000	\$ 96,000	\$ 48,000
TRACT 8	Charlotte	2,884	0.56		26	13	\$ 500	\$ 12,500	\$ 12,000	\$ 312,000	\$ 156,000
TRACT 9	Charlotte	2,341	0.46		21	11	\$ 500	\$ 12,500	\$ 12,000	\$ 252,000	\$ 132,000
NASH COUNTY		76,677		982			4				
TRACT 101	Rocky Mount	411	0.54		5	3	\$ 1,000	\$ 12,500	\$ 11,500	\$ 60,000	\$ 36,000
TRACT 102	Rocky Mount	6,831	8.91		87	44	\$ 1,000	\$ 12,500	\$ 11,500	\$ 1,044,000	\$ 528,000
NEW HANOVER COUNTY		120,284		617			5				
TRACT 101	Wilmington	2,494	2.07		13	6	\$ 500	\$ 12,500	\$ 12,000	\$ 156,000	\$ 72,000

Census Tracts with Poverty Rates of 20% or more in Cities with over 20,000 in Population

COUNTY (Tract)	City/Town	V6001 Pop Cens (Uncor)	Tract pop/ county pop (%)	1996 County Emp (Exp and New)	1996 Tract Emp (Exp and New Loc)	1996 Tract Emp (Exp and New Loc)	1997 Enterprise Tier Designation	EZ Tax Credit	Difference	High	Low
TRACT 103	Wilmington	4,629	3.85		24		500	\$ 12,500	\$ 12,000	\$ 288,000	\$ 144,000
TRACT 105.01	Wilmington	2,438	2.03		13		500	\$ 12,500	\$ 12,000	\$ 156,000	\$ 72,000
TRACT 108	Wilmington	2,554	2.12		13		500	\$ 12,500	\$ 12,000	\$ 156,000	\$ 84,000
TRACT 110	Wilmington	2,142	1.78		11		500	\$ 12,500	\$ 12,000	\$ 132,000	\$ 60,000
TRACT 111	Wilmington	3,202	2.66		16		500	\$ 12,500	\$ 12,000	\$ 192,000	\$ 96,000
TRACT 112	Wilmington	2,295	1.91		12		500	\$ 12,500	\$ 12,000	\$ 144,000	\$ 72,000
TRACT 113	Wilmington	1,722	1.43		9		500	\$ 12,500	\$ 12,000	\$ 108,000	\$ 48,000
TRACT 114	Wilmington	1,586	1.32		8		500	\$ 12,500	\$ 12,000	\$ 96,000	\$ 48,000
ONSLOW COUNTY		149,838		870			2				
TRACT 20	Jacksonville	1,501	1.00		9		4,000	\$ 12,500	\$ 8,500	\$ 108,000	\$ 48,000
TRACT 8	Jacksonville	1,974	1.32		11		4,000	\$ 12,500	\$ 8,500	\$ 132,000	\$ 72,000
ORANGE COUNTY		93,851		260			5				
TRACT 113	Carboro & Chapel Hill	2,153	2.29		6		500	\$ 12,500	\$ 12,000	\$ 72,000	\$ 36,000
TRACT 114	Chapel Hill	3,302	3.52		9		500	\$ 12,500	\$ 12,000	\$ 108,000	\$ 60,000
TRACT 117	Chapel Hill	4,124	4.39		11		500	\$ 12,500	\$ 12,000	\$ 132,000	\$ 72,000
PITT COUNTY		107,924		840			4				
TRACT 1	Greenville	4,883	4.52		38		1,000	\$ 12,500	\$ 11,500	\$ 456,000	\$ 228,000
TRACT 2	Greenville	6,309	5.85		49		1,000	\$ 12,500	\$ 11,500	\$ 588,000	\$ 300,000
TRACT 7	Greenville	8,564	7.94		67		1,000	\$ 12,500	\$ 11,500	\$ 804,000	\$ 396,000
TRACT 8	Greenville	5,319	4.93		41		1,000	\$ 12,500	\$ 11,500	\$ 492,000	\$ 252,000
TRACT 9	Greenville	3,857	3.57		30		1,000	\$ 12,500	\$ 11,500	\$ 360,000	\$ 180,000
ROWAN COUNTY		110,505		1,321			4				
TRACT 501	Salisbury	639	0.58		8		1,000	\$ 12,500	\$ 11,500	\$ 96,000	\$ 48,000
TRACT 504	Salisbury	3,139	2.84		37		1,000	\$ 12,500	\$ 11,500	\$ 444,000	\$ 228,000
TRACT 506	Salisbury	1,826	1.47		19		1,000	\$ 12,500	\$ 11,500	\$ 228,000	\$ 120,000
TRACT 508	Salisbury	3,836	3.47		46		1,000	\$ 12,500	\$ 11,500	\$ 552,000	\$ 276,000
VANCE COUNTY		38,892		258			2				
BNA 9602	Not found	2,638	6.78		17		9	\$ 12,500	\$ 8,500	\$ 204,000	\$ 108,000
BNA 9605	Henderson	5,373	13.82		36		18	\$ 12,500	\$ 8,500	\$ 432,000	\$ 216,000
BNA 9606	Henderson	2,306	5.93		15		8	\$ 12,500	\$ 8,500	\$ 180,000	\$ 96,000
BNA 9607	Henderson	4,856	12.49		32		16	\$ 12,500	\$ 8,500	\$ 384,000	\$ 192,000
WAKE COUNTY		423,380		3,350			5				
TRACT 501	Raleigh	1,555	0.39		13		7	\$ 12,500	\$ 12,000	\$ 156,000	\$ 84,000
TRACT 503	Raleigh	2,108	0.50		17		8	\$ 12,500	\$ 12,000	\$ 204,000	\$ 96,000
TRACT 504	Raleigh	1,820	0.43		14		7	\$ 12,500	\$ 12,000	\$ 168,000	\$ 84,000
TRACT 506	Raleigh	4,227	1.00		33		17	\$ 12,500	\$ 12,000	\$ 396,000	\$ 204,000
TRACT 507	Raleigh	2,955	0.70		23		12	\$ 12,500	\$ 12,000	\$ 276,000	\$ 144,000
TRACT 508	Raleigh	3,616	0.85		29		14	\$ 12,500	\$ 12,000	\$ 348,000	\$ 168,000
TRACT 509	Raleigh	3,729	0.88		30		15	\$ 12,500	\$ 12,000	\$ 360,000	\$ 180,000
TRACT 510	Raleigh	2,005	0.47		16		8	\$ 12,500	\$ 12,000	\$ 192,000	\$ 96,000
TRACT 511	Raleigh	5,417	1.28		43		21	\$ 12,500	\$ 12,000	\$ 516,000	\$ 252,000
TRACT 513	Raleigh	1,225	0.29		10		5	\$ 12,500	\$ 12,000	\$ 120,000	\$ 60,000
TRACT 520.01	Raleigh	2,899	0.68		23		11	\$ 12,500	\$ 12,000	\$ 276,000	\$ 132,000
TRACT 524.03	Raleigh	9,335	2.20		74		37	\$ 12,500	\$ 12,000	\$ 888,000	\$ 444,000
WAYNE COUNTY		104,666		504			3				
TRACT 14	Goldsboro	7,506	7.17		36		18	\$ 12,500	\$ 9,500	\$ 432,000	\$ 216,000
TRACT 15	Goldsboro	3,848	3.49		18		9	\$ 12,500	\$ 9,500	\$ 216,000	\$ 108,000

Census Tracts with Poverty Rates of 20% or More in Cities with over 20,000 in Population

COUNTY (Tract)	City/Town	V6001 Pop Cens (Uncon)	Tract pop/ county pop (%)	1996 County Emp (Exp and New)	1996 Tract Emp (Exp and New Loc)	1996 Tract Emp (Exp and New Loc)	1997 Enterprise Tier Designation	EZ Tax Credit	Difference	High	Low
TRACT 16	Goldsboro	1,629	1.56		8	4	\$ 3,000	\$ 12,500	\$ 9,500	\$ 96,000	\$ 48,000
TRACT 17	Goldsboro	495	0.47		2	1	\$ 3,000	\$ 12,500	\$ 9,500	\$ 24,000	\$ 12,000
TRACT 18	Goldsboro	3,466	3.31		17	8	\$ 3,000	\$ 12,500	\$ 9,500	\$ 204,000	\$ 96,000
WILSON COUNTY		66,061		606			3				
TRACT 1	Wilson	4,231	6.40		39	19	\$ 3,000	\$ 12,500	\$ 9,500	\$ 468,000	\$ 228,000
TRACT 2	Wilson	1,741	2.64		16	8	\$ 3,000	\$ 12,500	\$ 9,500	\$ 192,000	\$ 96,000
TRACT 3	Wilson	2,522	3.82		23	12	\$ 3,000	\$ 12,500	\$ 9,500	\$ 276,000	\$ 144,000
TRACT 7	Wilson	6,311	9.55		58	29	\$ 3,000	\$ 12,500	\$ 9,500	\$ 696,000	\$ 348,000
TRACT 8.01	Wilson	2,974	4.50		27	14	\$ 3,000	\$ 12,500	\$ 9,500	\$ 324,000	\$ 168,000
TRACT 8.02	Wilson	3,348	5.07		31	15	\$ 3,000	\$ 12,500	\$ 9,500	\$ 372,000	\$ 180,000
NC 1990 Pop. (>=20% pov)					5,080	2,539				\$ 60,960,000	\$ 30,468,000
NC 1990 Pop (< 20% pov)											
NC Total 1990 Population											
Pop >=20% pov Share											

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 942

Short Title: Barbers.

(Public)

Sponsors: Senator Rand.

Referred to: Finance.

April 17, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO CHANGE THE AGE OF HONORARY BARBER LICENSEES
3 FROM SEVENTY TO EIGHTY YEARS OF AGE.
4 The General Assembly of North Carolina enacts:
5 Section 1. G.S. 86A-25 reads as rewritten:
6 "**§ 86A-25. Fees collectible by Board.**
7 The State Board of Barber Examiners shall charge fees not to exceed the
8 following:
9 Certificate of registration or renewal as a barber \$ 30.00
10 Certificate of registration or renewal as an apprentice barber 30.00
11 Barbershop permit or renewal 30.00
12 Examination to become a registered barber 50.00
13 Examination to become a registered apprentice barber 50.00
14 Late fee for restoration of an expired barber certificate within
15 first year after expiration 20.00
16 Late fee for restoration of an expired barber certificate after
17 first year after expiration but within five years after
18 expiration 40.00
19 Late fee for restoration of an expired apprentice certificate
20 within first year after expiration 20.00
21 Late fee for restoration of an expired apprentice certificate
22 after first year after expiration but within three years of first
23 issuance of the certificate 25.00
24 Late fee for restoration of an expired barbershop certificate 25.00

1	Examination to become a barber school instructor	95.00
2	Student permit	15.00
3	Issuance of any duplicate copy of a license, certificate, or	
4	permit	7.50
5	Barber school permit or renewal	75.00
6	Late fee for restoration of an expired barber school certificate	50.00
7	Barber school instructor certificate or renewal	50.00
8	Late fee for restoration of an expired barber school instructor	
9	certificate within first year after expiration	25.00
10	Late fee for restoration of an expired barber school instructor	
11	certificate after first year after expiration but within three	
12	years after expiration	50.00
13	Inspection of newly established barbershop	70.00
14	Inspection of newly established barber school	125.00
15	Issuance of a registered barber or apprentice certificate by	
16	certification	70.00
17	Barbers 70 <u>80</u> years and older certificate or	
18	renewal	No charge."
19	Section 2. This act is effective when it becomes law.	

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 942 (First Edition)

SHORT TITLE: Barbers

SPONSOR(S): Senator Rand

FISCAL IMPACT

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

	<u>FY 1997-98</u>	<u>FY 1998-99</u>	<u>FY 1999-00</u>	<u>FY 2000-01</u>	<u>FY 2001-02</u>
REVENUES					
Special Revenue Fund	\$30,000	\$30,000	\$30,000	\$30,000	\$30,000

**PRINCIPAL DEPARTMENT(S) &
PROGRAM(S) AFFECTED:** State Board of Barber Examiners

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

BILL SUMMARY: The act changes the age of honorary barber licensees from seventy to eighty.

BACKGROUND: 1997 is the first year for free honorary barber licenses for barbers 70 years and older . The honorary license was included in SB 294, Regulation of Barbers, approved by the 1996 General Assembly (chapter 605 of 1996 Session Laws). However, when SB 294 was introduced as an agency bill in the Senate it had a free license for barbers who were 80 years or older. The House amended the bill to lower the age for an honorary license to 70.

ASSUMPTIONS AND METHODOLOGY: The State Board of Barber Examiners expects to lose between \$30,000 to \$50,000 this year due to free licenses being given to barbers over age 70. At \$30 a license this equals 1000 to 1667 honorary barber licenses. In the first two days of renewals in May 1997, 57 senior barbers asked for the free license. Based on 12,000 licensed barbers, the free licenses make up 8% to 13% of the total licenses issued. Raising the age to 80 would return a minimum of \$30,000 each year to the Board's operating fund.

FISCAL RESEARCH DIVISION

733-4910

PREPARED BY: Richard Bostic ^{RB}

APPROVED BY: Tom Covington 

DATE: May 5, 1997

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 630*

Short Title: Carrboro Charter Amendments.

(Local)

Sponsors: Senators Kinnaird and Lee.

Referred to: Finance.

April 1, 1997

A BILL TO BE ENTITLED

1 AN ACT TO AMEND THE CHARTER OF THE TOWN OF CARRBORO.

2 The General Assembly of North Carolina enacts:

3 Section 1. Section 9-3 of the Charter of the Town of Carrboro, being
4 Chapter 476 of the 1987 Session Laws, reads as rewritten:

5 "**Section 9-3. Zoning Board of Adjustment.** The board of aldermen may create a
6 board of adjustment in accordance with the provisions of Article 19 of Chapter 160A
7 of the General Statutes. Such board shall be subject to all the provisions of general
8 law except that the board of aldermen may authorize the board of adjustment to
9 decide any matter before it either (i) upon a vote of a majority of the members
10 present at a meeting and not excused from voting, so long as a quorum ~~consisting of~~
11 ~~at least six members~~ is present, or (ii) upon a vote of a four-fifths majority of the
12 members present at a meeting and not excused from voting, so long as a quorum
13 ~~consisting of at least six members~~ is present."

14 Section 2. Section 9-5 of the Charter of the Town of Carrboro, being
15 Chapter 476 of the 1987 Session Laws, reads as rewritten:

16 "**Section 9-5. Sprinkler Systems.** Notwithstanding any provision of the North
17 Carolina State Building Code or any general or local law to the contrary, the board
18 of aldermen may adopt an ordinance requiring that sprinkler systems be installed in
19 all of the following types of buildings constructed within the town or its
20 extraterritorial planning ~~jurisdiction~~ jurisdiction, including the portion of the joint
21 planning area authorized under Chapter 233 of the 1987 Session Laws wherein the
22 Town of Carrboro administers the State Building Code: (i) buildings in excess of 50
23 feet in height; (ii) nonresidential buildings containing at least 5,000 square feet of
24

1 floor surface area; ~~or~~ (iii) buildings designed for assembly occupancy (as defined in
2 the North Carolina State Building Code) that accommodate more than 25 ~~people.~~
3 ~~people; or (iv) residential buildings having three or more dwelling units. This~~
4 ~~ordinance applies~~ An ordinance adopted pursuant to this section may apply to
5 existing buildings only to the extent and under the circumstances that the provisions
6 of the North Carolina State Building Code apply to preexisting buildings."

7 Section 3. Section 3-1 of the Charter of the Town of Carrboro, being
8 Chapter 476 of the 1987 Session Laws, reads as rewritten:

9 "**Section 3-1. Privilege License Tax.** The town may levy privilege license taxes on
10 all trades, occupations, professions, businesses, and franchises carried on within the
11 town unless such trade, occupation, profession, business, or franchise has been
12 completely exempted from municipal privilege license taxes under State law. The
13 town may, but is not required to, establish a schedule of privilege license taxes based
14 in whole or in part on the annual gross receipts of the businesses taxed. The
15 schedule is not subject to the limitations referenced in G.S. 160A-211 on the
16 maximum amount of privilege license taxes that may be levied on specific types of
17 businesses."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

2

SENATE BILL 613

Pensions & Retirement and Insurance Committee Substitute Adopted 4/30/97

Short Title: Insurance Company Audits and Exams.

(Public)

Sponsors:

Referred to:

April 1, 1997

A BILL TO BE ENTITLED

1 AN ACT TO AMEND PROVISIONS IN THE INSURANCE LAWS DEALING
2 WITH EXAMINATIONS OF INSURANCE COMPANIES AND AUDITS OF
3 THEIR FINANCIAL STATEMENTS.
4

5 The General Assembly of North Carolina enacts:

6 Section 1. G.S. 58-2-131(d) reads as rewritten:

7 "(d) The Commissioner may conduct an examination of any insurer whenever the
8 Commissioner deems it to be prudent for the protection of policyholders but shall at
9 a minimum conduct ~~an~~ a regular examination of every domestic insurer not less
10 frequently than once every ~~three~~ five years. In scheduling and determining the
11 nature, scope, and frequency of examinations, the Commissioner shall consider such
12 matters as the results of financial statement analyses and ratios, changes in
13 management or ownership, actuarial opinions, reports of independent certified public
14 accountants, and other criteria as set forth in the NAIC Examiners' Handbook."

15 Section 2. G.S. 58-2-205 reads as rewritten:

16 "**§ 58-2-205. CPA audits of financial statements.**

17 ~~The Commissioner is authorized to adopt rules to provide for audits and opinions~~
18 ~~of insurers' financial statements by certified public accountants. Such rules shall be~~
19 ~~in accordance with the NAIC model rule that requires audited financial reports, as~~
20 ~~amended. (a) The NAIC model rule requiring annual audited financial reports as~~
21 ~~provided for in the annual statement instructions is incorporated into this section by~~
22 reference, except as specified in subsections (b) through (g) of this section.

1 (b) The annual audited financial report shall be filed with the Commissioner on
2 or before May 10 for the previous calendar year. Two copies of this report shall be
3 filed with the Chief Examiner in the Field Audit Section of the Department. An
4 extension of the May 10 filing date may be granted by the Commissioner for a period
5 of up to 45 days. The request for extension must be submitted in writing no sooner
6 than 15 days before the due date.

7 (c) This requirement applies to all insurers; provided that insurers having direct
8 premiums written in North Carolina of less than two hundred fifty thousand dollars
9 (\$250,000) in any year and having less than 500 policyholders in North Carolina at
10 the end of any year are exempt from this requirement for that year unless the
11 Commissioner makes a specific finding that compliance is necessary for the
12 Commissioner to carry out his or her statutory responsibilities.

13 (d) Certified public accountants that intend to practice pursuant to the provisions
14 of the annual statement instructions shall file a notice to that effect with the
15 Commissioner by October 1 of each year. The Commissioner may reject the filing if
16 the certified public accountant does not meet the requirements. The filing shall
17 contain a statement from the certified public accountant affirming that the certified
18 public accountant is aware of and will comply with the provisions of the annual
19 statement instructions related to the definition, availability, and maintenance of
20 certified public accountant workpapers and evidence of the certified public
21 accountant's expertise in the areas of insurance auditing and insurance accounting.
22 This evidence shall also demonstrate experience in the areas of insurance auditing
23 and insurance accounting for the certified public accountant's staff members who are
24 assigned to the audit.

25 (e) The certified public accountant may be deemed to be experienced in the areas
26 of insurance auditing and accounting if the office filing with the Department pursuant
27 to this section has existing audit clients in the insurance industry.

28 (f) The staff assigned to an audit under this section may be considered by the
29 Commissioner to be experienced in the areas of insurance auditing and accounting if
30 they meet the following criteria:

31 (1) Managerial staff that has been assigned or has had responsibility
32 for audit engagements in the insurance industry in an amount
33 averaging at least thirty percent (30%) of its chargeable time
34 during the last three years.

35 (2) Nonmanagerial staff that has been assigned or has had
36 responsibility for audit engagements in the insurance industry in an
37 amount averaging at least fifteen percent (15%) of its chargeable
38 time during the last three years or during the staff members'
39 periods of employment if employed fewer than three years.

40 (g) An audit performed by a certified public accountant under this section shall
41 be staffed by managerial staff experienced in the areas of insurance auditing and
42 accounting and by a majority or an equal number of nonmanagerial staff experienced
43 in the areas of insurance auditing and accounting.

44 (h) As used in this section, 'insurance' includes financial services."

1 Section 3. G.S. 58-2-131(k) reads as rewritten:

2 "(k) ~~When making an examination;~~ For any regular examination of an insurer, if
3 the Commissioner determines that appropriated resources within the Department are
4 insufficient to properly conduct or complete the examination, the Commissioner may
5 retain attorneys, appraisers, ~~independent~~ actuaries, ~~independent~~ certified public
6 accountants, or other professionals and specialists ~~as examiners.~~ to assist the
7 Commissioner in the examination. The insurer that is examined shall pay the persons
8 retained for their services under this subsection. The payments by an insurer under
9 this subsection for any regular examination shall not exceed fifty thousand dollars
10 (\$50,000). If any examination is requested by an insurer and not initiated by the
11 Commissioner, the Commissioner may retain the types of professionals and specialists
12 named in this subsection and in accordance with this subsection; and there shall be
13 no limit on the payments by the insurer under this subsection."

14 Section 4. This act becomes effective October 1, 1997, and applies to
15 audits or examinations conducted on or after that date.

PLEASE PRESS HARD - 5 COPIES

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____

DATE _____

S. B. No. 613 (2nd Edition)

Amendment No. _____

(to be filled in by
Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Winner
)
Sen.)

1 moves to amend the bill on page 2, line 9

2 () WHICH CHANGES THE TITLE
3 by deleting "less" and substituting "fewer".

4 _____

5 _____

7 _____

8 _____

9 _____

10 _____

11 _____

12 _____

13 _____

14 _____

15 _____

16 _____

17 _____

18 _____

SIGNED Bealie W...

Finance Chairman
Kerr

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: Senate Bill 613 Committee Substitute Adopted 4/30/97

SHORT TITLE: Insurance Company Audits and Exams

SPONSOR(S): Sen. Jenkins, *et al.*

FISCAL IMPACT

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

FY 1997-98 FY 1998-99 FY 1999-00 FY 2000-01 FY 2001-02

REVENUES

EXPENDITURES (\$250,000) (\$250,000) (\$250,000) (\$250,000) (\$250,000)

POSITIONS:

PRINCIPAL DEPARTMENT(S) &

PROGRAM(S) AFFECTED: Department of Insurance, Company Services Group, Financial Evaluation Division

EFFECTIVE DATE: October 1, 1997

BILL SUMMARY: Amends GS 58-2-131(d) to provide that Insurance Comm'r must conduct examination of insurer at least once every five (now three) years. Rewrites GS 58-2-205 (CPA audits of financial statements) to incorporate into statute by reference the NAIC model rule requiring annual audited financial statements, except as provided in that statute. Exceptions are that annual financial reports must be filed by May 10 of each year unless Comm'r grants extension; insurers with less than 500 policy holders or less than \$250,000 in premiums are exempt from rule's requirements unless Comm'r specifically requires compliance; CPA must certify and prove that he or she is experienced in areas of insurance auditing and accounting; and audit performed under the section must be staffed by managerial staff experienced in the areas of insurance auditing and accounting and by nonmanagerial staff, at least a majority of which have similar experience. Specifies that insurance includes "financial services" for this purpose. Amends GS 58-2-131 to allow Comm'r to hire attorneys, appraisers, actuaries, certified public

accountants, and other professionals to help the Dep't conduct its evaluation and to require the insurer to pay the cost of hiring such professionals, up to [\$50,000] per examination.¹

ASSUMPTIONS AND METHODOLOGY: Reduces the Department's costs by charging to the company being audited or examined certain costs now being borne by the Department. Assumes that the Department will be able to schedule its workload so that the burden will be fairly evenly distributed over the years. Based on past experience, assumes that about 25 companies will be examined each year, and 8-10 of these companies will require outside specialists for their examinations at costs within the \$20,000 - \$40,000 range for each audit, with most companies requiring about \$25,000-\$30,000 in additional audit resources.

TECHNICAL CONSIDERATIONS: The Department's representative is fairly confident of the total costs of the five-year cycle, but there may be some variation between years. A very unusual event could interfere with the Department's schedule for the year, requiring it to suspend audits or draw on funding intended for other purposes.

FISCAL RESEARCH DIVISION

733-4910

PREPARED BY: William L. Spencer

APPROVED BY:

DATE:

¹ Legislative Reporting Service, Institute of Government: "Daily Bulletin," Vol. 1997, No. 36, p. 5.

- 1 (3) Failure of the Commission to furnish proper forms upon timely
2 application by the employer, by reason of which failure the
3 employer was unable to execute and file the report on or before
4 the due date;
- 5 (4) The inability of the employer or the person in the employer's
6 organization responsible for the preparation and filing of reports to
7 obtain an interview with a representative of the Commission upon
8 a personal visit to the central office or any local office for the
9 purpose of securing information or aid in the proper preparation of
10 the report, which personal interview was attempted to be had
11 within the time during which the report could have been executed
12 and filed as required by law had the information at the time been
13 obtained;
- 14 (5) The entrance of one or more of the owners, officers, partners, or
15 the majority stockholder into the Armed Forces of the United
16 States, or any of its allies, or the United Nations, provided that the
17 entrance was unexpected and is not the annual two weeks training
18 for reserves; and
- 19 (6) Other circumstances where, in the opinion of the Chairman, the
20 Assistant Administrator, or their designees, the imposition of
21 penalties would be inequitable.

22 In the waiver of any penalty, the burden shall be upon the employer to establish to
23 the satisfaction of the Chairman, the Assistant Administrator, or their designees, that
24 the delinquency for which the penalty was imposed was due to any of the foregoing
25 facts or circumstances.

26 ~~Such waiver~~ The waiver or reduction of interest or a penalty under this subsection
27 shall be valid and binding upon the Commission. The reason for any ~~such~~ reduction
28 or waiver shall be made a part of the permanent records of the employing unit to
29 which it applies."

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

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 974 (First Edition)

SHORT TITLE: ESC Waive Interest

SPONSOR(S): Senators Foxx, et al

FISCAL IMPACT

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

FY 1997-98 FY 1998-99 FY 1999-00 FY 2000-01 FY 2001-02

REVENUES

Special Administration Fund

PRINCIPAL DEPARTMENT(S) &

PROGRAM(S) AFFECTED: Employment Security Commission

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

BILL SUMMARY: The bill authorizes the Employment Security Commission (ESC) to waive interest on late contributions if good cause is shown.

ASSUMPTIONS AND METHODOLOGY: This act clarifies the authority of ESC administrators to waive interest and penalties. The ESC waives penalties and interest in less than 20 cases a year.

FISCAL RESEARCH DIVISION

733-4910

PREPARED BY: Richard Bostic *RB*

APPROVED BY: Tom Covington *[Signature]*

DATE: May 5, 1997

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 1064*

Short Title: Property Tax Interest/Study.

(Public)

Sponsors: Senator Hoyle.

Referred to: Finance.

April 21, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW A TAXPAYER WHO PREVAILS IN A PROPERTY TAX
3 APPEAL TO RECEIVE INTEREST ON ANY OVERPAYMENT OF TAX AND
4 TO AUTHORIZE THE LEGISLATIVE RESEARCH COMMISSION TO
5 STUDY VARIOUS PROPERTY TAX ISSUES.
6 The General Assembly of North Carolina enacts:
7 Section 1. G.S. 105-290(b) is amended by adding a new subdivision to
8 read:
9 "(4) Interest on Overpayments. -- When an order of the Property Tax
10 Commission reduces the valuation of property or removes the
11 property from the tax lists and, based on the order, the taxpayer
12 has paid more tax than is due on the property, the taxpayer is
13 entitled to receive interest on the overpayment in accordance with
14 this subdivision. An overpayment of tax bears interest at an
15 annual rate of nine percent (9%) from the date the interest begins
16 to accrue until a refund is paid. Interest accrues from the later of
17 the date the tax was paid and the date the tax would have been
18 considered delinquent under G.S. 105-360. A refund is considered
19 paid on a date determined by the governing body of the taxing unit
20 that is no sooner than five days after a refund check is mailed."
21 Section 2. The Legislative Research Commission may study the methods
22 used by counties to develop the schedules of value for a general reappraisal of real
23 property and the appeal process for appeals of the value or listing of property. The
24 Commission may assign these topics to a study committee established to study various

1 tax issues or may create a separate study committee to study these topics. In
2 conducting the study, the Commission may determine whether the procedures used in
3 developing schedules of value produce unrealistic values on nonresidential real
4 property, whether representatives of the Department of Revenue should be given
5 more authority in resolving taxpayer appeals, and whether the Property Tax
6 Commission should be replaced with a State Tax Court. The Commission may make
7 an interim report of its findings to the 1998 Regular Session of the 1997 General
8 Assembly and may make a final report to the 1999 General Assembly.

9 Section 3. This act becomes effective July 1, 1997. Section 1 of this act
10 applies to appeals made to the Property Tax Commission on or after the effective
11 date of this act.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1997

S

D

SENATE BILL 1064*
Proposed Committee Substitute S1064-PCS6679

Short Title: Property Tax Interest/Study.

(Public)

Sponsors:

Referred to:

April 21, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW A TAXPAYER WHO PREVAILS IN A PROPERTY TAX
3 APPEAL TO RECEIVE INTEREST ON ANY OVERPAYMENT OF TAX AND
4 TO AUTHORIZE THE LEGISLATIVE RESEARCH COMMISSION TO
5 STUDY VARIOUS PROPERTY TAX ISSUES.

6 The General Assembly of North Carolina enacts:

7 Section 1. G.S. 105-290(b) is amended by adding a new subdivision to
8 read:

9 "(4) Interest on Overpayments. -- When an order of the Property Tax
10 Commission reduces the valuation of property or removes the
11 property from the tax lists and, based on the order, the taxpayer
12 has paid more tax than is due on the property, the taxpayer is
13 entitled to receive interest on the overpayment in accordance with
14 this subdivision. An overpayment of tax bears interest at the rate
15 set under G.S. 105-241.1(i) from the date the interest begins to
16 accrue until a refund is paid. Interest accrues from the later of the
17 date the tax was paid and the date the tax would have been
18 considered delinquent under G.S. 105-360. A refund is considered
19 paid on a date determined by the governing body of the taxing unit
20 that is no sooner than five days after a refund check is mailed."

21 Section 2. The Legislative Research Commission may study the methods
22 used by counties to develop the schedules of value for a general reappraisal of real
23 property and the appeal process for appeals of the value or listing of property. The

1 Commission may assign these topics to a study committee established to study various
2 tax issues or may create a separate study committee to study these topics. In
3 conducting the study, the Commission may determine whether the procedures used in
4 developing schedules of value produce unrealistic values on nonresidential real
5 property, whether representatives of the Department of Revenue should be given
6 more authority in resolving taxpayer appeals, and whether the Property Tax
7 Commission should be replaced with a State Tax Court. The Commission may make
8 an interim report of its findings to the 1998 Regular Session of the 1997 General
9 Assembly and may make a final report to the 1999 General Assembly.

10 Section 3. This act becomes effective July 1, 1997. Section 1 of this act
11 applies to appeals made to the Property Tax Commission on or after the effective
12 date of this act.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: Senate Bill 1064

SHORT TITLE: Property Tax Interest/Study

SPONSOR(S): Senator Hoyle

FISCAL IMPACT

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

FY 1997-98 FY 1998-99 FY 1999-00 FY 2000-01 FY 2001-02

REVENUES See section on assumptions and methodology.

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Local unity of government that levy a property tax

EFFECTIVE DATE: July 1, 1997

BILL SUMMARY:

The Machinery Act does not provides for the payment of interest when a taxpayer has paid more tax than is owed on property, due to a reduction in the value of the property, resulting from actions of the Property Tax Commission. This act sets the interest rate at 9% a year in such cases.

The Legislative Research Commission is authorized to study various property tax issues.

ASSUMPTIONS AND METHODOLOGY:

The impact of this legislation is indeterminate. According to the Commission's staff, in the majority of the appeals heard before the Commission, the county's values are sustained.

FISCAL RESEARCH DIVISION

733-4910

PREPARED BY: H. Warren Plonk

APPROVED BY:

DATE: May 5, 1997

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

May 7, 1997

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

DEAN SPINKS	TRINITY INCORPORATION STEERING COMM. - P.O. BOX 356, TRINITY, NC
KENNETH ORR	TRINITY INCORPORATION
Jim Ah	NCAFI
Kelly Broom	NC Board of Barber Examiners
Amanda Martin	EGHS
Robert Poon	Jordan Pire Well Day & Jones
Patti Sewell	DOR
Janet Sims	DOR
John Bag	DOA
Zora Whitaker	ESC
B. Davis	DOR

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

May 7, 1997

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Andy Elby	NC Farm Bureau
W. A. Hale	NC DOI
Mic Parland	Electricities
Tom Kerkhoff	Carroll's Foods
Peter Moss	" " Lanesburg
Perry Parks	CARROLL'S FOODS, INC
R. Paul Williams	NCMBA
Alan Miles	Barley & Dixon LLP
R. ROGERS	EHR
Alan Brown	Leg. Week in Review
Jon Reep	Leg Week in Review

VISITOR REGISTRATION SHEET



SENATE FINANCE COMMITTEE

May 7, 1997

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

V L McBride	NCOA
Baker Ellett	Good the
Ron Atkins	Good Neighbors Assoc
Mike Cooper	NCSBA
Tom Morrow	Sprint
Doug Weaver	NC CWA Political Council
Paul V. Quinn	Press
PERRI MORGAN	NFIB
J Rungquist	NCSOS
John May	NC CWA Political Council
Rob Schofield	NCJCC

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

May 7, 1997

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

<i>Gay Poshing</i>	<i>MAY DISPT. STORISS</i>
<i>Ram Carpenter</i>	<i>PCS</i>
<i>John Kishi</i>	<i>NC FPC</i>
<i>Nancy Bradley</i>	<i>NCERS</i>
<i>[Signature]</i>	<i>[Signature]</i>
<i>Dore Summers</i>	<i>20A, PA</i>
<i>Debbie E. Wolley</i>	<i>Park Producer 261 Talton Rd Princeton, NC 27569</i>
<i>Brooke Wolley</i>	<i>Park Producer 261 Talton Rd Princeton NC 27569</i>
<i>Bryant Wolley</i>	<i>Park Producer ''</i>

SENATE FINANCE COMMITTEE

THURSDAY, MAY 8, 1997

8:30 A.M. - ROOM 643 LOB

The Senate Finance Committee met. There were 22 members of the Committee present. Senator David W. Hoyle, Co- Chairman, was presiding. He introduced the Pages, they are: Krish Cooke from Apex, North Carolina, sponsored by Senator Carrington. Sara VandenEnde from Cary, North Carolina, sponsored by Senator Carrington and Amy Hilliker from Kitty Hawk, North Carolina, sponsored by Senator Basnight.

H. B.-603 Madison Occupancy Tax

Representative Ramsey came to explain the bill. Senator Kerr moved for adoption of committee substitute, motion passed. Senator Bob Shaw moved for a "favorable" report, motion passed.

S. B. 124 - Amend White Goods

Senator Odom came to explain the bill. Senator Kerr moved for adoption of a committee substitute, motion passed. Mr. Jim Blackburn with the N. C. Association of County Commissioners spoke in support of the bill. Mr. Bill Holloman with Sierra Club stated that they support the bill. Mr. Don McCorquadale with the North Carolina Retail Merchants Association spoke in opposition to the bill. Senator Dalton moved for a "favorable" report, motion passed.

S. B. 861 Dispensing Opticians

Senator Lee came to explain the bill, he made a motion for adoption of a committee substitute, motion passed. Mr. Virgil McBride with the N. C. Opticians Association spoke on the bill. Senator Conder made a motion for a "favorable" report, motion passed.

S. B. 921 Charitable Solicitations Exemption

Senator Odom explained the bill. Senator Dannelly moved for a "favorable" report, motion passed.

SENATE FINANCE COMMITTEE

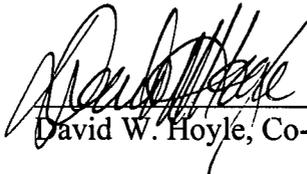
Thursday, May 8, 1998

Page -2-

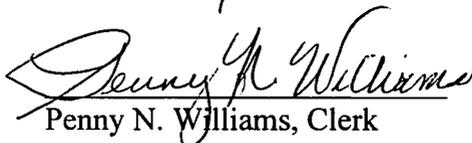
S. B. 711 - Leland Annexation

Senator Soles came to explain the bill. Senator Soles offered an amendment to the bill and moved for adoption, motion passed. Senator Kerr moved for a "favorable" report and that amendment to bill be rolled into a committee substitute, motion passed.

Meeting was adjourned. NOTE: S. B. 439, S. B. 482 and S. B. 1035 were pulled from the Agenda to be heard at a later date. Also, H. B. 603, S. B. 861 and S. B. 711 were not reported out of committee until 5/12/97


David W. Hoyle, Co-Chair


John H. Kerr, III Co-Chair


Penny N. Williams, Clerk


Evelyn S. Hartsell, Clerk

NOTE:

Agenda is Attachment # 1

Visitor's Registration is Attachment # 2

Committee Report (5-8-97) is Attachment # 3

Committee Report (5-12-97) is Attachment # 4

AGENDA

SENATE FINANCE COMMITTEE MEETING

THURSDAY, MAY 8, 1998

AT

8:30 A.M., ROOM 643 LOB

- HB 603 - MADISON OCCUPANCY TAX -
REP. RAMSEY (SEN. LEDBETTER)
- SB 124 - AMEND WHITE GOODS - SEN. ODOM
- SB 439 - SECURITIES/INVESTMENT ADVISERS/AB -
SEN. REEVES
- SB 482 - PERMIT FEES/AB - SEN. LUCAS
- SB 861 - DISPENSING OPTICIANS - SEN. LEE
- SB 921 - CHARITABLE SOLICITATIONS EXEMPTION -
SEN. ODOM
- SB 1035 - MODIFY FOOD TAX/MERCHANT'S DISCOUNT -
SEN. KERR
- SB 711 - LELAND ANNEXATION - SEN. SOLES

1 (3%) and shall apply to the gross receipts derived from the rental of any room,
2 lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar
3 place within the county that is subject to sales tax imposed by the State under G.S.
4 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does
5 not apply to accommodations furnished by nonprofit charitable, educational, or
6 religious organizations or to a business that offers to rent fewer than five units.

7 (c) **Collection.** Every operator of a business subject to the tax levied
8 under this section shall, on and after the effective date of the levy of the tax, collect
9 the tax. This tax shall be collected as part of the charge for furnishing a taxable
10 accommodation. The tax shall be stated and charged separately from the sales
11 records, and shall be paid by the purchaser to the operator of the business as trustee
12 for and on account of the county. The tax shall be added to the sales price and shall
13 be passed on to the purchaser instead of being borne by the operator of the business.
14 The county shall design, print, and furnish to all appropriate businesses and persons
15 in the county the necessary forms for filing returns and instructions to ensure the full
16 collection of the tax. An operator of a business who collects the occupancy tax
17 levied under this section may deduct from the amount remitted to the county a
18 discount equal to the discount the State allows the operator for State sales and use
19 tax.

20 (d) **Administration.** The county shall administer a tax levied under this
21 section. A tax levied under this section is due and payable to the county finance
22 officer in monthly installments on or before the fifteenth day of the month following
23 the month in which the tax accrues. Every person, firm, corporation, or association
24 liable for the tax shall, on or before the fifteenth day of each month, prepare and
25 render a return on a form prescribed by the county. The return shall state the total
26 gross receipts derived in the preceding month from rentals upon which the tax is
27 levied.

28 A return filed with the county finance officer under this section is not a
29 public record and may not be disclosed except in accordance with G.S. 153A-148.1
30 or G.S. 160A-208.1.

31 (e) **Penalties.** A person, firm, corporation, or association who fails or
32 refuses to file the return or pay the tax required by this section is subject to the civil
33 and criminal penalties set by G.S. 105-236 for failure to pay or file a return for State
34 sales and use taxes. The Madison County Board of Commissioners has the same
35 authority to waive the penalties for a room occupancy tax that the Secretary of
36 Revenue has to waive the penalties for State sales and use taxes.

37 (f) **Distribution and use of tax revenue.** Madison County shall, on a
38 quarterly basis, remit the net proceeds of the occupancy tax to the Madison County
39 Tourism Development Authority. The Authority shall use at least two-thirds of the
40 funds remitted to it under this subsection to promote travel and tourism in Madison
41 County and shall use the remainder for tourism-related expenditures. The
42 administrative expenses of the Authority may not exceed fifteen percent (15%) of the
43 funds remitted to it under this subsection.

44 The following definitions apply in this subsection:

- 1 (1) Net proceeds. -- Gross proceeds less the cost to the county of
2 administering and collecting the tax, as determined by the finance
3 officer, not to exceed five percent (5%) of the gross proceeds.
- 4 (2) Promote travel and tourism. -- To advertise or market an area or
5 activity, publish and distribute pamphlets and other materials,
6 conduct market research, or engage in similar promotional
7 activities that attract tourists or business travelers to the area; the
8 term includes administrative expenses incurred in engaging in the
9 listed activities.
- 10 (3) Tourism-related expenditures. -- Expenditures that are designed to
11 increase the use of lodging facilities in a county or to attract
12 tourists or business travelers to the county. The term includes
13 expenditures to construct, maintain, operate, or market a
14 convention or meeting facility, a visitors' center, or a coliseum and
15 other expenditures that, in the judgment of the Authority, will
16 facilitate and promote tourism.
- 17 (g) **Effective date of levy.** A tax levied under this section shall become
18 effective on the date specified in the resolution levying the tax. That date must be
19 the first day of a calendar month, however, and may not be earlier than the first day
20 of the second month after the date the resolution is adopted.
- 21 (h) **Repeal.** A tax levied under this section may be repealed by a
22 resolution adopted by the Madison County Board of Commissioners. Repeal of a tax
23 levied under this section shall become effective on the first day of a month and may
24 not become effective until the end of the fiscal year in which the repeal resolution
25 was adopted. Repeal of a tax levied under this section does not affect a liability for a
26 tax that was attached before the effective date of the repeal, nor does it affect a right
27 to a refund of a tax that accrued before the effective date of the repeal.
- 28 Section 2. Tourism Development Authority. (a) **Appointment and**
29 **membership.** When the board of commissioners adopts a resolution levying a room
30 occupancy tax under this act, it shall also adopt a resolution creating a county
31 Tourism Development Authority, which shall be a public authority under the Local
32 Government Budget and Fiscal Control Act. The Authority shall be composed of
33 three ex officio voting members as provided in subdivision (1) of this subsection and
34 eight members appointed by the board of commissioners as provided in subdivisions
35 (2) through (5) of this subsection. In order to be appointed to the Authority, an
36 individual must have demonstrated a commitment to promoting tourism in Madison
37 County. The members of the Authority shall be:
- 38 (1) The mayors of the Towns of Hot Springs, Mars Hill, and Marshall,
39 to serve ex officio. Each mayor may designate another resident of
40 the mayor's town to serve in his or her place.
- 41 (2) Three residents of Madison County, one each recommended by the
42 mayors of the Towns of Hot Springs, Mars Hill, and Marshall,
43 respectively.

1 (3) Two residents of Madison County selected by the Madison County
2 Board of Commissioners.

3 (4) The Chair of the Madison County Chamber of Commerce or an
4 individual recommended by the Chair of the Madison County
5 Chamber of Commerce.

6 (5) Two residents of Madison County recommended by the Madison
7 County Chamber of Commerce.

8 Members shall serve for a term of two years and shall serve without
9 compensation. The resolution creating the Authority shall provide for the filling of
10 vacancies on the Authority. The board of commissioners shall designate one member
11 of the Authority as chair. The Authority shall meet at the call of the chair and shall
12 adopt rules of procedure to govern its meetings. The Finance Officer of Madison
13 County shall be the ex officio finance officer of the Authority.

14 (b) **Duties.** The Authority shall expend the net proceeds of the tax
15 levied under this act for the purposes provided in Section 1 of this act. The
16 Authority shall promote travel, tourism, and conventions in the county, sponsor
17 tourist-related events and activities in the county, and finance tourist-related capital
18 projects in the county.

19 (c) **Reports.** The Authority shall report quarterly and at the close of the
20 fiscal year to the board of commissioners on its receipts and expenditures for the
21 preceding quarter and for the year in such detail as the board may require.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

HOUSE BILL 603*
Proposed Committee Substitute H603-CSLC-5/7
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Madison Occupancy Tax.

(Local)

Sponsors:

Referred to: Local and Regional Government II, if favorable,
Finance.

March 25, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE MADISON COUNTY TO LEVY A ROOM OCCUPANCY AND
3 TOURISM DEVELOPMENT TAX.
4 The General Assembly of North Carolina enacts:
5 Section 1. Occupancy tax. (a) Referendum. The
6 Madison County Board of Commissioners may direct the county board
7 of elections to conduct an advisory referendum on the question of
8 whether a room occupancy tax of up to three percent (3%) will be
9 levied in accordance with this act. The election shall be held
10 on a date jointly agreed upon by the two boards and shall be held
11 in accordance with the procedures of G.S. 163-287.
12 The form of the question to be presented on a ballot for
13 a special election concerning the levy of the tax authorized by
14 this act shall be:
15 [] FOR [] AGAINST
16 Tax on rental of lodging at hotels, motels, and similar
17 businesses, at a maximum rate of three percent (3%), to be used
18 to promote travel and tourism and for tourism-related
19 expenditures.

1 (b) Authorization and scope. If a majority of those
2 voting in a referendum held pursuant to this act vote for the
3 levy of the tax, the Madison County Board of Commissioners may by
4 resolution levy a room occupancy tax as provided in this act. In
5 addition, if the county has not held a referendum, or if five
6 years have passed since the tax was defeated at a referendum, the
7 Madison County Board of Commissioners may by resolution, after
8 not less than 10 days' public notice and after a public hearing
9 held pursuant thereto, levy a room occupancy tax as provided in
10 this act. The tax authorized by this act may be levied at a rate
11 of up to three percent (3%) and shall apply to the gross receipts
12 derived from the rental of any room, lodging, or accommodation
13 furnished by a hotel, motel, inn, tourist camp, or similar place
14 within the county that is subject to sales tax imposed by the
15 State under G.S. 105-164.4(a)(3). This tax is in addition to any
16 State or local sales tax. This tax does not apply to
17 accommodations furnished by nonprofit charitable, educational, or
18 religious organizations or to a business that offers to rent
19 fewer than five units.

20 (c) Administration. Except as otherwise provided in
21 this section, a tax levied under this section shall be levied,
22 administered, collected, and repealed as provided in G.S.
23 153A-155. The penalties provided in G.S. 153A-155 apply to a tax
24 levied under this section.

25 (d) Distribution and use of tax revenue. Madison
26 County shall, on a quarterly basis, remit the net proceeds of the
27 occupancy tax to the Madison County Tourism Development
28 Authority. The Authority shall use at least two-thirds of the
29 funds remitted to it under this subsection to promote travel and
30 tourism in Madison County and shall use the remainder for
31 tourism-related expenditures. The administrative expenses of the
32 Authority may not exceed fifteen percent (15%) of the funds
33 remitted to it under this subsection.

34 The following definitions apply in this subsection:

- 35 (1) Net proceeds. -- Gross proceeds less the cost to
36 the county of administering and collecting the tax,
37 as determined by the finance officer, not to exceed
38 five percent (5%) of the gross proceeds.
- 39 (2) Promote travel and tourism. -- To advertise or
40 market an area or activity, publish and distribute
41 pamphlets and other materials, conduct market
42 research, or engage in similar promotional
43 activities that attract tourists or business
44 travelers to the area; the term includes

1 administrative expenses incurred in engaging in the
2 listed activities.

3 (3) Tourism-related expenditures. -- Expenditures that
4 are designed to increase the use of lodging
5 facilities in a county or to attract tourists or
6 business travelers to the county. The term
7 includes expenditures to construct, maintain,
8 operate, or market a convention or meeting
9 facility, a visitors' center, or a coliseum and
10 other expenditures that, in the judgment of the
11 Authority, will facilitate and promote tourism.

12 Section 2. Tourism Development Authority. (a)
13 Appointment and membership. When the board of commissioners
14 adopts a resolution levying a room occupancy tax under this act,
15 it shall also adopt a resolution creating a county Tourism
16 Development Authority, which shall be a public authority under
17 the Local Government Budget and Fiscal Control Act. The Authority
18 shall be composed of three ex officio voting members as provided
19 in subdivision (1) of this subsection and eight members appointed
20 by the board of commissioners as provided in subdivisions (2)
21 through (5) of this subsection. In order to be appointed to the
22 Authority, an individual must have demonstrated a commitment to
23 promoting tourism in Madison County. The members of the
24 Authority shall be:

25 (1) The mayors of the Towns of Hot Springs, Mars Hill,
26 and Marshall, to serve ex officio. Each mayor may
27 designate another resident of the mayor's town to
28 serve in his or her place.

29 (2) Three residents of Madison County, one each
30 recommended by the mayors of the Towns of Hot
31 Springs, Mars Hill, and Marshall, respectively.

32 (3) Two residents of Madison County selected by the
33 Madison County Board of Commissioners.

34 (4) The Chair of the Madison County Chamber of Commerce
35 or an individual recommended by the Chair of the
36 Madison County Chamber of Commerce.

37 (5) Two residents of Madison County recommended by the
38 Madison County Chamber of Commerce.

39 Members shall serve for a term of two years and shall
40 serve without compensation. The resolution creating the
41 Authority shall provide for the filling of vacancies on the
42 Authority. The board of commissioners shall designate one member
43 of the Authority as chair. The Authority shall meet at the call
44 of the chair and shall adopt rules of procedure to govern its

1 meetings. The Finance Officer of Madison County shall be the ex
2 officio finance officer of the Authority.

3 (b) Duties. The Authority shall expend the net
4 proceeds of the tax levied under this act for the purposes
5 provided in Section 1 of this act. The Authority shall promote
6 travel, tourism, and conventions in the county, sponsor
7 tourist-related events and activities in the county, and finance
8 tourist-related capital projects in the county.

9 (c) Reports. The Authority shall report quarterly and
10 at the close of the fiscal year to the board of commissioners on
11 its receipts and expenditures for the preceding quarter and for
12 the year in such detail as the board may require.

13 Section 3. County administrative provisions. (a)
14 Article 7 of Chapter 153A of the General Statutes is amended by
15 adding a new section to read:

16 "§ 153A-155. Uniform provisions for room occupancy taxes.

17 (a) Scope. -- This section applies only to counties the General
18 Assembly has authorized to levy room occupancy taxes.

19 (b) Levy. -- A room occupancy tax may be levied only by
20 resolution, after not less than 10 days' public notice and after
21 a public hearing held pursuant thereto. A room occupancy tax
22 shall become effective on the date specified in the resolution
23 levying the tax. That date must be the first day of a calendar
24 month, however, and may not be earlier than the first day of the
25 second month after the date the resolution is adopted.

26 (c) Collection. -- Every operator of a business subject to a
27 room occupancy tax shall, on and after the effective date of the
28 levy of the tax, collect the tax. The tax shall be collected as
29 part of the charge for furnishing a taxable accommodation. The
30 tax shall be stated and charged separately from the sales
31 records, and shall be paid by the purchaser to the operator of
32 the business as trustee for and on account of the taxing county.
33 The tax shall be added to the sales price and shall be passed on
34 to the purchaser instead of being borne by the operator of the
35 business. The taxing county shall design, print, and furnish to
36 all appropriate businesses and persons in the county the
37 necessary forms for filing returns and instructions to ensure the
38 full collection of the tax. An operator of a business who
39 collects a room occupancy tax may deduct from the amount remitted
40 to the taxing county a discount equal to the discount the State
41 allows the operator for State sales and use tax.

42 (d) Administration. -- The taxing county shall administer a
43 room occupancy tax it levies. A room occupancy tax is due and
44 payable to the county finance officer in monthly installments on

1 or before the 15th day of the month following the month in which
2 the tax accrues. Every person, firm, corporation, or association
3 liable for the tax shall, on or before the 15th day of each
4 month, prepare and render a return on a form prescribed by the
5 taxing county. The return shall state the total gross receipts
6 derived in the preceding month from rentals upon which the tax is
7 levied. A room occupancy tax return filed with the county
8 finance officer is not a public record and may not be disclosed
9 except in accordance with G.S. 153A-148.1 or G.S. 160A-208.1.

10 (e) Penalties. -- A person, firm, corporation, or association
11 who fails or refuses to file a room occupancy tax return or pay a
12 room occupancy tax as required by law is subject to the civil and
13 criminal penalties set by G.S. 105-236 for failure to pay or file
14 a return for State sales and use taxes. The governing board of
15 the taxing county has the same authority to waive the penalties
16 for a room occupancy tax that the Secretary of Revenue has to
17 waive the penalties for State sales and use taxes.

18 (f) Repeal or Reduction. -- A room occupancy tax levied by a
19 county may be repealed or reduced by a resolution adopted by the
20 governing body of the county. Repeal or reduction of a room
21 occupancy tax shall become effective on the first day of a month
22 and may not become effective until the end of the fiscal year in
23 which the resolution was adopted. Repeal or reduction of a room
24 occupancy tax does not affect a liability for a tax that was
25 attached before the effective date of the repeal or reduction,
26 nor does it affect a right to a refund of a tax that accrued
27 before the effective date of the repeal or reduction."

28 (b) This section applies only to Madison County.

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

**NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE**

BILL NUMBER: HB 603
SHORT TITLE: Madison Occupancy Tax
SPONSOR(S): Representative Ramsey, et al.

FISCAL IMPACT

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

FY 1997-98 FY 1998-99 FY 1999-00 FY 2000-01 FY 2001-02

REVENUES See assumptions and methodology

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: The County of Madison

EFFECTIVE DATE: When it becomes law

BILL SUMMARY:

The proposed act authorizes Madison County, if approved by the voters of the county, to levy a room occupancy tax of 3% and to create a tourism development board. Seventy five percent of the revenue is to be used to promote travel and tourism. The remaining twenty five percent is to be used for tourism-related expenses. The act set the amount of administrative expenses at 15% of the funds remitted to the authority.

ASSUMPTIONS AND METHODOLOGY:

The Department of Health for Madison County reports that 87 rooms are currently for rent by various establishments in the county; several bed and breakfast inns, a motor court, and an alpine court. Using a range of \$35.00 to \$95.00 a night for room lodging and a 3% occupancy tax rate, the expected revenues from an occupancy tax would be \$11,000 to \$30,000 annually. The estimate assumes an occupancy rate of 65% for six months out of the year. If the same rooms were occupied only 50% of the time the expected revenues would range from \$8,000 to \$23,000.

The finance official of the county or city that levies an occupancy tax is responsible for administering the tax.

FISCAL RESEARCH DIVISION

733-4910

PREPARED BY: Warren Plonk

APPROVED BY: Tom Covington TomC

DATE: April 9, 1997

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 124

Short Title: Amend White Goods Tax.

(Public)

Sponsors: Senators Odom; and Kinnaird.

Referred to: Finance.

February 17, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO REDUCE THE WHITE GOODS DISPOSAL TAX RATE TO ONE
3 RATE FOR ANY WHITE GOOD REGARDLESS OF WHETHER THE WHITE
4 GOOD CONTAINS CHLOROFLUOROCARBONS, TO REPEAL THE WHITE
5 GOODS DISPOSAL TAX SUNSET, TO PROVIDE THAT WHITE GOODS
6 TAX REVENUE THAT IS NOT NEEDED FOR THE MANAGEMENT OF
7 DISCARDED WHITE GOODS MAY BE USED TO CLEAN UP ILLEGAL
8 DUMP SITES, AND TO ALTER THE DISTRIBUTION OF THE TAX
9 PROCEEDS FROM THIS TAX.

10 The General Assembly of North Carolina enacts:

11 Section 1. G.S. 105-187.21 reads as rewritten:

12 "**§ 105-187.21. Tax imposed.**

13 A privilege tax is imposed on a white goods retailer at a flat rate for each new
14 white good that is sold by the retailer. An excise tax is imposed on a new white good
15 purchased outside the State for storage, use, or consumption in this State. The rate
16 of the privilege tax and the excise tax is five dollars ~~(\$5.00) if the new white good~~
17 ~~does not contain chlorofluorocarbon refrigerants and is ten dollars (\$10.00) if the new~~
18 ~~white good contains chlorofluorocarbon refrigerants. These taxes are (\$5.00). This~~
19 tax is in addition to all other taxes."

20 Section 2. G.S. 130A-309.82 reads as rewritten:

21 "**§ 130A-309.82. Use of disposal tax proceeds by counties.**

22 Article 5C of Chapter 105 of the General Statutes imposes a tax on new white
23 goods to provide funds for the management of discarded white goods. A county ~~may~~
24 must use proceeds of the tax distributed to it under that Article ~~only~~ for the

1 management of discarded white goods. If a county has a surplus of tax proceeds after
2 reimbursing its costs of managing discarded white goods, then it may use the
3 remainder of the tax proceeds for the cleanup of unmanaged illegal dump sites."

4 Section 3. G.S. 130A-309.83 reads as rewritten:

5 "**§ 130A-309.83. White Goods Management Account.**

6 The White Goods Management Account is established within the Department.
7 The Account consists of revenue credited to the Account from the proceeds of the
8 white goods disposal tax imposed by Article 5C of Chapter 105 of the General
9 ~~Statutes. Statutes~~ and any revenue credited to the Account as the result of the
10 recovery by the State of part or all of the costs of cleaning up an unmanaged illegal
11 dump site.

12 The Department shall use revenue in the Account to make grants to units of local
13 government to assist them in managing discarded white goods. ~~goods and cleaning up~~
14 unmanaged illegal dump sites. The Department must make grants for the
15 management of discarded white goods to all applicants who meet the grant criteria
16 before it makes a grant for cleaning up unmanaged illegal dump sites. To administer
17 the grants, the Department shall establish procedures for applying for a grant and the
18 criteria for selecting among grant applicants. The criteria for a grant to manage
19 discarded white goods shall include the financial ability of a unit to manage white
20 goods, the severity of a unit's white goods management problem, and the effort made
21 by a unit to manage white goods within the resources available to it. The criteria for
22 a grant to clean up an unmanaged illegal dump site shall include the financial ability
23 of the unit to clean up the site and the severity of the problem created by the site.

24 A unit of local government is not eligible for a grant to manage discarded white
25 goods unless its costs of managing white goods for a six-month period preceding the
26 date the unit files an application for a grant exceeded the amount the unit received
27 during that period from the proceeds of the white goods disposal tax under G.S. 105-
28 187.24. The Department shall determine the six-month period to be used in
29 determining who is eligible for a ~~grant. grant to manage discarded white goods.~~ A
30 grant to a unit to manage discarded white goods may not exceed the unit's
31 unreimbursed cost for the six-month period."

32 Section 4. G.S. 105-187.24 reads as rewritten:

33 "**§ 105-187.24. Use of tax proceeds.**

34 The Secretary shall distribute the taxes collected under this Article, less the
35 Department of Revenue's allowance for administrative expenses, in accordance with
36 this section. The Secretary may retain the Department's cost of collection, not to
37 exceed two hundred twenty-five thousand dollars (\$225,000) a year, as reimbursement
38 to the Department.

39 Each quarter, the Secretary shall credit ~~five percent (5%)~~ eight percent (8%) of
40 the net tax proceeds to the Solid Waste Management Trust Fund and shall credit
41 twenty percent (20%) of the net tax proceeds to the White Goods Management
42 Account. The Secretary shall distribute the remaining ~~seventy-five percent (75%)~~
43 seventy-two percent (72%) of the net tax proceeds among the counties on a per

1 capita basis according to the most recent annual population estimates certified to the
2 Secretary by the State Planning Officer.

3 A county may use funds distributed to it under this section only as provided in
4 G.S. 130A-309.82. A county that receives funds under this section and that has an
5 interlocal agreement with another unit of local government under which the other
6 unit provides for the disposal of solid waste for the county must transfer the amount
7 received under this section to that other unit. A unit to which funds are transferred is
8 subject to the same restrictions on use of the funds as the county."

9 Section 5. G.S. 130A-309.12 reads as rewritten:

10 **"§ 130A-309.12. Solid Waste Management Trust Fund.**

11 (a) The Solid Waste Management Trust Fund is created and is to be administered
12 by the Department for the purposes of:

- 13 (1) Funding activities of the Department to promote waste reduction
14 and recycling including but not limited to public education
15 programs and technical assistance to units of local government;
- 16 (2) Funding research on the solid waste stream in North Carolina;
- 17 (3) Funding activities related to the development of secondary
18 materials markets;
- 19 (4) Providing funding for demonstration projects as provided by this
20 Part; and
- 21 (5) Providing funding for research by The University of North
22 Carolina and independent nonprofit colleges and universities
23 within the State which are accredited by the Southern Association
24 of Colleges and Schools as provided by this Part.

25 (b) The Solid Waste Management Trust Fund shall consist of the following:

- 26 (1) Funds appropriated by the General Assembly.
- 27 (2) Contributions and grants from public or private sources.
- 28 (3) Ten percent (10%) of the proceeds of the scrap tire disposal tax
29 imposed under Article 5B of Chapter 105 of the General Statutes.
- 30 (4) ~~Five percent (5%)~~ Eight percent (8%) of the proceeds of the white
31 goods disposal tax imposed under Article 5C of Chapter 105 of the
32 General Statutes.

33 (c) The Department shall report annually on or before 1 September to the
34 Environmental Review Commission as to the condition of the Solid Waste
35 Management Trust Fund and as to the use of all funds allocated from the Solid Waste
36 Management Trust Fund."

37 Section 6. Section 11 of Chapter 471 of the 1993 Session Laws, as
38 amended by Section 15.1(b) of Chapter 769 of the 1993 Session Laws, reads as
39 rewritten:

40 "Sec. 11. Sections 1 through 5 of this act and this section become effective
41 January 1, 1994. ~~Section 3 of this act expires July 1, 1998. Section 6 of this act~~
42 ~~becomes effective July 1, 1998. Sections 7, 8, and 9 of this act become effective July~~
43 ~~1, 1999.~~

1 ~~The repeal of the tax imposed by Section 3 of this act does not affect the rights or~~
2 ~~liabilities of the State, a taxpayer, or another person that arose during the time the~~
3 ~~tax was in effect.~~ The first report submitted by the Department to the
4 Environmental Review Commission under G.S. 130A-309.85, as enacted by this act,
5 shall cover the period from January 1, 1994, to June 30, 1994."

6 Section 7. This act becomes effective January 1, 1998, and applies to the
7 tax year beginning January 1, 1998.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

D

SENATE BILL 124
Proposed Committee Substitute S124-PCS1792

Short Title: Amend White Goods Tax.

(Public)

Sponsors:

Referred to:

February 17, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO REDUCE THE WHITE GOODS DISPOSAL TAX RATE TO ONE
3 RATE FOR ANY WHITE GOOD REGARDLESS OF WHETHER THE WHITE
4 GOOD CONTAINS CHLOROFLUOROCARBONS, TO EXTEND THE WHITE
5 GOODS DISPOSAL TAX SUNSET, TO PROVIDE THAT WHITE GOODS
6 TAX REVENUE THAT IS NOT NEEDED FOR THE MANAGEMENT OF
7 DISCARDED WHITE GOODS MAY BE USED TO CLEAN UP ILLEGAL
8 DUMP SITES, AND TO ALTER THE DISTRIBUTION OF THE TAX
9 PROCEEDS FROM THIS TAX.

10 The General Assembly of North Carolina enacts:

11 Section 1. G.S. 105-187.21 reads as rewritten:

12 "§ 105-187.21. Tax imposed.

13 A privilege tax is imposed on a white goods retailer at a flat rate for each new
14 white good that is sold by the retailer. An excise tax is imposed on a new white good
15 purchased outside the State for storage, use, or consumption in this State. The rate
16 of the privilege tax and the excise tax is ~~five dollars (\$5.00) if the new white good~~
17 ~~does not contain chlorofluorocarbon refrigerants and is ten dollars (\$10.00) if the new~~
18 ~~white good contains chlorofluorocarbon refrigerants.~~ three dollars (\$3.00). These
19 taxes are in addition to all other taxes."

20 Section 2. G.S. 130A-309.82 reads as rewritten:

21 "§ 130A-309.82. Use of disposal tax proceeds by counties.

22 Article 5C of Chapter 105 of the General Statutes imposes a tax on new white
23 goods to provide funds for the management of discarded white goods. A county may

1 must use the proceeds of the tax distributed to it under that Article only for the
2 management of discarded white goods. If a county has a surplus of tax proceeds after
3 reimbursing its costs of managing discarded white goods, then it may use the
4 remainder of the tax proceeds for the cleanup of unmanaged illegal dump sites."

5 Section 3. G.S. 130A-309.83 reads as rewritten:

6 "**§ 130A-309.83. White Goods Management Account.**

7 The White Goods Management Account is established within the Department.
8 The Account consists of revenue credited to the Account from the proceeds of the
9 white goods disposal tax imposed by Article 5C of Chapter 105 of the General
10 ~~Statutes. Statutes and any revenue credited to the Account as the result of the~~
11 recovery by the State of part or all of the costs of cleaning up an unmanaged illegal
12 dump site.

13 The Department shall use revenue in the Account to make grants to units of local
14 government to assist them in managing discarded white goods. ~~goods and cleaning up~~
15 unmanaged illegal dump sites. The Department must make grants for the
16 management of discarded white goods to all applicants who meet the grant criteria
17 before it makes a grant for cleaning up unmanaged illegal dump sites. To administer
18 the grants, the Department shall establish procedures for applying for a grant and the
19 criteria for selecting among grant applicants. The criteria for a grant to manage
20 discarded white goods shall include the financial ability of a unit to manage white
21 goods, the severity of a unit's white goods management problem, and the effort made
22 by a unit to manage white goods within the resources available to it. The criteria for
23 a grant to clean up an unmanaged illegal dump site shall include the financial ability
24 of the unit to clean up the site and the severity of the problem created by the site.

25 A unit of local government is not eligible for a grant to manage discarded white
26 goods unless its costs of managing white goods for a six-month period preceding the
27 date the unit files an application for a grant exceeded the amount the unit received
28 during that period from the proceeds of the white goods disposal tax under G.S. 105-
29 187.24. The Department shall determine the six-month period to be used in
30 determining who is eligible for a grant. grant to manage discarded white goods. A
31 grant to a unit to manage discarded white goods may not exceed the unit's
32 unreimbursed cost for the six-month period."

33 Section 4. G.S. 105-187.24 reads as rewritten:

34 "**§ 105-187.24. Use of tax proceeds.**

35 The Secretary shall distribute the taxes collected under this Article, less the
36 Department of Revenue's allowance for administrative expenses, in accordance with
37 this section. The Secretary may retain the Department's cost of collection, not to
38 exceed two hundred twenty-five thousand dollars (\$225,000) a year, as reimbursement
39 to the Department.

40 Each quarter, the Secretary shall credit ~~five percent (5%)~~ eight percent (8%) of
41 the net tax proceeds to the Solid Waste Management Trust Fund and shall credit
42 twenty percent (20%) of the net tax proceeds to the White Goods Management
43 Account. The Secretary shall distribute the remaining ~~seventy-five percent (75%)~~
44 seventy-two percent (72%) of the net tax proceeds among the counties on a per

1 capita basis according to the most recent annual population estimates certified to the
2 Secretary by the State Planning Officer.

3 A county may use funds distributed to it under this section only as provided in
4 G.S. 130A-309.82. A county that receives funds under this section and that has an
5 interlocal agreement with another unit of local government under which the other
6 unit provides for the disposal of solid waste for the county must transfer the amount
7 received under this section to that other unit. A unit to which funds are transferred is
8 subject to the same restrictions on use of the funds as the county."

9 Section 5. G.S. 130A-309.12 reads as rewritten:

10 **"§ 130A-309.12. Solid Waste Management Trust Fund.**

11 (a) The Solid Waste Management Trust Fund is created and is to be administered
12 by the Department for the purposes of:

- 13 (1) Funding activities of the Department to promote waste reduction
14 and recycling including but not limited to public education
15 programs and technical assistance to units of local government;
- 16 (2) Funding research on the solid waste stream in North Carolina;
- 17 (3) Funding activities related to the development of secondary
18 materials markets;
- 19 (4) Providing funding for demonstration projects as provided by this
20 Part; and
- 21 (5) Providing funding for research by The University of North
22 Carolina and independent nonprofit colleges and universities
23 within the State which are accredited by the Southern Association
24 of Colleges and Schools as provided by this Part.

25 (b) The Solid Waste Management Trust Fund shall consist of the following:

- 26 (1) Funds appropriated by the General Assembly.
- 27 (2) Contributions and grants from public or private sources.
- 28 (3) Ten percent (10%) of the proceeds of the scrap tire disposal tax
29 imposed under Article 5B of Chapter 105 of the General Statutes.
- 30 (4) ~~Five percent (5%)~~ Eight percent (8%) of the proceeds of the white
31 goods disposal tax imposed under Article 5C of Chapter 105 of the
32 General Statutes.

33 (c) The Department shall report annually on or before 1 September to the
34 Environmental Review Commission as to the condition of the Solid Waste
35 Management Trust Fund and as to the use of all funds allocated from the Solid Waste
36 Management Trust Fund."

37 Section 6. Section 11 of Chapter 471 of the 1993 Session Laws, as
38 amended by Section 15.1(b) of Chapter 769 of the 1993 Session Laws, reads as
39 rewritten:

40 "Sec. 11. Sections 1 through 5 of this act and this section become effective
41 January 1, 1994. Section 3 of this act expires July 1, ~~1998~~: 2003. Section 6 of this act
42 becomes effective July 1, 1998. Sections 7, 8, and 9 of this act become effective July
43 1, 1999.

1 The repeal of the tax imposed by Section 3 of this act does not affect the rights or
2 liabilities of the State, a taxpayer, or another person that arose during the time the
3 tax was in effect. The first report submitted by the Department to the
4 Environmental Review Commission under G.S. 130A-309.85, as enacted by this act,
5 shall cover the period from January 1, 1994, to June 30, 1994."

6 Section 7. Sections 6, 7, 8, and 9 of Chapter 471 of the 1993 Session
7 Laws are repealed.

8 Section 8. Sections 7 and 8 of this act are effective when this act
9 becomes law. The remaining sections of this act become effective January 1, 1998.

EXPLANATION OF SENATE BILL 124
Proposed Committee Substitute
Amend White Goods Tax

TO: Senate Finance Committee
FROM: Sabra Faires, Committee Counsel
DATE: May 7, 1997
SPONSOR: Senator Odom

Senate Bill 124 changes the tax that is imposed on "white goods" as follows, effective January 1, 1998:

1. It extends the sunset on the tax so that the tax expires five years after the current repeal date. Under the bill, the tax expires July 1, 2003. Under current law, the tax will expire July 1, 1998.
2. It reduces the tax on all new white goods to \$3.00. Under current law, the tax on new white goods that contain chloroflourocarbons is \$10.00 and the tax on those that do not is \$5.00.
3. It allows revenue from the white goods tax to be used to clean up unmanaged, illegal dump sites if the revenue is not needed for the disposal of discarded white goods. Section 2 allows counties to use surplus white goods tax revenue for this purpose and Section 3 allows the Department of Environment, Health, and Natural Resources to make grants to counties for this purpose from the White Goods Management Account.
4. It changes the allocation of the white goods tax revenue by increasing the percentage that goes to the Solid Waste Management Trust Fund (from 5% to 8%) and decreasing the amount that is distributed to counties (from 75% to 72%).

The white goods tax was imposed effective January 1, 1994. The purpose of the tax was to provide a source of revenue for the proper disposal of discarded white goods. A white good is a domestic or commercial large appliance, such as a refrigerator, a water heater, an air conditioner unit, or a dishwasher. Chlorofluorocarbon refrigerant is a type of gas that must be removed from a white good under federal law. Chlorofluorocarbon refrigerants were banned as of January 1, 1996, by the Environmental Protection Agency.

Under current law, the tax proceeds are distributed quarterly as follows:

- (1) 5% to the Solid Waste Management Trust Fund. The money in this Fund is used to fund activities of the Department of Environment, Health, and Natural Resources (DEHNR) to promote waste reduction and recycling, to fund research on the solid waste stream in North Carolina, to fund

activities related to the development of secondary materials markets, to fund demonstration projects, and to fund research by in-State colleges and universities.

- (2) 20% to the White Goods Management Account. The money in this Account is used to make grants to local governmental units to assist them in managing discarded white goods.
- (3) 75% to the 100 counties on a per capita basis to be used only for the management of discarded white goods.

**NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE**

BILL NUMBER: Senate Bill 124
SHORT TITLE: Amend White Goods Tax
SPONSOR(S): Proposed Committee Substitute

Estimate (\$ Loss)					
FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 1997-98</u>	<u>FY 1998-99</u>	<u>FY 1999-00</u>	<u>FY 2000-01</u>	<u>FY 2001-02</u>
REVENUES					
Total (Loss)	\$ (4,325,926)	(4,576,830)	(4,842,286)	(5,123,139)	(5,420,281)
Gain/Loss by Fund					
SWMTF 8%	\$ (96,501)	(102,099)	(108,020)	(114,285)	(120,914)
WGMA 20%	\$ (865,185)	(915,366)	(968,457)	(1,024,628)	(1,084,056)
COUNTY 72%	\$ (3,364,240)	(3,559,366)	(3,765,809)	(3,984,226)	(4,215,311)
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:					
	SWMTF- Solid Waste Management Trust Fund				
	WGMA - White Goods Management Account				
	County units of government that dispose of white goods				
EFFECTIVE DATE: January 1, 1998 and expires on July 1, 2003					

BILL SUMMARY:

The current white goods disposal tax, paid at the point of sale on new goods, is \$5.00 on those that do not contain refrigerants and \$10.00 on those that do. This bill reduces the tax on all white goods to \$3.00.

The act changes the allocation of tax revenues. The SWMTF is to receive 8% of the revenue instead of 5% and the county distribution is reduced from 75% to 72%. The percentage of revenue going to the WGMA does not change. Under the act, if a county has surplus revenue after covering its cost of managing discarded white goods it may use the additional revenue to clean-up illegal dump sites.

ASSUMPTIONS AND METHODOLOGY:

The fiscal summary is found on page 3. The tax data used in the analysis was provided by the Department of Revenue Sales and Use Tax Division. The Association of Home Appliance Manufactures provided information on product sales in the State.

The over all rate decrease is equal to 52%. Thirty nine percent of the white goods sold in 1996 used refrigerants and the remaining 61% of the goods sold did not contain refrigerants. The rate on white goods containing refrigerants is decreased by 70% and the rate on the remaining white goods is reduced 48%. The result, as measured in total revenue loss is 52%.

FISCAL RESEARCH DIVISION

733-4910

PREPARED BY: H. Warren Plonk

APPROVED BY:

DATE: April 29, 1997

Fiscal Summary White Goods Disposal Tax

White Goods Collections History

Collections By FY Quarters	FY 93-94	FY 94-95	FY 95-96	Estimate FY 96-97
September		\$2,338,720	\$2,555,512	\$2,621,955
December		\$1,705,982	\$1,666,539	\$1,709,869
March	\$828,523	\$1,558,002	\$1,504,094	\$1,543,200
June	\$1,680,750	\$1,793,733	\$1,937,630	\$1,988,008
TOTAL	\$2,509,273	\$7,396,437	\$7,663,775	\$7,863,033

Revenue Forecast Summary

Collections By FY Quarters	Estimate FY 97-98	Estimate FY 98-99	Estimate FY 99-00	Estimate FY 00-01	Estimate FY 01-02
September	\$2,774,029	\$2,934,922	\$3,105,148	\$3,285,246	\$3,475,791
December	\$1,809,041	\$1,913,966	\$2,024,976	\$2,142,424	\$2,266,685
March	\$1,632,706	\$1,727,403	\$1,827,592	\$1,933,593	\$2,045,741
June	\$2,103,313	\$2,225,305	\$2,354,373	\$2,490,926	\$2,635,400
TOTAL	\$8,319,089	\$8,801,596	\$9,312,089	\$9,852,190	\$10,423,617
	52% (loss) (\$4,325,926)	(\$4,576,830)	(\$4,842,286)	(\$5,123,139)	(\$5,420,281)
Collections	\$3,993,163	\$4,224,766	\$4,469,803	\$4,729,051	\$5,003,336

Revenue Distribution History

SWMTF 5%	\$125,464	\$369,822	\$383,189	\$393,152
WGMA 20%	\$501,855	\$1,479,287	\$1,532,755	\$1,572,607
COUNTY 75%	\$1,881,955	\$5,547,328	\$5,747,831	\$5,897,275
TOTAL	\$2,509,273	\$7,396,437	\$7,663,775	\$7,863,033

Current Distribution under Revenue Forecast

SWMTF 5%	\$415,954	\$440,080	\$465,604	\$492,609	\$521,181
WGMA 20%	\$1,663,818	\$1,760,319	\$1,862,418	\$1,970,438	\$2,084,723
COUNTY 75%	\$6,239,317	\$6,601,197	\$6,984,067	\$7,389,142	\$7,817,713
Total	\$8,319,089	\$8,801,596	\$9,312,089	\$9,852,190	\$10,423,617

Revenue Distribution under SB 124

SWMTF 8%	\$319,453	\$337,981	\$357,584	\$378,324	\$400,267
WGMA 20%	\$798,633	\$844,953	\$893,961	\$945,810	\$1,000,667
COUNTY 72%	\$2,875,077	\$3,041,832	\$3,218,258	\$3,404,917	\$3,602,402
Total	\$3,993,163	\$4,224,766	\$4,469,803	\$4,729,051	\$5,003,336

Gain/(Loss) by Fund under SB 124

SWMTF 8%	(\$96,501)	(\$102,099)	(\$108,020)	(\$114,285)	(\$120,914)
WGMA 20%	(\$865,185)	(\$915,366)	(\$968,457)	(\$1,024,628)	(\$1,084,056)
COUNTY 72%	(\$3,364,240)	(\$3,559,366)	(\$3,765,809)	(\$3,984,226)	(\$4,215,311)
Total	(\$4,325,926)	(\$4,576,830)	(\$4,842,286)	(\$5,123,139)	(\$5,420,281)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 861

Short Title: Dispensing Opticians.

(Public)

Sponsors: Senator Lee.

Referred to: Finance.

April 15, 1997

- 1 A BILL TO BE ENTITLED
2 AN ACT AMENDING THE DISPENSING OPTICIANS ACT.
3 The General Assembly of North Carolina enacts:
4 Section 1. G.S. 90-237 reads as rewritten:
5 "§ 90-237. **Qualifications for dispensing opticians.**
6 In order to be issued a license as a registered licensed optician by the North
7 Carolina State Board of Opticians, the applicant:
8 (1) Shall not have violated this Article or the rules of the ~~Board,~~
9 Board.
10 (2) Shall be at least 18 years of age and a high school graduate or
11 ~~equivalent;~~ equivalent.
12 (2a) Shall be of good moral character.
13 (3) Shall have passed an examination conducted by the Board to
14 determine his or her fitness to engage in the business of a
15 dispensing ~~optician;~~ and optician.
16 (4) Shall have completed a six-month internship by working full time
17 under the supervision of a licensed optician, ~~optometrist~~
18 optometrist, or physician trained in ophthalmology, in order to
19 demonstrate proficiency in the areas of measurement of the face,
20 and fitting and adjusting glasses and frames to the face, lens
21 recognition, lens design, and prescription interpretation."
22 Section 2. G.S. 90-241 reads as rewritten:
23 "§ 90-241. **Waiver of written examination requirements.**

1 (a) The Board shall grant a license without examination to any applicant who
2 ~~holds a currently valid license as a dispensing optician issued by another state, is in~~
3 ~~good standing in such other state, has engaged in practice in such other state as a~~
4 ~~licensee for four years immediately preceding the application in this State, is at least~~
5 ~~18 years of age, and has not violated this Article or the rules of the Board. who:~~

6 (1) Is at least 18 years of age.

7 (2) Is of good moral character.

8 (3) Holds a license in good standing as a dispensing optician in
9 another state.

10 (4) Has engaged in the practice of opticianry in the other state for four
11 years immediately preceding the application to the Board.

12 (5) Has not violated this Article or the rules of the Board.

13 (b) The Board ~~will~~ shall grant admission to the next examination and grant license
14 upon attainment of a passing score on the examination to ~~persons from other states~~
15 ~~who are not licensed but who have worked~~ a person who has worked, in a state that
16 does not license opticians, in opticianry for four years immediately preceding the
17 application to the Board performing tasks and taking the curriculum equivalent to the
18 North Carolina apprenticeship, and who meet ~~meets~~ the requirements of G.S. 90-237,
19 subsections (1), (2) and (3). G.S. 90-237(1) through (3).

20 (c) Any person desiring to secure a license under this section shall make
21 application therefor in the manner and form prescribed by the rules ~~and regulations~~
22 of the Board and shall pay the fee prescribed in G.S. 90-246.

23 ~~(d) Upon receipt of the application described in subsection (c) above, the Board~~
24 ~~may issue a temporary license to engage in opticianry in this State. Persons issued a~~
25 ~~temporary license under this subsection may engage in opticianry in this State for not~~
26 ~~more than 60 days while awaiting a final decision on licensure by the Board. The~~
27 ~~Board shall make a final decision on licensure under this subsection not later than 60~~
28 ~~days after receipt of the initial application. If the Board does not approve licensure~~
29 ~~under this subsection, the applicant, if operating under a temporary license, shall~~
30 ~~immediately surrender it to the Board and cease the practice of opticianry in this~~
31 ~~State."~~

32 Section 3. G.S. 90-244(b) reads as rewritten:

33 "(b) A license issued by the Board automatically expires on the first day of January
34 of each year. A license ~~may~~ shall be reinstated without penalty ~~during the month~~
35 from January 1 through January 15 immediately following expiration. After the end
36 of the month, expiration. After January 15, a license may shall be reinstated by
37 payment of the renewal fee and a penalty of ~~five dollars (\$5.00) per month not to~~
38 ~~exceed the license fee itself. fifty dollars (\$50.00).~~ Licenses ~~which~~ that remain expired
39 two years or more ~~may~~ shall not be reinstated."

40 Section 4. G.S. 90-246 reads as rewritten:

41 "§ 90-246. Fees.

42 In order to provide the means of administering and enforcing the provisions of this
43 Article and the other duties of the North Carolina State Board of Opticians, the

1 Board is hereby authorized to charge and collect fees established by its rules and
 2 regulations not to exceed the following:

3	(1)	Each examination	\$125.00	<u>\$200.00</u>
4	(2)	Each initial license	\$25.00	<u>\$ 50.00</u>
5	(3)	Each renewal of license	60.00	<u>\$100.00</u>
6	(4)	Each license issued to a practitioner		
7		of another state to practice		
8		in this State.....	\$100.00	<u>\$200.00</u>
9	(5)	Each registration of an optical		
10		place of business	\$25.00	<u>\$ 50.00</u>
11	(6)	Each application for registration		
12		as an opticianry apprentice or		
13		intern, and renewals thereof	\$25.00	
14	(7)	Temporary license issued pursuant		
15		to G.S. 90-241(d)	\$25.00.	
16	(8)	<u>Each registration of a training</u>		
17		<u>establishment</u>	<u>\$ 25.00</u>	
18	(9)	<u>Each license verification</u>	<u>\$ 10.00.</u>	

19 Section 5. G.S. 90-249 reads as rewritten:

20 "**§ 90-249. Powers of the Board.**

21 (a) The Board shall have the power to make ~~rules and regulations~~, rules, not
 22 inconsistent with this Article and the laws of the State of North Carolina, with
 23 respect to the following areas of the business of opticianry in North Carolina:

- 24 (1) Misrepresentation to the ~~public~~; public.
- 25 (2) Baiting or deceptive ~~advertising~~; advertising.
- 26 (3) Continuing education of ~~licensees~~; licensees.
- 27 (4) Location of registrants in the ~~State~~; State.
- 28 (5) Registration of established optical places of business, ~~provided but~~
 29 no rule restricting type or location of a business may be ~~enacted~~;
 30 enacted.
- 31 (6) Requiring photographs for purposes of identification of persons
 32 subject to this ~~Article~~; Article.
- 33 (7) Content of licensure examination and ~~reexamination~~;
 34 reexamination.
- 35 (8) Revocation, suspension, and reinstatement of ~~license and~~
 36 ~~reprimands~~; licenses, probation, and reprimands of licensees, and
 37 other penalties.
- 38 (9) Fees within the limits of ~~G.S. 90-246~~; G.S. 90-246.
- 39 (10) Accreditation of schools of ~~opticianry~~; opticianry.
- 40 (11) Registration and training of apprentices and ~~interns~~; interns.
- 41 (12) ~~License without examination and issuance of temporary license.~~
 42 Licenses and examinations pursuant to G.S. 90-241.

43 (a1) Except as provided in this Article, the Board shall not prohibit or restrict
 44 advertising by licensees.

~~(b) The Board shall have the power to revoke, suspend or issue a reprimand with regard to any license granted by it under this Article for misconduct, gross negligence, incompetence, or violation of this Article or the rules of the Board promulgated hereunder. It shall be grounds for revocation of a license to advertise in any manner which conveys or intends to convey the impression to the public that the eyes are examined by persons licensed under this Article. Other than as expressly provided in this Article, the Board shall neither adopt nor enforce any rule, regulation or policy which prohibits advertising.~~

~~(c) Any person whose license has been revoked for any cause may, after the expiration of 90 days, and within two years from the date of revocation, apply to the Board to have the same reinstated, and upon a showing satisfactory to the Board, the license may be restored to such person.~~

~~(d) The procedure for revocation and suspension of a license or refusal to grant license or permission to sit for the examination shall be in accordance with the provisions of Chapter 150B of the General Statutes."~~

Section 6. Article 17 of Chapter 90 of the General Statutes is amended by adding a new section to read:

"§ 90-249.1. Disciplinary actions.

(a) The Board may suspend, revoke, or refuse to issue, renew, or reinstate any license for any of the following:

- (1) Offering to practice or practicing as a dispensing optician without a license.
- (2) Aiding or abetting an unlicensed person in offering to practice or practicing as a dispensing optician.
- (3) Selling, transferring, or assigning a license.
- (4) Engaging in fraud or misrepresentation to obtain or renew a license.
- (5) Engaging in false or misleading advertising.
- (6) Advertising in any manner that conveys or intends to convey the impression that eyes are examined by persons licensed under this Article.
- (7) Engaging in malpractice, unethical conduct, fraud, deceit, gross negligence, incompetence, or gross misconduct.
- (8) Being convicted of a crime involving fraud or moral turpitude.
- (9) Violating any provision of this Article or the rules adopted by the Board.

(b) In addition or as an alternative to taking any of the actions permitted in subsection (a) of this section, the Board may assess a licensee a civil penalty of not more than one thousand dollars (\$1,000) for the violation of any section of this Article. In any case in which the Board is authorized to take any of the actions permitted in subsection (a) of this section, the Board may instead accept an offer in compromise of the charges whereby the accused licensee shall pay to the Board a civil penalty of not more than one thousand dollars (\$1,000). All civil penalties

1 collected by the Board shall be remitted to the school fund of the county in which
2 the violation occurred.

3 (c) In determining the amount of a civil penalty, the Board may consider:

- 4 (1) The degree and extent of harm caused by the violation to public
5 health and safety or the potential for harm.
6 (2) The duration and gravity of the violation.
7 (3) Whether the violation was willful or reflects a continuing pattern.
8 (4) Whether the violation involved elements of fraud or deception.
9 (5) Prior disciplinary actions against the licensee.
10 (6) Whether and to what extent the licensee profited from the
11 violation.

12 (d) Any person, including the Board and its staff, may file a complaint with the
13 Board alleging that a licensee committed acts in violation of subsection (a) of this
14 section. The Board may, without holding a hearing, dismiss the complaint as
15 unfounded or trivial. Any hearings held pursuant to this section shall be conducted
16 in accordance with Chapter 150B of the General Statutes."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

D

SENATE BILL 861
Proposed Senate Finance Committee Substitute
S861-CSLJX-5/8

Short Title: Dispensing Opticians.

(Public)

Sponsors:

Referred to: Finance.

April 15, 1997

- 1 A BILL TO BE ENTITLED
2 AN ACT AMENDING THE DISPENSING OPTICIANS ACT.
3 The General Assembly of North Carolina enacts:
4 Section 1. G.S. 90-237 reads as rewritten:
5 "§ 90-237. Qualifications for dispensing opticians.
6 In order to be issued a license as a registered licensed
7 optician by the North Carolina State Board of Opticians, the
8 applicant:
9 (1) Shall not have violated this Article or the rules
10 of the ~~Board;~~ Board.
11 (2) Shall be at least 18 years of age and a high school
12 graduate or ~~equivalent;~~ equivalent.
13 (2a) Shall be of good moral character.
14 (3) Shall have passed an examination conducted by the
15 Board to determine his or her fitness to engage in
16 the business of a dispensing ~~optician;~~ and
17 optician.
18 (4) Shall have completed a six-month internship by
19 working full time under the supervision of a
20 licensed optician, ~~optometrist~~ optometrist, or
21 physician trained in ophthalmology, in order to

1 demonstrate proficiency in the areas of measurement
2 of the face, and fitting and adjusting glasses and
3 frames to the face, lens recognition, lens design,
4 and prescription interpretation."

5 Section 2. G.S. 90-241 reads as rewritten:

6 "§ 90-241. Waiver of written examination requirements.

7 (a) ~~The Board shall grant a license without examination to any~~
8 ~~applicant who holds a currently valid license as a dispensing~~
9 ~~optician issued by another state, is in good standing in such~~
10 ~~other state, has engaged in practice in such other state as a~~
11 ~~licensee for four years immediately preceding the application in~~
12 ~~this State, is at least 18 years of age, and has not violated~~
13 ~~this Article or the rules of the Board, who:~~

14 (1) Is at least 18 years of age.

15 (2) Is of good moral character.

16 (3) Holds a license in good standing as a dispensing
17 optician in another state.

18 (4) Has engaged in the practice of opticianry in the
19 other state for four years immediately preceding
20 the application to the Board.

21 (5) Has not violated this Article or the rules of the
22 Board.

23 (b) ~~The Board will~~ shall grant admission to the next
24 examination and grant license upon attainment of a passing score
25 on the examination to ~~persons from other states who are not~~
26 ~~licensed but who have worked~~ a person who has worked, in a state
27 that does not license opticians, in opticianry for four years
28 immediately preceding the application to the Board performing
29 tasks and taking the curriculum equivalent to the North Carolina
30 apprenticeship, and who meet ~~meets~~ the requirements of G.S.
31 90-237, subsections (1), (2) and (3). G.S. 90-237(1) through (3).

32 (c) Any person desiring to secure a license under this section
33 shall make application therefor in the manner and form prescribed
34 by the rules and regulations of the Board and shall pay the fee
35 prescribed in G.S. 90-246.

36 ~~(d) Upon receipt of the application described in subsection (c)~~
37 ~~above, the Board may issue a temporary license to engage in~~
38 ~~opticianry in this State. Persons issued a temporary license~~
39 ~~under this subsection may engage in opticianry in this State for~~
40 ~~not more than 60 days while awaiting a final decision on~~
41 ~~licensure by the Board. The Board shall make a final decision on~~
42 ~~licensure under this subsection not later than 60 days after~~
43 ~~receipt of the initial application. If the Board does not approve~~
44 ~~licensure under this subsection, the applicant, if operating~~

1 ~~under a temporary license, shall immediately surrender it to the~~
 2 ~~Board and cease the practice of opticianry in this State."~~

3 Section 3. G.S. 90-244(b) reads as rewritten:

4 "(b) A license issued by the Board automatically expires on the
 5 first day of January of each year. A license ~~may~~ shall be
 6 reinstated without penalty ~~during the month from January 1~~
 7 through January 15 immediately following expiration. After the
 8 end of the month, expiration. After January 15, a license may
 9 shall be reinstated by payment of the renewal fee and a penalty
 10 of ~~five dollars (\$5.00) per month not to exceed the license fee~~
 11 itself, fifty dollars (\$50.00). Licenses which that remain
 12 expired two years or more may shall not be reinstated."

13 Section 4. G.S. 90-246 reads as rewritten:

14 "§ 90-246. Fees.

15 In order to provide the means of administering and enforcing
 16 the provisions of this Article and the other duties of the North
 17 Carolina State Board of Opticians, the Board is hereby authorized
 18 to charge and collect fees established by its rules and
 19 ~~regulations~~ not to exceed the following:

20	(1)	Each examination.....	\$125.00	<u>\$200.00</u>
21	(2)	Each initial license.....	\$25.00	<u>\$ 50.00</u>
22	(3)	Each renewal of license.....	60.00	<u>\$100.00</u>
23	(4)	Each license issued to a practitioner		
24		of another state to practice		
25		in this State.....	\$100.00	<u>\$200.00</u>
26	(5)	Each registration of an optical		
27		place of business.....	\$25.00	<u>\$ 50.00</u>
28	(6)	Each application for registration		
29		as an opticianry apprentice or		
30		intern, and renewals thereof....	\$25.00	
31	(7)	Temporary license issued pursuant		
32		to G.S. 90-241(d).....	\$25.00.	
33	<u>(8)</u>	<u>Each registration of a training</u>		
34		<u>establishment.....</u>	<u>\$ 25.00</u>	
35	<u>(9)</u>	<u>Each license verification.....</u>	<u>\$ 10.00.</u>	

36 Section 5. G.S. 90-249 reads as rewritten:

37 "§ 90-249. Powers of the Board.

38 (a) The Board shall have the power to make ~~rules and~~
 39 ~~regulations,~~ rules, not inconsistent with this Article and the
 40 laws of the State of North Carolina, with respect to the
 41 following areas of the business of opticianry in North Carolina:

- 42 (1) Misrepresentation to the ~~public;~~ public.
- 43 (2) Baiting or deceptive ~~advertising;~~ advertising.
- 44 (3) Continuing education of ~~licensees;~~ licensees.

- 1 (4) Location of registrants in the ~~State;~~ State.
2 (5) Registration of established optical places of
3 business, ~~provided but~~ no rule restricting type or
4 location of a business may be ~~enacted;~~ enacted.
5 (6) Requiring photographs for purposes of
6 identification of persons subject to this ~~Article;~~
7 Article.
8 (7) Content of licensure examination and ~~reexamination;~~
9 reexamination.
10 (8) Revocation, suspension, and reinstatement of
11 ~~license and reprimands;~~ licenses, probation, and
12 reprimands of licensees, and other penalties.
13 (9) Fees within the limits of ~~G.S. 90-246;~~ G.S. 90-246.
14 (10) Accreditation of schools of ~~opticianry;~~ opticianry.
15 (11) Registration and training of apprentices and
16 ~~interns;~~ interns.
17 (12) ~~License without examination and issuance of~~
18 ~~temporary license. Licenses and examinations~~
19 pursuant to G.S. 90-241.

20 ~~(b) The Board shall have the power to revoke, suspend or issue~~
21 ~~a reprimand with regard to any license granted by it under this~~
22 ~~Article for misconduct, gross negligence, incompetence, or~~
23 ~~violation of this Article or the rules of the Board promulgated~~
24 ~~hereunder. It shall be grounds for revocation of a license to~~
25 ~~advertise in any manner which conveys or intends to convey the~~
26 ~~impression to the public that the eyes are examined by persons~~
27 ~~licensed under this Article. Other than as expressly provided in~~
28 ~~this Article, the Board shall neither adopt nor enforce any rule,~~
29 ~~regulation or policy which prohibits advertising.~~

30 ~~(c) Any person whose license has been revoked for any cause~~
31 ~~may, after the expiration of 90 days, and within two years from~~
32 ~~the date of revocation, apply to the Board to have the same~~
33 ~~reinstated, and upon a showing satisfactory to the Board, the~~
34 ~~license may be restored to such person.~~

35 ~~(d) The procedure for revocation and suspension of a license or~~
36 ~~refusal to grant license or permission to sit for the examination~~
37 ~~shall be in accordance with the provisions of Chapter 150B of the~~
38 ~~General Statutes."~~

39 Section 6. Article 17 of Chapter 90 of the General
40 Statutes is amended by adding a new section to read:

41 "§ 90-249.1. Disciplinary actions.

42 (a) The Board may suspend, revoke, or refuse to issue, renew,
43 or reinstate any license for any of the following:

- 1 (1) Offering to practice or practicing as a dispensing
2 optician without a license.
- 3 (2) Aiding or abetting an unlicensed person in offering
4 to practice or practicing as a dispensing optician.
- 5 (3) Selling, transferring, or assigning a license.
- 6 (4) Engaging in fraud or misrepresentation to obtain or
7 renew a license.
- 8 (5) Engaging in false or misleading advertising.
- 9 (6) Advertising in any manner that conveys or intends
10 to convey the impression that eyes are examined by
11 persons licensed under this Article or optical
12 places of business registered under this Article.
- 13 (7) Engaging in malpractice, unethical conduct, fraud,
14 deceit, gross negligence, incompetence, or gross
15 misconduct.
- 16 (8) Being convicted of a crime involving fraud or moral
17 turpitude.
- 18 (9) Violating any provision of this Article or the
19 rules adopted by the Board.
- 20 (b) In addition or as an alternative to taking any of the
21 actions permitted in subsection (a) of this section, the Board
22 may assess a licensee a civil penalty of not more than one
23 thousand dollars (\$1,000) for the violation of any section of
24 this Article. In any case in which the Board is authorized to
25 take any of the actions permitted in subsection (a) of this
26 section, the Board may instead accept an offer in compromise of
27 the charges whereby the accused licensee shall pay to the Board a
28 civil penalty of not more than one thousand dollars (\$1,000).
29 All civil penalties collected by the Board shall be remitted to
30 the school fund of the county in which the violation occurred.
- 31 (c) In determining the amount of a civil penalty, the Board may
32 consider:
 - 33 (1) The degree and extent of harm caused by the
34 violation to public health and safety or the
35 potential for harm.
 - 36 (2) The duration and gravity of the violation.
 - 37 (3) Whether the violation was willful or reflects a
38 continuing pattern.
 - 39 (4) Whether the violation involved elements of fraud or
40 deception.
 - 41 (5) Prior disciplinary actions against the licensee.
 - 42 (6) Whether and to what extent the licensee profited
43 from the violation.

1 (d) Any person, including the Board and its staff, may file a
2 complaint with the Board alleging that a licensee committed acts
3 in violation of subsection (a) of this section. The Board may,
4 without holding a hearing, dismiss the complaint as unfounded or
5 trivial. Any hearings held pursuant to this section shall be
6 conducted in accordance with Chapter 150B of the General
7 Statutes."

8 Section 7. G.S. 90-238 reads as rewritten:

9 "§ 90-238. North Carolina State Board of Opticians created;
10 appointment and qualification of members.

11 There is hereby created a North Carolina State Board of
12 Opticians whose duty it shall be to carry out the purposes and
13 enforce the provisions of this Article. The Board shall consist
14 of seven members appointed by the Governor as follows:

15 (1) Five licensed dispensing opticians, each of whom
16 shall serve three-year terms;

17 (2) Two residents of North Carolina who are not
18 licensed as dispensing opticians, physicians, or
19 optometrists, who shall serve three-year terms.

20 Each member of the Board shall serve until his successor is
21 appointed and qualifies; provided that no person shall serve on
22 this Board for more than two complete consecutive terms. Each
23 member of the Board, before entering upon his duties, shall take
24 all oaths prescribed for other State officers in the manner
25 provided by law, which oaths shall be filed in the office of the
26 Secretary of State. The Governor, at his option, may remove any
27 member of the Board for good cause shown, may appoint members to
28 fill unexpired terms, and must make optician appointments from a
29 list of three nominees for each vacancy submitted by the Board as
30 a result of an election conducted by the Board ~~in May of~~ each
31 year and open to all licensees."

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

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 861 (First Edition)

SHORT TITLE: Dispensing Opticians

SPONSOR(S): Senator Lee

FISCAL IMPACT

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

FY 1997-98 FY 1998-99 FY 1999-00 FY 2000-01 FY 2001-02

REVENUES

Special Revenue Fund	\$61,740	\$61,740	\$61,740	\$61,740	\$61,740
----------------------	----------	----------	----------	----------	----------

EXPENDITURES

Special Revenue Fund	see ASSUMPTIONS AND METHODOLOGY				
----------------------	--	--	--	--	--

PRINCIPAL DEPARTMENT(S) &

PROGRAM(S) AFFECTED: North Carolina State Board of Opticians

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

BILL SUMMARY: The bill increases license and exam fees that have not been changed since 1989. The bill deletes a temporary license that the Board has not used. A late penalty for renewing licenses is changed from \$5 per month (up to the amount of the fee) to a \$50 lump sum payment. Disciplinary action for a licensee is revised to allow the payment of a civil penalty of \$1,000 for violation of Board rules. The bill makes other technical changes.

ASSUMPTIONS AND METHODOLOGY: Section four of the bill sets new limits on the amounts that can be charged for licenses and exams. As shown in the chart on page two, the proposed fee changes will raise a maximum of \$61,740 for the Board of Opticians. The Board has not voted on how it will implement the new fee schedule if the bill passes.

	<u>Number</u> <u>Affected</u>	<u>Current</u> <u>Fee</u>	<u>Current</u> <u>Revenue</u>	<u>Proposed</u> <u>Fee</u>	<u>Proposed</u> <u>Revenue</u>
Exams	100	\$ 125	\$ 12,500	\$ 200	\$ 20,000
Initial License	60	\$ 25	\$ 1,500	\$ 50	\$ 3,000
Renewal of License	900	\$ 60	\$ 54,000	\$ 100	\$ 90,000
Out-of-State Licenses	15	\$ 100	\$ 1,500	\$ 200	\$ 3,000
Business Registrations	350	\$ 25	\$ 8,750	\$ 50	\$ 17,500
Training Establishments Registrations	250			\$ 25	\$ 6,250
License Verification	24			\$ 10	\$ 240
			\$ 78,250		\$ 139,990
Maximum Revenue Gain =					\$61,740

The Board plans to use the additional funds to increase its inspections and investigations. There are 488 optician sites in North Carolina, but the Board of Opticians staff visited only 180 of these sites in FY 1995-96. The Board believes each site should be visited twice a year. With the fee increase, the Board will spend \$26,650 for mileage, per diem, and subsistence for two part-time inspectors.

Another \$7,000 of the fee increase will be used to improve test administration. The Board would like to hire a test consultant to advise the Board on how to rework the license examination. Part of the funds will go toward reprinting the new exam.

Based on the Financial Statement for the Board of Opticians for the fiscal year ending June 30, 1996, the Board had a fund balance of \$198,909. Annual revenues exceeded expenses by \$5,386 for the FY 1995-96 fiscal year. If the Board were to use fund balance to undertake the initiatives mentioned above, the fund would be depleted in 6 years.

FISCAL RESEARCH DIVISION

733-4910

PREPARED BY: Richard Bostic

APPROVED BY: Tom Covington

DATE: May 8, 1997

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 921

Short Title: Charitable Solicitations Exemption.

(Public)

Sponsors: Senator Odom.

Referred to: Finance.

April 17, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO EXEMPT CONTINUING CARE FACILITIES THAT PROVIDE
3 HUMANE AND PHILANTHROPIC CARE TO THE ELDERLY FROM THE
4 LICENSURE REQUIREMENTS OF THE NORTH CAROLINA CHARITABLE
5 SOLICITATIONS ACT.

6 The General Assembly of North Carolina enacts:

7 Section 1. G.S. 131F-3 reads as rewritten:

8 "§ 131F-3. Exemptions.

9 The following are exempt from the provisions of this Chapter:

- 10 (1) Any person who solicits charitable contributions for a religious
11 institution.
- 12 (2) Solicitation of charitable contributions by the federal, State, or
13 local government, or any of their agencies.
- 14 (3) Any person who receives less than twenty-five thousand dollars
15 (\$25,000) in contributions in any calendar year and does not
16 provide compensation to any officer, trustee, organizer,
17 incorporator, fund-raiser, or solicitor.
- 18 (4) Any educational institution, the curriculum of which, in whole or
19 in part, is registered, approved, or accredited by the Southern
20 Association of Colleges and Schools or an equivalent regional
21 accrediting body, and any educational institution in compliance
22 with Article 39 of Chapter 115C of the General Statutes, and any
23 foundation or department having an established identity with any
24 of these educational institutions.

- 1 (5) Any hospital licensed pursuant to Article 5 of Chapter 131E or
- 2 Article 2 of Chapter 122C of the General Statutes and any
- 3 foundation or department having an established identity with that
- 4 hospital if the governing board of the hospital, authorizes the
- 5 solicitation and receives an accounting of the funds collected and
- 6 expended.
- 7 (6) Any noncommercial radio or television station.
- 8 (7) A qualified community trust as provided in 26 C.F.R. § 1.170A-
- 9 9(e)(10) through (e)(14).
- 10 (8) A bona fide volunteer or bona fide employee or salaried officer of
- 11 a charitable organization or sponsor.
- 12 (9) An attorney, investment counselor, or banker who advises a person
- 13 to make a charitable contribution.
- 14 (10) A volunteer fire department, rescue squad, or emergency medical
- 15 service.
- 16 (11) A Young Men's Christian Association or a Young Women's
- 17 Christian Association.
- 18 (12) Any person that provides humane and philanthropic care to the
- 19 elderly and that is licensed as a continuing care facility under
- 20 Article 64 of Chapter 58 of the General Statutes, and any person
- 21 who solicits contributions for that person."

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

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: Senate Bill 921 (First Edition)

SHORT TITLE: Charitable Solicitations Exemption

SPONSOR(S): Senator Odom

FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 1997-98</u>	<u>FY 1998-99</u>	<u>FY 1999-00</u>	<u>FY 2000-01</u>	<u>FY 2001-02</u>
REVENUES	(\$100)	(\$100)	(\$100)	(\$100)	(\$100)
EXPENDITURES	0	0	0	0	0
POSITIONS:	0	0	0	0	0
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:					
Department of Human Resources Division of Facility Services					
EFFECTIVE DATE: Upon Ratification.					

BILL SUMMARY: The proposed legislation amends GS 131F-3 by exempting continuing care facilities that provide humane and philanthropic care to the elderly from the licensure requirements of the N.C. Charitable Solicitations Act.

ASSUMPTIONS AND METHODOLOGY:

Currently, two continuing care retirement facilities are licensed under the N.C. Charitable Solicitations Act. Since the charitable license fee is \$50 per year, the loss in revenue from the proposed legislation would be (\$100) per year. The charitable solicitations license fees are used to support the charitable solicitations program in the Division of Facilities Services.. The annual fee collections from these licenses exceed the expenditures for the program by an average of

\$100,000 per year which means that the proposed legislation will have no impact on the charitable solicitation program.

TECHNICAL CONSIDERATIONS: None.

FISCAL RESEARCH DIVISION

733-4910

PREPARED BY: L. Carol Shaw *L. Carol Shaw*

APPROVED BY: Tom L. Covington *Tom L. Covington*

DATE: 5/2/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 711*

Short Title: Leland Annexation.

(Local)

Sponsors: Senator Soles.

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

April 7, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO EXTEND THE CORPORATE LIMITS OF THE TOWN OF
3 LELAND.

4 The General Assembly of North Carolina enacts:

5 Section 1. The corporate limits of the Town of Leland are extended to
6 include the following described tract of land:

7
8 Being a tract of land located in Town Creek Township, Brunswick
9 County, North Carolina, and being more fully described as follows:

10
11 Beginning at a Right-of-Way Monument, in the northern Right-of-Way of
12 US 17, said monument being located on the south side of a gate leading into the
13 property, as shown on a map titled "THE GREGORY POOLE TRACT", prepared
14 by Stuart Gooden, R.L.S., and dated May 31, 1994; thence with said Right-of-Way
15 South 54 degrees 56 minutes 00 seconds West, a distance of 1111.44 feet; thence
16 leaving said Right-of-Way North 45 degrees 36 minutes 40 seconds West, a distance of
17 272.41 feet; thence North 45 degrees 36 minutes 08 seconds West, a distance of
18 2493.87 feet; thence North 45 degrees 35 minutes 59 seconds West, a distance of
19 1124.67 feet; thence North 48 degrees 44 minutes 35 seconds West, a distance of
20 1849.91 feet; thence South 78 degrees 10 minutes 46 seconds West, a distance of
21 793.76 feet; thence North 66 degrees 50 minutes 57 seconds West, a distance of
22 1282.45 feet to a point in SR 1438 (Lanvale Road); thence North 11 degrees 09
23 minutes 18 seconds West, a distance of 344.20 feet to a point in the centerline of

1 Lanvale Road thence with said centerline North 07 degrees 08 minutes 13 seconds
2 West, a distance of 690.45 feet; thence North 06 degrees 46 minutes 34 seconds
3 West, a distance of 441.28 feet; thence North 09 degrees 45 minutes 03 seconds
4 West, a distance of 128.86 feet; thence North 14 degrees 28 minutes 52 seconds
5 West, a distance of 124.97 feet; thence North 19 degrees 35 minutes 26 seconds
6 West, a distance of 150.19 feet; thence North 26 degrees 13 minutes 01 seconds
7 West, a distance of 150.04 feet; thence North 32 degrees 26 minutes 42 seconds
8 West, a distance of 178.45 feet; thence North 36 degrees 09 minutes 42 seconds
9 West, a distance of 237.57 feet; thence North 36 degrees 09 minutes 33 seconds
10 West, a distance of 187.40 feet; thence North 36 degrees 08 minutes 44 seconds
11 West, a distance of 246.56 feet; thence North 36 degrees 09 minutes 33 seconds
12 West, a distance of 198.67 feet; thence North 35 degrees 57 minutes 10 seconds
13 West, a distance of 188.63 feet; thence North 35 degrees 22 minutes 08 seconds
14 West, a distance of 52.73 feet; thence North 30 degrees 54 minutes 08 seconds
15 West, a distance of 193.58 feet; thence North 24 degrees 37 minutes 51 seconds
16 West, a distance of 239.60 feet; thence leaving said centerline and with Sturgeon
17 Branch North 72 degrees 40 minutes 07 seconds East, a distance of 30.21
18 feet; thence North 72 degrees 59 minutes 08 seconds East, a distance of 150.37
19 feet; thence North 15 degrees 10 minutes 23 seconds East, a distance of 242.76
20 feet; thence North 84 degrees 23 minutes 02 seconds East, a distance of 141.02
21 feet; thence North 55 degrees 24 minutes 41 seconds East, a distance of 313.03
22 feet; thence North 40 degrees 17 minutes 58 seconds East, a distance of 94.28 feet;
23 thence North 03 degrees 42 minutes 18 seconds West, a distance of 48.90 feet;
24 thence North 89 degrees 55 minutes 04 seconds East, a distance of 138.95 feet;
25 thence North 63 degrees 52 minutes 03 seconds East, a distance of 108.98 feet;
26 thence North 41 degrees 05 minutes 41 seconds East, a distance of 227.03 feet;
27 thence North 36 degrees 48 minutes 37 seconds East, a distance of 204.72 feet;
28 thence North 48 degrees 24 minutes 27 seconds East, a distance of 120.97 feet to a
29 point in the run of Rice Branch thence with said branch South 51 degrees 13 minutes
30 24 seconds East, a distance of 35.93 feet; thence South 89 degrees 20 minutes 59
31 seconds East, a distance of 106.00 feet; thence North 88 degrees 41 minutes 14
32 seconds East, a distance of 231.37 feet; thence South 63 degrees 01 minutes 01
33 seconds East, a distance of 72.07 feet; thence South 30 degrees 31 minutes 05
34 seconds East, a distance of 88.34 feet; thence North 55 degrees 02 minutes 25
35 seconds East, a distance of 68.06 feet; thence South 83 degrees 07 minutes 08
36 seconds East, a distance of 75.12 feet; thence South 53 degrees 08 minutes 14
37 seconds East, a distance of 49.51 feet; thence South 37 degrees 05 minutes 03
38 seconds East, a distance of 77.72 feet; thence North 46 degrees 14 minutes 12
39 seconds East, a distance of 56.82 feet; thence South 50 degrees 58 minutes 00
40 seconds East, a distance of 39.22 feet; thence South 06 degrees 18 minutes 38
41 seconds West, a distance of 73.24 feet; thence South 17 degrees 06 minutes 48
42 seconds East, a distance of 38.30 feet; thence South 63 degrees 48 minutes 32
43 seconds East, a distance of 58.91 feet; thence North 45 degrees 05 minutes 05
44 seconds East, a distance of 170.10 feet; thence South 25 degrees 36 minutes 41

1 seconds East, a distance of 133.07 feet; thence South 08 degrees 55 minutes 12
2 seconds West, a distance of 56.18 feet; thence North 73 degrees 37 minutes 44
3 seconds East, a distance of 70.25 feet; thence South 09 degrees 39 minutes 11
4 seconds East, a distance of 54.37 feet; thence North 77 degrees 45 minutes 53
5 seconds East, a distance of 54.74 feet; thence South 65 degrees 56 minutes 51
6 seconds East, a distance of 118.51 feet; thence North 51 degrees 52 minutes 28
7 seconds East, a distance of 113.22 feet; thence South 85 degrees 54 minutes 21
8 seconds East, a distance of 72.82 feet; thence North 35 degrees 31 minutes 42
9 seconds East, a distance of 74.71 feet; thence South 80 degrees 09 minutes 57
10 seconds East, a distance of 94.27 feet; thence North 67 degrees 59 minutes 19
11 seconds East, a distance of 103.53 feet; thence South 22 degrees 55 minutes 29
12 seconds East, a distance of 82.62 feet; thence North 45 degrees 55 minutes 16
13 seconds East, a distance of 67.70 feet; thence South 37 degrees 17 minutes 37
14 seconds East, a distance of 68.76 feet; thence North 53 degrees 44 minutes 53
15 seconds East, a distance of 58.17 feet; thence North 12 degrees 52 minutes 59
16 seconds West, a distance of 38.98 feet; thence South 89 degrees 48 minutes 15
17 seconds East, a distance of 58.32 feet; thence North 58 degrees 19 minutes 43
18 seconds East, a distance of 93.90 feet; thence South 63 degrees 38 minutes 13
19 seconds East, a distance of 47.06 feet; thence South 37 degrees 24 minutes 09
20 seconds East, a distance of 54.13 feet; thence North 43 degrees 32 minutes 32
21 seconds East, a distance of 90.22 feet; thence North 83 degrees 55 minutes 19
22 seconds East, a distance of 54.78 feet; thence South 82 degrees 53 minutes 15
23 seconds East, a distance of 66.22 feet; thence North 45 degrees 30 minutes 43
24 seconds East, a distance of 102.03 feet; thence North 73 degrees 09 minutes 53
25 seconds East, a distance of 138.11 feet; thence North 20 degrees 04 minutes 19
26 seconds West, a distance of 80.59 feet; thence North 36 degrees 34 minutes 12
27 seconds East, a distance of 51.79 feet; thence North 34 degrees 47 minutes 49
28 seconds East, a distance of 76.72 feet; thence North 08 degrees 06 minutes 25
29 seconds East, a distance of 122.32 feet; thence North 71 degrees 30 minutes 52
30 seconds East, a distance of 75.69 feet; thence North 20 degrees 40 minutes 01
31 seconds West, a distance of 68.51 feet; thence North 61 degrees 42 minutes 35
32 seconds East, a distance of 93.25 feet; thence leaving said branch South 20 degrees
33 33 minutes 06 seconds East, a distance of 291.98 feet; thence South 20 degrees 32
34 minutes 17 seconds East, a distance of 534.90 feet; thence North 41 degrees 38
35 minutes 26 seconds East, a distance of 242.33 feet; thence North 53 degrees 43
36 minutes 59 seconds East, a distance of 347.56 feet; thence North 51 degrees 33
37 minutes 50 seconds East, a distance of 241.30 feet; thence North 67 degrees 45
38 minutes 59 seconds East, a distance of 681.05 feet; thence North 70 degrees 01
39 minutes 48 seconds East, a distance of 563.93 feet; thence South 53 degrees 07
40 minutes 47 seconds East, a distance of 1460.15 feet; thence South 05 degrees 55
41 minutes 43 seconds East, a distance of 3955.76 feet; thence South 05 degrees 56
42 minutes 16 seconds East, a distance of 830.35 feet; thence South 05 degrees 55
43 minutes 43 seconds East, a distance of 20.52 feet; thence South 89 degrees 43
44 minutes 05 seconds West, a distance of 1015.93 feet; thence South 02 degrees 20

1 minutes 58 seconds West, a distance of 943.79 feet; thence South 01 degrees 12
2 minutes 44 seconds West, a distance of 822.48 feet; thence South 84 degrees 06
3 minutes 28 seconds East, a distance of 1876.12 feet; thence South 35 degrees 07
4 minutes 22 seconds East, a distance of 277.41 feet; thence South 34 degrees 55
5 minutes 00 seconds East, a distance of 155.49 feet; thence South 34 degrees 41
6 minutes 11 seconds east, a distance of 373.23 feet; to a point in the northern Right-of-
7 Way of US HWY 17; thence with said right-of-way South 54 degrees 55 minutes 59
8 seconds West, a distance of 397.20 feet; thence South 50 degrees 44 minutes 34
9 seconds West, a distance of 170.35 feet; thence South 52 degrees 40 minutes 24
10 seconds West, a distance of 60.36 feet; to the Point of Beginning, containing

11 893.64 acres, and being tract "A" as shown on a map titled "THE GREGORY
12 POOLE TRACT", prepared by Stuart Gooden, R.L.S., and dated May 31, 1994.

13 Section 2. (a) The corporate limits of the area annexed by Section 1 of
14 this act shall be considered satellite corporate limits within the meaning of Part 4 of
15 Article 4A of Chapter 160A of the General Statutes, except they are excluded in any
16 calculations made under G.S. 160A-58.1(b)(5). The corporate limits of the area
17 annexed by Section 1 of this act are not external boundaries for the purposes of Part
18 2 or 3 of Article 4A of Chapter 160A of the General Statutes until they are
19 contiguous to the town.

20 (b) Notwithstanding any provision of law, this act does not affect the
21 existing franchise or other right of Brunswick Electric Membership Cooperative to
22 continue to provide electric service to the area annexed by this act.

23 Section 3. Real and personal property in the territory annexed pursuant
24 to this act is subject to municipal taxes as provided in G.S. 160A-58.10.

25 Section 4. This act becomes effective June 30, 1997.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 711

S711-ALJ-5/8

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

Date _____, 1997

Comm. Sub.
Amends Title

Senator _____

1 moves to amend the bill on page 4, line 13, by deleting the
2 designation "(a)";
3
4 and on page 4, lines 20 through 22, by deleting those lines;
5
6 and on page 4, line 25, by rewriting that line to read:
7 "Section 4. This act is effective when it becomes law."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

5-8-97

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Patti Sewell

DOR

PAUL SMITH

PFFNC

Amy Tundora

Tunton: Will Tamm

Betty Pitts

Bowley Assoc

PAT PATTERSON

SHP

MARIO A. SUIT

MAS & ASSOC.

BILL SCOBGIN

NCBA

Ginley Buckland

DEHPC

Rob Schobell

NCJOC

R. Paul Wilson

NCHBA

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

5-8-97

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Jim Blackburn	NC Association of County Commissioners
VL McBride	NCSA
Carolyn Allen	Board of Opticians
Don McCorquodale	NCRMA
Scott Tompkins	Sec State
David Martin	DEHNR - Solid Waste Section
Ann Case	DEHNR
Georget Lowry	NC DOR
Gary Harris	NC Petroleum Marketers
Jim Holman	Univ of Wm Lib
Patty Berry	CCNC
Jessie Langmuir	NC SOS

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

FINANCE COMMITTEE REPORT

Senator David Hoyle, Co-Chair
Senator John Kerr, Co-Chair

Thursday, May 08, 1997

SENATOR HOYLE,

submits the following with recommendations as to passage:

FAVORABLE

S.B. 921 Charitable Solicitations Exemption
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B. 124 Amend White Goods Tax
Draft Number: PCS1792
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

TOTAL REPORTED: 2

Committee Clerk Comment: None

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

FINANCE COMMITTEE REPORT

Senator David Hoyle, Co-Chair
Senator John Kerr, Co-Chair

Monday, May 12, 1997

SENATOR HOYLE,

submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B.	711	Leland Annexation	
		Draft Number:	PCS4600
		Sequential Referral:	None
		Recommended Referral:	None
		Long Title Amended:	No

S.B.	861	Dispensing Opticians	
		Draft Number:	PCS2755
		Sequential Referral:	None
		Recommended Referral:	None
		Long Title Amended:	No

S.B.	1064	Property Tax Interest/Study	
		Draft Number:	PCS6679
		Sequential Referral:	None
		Recommended Referral:	None
		Long Title Amended:	No

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO SENATE C.S. BILL

H.B.	603	Madison Occupancy Tax	
		Draft Number:	PCS1368
		Sequential Referral:	None
		Recommended Referral:	None
		Long Title Amended:	No

TOTAL REPORTED: 4

Committee Clerk Comment: None

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT

Senator David Hoyle, Co-Chair
Senator John Kerr, Co-Chair

Monday, May 12, 1997

SENATOR HOYLE,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

✓ S.B. 711 Leland Annexation — Taken up in Sen. Finance 5/8/97
Draft Number: PCS4600
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

✓ S.B. 861 Dispensing Opticians — Taken up in Sen. Fin 5/8/97
Draft Number: PCS2755
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

S.B. 1064 Property Tax Interest/Study — Taken up in Sen. Finance 5/7/97
Draft Number: PCS6679
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO SENATE C.S. BILL

✓ H.B. 603 Madison Occupancy Tax — Taken up in Sen. Fin 5/8/97
Draft Number: PCS1368
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 4

Committee Clerk Comment: None

SENATE FINANCE COMMITTEE

TUESDAY, MAY 13, 1997

12 NOON - ROOM 544 - LOB

The Senate Finance Committee met on May 13, 1997, with Senator Hoyle presiding. There were 21 committee members present.

H.B. 36 - Make Use Tax User-Friendly

Representative Capps explained this bill and on motion by Senator Dannelly, this bill was given a "favorable" report. Copy of bill, explanation and fiscal note included in the minutes.

H.B. 204 - Foreclosure Filing Fees

Representative Neely explained this bill and introduced Mr. Peter Powell from the Administrative Office of the Courts to answer any questions. On motion by Senator Wellons, this bill was given a "favorable" report by the committee. Copy of bill, explanation and fiscal note included in the minutes.

S.B. 466 - No Tax on Parental Savings Trust Fund

Senator Hartsell was recognized to explain this bill and offered a proposed committee substitute for this bill. On his motion, the PCS was adopted for discussion by the committee. At the conclusion of his explanation, Senator Hartsell asked that Mr. Jim Huett, with Education Financing Services, be recognized to give some background information on this bill. At the conclusion of his presentation, Senator Hartsell and Mr. Huett answered questions from the committee members. Senator Hoyle announced that this bill will not be voted on today but will be back on the agenda at a later date. Copy of bill, committee substitute, explanation, fiscal note and other information included in the minutes.

S.B. 875 - Revise Record Laws-2

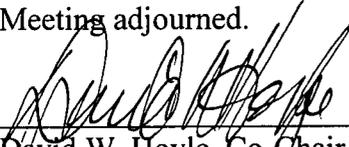
Senator Kerr was recognized to explain this bill. He offered an amendment to the bill which would change the review officer designation. This amendment was adopted on his motion. (No copy of amendment.) At the conclusion of his explanation, there were several questions from the committee members. The following Registers of Deeds were introduced for brief remarks in support of this bill:

Minutes - Senate Finance Committee
May 13, 1997
Page 2

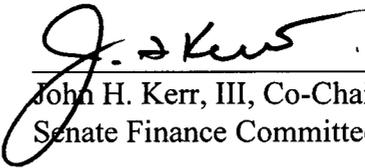
Ann Shaw - Randolph County
Judy Gibson - Mecklenburg County
Gwynn Rouse - Lenoir County

Also introduced for brief remarks was Phil Wagoner, representing the North Carolina Association of Surveyors. Mr. Wagoner stated that his organization had some concerns regarding this bill that he would like to see addressed. Senator Hoyle announced that this bill would not be voted on today but would be considered again at a later date. Copy of bill included in the minutes.

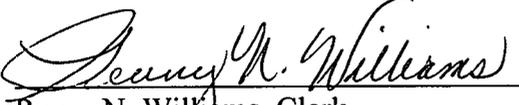
Meeting adjourned.



David W. Hoyle, Co-Chair
Senate Finance Committee



John H. Kerr, III, Co-Chair
Senate Finance Committee



Penny N. Williams, Clerk



Evelyn S. Hartsell, Clerk

NOTE:

Agenda is Attachment # 1
Visitors' Sign Up Sheet is Attachment # 2
Committee Report is Attachment # 3

S.B. 439 and S.B. 649 were not heard in the committee meeting.

AGENDA

SENATE FINANCE COMMITTEE

MAY 13, 1997

12 NOON - ROOM 544

S.B. 439 - Securities/Investment Advisers/AB. - Sen. Reeves

S.B. 466 - Tax Exempt Parental Savings Trust Fund. - Sen. Hartsell

S.B. 649 - Lobbist Penalty. - Sen. Miller

S.B. 875 - Revise Records Laws-2. - Sen. Kerr

H.B. 36 - Make Use Tax User-Friendly. - Rep. Capps

H.B. 204 - Foreclosure Filing Fees. - Rep. Neely

EXPLANATION OF HOUSE BILL 36
Consumer use Tax Returns

TO: Senate Finance Committee
FROM: Sabra Faires, Committee Counsel
DATE: May 13, 1997
SPONSOR: Representative Capps

House Bill 36 is a recommendation of the Revenue Laws Study Committee. It establishes an annual filing period for the payment of use taxes owed by consumers on mail-order purchases. The annual filing period relieves consumers of the need to file either monthly or quarterly returns. The bill is effective when it becomes law and applies to purchases made on or after January 1, 1997.

Currently, the Department of Revenue includes an annual use tax return (Form E-554) on the individual income tax booklets. The Department began doing this in 1991. Under the State sales and use tax law, a person is responsible for paying use tax on their out-of-state purchases. The law specifies only two reporting periods - a quarterly period if the tax owed is less than \$50.00, and a monthly period if the tax owed is more than this. Arguably, therefore, North Carolina customers of mail-order catalog companies should be filing either monthly or quarterly returns.

This bill seeks to improve the collection of the use tax by minimizing the compliance burden. Under the bill, individuals who owe use tax on goods purchased out-of-state for a non-business purpose will be able to file an annual use tax return. The return and the tax will be due at the same time as the individual income tax return. In theory, residents who are subject to use tax for out-of-state purchases are more likely to comply if the reporting and payment procedure is not unduly burdensome.

The use tax complements the sales tax by taxing transactions that are not subject to the sales tax because of movement in interstate commerce. Like the sales tax, the use tax is imposed on the purchaser. Unlike the sales tax, the responsibility for remitting the tax to the Department is also on the purchaser. In the 1980s, states around the country became increasingly aware of the revenue loss from taxpayer avoidance of the use tax. The Department estimated in 1995 that the potential increase in State and local revenue for North Carolina, if full taxpayer compliance was achieved, was \$71.1 million.

The most cost-effective manner to collect the tax, from a state's point-of-view, is to require the out-of-state retailers to collect and remit the use tax. However, in 1967, the U.S. Supreme Court ruled in Bellas Hess that a state can not require an out-of-state retailer to collect its use tax unless the retailer has enough contacts with the state to subject it to the state's taxing jurisdiction. The Supreme Court reaffirmed this decision in 1992 in Quill Company v. North Dakota.

The Direct Marketers Association, the Federation of Tax Administrators, the Multi-state Tax Commission, and the National Governors' Association are negotiating a possible agreement under which more direct marketers would voluntarily collect use tax on behalf of customers in states in which the marketers do not have nexus. The group has a draft agreement now and is likely to have a final agreement by July 1 of 1998. If a final proposed agreement is reached, it will then be up to the states and the marketers to enter into the agreement.

In an effort to collect a larger percentage of this tax, North Carolina has entered a cooperative agreement with other southeastern states called the Southeastern States Exchange Agreement. The member states to this agreement exchange information gained through tax audits of businesses, such as the names and addresses of North Carolina customers to whom untaxed sales were made. The Department may then contact these customers for the collection of the use tax, plus penalties and interest.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: House Bill 36 (First Edition)

SHORT TITLE: Make Use Tax User-Friendly

SPONSOR(S): Representative Russell Capps

FISCAL IMPACT

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

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue

EFFECTIVE DATE: Effective upon ratification and applies to purchases made on or after January 1, 1997.

BILL SUMMARY: The proposed bill relieves consumers from filing monthly use tax returns. It will bring into compliance those taxpayers who fill out Form E-554 and pay use tax when they do their annual income tax returns.

ASSUMPTIONS AND METHODOLOGY:

Since this change is not accompanied by increased auditing manpower or a large public relations budget, increased compliance and thus increased revenues are not anticipated. In catalog purchases alone, there is an estimated \$47.4 million in state use tax and \$23.7 million in local use tax that goes uncollected annually because the buyer may not be aware the tax is due the state and the seller is not obligated to collect the tax.

Note: In 1996, the General Assembly granted the Secretary of Revenue the authority to "enter into agreements with sellers pursuant to which the seller agrees to collect and remit on behalf of its customers State and local use taxes due on items of tangible personal property the seller sells." (SB6, Chapter 14, 1996 Second Extra Session). It is hoped that an use tax collection agreement will be hammered out between the Direct Marketers Association, the Federation of Tax Administrators, and the Multi-state Tax Commission.

FISCAL RESEARCH DIVISION 733-4910

PREPARED BY: Richard Bostic

APPROVED BY: Tom Covington **TomC**

DATE: February 14, 1997

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 204*

Short Title: Foreclosure Filing Fees.

(Public)

Sponsors: Representatives Neely, Culpepper, Hensley, R. Hunter, and McCrary.

Referred to: Judiciary II, if favorable, Finance.

February 17, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO RAISE THE FORECLOSURE FILING FEES.

3 The General Assembly of North Carolina enacts:

4 Section 1. G.S. 7A-308(a) reads as rewritten:

5 "(a) The following miscellaneous fees and commissions shall be collected by the
6 clerk of superior court and remitted to the State for the support of the General Court
7 of Justice:

8 (1) Foreclosure under power of sale in deed of trust or
9 mortgage \$25.00 \$30.00

10 ~~Plus if the property is sold pursuant to the power of sale,~~
11 ~~an additional sum of thirty cents (30¢) per one hundred~~
12 ~~dollars (\$100.00), or major fraction thereof, of the final sale~~
13 ~~price shall be collected. In no case shall the additional sum~~
14 ~~exceed two hundred dollars (\$200.00). If the property is~~
15 ~~sold under the power of sale, an additional amount will be~~
16 ~~charged, determined by the following formula: thirty cents~~
17 ~~(30¢) per one hundred dollars (\$100.00), or major fraction~~
18 ~~thereof, of the final sale price. If the amount determined by~~
19 ~~the formula is less than ten dollars (\$10.00), a minimum ten~~
20 ~~dollar (\$10.00) fee will be collected. If the amount~~
21 ~~determined by the formula is more than two hundred dollars~~
22 ~~(\$200.00), a maximum two hundred dollar (\$200.00) fee will~~
23 ~~be collected.~~

24 (2) Proceeding supplemental to execution 20.00

1	(3)	Confession of judgment	15.00
2	(4)	Taking a deposition	5.00
3	(5)	Execution	15.00
4	(6)	Notice of resumption of former name	5.00
5	(7)	Taking an acknowledgment or administering an	
6		oath, or both, with or without seal, each certificate	
7		(except that oaths of office shall be administered to	
8		public officials without charge)	1.00
9	(8)	Bond, taking justification or approving	5.00
10	(9)	Certificate, under seal	2.00
11	(10)	Exemplification of records	5.00
12	(11)	Recording or docketing (including indexing) any	
13		document	
14		-- first page	4.00
15		-- each additional page or fraction thereof	.25
16	(12)	Preparation of copies	
17		-- first page	1.00
18		-- each additional page or fraction thereof	.25
19	(13)	Preparation and docketing of transcript of judgment	5.00
20	(14)	Substitution of trustee in deed of trust	5.00
21	(15)	Execution of passport application -- the amount	
22		allowed by federal law	
23	(16)	Repealed by Session Laws 1989, c. 783, s. 2.	
24	(17)	Criminal record search except if search is requested	
25		by an agency of the State or any of its political	
26		subdivisions or by an agency of the United States or	
27		by a petitioner in a proceeding under Article 2 of	
28		General Statutes Chapter 20	5.00
29	(18)	Filing the affirmations, acknowledgments,	
30		agreements and resulting orders entered into under	
31		the provisions of G.S. 110-132 and G.S. 110-133	4.00
32	(19)	Repealed by Session Laws 1989, c. 783, s. 3."	
33		Section 2. This act becomes effective October 1, 1997.	

EXPLANATION OF HOUSE BILL 204
Foreclosure Filing Fees

TO: Senate Finance Committee
FROM: Sabra Faires, Committee Counsel
DATE: May 13, 1997
SPONSOR: Representative Neely
Recommendation of the Courts Commission

House Bill 204 does two things:

1. It increases the foreclosure filing fee from \$25 to \$30.
2. It establishes a minimum fee of \$10 when the property is sold under a power of sale.

The fees collected are remitted to the State General Fund for the support of the General Court of Justice.

A foreclosure under a power of sale in a deed of trust or a mortgage is a type of special proceeding. The cost of initiating all other types of special proceedings is \$30. This bill brings the cost of foreclosures in line with other types of special proceedings. The cost of initiating special proceedings was increased in 1992 from \$25 to \$30. The cost of initiating a foreclosure proceeding was not increased at that time. This was probably an oversight since the fee is listed as a miscellaneous fee under a different statute.

If property is sold under the power of sale, an additional fee is charged. The additional amount is based upon a formula: 30 cents per \$100 of the final sale price, subject to a \$200 maximum fee. This bill establishes a minimum fee of \$10. In the past few years, there have been many foreclosures initiated on time shares, primarily in the resort communities. The sales price on a time share is usually low, since what is being sold is a week's worth of value. The low sales price results in an extremely low fee, sometimes as low as \$1.32. The clerks of court requested that a minimum fee be established to more adequately cover the costs of handling the special proceeding.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: House Bill 204

SHORT TITLE: Foreclosure Filing Fees

SPONSOR(S): Representatives Neely, Culpepper, Hensley, R. Hunter, and McCrary

FISCAL IMPACT

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

FY 1997-98 FY 1998-99 FY 1999-00 FY 2000-01 FY 2001-02

REVENUES Small Increase Ranging from \$50,000 to \$100,000 Per Year

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Judicial Department

EFFECTIVE DATE: October 1, 1997

BILL SUMMARY: Amends GS 7A-308(a)(1) to raise the court fee for foreclosure proceedings from \$25 to \$30. Also sets additional charge of 30 cents per \$100 of final sale price (with minimum charge of \$10 and maximum of \$200) if property is sold under power of sale.

ASSUMPTIONS AND METHODOLOGY: Judicial Department

This legislation raises the court fee for foreclosure proceedings from \$25 to \$30. Judicial Department fiscal data for 1995-96 estimates that approximately 11,600 foreclosure actions were collected by the court. A \$5 fee increase would have increased revenues by \$58,000 in 1995-96. Data from the first quarter of FY 1996-97 shows that approximately 4,250 foreclosure actions were filed statewide. Extrapolating from this data, the Judicial Department estimates approximately 17,000 foreclosure actions will be filed this year. If the \$5 fee increase were collected in all of these cases, additional revenues would total about \$85,000 in 1996-97. The Department anticipates this range of foreclosure filings would continue in future fiscal years. Thus, the Judicial Department anticipates additional revenues would range from approximately \$50,000 to \$100,000 a year, if the \$5 increase was approved.

TECHNICAL CONSIDERATIONS:

FISCAL RESEARCH DIVISION

733-4910

PREPARED BY: Charles Perusse

APPROVED BY: Tom L. Covington

DATE: March 19, 1997

A handwritten signature in cursive script, appearing to read "Charles Perusse", is written over the printed name. The signature is fluid and somewhat stylized, with a large loop at the end.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 466

Short Title: Tax Exempt Parental Savings Trust Fund.

(Public)

Sponsors: Senators Hartsell; and Lee.

Referred to: Finance.

March 24, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO EXEMPT CERTAIN INCOME FROM THE PARENTAL SAVINGS
3 TRUST FUND FROM STATE INCOME TAX.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 105-134.6(b) is amended to add a new subdivision to
6 read:

7 "(12) Earnings or distributions from the Parental Savings Trust Fund of
8 the State Education Assistance Authority used for the
9 postsecondary education expenses of a beneficiary of the Fund.
10 For the purposes of this subdivision, the term 'postsecondary
11 education expenses' has the meaning provided in G.S. 116-
12 201(b)(7a)."

13 Section 2. G.S. 116-201(b) is amended to add a new subdivision to read
14 as follows:

15 "(7a) 'Postsecondary education expenses' means expenses, as further
16 described in rules and contracts adopted by the Authority for
17 participation in the Parental Savings Trust Fund, for tuition, fees,
18 books, supplies, equipment, room, and board, and other expenses
19 incurred in connection with enrollment at an eligible institution."

20 Section 3. This act is effective for taxable years beginning on or after
21 January 1, 1998.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

D

SENATE BILL 466
Proposed Senate Finance Committee Substitute
S466-CSLJ-5/13

Short Title: No Tax On Parental Savings Trust Fund. (Public)

Sponsors:

Referred to: Finance.

March 24, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO EXEMPT FROM STATE INCOME TAX ALL OF THE ANNUAL
3 INVESTMENT INCOME EARNED BY CONTRIBUTORS ON DEPOSITS IN THE
4 PARENTAL SAVINGS TRUST FUND AS WELL AS THE DISTRIBUTIONS TO
5 BENEFICIARIES OF THAT FUND.
6 The General Assembly of North Carolina enacts:
7 Section 1. G.S. 105-134.6(b) is amended by adding two
8 new subdivisions to read:
9 "(12) Interest and other investment earnings on
10 amounts contributed to the Parental Savings
11 Trust Fund of the State Education Assistance
12 Authority for the payment of room or board at
13 an eligible educational institution, as
14 defined in section 135(c)(3) of the Code.
15 (13) The amount that is distributed to a
16 beneficiary of the Parental Savings Trust Fund
17 of the State Education Assistance Authority if
18 the earnings on the amount are excluded from
19 income under subdivision (12) of this
20 subsection or section 529 of the Code."

1 Section 2. This act is effective for taxable years
2 beginning on or after January 1, 1998.

EXPLANATION OF SENATE BILL 466
Parental Savings Trust Fund

TO: Senate Finance Committee
FROM: Sabra Faires, Committee Counsel
DATE: May 13, 1997
SPONSOR: Senator Fletcher Hartsell

Senate Bill 466 excludes two types of income from State individual income tax. The items excluded are the annual earnings on amounts contributed to the Parental Savings Trust Fund for the future payment of room or board at an institution of higher education and the amount distributed to a beneficiary of the Fund that is used to pay for higher education expenses. The bill is effective for taxable years beginning on or after January 1, 1998.

The Parental Savings Trust Fund is part of the State Education Assistance Authority. The Fund is authorized by G.S. 116-209.25, which was enacted by the 1996 General Assembly. The Authority plans to begin the Fund in the fall of this year. The Parental Savings Trust Fund is a kind of qualified state tuition program under section 529 of the Internal Revenue Code.

Section 529 of the Code excludes some of the amounts earned by contributors to the Parental Savings Trust Fund from federal tax and, therefore, North Carolina tax as well. Under federal law, earnings on amounts contributed for the payment of tuition, fees, books, supplies, and equipment at an institution of higher education are excluded from tax but not the earnings on amounts contributed for room and board. Also under federal law, the amount distributed to a beneficiary of the Fund that exceeds the amount contributed is taxable. Under federal law, the tax on the investment earnings is deferred until a distribution is made, at which time the earnings are taxable to the beneficiary rather than the contributor.

This bill establishes a different tax treatment for federal and state purposes for earnings on amounts contributed for the payment of room and board and for distributions from the Fund. The State exclusion is accomplished by deducting these amounts from federal taxable income. Federal taxable income is the starting point for determining State taxable income.

Under the Parental Savings Trust Fund, a person can contribute amounts for a child who is less than 16 years old. Either the child or the person making the contributions must be a resident of this State. The amount in the account can

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

DRAFT/FRD

BILL NUMBER: SB 466 (First Edition)

SHORT TITLE: Tax Exempt Parental Savings Trust Fund

SPONSOR(S): Senators Hartsell and Lee

FISCAL IMPACT

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

FY 1997-98 FY 1998-99 FY 1999-00 FY 2000-01 FY 2001-02

REVENUES

General Fund	-	(\$3,269)	(\$20,413)	(\$54,244)	(\$105,704)
--------------	---	-----------	------------	------------	-------------

NOTE: The revenue loss will increase to \$819,000 in year 2007 and remain at that level. See assumptions and methodology.

PRINCIPAL DEPARTMENT(S) &

PROGRAM(S) AFFECTED: State Education Assistance Authority, Department of State Treasurer

EFFECTIVE DATE: The act is effective for taxable years beginning on or after January 1, 1998.

BILL SUMMARY: The bill exempts the earnings of the Parental Savings Trust Fund from state individual income tax.

BACKGROUND: The 1996 General Assembly established a Parental Savings Trust Fund to encourage parents and others to save for postsecondary education expenses. (1996, 2nd Extra Session, c. 18, s.16.7) The Fund is administered by the State Education Assistance Authority and Fund investments are made by the State Treasurer. Within the Fund there will be two accounts. One account will be for qualified expenses - tuition, fees, books, supplies and equipment. Earnings from this account are exempt from federal and state individual income tax until the proceeds are distributed to the beneficiary (and taxed at the beneficiary's tax rate). The second account will be for non-qualified expenses - travel, room, board, and incidentals. Earnings from this account are assigned to the contributor and taxed in the year earned. The Authority will ask contributors to the Fund whether they are saving for a public or private institution, then determine how much should be placed in each account based on average college costs.

To assist those parents or interested parties whose savings in the Fund are insufficient to pay for all college expenses, the General Assembly authorized the State Education Assistance Authority to develop a loan program in conjunction with the Parental Savings Trust Fund.

ASSUMPTIONS AND METHODOLOGY: The consultant that developed the Parental Savings Trust Fund concept for the State Education Assistance Authority assumes the following criteria in projecting the number of participants in the Fund:

- 1) Children age birth to 16 are eligible for the account. Establishing an account for a person over age 16 would not yield sufficient savings in time for college.
- 2) Approximately 64,000 children finish high school in the state each year and approximately 43% of them pursue higher education (excluding community college).
- 3) Using the data above, the target population is approximately 448,000

16 (age levels) X 64,000 (high school graduates in each age group) X .43 (percent going to college)

- 4) Each year between .6% and 1.2% of this target population will start savings accounts.

This fiscal note assumes the Fund will attract 1.2% of the target population or 5,376 new accounts each year. The Fund anticipates receiving its first accounts in October 1997. The average account holder will contribute \$125 a month. The average interest rate earned by these contributions is 5.5%. (This is equivalent to the State Treasurer's short term interest rate of 6.5% minus 1% in administrative charges.) There will be no payouts from the Fund for the first six years.

Based on the above assumptions, the interest earned by the Fund each calendar year is as follows:

1998	\$	93,426
1999	\$	583,240
2000	\$	1,549,839
2001	\$	3,020,115
2002	\$	5,022,482

2007 \$12,600,000 (max)

For this fiscal note, it is assumed that half of the Fund earnings will be credited to qualified expenses and tax deferred. Federal tax law allows the earnings on qualified expenses (tuition, fees, books) in the Fund to be tax deferred until the student attends college. State tax law conforms with the federal law on this topic. For private schools, tuition and fees might be 70% of the overall cost of attending the university. For public schools, tuition and fees may average about 30% of the cost of a university education. Since there is no sound basis to judge the college

destination of future Fund participants, this fiscal note chooses the mid-point of 50%. Thus 50% of the earnings will be taxed at the student's tax rate when the funds are paid out and 50% of the earnings will be taxed at the contributors' rate when earned each year.

Under SB 466, the interest earned in 1998 on non-qualified expenses accounts in the Fund will be tax exempt when individuals file their income tax returns in the spring of 1999. It is assumed that the average Fund contributor pays a 7% individual income tax rate. The tax loss for non-qualified expenses is 50% of the estimated earnings on page 2 times the 7% tax rate.

FY 1998-99	\$ 3,269
FY 1999-00	\$ 20,413
FY 2000-01	\$ 57,244
FY 2001-02	\$105,704
FY 2006-07	\$441,000

The interest on qualified expenses would be taxable under current law when the first payouts are made in FY 2004-05. SB 466 would exempt the earnings on qualified expenses from tax. If the average student works in the summer, works part-time in school, and is claimed as a dependent on his/her parents' tax return, then it is possible that the distribution from the Fund will be subject to the minimum state income tax of 6%. In FY 2006-07, the total earnings in the Fund are estimated to be \$12.6 million, with 50% of this amount or \$6.3 million designated for qualified expenses. Applying a 6% tax rate to \$6.3 million is equal to \$378,000.

The maximum tax loss for qualified and non-qualified expenses based on the scenario outlined above is \$819,000 beginning in FY 2006-07.

FISCAL RESEARCH DIVISION

733-4910

PREPARED BY: Richard Bostic

APPROVED BY: Tom Covington

DATE: May 13, 1997

warning systems to residence halls at the constituent institutions of The University and at the North Carolina School of Science and Mathematics that are not currently so equipped. The central alarm and warning systems to be installed shall be interconnected with a supervisory campuswide system of reporting into a station that is continuously monitored.

(c) Of the funds appropriated to the Office of the State Treasurer, the sum of one million dollars (\$1,000,000) for the 1996-97 fiscal year shall be used for the purpose of establishing the Fire Safety Loan Fund for installing fire safety equipment and systems in fraternity and sorority housing at public and nonpublic institutions of higher education located in North Carolina as authorized by G.S. 116-44.8.

(d) Subsection (a) of this section is effective upon ratification.

Requested by: Senators Perdue, Plexico, Winner, Little, Conder, Representatives Grady, Preston, Cummings

REPORT ON SERVICES PROVIDED BY FACULTY AND STUDENT ADVISORS

Sec. 16.6. The Board of Governors of The University of North Carolina shall report to the Joint Legislative Education Oversight Committee prior to January 2, 1997, on the implementation by each constituent institution of the recommendations included in the report on "Academic Advising in the University of North Carolina." The report shall include the following information collected from each constituent institution: (i) the progress of the institution's initiative to improve advising, (ii) the results of the senior survey referenced in the report on "Academic Advising in the University of North Carolina", and (iii) the plans of each constituent institution to address specifically any item of student dissatisfaction on the senior survey that had a score of dissatisfaction above thirty-three percent (33%).

Requested by: Senators Plexico, Winner, Little, Conder, Representatives Grady, Preston, Cummings, McMahan

PARENTAL SAVINGS TRUST FUND

Sec. 16.7. Article 23 of Chapter 116 of the General Statutes is amended by adding a new section to read:

"§ 116-209.25. Parental Savings Trust Fund.

(a) Policy. -- The General Assembly of North Carolina hereby finds and declares that encouraging parents and other interested parties to save for the postsecondary education expenses of eligible students is fully consistent with and furthers the long-established policy of the State to encourage, promote, and assist education as more fully set forth in G.S. 116-201(a).

(b) Parental Savings Trust Fund. -- There is established a parental savings trust fund to be administered by the State Education Assistance Authority to enable qualified parents to save funds to meet the costs of the postsecondary education expenses of eligible students.

(c) Contributions to the Trust Fund. -- The Authority is authorized to accept, hold, and disburse contributions, and interest earned on such contributions, from qualified parents and other interested parties in the Parental Savings Trust Fund. The contributions to the Parental Savings Trust Fund shall be held by the Authority in a separate institutional trust fund and, as such, contributions to the trust fund shall be invested by the State Treasurer as authorized in G.S. 147-69.2(b)(1) through (6) and the applicable provisions of G.S. 147-69.3. The contributions to the Parental Savings Trust Fund shall not be considered State moneys, assets of the State, or State revenue for any purpose.

(d) Administration of the Trust Fund. -- The Authority is authorized to develop and perform all functions necessary and desirable to administer the Parental Savings

tes is
itions
ional
iated
gher
that
the
ight
ous
or
by
by
em
oly
it
it
M
...

(1996, 2nd Ex. Sess. C. 18, S. 16.7)

Trust Fund and to provide such other services as the Authority shall deem necessary to facilitate participation in the Parental Savings Trust Fund.

(e) Loan Program. -- The Authority is authorized to develop and administer a loan program in conjunction with the Parental Savings Trust Fund to provide loan assistance to qualified parents and interested parties in order to facilitate the postsecondary education of eligible students. All funds appropriated to, or otherwise received by the Authority for loans under this section, all funds received as repayment of such loans, and all interest earned on these funds shall be placed in an institutional trust fund. This institutional trust fund may be used only for loans made to qualified parents and interested parties who contributed to the Parental Savings Trust Fund and administrative costs associated with the recovery of funds advanced under this loan program."

Requested by: Representatives Holmes, Creech, Esposito, Senators Plexico, Winner
SUPERCOMPUTER AND THE RESEARCH AND EDUCATION NETWORK/BOARD OF GOVERNORS TO MAINTAIN FUNDS

Sec. 16.8. The Board of Governors of The University of North Carolina shall maintain the funds transferred by this act for the purchase of the Supercomputer and the Research and Education Network in a central identifiable budget purpose.

Requested by: Senators Plyler, Plexico, Winner, Little, Conder, Representatives Grady, Preston, Cummings
AGRICULTURE RESEARCH FUNDS

Sec. 16.9. Of the funds appropriated to the Board of Governors of The University of North Carolina for the 1996-97 fiscal year the following sums shall be allocated as follows:

- (1) The sum of \$1,000,000 in nonrecurring funds shall be allocated for research efforts focused upon eradicating diseases in the State's turkey population. Any of these funds remaining at the end of the 1996-97 fiscal year shall not revert but shall remain available for use pursuant to this section.
- (2) The sum of \$90,000 in nonrecurring funds shall be allocated to enhance fish hatcheries research and production.
- (3) The sum of \$250,000 in nonrecurring funds shall be allocated for turfgrass research.

Requested by: Senators Plexico, Winner, Little, Conder, Representatives Grady, Preston, Cummings
UNC FUNDING FOR NEW ENROLLMENT POLICY CHANGE

Sec. 16.10. In requesting funds for additional students, the Board of Governors of The University of North Carolina shall revise its methodology to ensure sufficient funding for support services needed due to enrollment growth. The policy change shall be implemented for the 1996-97 fiscal year and each fiscal year thereafter. Funds are provided in this act to implement this policy change for the 1996-97 fiscal year.

Requested by: Senators Plexico, Winner, Little, Conder, Representatives Grady, Preston, Cummings
ACADEMIC ENHANCEMENT FUNDS

Sec. 16.11. Of the funds appropriated to The University of North Carolina Board of Governors, the sum of seventeen million eight hundred thousand dollars (\$17,800,000) shall be allocated to constituent institutions classified as Research University I campuses in direct proportion to the funds to be raised on each

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

2

SENATE BILL 875

State Government, Local Government, and Personnel Committee Substitute Adopted
4/24/97

Short Title: Revise Records Laws-2.

(Public)

Sponsors:

Referred to: Finance.

April 15, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO IMPROVE THE PROCEDURES FOR RECORDING MAPS AND
3 PLATS, TO REVISE THE LAW GOVERNING THE DISPOSITION OF
4 CERTAIN BIRTH AND DEATH CERTIFICATES, AND TO ESTABLISH A
5 STUDY OF LAND TITLE REGISTRATION PROCEDURES.

6 The General Assembly of North Carolina enacts:

7 Section 1. G.S. 39-32.3 reads as rewritten:

8 "**§ 39-32.3. Recordation of plat showing control corners.**

9 Upon designating a control corner and affixing a permanent marker, said person,
10 firm or corporation shall cause to be filed in the office of the register of deeds of the
11 county in which the real estate development is located a map or plat showing the
12 location of the control corner or corners and permanent marker or markers with
13 adequate and sufficient description to enable a surveyor to locate such control corner
14 or marker. ~~The register of deeds shall not accept for registration or record any map
15 or plat of a real estate subdivision or development made after July 1, 1947, unless the
16 location of such control corner or corners is shown thereon. No map or plat of a real
17 estate subdivision or development made after July 1, 1947, shall be certified for
18 recording pursuant to G.S 47-30.2 unless the location of control corners is shown
19 thereon.~~"

20 Section 2. G.S. 47-30 reads as rewritten:

21 "**§ 47-30. Plats and subdivisions; mapping requirements.**

1 (a) Size Requirements. -- All land plats presented to the register of deeds for
2 recording in the registry of a county in North Carolina after September 30, 1991,
3 having an outside marginal size of either 18 inches by 24 inches, 21 inches by 30
4 inches, or 24 inches by 36 inches, and having a minimum one and one-half inch
5 border on the left side and a minimum one-half inch border on the other sides shall
6 be deemed to meet the size requirements for recording under this section. Where
7 size of land areas, or suitable scale to assure legibility require, plats may be placed on
8 two or more sheets with appropriate match lines. Counties may specify either:

- 9 (1) Only 18 inches by 24 inches;
- 10 (2) A combination of 18 inches by 24 inches and 21 inches by 30
11 inches;
- 12 (3) A combination of 18 inches by 24 inches and 24 inches by 36
13 inches; or
- 14 (4) A combination of all three sizes.

15 Provided, that all registers of deeds where specific sizes other than the combination of
16 all three sizes have been specified, shall be required to submit said size specifications
17 to the North Carolina Association of Registers of Deeds for inclusion on a master list
18 of all such counties. The list shall be available in each register of deeds office by
19 October 1, 1991. For purposes of this section, the terms 'plat' and 'map' are
20 synonymous.

21 (b) Plats to Be Reproducible. -- Each plat presented for recording shall be a
22 reproducible plat, either original ink on polyester film (mylar), or a reproduced
23 drawing, transparent and archival (as defined by the American National Standards
24 Institute), and submitted in this form. The recorded plat must be such that the public
25 may obtain legible copies. A direct or photographic copy of each recorded plat shall
26 be placed in the plat book or plat file maintained for that purpose and properly
27 indexed for use. In those counties in which the register has made a security copy of
28 the plat from which legible copies can be made, the original may be returned to the
29 person indicated on the plat.

30 (c) Information Contained in Title of Plat. -- The title of each plat shall contain
31 the following information: property designation, name of owner (the name of owner
32 shall be shown for indexing purposes only and is not to be construed as title
33 certification), location to include township, county and state, the date or dates the
34 survey was made; scale or scale ratio in words or figures and bar graph; name and
35 address of surveyor or firm preparing the plat.

36 (d) Certificate; Form. -- There shall appear on each plat a certificate by the
37 person under whose supervision ~~such~~ the survey or ~~such~~ plat was made, stating the
38 origin of the information shown on the plat, including recorded deed and plat
39 references shown thereon. The ratio of precision before any adjustments must be
40 shown. Any lines on the plat that were not actually surveyed must be clearly
41 indicated and a statement included revealing the source of information. ~~The~~
42 ~~execution of such certificate shall be acknowledged before any officer authorized to~~
43 ~~take acknowledgments by the registered land surveyor preparing the plat. All plats to~~
44 ~~be recorded shall be probated as required by law for the registration of deeds.~~ Where

1 a plat consists of more than one sheet, only one sheet must contain the certification
2 and all other sheets must be signed and sealed.

3 The certificate required above shall include the source of information for the
4 survey and data indicating the ratio of precision of the survey before adjustments and
5 shall be in substantially the following form:

6 'I,, certify that this plat was drawn under my supervision from an
7 actual survey made under my supervision (deed description recorded in Book,
8 page, etc.) (other); that the boundaries not surveyed are clearly indicated as
9 drawn from information found in Book, page; that the ratio of precision
10 as calculated is 1:.....; that this plat was prepared in accordance with G.S. 47-30 as
11 amended. Witness my original signature, registration number and seal this day
12 of, A.D., 19.....

13

14 Seal or Stamp

15

16

17

.....

18 Surveyor

19

Registration Number'

20

21 ~~The certificate of the Notary shall read as follows:~~

~~"North Carolina,County.~~

22

23 ~~I, a Notary Public of the County and State aforesaid, certify that....., a~~
24 ~~registered land surveyor, personally appeared before me this day and acknowledged~~
25 ~~the execution of the foregoing instrument. Witness my hand and official stamp or~~
26 ~~seal, this..... day of, 19.....~~

27

28 Seal or Stamp

29

~~Notary Public.....~~

30

~~My Commission expires~~

31

32 Nothing in this requirement shall prevent the recording of a map that was
33 prepared in accordance with a previous version of G.S. 47-30 as amended, properly
34 signed, and notarized under the statutes applicable at the time of the signing of the
35 map. However, it shall be the responsibility of the person presenting the map to
36 prove that the map was so prepared.

37 (e) Method of Computation. -- An accurate method of computation shall be used
38 to determine the acreage and ratio of precision shown on the plat. Area by
39 estimation is not acceptable nor is area by planimeter, area by scale, or area copied
40 from another source, except in the case of tracts containing inaccessible sections or
41 areas. In such case the surveyor may make use of aerial photographs or other
42 appropriate aids to determine the acreage of ~~such~~ any inaccessible areas when ~~such~~
43 the areas are bounded by natural and visible monuments. In such case the methods

1 used must be stated on the plat and all accessible areas of the tract shall remain
2 subject to all applicable standards of this section.

3 (f) Plat to Contain Specific Information. -- Every plat shall contain the following
4 specific information:

5 (1) An accurately positioned north arrow coordinated with any
6 bearings shown on the plat. Indication shall be made as to
7 whether the north index is true, magnetic, North Carolina grid
8 ('NAD 83' or 'NAD 27'), or is referenced to old deed or plat
9 bearings. If the north index is magnetic or referenced to old deed
10 or plat bearings, the date and the source (if known) ~~such~~ the index
11 was originally determined shall be clearly indicated.

12 (2) The azimuth or course and distance of every property line
13 surveyed shall be shown. Distances shall be in feet or meters and
14 decimals thereof. The number of decimal places shall be
15 appropriate to the class of survey required.

16 (3) All plat distances shall be by horizontal or grid measurements. All
17 lines shown on the plat shall be correctly plotted to the scale
18 shown. Enlargement of portions of a plat are acceptable in the
19 interest of clarity, where shown as inserts. Where the North
20 Carolina grid system is used the grid factor shall be shown on the
21 face of the plat. If grid distances are used, it must be shown on the
22 plat.

23 (4) Where a boundary is formed by a curved line, the following data
24 must be given: actual survey data from the point of curvature to
25 the point of tangency shall be shown as standard curve data, or as
26 a traverse of bearings and distances around the curve. If standard
27 curve data is used the bearing and distance of the long chord (from
28 point of curvature to point of tangency) must be shown on the plat.

29 (5) Where a subdivision of land is set out on the plat, all streets and
30 lots shall be accurately plotted with dimension lines indicating
31 widths and all other information pertinent to reestablishing all lines
32 in the field. This shall include bearings and distances sufficient to
33 form a continuous closure of the entire perimeter.

34 (6) Where control corners have been established in compliance with
35 G.S. 39-32.1, 39-32.2, 39-32.3, and 39-32.4, as amended, the
36 location and pertinent information as required in the reference
37 statute shall be plotted on the plat. All other corners which are
38 marked by monument or natural object shall be so identified on all
39 plats, and where practical all corners of adjacent owners along the
40 boundary lines of the subject tract which are marked by monument
41 or natural object shall be shown.

42 (7) The names of adjacent landowners, or lot, block, parcel,
43 subdivision designations or other legal reference where applicable,
44 shall be shown where they could be determined by the surveyor.

- 1 (8) All visible and apparent rights-of-way, watercourses, utilities,
2 roadways, and other such improvements shall be accurately located
3 where crossing or forming any boundary line of the property
4 shown.
- 5 (9) Where the plat is the result of a survey, one or more corners shall,
6 by a system of azimuths or courses and distances, be accurately
7 tied to and coordinated with a horizontal control monument of
8 some United States or State Agency survey system, such as the
9 North Carolina Geodetic Survey where ~~such~~ the monument is
10 within 2,000 feet of the subject property. Where the North
11 Carolina Grid System coordinates of said monument are on file in
12 the North Carolina Department of Environment, Health, and
13 Natural Resources, the coordinates of both the referenced corner
14 and the monuments used shall be shown in X (easting) and Y
15 (northing) coordinates on the plat. The coordinates shall be
16 identified as based on 'NAD 83,' indicating North American
17 Datum of 1983, or as 'NAD 27,' indicating North American Datum
18 of 1927. The tie lines to the monuments shall also be sufficient to
19 establish true north or grid north bearings for the plat if the
20 monuments exist in pairs. Within a previously recorded
21 subdivision that has been tied to grid control, control monuments
22 within the subdivision may be used in lieu of additional ties to grid
23 control. Within a previously recorded subdivision that has not
24 been tied to grid control, if horizontal control monuments are
25 available within 2,000 feet, the above requirements shall be met;
26 but in the interest of bearing consistency with previously recorded
27 plats, existing bearing control should be used where practical. In
28 the absence of Grid Control, other appropriate natural monuments
29 or landmarks shall be used. In all cases, the tie lines shall be
30 sufficient to accurately reproduce the subject lands from the
31 control or reference points used.
- 32 (10) A vicinity map (location map) shall appear on the plat.
- 33 (11) Notwithstanding any other provision contained in this section, it is
34 the duty of the surveyor, by a certificate on the face of the plat, to
35 certify to one of the following:
- 36 a. That the survey creates a subdivision of land within the area
37 of a county or municipality that has an ordinance that
38 regulates parcels of land;
- 39 b. That the survey is located in ~~such~~ a portion of a county or
40 municipality that is unregulated as to an ordinance that
41 regulates parcels of land;
- 42 c. That the survey is of an existing parcel or parcels of land;

1 d. That the survey is of another category, such as the
2 recombination of existing parcels, a court-ordered survey, or
3 other exception to the definition of subdivision;

4 e. That the information available to the surveyor is such that
5 the surveyor is unable to make a determination to the best
6 of ~~his or her~~ the surveyor's professional ability as to
7 provisions contained in (a) through (d) above.

8 However, if the plat contains the certificate of a surveyor as stated
9 in a., d., or e. above, then the plat shall have, in addition to said
10 surveyor's certificate, a certification of approval, or no approval
11 required, as may be required by local ordinance from the
12 appropriate government authority before the plat is presented for
13 recordation. If the plat contains the certificate of a surveyor as
14 stated in b. or c. above, nothing shall prevent the recordation of
15 the plat if all other provisions have been met.

16 (g) Recording of Plat. ~~For purposes of recording, the register of deeds shall not~~
17 ~~be responsible for.~~ In certifying a plat for recording pursuant to G.S. 47-30.2, the
18 Review Officer shall not be responsible for reviewing or certifying as to the following
19 requirements of this section:

20 (1) ~~The provisions of subsection (b);~~ Subsection (b) of this section as
21 to archival;

22 (2) ~~The provisions of subsection (d), except for the notary certificate;~~

23 (3) ~~The provisions of subsection (e);~~ Subsection (e) of this section; or

24 (4) ~~The provisions of subdivisions (2) through (9) of subsection (f).~~
25 Subdivisions (1) through (10) of subsection (f) of this section.

26 A plat, when certified pursuant to G.S. 47-30.2 ~~proven and probated as provided~~
27 ~~herein for deeds and other conveyances, when and~~ presented for recording, shall be
28 recorded in the plat book or plat file and when so recorded shall be duly indexed.
29 Reference in any instrument hereafter executed to the record of any plat herein
30 authorized shall have the same effect as if the description of the lands as indicated on
31 the record of the plat were set out in the instrument.

32 (h) Nothing in this section shall be deemed to prevent the filing of any plat
33 prepared by a registered land surveyor but not recorded prior to the death of the
34 registered land surveyor. However, it is the responsibility of the person presenting
35 the map to the Review Officer pursuant to G.S. 47-30.2 to prove that the plat was so
36 prepared. For preservation these plats may be filed without signature, notary
37 acknowledgement or probate, in a special plat file.

38 (i) Nothing in this section shall be deemed to invalidate any instrument or the title
39 thereby conveyed making reference to any recorded plat.

40 (j) The provisions of this section shall not apply to boundary plats of areas
41 annexed by municipalities nor to plats of municipal boundaries, whether or not
42 required by law to be recorded.

43 (k) The provisions of this section shall apply to all counties in North Carolina.
44 ~~Where local law is in conflict with this section, the provisions in this section shall~~

1 ~~apply. Failure of a plat to conform in all requirements of this statute shall be~~
2 ~~sufficient grounds for the register of deeds to refuse to accept the plat for recordation.~~

3 (l) The provisions of this section shall not apply to the registration of highway
4 right-of-way plans provided for in G.S. 136-19.4 nor to registration of roadway
5 corridor official maps provided in Article 2E of Chapter 136.

6 (m) Except as provided in subsection (n), any map submitted for inclusion on the
7 public record, whether submitted alone or attached to a deed or other instrument,
8 shall be prepared by a registered land surveyor. Such a map shall either (i) have an
9 original personal signature and original seal as approved by the North Carolina State
10 Board of Registration for Professional Engineers and Land Surveyors or (ii) be a copy
11 of a map, already on file in the public record, that is certified by the custodian of the
12 public record to be a true and accurate copy of a map bearing an original personal
13 signature and original seal. The presence of the original personal signature and seal
14 shall constitute a certification that the map conforms to the standards of practice for
15 land surveying in North Carolina, as defined in the rules of the North Carolina State
16 Board of Registration for Professional Engineers and Land Surveyors.

17 (n) A map that does not meet the requirements of subsection (m) of this section
18 may be attached to a deed or other instrument submitted for inclusion in the public
19 record only for illustrative purposes and only if the map is conspicuously labelled,
20 'THIS MAP IS NOT A CERTIFIED SURVEY AND NO RELIANCE MAY BE
21 PLACED IN ITS ACCURACY.'

22 Section 3. Article 2 of Chapter 47 of the General Statutes is amended by
23 adding a new section to read:

24 "**§ 47-30.2. Review Officer.**

25 (a) The board of commissioners of each county shall, by resolution, designate by
26 name a person experienced in mapping or land records management as Review
27 Officer to review each map and plat before it is presented to the register of deeds for
28 recording. The person designated Review Officer shall, if possible, be certified as a
29 property mapper pursuant to G.S. 147-54.4. The resolution designating the Review
30 Officer shall be recorded in the county registry and indexed on the grantor index in
31 the name of the Review Officer.

32 (b) The Review Officer shall review each map or plat before it is presented to the
33 register of deeds for recording and certify that it complies with all statutory
34 requirements for recording. The certification shall be in substantially the following
35 form:

36
37 State of North Carolina
38 County of
39
40 I, Review Officer of County, certify that the map or plat to which
41 this certification is affixed meets all statutory
42 requirements for recording.
43 Review Officer
44

1 Date

2 (c) The register of deeds shall not accept for recording any map or plat that does
3 not have affixed a certification as provided in subsection (b) of this section."

4 Section 4. G.S. 136-102.6(d) reads as rewritten:

5 "(d) The right-of-way and construction plans for such public streets in residential
6 subdivisions, including plans for street drainage, shall be submitted to the Division of
7 Highways for review and approval, prior to the recording of the subdivision plat in
8 the office of the register of deeds. The plat or map required by this section shall not
9 be recorded by the register of deeds without a certification pursuant to G.S. 47-30.2
10 and, if determined to be necessary by the Review Officer, a certificate of approval by
11 the Division of Highways of the plans for the public street as being in accordance
12 with the minimum standards of the Board of Transportation for acceptance of the
13 subdivision street on the State highway system for maintenance. The Review Officer
14 shall not certify a map or plat subject to this section unless the new streets or changes
15 in existing streets are designated either public or private. The certificate of approval
16 shall not be deemed an acceptance of the dedication of such the streets on the
17 subdivision plat or map. Final acceptance by the Division of Highways of such the
18 public streets and placing them on the State highway system for maintenance shall be
19 conclusive proof that the streets have been constructed according to the minimum
20 standards of the Board of Transportation."

21 Section 5. G.S. 153A-321 reads as rewritten:

22 "**§ 153A-321. Planning agency.**

23 A county may by ordinance create or designate one or more agencies to perform
24 the following duties:

- 25 (1) Make studies of the county and surrounding areas;
- 26 (2) Determine objectives to be sought in the development of the study
27 area;
- 28 (3) Prepare and adopt plans for achieving these objectives;
- 29 (4) Develop and recommend policies, ordinances, administrative
30 procedures, and other means for carrying out plans in a
31 coordinated and efficient manner;
- 32 (5) Advise the board of commissioners concerning the use and
33 amendment of means for carrying out plans;
- 34 (6) Exercise any functions in the administration and enforcement of
35 various means for carrying out plans that the board of
36 commissioners may direct;
- 37 (7) Perform any other related duties that the board of commissioners
38 may direct.

39 An agency created or designated pursuant to this section may include but shall not
40 be limited to one or more of the following, ~~with any staff that the board of~~
41 ~~commissioners considers appropriate:~~ following:

- 42 (1) A planning board or commission of any size (with not less fewer
43 than three members) or composition considered appropriate,
44 organized in any manner considered appropriate;

1 (2) A joint planning board created by two or more local governments
2 according to the procedures and provisions of Chapter 160A,
3 Article 20, Part 1."

4 Section 6. G.S. 153A-332 reads as rewritten:

5 "**§ 153A-332. Ordinance to contain procedure for plat approval; approval prerequisite**
6 **to plat recordation; statement by owner.**

7 A subdivision ordinance adopted pursuant to this Part shall contain provisions
8 setting forth the procedures to be followed in granting or denying approval of a
9 subdivision plat before its registration.

10 The ordinance shall provide that the following agencies be given an opportunity to
11 make recommendations concerning an individual subdivision plat before the plat is
12 approved:

- 13 (1) The district highway engineer as to proposed State streets, State
14 highways, and related drainage systems;
- 15 (2) The county health director or local public utility, as appropriate, as
16 to proposed water or sewerage systems;
- 17 (3) Any other agency or official designated by the board of
18 commissioners.

19 The ordinance may provide that final approval of each individual subdivision plat
20 is to be given by:

- 21 (1) The board of commissioners,
- 22 (2) The board of commissioners on recommendation of a planning
23 agency, or
- 24 (3) A designated planning agency.

25 From the effective date of time that a subdivision ordinance that is adopted by the
26 county, filed with the register of deeds of the county, no subdivision plat of land
27 within the county's jurisdiction may be filed or recorded until it has been submitted
28 to and approved by the appropriate board or agency, as specified in the subdivision
29 ordinance, and until this approval is entered in writing on the face of the plat by an
30 authorized representative of the county, the chairman or head of the board or agency.
31 The Review Officer, pursuant to G.S. 47-30.2, shall not certify register of deeds may
32 not file or record a plat of a subdivision of land located within the territorial
33 jurisdiction of the county that has not been approved in accordance with these
34 provisions, and the clerk of superior court may not order or direct the recording of a
35 plat if the recording would be in conflict with this section. ~~The owner of land shown~~
36 ~~on a subdivision plat submitted for recording, or his authorized agent, shall sign a~~
37 ~~statement on the plat stating whether any land shown thereon is within the~~
38 ~~subdivision regulation jurisdiction of the county."~~

39 Section 7. G.S. 160A-361 reads as rewritten:

40 "**§ 160A-361. Planning agency.**

41 Any city may by ordinance create or designate one or more agencies to perform
42 the following duties:

- 43 (1) Make studies of the area within its jurisdiction and surrounding
44 areas;

- 1 (2) Determine objectives to be sought in the development of the study
2 area;
- 3 (3) Prepare and adopt plans for achieving these objectives;
- 4 (4) Develop and recommend policies, ordinances, administrative
5 procedures, and other means for carrying out plans in a
6 coordinated and efficient manner;
- 7 (5) Advise the council concerning the use and amendment of means
8 for carrying out plans;
- 9 (6) Exercise any functions in the administration and enforcement of
10 various means for carrying out plans that the council may direct;
- 11 (7) Perform any other related duties that the council may direct.

12 An agency created or designated pursuant to this section may include, but shall not
13 be limited to, one or more of the following; ~~with such staff as the council may deem~~
14 appropriate: following:

- 15 (1) A planning board or commission of any size (with not less fewer
16 than three members) or composition deemed appropriate,
17 organized in any manner deemed appropriate;
- 18 (2) A joint planning board created by two or more local governments
19 pursuant to Article 20, Part 1, of this Chapter."

20 Section 8. G.S. 160A-373 reads as rewritten:

21 "**§ 160A-373. Ordinance to contain procedure for plat approval; approval prerequisite**
22 **to plat recordation; statement by owner.**

23 Any subdivision ordinance adopted pursuant to this Part shall contain provisions
24 setting forth the procedures to be followed in granting or denying approval of a
25 subdivision plat prior to its registration.

26 The ordinance may provide that final approval of each individual subdivision plat
27 is to be given by

- 28 (1) The city council,
- 29 (2) The city council on recommendation of a planning agency, or
- 30 (3) A designated planning agency.

31 From and after the effective date of time that a subdivision ordinance that is
32 adopted by the city, filed with the register of deeds of the county, no subdivision plat
33 of land within the city's jurisdiction shall be filed or recorded until it shall have been
34 submitted to and approved by the council or appropriate agency, as specified in the
35 subdivision ordinance, and until this approval shall have been entered on the face of
36 the plat in writing by ~~the chairman or head of the agency.~~ an authorized
37 representative of the city. The Review Officer, pursuant to G.S. 47-30.2 shall not
38 certify register of deeds shall not file or record a plat of a subdivision of land located
39 within the territorial jurisdiction of a city that has not been approved in accordance
40 with these provisions, nor shall the clerk of superior court order or direct the
41 recording of a plat if the recording would be in conflict with this section. ~~The owner~~
42 ~~of land shown on a subdivision plat submitted for recording, or his authorized agent,~~
43 ~~shall sign a statement on the plat stating whether or not any land shown thereon is~~
44 ~~within the subdivision regulation jurisdiction of any city."~~

1 Section 9. G.S. 161-10(a)(3) reads as rewritten:

2 "(3) Plats. -- For each original or revised plat recorded ~~nineteen dollars~~
3 ~~(\$19.00)~~ twenty-one dollars (\$21.00) per sheet or page; for
4 furnishing a certified copy of a plat three dollars (\$3.00)."

5 Section 10. G.S. 89C-26 is repealed.

6 Section 11. G.S. 130A-99 reads as rewritten:

7 "**§ 130A-99. Register of deeds to preserve copies of birth and death records.**

8 (a) The register of deeds of each county shall file and preserve the copies of birth
9 and death certificates furnished by the local registrar under the provisions of G.S.
10 130A-97, and shall make and keep a proper index of the certificates. These
11 certificates shall be open to inspection and examination. Copies or abstracts of these
12 certificates shall be provided to any person upon request. Certified copies of these
13 certificates shall be provided only to those persons described in G.S. 130A-93(c).

14 (b) The register of deeds may remove from the records and destroy copies of birth
15 or death certificates for persons born or dying in counties other than the county in
16 which the office of the register of deeds is located."

17 Section 12. G.S. 132-3(a) reads as rewritten:

18 "(a) Prohibition. -- No public official may destroy, sell, loan, or otherwise dispose
19 of any public record, except in accordance with ~~G.S. 121-5~~, G.S. 121-5 and G.S.
20 130A-99, without the consent of the Department of Cultural Resources. Whoever
21 unlawfully removes a public record from the office where it is usually kept, or alters,
22 defaces, mutilates or destroys it shall be guilty of a Class 3 misdemeanor and upon
23 conviction only fined not less than ten dollars (\$10.00) nor more than five hundred
24 dollars (\$500.00)."

25 Section 13. G.S. 121-5(b) reads as rewritten:

26 "(b) Destruction of Records Regulated. -- No person may destroy, sell, loan, or
27 otherwise dispose of any public record without the consent of the Department of
28 ~~Cultural Resources.~~ Resources, except as provided in G.S. 130A-99. Whoever
29 unlawfully removes a public record from the office where it is usually kept, or alters,
30 mutilates, or destroys it shall be guilty of a Class 3 misdemeanor and upon conviction
31 only fined at the discretion of the court.

32 When the custodian of any official State records certifies to the Department of
33 Cultural Resources that such records have no further use or value for official and
34 administrative purposes and when the Department certifies that such records appear
35 to have no further use or value for research or reference, then such records may be
36 destroyed or otherwise disposed of by the agency having custody of them.

37 When the custodian of any official records of any county, city, municipality, or
38 other subdivision of government certifies to the Department that such records have
39 no further use or value for official business and when the Department certifies that
40 such records appear to have no further use or value for research or reference, then
41 such records may be authorized by the governing body of said county, city,
42 municipality, or other subdivision of government to be destroyed or otherwise
43 disposed of by the agency having custody of them. A record of such certification and

1 authorization shall be entered in the minutes of the governing body granting the
2 authority.

3 The North Carolina Historical Commission is hereby authorized and empowered
4 to make such orders, rules, and regulations as may be necessary and proper to carry
5 into effect the provisions of this section. When any State, county, municipal, or other
6 governmental records shall have been destroyed or otherwise disposed of in
7 accordance with the procedure authorized in this subsection, any liability that the
8 custodian of such records might incur for such destruction or other disposal shall
9 cease and determine."

10 Section 14. The Legislative Research Commission may study the
11 procedures for land title registration pursuant to Chapter 43 of the General Statutes
12 and make recommendations regarding revisions to the procedures to improve them.
13 The Commission shall report its findings and recommendations to the 1998 Regular
14 Session of the 1997 General Assembly.

15 Section 15. Sections 1 through 10 of this act become effective October 1,
16 1997. The remainder of this act is effective when it becomes law. The removal and
17 destruction by a register of deeds of any out-of-county birth certificates prior to the
18 effective date of this act is valid, and the register of deeds is not in violation of G.S.
19 121-5 or G.S. 132-3.

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

5-13-97

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Bernard Allen

SOS

Claire J. Marshall

SOS

David J. Sherry

S of S

Sharon P. Pason

SOS

Scott Tompkins

Sec. State

Asklei Bwagun

NCCBT

Rochelle Meddler

SOS

WMM Bide

WMA

Alice Farland

Electricities

Bill Scoggin

NABA

Frank Galante

S of State

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

5-13-97

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Ann Shaw	Randolph Co. Register of Deeds
----------	--------------------------------

Judy Gibson	Mecklenburg Co. Register of Deeds
-------------	-----------------------------------

Luzva Rouse	Lexen Co. Register of Deeds
-------------	-----------------------------

JULIAN PHILPOTT	NCFB
-----------------	------

Andy Allen	NC Farm Bureau
------------	----------------

Mary Kleng	League of Women Voters of Charlotte - Mecklenburg
------------	--

WELBORN ROBER	BPA, PA
---------------	---------

Ruffi Post	EDA, PA
------------	---------

Diane Henderson	RSH, MS
-----------------	---------

NANCY POMERANZ	DOTR
----------------	------

Paul Zepini	OSBA
-------------	------

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

5-13-97

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Dick Underwood

DR

John Chiving

SEANC

Linda Craft

SEANC

Lynn Stephens

SEANC

Arthur Paradise

SEANC

Murley A. Bell

SEANC

La Rena Thoutin

SEANC

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT

John H. Kerr, III, Co-Chair

David W. Hoyle, Co-Chair

Tuesday, May 13, 1997

SENATOR JOHN KERR,

submits the following with recommendations as to passage:

FAVORABLE

H.B. 36 Make Use Tax User-Friendly.
 Sequential Referral: None
 Recommended Referral: None

H.B. 204 Foreclosure Filing Fees.
 Sequential Referral: None
 Recommended Referral: None

TOTAL REPORTED: 2

Committee Clerk Comment: None

SENATE FINANCE COMMITTEE

WEDNESDAY, MAY 14, 1997

12:00 NOON - ROOM 544 LOB

The Senate Finance Committee met. There were 26 members of the Committee present. Senator David W. Hoyle, Co-Chairman, presided. He introduced the Pages, they are Kelly Smith from Raleigh, N. C., sponsored by Senator Reeves and Alexandra Sible from Cary, N. C., sponsored by Senator Carrington.

S. B. 660 - License Athletic Trainers

Senator Hoyle came to explain the bill, he moved for adoption of a committee substitute, motion passed. Mr. Rick Proctor with the N. C. Association of Athletic Trainers spoke in support of the bill. Mr. Proctor is the Athletic Trainer at High Point College. Senator Rand asked the question relative to whether or not this bill had been heard by the Licensing Committee for the General Assembly, Senator Hoyle replied that it had been heard and passed on this past Monday. Senator Cochrane moved for a "favorable" report, motion passed.

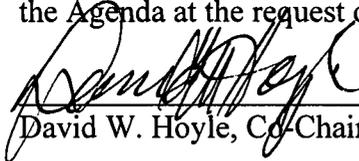
S. B. 649 - Lobbyist Penalty

Senator Brad Miller came to explain the bill and stated that this bill was introduced at the request of Secretary of State Elaine Marshall. Secretary Marshall spoke relative to the need for this bill and in support of the bill. After many questions by committee members, Senator Webster want to offer an amendment and make a motion for acceptance. There were continued questions by members of the committee on the amendment, therefore, Senator Webster withdrew from making an amendment. Senator Dalton stated that he wanted to an amendment and Secretary of State Marshall stated that she had no problems with the amendment, therefore, it was decided that Senator Webster and Dalton would jointly offer the amendment, which they did, and motion was passed. Senator Carrington moved for a "favorable" report with amendment being rolled into a committee substitute, motion passed.

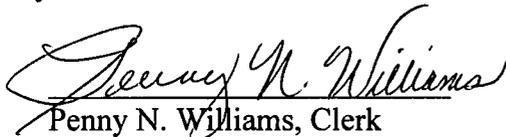
S. B. 875 - Revise Records Laws-2

Senator Kerr came to explain the bill and made a motion for adoption of amendment Ms. Sabre Faires, Staff Counsel, explained the amendment, amendment adopted. Ms. Ann Shaw, Register of Deeds from Randolph County, spoke to the bill. She give an overview of the bill and how the bill came about. Senator Cooper sent forth an amendment and amendment was adopted. Mr. Jim Blackburn with the N. C. Association of County Commissioners spoke in support of the Bill. Mr. Phil Wagoner representing the N. C. Society of Surveys read a letter from their President, Mr. Bill Owen. Mr. Dan Howell of the N. C. Planning Commission spoke in support of the bill. Mr. Andy Remonet spoke on the bill. After much discussion, Senator Hoyle announced that this bill would not be voted on today, but would be brought back before the Committee for consideration later.

Meeting was adjourned. NOTE: S. B. 781, S. B. 439 and S. B. 847 were removed from the Agenda at the request of the sponsors.


David W. Hoyle, Co-Chair


John H. Kerr, III Co-Chair


Penny N. Williams, Clerk


Evelyn S. Hartsell, Clerk

NOTE:

Agenda is Attachment # 1
Visitor's Registration is Attachment # 2
Committee Report (S. B. 660) is Attachment # 3
Committee Report (S. B. 649) is Attachment # 4

AGENDA

SENATE FINANCE COMMITTEE MEETING

WEDNESDAY, MAY 14, 1997

ROOM 544, 12:00 NOON

SB 660 - License Athletic Trainers - Senator Hoyle

SB 875 - Revise Records Laws-2 - Senator Kerr

SB 781 - Amend Costs of Administration - Senator Kerr - *remove per Sen. Kerr*

SB 439 - Securities/Investment Adviser/AB. - Senator Reeves - *Sen. Reeves asked that Bill be removed*

SB 649 - Lobbyist Penalty - Senator Miller

SB 847 - No Sales Tax on Reusable Containers - Senator Odom - *Sen. Odom asked for Bill to be removed*

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 660

Short Title: License Athletic Trainers.

(Public)

Sponsors: Senators Hoyle and Shaw of Guilford.

Referred to: Finance.

April 2, 1997

1 A BILL TO BE ENTITLED

2 AN ACT TO LICENSE ATHLETIC TRAINERS.

3 The General Assembly of North Carolina enacts:

4 Section 1. Chapter 90 of the General Statutes is amended by adding a
5 new Article to read:

6 "ARTICLE 33.

7 "Athletic Trainers.

8 "§ 90-512. Title; purpose.

9 (a) This Article may be cited as the 'Athletic Trainers Licensing Act'.

10 (b) The practice of athletic trainer services affects the public health, safety, and
11 welfare. Licensure of the practice of athletic trainer services is necessary to ensure
12 minimum standards of competency and to provide the public with safe athletic
13 trainer services. It is the purpose of this Article to provide for the regulation of
14 persons offering athletic trainer services.

15 "§ 90-513. Definitions.

16 The following definitions apply in this Article:

17 (1) Athletic trainer. -- A person who, under a written protocol with a
18 physician licensed under Article 1 of Chapter 90 of the General
19 Statutes and filed with the North Carolina Medical Board, carries
20 out the practice of care, prevention, and rehabilitation of injuries
21 incurred by athletes, and who, in carrying out these functions, may
22 use physical modalities, including heat, light, sound, cold,
23 electricity, or mechanical devices related to rehabilitation and
24 treatment.

1 (2) Board. -- The North Carolina Board of Athletic Trainer
2 Examiners as created by G.S. 90-514.

3 (3) License. -- A certificate which evidences approval by the Board
4 that a person has successfully completed the requirements set forth
5 in G.S. 90-517 that entitles the person to perform the functions and
6 duties of an athletic trainer.

7 **"§ 90-514. Board of Examiners created.**

8 (a) The North Carolina Board of Athletic Trainer Examiners is created.

9 (b) Composition and Terms. -- The Board shall consist of seven members who
10 shall serve staggered terms. Four members shall be athletic trainers certified by the
11 National Athletic Trainers' Association Board of Certification, Inc. One member
12 shall be a licensed orthopedic surgeon, one member shall be a licensed family
13 practice physician, and one member shall represent the public at large.

14 The initial Board members shall be selected on or before August 1, 1997, as
15 follows:

16 (1) The General Assembly, upon the recommendation of the President
17 Pro Tempore of the Senate, shall appoint two certified athletic
18 trainers and an orthopedic surgeon. The certified athletic trainers
19 shall serve for terms of three years, and the orthopedic surgeon
20 shall serve for a term of one year.

21 (2) The General Assembly, upon the recommendation of the Speaker
22 of the House of Representatives, shall appoint two certified athletic
23 trainers and a family practice physician. The certified athletic
24 trainers and the family practice physician shall serve for terms of
25 two years.

26 (3) The Governor shall appoint for a three-year term a public member
27 to the Board.

28 Upon the expiration of the terms of the initial Board members, each member shall
29 be appointed for a term of three years and shall serve until a successor is appointed.
30 No member may serve more than two consecutive full terms.

31 (c) Qualifications. -- The athletic trainer members shall hold current licenses and
32 shall reside or be employed in North Carolina. They shall have at least five years'
33 experience as athletic trainers, including the three years immediately preceding
34 appointment to the Board, and shall remain in active practice and in good standing
35 with the Board as a licensee during their terms. The first athletic trainers appointed
36 to the Board pursuant to this section shall, upon appointment and qualification,
37 immediately become licensed as athletic trainers by complying with the provisions of
38 this Article.

39 (d) Vacancies. -- A vacancy shall be filled in the same manner as the original
40 appointment, except that all unexpired terms on the Board shall be filled in
41 accordance with G.S. 120-122 and shall be filled within 45 days after the vacancy
42 occurs. Appointees to fill vacancies shall serve the remainder of the unexpired term
43 and until their successors have been duly appointed and qualified.

1 (e) Removal. -- The Board may remove any of its members for neglect of duty,
2 incompetence, or unprofessional conduct. A member subject to disciplinary
3 proceedings as a licensee shall be disqualified from participating in the official
4 business of the Board until the charges have been resolved.

5 (f) Compensation. -- Each member of the Board shall receive per diem and
6 reimbursement for travel and subsistence as provided in G.S. 93B-5.

7 (g) Officers. -- The officers of the Board shall be a chair, who shall be a licensed
8 athletic trainer, a vice- chair, and other officers deemed necessary by the Board to
9 carry out the purposes of this Article. All officers shall be elected annually by the
10 Board for one-year terms and shall serve until their successors are elected and
11 qualified.

12 (h) Immunity From Suit. -- Individual Board members shall be immune from civil
13 liability arising from activities performed within the scope of their official duties.

14 (i) Meetings. -- The Board shall hold at least two meetings each year to conduct
15 business and to review the standards and regulations for improving athletic training
16 services. The Board shall adopt rules governing the calling, holding, and conducting
17 of regular and special meetings. A majority of Board members shall constitute a
18 quorum.

19 "§ 90-515. Powers of the Board.

20 The Board shall have the power and duty to:

- 21 (1) Administer this Article.
- 22 (2) Issue interpretations of this Article.
- 23 (3) Adopt, amend, or repeal rules as may be necessary to carry out the
24 provisions of this Article.
- 25 (4) Employ and fix the compensation of personnel that the Board
26 determines is necessary to carry into effect the provisions of the
27 Article and incur other expenses necessary to effectuate this
28 Article.
- 29 (5) Examine and determine the qualifications and fitness of applicants
30 for licensure, renewal of licensure, and reciprocal licensure.
- 31 (6) Issue, renew, deny, suspend, or revoke licenses and carry out any
32 disciplinary actions authorized by this Article.
- 33 (7) In accordance with G.S. 90-524, set fees for licensure, license
34 renewal, and other services deemed necessary to carry out the
35 purposes of this Article.
- 36 (8) Conduct investigations for the purpose of determining whether
37 violations of this Article or grounds for disciplining licensees exists.
- 38 (9) Maintain a record of all proceedings and make available to
39 licensees and other concerned parties an annual report of all Board
40 action.
- 41 (10) Develop standards and adopt rules for the improvement of athletic
42 training services in the State.
- 43 (11) Adopt a seal containing the name of the Board for use on all
44 certificates, licenses, and official reports issued by it.

1 "§ 90-516. Custody and use of funds; contributions.

2 (a) All fees payable to the Board shall be deposited in the name of the Board in
3 financial institutions designated by the Board as official depositories and shall be used
4 to pay all expenses incurred in carrying out the purposes of this Article.

5 (b) The Board may accept grants, contributions, bequests, and gifts that shall be
6 kept in a separate fund and shall be used by it to enhance the practice of athletic
7 trainers.

8 "§ 90-517. Requirements of license; exemption from license.

9 (a) On or after January 1, 1998, no person shall practice or offer to practice as an
10 athletic trainer, perform activities of an athletic trainer, or use any card, title, or
11 abbreviation to indicate that the person is an athletic trainer unless that person is
12 currently licensed as provided by this Article.

13 (b) The provisions of this Article do not apply to:

- 14 (1) Licensed, registered, or certified professionals, such as nurses,
15 physical therapists, and chiropractors if they do not hold
16 themselves out to the public as athletic trainers.
- 17 (2) A physician licensed under Article 1 of Chapter 90 of the General
18 Statutes.
- 19 (3) A person serving as a student-trainer or in a similar position under
20 the supervision of a physician or licensed athletic trainer.
- 21 (4) An athletic trainer who is employed by, or under contract with, an
22 organization, corporation, or educational institution located in
23 another state and who is representing that organization,
24 corporation, or educational institution at an event held in this
25 State.

26 "§ 90-518. Application for license; qualifications; issuance.

27 (a) An applicant for a license under this Article shall make a written application
28 to the Board on a form approved by the Board and shall submit to the Board an
29 application fee along with evidence that demonstrates good moral character and
30 graduation from an accredited four-year college or university in a course of study
31 approved by the Board.

32 (b) The applicant shall also pass the examination administered by the National
33 Athletic Trainers' Association Board of Certification, Inc.

34 (c) When the Board determines that an applicant has met all the qualifications for
35 licensure and has submitted the required fee, the Board shall issue a license to the
36 applicant. A license is valid for a period of one year from the date of issuance and
37 may be renewed subject to the requirements of this Article.

38 "§ 90-519. Athletic trainers previously certified.

39 The Board shall issue a license to practice as an athletic trainer to a person who
40 applies to the Board on or before August 1, 1998, and furnishes to the Board on a
41 form approved by the Board proof of good moral character, graduation from an
42 accredited four-year college or university in a course of study approved by the Board,
43 and a current certificate from the National Athletic Trainers' Association Board of
44 Certification, Inc.

1 "§ 90-520. Athletic trainers not certified.

2 (a) A person who has been actively engaged as an athletic trainer since August 1,
3 1994, and who continues to practice up to the time of application, shall be eligible for
4 licensure without examination by paying the required fee and by demonstrating the
5 following:

6 (1) Proof of good moral character.

7 (2) Proof of practice in this State since August 1, 1994.

8 (3) Proof of graduation from an accredited four-year college or
9 university in a course of study approved by the Board.

10 (4) Fulfillment of any other requirements set by the Board.

11 An application made pursuant to this section shall be filed with the Board on or
12 before August 1, 1998.

13 (b) A person is 'actively engaged' as an athletic trainer if the person is a salaried
14 employee of, or has contracted with, an educational institution, industry, hospital,
15 rehabilitation clinic, professional athletic organization, or other bona fide athletic
16 organization, and the person performs the duties of an athletic trainer.

17 "§ 90-521. Reciprocity with other states.

18 A license may be issued to a qualified applicant holding an athletic trainer license
19 in another state if that state recognizes the license of this State in the same manner.

20 "§ 90-522. License renewal.

21 Every license issued under this Article shall be renewed during the month of
22 January. On or before the date the current license expires, any person who desires to
23 continue practice shall apply for a license renewal and shall submit the required fee.
24 Licenses that are not renewed shall automatically lapse. In accordance with rules
25 adopted by the Board, a license that has lapsed may be reissued within five years
26 from the date it lapsed. A license that has been expired for more than five years may
27 be reissued only in a manner prescribed by the Board.

28 "§ 90-523. Continuing education.

29 (a) The Board shall require evidence of successful completion of a continuing
30 educational program as a condition of license renewal. The Board shall determine
31 the number of hours and subject matter of continuing education required as a
32 condition of license renewal.

33 (b) The Board shall grant approval to a continuing education program or course
34 upon finding that the program or course offers an educational experience designed to
35 enhance the practice of athletic trainer, including the continuing education program
36 of the National Athletic Trainers' Association.

37 (c) If a continuing education program offers to teach licensees to perform
38 advanced skills, the Board may grant approval for the program and the performance
39 of the advanced skills by those successfully completing the program when it finds that
40 the nature of the procedure taught in the program and the program facilities and
41 faculty are such that a licensee fully completing the program can reasonably be
42 expected to carry out those procedures safely and properly.

43 "§ 90-524. Expenses and fees.

1 (a) All salaries, compensation, and expenses incurred or allowed to carry out the
2 purposes of this Article shall be paid by the Board exclusively out of the fees
3 received by the Board as authorized by this Article or funds received from other
4 sources. In no case shall any salary, expense, or other obligation of the Board be
5 charged against the State treasury.

6 (b) The schedule of fees shall not exceed the following:

7 (1) Issuance of a license. \$100.00

8 (2) License renewal. 50.00

9 (3) Reinstatement of lapsed license. 75.00

10 (4) Reasonable charges for duplication services and material.

11 **"§ 90-525. Hiring of athletic trainers by school units.**

12 Local school administrative units may hire persons who are not licensed under this
13 Article, but those persons may not hold themselves out as athletic trainers as defined
14 by this Article unless they are exempt from the provisions of this Article under G.S.
15 90-517(b).

16 **"§ 90-526. Disciplinary authority of the Board; administrative proceedings.**

17 (a) Grounds for disciplinary action shall include the following:

18 (1) Giving false information or withholding material information from
19 the Board in procuring or attempting to procure a license to
20 practice as an athletic trainer.

21 (2) Having been convicted of or pled guilty or no contest to a crime
22 that indicates that the person is unfit or incompetent to practice as
23 an athletic trainer or that indicates that the person has deceived or
24 defrauded the public.

25 (3) Having a mental or physical disability or using a drug to a degree
26 that interferes with the person's fitness to practice as an athletic
27 trainer.

28 (4) Engaging in conduct that endangers the public health.

29 (5) Being unfit or incompetent to practice as an athletic trainer by
30 reason of deliberate or negligent acts or omissions regardless of
31 whether actual injury to a patient is established.

32 (6) Willfully violating any provision of this Article or rules adopted by
33 the Board.

34 (7) Having been convicted of or pled guilty or no contest to an offense
35 under State or federal narcotic or controlled substance laws.

36 In accordance with the provisions of Chapter 150B of the General Statutes, the
37 Board may require remedial education, issue a letter of reprimand, restrict, revoke, or
38 suspend any license to practice as an athletic trainer in North Carolina or deny any
39 application for licensure if the Board determines that the applicant or licensee has
40 committed any of the above acts or is no longer qualified to practice as an athletic
41 trainer. The Board may reinstate a revoked license or remove licensure restrictions
42 when it finds that the reasons for revocation or restriction no longer exist and that the
43 person can reasonably be expected to practice as an athletic trainer safely and
44 properly.

1 (b) A person whose application is denied, suspended, or revoked is entitled to a
2 hearing before the Board if the person submits a written request to the Board.
3 Proceedings for denial, revocation, or suspension of a license shall be conducted
4 consistent with Article 3A of Chapter 150B of the General Statutes.

5 "§ 90-527. Enjoining illegal practices.

6 If the Board finds that a person is violating any of the provisions of this Article, it
7 may apply in its own name to the Superior Court of Wake County for a temporary
8 restraining order or other injunctive relief to prevent the person from continuing
9 illegal practices. The court may grant injunctions regardless of whether criminal
10 prosecution or other action has been or may be instituted as a result of a violation.

11 "§ 90-528. Penalties.

12 A person who violates any provision of this Article is guilty of a Class 1
13 misdemeanor. Each act of unlawful practice constitutes a distinct and separate
14 offense.

15 "§ 90-529. Reports; immunity from suit.

16 A person who has reasonable cause to suspect misconduct or incapacity of a
17 licensee, or who has reasonable cause to suspect that a person is in violation of this
18 Article, shall report the relevant facts to the Board. Upon receipt of a charge, or
19 upon its own initiative, the Board may give notice of an administrative hearing or
20 may, after diligent investigation, dismiss unfounded charges. A person who, in good
21 faith, makes a report pursuant to this section shall be immune from any criminal
22 prosecution or civil liability resulting therefrom.

23 "§ 90-530. No third-party reimbursement.

24 Nothing in this Article shall be construed to require direct third-party
25 reimbursement to persons licensed under this Article."

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

Call Penny

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

D

SENATE BILL 660
Proposed Senate Finance Committee Substitute
S660-CSLJX-5/14

Short Title: License Athletic Trainers. (Public)

Sponsors:

Referred to: Finance.

April 2, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO LICENSE ATHLETIC TRAINERS.
3 The General Assembly of North Carolina enacts:
4 Section 1. Chapter 90 of the General Statutes is
5 amended by adding a new Article to read:
6 "ARTICLE 33.
7 "Athletic Trainers.
8 "§ 90-512. Title; purpose.
9 (a) This Article may be cited as the 'Athletic Trainers
10 Licensing Act'.
11 (b) The practice of athletic trainer services affects the
12 public health, safety, and welfare. Licensure of the practice of
13 athletic trainer services is necessary to ensure minimum
14 standards of competency and to provide the public with safe
15 athletic trainer services. It is the purpose of this Article to
16 provide for the regulation of persons offering athletic trainer
17 services.
18 "§ 90-513. Definitions.
19 The following definitions apply in this Article:
20 (1) Athletic trainer. -- A person who, under a written
21 protocol with a physician licensed under Article 1
22 of Chapter 90 of the General Statutes and filed

1 with the North Carolina Medical Board, carries out
2 the practice of care, prevention, and
3 rehabilitation of injuries incurred by athletes,
4 and who, in carrying out these functions, may use
5 physical modalities, including heat, light, sound,
6 cold, electricity, or mechanical devices related to
7 rehabilitation and treatment.
8 (2) Board. -- The North Carolina Board of Athletic
9 Trainer Examiners as created by G.S. 90-514.
10 (3) License. -- A certificate that evidences approval
11 by the Board that a person has successfully
12 completed the requirements set forth in G.S. 90-518
13 entitling the person to perform the functions and
14 duties of an athletic trainer.

15 "§ 90-514. Board of Examiners created.

16 (a) The North Carolina Board of Athletic Trainer Examiners is
17 created.

18 (b) Composition and Terms. -- The Board shall consist of seven
19 members who shall serve staggered terms. Four members shall be
20 athletic trainers certified by the National Athletic Trainers'
21 Association Board of Certification, Inc. One member shall be a
22 licensed orthopedic surgeon, one member shall be a licensed
23 family practice physician or pediatrician, and one member shall
24 represent the public at large.

25 The initial Board members shall be selected on or before August
26 1, 1997, as follows:

27 (1) The General Assembly, upon the recommendation of
28 the President Pro Tempore of the Senate, shall
29 appoint two certified athletic trainers and an
30 orthopedic surgeon. The certified athletic
31 trainers shall serve for terms of three years, and
32 the orthopedic surgeon shall serve for a term of
33 one year.

34 (2) The General Assembly, upon the recommendation of
35 the Speaker of the House of Representatives, shall
36 appoint two certified athletic trainers and a
37 family practice physician or pediatrician. The
38 certified athletic trainers and the family practice
39 physician or pediatrician shall serve for terms of
40 two years.

41 (3) The Governor shall appoint for a three-year term a
42 public member to the Board.

43 Upon the expiration of the terms of the initial Board members,
44 each member shall be appointed for a term of three years and

1 shall serve until a successor is appointed. No member may serve
2 more than two consecutive full terms.

3 (c) Qualifications. -- The athletic trainer members shall hold
4 current licenses and shall reside or be employed in North
5 Carolina. They shall have at least five years' experience as
6 athletic trainers, including the three years immediately
7 preceding appointment to the Board, and shall remain in active
8 practice and in good standing with the Board as a licensee during
9 their terms. The first athletic trainers appointed to the Board
10 pursuant to this section shall be eligible for licensure under
11 G.S. 90-519 and, upon appointment, shall immediately apply for a
12 license.

13 (d) Vacancies. -- A vacancy shall be filled in the same manner
14 as the original appointment, except that all unexpired terms of
15 Board members appointed by the General Assembly shall be filled
16 in accordance with G.S. 120-122 and shall be filled within 45
17 days after the vacancy occurs. Appointees to fill vacancies
18 shall serve the remainder of the unexpired term and until their
19 successors have been duly appointed and qualified.

20 (e) Removal. -- The Board may remove any of its members for
21 neglect of duty, incompetence, or unprofessional conduct. A
22 member subject to disciplinary proceedings as a licensee shall be
23 disqualified from participating in the official business of the
24 Board until the charges have been resolved.

25 (f) Compensation. -- Each member of the Board shall receive
26 per diem and reimbursement for travel and subsistence as provided
27 in G.S. 93B-5.

28 (g) Officers. -- The officers of the Board shall be a chair,
29 who shall be a licensed athletic trainer, a vice-chair, and
30 other officers deemed necessary by the Board to carry out the
31 purposes of this Article. All officers shall be elected annually
32 by the Board for one-year terms and shall serve until their
33 successors are elected and qualified.

34 (h) Meetings. -- The Board shall hold at least two meetings
35 each year to conduct business and to review the standards and
36 rules for improving athletic training services. The Board shall
37 adopt establish the procedures for calling, holding, and
38 conducting regular and special meetings. A majority of Board
39 members constitutes a quorum.

40 "§ 90-515. Powers of the Board.

41 The Board shall have the power and duty to:

- 42 (1) Administer this Article.
43 (2) Issue interpretations of this Article.

- 1 (3) Adopt, amend, or repeal rules as may be necessary
2 to carry out the provisions of this Article.
- 3 (4) Employ and fix the compensation of personnel that
4 the Board determines is necessary to carry into
5 effect the provisions of the Article and incur
6 other expenses necessary to effectuate this
7 Article.
- 8 (5) Examine and determine the qualifications and
9 fitness of applicants for licensure, renewal of
10 licensure, and reciprocal licensure.
- 11 (6) Issue, renew, deny, suspend, or revoke licenses and
12 carry out any disciplinary actions authorized by
13 this Article.
- 14 (7) In accordance with G.S. 90-524, set fees for
15 licensure, license renewal, and other services
16 deemed necessary to carry out the purposes of this
17 Article.
- 18 (8) Conduct investigations for the purpose of
19 determining whether violations of this Article or
20 grounds for disciplining licensees exist.
- 21 (9) Maintain a record of all proceedings and make
22 available to licensees and other concerned parties
23 an annual report of all Board action.
- 24 (10) Develop standards and adopt rules for the
25 improvement of athletic training services in the
26 State.
- 27 (11) Adopt a seal containing the name of the Board for
28 use on all licenses and official reports issued by
29 it.

30 **"§ 90-516. Custody and use of funds; contributions.**

31 (a) All fees payable to the Board shall be deposited in the
32 name of the Board in financial institutions designated by the
33 Board as official depositories and shall be used to pay all
34 expenses incurred in carrying out the purposes of this Article.

35 (b) The Board may accept grants, contributions, bequests, and
36 gifts that shall be kept in a separate fund and shall be used by
37 it to enhance the practice of athletic trainers.

38 **"§ 90-517. Requirements of license; exemption from license.**

39 (a) On or after January 1, 1998, no person shall practice or
40 offer to practice as an athletic trainer, perform activities of
41 an athletic trainer, or use any card, title, or abbreviation to
42 indicate that the person is an athletic trainer unless that
43 person is currently licensed as provided by this Article.

44 (b) The provisions of this Article do not apply to:

- 1 (1) Licensed, registered, or certified professionals,
2 such as nurses, physical therapists, and
3 chiropractors, if they do not hold themselves out
4 to the public as athletic trainers.
- 5 (2) A physician licensed under Article 1 of Chapter 90
6 of the General Statutes.
- 7 (3) A person serving as a student-trainer or in a
8 similar position under the supervision of a
9 physician or licensed athletic trainer.
- 10 (4) An athletic trainer who is employed by, or under
11 contract with, an organization, corporation, or
12 educational institution located in another state
13 and who is representing that organization,
14 corporation, or educational institution at an event
15 held in this State.

16 "§ 90-518. Application for license; qualifications; issuance.

17 (a) An applicant for a license under this Article shall make a
18 written application to the Board on a form approved by the Board
19 and shall submit to the Board an application fee along with
20 evidence that demonstrates good moral character and graduation
21 from an accredited four-year college or university in a course of
22 study approved by the Board.

23 (b) The applicant shall also pass the examination administered
24 by the National Athletic Trainers' Association Board of
25 Certification, Inc.

26 (c) When the Board determines that an applicant has met all
27 the qualifications for licensure and has submitted the required
28 fee, the Board shall issue a license to the applicant. A license
29 is valid for a period of one year from the date of issuance and
30 may be renewed subject to the requirements of this Article.

31 "§ 90-519. Athletic trainers previously certified.

32 The Board shall issue a license to practice as an athletic
33 trainer to a person who applies to the Board on or before August
34 1, 1998, and furnishes to the Board on a form approved by the
35 Board proof of good moral character, graduation from an
36 accredited four-year college or university in a course of study
37 approved by the Board, and a current certificate from the
38 National Athletic Trainers' Association Board of Certification,
39 Inc.

40 "§ 90-520. Athletic trainers not certified.

41 (a) A person who has been actively engaged as an athletic
42 trainer since August 1, 1994, and who continues to practice up to
43 the time of application, shall be eligible for licensure without

1 examination by paying the required fee and by demonstrating the
2 following:

- 3 (1) Proof of good moral character.
- 4 (2) Proof of practice in this State since August 1,
5 1994.
- 6 (3) Proof of graduation from an accredited four-year
7 college or university in a course of study approved
8 by the Board.
- 9 (4) Fulfillment of any other requirements set by the
10 Board.

11 An application made pursuant to this section shall be filed
12 with the Board on or before August 1, 1998.

13 (b) A person is 'actively engaged' as an athletic trainer if
14 the person is a salaried employee of, or has contracted with, an
15 educational institution, an industry, a hospital, a
16 rehabilitation clinic or a professional athletic organization or
17 another bona fide athletic organization and the person performs
18 the duties of an athletic trainer.

19 "§ 90-521. Reciprocity with other states.

20 A license may be issued to a qualified applicant holding an
21 athletic trainer license in another state if that state
22 recognizes the license of this State in the same manner.

23 "§ 90-522. License renewal.

24 Every license issued under this Article shall be renewed during
25 the month of January. On or before the date the current license
26 expires, any person who desires to continue practice shall apply
27 for a license renewal and shall submit the required fee.
28 Licenses that are not renewed shall automatically lapse. In
29 accordance with rules adopted by the Board, a license that has
30 lapsed may be reissued within five years from the date it lapsed.
31 A license that has been expired for more than five years may be
32 reissued only in a manner prescribed by the Board.

33 "§ 90-523. Continuing education.

34 (a) As a condition of license renewal, a licensee must meet
35 the continuing education requirements set by the Board. The
36 Board shall determine the number of hours and subject matter of
37 continuing education required as a condition of license renewal.
38 The Board shall determine the qualifications of a provider of an
39 educational program that satisfies the continuing education
40 requirement.

41 (b) The Board shall grant approval to a continuing education
42 program or course upon finding that the program or course offers
43 an educational experience designed to enhance the practice of

1 athletic trainer, including the continuing education program of
2 the National Athletic Trainers' Association.

3 (c) If a continuing education program offers to teach
4 licensees to perform advanced skills, the Board may grant
5 approval for the program when it finds that the nature of the
6 procedure taught in the program and the program facilities and
7 faculty are such that a licensee fully completing the program can
8 reasonably be expected to carry out those procedures safely and
9 properly.

10 "§ 90-524. Expenses and fees.

11 (a) All salaries, compensation, and expenses incurred or
12 allowed to carry out the purposes of this Article shall be paid
13 by the Board exclusively out of the fees received by the Board as
14 authorized by this Article or funds received from other sources.
15 In no case shall any salary, expense, or other obligation of the
16 Board be charged against the State treasury.

17 (b) The schedule of fees shall not exceed the following:

- | | | |
|----|--|-----------------|
| 18 | <u>(1) Issuance of a license.</u> | <u>\$100.00</u> |
| 19 | <u>(2) License renewal.</u> | <u>50.00</u> |
| 20 | <u>(3) Reinstatement of lapsed license.</u> | <u>75.00</u> |
| 21 | <u>(4) Reasonable charges for duplication services and</u> | |
| 22 | <u>material.</u> | |

23 "§ 90-525. Hiring of athletic trainers by school units.

24 Local school administrative units may hire persons who are not
25 licensed under this Article. The persons hired may function as
26 athletic trainers in the scope of their employment. The persons
27 hired may not hold themselves out as athletic trainers unless
28 they are exempt from the provisions of this Article under G.S.
29 90-517(b).

30 "§ 90-526. Disciplinary authority of the Board; administrative
31 proceedings.

32 (a) Grounds for disciplinary action against a licensee shall
33 include the following:

- | | | |
|----|--|--|
| 34 | <u>(1) Giving false information or withholding material</u> | |
| 35 | <u>information from the Board in procuring a license</u> | |
| 36 | <u>to practice as an athletic trainer.</u> | |
| 37 | <u>(2) Having been convicted of or pled guilty or no</u> | |
| 38 | <u>contest to a crime that indicates that the person</u> | |
| 39 | <u>is unfit or incompetent to practice as an athletic</u> | |
| 40 | <u>trainer or that indicates that the person has</u> | |
| 41 | <u>deceived or defrauded the public.</u> | |
| 42 | <u>(3) Having a mental or physical disability or using a</u> | |
| 43 | <u>drug to a degree that interferes with the person's</u> | |
| 44 | <u>fitness to practice as an athletic trainer.</u> | |

- 1 (4) Engaging in conduct that endangers the public
2 health.
- 3 (5) Being unfit or incompetent to practice as an
4 athletic trainer by reason of deliberate or
5 negligent acts or omissions regardless of whether
6 actual injury to a patient is established.
- 7 (6) Willfully violating any provision of this Article
8 or rules adopted by the Board.
- 9 (7) Having been convicted of or pled guilty or no
10 contest to an offense under State or federal
11 narcotic or controlled substance laws.

12 (b) In accordance with Article 3A of Chapter 150B of the
13 General Statutes, the Board may require remedial education, issue
14 a letter of reprimand, restrict, revoke, or suspend any license
15 to practice as an athletic trainer in North Carolina or deny any
16 application for licensure if the Board determines that the
17 applicant or licensee has committed any of the above acts or is
18 no longer qualified to practice as an athletic trainer. The
19 Board may reinstate a revoked license or remove licensure
20 restrictions when it finds that the reasons for revocation or
21 restriction no longer exist and that the person can reasonably be
22 expected to practice as an athletic trainer safely and properly.
23 "§ 90-527. Enjoining illegal practices.

24 If the Board finds that a person who does not have a license
25 issued under this Article claims to be an athletic trainer or is
26 engaging in practice as an athletic trainer in violation of this
27 Article, the Board may apply in its own name to the Superior
28 Court of Wake County for a temporary restraining order or other
29 injunctive relief to prevent the person from continuing illegal
30 practices. The court may grant injunctions regardless of whether
31 criminal prosecution or other action has been or may be
32 instituted as a result of a violation.

33 "§ 90-528. Penalties.

34 A person who does not have a license issued under this Article
35 who either claims to be an athletic trainer or engages in
36 practice as an athletic trainer in violation of this Article is
37 guilty of a Class 1 misdemeanor. Each act of unlawful practice
38 constitutes a distinct and separate offense.

39 "§ 90-529. Reports; immunity from suit.

40 A person who has reasonable cause to suspect misconduct or
41 incapacity of a licensee, or who has reasonable cause to suspect
42 that a person is in violation of this Article, shall report the
43 relevant facts to the Board. Upon receipt of a charge, or upon
44 its own initiative, the Board may give notice of an

1 administrative hearing or may, after diligent investigation,
2 dismiss unfounded charges. A person who, in good faith, makes a
3 report pursuant to this section shall be immune from any criminal
4 prosecution or civil liability resulting therefrom.

5 "§ 90-530. No third-party reimbursement required.

6 Nothing in this Article shall be construed to require direct
7 third-party reimbursement to persons licensed under this
8 Article."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

D

SENATE BILL 660
Proposed Committee Substitute S660-PCS7799

Short Title: License Athletic Trainers.

(Public)

Sponsors:

Referred to:

April 2, 1997

1 A BILL TO BE ENTITLED

2 AN ACT TO LICENSE ATHLETIC TRAINERS.

3 The General Assembly of North Carolina enacts:

4 Section 1. Chapter 90 of the General Statutes is amended by adding a
5 new Article to read:

6 "ARTICLE 33.

7 "Athletic Trainers.

8 "§ 90-512. Title; purpose.

9 (a) This Article may be cited as the 'Athletic Trainers Licensing Act'.

10 (b) The practice of athletic trainer services affects the public health, safety, and
11 welfare. Licensure of the practice of athletic trainer services is necessary to ensure
12 minimum standards of competency and to provide the public with safe athletic
13 trainer services. It is the purpose of this Article to provide for the regulation of
14 persons offering athletic trainer services.

15 "§ 90-513. Definitions.

16 The following definitions apply in this Article:

17 (1) Athletic trainer. -- A person who, under a written protocol with a
18 physician licensed under Article 1 of Chapter 90 of the General
19 Statutes and filed with the North Carolina Medical Board, carries
20 out the practice of care, prevention, and rehabilitation of injuries
21 incurred by athletes, and who, in carrying out these functions, may
22 use physical modalities, including heat, light, sound, cold,

1 electricity, or mechanical devices related to rehabilitation and
2 treatment.

3 (2) Board. -- The North Carolina Board of Athletic Trainer
4 Examiners as created by G.S. 90-514.

5 (3) License. -- A certificate that evidences approval by the Board that
6 a person has successfully completed the requirements set forth in
7 G.S. 90-518 entitling the person to perform the functions and
8 duties of an athletic trainer.

9 **"§ 90-514. Board of Examiners created.**

10 (a) The North Carolina Board of Athletic Trainer Examiners is created.

11 (b) Composition and Terms. -- The Board shall consist of seven members who
12 shall serve staggered terms. Four members shall be athletic trainers certified by the
13 National Athletic Trainers' Association Board of Certification, Inc. One member
14 shall be a licensed orthopedic surgeon, one member shall be a licensed family
15 practice physician or pediatrician, and one member shall represent the public at
16 large.

17 The initial Board members shall be selected on or before August 1, 1997, as
18 follows:

19 (1) The General Assembly, upon the recommendation of the President
20 Pro Tempore of the Senate, shall appoint two certified athletic
21 trainers and an orthopedic surgeon. The certified athletic trainers
22 shall serve for terms of three years, and the orthopedic surgeon
23 shall serve for a term of one year.

24 (2) The General Assembly, upon the recommendation of the Speaker
25 of the House of Representatives, shall appoint two certified athletic
26 trainers and a family practice physician or pediatrician. The
27 certified athletic trainers and the family practice physician or
28 pediatrician shall serve for terms of two years.

29 (3) The Governor shall appoint for a three-year term a public member
30 to the Board.

31 Upon the expiration of the terms of the initial Board members, each member shall
32 be appointed for a term of three years and shall serve until a successor is appointed.
33 No member may serve more than two consecutive full terms.

34 (c) Qualifications. -- The athletic trainer members shall hold current licenses and
35 shall reside or be employed in North Carolina. They shall have at least five years'
36 experience as athletic trainers, including the three years immediately preceding
37 appointment to the Board, and shall remain in active practice and in good standing
38 with the Board as a licensee during their terms. The first athletic trainers appointed
39 to the Board pursuant to this section shall be eligible for licensure under G.S. 90-519
40 and, upon appointment, shall immediately apply for a license.

41 (d) Vacancies. -- A vacancy shall be filled in the same manner as the original
42 appointment, except that all unexpired terms of Board members appointed by the
43 General Assembly shall be filled in accordance with G.S. 120-122 and shall be filled
44 within 45 days after the vacancy occurs. Appointees to fill vacancies shall serve the

1 remainder of the unexpired term and until their successors have been duly appointed
2 and qualified.

3 (e) Removal. -- The Board may remove any of its members for neglect of duty,
4 incompetence, or unprofessional conduct. A member subject to disciplinary
5 proceedings as a licensee shall be disqualified from participating in the official
6 business of the Board until the charges have been resolved.

7 (f) Compensation. -- Each member of the Board shall receive per diem and
8 reimbursement for travel and subsistence as provided in G.S. 93B-5.

9 (g) Officers. -- The officers of the Board shall be a chair, who shall be a licensed
10 athletic trainer, a vice-chair, and other officers deemed necessary by the Board to
11 carry out the purposes of this Article. All officers shall be elected annually by the
12 Board for one-year terms and shall serve until their successors are elected and
13 qualified.

14 (h) Meetings. -- The Board shall hold at least two meetings each year to conduct
15 business and to review the standards and rules for improving athletic training
16 services. The Board shall establish the procedures for calling, holding, and
17 conducting regular and special meetings. A majority of Board members constitutes a
18 quorum.

19 **"§ 90-515. Powers of the Board.**

20 The Board shall have the power and duty to:

- 21 (1) Administer this Article.
- 22 (2) Issue interpretations of this Article.
- 23 (3) Adopt, amend, or repeal rules as may be necessary to carry out the
24 provisions of this Article.
- 25 (4) Employ and fix the compensation of personnel that the Board
26 determines is necessary to carry into effect the provisions of this
27 Article and incur other expenses necessary to effectuate this
28 Article.
- 29 (5) Examine and determine the qualifications and fitness of applicants
30 for licensure, renewal of licensure, and reciprocal licensure.
- 31 (6) Issue, renew, deny, suspend, or revoke licenses and carry out any
32 disciplinary actions authorized by this Article.
- 33 (7) In accordance with G.S. 90-524, set fees for licensure, license
34 renewal, and other services deemed necessary to carry out the
35 purposes of this Article.
- 36 (8) Conduct investigations for the purpose of determining whether
37 violations of this Article or grounds for disciplining licensees exist.
- 38 (9) Maintain a record of all proceedings and make available to
39 licensees and other concerned parties an annual report of all Board
40 action.
- 41 (10) Develop standards and adopt rules for the improvement of athletic
42 training services in the State.
- 43 (11) Adopt a seal containing the name of the Board for use on all
44 licenses and official reports issued by it.

1 **"§ 90-516. Custody and use of funds; contributions.**

2 (a) All fees payable to the Board shall be deposited in the name of the Board in
3 financial institutions designated by the Board as official depositories and shall be used
4 to pay all expenses incurred in carrying out the purposes of this Article.

5 (b) The Board may accept grants, contributions, bequests, and gifts that shall be
6 kept in a separate fund and shall be used by it to enhance the practice of athletic
7 trainers.

8 **"§ 90-517. Requirements of license; exemption from license.**

9 (a) On or after January 1, 1998, no person shall practice or offer to practice as an
10 athletic trainer, perform activities of an athletic trainer, or use any card, title, or
11 abbreviation to indicate that the person is an athletic trainer unless that person is
12 currently licensed as provided by this Article.

13 (b) The provisions of this Article do not apply to:

14 (1) Licensed, registered, or certified professionals, such as nurses,
15 physical therapists, and chiropractors, if they do not hold
16 themselves out to the public as athletic trainers.

17 (2) A physician licensed under Article 1 of Chapter 90 of the General
18 Statutes.

19 (3) A person serving as a student-trainer or in a similar position under
20 the supervision of a physician or licensed athletic trainer.

21 (4) An athletic trainer who is employed by, or under contract with, an
22 organization, corporation, or educational institution located in
23 another state and who is representing that organization,
24 corporation, or educational institution at an event held in this
25 State.

26 **"§ 90-518. Application for license; qualifications; issuance.**

27 (a) An applicant for a license under this Article shall make a written application
28 to the Board on a form approved by the Board and shall submit to the Board an
29 application fee along with evidence that demonstrates good moral character and
30 graduation from an accredited four-year college or university in a course of study
31 approved by the Board.

32 (b) The applicant shall also pass the examination administered by the National
33 Athletic Trainers' Association Board of Certification, Inc.

34 (c) When the Board determines that an applicant has met all the qualifications for
35 licensure and has submitted the required fee, the Board shall issue a license to the
36 applicant. A license is valid for a period of one year from the date of issuance and
37 may be renewed subject to the requirements of this Article.

38 **"§ 90-519. Athletic trainers previously certified.**

39 The Board shall issue a license to practice as an athletic trainer to a person who
40 applies to the Board on or before August 1, 1998, and furnishes to the Board on a
41 form approved by the Board proof of good moral character, graduation from an
42 accredited four-year college or university in a course of study approved by the Board,
43 and a current certificate from the National Athletic Trainers' Association Board of
44 Certification, Inc.

1 **"§ 90-520. Athletic trainers not certified.**

2 (a) A person who has been actively engaged as an athletic trainer since August 1,
3 1994, and who continues to practice up to the time of application, shall be eligible for
4 licensure without examination by paying the required fee and by demonstrating the
5 following:

- 6 (1) Proof of good moral character.
7 (2) Proof of practice in this State since August 1, 1994.
8 (3) Proof of graduation from an accredited four-year college or
9 university in a course of study approved by the Board.
10 (4) Fulfillment of any other requirements set by the Board.

11 An application made pursuant to this section shall be filed with the Board on or
12 before August 1, 1998.

13 (b) A person is 'actively engaged' as an athletic trainer if the person is a salaried
14 employee of, or has contracted with, an educational institution, an industry, a
15 hospital, a rehabilitation clinic or a professional athletic organization or another bona
16 fide athletic organization and the person performs the duties of an athletic trainer.

17 **"§ 90-521. Reciprocity with other states.**

18 A license may be issued to a qualified applicant holding an athletic trainer license
19 in another state if that state recognizes the license of this State in the same manner.

20 **"§ 90-522. License renewal.**

21 Every license issued under this Article shall be renewed during the month of
22 January. On or before the date the current license expires, any person who desires to
23 continue practice shall apply for a license renewal and shall submit the required fee.
24 Licenses that are not renewed shall automatically lapse. In accordance with rules
25 adopted by the Board, a license that has lapsed may be reissued within five years
26 from the date it lapsed. A license that has been expired for more than five years may
27 be reissued only in a manner prescribed by the Board.

28 **"§ 90-523. Continuing education.**

29 (a) As a condition of license renewal, a licensee must meet the continuing
30 education requirements set by the Board. The Board shall determine the number of
31 hours and subject matter of continuing education required as a condition of license
32 renewal. The Board shall determine the qualifications of a provider of an
33 educational program that satisfies the continuing education requirement.

34 (b) The Board shall grant approval to a continuing education program or course
35 upon finding that the program or course offers an educational experience designed to
36 enhance the practice of athletic trainer, including the continuing education program
37 of the National Athletic Trainers' Association.

38 (c) If a continuing education program offers to teach licensees to perform
39 advanced skills, the Board may grant approval for the program when it finds that the
40 nature of the procedure taught in the program and the program facilities and faculty
41 are such that a licensee fully completing the program can reasonably be expected to
42 carry out those procedures safely and properly.

43 **"§ 90-524. Expenses and fees.**

1 If the Board finds that a person who does not have a license issued under this
2 Article claims to be an athletic trainer or is engaging in practice as an athletic trainer
3 in violation of this Article, the Board may apply in its own name to the Superior
4 Court of Wake County for a temporary restraining order or other injunctive relief to
5 prevent the person from continuing illegal practices. The court may grant injunctions
6 regardless of whether criminal prosecution or other action has been or may be
7 instituted as a result of a violation.

8 **"§ 90-528. Penalties.**

9 A person who does not have a license issued under this Article who either claims
10 to be an athletic trainer or engages in practice as an athletic trainer in violation of
11 this Article is guilty of a Class 1 misdemeanor. Each act of unlawful practice
12 constitutes a distinct and separate offense.

13 **"§ 90-529. Reports; immunity from suit.**

14 A person who has reasonable cause to suspect misconduct or incapacity of a
15 licensee, or who has reasonable cause to suspect that a person is in violation of this
16 Article, shall report the relevant facts to the Board. Upon receipt of a charge, or
17 upon its own initiative, the Board may give notice of an administrative hearing or
18 may, after diligent investigation, dismiss unfounded charges. A person who, in good
19 faith, makes a report pursuant to this section shall be immune from any criminal
20 prosecution or civil liability resulting therefrom.

21 **"§ 90-530. No third-party reimbursement required.**

22 Nothing in this Article shall be construed to require direct third-party
23 reimbursement to persons licensed under this Article."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 649

Short Title: Lobbyist Penalty.

(Public)

Sponsors: Senator Miller.

Referred to: Finance.

April 2, 1997

1 A BILL TO BE ENTITLED

2 AN ACT TO INCREASE THE PENALTY FOR LATE FILING OF REPORTS BY
3 LOBBYIST AND PRINCIPAL.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 120-47.6(d) reads as rewritten:

6 "(d) When a lobbyist fails to file a lobbying expense report as required herein, the
7 Secretary of State shall send a certified or registered letter advising the lobbyist of the
8 delinquency and the penalties provided by law. Within 20 days of the receipt of the
9 letter, the lobbyist shall deliver or post by United States mail to the Secretary of State
10 the required report and an additional late filing fee of ten dollars ~~(\$10.00)~~ (\$10.00) a
11 day for the first 30 days the report is late and fifty dollars (\$50.00) a day for every
12 day thereafter, not to exceed one thousand dollars (\$1,000). Filing of the required
13 report and payment of the additional fee within the time extended shall constitute
14 compliance with this section. Failure to file an expense report in one of the manners
15 prescribed herein shall result in revocation of any and all registrations of a lobbyist
16 under this Article. No lobbyist may register or reregister under this Article until he
17 has fully complied with this section."

18 Section 2. G.S. 120-47.7(d) reads as rewritten:

19 "(d) When a lobbyist's principal fails to file a lobbying expense report as required
20 herein, the Secretary of State shall send a certified or registered letter advising the
21 lobbyist's principal of the delinquency and the penalties provided by law. Within 20
22 days of the receipt of the letter, the lobbyist's principal shall deliver or post by
23 United States mail to the Secretary of State the required report and a late filing fee of
24 ten dollars ~~(\$10.00)~~ (\$10.00) a day for the first 30 days the report is late and fifty

1 dollars (\$50.00) a day for every day thereafter, not to exceed one thousand dollars
2 (\$1,000). Filing of the required report and payment of the late fee within the time
3 extended shall constitute compliance with this section."

4 Section 3. This act becomes effective January 1, 1999.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 649

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

S649-ALJ-5/14

Date _____, 1997

Comm. Sub. [
Amends Title [

Senator Dalton

1 moves to amend the bill on page 1, line 12, by rewriting that line
2 to read:
3 "day thereafter, not to exceed one thousand dollars (\$1,000). A
4 lobbyist who is assessed a late filing fee under this section may
5 appeal to the Secretary of State within 10 days of receipt of notice
6 of the assessment seeking a waiver of the assessment for good cause
7 shown. Good cause shall consist of excusable neglect, unavoidable
8 delay, or impossibility of performance.
9 Filing of the required";
10
11 and on page 2, line 2, by rewriting that line to read:
12 "(\$1,000). A lobbyist's principal who is assessed a late filing fee
13 under this section may appeal to the Secretary of State within 10
14 days of receipt of notice of the assessment seeking a waiver of the
15 assessment for good cause shown. Good cause shall consist of
16 excusable neglect, unavoidable delay, or impossibility of
17 performance.
18 Filing of the required report and payment of the late fee
19 within the time".

SIGNED 
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

2

SENATE BILL 649
Finance Committee Substitute Adopted 5/20/97

Short Title: Lobbyist Penalty.

(Public)

Sponsors:

Referred to:

April 2, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO INCREASE THE PENALTY FOR LATE FILING OF REPORTS BY
3 LOBBYIST AND PRINCIPAL.
4 The General Assembly of North Carolina enacts:
5 Section 1. G.S. 120-47.6(d) reads as rewritten:
6 "(d) When a lobbyist fails to file a lobbying expense report as required herein, the
7 Secretary of State shall send a certified or registered letter advising the lobbyist of the
8 delinquency and the penalties provided by law. Within 20 days of the receipt of the
9 letter, the lobbyist shall deliver or post by United States mail to the Secretary of State
10 the required report and an additional late filing fee of ten dollars ~~(\$10.00)~~ (\$10.00) a
11 day for the first 30 days the report is late and fifty dollars (\$50.00) a day for every
12 day thereafter, not to exceed one thousand dollars (\$1,000). A lobbyist who is
13 assessed a late filing fee under this section may appeal to the Secretary of State
14 within 10 days of receipt of notice of the assessment seeking a waiver of the
15 assessment for good cause shown. Good cause shall consist of excusable neglect,
16 unavoidable delay, or impossibility of performance.
17 Filing of the required report and payment of the additional fee within the time
18 extended shall constitute compliance with this section. Failure to file an expense
19 report in one of the manners prescribed herein shall result in revocation of any and
20 all registrations of a lobbyist under this Article. No lobbyist may register or reregister
21 under this Article until he has fully complied with this section."
22 Section 2. G.S. 120-47.7(d) reads as rewritten:

1 "(d) When a lobbyist's principal fails to file a lobbying expense report as required
2 herein, the Secretary of State shall send a certified or registered letter advising the
3 lobbyist's principal of the delinquency and the penalties provided by law. Within 20
4 days of the receipt of the letter, the lobbyist's principal shall deliver or post by
5 United States mail to the Secretary of State the required report and a late filing fee of
6 ten dollars ~~(\$10.00)~~. (\$10.00) a day for the first 30 days the report is late and fifty
7 dollars (\$50.00) a day for every day thereafter, not to exceed one thousand dollars
8 (\$1,000). A lobbyist's principal who is assessed a late filing fee under this section
9 may appeal to the Secretary of State within 10 days of receipt of notice of the
10 assessment seeking a waiver of the assessment for good cause shown. Good cause
11 shall consist of excusable neglect, unavoidable delay, or impossibility of performance.
12 Filing of the required report and payment of the late fee within the time extended
13 shall constitute compliance with this section."

14 Section 3. This act becomes effective January 1, 1999.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 875

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

S875-ALJ-5/20

Date _____, 1997

Comm. Sub. [YES]
Amends Title []
2nd Edition

Senator _____

- 1 moves to amend the bill on page 7, line 27, by rewriting that line
2 to read:
3 "Officer to review each map and plat required to be submitted for
4 review before the map or plat is presented to the register of deeds
5 for";
6
7 and on page 7, line 32, by rewriting that line to read:
8 "(b) The Review Officer shall expeditiously review each map or
9 plat required to be submitted to the Officer before the map or plat
10 is presented to the";
11
12 and on page 8, lines 3 and 4, by inserting a new subsection to read:
13 "(d) A map or plat must be presented to the Review Officer unless
14 it is any of the following:
15 (1) A survey of one or more existing parcels, as certified
16 under G.S. 47-30(f)(11)c., and does not include a new
17 street or a change to an existing street.
18 (2) A survey of an existing man-made or natural feature of
19 a parcel, such as a building or a creek.
20 (3) A control survey."
21
22 .

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

May 14, 1997

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Gene Wimmer	NCBA
Bill Scoggin	NCBA
Gene Ammann	RJR
LEighton Popper	ZDA, PA
Ruffin Fook	ZDA, PA
Betsy Kane	for Bill Holman
Bernard Allen	SOS
Michael Dimeo	Director of DAF
Chip Futrell	SOS
Alice Barland	Utilities
Mary Corvino	Wickhamburg County

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

May 14, 1997
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John McAlistar	Duke Power
David Simmons	Zebulon D. Alley, PA
Gary W. Thompson	Geodetic Survey / OSPL
Jamie Donath	
Rick Brater	NCATA
Keith Rypke	CAROUNAS Healthcare System
James M. Coll, Jr	NCATA
Chaeuk Rozansky	NCATA
Robert G. Lewis	NCALY
Steve Keene	NC Medical Society
Randy Judgen	NCATA (Athletic Trainers Assn)

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

May 14, 1997
Date

Name of Committee

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Susanne Graver	NCATA (NC Athletic Trainers Assn)
Katie Walsh	NCATA
Alb Moses	NCATA
Jim Bazluki	NCATA
Paul Zipp	OSBM
Henry Jones	Attorney - Raleigh
DAVID BEAM	NC INSULATION CONTRACTORS ASSOC.

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

FINANCE COMMITTEE REPORT

Senator David Hoyle, Co-Chair
Senator John Kerr, Co-Chair

Thursday, May 15, 1997

SENATOR HOYLE,

submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B.	660	License Athletic Trainers	
		Draft Number:	PCS7799
		Sequential Referral:	None
		Recommended Referral:	None
		Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comment: None

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT

Senator David Hoyle, Co-Chair

Senator John Kerr, Co-Chair

Tuesday, May 20, 1997

SENATOR HOYLE,

submits the following with recommendations as to passage:

FAVORABLE

S.B. 916 Cosmetologists
 Sequential Referral: None
 Recommended Referral: None

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B. 649 Lobbyist Penalty
 Draft Number: PCS1811
 Sequential Referral: None
 Recommended Referral: None
 Long Title Amended: No

Note
S.B. 649 taken up
in 5/14/97 meeting
had to wait on comp
sub to report out today

TOTAL REPORTED: 2

Committee Clerk Comment: None

SENATE FINANCE COMMITTEE

THURSDAY, MAY 15, 1997

8:30 A.M. - ROOM 643 LOB

The Senate Finance Committee met on May 15, 1997, with Senator Kerr presiding. There were 24 committee members present.

H.B. 704 - Sheriff's Registration Plates

Representative Thompson was recognized to explain this bill. Senator Lee moved for adoption of proposed committee substitute and the motion carried. Representative Thompson gave an explanation of this bill. Senator Cochrane moved for "favorable" report for committee substitute and the motion carried. Copy of bill, committee substitute and fiscal note included in the minutes.

H.B. 53 - 82nd Airborne Division Plates

Representative Warner was recognized to explain this bill. Senator Ballantine moved for adoption of proposed committee substitute and the motion carried. Representative Warner explained the bill and Senator Cochrane moved for "favorable" report for committee substitute and the motion carried. Copy of bill and committee substitute included in the minutes.

S.B. 812 - Smoky Mountains Special Plate

Senator Jenkins was recognized to explain this bill. Senator Cochrane moved for a "favorable" report and the motion carried. Copy of bill and fiscal note included in the minutes.

S.B. 570 - Clean Water License Plate

Senator Dalton was recognized to explain this bill. Senator Hoyle moved that proposed committee substitute be adopted and the motion carried. On motion by Senator Wellons, the committee substitute was given a "favorable" report and the motion carried. Copy of bill, committee substitute and fiscal note included in the minutes.

Minutes - Senate Finance Committee
May 15, 1997
Page 2

S.B. 426 - Magistrates Special License Plates

Senator Hoyle was recognized to explain this bill and moved for the adoption of a proposed committee substitute. The motion carried. After Senator Hoyle's explanation and discussion, Senator Rand moved for a "favorable" report for the committee substitute and the motion carried. Copy of bill and committee substitute included in the minutes.

H.B. 1107 - Facility Authorities

Representative Neely was recognized and gave a brief history of this bill. At the conclusion of Representative Neely's explanation, Senator Reeves sent forth an amendment. There were several questions from the committee members to the bill sponsor. Mr. Steve Stroud, Chairman of the Centennial Authority, was introduced to further explain the bill and answer questions. Senator Reeves explained his amendment and moved for its adoption. The amendment was adopted and the discussion continued. On motion by Senator Rand, H.B. 1107, as amended, was given a "favorable" report by the committee. Copy of bill, amendment and fiscal note included in the minutes.

S.B. 847 - No Sales Tax on Reusable Containers

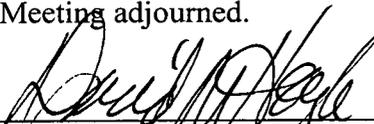
Senator Odom was recognized to explain this bill and Senator Kerr moved for the adoption of a proposed committee substitute. The motion carried. At the conclusion of Senator Odom's explanation, Senator Ballantine moved for a "favorable" report for the committee substitute and the motion carried. Copy of bill and committee substitute included in the minutes.

Minutes - Finance Committee Meeting
May 15, 1997
Page 2

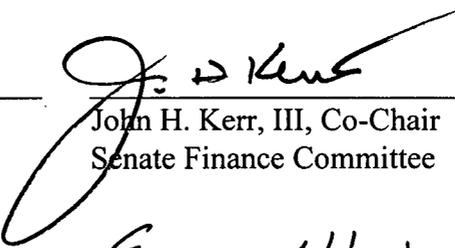
S.B. 916 - Cosmetologists

Senator Kerr was recognized to explain this bill and at the conclusion of his explanation Senator Cooper moved for a "favorable" report and the motion carried. Copy of bill and fiscal note included in the minutes.

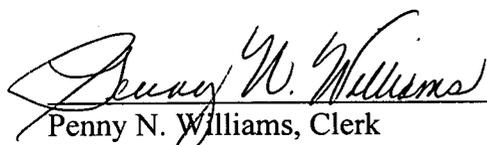
Meeting adjourned.



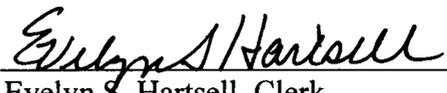
David W. Hoyle, Co-Chair
Senate Finance Committee



John H. Kerr, III, Co-Chair
Senate Finance Committee



Penny N. Williams, Clerk



Evelyn S. Hartsell, Clerk

NOTE:

Agenda is Attachment # 1
Visitors' Sheet is Attachment # 2
Committee Report is Attachment # 3

S.B. 374, S.B. 466, and H.B. 348 were on the Agenda and not heard at the committee meeting.

AGENDA
SENATE FINANCE COMMITTEE

Thursday, May 15, 1997

ROOM 643 - 8:30 AM

- S.B. 374 - Chiropractor Supplements Exempt - Sen. Odom**
- S.B. 426 - Magistrates Special License Plates - Sen. Hoyle**
- S.B. 466 - Tax Exempt Parental Savings Trust Fund. - Sen. Hartsell**
- S.B. 570 - Clean Water License Plate. - Sen. Dalton**
- S.B. 812 - Smoky Mountains Special Plate. - Sen. Jenkins**
- S.B. 847 - No Sales Tax on Reusable Containers - Sen. Odom**
- S.B. 916 - Cosmetologists - Sen. Kerr**
- H.B. 53 - 82nd Airborne Division Plates. - Rep. Warner**
- H.B. 348 - Cider Vinegar Manufacturer Permit - Rep. Eddins**
- H.B. 704 - Sheriff's Registration Plates. - Rep. Thompson**
- H.B. 1107 - Facility Authorities - Rep. Neely**

- 1 authorized by this subdivision unless it receives at least 300
2 applications for the plate.
- 3 (3) Civil Air Patrol Member. -- Issuable to an active member of the
4 North Carolina Wing of the Civil Air Patrol. The plate shall bear
5 the phrase 'Civil Air Patrol'. A plate issued to an officer member
6 shall begin with the number '201' and the number shall reflect the
7 seniority of the member; a plate issued to an enlisted member, a
8 senior member, or a cadet member shall begin with the number
9 '501'.
- 10 (3a) Civic Club. -- Issuable to a member of a nationally recognized
11 civic organization whose member clubs in the State are exempt
12 from State corporate income tax under G.S. 105-130.11(a)(5).
13 Examples of these clubs include Jaycees, Kiwanis, Optimist,
14 Rotary, Ruritan, and Shrine. The plate shall bear a word or phrase
15 identifying the civic club and the emblem of the civic club. The
16 Division may not issue a civic club plate authorized by this
17 subdivision unless it receives at least 300 applications for that civic
18 club plate.
- 19 (4) Class D Citizen's Radio Station Operator. -- Issuable to a Class D
20 citizen's radio station operator. For an operator who has been
21 issued Class D citizen's radio station call letters by the Federal
22 Communications Commission, the plate shall bear the operator's
23 official Class D citizen's radio station call letters. For an operator
24 who has not been issued Class D citizen's radio station call letters
25 by the Federal Communications Commission, the plate shall bear
26 the phrase 'Citizen's Band Radio'.
- 27 (5) Clerk of Superior Court. -- Issuable to a current or retired clerk of
28 superior court. A plate issued to a current clerk shall bear the
29 phrase 'Clerk Superior Court' and the letter 'C' followed by a
30 number that indicates the county the clerk serves. A plate issued to
31 a retired clerk shall bear the phrase 'Clerk Superior Court,
32 Retired', the letter 'C' followed by a number that indicates the
33 county the clerk served, and the letter 'X' indicating the clerk's
34 retired status.
- 35 (6) Coast Guard Auxiliary Member. -- Issuable to an active member of
36 the United States Coast Guard Auxiliary. The plate shall bear the
37 phrase 'Coast Guard Auxiliary'.
- 38 (6a) Collegiate Insignia Plate. -- Issuable to the registered owner of a
39 motor vehicle in accordance with G.S. 20-81.12. The plate may
40 bear a phrase or an insignia representing a public or private
41 college or university.
- 42 (7) County Commissioner. -- Issuable to a county commissioner of a
43 county in this State. The plate shall bear the words 'County
44 Commissioner' followed first by a number representing the

- 1 commissioner's county and then by a letter or number that
2 distinguishes plates issued to county commissioners of the same
3 county. The number of a county shall be the order of the county in
4 an alphabetical list of counties that assigns number one to the first
5 county in the list and a letter or number to distinguish different
6 cars owned by the county commissioners in that county. The
7 Division may not issue the plate authorized by this subdivision
8 unless it receives at least 300 applications for the plate.
- 9 (8) Disabled Veteran. -- Issuable to a veteran of the armed forces of
10 the United States who suffered a 100% service-connected
11 disability.
- 12 (9) District Attorney. -- Issuable to a North Carolina or United States
13 District Attorney. The plate issuable to a North Carolina district
14 attorney shall bear the letters 'DA' followed by a number that
15 represents the prosecutorial district the district attorney serves. The
16 plate for a United States attorney shall bear the phrase 'U.S.
17 Attorney' followed by a number that represents the district the
18 attorney serves, with 1 being the Eastern District, 2 being the
19 Middle District, and 3 being the Western District.
- 20 (10) Fire Department or Rescue Squad Member. -- Issuable to an active
21 regular member or volunteer member of a fire department, rescue
22 squad, or both a fire department and rescue squad. The plate shall
23 bear the words 'Firefighter', 'Rescue Squad', or 'Firefighter-
24 Rescue Squad'.
- 25 (10a) Future Farmers of America. -- Issuable to a member or a supporter
26 of the National Future Farmers of America Organization. The
27 plate shall bear the emblem of the organization and the letters
28 'FFA'. The Division may not issue the plate authorized by this
29 subdivision unless it receives at least 300 applications for the plate.
- 30 (11) Historic Vehicle Owner. -- Issuable for a motor vehicle that is at
31 least 35 years old measured from the date of manufacture. The
32 plate for an historic vehicle shall bear the word 'Antique' unless
33 the vehicle is a model year 1943 or older. The plate for a vehicle
34 that is a model year 1943 or older shall bear the word 'Antique' or
35 the words 'Horseless Carriage', at the option of the vehicle owner.
- 36 (11a) Historical Attraction Plate. -- Issuable to the registered owner of a
37 motor vehicle in accordance with G.S. 20-81.12. The plate may
38 bear a phrase or an insignia representing a publicly owned or
39 nonprofit historical attraction located in North Carolina.
- 40 (12) Honorary Plate. -- Issuable to a member of the Honorary Consular
41 Corps, who has been certified by the U. S. State Department, the
42 plate shall bear the words 'Honorary Consular Corps' and a
43 distinguishing number based on the order of issuance.

- 1 (13) Judge or Justice. -- Issuable to a sitting or retired judge or justice
2 in accordance with G.S. 20-79.6.
- 3 (13a) Legion of Valor. -- Issuable to a recipient of one of the following
4 military decorations: the Congressional Medal of Honor, the
5 Distinguished Service Cross, the Navy Cross, or the Air Force
6 Cross. The plate shall bear the emblem and name of the recipient's
7 decoration.
- 8 (14) Legislator. -- Issuable to a member of the North Carolina General
9 Assembly. The plate shall bear 'The Great Seal of the State of
10 North Carolina' and, as appropriate, the word 'Senate' or 'House'
11 followed by the Senator's or Representative's assigned seat
12 number.
- 13 (15) Marshal. -- Issuable to a United States Marshal. The plate shall
14 bear the phrase 'U.S. Marshal' followed by a number that
15 represents the district the Marshal serves, with 1 being the Eastern
16 District, 2 being the Middle District, and 3 being the Western
17 District.
- 18 (16) Military Reservist. -- Issuable to a member of a reserve component
19 of the armed forces of the United States. The plate shall bear the
20 name and insignia of the appropriate reserve component. Plates
21 shall be numbered sequentially for members of a component with
22 the numbers 1 through 5000 reserved for officers, without regard to
23 rank.
- 24 (16a) Military Retiree. -- Issuable to an individual who has retired from
25 the armed forces of the United States. The plate shall bear the
26 word 'Retired' and the name and insignia of the branch of service
27 from which the individual retired. The Division may not issue the
28 plate authorized by this subdivision unless it receives at least 300
29 applications for the plate.
- 30 (17) National Guard Member. -- Issuable to an active or a retired
31 member of the North Carolina National Guard. The plate shall
32 bear the phrase 'National Guard'. A plate issued to an active
33 member shall bear a number that reflects the seniority of the
34 member; a plate issued to a commissioned officer shall begin with
35 the number '1'; a plate issued to a noncommissioned officer with a
36 rank of E7, E8, or E9 shall begin with the number '1601'; a plate
37 issued to an enlisted member with a rank of E6 or below shall
38 begin with the number '3001'. The plate issued to a retired or
39 separated member shall indicate the member's retired status.
- 40 (17a) Olympic Games. -- Issuable to the registered owner of a motor
41 vehicle in accordance with G.S. 20-81.12. The plate may bear a
42 phrase or insignia representing the Olympic Games.

- 1 (18) Partially Disabled Veteran. -- Issuable to a veteran of the armed
2 forces of the United States who suffered a service connected
3 disability of less than 100%.
- 4 (19) Pearl Harbor Survivor. -- Issuable to a veteran of the armed forces
5 of the United States who was present at and survived the attack on
6 Pearl Harbor on December 7, 1941. The plate will bear the phrase
7 'Pearl Harbor Survivor' and the insignia of the Pearl Harbor
8 Survivors' Association.
- 9 (20) Personalized. -- Issuable to the registered owner of a motor vehicle.
10 The plate will bear the letters or letters and numbers requested by
11 the owner. The Division may refuse to issue a plate with a letter
12 combination that is offensive to good taste and decency. The
13 Division may not issue a plate that duplicates another plate.
- 14 (21) Prisoner of War. -- Issuable to the following:
- 15 a. A member or veteran member of the armed forces of the
16 United States who has been captured and held prisoner by
17 forces hostile to the United States while serving in the
18 armed forces.
- 19 b. The surviving spouse of a person who had a prisoner of war
20 plate at the time of death so long as the surviving spouse
21 continues to renew the plate and does not remarry.
- 22 (21a) Professional Sports Fan. -- Issuable to the registered owner of a
23 motor vehicle. The plate shall bear the logo of a professional sports
24 team located in North Carolina. The Division shall receive 300 or
25 more applications for a professional sports fan plate before a plate
26 may be issued. The Division shall not develop a professional sports
27 fan plate unless the professional sports team licenses, without
28 charge, the State to use the official team logo on the plate.
- 29 (22) Purple Heart Recipient. -- Issuable to a recipient of the Purple
30 Heart award. The plate shall bear the phrase 'Purple Heart
31 Veteran, Combat Wounded' and the letters 'PH'.
- 32 (22a) Register of Deeds. -- Issuable to a register of deeds. The plate shall
33 bear the words 'Register of Deeds' and the letter 'R' followed by a
34 number representing the county of the register of deeds. The
35 number of a county shall be the order of the county in an
36 alphabetical list of counties that assigns number one to the first
37 county in the list.
- 38 (22a1) Sheriff. -- Issuable to a current sheriff or a retired sheriff who
39 served as sheriff for 10 or more years. A plate issued to a current
40 sheriff shall bear the phrase 'Sheriff' and the letter 'S' followed by
41 a number that indicates the county the sheriff serves. A plate
42 issued to a retired sheriff who served for 10 or more years shall
43 bear the phrase 'Sheriff, Retired' and the letters 'SX' followed by
44 the number that indicates the county the sheriff served.

- 1 (22b) Special Olympics. -- Issuable to the registered owner of a motor
2 vehicle in accordance with G.S. 20-81.12. The plate may bear a
3 phrase or an insignia representing the North Carolina Special
4 Olympics.
- 5 (22c) Square Dance Clubs. -- Issuable to a member of a recognized
6 square dance organization exempt from corporate income tax
7 under G.S. 105-130.11(a)(5). The plate shall bear a word or phrase
8 identifying the club and the emblem of the club. The Division shall
9 not issue a dance club plate authorized by this subdivision unless it
10 receives at least 300 applications for that dance club plate.
- 11 (23) State Government Official. -- Issuable to elected and appointed
12 members of State government in accordance with G.S. 20-79.5.
- 13 (23a) State Attraction. -- Issuable to the registered owner of a motor
14 vehicle in accordance with G.S. 20-81.12. The plate may bear a
15 phrase or an insignia representing a publicly owned or nonprofit
16 State attraction located in North Carolina.
- 17 (24) Street Rod Owner. -- Issuable to the registered owner of a
18 modernized private passenger motor vehicle manufactured prior to
19 the year 1949 or designed to resemble a vehicle manufactured
20 prior to the year 1949. The plate shall bear the phrase 'Street
21 Rod'. The Division may not issue the plate authorized by this
22 subdivision unless it receives at least 300 applications for the plate.
- 23 (25) Transportation Personnel. -- Issuable to various members of the
24 Divisions of the Department of Transportation. The plate shall
25 bear the letters 'DOT' followed by a number from 1 to 85, as
26 designated by the Governor.
- 27 (26) U.S. Representative. -- Issuable to a United States Representative
28 for North Carolina. The plate shall bear the phrase 'U.S. House'
29 and shall be issued on the basis of Congressional district numbers.
- 30 (27) U.S. Senator. -- Issuable to a United States Senator for North
31 Carolina. The plates shall bear the phrase 'U.S. Senate' and shall
32 be issued on the basis of seniority represented by the numbers 1
33 and 2.
- 34 (28) Veterans of Foreign Wars. -- Issuable to a member or a supporter
35 of the Veterans of Foreign Wars. The plate shall bear the words
36 'Veterans of Foreign Wars' or 'VFW' and the emblem of the
37 VFW. The Division may not issue the plate authorized by this
38 subdivision unless it receives at least 300 applications for the plate.
- 39 (29) Wildlife Resources. -- Issuable to the registered owner of a motor
40 vehicle in accordance with G.S. 20-81.12. The plate shall bear a
41 picture representing a native wildlife species occurring in North
42 Carolina."

43 Section 2. This act becomes effective December 1, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

HOUSE BILL 704
Proposed Senate Committee Substitute H704-PCS2331

Short Title: Sheriff's Registration Plates.

(Public)

Sponsors:

Referred to:

March 31, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE SPECIAL REGISTRATION LICENSE PLATES FOR
3 CURRENT SHERIFFS AND CERTAIN RETIRED SHERIFFS.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 20-79.4(b) is amended by adding a new subdivision in the
6 appropriate alphabetical order to read:

7 "(22a1) Sheriff. -- Issuable to a current sheriff or to a retired sheriff
8 who served as sheriff for at least 10 years before retiring. A
9 plate issued to a current sheriff shall bear the word 'Sheriff'
10 and the letter 'S' followed by a number that indicates the
11 county the sheriff serves. A plate issued to a retired sheriff
12 shall bear the phrase 'Sheriff, Retired', the letter 'S'
13 followed by a number that indicates the county the sheriff
14 served, and the letter 'X' indicating the sheriff's retired
15 status."

16 Section 2. This act becomes effective December 1, 1997.

HB 704

**NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE**

BILL NUMBER: SB 639 (First Edition)

SHORT TITLE: Sheriff's Registration Plates

SPONSOR(S): Senators Gulley, et al

	FISCAL IMPACT				
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 1997-98</u>	<u>FY 1998-99</u>	<u>FY 1999-00</u>	<u>FY 2000-01</u>	<u>FY 2001-02</u>
REVENUES					
Highway Fund - Special Registration Plate Acct.	\$1,640	\$1,640	\$1,640	\$1,640	\$1,640
EXPENDITURES					
Highway Fund - Special Registration Plate Acct.	\$501	-	-	-	-
NET CHANGE	\$1,139	\$1,640	\$1,640	\$1,640	\$1,640
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Transportation - Division of Motor Vehicles					
EFFECTIVE DATE: The act is effective when it becomes law.					

BILL SUMMARY: The bill authorizes the Division of Motor Vehicles to issue special registration plates for active and retired sheriffs.

ASSUMPTIONS AND METHODOLOGY: There are 100 active sheriffs and 64 retired sheriffs who served 10 or more years. This fiscal note assumes the issuance of 164 license plates in FY 1997-98 and renewal of those plates in the following years. There is a one-time cost of \$100 to design the new plate and a one-time production cost of \$2.45 per plate. For 164 plates, the total production cost is \$501. In addition to the normal \$20 registration fee, there is a \$10 annual fee for each sheriff plate that will be deposited into the Special Registration Plate Account within the Highway Fund. When additional retired sheriffs join, each additional plate issued will produce \$10.00 in recurring revenue and \$2.45 in one-time costs.

FISCAL RESEARCH DIVISION

PREPARED BY: Richard Bostic *RB*

APPROVED BY: Tom Covington *[Signature]*

DATE: May 14, 1997

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 53

Short Title: 82nd Airborne Division Plates.

(Public)

Sponsors: Representatives Warner; Hardy, Hill, Hurley, Kinney, McAllister, Moore, Morris, Smith, and Yongue.

Referred to: Transportation, if favorable, Finance.

February 5, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO ISSUE
3 82ND AIRBORNE DIVISION ASSOCIATION SPECIAL REGISTRATION
4 PLATES.

5 The General Assembly of North Carolina enacts:

6 Section 1. G.S. 20-79.4(a) is amended by adding a new subdivision that
7 reads:

8 "(9a) 82nd Airborne Division Association Member. -- Issuable to a
9 member of the 82nd Airborne Division Association. The plate
10 shall bear the insignia of the 82nd Airborne Division Association,
11 Inc. The Division may not issue the plate authorized by this
12 subdivision unless it receives at least 500 applications for the
13 plate."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

HOUSE BILL 53
Proposed Senate Committee Substitute H53-PCSA387

Short Title: 82nd Airborne Division Plates.

(Public)

Sponsors:

Referred to:

February 5, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO ISSUE
3 82ND AIRBORNE DIVISION ASSOCIATION SPECIAL REGISTRATION
4 PLATES.
5 The General Assembly of North Carolina enacts:
6 Section 1. G.S. 20-79.4(b) is amended by adding a new subdivision to
7 read:
8 "(9a) 82nd Airborne Division Association Member. -- Issuable to a
9 member of the 82nd Airborne Division Association, Inc. The plate
10 shall bear the insignia of the 82nd Airborne Division Association,
11 Inc. The Division may not issue the plate authorized by this
12 subdivision unless it receives at least 300 applications for the
13 plate."
14 Section 2. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 812

Short Title: Smoky Mountains Special Plate.

(Public)

Sponsors: Senators Jenkins; Carpenter and Dalton.

Referred to: Transportation.

April 10, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR SPECIAL REGISTRATION PLATES FOR
3 SUPPORTERS OF THE GREAT SMOKY MOUNTAINS NATIONAL PARK.
4 The General Assembly of North Carolina enacts:
5 Section 1. G.S. 20-79.4(b)(23a) reads as rewritten:
6 "(23a) State Attraction. -- Issuable to the registered owner of a motor
7 vehicle in accordance with G.S. 20-81.12. The plate may bear a
8 phrase or an insignia representing a publicly owned or nonprofit
9 State or federal attraction located in North Carolina."
10 Section 2. G.S. 20-81.12(b2) reads as rewritten:
11 "(b2) State Attraction Plates. -- The Division must receive 300 or more
12 applications for a State attraction plate before the plate may be developed. The
13 Division must transfer quarterly the money in the Collegiate and Cultural Attraction
14 Plate Account derived from the sale of State attraction plates to the organizations
15 named below in proportion to the number of State attraction plates sold representing
16 that organization:
17 (1) The Friends of the Great Smoky Mountains National Park. -- The
18 revenue derived from the special plate shall be transferred
19 quarterly to the Friends of the Great Smoky Mountains National
20 Park, Inc., to be used for educational materials, preservation
21 programs, capital improvements for the portion of the Great
22 Smoky Mountains National Park that is located in North Carolina,
23 and operating expenses of the Great Smoky Mountains National
24 Park.

- 1 (2) The North Carolina Arboretum. -- The revenue derived from the
- 2 special plate shall be transferred quarterly to The North Carolina
- 3 Arboretum Society and used to help the Society obtain grants for
- 4 the North Carolina Arboretum and for capital improvements to the
- 5 North Carolina Arboretum.
- 6 ~~(2)~~ (3) The North Carolina Zoological Society. -- The revenue derived
- 7 from the special plate shall be transferred quarterly to The North
- 8 Carolina Zoological Society, Incorporated, to be used for
- 9 educational programs and conservation programs at the North
- 10 Carolina Zoo at Asheboro and for operating expenses of the North
- 11 Carolina Zoo at Asheboro."
- 12 Section 3. This act is effective when it becomes law.

**NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE**

BILL NUMBER: SB 812 (First Edition)

SHORT TITLE: Smoky Mountains Special Plate

SPONSOR(S): Senators Jenkins, Carpenter and Dalton

FISCAL IMPACT

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

FY 1997-98 FY 1998-99 FY 1999-00 FY 2000-01 FY 2001-02

REVENUES

Collegiate and Cultural Attraction Plate Account	\$6,000	\$6,000	\$6,000	\$6,000	\$6,000
Highway Fund - Special Registration Plate Acct.	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000

EXPENDITURES

Highway Fund - Special Registration Plate Acct.	\$835	-	-	-	-
--	-------	---	---	---	---

PRINCIPAL DEPARTMENT(S) &

PROGRAM(S) AFFECTED: Department of Transportation - Division of Motor Vehicles

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

BILL SUMMARY: This bill authorizes the Division of Motor Vehicles (DMV) to issue a special registration plate to Friends of the Great Smoky Mountains National Park if at least 300 applications for such plate are received.

ASSUMPTIONS AND METHODOLOGY:

This fiscal note assumes the issuance of the minimum 300 license plates in FY 1997-98 and renewal of those plates in the following years. There is a one-time cost of \$100 to design the new plate and a one-time production cost of \$2.45 per plate. For 300 plates, the total production cost is \$735.00 and is paid from the Special Registration Plate Account. In addition to the normal \$20 registration fee every license holder pays, there is a \$30 annual fee for each Smoky Mountain

plate. \$10 of this additional fee is deposited into the Special Registration Plate Account and \$20 of the fee is deposited into the Collegiate and Cultural Attraction Plate Account as a credit to the Friends of the Great Smoky Mountains National Park. It is assumed that applicants for this plate already register their vehicle in the state and are paying the current \$20 registration fee, thus no new revenue for the Highway Fund.

FISCAL RESEARCH DIVISION

733-4910

PREPARED BY: Richard Bostic ^{RS}

APPROVED BY: Tom Covington 

DATE: May 14, 1997

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 570

Short Title: Clean Water License Plate.

(Public)

Sponsors: Senators Dalton; Jenkins, Kinnaird, Phillips, Weinstein, and Wellons.

Referred to: Transportation.

April 1, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO ISSUE
3 A "SCENIC RIVERS" REGISTRATION PLATE WITH THE NET PROCEEDS
4 FROM THE SALE OF THE PLATES TO BE DEPOSITED IN THE CLEAN
5 WATER MANAGEMENT TRUST FUND.

6 The General Assembly of North Carolina enacts:

7 Section 1. G.S. 20-81.12 is amended by adding a new subsection to read:
8 "(b5) Scenic Rivers Plates. -- The Division shall receive 300 or more applications
9 for a scenic rivers plate with the words 'Scenic Rivers' and a picture representing the
10 unique beauty of the scenic rivers of North Carolina before the plate may be
11 developed. The Division shall transfer quarterly the money in the Collegiate and
12 Cultural Attraction Plate Account derived from the sale of scenic rivers plates to the
13 Clean Water Management Trust Fund established by Article 13A of Chapter 113 of
14 the General Statutes."

15 Section 2. G.S. 20-79.4(a) reads as rewritten:

16 "(a) Fees. -- Upon request, the Division shall provide and issue free of charge one
17 registration plate to a recipient of the Congressional Medal of Honor, a 100%
18 disabled veteran, and an ex-prisoner of war. All other special registration plates are
19 subject to the regular motor vehicle registration fee in G.S. 20-87 or G.S. 20-88 plus
20 an additional fee in the following amount:

21 <u>Special Plate</u>	<u>Additional Fee Amount</u>
22 Historical Attraction	\$30.00
23 State Attraction	\$30.00
24 Collegiate Insignia	\$25.00

1	Olympic Games	\$25.00
2	Special Olympics	\$25.00
3	Wildlife Resources	\$20.00
4	<u>Scenic Rivers</u>	<u>\$20.00</u>
5	Personalized	\$20.00
6	Active Member of the National Guard	None
7	All Other Special Plates	\$10.00."

8 Section 3. G.S. 20-79.7(b) reads as rewritten:

9 "(b) Distribution of Fees. -- The Special Registration Plate Account and the
 10 Collegiate and Cultural Attraction Plate Account are established within the Highway
 11 Fund. The Division must credit the additional fee imposed for the special
 12 registration plates listed in subsection (a) among the Special Registration Plate
 13 Account (SRPA), the Collegiate and Cultural Attraction Plate Account (CCAPA),
 14 and the Natural Heritage Trust Fund (NHTF), which is established under G.S. 113-
 15 77.7, as follows:

16	<u>Special Plate</u>	<u>SRPA</u>	<u>CCAPA</u>	<u>NHTF</u>
17	Historical Attraction	\$10	\$20	0
18	In-State Collegiate Insignia	\$10	\$15	0
19	Out-of-state Collegiate Insignia	\$10	0	\$15
20	Personalized	\$10	0	\$10
21	Special Olympics	\$10	\$15	0
22	Olympic Games	\$10	\$15	0
23	State Attraction	\$10	\$20	0
24	Wildlife Resources	\$10	\$10	0
25	<u>Scenic Rivers</u>	<u>\$10</u>	<u>\$10</u>	<u>0</u>
26	All other Special Plates	\$10	0	0."

27 Section 4. This act becomes effective December 1, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

D

SENATE BILL 570
Proposed Committee Substitute S570-PCS8702

Short Title: Clean Water License Plate.

(Public)

Sponsors:

Referred to:

April 1, 1997

A BILL TO BE ENTITLED

1 AN ACT TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO ISSUE
2 A "SCENIC RIVERS" REGISTRATION PLATE WITH THE NET PROCEEDS
3 FROM THE SALE OF THE PLATES TO BE DEPOSITED IN THE CLEAN
4 WATER MANAGEMENT TRUST FUND.
5

6 The General Assembly of North Carolina enacts:

7 Section 1. G.S. 20-79.4(b) is amended by adding a new subdivision in the
8 appropriate alphabetical order to read:

9 "(22a1) Scenic Rivers. -- Issuable to the registered owner of a motor
10 vehicle in accordance with G.S. 20-81.12. The plate shall bear
11 the words 'Scenic Rivers' and a picture representing the
12 unique beauty of the scenic rivers of North Carolina."

13 Section 2. G.S. 20-79.7(a) reads as rewritten:

14 "(a) Fees. -- Upon request, the Division shall provide and issue free of charge one
15 registration plate to a recipient of the Congressional Medal of Honor, a 100%
16 disabled veteran, and an ex-prisoner of war. All other special registration plates are
17 subject to the regular motor vehicle registration fee in G.S. 20-87 or G.S. 20-88 plus
18 an additional fee in the following amount:

19 <u>Special Plate</u>	<u>Additional Fee Amount</u>
20 Historical Attraction	\$30.00
21 State Attraction	\$30.00
22 Collegiate Insignia	\$25.00
23 Olympic Games	\$25.00

1	Special Olympics	\$25.00
2	<u>Scenic Rivers</u>	<u>\$20.00</u>
3	Wildlife Resources	\$20.00
4	Personalized	\$20.00
5	Active Member of the National Guard	None
6	All Other Special Plates	\$10.00."

7 Section 3. G.S. 20-79.7(b) reads as rewritten:

8 "(b) Distribution of Fees. -- The Special Registration Plate Account and the
 9 Collegiate and Cultural Attraction Plate Account are established within the Highway
 10 Fund. The Division must credit the additional fee imposed for the special
 11 registration plates listed in subsection (a) among the Special Registration Plate
 12 Account (SRPA), the Collegiate and Cultural Attraction Plate Account (CCAPA),
 13 and the Natural Heritage Trust Fund (NHTF), which is established under G.S. 113-
 14 77.7, as follows:

15 <u>Special Plate</u>	<u>SRPA</u>	<u>CCAPA</u>	<u>NHTF</u>
16 Historical Attraction	\$10	\$20	0
17 In-State Collegiate Insignia	\$10	\$15	0
18 Out-of-state Collegiate Insignia	\$10	0	\$15
19 Personalized	\$10	0	\$10
20 <u>Scenic Rivers</u>	<u>\$10</u>	<u>\$10</u>	<u>0</u>
21 Special Olympics	\$10	\$15	0
22 Olympic Games	\$10	\$15	0
23 State Attraction	\$10	\$20	0
24 Wildlife Resources	\$10	\$10	0
25 All other Special Plates	\$10	0	0."

26 Section 4. G.S. 20-81.12 is amended by adding a new subsection to read:

27 "(b5) Scenic Rivers Plates. -- The Division must receive 300 or more applications
 28 for a scenic rivers plate before the plate may be developed. The Division must
 29 transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account
 30 derived from the sale of scenic rivers plates to the Clean Water Management Trust
 31 Fund established in G.S. 113-45.3."

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

**NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE**

BILL NUMBER: SB 570 (First Edition)

SHORT TITLE: Clean Water License Plate

SPONSOR(S): Senators Dalton, et al

FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 1997-98</u>	<u>FY 1998-99</u>	<u>FY 1999-00</u>	<u>FY 2000-01</u>	<u>FY 2001-02</u>
REVENUES					
Collegiate and Cultural Attraction Plate Account	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000
Highway Fund - Special Registration Plate Acct.	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000
EXPENDITURES					
Highway Fund - Special Registration Plate Acct.	\$835	-	-	-	-
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Transportation - Division of Motor Vehicles					
EFFECTIVE DATE: The act is effective December 1, 1997.					

BILL SUMMARY: This bill authorizes the Division of Motor Vehicles (DMV) to issue a special registration plate on Scenic Rivers to benefit the Clean Water Management Trust Fund if at least 300 applications for such plate are received.

ASSUMPTIONS AND METHODOLOGY:

This fiscal note assumes the issuance of the minimum 300 license plates in FY 1997-98 and renewal of those plates in the following years. There is a one-time cost of \$100 to design the new plate and a one-time production cost of \$2.45 per plate. For 300 plates, the total production cost is \$735.00 and is paid from the Special Registration Plate Account. In addition to the normal \$20 registration fee every license holder pays, there is a \$20 annual fee for each Scenic Rivers plate.

\$10 of this additional fee is deposited into the Special Registration Plate Account and \$10 of the fee is deposited into the Collegiate and Cultural Attraction Plate Account as a credit to the Clean Water Management Trust Fund . It is assumed that applicants for this plate already register their vehicle in the state and are paying the current \$20 registration fee, thus no new revenue for the Highway Fund.

FISCAL RESEARCH DIVISION

733-4910

PREPARED BY: Richard Bostic 

APPROVED BY: Tom Covington 

DATE: May 14, 1997

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

2

SENATE BILL 426
Transportation Committee Substitute Adopted 4/22/97

Short Title: Magistrates Special License Plates.

(Public)

Sponsors:

Referred to: Finance.

March 19, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE SPECIAL REGISTRATION PLATES ON
3 COMMERCIAL MOTOR VEHICLES, AND TO PROVIDE SPECIAL MOTOR
4 VEHICLE REGISTRATION PLATES FOR MAGISTRATES.

5 The General Assembly of North Carolina enacts:

6 Section 1. G.S. 20-63(b) reads as rewritten:

7 "(b) Every license plate shall have displayed upon it the registration number
8 assigned to the vehicle for which it is issued, the name of the State of North Carolina,
9 which may be abbreviated, and the year number for which it is issued or the date of
10 ~~expiration, expiration, and, if~~ If the plate is issued for a commercial vehicle, as
11 defined in G.S. 20-4.2(1), the word 'commercial,' designating 'commercial ~~vehicle.~~'
12 vehicle' shall appear on the plate, unless the plate is a special registration plate
13 authorized in G.S. 20-79.4. The Division may not issue a plate bearing the word
14 'commercial' for a trailer, or a vehicle licensed for 6,000 pounds or less.

15 A registration plate issued by the Division for a private passenger vehicle or for a
16 private hauler vehicle licensed for 6,000 pounds or less shall be a 'First in Flight'
17 plate. A "First in Flight" plate shall have the words "First in Flight" printed at the
18 top of the plate above all other letters and numerals. The background of the plate
19 shall depict the Wright Brothers biplane flying over Kitty Hawk Beach, with the
20 plane flying slightly upward and to the right."

21 Section 2. G.S. 20-79.4(a) reads as rewritten:

22 "(a) General. -- Upon application and payment of the required registration fees, a
23 person may obtain from the Division a special registration plate for a motor vehicle

1 registered in that person's name if the person qualifies for the registration plate. A
2 special registration plate, with the exception of a personalized registration plate, may
3 not be issued for a vehicle registered under the International Registration Plan. ~~Plan~~
4 ~~or for a commercial truck.~~ A special registration plate may be issued for a
5 commercial vehicle that is not registered under the International Registration Plan.
6 A holder of a special registration plate who becomes ineligible for the plate, for
7 whatever reason, must return the special plate within 30 days."

8 Section 3. G.S. 20-79.4(b) is amended by adding a new subdivision to
9 read:

10 "(14a) Magistrates. -- Issuable to a current North Carolina magistrate.
11 The plate shall bear the letters 'MJ' followed by a number. The
12 number shall indicate the district court district the magistrate
13 serves followed by a hyphen and a number indicating the seniority
14 of the magistrate. Magistrates from district court districts 9 and 9B
15 shall receive plates with the number '9' as the designation for their
16 district."

17 Section 4. This act becomes effective January 1, 1998, and applies to new
18 or renewal registrations occurring on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

D

SENATE BILL 426
Transportation Committee Substitute Adopted 4/22/97
Proposed Committee Substitute S426-PCS7800

Short Title: Magistrates/Truck Special Plates.

(Public)

Sponsors:

Referred to:

March 19, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE SPECIAL REGISTRATION LICENSE PLATES ON
3 CERTAIN COMMERCIAL MOTOR VEHICLES AND TO PROVIDE SPECIAL
4 REGISTRATION LICENSE PLATES FOR MAGISTRATES.
5 The General Assembly of North Carolina enacts:
6 Section 1. G.S. 20-63(b), as amended by Chapter 36 of the 1997 Session
7 Laws, reads as rewritten:
8 "(b) Every license plate shall have displayed upon it the registration number
9 assigned to the vehicle for which it is issued, the name of the State of North Carolina,
10 which may be abbreviated, and the year number for which it is issued or the date of
11 ~~expiration, expiration, and, if the A plate is issued for a commercial vehicle, as~~
12 ~~defined in G.S. 20-4.2(1), must bear the word 'commercial,' designating 'commercial~~
13 ~~vehicle.'~~ The Division may not issue a plate bearing the word 'commercial' for a
14 trailer, or a vehicle unless the plate is a special registration plate authorized in G.S.
15 20-79.4 or the commercial vehicle is a trailer or is licensed for 6,000 pounds or less.
16 A registration plate issued by the Division for a private passenger vehicle or for a
17 private hauler vehicle licensed for 6,000 pounds or less shall be a 'First in Flight'
18 plate. A 'First in Flight' plate shall have the words 'First in Flight' printed at the top
19 of the plate above all other letters and numerals. The background of the plate shall
20 depict the Wright Brothers biplane flying over Kitty Hawk Beach, with the plane
21 flying slightly upward and to the right."
22 Section 2. G.S. 20-79.4(a) reads as rewritten:

1 "(a) General. -- Upon application and payment of the required registration fees, a
2 person may obtain from the Division a special registration plate for a motor vehicle
3 registered in that person's name if the person qualifies for the registration plate. A
4 special registration ~~plate, with the exception of a personalized registration plate, plate~~
5 may not be issued for a vehicle registered under the International Registration Plan.
6 ~~Plan or for a commercial truck.~~ A special registration plate may be issued for a
7 commercial vehicle that is not registered under the International Registration Plan.
8 A holder of a special registration plate who becomes ineligible for the plate, for
9 whatever reason, must return the special plate within 30 days."

10 Section 3. G.S. 20-79.4(b) is amended by adding a new subdivision to
11 read:

12 "(14a) Magistrate. -- Issuable to a North Carolina magistrate. The plate
13 shall bear the letters 'MJ' followed by a number indicating the
14 district court district the magistrate serves, then by a hyphen, and
15 then by a number indicating the seniority of the magistrate. The
16 Division shall use the number '9' to designate District Court
17 Districts 9 and 9B."

18 Section 4. Sections 1 and 2 of this act become effective January 1, 1998,
19 and apply to registration plates issued for periods beginning on or after that date.
20 The remaining sections of this act are effective when this act becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

2

HOUSE BILL 1107
Committee Substitute Favorable 4/29/97

Short Title: Facility Authorities.

(Public)

Sponsors:

Referred to:

April 21, 1997

- 1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE FACILITY AUTHORITY ACT RELATING TO THE
3 MEMBERSHIP OF FACILITY AUTHORITIES AND ROOM OCCUPANCY
4 TAX ALLOCATIONS FOR CAPITAL IMPROVEMENTS.
5 The General Assembly of North Carolina enacts:
6 Section 1. G.S. 160A-480.3(b) reads as rewritten:
7 "(b) Membership. -- An authority shall have eight or ~~13~~ 17 members. Members
8 shall be chosen for terms as follows:
9 (1) Four shall be appointed by the General Assembly upon the
10 recommendation of the Speaker of the House of Representatives in
11 accordance with G.S. 120-121, at least one of whom shall be a
12 resident of the territorial jurisdiction of the authority;
13 (2) Four shall be appointed by the General Assembly upon the
14 recommendation of the President Pro Tempore of the Senate in
15 accordance with G.S. 120-121, at least one of whom shall be a
16 resident of the territorial jurisdiction of the authority; and
17 (3) If the territorial jurisdiction of the authority is a county where the
18 main campus of a constituent institution of The University of
19 North Carolina is located, then:
20 a. ~~Two~~ Four members shall be appointed by the board of
21 commissioners of that ~~county~~; county, one of whom at the
22 time of appointment is a resident of the municipality with

- 1 the second largest population in the county, according to the
2 most recent decennial federal census;
3 b. ~~Two~~ Four members shall be appointed by the city council of
4 the city with the largest population in the county, according
5 to the most recent decennial federal census; and
6 c. One member shall be appointed jointly by the mayors of all
7 the cities in that ~~county.~~ county;
8 d. Beginning January 1, 1999, a majority of any executive
9 committee, or other committee however termed having
10 supervisory or management authority over the facility to be
11 constructed by the authority, shall consist of authority
12 members appointed under this subdivision;
13 e. The Chancellor and Board of Trustees of the constituent
14 institution of The University of North Carolina whose main
15 campus is located within the county shall make
16 recommendations to the General Assembly no later than
17 April 1 of each odd-numbered year for persons to be
18 appointed under subdivisions (1) and (2) of this section, and
19 the General Assembly may consider such recommendations;
20 and
21 f. ~~The~~ Neither the board of commissioners ~~may not~~ nor the
22 city council may appoint a member of its board to serve on
23 the authority.

24 Two of the initial appointments under subdivision (1) of this subsection, two of the
25 initial appointments under subdivision (2) of this subsection, one of the initial
26 appointments under subdivision (3)a. of this subsection, and one of the initial
27 appointments under subdivision (3)b. of this section shall be for terms expiring July 1
28 of the second year after the year in which the authority is created. The remaining
29 initial appointments shall be for terms expiring July 1 of the fourth year after the year
30 in which the authority is created. Successors shall be appointed in the same manner
31 for four-year terms. In 1999, the third member appointed by the board of
32 commissioners shall serve a two-year term beginning January 1, and the fourth
33 member appointed by the board of commissioners shall serve a four-year term
34 beginning January 1. In 1999, the third member appointed by the city council shall
35 serve a two-year term beginning January 1, and the fourth member appointed by the
36 city council shall serve a four-year term beginning January 1. A member may be
37 removed by the appointing authority for cause. Vacancies occurring in the
38 membership of the authority shall be filled by the remaining members."

39 Section 2. G.S. 160A-480.8(c)(3) reads as rewritten:

- 40 "(3) With the approval of the county levying the tax, by receipts, if any,
41 from a room occupancy and prepared food and beverage tax levied
42 by a county and distributed to the Authority; provided, however,
43 that any agreement or undertaking by a county to distribute
44 receipts, if any, from the tax to the Authority may not obligate the

1 county to exercise any power of taxation, or restrict the ability of
2 the county to repeal the tax. However, no action by a county to
3 discontinue, decrease, or repeal a room occupancy tax shall
4 become effective while previously issued bonds or notes secured by
5 receipts from such a tax allocated to an authority by the county
6 remain outstanding."

7 Section 3. Section 19 of Chapter 594 of the 1991 Session Laws, as
8 rewritten by Section 5 of Chapter 458 of the 1995 Session Laws, reads as rewritten:

9 "Sec. 19. Repeal. -- The taxes levied pursuant to this authority may be repealed by
10 the county by enacting an ordinance of repeal. No such repeal shall be effective until
11 at least 180 days after the passage of the repeal ~~ordinance.~~ ordinance, provided the
12 levy of any occupancy tax in effect on January 1, 1997, shall not be decreased and no
13 repeal thereof shall become effective until all obligations secured by receipts from
14 such tax and issued under G.S. 160A-480.8 or G.S. 160A-480.12 have ceased to be
15 outstanding. Repeal of a tax levied under this act does not affect a liability for a tax
16 that was attached before the effective date of the repeal, nor does it affect a right to a
17 refund of a tax that accrued before the effective date of the repeal."

18 Section 4. Section 1 of this act becomes effective January 1, 1999. The
19 remainder of this act becomes effective when it becomes law.



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1107

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

H1107-ALB-3

Date _____, 1997

Comm. Sub. [YES]
Amends Title []
Second Edition

1 moves to amend the bill on page 1, line 6, through page 2. line 38
2 by rewriting those lines to read:

3 Section 1. G.S. 160A-480.3(b) reads as rewritten:

4 "(b) Membership. -- An authority shall have eight or ~~13~~ 21
5 members. Members shall be chosen for terms as follows:

- 6 (1) Four shall be appointed by the General Assembly upon
7 the recommendation of the Speaker of the House of
8 Representatives in accordance with G.S. 120-121, at
9 least one of whom shall be a resident of the
10 territorial jurisdiction of the authority;
- 11 (2) Four shall be appointed by the General Assembly upon
12 the recommendation of the President Pro Tempore of the
13 Senate in accordance with G.S. 120-121, at least one
14 of whom shall be a resident of the territorial
15 jurisdiction of the authority; and
- 16 (3) If the territorial jurisdiction of the authority is a
17 county where the main campus of a constituent
18 institution of The University of North Carolina is
19 located, then:
- 20 a. Two ~~Four~~ members shall be appointed by the board
21 of commissioners of that ~~county;~~ county, one of
22 whom at the time of appointment is a resident of
23 the municipality with the second largest
24 population in the county, according to the most
25 recent decennial federal census;



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1107

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

H1107-ALB-3

- 1 b. ~~Two~~ Four members shall be appointed by the city
2 council of the city with the largest population
3 in the county, according to the most recent
4 decennial federal census; ~~and~~
5 b1. Two members shall be appointed by the Board of
6 Trustees of the constituent institution of The
7 University of North Carolina whose main campus is
8 located within the county; and
9 c. ~~One member~~ Three members shall be appointed
10 jointly by the mayors of all the cities in the
11 county.
12 Beginning January 1, 1999, a majority of any executive committee,
13 or other committee however termed having supervisory or management
14 authority over the facility to be constructed by the authority,
15 shall consist of authority members appointed under this subdivision.
16 The Chancellor and Board of Trustees of the constituent
17 institution of The University of North Carolina whose main campus is
18 located within the county shall make recommendations to the General
19 Assembly no later than April 1 of each odd-numbered year for persons
20 to be appointed under subdivisions (1) and (2) of this section, and
21 the General Assembly may consider such recommendations. The Neither
22 the board of commissioners may not nor the city council may appoint
23 a member of its board to serve on the authority.



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1107

AMENDMENT NO. _____
(to be filled in by
Principal Clerk) _____
Page 3 of _____

H1107-ALB-3

1 Two of the initial appointments under subdivision (1) of this
2 subsection, two of the initial appointments under subdivision (2) of
3 this subsection, one of the initial appointments under subdivision
4 (3)a. of this subsection, and one of the initial appointments under
5 subdivision (3)b. of this section shall be for terms expiring July 1
6 of the second year after the year in which the authority is created.
7 The remaining initial appointments shall be for terms expiring July
8 1 of the fourth year after the year in which the authority is
9 created. The third member appointed by the board of commissioners
10 shall serve a term beginning January 1, 1999 and expiring July 1,
11 2001, and the fourth member appointed by the board of commissioners
12 shall serve a term beginning January 1, 1999 and expiring July 1,
13 2003. The third member appointed by the city council shall serve a
14 term beginning January 1, 1999 and expiring July 1, 2001, and the
15 fourth member appointed by the city council shall serve a term
16 beginning January 1, 1999 and expiring July 1, 2003. The second
17 member appointed jointly by the mayors of all the cities in that
18 county shall serve a term beginning January 1, 1999 and expiring
19 July 1, 2001, and the third member appointed jointly by the mayors
20 of all the cities in that county shall serve a term beginning
21 January 1, 1999 and expiring July 1, 2003. Of the initial
22 appointments by the Board of Trustees of the constituent institution
23 of The University of North Carolina whose main campus is located
24 within the county, one shall serve a term beginning January 1, 1999
25 and expiring July 1, 2001, and the other shall serve a term
26 beginning July 1, 1999 and expiring July 1, 2003. Successors shall
27 be appointed in the same manner for four-year terms. A member may
28 be removed by the appointing authority for cause. Vacancies
29 occurring in the membership of the authority shall be filled by the
30 remaining members."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____

FAILED _____

TABLED _____

CENTENNIAL AUTHORITY MEMBERSHIP PROPOSALS

<u>CATEGORY</u>	<u>CURRENT</u>	<u>HOUSE</u>	<u>SENATE</u>
Pro Tempore	4	4	4
Speaker	4	4	4
Wake County	2	4	4
City of Raleigh	2	4	4
Local Mayors	1	1	3
NCSU	--	--	2
TOTAL	13	17	21

**NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE**

BILL NUMBER: House Bill 1107
SHORT TITLE: Facility Authorities
SPONSOR(S): Representative Neely, et al.

	FISCAL IMPACT				
	Yes ()	No (X)	No Estimate Available ()		
	<u>FY 1997-98</u>	<u>FY 1998-99</u>	<u>FY 1999-00</u>	<u>FY 2000-01</u>	<u>FY 2001-02</u>
REVENUES	See assumptions and methodology				
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:	Local units of government that a facility authority.				
EFFECTIVE DATE:	When it becomes law				

BILL SUMMARY: H 1107. FACILITY AUTHORITIES. Intro. 4/21/97. House committee substitute makes the following changes to 1st edition. Replaces blank bill with *AN ACT TO AMEND THE FACILITY AUTHORITY ACT RELATING TO THE MEMBERSHIP OF FACILITY AUTHORITIES AND ROOM OCCUPANCY TAX ALLOCATIONS FOR CAPITAL IMPROVEMENTS*. Expands to 17 (now, 13) the number of members of facility authorities. Changes membership in counties with main campuses of a constituent UNC institution as follows: (1) requires board of county commissioners to appoint a member to the authority who is a resident of the municipality with the second largest population in the county, (2) increases to two the number of members appointed by the city council of the city with the largest population in the county, (3) requires that the majority of any executive committee consist of authority members appointed by local governing boards in that county, (4) authorizes the General Assembly to consider recommendations of the Chancellor and Board of Trustees of the constituent institutions for appointments by the Speaker and the President Pro Tem., and (5) prohibits a local governing board from appointing one of its members to serve on the authority. Restricts county from decreasing or repealing room occupancy tax while previously issued bonds or notes secured by receipts from the tax allocated to an authority remain outstanding. Provisions regarding membership are effective Jan. 1, 1999. All other provisions effective are effective when act becomes law.

Summary Source: Institute of Government

ASSUMPTIONS AND METHODOLOGY:

The act restrict a county from decreasing or repealing the occupancy tax while receipts from the tax have been pledged to a bond issue. There is not a fiscal impact as a result of this legislation.

FISCAL RESEARCH DIVISION

733-4910

PREPARED BY: Warren Plonk

APPROVED BY:

DATE: May 6, 1997

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 847

Short Title: No Sales Tax on Reusable Containers.

(Public)

Sponsors: Senator Odom.

Referred to: Finance.

April 15, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO EXEMPT FROM SALES AND USE TAX REUSABLE INDUSTRIAL
3 CONTAINERS USED AS PACKING FOR TANGIBLE PERSONAL
4 PROPERTY.
5 The General Assembly of North Carolina enacts:
6 Section 1. G.S. 105-164.13(23) reads as rewritten:
7 "(23) Sales of wrapping paper, labels, wrapping twine, paper, cloth,
8 plastic bags, cartons, packages and containers, cores, cones or
9 spools, wooden boxes, baskets, coops and barrels, including paper
10 cups, napkins and drinking straws and like articles sold to
11 manufacturers, producers and retailers, when ~~such~~ the materials
12 are used for packaging, shipment or delivery of tangible personal
13 property which is sold either at wholesale or retail and when ~~such~~
14 ~~articles~~ the materials constitute a part of the sale of ~~such~~ tangible
15 personal property and are delivered with it to the customer. In
16 addition, the exemption allowed by this subdivision applies to a
17 reusable container in which the tangible personal property is
18 packaged, shipped, or delivered even if the owner, seller, or lessor
19 of the container holds or retains a property interest in it."
20 Section 2. This act becomes effective October 1, 1997, and applies to
21 sales made on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

D

SENATE BILL 847
Proposed Committee Substitute S847-PCS6681

Short Title: No Sales Tax on Reusable Containers.

(Public)

Sponsors:

Referred to:

April 15, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO EXEMPT FROM SALES AND USE TAX REUSABLE INDUSTRIAL
3 CONTAINERS USED AS PACKAGING FOR TANGIBLE PERSONAL
4 PROPERTY.

5 The General Assembly of North Carolina enacts:

6 Section 1. G.S. 105-164.13 is amended by adding a new subdivision to
7 read:

8 "(23a) Containers that are leased to a manufacturer or purchaser of
9 tangible personal property, are used by the manufacturer of the
10 property to enclose the property for delivery to the purchaser of
11 the property, and are later returned to the lessor for reuse."

12 Section 2. This act becomes effective October 1, 1997, and applies to
13 sales made on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1997

S

1

SENATE BILL 916

Short Title: Cosmetologists.

(Public)

Sponsors: Senator Kerr.

Referred to: Finance.

April 17, 1997

- 1 A BILL TO BE ENTITLED
2 AN ACT TO REWRITE THE LAWS REGULATING COSMETIC ART.
3 The General Assembly of North Carolina enacts:
4 Section 1. Chapter 88 of the General Statutes is repealed.
5 Section 2. The General Statutes are amended by adding the following
6 new Chapter to read:
7 "Chapter 88B.
8 "Cosmetic Art.
9 "§ 88B-1. Short title.
10 This act shall be known and may be cited as the North Carolina Cosmetic Art Act.
11 "§ 88B-2. Definitions.
12 The following definitions apply in this Chapter:
13 (1) Apprentice. -- A person who is not a manager or operator, and
14 who is engaged in learning the practice of cosmetic art under the
15 direction and supervision of a cosmetologist.
16 (2) Board. -- The North Carolina Board of Cosmetic Art Examiners.
17 (3) Booth. -- A workstation located within a licensed cosmetic art shop
18 that is operated primarily by one individual in performing cosmetic
19 art services for consumers.
20 (4) Booth renter. -- A person who rents a booth in a cosmetic art shop.
21 (5) Cosmetic art. -- All or any part or combination of: (i) the
22 systematic massaging with the hands or mechanical apparatus of
23 the scalp, face, neck, shoulders, hands, and feet; (ii) the use of
24 cosmetic chemicals and preparations and antiseptics; (iii)

- 1 manicuring, including the application of artificial nails; (iv)
2 esthetics; or (v) cutting, coloring, cleansing, arranging, dressing,
3 waving, and marcelling the hair, and the use of electricity for
4 stimulating growth of hair.
- 5 (6) Cosmetic art shop. -- Any building or part thereof where cosmetic
6 art is practiced for pay or reward, whether direct or indirect.
- 7 (7) Cosmetic art school. -- Any building or part thereof where
8 cosmetic art is taught.
- 9 (8) Cosmetologist. -- Any individual who is licensed to practice all
10 parts of cosmetic art.
- 11 (9) Cosmetology teacher. -- An individual licensed by the Board to
12 teach all parts of cosmetic art.
- 13 (10) Esthetician. -- An individual licensed by the Board to practice only
14 that part of cosmetic art that constitutes skin care.
- 15 (11) Esthetician teacher. -- An individual licensed by the Board to teach
16 only that part of cosmetic art that constitutes skin care.
- 17 (12) Manicurist. -- An individual licensed by the Board to practice only
18 that part of cosmetic art that constitutes manicuring.
- 19 (13) Manicuring. -- The care and treatment of the fingernails, toenails,
20 cuticles on fingernails and toenails, and the hands and feet,
21 including the decoration of the fingernails and the application of
22 nail extensions and artificial nails.
- 23 (14) Manicurist teacher. -- An individual licensed by the Board to teach
24 manicuring.
- 25 (15) Shampooing. -- The application and removal of commonly used,
26 room temperature, liquid hair cleaning and hair conditioning
27 products. Shampooing does not include the arranging, dressing,
28 waving, coloring, or other treatment of the hair.

29 "§ 88B-3. Creation and membership of the Board; term of office; removal for cause;
30 officers.

31 (a) The North Carolina Board of Cosmetic Art Examiners is established. The
32 Board shall consist of six members who shall be appointed as follows:

- 33 (1) The General Assembly, upon the recommendation of the President
34 Pro Tempore of the Senate, shall appoint a cosmetologist.
- 35 (2) The General Assembly, upon the recommendation of the Speaker
36 of the House of Representatives, shall appoint a cosmetologist.
- 37 (3) The Governor shall appoint two cosmetologists, a cosmetology
38 teacher, and a member of the public who is not licensed under this
39 Chapter.

40 (b) Each cosmetologist member shall have practiced all parts of cosmetic art in
41 this State for at least five years immediately preceding appointment to the Board and
42 shall not have any connection with any cosmetic art school while serving on the
43 Board. The cosmetology teacher member shall be currently employed as a teacher by
44 a North Carolina public school, community college, or other public or private

1 cosmetic art school and shall have practiced or taught cosmetic art for at least five
2 years immediately preceding appointment to the Board.

3 (c) Cosmetologist members of the Board shall serve staggered terms of three years.
4 No Board member shall serve more than two consecutive terms, except that each
5 member shall serve until a successor is appointed and qualified. All other board
6 members shall serve three-year terms, but they shall not be staggered.

7 (d) The Governor may remove any member of the Board for cause.

8 (e) A vacancy shall be filled in the same manner as the original appointment,
9 except that unexpired terms in seats appointed by the General Assembly shall be
10 filled in accordance with G.S. 120-122. Appointees to fill vacancies shall serve the
11 remainder of the unexpired term and until their successors have been duly appointed
12 and qualified.

13 (f) The Board shall elect a chair, a vice-chair, and other officers as deemed
14 necessary by the Board to carry out the purposes of this Chapter. All officers shall be
15 elected annually by the Board for one-year terms and shall serve until their successors
16 are elected and qualified.

17 (g) The Board shall not issue a teacher's license to any Board member during that
18 member's term on the Board.

19 (h) No Board member may be employed by the Board for at least one year after
20 that member's term expires.

21 **"§ 88B-4. Powers and duties of the Board.**

22 (a) The Board shall have the following powers and duties:

- 23 (1) To administer and interpret this Chapter.
- 24 (2) To adopt, amend, and repeal rules to carry out the provisions of
25 this Chapter.
- 26 (3) To examine and determine the qualifications and fitness of
27 applicants for licensure under this Chapter.
- 28 (4) To issue, renew, deny, restrict, suspend, or revoke licenses.
- 29 (5) To conduct investigations of alleged violations of this Chapter or
30 the Board's rules.
- 31 (6) To collect fees required by G.S. 88B-20 and any other monies
32 permitted by law to be paid to the Board.
- 33 (7) To approve new cosmetic art schools.
- 34 (8) To inspect cosmetic art schools and shops.
- 35 (9) To adopt rules for the sanitary management and physical
36 requirements of cosmetic art shops and cosmetic art schools.
- 37 (10) To establish a curriculum for each course of study required for the
38 issuance of a license issued under this Chapter.
- 39 (11) To employ an executive director and any additional professional,
40 clerical, or special personnel necessary to carry out the provisions
41 of this Chapter, and to purchase or rent necessary office space,
42 equipment, and supplies.
- 43 (12) To adopt a seal.
- 44 (13) To carry out any other actions authorized by this Chapter.

1 (b) A member of the Board shall have the authority to inspect cosmetic art shops
2 and cosmetic art schools at any reasonable hour to determine compliance with the
3 provisions of this Chapter if the inspection is made: (i) at the request of the Board, or
4 with the approval of the chair or the executive director as the result of a complaint
5 made to the Board or a problem reported by an inspector, or (ii) at the request of an
6 inspector who deems it necessary to request the assistance of a Board member and
7 who has the prior approval of the chair or executive director to do so. A Board
8 member who makes an inspection pursuant to this subsection shall file a report with
9 the Board before requesting reimbursement for expenses.

10 (c) The Board shall keep a record of its proceedings relating to the issuance,
11 renewal, denial, restriction, suspension, and revocation of licenses. This record shall
12 also contain each licensee's name, business and home addresses, license number, and
13 the date the license was issued.

14 **"§ 88B-5. Meetings and compensation of the Board.**

15 (a) Each member of the Board shall receive compensation for services and
16 expenses as provided in G.S. 93B-5, but shall be limited to payment for services
17 deemed official business of the Board when such business exceeds three continuous
18 hours per day. Official business of the Board includes meetings called by the chair
19 and time spent inspecting cosmetic art shops and schools as permitted by this
20 Chapter. No payment for per diem or travel expenses shall be authorized or paid for
21 Board meetings other than those called by the chair. The Board may annually select
22 one member to attend a national state board of cosmetic arts meeting on official
23 business of the Board. No other Board members shall be authorized to attend trade
24 shows or to travel out of State at the Board's expense.

25 (b) The Board shall hold four regular meetings a year in the months of January,
26 April, July, and October. The chair may call additional meetings whenever
27 necessary.

28 **"§ 88B-6. Board office, employees, funds, budget requirements.**

29 (a) The Board shall maintain its office in Raleigh, North Carolina.

30 (b) The Board shall employ an executive director who shall not be a member of
31 the Board. The executive director shall keep all records of the Board, issue all
32 necessary notices, and perform any other duties required by the Board.

33 (c) With the approval of the Director of the Budget and the Office of State
34 Personnel, the Board may employ as many inspectors, investigators, and other staff as
35 necessary to perform inspections and other duties prescribed by the Board.
36 Inspectors and investigators shall be experienced in all parts of cosmetic art and shall
37 have authority to examine cosmetic art shops and cosmetic art schools during
38 business hours to determine compliance with this Chapter.

39 (d) The salaries of all employees of the Board, including the executive director,
40 shall be subject to the State Personnel Act.

41 (e) The executive director may collect in the Board's name and on its behalf the
42 fees prescribed in this Chapter and shall turn these and any other monies paid to the
43 Board over to the State Treasurer. These funds shall be credited to the Board and
44 shall be held and expended under the supervision of the Director of the Budget only

1 for the administration and enforcement of this Chapter. Nothing in this Chapter shall
2 authorize any expenditure in excess of the amount credited to the Board and held by
3 the State Treasurer as provided in this subsection.

4 (f) The Executive Budget Act and the State Personnel Act apply to the
5 administration of this Chapter.

6 **"§ 88B-7. Qualifications for licensing cosmetologists.**

7 The Board shall issue a license to practice as a cosmetologist to any individual who
8 meets all of the following requirements:

9 (1) Successful completion of at least 1,500 hours of a cosmetology
10 curriculum in an approved cosmetic art school, or at least 1,200
11 hours of a cosmetology curriculum in an approved cosmetic art
12 school and completion of an apprenticeship for a period of at least
13 six months under the direct supervision of a cosmetologist, as
14 certified by sworn affidavit of three licensed cosmetologists or by
15 other evidence satisfactory to the Board.

16 (2) Passage of an examination conducted by the Board.

17 (3) Payment of the fees required by G.S. 88B-20.

18 **"§ 88B-8. Qualifications for licensing apprentices.**

19 The Board shall issue a license to practice as an apprentice to any individual who
20 meets all of the following requirements:

21 (1) Successful completion of at least 1,200 hours of a cosmetology
22 curriculum in an approved cosmetic art school.

23 (2) Passage of an examination conducted by the Board.

24 (3) Payment of the fees required by G.S. 88B-20.

25 **"§ 88B-9. Qualifications for licensing as an esthetician.**

26 The Board shall issue a license to practice as an esthetician to any individual who
27 meets all of the following requirements:

28 (1) Successful completion of at least 600 hours of an esthetician
29 curriculum in an approved cosmetic art school.

30 (2) Passage of an examination conducted by the Board.

31 (3) Payment of the fees required by G.S. 88B-20.

32 **"§ 88B-10. Qualifications for licensing manicurists.**

33 The Board shall issue a license to practice as a manicurist to any individual who
34 meets all of the following requirements:

35 (1) Successful completion of at least 300 hours of a manicurist
36 curriculum in an approved cosmetic art school.

37 (2) Passage of an examination conducted by the Board.

38 (3) Payment of the fees required by G.S. 88B-20.

39 **"§ 88B-11. Qualifications for licensing teachers.**

40 (a) Applicants for any teacher's license issued by the Board shall meet all of the
41 following requirements:

42 (1) Possession of a high school diploma or a high school graduation
43 equivalency certificate.

44 (2) Payment of the fees required by G.S. 88B-20.

1 (b) The Board shall issue a license to practice as a cosmetology teacher to any
2 individual who meets the requirements of subsection (a) of this section and who
3 meets all of the following:

4 (1) Holds in good standing a cosmetologist license issued by the Board.

5 (2) Submits proof of either practice of cosmetic art in a cosmetic art
6 shop for a period equivalent to five years of full-time work
7 immediately prior to application or successful completion of at
8 least 800 hours of a cosmetology teacher curriculum in an
9 approved cosmetic art school.

10 (3) Passes an examination for cosmetology teachers conducted by the
11 Board.

12 (c) The Board shall issue a license to practice as an esthetician teacher to any
13 individual who meets the requirements of subsection (a) of this section and who
14 meets all of the following:

15 (1) Holds in good standing a cosmetologist or an esthetician license
16 issued by the Board.

17 (2) Submits proof of either practice as an esthetician in a cosmetic art
18 shop for a period equivalent to three years of full-time work
19 immediately prior to application or successful completion of at
20 least 650 hours of an esthetician teacher curriculum in an approved
21 cosmetic art school.

22 (3) Passes an examination for esthetician teachers conducted by the
23 Board.

24 (d) The Board shall issue a license to practice as a manicurist teacher to any
25 individual who meets the requirements of subsection (a) of this section and who
26 meets all of the following:

27 (1) Holds in good standing a cosmetologist or manicurist license issued
28 by the Board.

29 (2) Submits proof of either practice as a manicurist in a cosmetic art
30 shop for a period equivalent to two years of full-time work
31 immediately prior to application or successful completion of at
32 least 320 hours of a manicurist teacher curriculum in an approved
33 cosmetic art school.

34 (3) Passes an examination for manicurist teachers conducted by the
35 Board.

36 "§ 88B-12. Temporary employment permit; extensions; limits on practice.

37 (a) The Board shall issue a temporary employment permit to an applicant for
38 licensure as an apprentice, cosmetologist, esthetician, or manicurist who meets all of
39 the following:

40 (1) Has completed the required hours of a cosmetic art school
41 curriculum in the area in which the applicant wishes to be
42 licensed.

43 (2) Has applied to take the examination within three months of
44 completing the required hours.

- 1 (3) Is qualified to take the examination.
- 2 (b) A temporary employment permit shall expire six months from the date of
3 graduation from a cosmetic art school and shall not be renewed.
- 4 (c) The holder of a temporary employment permit may practice cosmetic art only
5 under the supervision of a licensed cosmetologist, manicurist, or esthetician, as
6 appropriate, and may not operate a cosmetic art shop.
- 7 **"§ 88B-13. Applicants licensed in other states.**
- 8 (a) The Board shall issue a license to an applicant licensed as an apprentice,
9 cosmetologist, esthetician, or manicurist in another state if the applicant shows:
- 10 (1) The applicant is an active practitioner in good standing.
- 11 (2) The applicant has practiced at least one out of the three years
12 immediately preceding the application for a license.
- 13 (3) There is no disciplinary proceeding or unresolved complaint
14 pending against the applicant at the time a license is to be issued
15 by this State.
- 16 (4) The licensure requirements in the state in which the applicant is
17 licensed are substantially equivalent to those required by this State.
- 18 (b) Instead of meeting the requirements in subsection (a) of this section, any
19 applicant who is licensed as a cosmetologist, esthetician, or manicurist in another
20 state shall be admitted to practice in this State under the same reciprocity or comity
21 provisions that the state in which the applicant is licensed grants to persons licensed
22 in this State.
- 23 (c) The Board may establish standards for issuing a license to an applicant who is
24 licensed as a teacher in another state. These standards shall include a requirement
25 that the licensure requirements in the state in which the teacher is licensed shall be
26 substantially equivalent to those required in this State and that the applicant shall be
27 licensed by the Board to practice in the area in which the applicant is licensed to
28 teach.
- 29 **"§ 88B-14. Licensing of cosmetic art shops.**
- 30 (a) The Board shall issue a license to operate a cosmetic art shop to any applicant
31 who submits a properly completed application, on a form approved by the Board,
32 pays the required fee, and is determined, after inspection, to be in compliance with
33 the provisions of this Chapter and the Board's rules.
- 34 (b) The applicant shall list all licensed cosmetologists who practice cosmetic art in
35 the shop and shall identify each as an employee or a booth renter.
- 36 (c) A cosmetic art shop shall be allowed to operate for a period of 30 days while
37 the Board inspects and determines the shop's compliance with this Chapter and the
38 Board's rules. If the Board is unable to complete the inspection within 30 days, the
39 shop will be authorized to operate until such an inspection can be completed.
- 40 (d) A license to operate a cosmetic art shop shall not be transferable from one
41 location to another or from one owner to another.
- 42 **"§ 88B-15. Practice outside cosmetic art shops.**
- 43 (a) Any individual licensed under this Chapter may visit the residences of
44 individuals who are sick or disabled and confined to their place of residence in order

1 to attend to their cosmetic needs. A licensed individual may also visit hospitals,
2 nursing homes, rest homes, retirement homes, mental institutions, correctional
3 facilities, funeral homes, and similar institutions to attend to the cosmetic needs of
4 those in these institutions.

5 (b) An individual licensed under this Chapter may practice in a licensed
6 barbershop as permitted by G.S. 86-15.

7 **"§ 88B-16. Licensing cosmetic art schools.**

8 (a) The Board shall issue a license to any cosmetic art school that submits a
9 properly completed application, on a form approved by the Board, pays the required
10 license fee, and is determined by the Board, after inspection, to be in compliance
11 with the provisions of this Chapter and the Board's rules.

12 (b) No one may open or operate a cosmetic art school before the Board has
13 approved a license for the school. The Board shall not issue a license before a
14 cosmetic art school has been inspected and determined to be in compliance with the
15 provisions of this Chapter and the Board's rules.

16 (c) Cosmetic art schools located in this State shall be licensed by the Board before
17 any credit may be given for curriculum hours taken in the school. The Board may
18 establish standards for approving hours from schools in other states that are licensed.

19 **"§ 88B-17. Bond required for private cosmetic art schools.**

20 (a) Each private cosmetic art school shall provide a guaranty bond unless the
21 school has already provided a bond or an alternative to a bond under G.S. 115D-95.
22 The Board may restrict, suspend, revoke, refuse to renew or reinstate the license of a
23 school that fails to maintain a bond or an alternative to a bond pursuant to this
24 section or G.S. 115D-95.

25 (b) (1) The applicant shall file the guaranty bond with the clerk of
26 superior court in the county in which the school is located. The
27 bond shall be in favor of the students. The bond shall be executed
28 by the applicant as principal and by a bonding company
29 authorized to do business in this State. The bond shall be
30 conditioned to provide indemnification to any student or the
31 student's parent or guardian who has suffered loss of tuition or any
32 fees by reason of the failure of the school to offer or complete
33 student instruction, academic services, or other goods and services
34 as related to course enrollment for any reason, including
35 suspension, revocation, or nonrenewal of a school's approval,
36 bankruptcy, foreclosure, or the school ceasing to operate.

37 (2) The bond amount shall be at least equal to the maximum amount
38 of prepaid tuition held at any time by the school during the last
39 fiscal year, but in no case shall be less than ten thousand dollars
40 (\$10,000). Each application for license or license renewal shall
41 include a letter signed by an authorized representative of the
42 school showing the calculations made and the method of
43 computing the amount of the bond in accordance with rules
44 prescribed by the Board. If the Board finds that the calculations

1 made and the method of computing the amount of the bond are
2 inaccurate or that the amount of the bond is otherwise inadequate
3 to provide indemnification under the terms of the bond, the Board
4 may require the applicant to provide an additional bond.

- 5 (3) The bond shall remain in force and effect until canceled by the
6 guarantor. The guarantor may cancel the bond upon 30 days'
7 notice to the Board. Cancellation of the bond shall not affect any
8 liability incurred or accrued prior to the termination of the notice
9 period.

10 (c) An applicant who is unable to secure a bond may seek from the Board a
11 waiver of the guaranty bond requirement and approval of one of the guaranty bond
12 alternatives set forth in this subsection. With the approval of the Board, an applicant
13 may file one of the following instead of a bond with the clerk of court in the county
14 in which the school is located:

- 15 (1) An assignment of a savings account in an amount equal to the
16 bond required that is in a form acceptable to the Board, and is
17 executed by the applicant and a state or federal savings and loan
18 association, state bank, or national bank that is doing business in
19 this State and whose accounts are insured by a federal depositor's
20 corporation, and access to the account is subject to the same
21 conditions as those for a bond in subsection (b) of this section.

- 22 (2) A certificate of deposit that is executed by a state or federal savings
23 and loan association, state bank, or national bank that is doing
24 business in this State and whose accounts are insured by a federal
25 depositor's corporation and access to the certificate of deposit is
26 subject to the same conditions as those for a bond in subsection (b)
27 of this section.

28 "§ 88B-18. Examinations.

29 (a) Each applicant for any examination shall file an application with the Board,
30 on a form approved by the Board, which shall be verified by the applicant under
31 oath, and the applicant shall pay the required examination fee. Applications shall be
32 filed at least 30 days before the requested examination date.

33 (b) Each examination shall have both a practical and a written portion.

34 (c) Examinations for applicants for apprentice, cosmetologist, teacher, esthetician,
35 and manicurist licenses shall be given in at least three locations in the State that are
36 geographically scattered. The examinations shall be administered in the Board's office
37 or in a publicly supported two-year postsecondary educational institution with
38 appropriate facilities. The Board shall reimburse an institution, if requested, for the
39 use of its facilities in administering examinations.

40 (d) An applicant for a cosmetologist license who fails to pass the examination
41 three times may not reapply to take the examination again until after the applicant
42 has successfully completed any additional requirements prescribed by the Board.

43 "§ 88B-19. Expired school credits.

No credit shall be approved by the Board if five years or more have elapsed from the date a person enrolled in a cosmetic art school unless the person completed the required number of hours and filed an application to take an examination administered by the Board.

"§ 88B-20. Fees required.

(a) The Board may charge examination fees as follows:

- (1) Cosmetologist\$ 20.00
- (2) Apprentice.....\$ 5.00
- (3) Manicurist\$ 15.00
- (4) Esthetician\$ 20.00
- (5) Teacher\$ 25.00.

(b) The Board may charge application fees as follows:

- (1) Inspection of a newly established cosmetic art shop\$ 25.00
- (2) Reciprocity applicant under G.S. 88B-13.....\$ 15.00.

(c) The Board may charge license fees as follows:

- (1) Cosmetologist\$ 39.00 every 3 years
- (2) Apprentice.....\$ 10.00 per year
- (3) Esthetician\$ 10.00 per year
- (4) Manicurist\$ 10.00 per year
- (5) Teacher\$ 10.00 every 2 years
- (6) Cosmetic art shop per active booth per year.....\$ 3.00
- (7) Cosmetic art school\$ 50.00 per year
- (8) Duplicate license.....\$ 1.00.

(d) The Board may require payment of late fees and reinstatement fees as follows:

- (1) Apprentice, cosmetologist, esthetician, manicurist, and teacher late renewal.....\$ 10.00
- (2) Cosmetic art schools and shops late renewal\$ 10.00
- (3) Reinstatement - cosmetic art schools and shops\$ 25.00.

(e) The Board may prorate fees as appropriate.

"§ 88B-21. Renewals; expired licenses.

(a) Each license to operate a cosmetic art shop shall be renewed on or before the first day of February of each year. As provided in G.S. 88B-20, a late fee shall be charged for licenses renewed after February 1. Any license not renewed by March 1 of each year shall expire. A cosmetic art shop whose license has been expired for one year or less shall have the license reinstated immediately upon payment of the reinstatement fee, the late fee, and all unpaid license fees. The licensee shall submit to the Board, as a part of the renewal process, a list of all licensed cosmetologists who practice cosmetic art in the shop and shall identify each as an employee or a booth renter.

1 (b) Cosmetologist licenses shall be renewed on or before October 1 every three
2 years beginning October 1, 1998. A late fee shall be charged for renewals after that
3 date. Any license not renewed shall expire on October 1 of the year that renewal is
4 required. The Board may develop and implement a plan for staggered license
5 renewal and may prorate license fees to implement such a plan.

6 (c) Apprentice, esthetician, and manicurist licenses shall be renewed annually on
7 or before October 1 of each year. A late fee shall be charged for the renewal of
8 licenses after that date. Any license not renewed shall expire on October 1 of that
9 year.

10 (d) Teacher licenses shall be renewed every two years on or before October 1. A
11 late fee shall be charged for the renewal of licenses after that date. Any license not
12 renewed shall expire on October 1 of that year.

13 (e) Prior to renewal of a teacher's license, the teacher shall annually complete a
14 minimum of eight hours of continuing education which shall be approved by the
15 Board. Teachers shall submit written documentation to the Board showing that they
16 have satisfied the requirements of this subsection.

17 (f) If an apprentice, cosmetologist, esthetician, manicurist, or teacher fails to
18 renew his or her license within five years following the expiration date, the licensee
19 shall be required to pay the license fee for each year that the fees are delinquent and
20 to pass an examination as prescribed by the Board before the license will be
21 reinstated.

22 (g) Cosmetic art school licenses shall be renewed on or before October 1 of each
23 year. A late fee shall be charged for licenses renewed after that date. Any license
24 not renewed by November 1 of that year shall expire. A cosmetic art school whose
25 license has been expired for one year or less shall have its license reinstated upon
26 payment of the reinstatement fee, the late fee, and all unpaid license fees.

27 **"§ 88B-22. Licenses required; criminal penalty.**

28 (a) Except as provided in this Chapter, no person may practice or attempt to
29 practice cosmetic art for pay or reward in any form, either directly or indirectly,
30 without being licensed as an apprentice, cosmetologist, esthetician, or manicurist by
31 the Board.

32 (b) Except as provided in this Chapter, no person may practice cosmetic art or
33 any part of cosmetic art, for pay or reward in any form, either directly or indirectly,
34 outside of a licensed cosmetic art shop.

35 (c) No person may open or operate a cosmetic art shop in this State unless a
36 license has been issued by the Board for that shop.

37 (d) An individual licensed as an esthetician or manicurist may practice only that
38 part of cosmetic art for which the individual is licensed.

39 (e) An apprentice licensed under the provisions of this Chapter shall apprentice
40 under the direct supervision of a cosmetologist. An apprentice shall not operate a
41 cosmetic art shop.

42 (f) A violation of this act is a Class 3 misdemeanor.

43 **"§ 88B-23. Licenses to be posted.**

1 (a) Every apprentice, cosmetologist, esthetician, manicurist, and teacher licensed
2 under this Chapter shall display the certificate of license issued by the Board within
3 the shop in which the person works.

4 (b) Every certificate of license to operate a cosmetic art shop or school shall be
5 conspicuously posted in the shop or school for which it is issued.

6 "§ 88B-24. Revocation of licenses and other disciplinary measures.

7 The Board may restrict, suspend, revoke, or refuse to issue, renew, or reinstate any
8 license for any of the following:

9 (1) Conviction of a felony shown by certified copy of the record of the
10 court of conviction.

11 (2) Gross malpractice or gross incompetency as determined by the
12 Board.

13 (3) Advertising by means of knowingly false or deceptive statements.

14 (4) Permitting any individual to practice cosmetic art without a license
15 or temporary employment permit, with an expired license or
16 temporary employment permit, or with an invalid license or
17 temporary employment permit.

18 (5) Obtaining or attempting to obtain a license for money or other
19 thing of value other than the required fee or by fraudulent
20 misrepresentation.

21 (6) Practicing or attempting to practice by fraudulent
22 misrepresentation.

23 (7) Willful failure to display a certificate of license as required by G.S.
24 88B-23.

25 (8) Willful violation of the rules adopted by the Board.

26 (9) Violation of G.S. 86-15 by a cosmetologist, esthetician, or
27 manicurist licensed by the Board and practicing cosmetic art in a
28 barber shop.

29 "§ 88B-25. Exemptions.

30 The following persons are exempt from the provisions of this Chapter while
31 engaged in the proper discharge of their professional duties:

32 (1) Undertakers and funeral establishments licensed under G.S. 90-
33 210.25.

34 (2) Persons authorized to practice medicine or surgery under Chapter
35 90 of the General Statutes.

36 (3) Nurses licensed under Chapter 90 of the General Statutes.

37 (4) Commissioned medical or surgical officers of the United States
38 Army, Air Force, Navy, Marine, or Coast Guard.

39 (5) A person employed in a cosmetic art shop to shampoo hair.

40 "§ 88B-26. Rules to be posted.

41 (a) The Board shall furnish a copy of its rules relating to sanitary management of
42 cosmetic art shops and cosmetic art schools to each shop and school licensed by the
43 Board. Each shop and school shall post the rules in a conspicuous place.

1 (b) The Board shall furnish a copy of its rules relating to curriculum and schools
2 to each licensed cosmetic art school. Each cosmetic art school shall make these rules
3 available to all teachers and students.

4 "§ 88B-27. Inspections.

5 Any inspector or other authorized representative of the Board may enter any
6 cosmetic art shop or school to inspect it for compliance with this Chapter and the
7 Board's rules. All persons practicing cosmetic art in a shop or school shall, upon
8 request, present satisfactory proof of identification. Satisfactory proof shall be in the
9 form of a photographic driver's license or photographic identification card issued by
10 any state, federal, or other government entity. The Board may require a cosmetic art
11 shop or school to be inspected as a condition for license renewal.

12 "§ 88B-28. Restraining orders.

13 The Board, the Department of Human Resources, or any county or district health
14 director may apply to the superior court for an injunction to restrain any person from
15 violating the provisions of this Chapter or the Board's rules. Actions under this
16 section shall be brought in the county where the defendant resides or maintains his or
17 her principal place of business or where the alleged acts occurred.

18 "§ 88B-29. Civil penalties.

19 (a) Authority to Assess Civil Penalties. -- In addition to taking any of the actions
20 permitted under G.S. 88B-24, the Board may assess a civil penalty not in excess of
21 one thousand dollars (\$1,000) for the violation of any section of this Chapter or the
22 violation of any rules adopted by the Board. All civil penalties collected by the
23 Board shall be remitted to the school fund of the county in which the violation
24 occurred.

25 (b) Consideration Factors. -- Before imposing and assessing a civil penalty and
26 fixing the amount thereof, the Board shall, as a part of its deliberations, take into
27 consideration the following factors:

- 28 (1) The nature, gravity, and persistence of the particular violation.
- 29 (2) The appropriateness of the imposition of a civil penalty when
30 considered alone or in combination with other punishment.
- 31 (3) Whether the violation was willful and malicious.
- 32 (4) Any other factors that would tend to mitigate or aggravate the
33 violations found to exist.

34 (c) Schedule of Civil Penalties. -- The Board shall establish a schedule of civil
35 penalties for violations of this Chapter. The schedule shall indicate for each type of
36 violation whether the violation can be corrected. Penalties shall be assessed for the
37 first, second, and third violations of specified sections of this Chapter and for
38 specified rules.

39 (d) Costs. -- The Board may in a disciplinary proceeding charge costs, including
40 reasonable attorneys' fees, to the licensee against whom the proceedings were
41 brought."

42 Section 3. Any esthetician who submits proof to the Board that the
43 esthetician is actively engaged in the practice of esthetics on the effective date of this
44 act, and who passes an examination conducted by the Board, and pays the required

1 fee shall be licensed without having to satisfy the requirements of G.S. 88B-9, as
2 enacted by Section 2 of this act. All persons who do not make application to the
3 Board within one year of the effective date of this act shall be required to complete
4 all training and examination requirements prescribed by the Board and to otherwise
5 comply with the provisions of Chapter 88B, as enacted by Section 2 of this act.

6 Section 4. Any manicurist who submits proof to the Board that the
7 manicurist is actively engaged in the practice of manicuring on the effective date of
8 this act, and who passes an examination conducted by the Board, and pays the
9 required fee shall be licensed without having to satisfy the requirements of G.S. 88B-
10 10, as enacted by Section 2 of this act. All persons who do not make application to
11 the Board within one year of the effective date of this act shall be required to
12 complete all training and examination requirements prescribed by the Board and to
13 otherwise comply with the provisions of Chapter 88B, as enacted by Section 2 of this
14 act.

15 Section 5. Until the Board adopts a staggered license renewal plan under
16 G.S. 88B-21(b), as enacted by Section 2 of this act, any cosmetologist who applies for
17 licensure in a year other than the year all other cosmetologist licenses are due for
18 renewal shall pay the annual fee provided in G.S. 88B-20, as enacted by Section 2 of
19 this act, on or before October 1 of each year until the year all other cosmetologist
20 licenses are again due for renewal. Any license not renewed shall expire on October
21 1 of that year.

22 Section 6. Any license currently issued by the State Board of Cosmetic
23 Art Examiners shall remain valid until its expiration.

24 Section 7. The State Board of Cosmetic Art Examiners existing on the
25 effective date of this act shall continue in effect until the terms of the members expire
26 or a member is removed as authorized in G.S. 88B-3, as enacted by Section 2 of this
27 act. Vacancies on the Board shall be filled as authorized in G.S. 88B-3, as enacted by
28 Section 2 of this act. The rules of the State Board of Cosmetic Art Examiners in
29 effect on the effective date of this Chapter shall continue in effect until amended.

30 Section 8. Nothing in this Chapter shall require the North Carolina
31 Board of Cosmetic Art Examiners to issue esthetician's licenses until the General
32 Assembly enacts legislation allowing the Board to charge an examination fee of
33 twenty dollars (\$20.00) and a license fee of ten dollars (\$10.00) per year.

34 Section 9. This act becomes effective July 1, 1997, and shall apply to
35 applications made and acts occurring on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 916 (First Edition)

SHORT TITLE: Cosmetologists

SPONSOR(S): Senator Kerr

FISCAL IMPACT

	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 1997-98</u>	<u>FY 1998-99</u>	<u>FY 1999-00</u>	<u>FY 2000-01</u>	<u>FY 2001-02</u>
REVENUES					
Special Revenue Fund					
Esthetician Exam	\$10,000	\$5,000	\$5,000	\$4,000	\$4,000
Esthetician License	\$5,000	\$7,500	\$10,000	\$12,000	\$14,000
Duplicate License	\$500	\$500	\$500	\$500	\$500
Late Fees	<u>\$10,875</u>	<u>\$10,875</u>	<u>\$10,875</u>	<u>\$10,875</u>	<u>\$10,875</u>
Total	\$26,375	\$23,875	\$26,375	\$27,375	\$29,375
EXPENDITURES					
Special Revenue Fund	NA	NA	NA	NA	NA

**PRINCIPAL DEPARTMENT(S) &
PROGRAM(S) AFFECTED:** State Board of Cosmetic Art Examiners

EFFECTIVE DATE: The act becomes effective July 1, 1997.

BILL SUMMARY: The bill rewrites Chapter 18 of the General Statutes dealing with Cosmetic Art. Of fiscal importance, required fees in 88B-20 were amended to (1) create a new exam and license fee for an Esthetician, (2) establish a charge for a duplicate license, (3) expand late fees to apprentice, esthetician, manicurist, teacher and cosmetic art schools, and (4) expand reinstatement fee to cosmetic art schools.

ASSUMPTIONS AND METHODOLOGY: The new license created by this act is for Estheticians or skin care specialists. SB 916 sets an exam fee of \$20 and an annual license fee of \$10. The Executive Secretary of the State Board of Cosmetic Art Examiners estimates that 500

persons will apply for the Esthetician exam in FY 1997-98. The Executive Secretary projects that 250 will apply in both 1998 and 1999, then the number will drop to 200 in each of the next two years. He sees much demand for this license because it requires fewer hours (600 versus 1200) than a cosmetologist.

Another new fee is \$1 for a duplicate license. This fiscal year, the Board has produced 518 duplicate licenses from July 1996 to May 1997. This fiscal note assumes that 500 duplicate licenses will be produced each year.

Cosmetologists pay a \$10 fee for late renewal of licenses. The Board reports that 20% of cosmetologists pay a late fee each year. This bill expands the late fee to apprentices, estheticians, manicurists, and teachers. If you apply the 20% rate to the 5,000 persons in these four groups, then the Board can expect 1,000 persons to pay a late fee each year.

Another group currently paying a late fee is cosmetic art shops. The late fee is \$10 and the reinstatement fee for being 30 days late is \$25. The Board reports that 27% of the shops are always 30 days late in renewing their licenses. This act expands the late and reinstatement fees to cosmetic art schools. The Board projects that 25 of the 115 schools will be late with payments each year and will pay \$35 each.

FISCAL RESEARCH DIVISION

733-4910

PREPARED BY: Richard Bostic

APPROVED BY: Tom Covington

DATE: May 15, 1997

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

5-15-97

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

J. m Blackburn	NC Association of County Commissioners
Estherine Davis	Electricities of NC Raleigh NC
J Ramquist	NC SOS
D. Hume	Smith Haden
Patti Seawell	PRR
C. Boyer	R W Boyce
Mari Sims	NCSERS
Lucia Peel	NC Med Society
Allen Dobson	MAATF
Patrice Roeder	NCACC
Lebbison Lopez	ZDA, PA

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

5-15-97

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Samuel Taylor	Wamble Center
Paul Zisig	OSBM
George Bray	NC DOR
Sandy Sals	WesR
David Furell	Hoffa, McManis, Caldwell, McElroy & Collier
Carole Howard	DMU / DOT
Home W. Miller	EGAS
Eddie Caldwell	NC Sheriff's Assoc
John Rustin	NCFM
Mic Garland	Electricians
Nike Woodward	DOR

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

5-15-97

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

C M CARON	N.C. Chiropractic Assoc.
Will Cherry	Intern Rep. Neely
Scott Moww	EHR
Nancy Pomerantz	DOR
CHARLES COLLINS	"
Harvey Schmitt	GRC
Joseph H. Myers	GRC
Chris H. Fahey	Low Income Housing Dev Corp.
DAN KORWELIS	Forsyth County Low Income Housing Dev. Corp.
Steve Jensen	Central Auth.
Jack Hawks	
Mark Black	

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT

John H. Kerr, III, Co-Chair
David W. Hoyle, Co-Chair

Thursday, May 15, 1997

SENATOR JOHN KERR,

submits the following with recommendations as to passage:

FAVORABLE

S.B. 812 Smoky Mountains Special Plate.
Sequential Referral: None
Recommended Referral: None

S.B. 916 Cosmetologists.
Sequential Referral: None
Recommended Referral: None

FAVORABLE, AS AMENDED

H.B.(CS)1107 Facility Authorities.
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 3

Committee Clerk Comment: None

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

FINANCE COMMITTEE REPORT

John H. Kerr, III, Co-Chair
David W. Hoyle, Co-Chair

Monday, May 19, 1997

SENATOR JOHN KERR,

submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B. **570** Clean Water License Plate.
 Draft Number: PCS8702
 Sequential Referral: None
 Recommended Referral: None
 Long Title Amended: No

S.B. **847** No Sales Tax on Reusable Containers.
 Draft Number: PCS6681
 Sequential Referral: None
 Recommended Referral: None
 Long Title Amended: Yes

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO SENATE C.S. BILL

H.B. **53** 82nd Airborne Division Plates.
 Draft Number: PCSA387
 Sequential Referral: None
 Recommended Referral: None
 Long Title Amended: No

H.B. **704** Sheriff's Registration Plates.
 Draft Number: PCS2331
 Sequential Referral: None
 Recommended Referral: None
 Long Title Amended: Yes

**UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1,
BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2**

S.B.(CS #1)**426** Magistrates/Truck Special Plates.
 Draft Number: PCS7800
 Sequential Referral: None
 Recommended Referral: None
 Long Title Amended: Yes

TOTAL REPORTED: 5

May 19, 1997

Committee Clerk Comment:

S426; S570; S847; H53; and H704

Corrected Copy

SENATE FINANCE COMMITTEE

TUESDAY, MAY 20, 1997

12:00 NOON - ROOM 544 LOB

The Senate Finance Committee met. There were 24 members present. Senator John H. Kerr, III, Co-Chairman, presiding. Senator Kerr called meeting to order and introduced the Pages, they are Jamie Bennett from Kitty Hawk, N. C., sponsored by Senator Basnight, Ben Eisner from Kill Devil Hills, N. C., sponsored by Senator Basnight and Joseph Patton from Nags Head, N. C., sponsored by Senator Basnight.

S. B. 660 - License Athletic Trainers

Senator Hoyle came to explain the bill, he moved for adoption of proposed committee substitute to the bill, motion passed. Mr. William H. Potter, Jr. with the Physical Therapists Association spoke in opposition to the Bill. Ms. Flo Moses representing the N. C. Athletic Trainers Association spoke in support of the bill. Senator Lee moved for a "favorable" report, motion carried.

S. B. 916 - Cosmetologists

Senator Kerr brought the bill back to the committee for an assessment report on bill. He explained the bill and stated that manicurists and estheticians will be added to the bill. He moved for a "favorable" report, motion passed.

S. B. 875 - Revise Records Law-A

Senator Kerr came to again explain the bill and to explain an amendment. Senator Kerr moved for adoption of amendment. Mr. Phil Wagoner representing the N. C. Society of Land Surveyors spoke on the bill. He stated that the amendment takes care of the objections that they had to the bill. Amendment was adopted. Senator Conder moved for "favorable" report and amendment put into the bill and it be rolled into a committee substitute, motion passed. Senator Cooper had prepared an amendments but decided to withdraw the amendment.

SENATE FINANCE COMMITTEE

Tuesday, May 20, 1997

Page -2-

S. B. 374 Chiropractor Supplements Exempt

Senator Odom came to explain the bill. Senator Cooper moved for adoption of proposed committee substitute, motion passed. Senator McDaniel moved for a "favorable" report, motion passed. NOTE: Bill was not reported out of committee until 5/26/97.

S. B. 439 - Securities/Investment Advisers/AB

Senator Reeves came to explain the bill. Senator Wellons sent forth an amendment to the bill and made a motion for adoption, motion passed. Senator Wellons made a motion for a "favorable as amended", motion passed. NOTE: Bill was not reported out until 5/22/97.

S. B. 466 - Tax Exempt Parental Savings Trust Fund

Senator Hartsell came to explain the proposed committee substitute to this bill. Mr. Jim Hewitt with the Education Financing Association spoke to the bill. Senator Rand made a motion for a "favorable" report, motion passed. NOTE: Bill was reported out of Committee on 5/22/97.

S. B. 1035 - Modify Food Tax/Merchant's Discount

Senator Kerr came to explain the bill. Senator Kerr moved for adoption of proposed committee substitute, motion passed. Senator Winner submitted an amendment to the bill. Senator Kerr stated that he wanted this bill to be taken up again in this Committee, however, he had several people that wanted to speak today on the Bill. Ms. Fran Preston with the N. C. Retail Merchants Association spoke on the bill. Mr. Rob Scoffield, Attorney with the Justice Department, spoke in opposition to the bill.

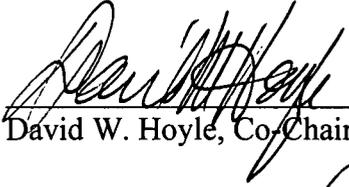
NOTE: S. B. 365 was placed in a Subcommittee composed of Senator Hartsell, Chairman, Senators Dalton, Gulley and Weinstein.

Meeting was adjourned.

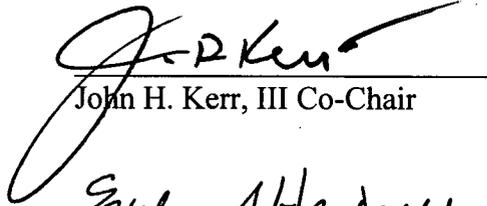
SENATE FINANCE COMMITTEE

Tuesday, May 20, 1997

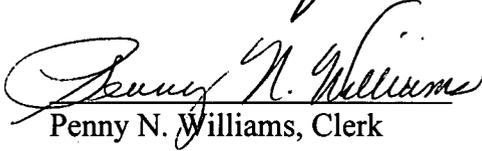
Page -3-



David W. Hoyle, Co-Chair



John H. Kerr, III Co-Chair



Penny N. Williams, Clerk



Evelyn S. Hartsell, Clerk

NOTE:

Agenda is Attachment # 1

Visitor's Registration is Attachment # 2

Committee Report on SB 660 is Attachment # 3

Committee Report on SB 916 is Attachment # 4

Committee Report on SB 374 is Attachment # 5

AGENDA

SENATE FINANCE MEETING

TUESDAY, MAY 20, 1997

ROOM 544 LOB AT 12:00 NOON

- . SB 660 - LICENSE ATHLETIC TRAINERS - SEN. HOYLE
- . SB 916 - COSMETOLOGISTS - SEN. KERR
- SB 365 - PROPERTY TAX CLERICAL ERROR - SEN. RUCHO
- . SB 374 - CHIROPRACTOR SUPPLEMENTS EXEMPT - SEN. ODOM
- . SB 439 - SECURITIES/INVESTMENT ADVISERS/AB - SEN. REEVES
- . SB 466 - TAX EXEMPT PARENTAL SAVINGS TRUST FUND -
SEN. HARTSELL
- . SB 875 - REVISE RECORDS LAW-2 - SEN. KERR
- . SB 1035 - MODIFY FOOD TAX/MERCHANT'S DISCOUNT -
SEN. KERR

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1997

S

2

SENATE BILL 660
Finance Committee Substitute Adopted 5/15/97

Short Title: License Athletic Trainers.

(Public)

Sponsors:

Referred to:

April 2, 1997

1 A BILL TO BE ENTITLED

2 AN ACT TO LICENSE ATHLETIC TRAINERS.

3 The General Assembly of North Carolina enacts:

4 Section 1. Chapter 90 of the General Statutes is amended by adding a
5 new Article to read:

6 "ARTICLE 33.

7 "Athletic Trainers.

8 "§ 90-512. Title; purpose.

9 (a) This Article may be cited as the 'Athletic Trainers Licensing Act'.

10 (b) The practice of athletic trainer services affects the public health, safety, and
11 welfare. Licensure of the practice of athletic trainer services is necessary to ensure
12 minimum standards of competency and to provide the public with safe athletic
13 trainer services. It is the purpose of this Article to provide for the regulation of
14 persons offering athletic trainer services.

15 "§ 90-513. Definitions.

16 The following definitions apply in this Article:

17 (1) Athletic trainer. -- A person who, under a written protocol with a
18 physician licensed under Article 1 of Chapter 90 of the General
19 Statutes and filed with the North Carolina Medical Board, carries
20 out the practice of care, prevention, and rehabilitation of injuries
21 incurred by athletes, and who, in carrying out these functions, may
22 use physical modalities, including heat, light, sound, cold,

1 electricity, or mechanical devices related to rehabilitation and
2 treatment.

3 (2) Board. -- The North Carolina Board of Athletic Trainer
4 Examiners as created by G.S. 90-514.

5 (3) License. -- A certificate that evidences approval by the Board that
6 a person has successfully completed the requirements set forth in
7 G.S. 90-518 entitling the person to perform the functions and
8 duties of an athletic trainer.

9 **"§ 90-514. Board of Examiners created.**

10 (a) The North Carolina Board of Athletic Trainer Examiners is created.

11 (b) Composition and Terms. -- The Board shall consist of seven members who
12 shall serve staggered terms. Four members shall be athletic trainers certified by the
13 National Athletic Trainers' Association Board of Certification, Inc. One member
14 shall be a licensed orthopedic surgeon, one member shall be a licensed family
15 practice physician or pediatrician, and one member shall represent the public at
16 large.

17 The initial Board members shall be selected on or before August 1, 1997, as
18 follows:

19 (1) The General Assembly, upon the recommendation of the President
20 Pro Tempore of the Senate, shall appoint two certified athletic
21 trainers and an orthopedic surgeon. The certified athletic trainers
22 shall serve for terms of three years, and the orthopedic surgeon
23 shall serve for a term of one year.

24 (2) The General Assembly, upon the recommendation of the Speaker
25 of the House of Representatives, shall appoint two certified athletic
26 trainers and a family practice physician or pediatrician. The
27 certified athletic trainers and the family practice physician or
28 pediatrician shall serve for terms of two years.

29 (3) The Governor shall appoint for a three-year term a public member
30 to the Board.

31 Upon the expiration of the terms of the initial Board members, each member shall
32 be appointed for a term of three years and shall serve until a successor is appointed.
33 No member may serve more than two consecutive full terms.

34 (c) Qualifications. -- The athletic trainer members shall hold current licenses and
35 shall reside or be employed in North Carolina. They shall have at least five years'
36 experience as athletic trainers, including the three years immediately preceding
37 appointment to the Board, and shall remain in active practice and in good standing
38 with the Board as a licensee during their terms. The first athletic trainers appointed
39 to the Board pursuant to this section shall be eligible for licensure under G.S. 90-519
40 and, upon appointment, shall immediately apply for a license.

41 (d) Vacancies. -- A vacancy shall be filled in the same manner as the original
42 appointment, except that all unexpired terms of Board members appointed by the
43 General Assembly shall be filled in accordance with G.S. 120-122 and shall be filled
44 within 45 days after the vacancy occurs. Appointees to fill vacancies shall serve the

1 remainder of the unexpired term and until their successors have been duly appointed
2 and qualified.

3 (e) Removal. -- The Board may remove any of its members for neglect of duty,
4 incompetence, or unprofessional conduct. A member subject to disciplinary
5 proceedings as a licensee shall be disqualified from participating in the official
6 business of the Board until the charges have been resolved.

7 (f) Compensation. -- Each member of the Board shall receive per diem and
8 reimbursement for travel and subsistence as provided in G.S. 93B-5.

9 (g) Officers. -- The officers of the Board shall be a chair, who shall be a licensed
10 athletic trainer, a vice-chair, and other officers deemed necessary by the Board to
11 carry out the purposes of this Article. All officers shall be elected annually by the
12 Board for one-year terms and shall serve until their successors are elected and
13 qualified.

14 (h) Meetings. -- The Board shall hold at least two meetings each year to conduct
15 business and to review the standards and rules for improving athletic training
16 services. The Board shall establish the procedures for calling, holding, and
17 conducting regular and special meetings. A majority of Board members constitutes a
18 quorum.

19 "§ 90-515. Powers of the Board.

20 The Board shall have the power and duty to:

- 21 (1) Administer this Article.
- 22 (2) Issue interpretations of this Article.
- 23 (3) Adopt, amend, or repeal rules as may be necessary to carry out the
24 provisions of this Article.
- 25 (4) Employ and fix the compensation of personnel that the Board
26 determines is necessary to carry into effect the provisions of this
27 Article and incur other expenses necessary to effectuate this
28 Article.
- 29 (5) Examine and determine the qualifications and fitness of applicants
30 for licensure, renewal of licensure, and reciprocal licensure.
- 31 (6) Issue, renew, deny, suspend, or revoke licenses and carry out any
32 disciplinary actions authorized by this Article.
- 33 (7) In accordance with G.S. 90-524, set fees for licensure, license
34 renewal, and other services deemed necessary to carry out the
35 purposes of this Article.
- 36 (8) Conduct investigations for the purpose of determining whether
37 violations of this Article or grounds for disciplining licensees exist.
- 38 (9) Maintain a record of all proceedings and make available to
39 licensees and other concerned parties an annual report of all Board
40 action.
- 41 (10) Develop standards and adopt rules for the improvement of athletic
42 training services in the State.
- 43 (11) Adopt a seal containing the name of the Board for use on all
44 licenses and official reports issued by it.

1 **"§ 90-516. Custody and use of funds; contributions.**

2 (a) All fees payable to the Board shall be deposited in the name of the Board in
3 financial institutions designated by the Board as official depositories and shall be used
4 to pay all expenses incurred in carrying out the purposes of this Article.

5 (b) The Board may accept grants, contributions, bequests, and gifts that shall be
6 kept in a separate fund and shall be used by it to enhance the practice of athletic
7 trainers.

8 **"§ 90-517. Requirements of license; exemption from license.**

9 (a) On or after January 1, 1998, no person shall practice or offer to practice as an
10 athletic trainer, perform activities of an athletic trainer, or use any card, title, or
11 abbreviation to indicate that the person is an athletic trainer unless that person is
12 currently licensed as provided by this Article.

13 (b) The provisions of this Article do not apply to:

14 (1) Licensed, registered, or certified professionals, such as nurses,
15 physical therapists, and chiropractors, if they do not hold
16 themselves out to the public as athletic trainers.

17 (2) A physician licensed under Article 1 of Chapter 90 of the General
18 Statutes.

19 (3) A person serving as a student-trainer or in a similar position under
20 the supervision of a physician or licensed athletic trainer.

21 (4) An athletic trainer who is employed by, or under contract with, an
22 organization, corporation, or educational institution located in
23 another state and who is representing that organization,
24 corporation, or educational institution at an event held in this
25 State.

26 **"§ 90-518. Application for license; qualifications; issuance.**

27 (a) An applicant for a license under this Article shall make a written application
28 to the Board on a form approved by the Board and shall submit to the Board an
29 application fee along with evidence that demonstrates good moral character and
30 graduation from an accredited four-year college or university in a course of study
31 approved by the Board.

32 (b) The applicant shall also pass the examination administered by the National
33 Athletic Trainers' Association Board of Certification, Inc.

34 (c) When the Board determines that an applicant has met all the qualifications for
35 licensure and has submitted the required fee, the Board shall issue a license to the
36 applicant. A license is valid for a period of one year from the date of issuance and
37 may be renewed subject to the requirements of this Article.

38 **"§ 90-519. Athletic trainers previously certified.**

39 The Board shall issue a license to practice as an athletic trainer to a person who
40 applies to the Board on or before August 1, 1998, and furnishes to the Board on a
41 form approved by the Board proof of good moral character, graduation from an
42 accredited four-year college or university in a course of study approved by the Board,
43 and a current certificate from the National Athletic Trainers' Association Board of
44 Certification, Inc.

1 "§ 90-520. Athletic trainers not certified.

2 (a) A person who has been actively engaged as an athletic trainer since August 1,
3 1994, and who continues to practice up to the time of application, shall be eligible for
4 licensure without examination by paying the required fee and by demonstrating the
5 following:

- 6 (1) Proof of good moral character.
7 (2) Proof of practice in this State since August 1, 1994.
8 (3) Proof of graduation from an accredited four-year college or
9 university in a course of study approved by the Board.
10 (4) Fulfillment of any other requirements set by the Board.

11 An application made pursuant to this section shall be filed with the Board on or
12 before August 1, 1998.

13 (b) A person is 'actively engaged' as an athletic trainer if the person is a salaried
14 employee of, or has contracted with, an educational institution, an industry, a
15 hospital, a rehabilitation clinic or a professional athletic organization or another bona
16 fide athletic organization and the person performs the duties of an athletic trainer.

17 "§ 90-521. Reciprocity with other states.

18 A license may be issued to a qualified applicant holding an athletic trainer license
19 in another state if that state recognizes the license of this State in the same manner.

20 "§ 90-522. License renewal.

21 Every license issued under this Article shall be renewed during the month of
22 January. On or before the date the current license expires, any person who desires to
23 continue practice shall apply for a license renewal and shall submit the required fee.
24 Licenses that are not renewed shall automatically lapse. In accordance with rules
25 adopted by the Board, a license that has lapsed may be reissued within five years
26 from the date it lapsed. A license that has been expired for more than five years may
27 be reissued only in a manner prescribed by the Board.

28 "§ 90-523. Continuing education.

29 (a) As a condition of license renewal, a licensee must meet the continuing
30 education requirements set by the Board. The Board shall determine the number of
31 hours and subject matter of continuing education required as a condition of license
32 renewal. The Board shall determine the qualifications of a provider of an
33 educational program that satisfies the continuing education requirement.

34 (b) The Board shall grant approval to a continuing education program or course
35 upon finding that the program or course offers an educational experience designed to
36 enhance the practice of athletic trainer, including the continuing education program
37 of the National Athletic Trainers' Association.

38 (c) If a continuing education program offers to teach licensees to perform
39 advanced skills, the Board may grant approval for the program when it finds that the
40 nature of the procedure taught in the program and the program facilities and faculty
41 are such that a licensee fully completing the program can reasonably be expected to
42 carry out those procedures safely and properly.

43 "§ 90-524. Expenses and fees.

1 (a) All salaries, compensation, and expenses incurred or allowed to carry out the
2 purposes of this Article shall be paid by the Board exclusively out of the fees
3 received by the Board as authorized by this Article or funds received from other
4 sources. In no case shall any salary, expense, or other obligation of the Board be
5 charged against the State treasury.

6 (b) The schedule of fees shall not exceed the following:

7 (1) Issuance of a license \$100.00

8 (2) License renewal 50.00

9 (3) Reinstatement of lapsed license 75.00

10 (4) Reasonable charges for duplication services and material.

11 "§ 90-525. Hiring of athletic trainers by school units.

12 Local school administrative units may hire persons who are not licensed under this
13 Article. The persons hired may function as athletic trainers in the scope of their
14 employment. The persons hired may not hold themselves out as athletic trainers
15 unless they are exempt from the provisions of this Article under G.S. 90-517(b).

16 "§ 90-526. Disciplinary authority of the Board; administrative proceedings.

17 (a) Grounds for disciplinary action against a licensee shall include the following:

18 (1) Giving false information or withholding material information from
19 the Board in procuring a license to practice as an athletic trainer.

20 (2) Having been convicted of or pled guilty or no contest to a crime
21 that indicates that the person is unfit or incompetent to practice as
22 an athletic trainer or that indicates that the person has deceived or
23 defrauded the public.

24 (3) Having a mental or physical disability or using a drug to a degree
25 that interferes with the person's fitness to practice as an athletic
26 trainer.

27 (4) Engaging in conduct that endangers the public health.

28 (5) Being unfit or incompetent to practice as an athletic trainer by
29 reason of deliberate or negligent acts or omissions regardless of
30 whether actual injury to a patient is established.

31 (6) Willfully violating any provision of this Article or rules adopted by
32 the Board.

33 (7) Having been convicted of or pled guilty or no contest to an offense
34 under State or federal narcotic or controlled substance laws.

35 (b) In accordance with Article 3A of Chapter 150B of the General Statutes, the
36 Board may require remedial education, issue a letter of reprimand, restrict, revoke, or
37 suspend any license to practice as an athletic trainer in North Carolina or deny any
38 application for licensure if the Board determines that the applicant or licensee has
39 committed any of the above acts or is no longer qualified to practice as an athletic
40 trainer. The Board may reinstate a revoked license or remove licensure restrictions
41 when it finds that the reasons for revocation or restriction no longer exist and that the
42 person can reasonably be expected to practice as an athletic trainer safely and
43 properly.

44 "§ 90-527. Enjoining illegal practices.

1 If the Board finds that a person who does not have a license issued under this
2 Article claims to be an athletic trainer or is engaging in practice as an athletic trainer
3 in violation of this Article, the Board may apply in its own name to the Superior
4 Court of Wake County for a temporary restraining order or other injunctive relief to
5 prevent the person from continuing illegal practices. The court may grant injunctions
6 regardless of whether criminal prosecution or other action has been or may be
7 instituted as a result of a violation.

8 **"§ 90-528. Penalties.**

9 A person who does not have a license issued under this Article who either claims
10 to be an athletic trainer or engages in practice as an athletic trainer in violation of
11 this Article is guilty of a Class 1 misdemeanor. Each act of unlawful practice
12 constitutes a distinct and separate offense.

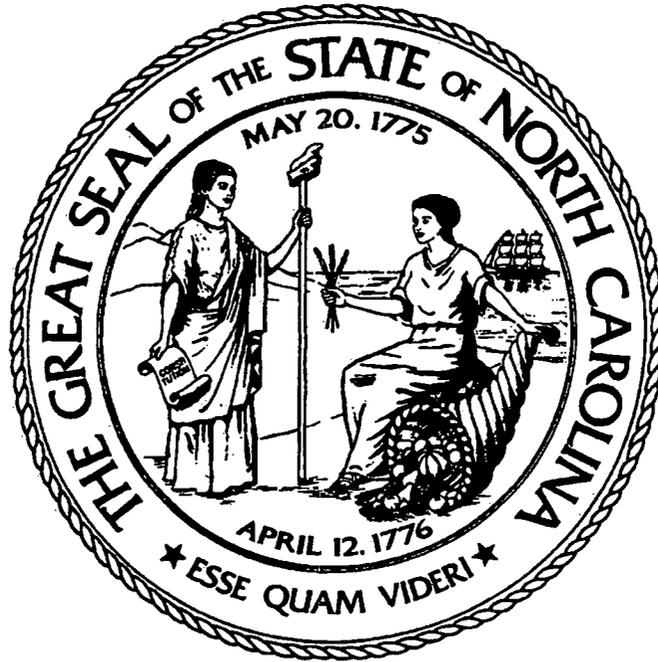
13 **"§ 90-529. Reports; immunity from suit.**

14 A person who has reasonable cause to suspect misconduct or incapacity of a
15 licensee, or who has reasonable cause to suspect that a person is in violation of this
16 Article, shall report the relevant facts to the Board. Upon receipt of a charge, or
17 upon its own initiative, the Board may give notice of an administrative hearing or
18 may, after diligent investigation, dismiss unfounded charges. A person who, in good
19 faith, makes a report pursuant to this section shall be immune from any criminal
20 prosecution or civil liability resulting therefrom.

21 **"§ 90-530. No third-party reimbursement required.**

22 Nothing in this Article shall be construed to require direct third-party
23 reimbursement to persons licensed under this Article."

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



LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS

Assessment Report
for

Athletic Trainers

Senate Bill 660
House Bill 824

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

D

SENATE BILL 660
Finance Committee Substitute Adopted 5/15/97
Proposed Senate Finance Committee Substitute # 2
S660-CSLJX-5/20

Short Title: License Athletic Trainers.

(Public)

Sponsors:

Referred to:

April 2, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO LICENSE ATHLETIC TRAINERS.
3 The General Assembly of North Carolina enacts:
4 Section 1. Chapter 90 of the General Statutes is
5 amended by adding a new Article to read:
6 "ARTICLE 33.
7 "Athletic Trainers.
8 "§ 90-512. Title; purpose.
9 (a) This Article may be cited as the 'Athletic Trainers
10 Licensing Act'.
11 (b) The practice of athletic trainer services affects the
12 public health, safety, and welfare. Licensure of the practice of
13 athletic trainer services is necessary to ensure minimum
14 standards of competency and to provide the public with safe
15 athletic trainer services. It is the purpose of this Article to
16 provide for the regulation of persons offering athletic trainer
17 services.
18 "§ 90-513. Definitions.
19 The following definitions apply in this Article:

- 1 (1) Athletic trainer. -- A person who, under a written
2 protocol with a physician licensed under Article 1
3 of Chapter 90 of the General Statutes and filed
4 with the North Carolina Medical Board, carries out
5 the practice of care, prevention, and
6 rehabilitation of injuries incurred by athletes,
7 and who, in carrying out these functions, may use
8 physical modalities, including heat, light, sound,
9 cold, electricity, or mechanical devices related to
10 rehabilitation and treatment.
- 11 (2) Board. -- The North Carolina Board of Athletic
12 Trainer Examiners as created by G.S. 90-514.
- 13 (3) License. -- A certificate that evidences approval
14 by the Board that a person has successfully
15 completed the requirements set forth in G.S. 90-518
16 entitling the person to perform the functions and
17 duties of an athletic trainer.

18 "§ 90-514. Board of Examiners created.

19 (a) The North Carolina Board of Athletic Trainer Examiners is
20 created.

21 (b) Composition and Terms. -- The Board shall consist of seven
22 members who shall serve staggered terms. Four members shall be
23 athletic trainers certified by the National Athletic Trainers'
24 Association Board of Certification, Inc. One member shall be a
25 licensed orthopedic surgeon, one member shall be a licensed
26 family practice physician or pediatrician, and one member shall
27 represent the public at large.

28 The initial Board members shall be selected on or before August
29 1, 1997, as follows:

- 30 (1) The General Assembly, upon the recommendation of
31 the President Pro Tempore of the Senate, shall
32 appoint two certified athletic trainers and an
33 orthopedic surgeon. The certified athletic
34 trainers shall serve for terms of three years, and
35 the orthopedic surgeon shall serve for a term of
36 one year.
- 37 (2) The General Assembly, upon the recommendation of
38 the Speaker of the House of Representatives, shall
39 appoint two certified athletic trainers and a
40 family practice physician or pediatrician. The
41 certified athletic trainers and the family practice
42 physician or pediatrician shall serve for terms of
43 two years.

1 (3) The Governor shall appoint for a three-year term a
2 public member to the Board.

3 Upon the expiration of the terms of the initial Board members,
4 each member shall be appointed for a term of three years and
5 shall serve until a successor is appointed. No member may serve
6 more than two consecutive full terms.

7 (c) Qualifications. -- The athletic trainer members shall hold
8 current licenses and shall reside or be employed in North
9 Carolina. They shall have at least five years' experience as
10 athletic trainers, including the three years immediately
11 preceding appointment to the Board, and shall remain in active
12 practice and in good standing with the Board as a licensee during
13 their terms. The first athletic trainers appointed to the Board
14 pursuant to this section shall be eligible for licensure under
15 G.S. 90-519 and, upon appointment, shall immediately apply for a
16 license.

17 (d) Vacancies. -- A vacancy shall be filled in the same manner
18 as the original appointment, except that all unexpired terms of
19 Board members appointed by the General Assembly shall be filled
20 in accordance with G.S. 120-122 and shall be filled within 45
21 days after the vacancy occurs. Appointees to fill vacancies
22 shall serve the remainder of the unexpired term and until their
23 successors have been duly appointed and qualified.

24 (e) Removal. -- The Board may remove any of its members for
25 neglect of duty, incompetence, or unprofessional conduct. A
26 member subject to disciplinary proceedings as a licensee shall be
27 disqualified from participating in the official business of the
28 Board until the charges have been resolved.

29 (f) Compensation. -- Each member of the Board shall receive
30 per diem and reimbursement for travel and subsistence as provided
31 in G.S. 93B-5.

32 (g) Officers. -- The officers of the Board shall be a chair,
33 who shall be a licensed athletic trainer, a vice-chair, and other
34 officers deemed necessary by the Board to carry out the purposes
35 of this Article. All officers shall be elected annually by the
36 Board for one-year terms and shall serve until their successors
37 are elected and qualified.

38 (h) Meetings. -- The Board shall hold at least two meetings
39 each year to conduct business and to review the standards and
40 rules for improving athletic training services. The Board shall
41 establish the procedures for calling, holding, and conducting
42 regular and special meetings. A majority of Board members
43 constitutes a quorum.

44 "§ 90-515. Powers of the Board.

- 1 The Board shall have the power and duty to:
- 2 (1) Administer this Article.
 - 3 (2) Issue interpretations of this Article.
 - 4 (3) Adopt, amend, or repeal rules as may be necessary
5 to carry out the provisions of this Article.
 - 6 (4) Employ and fix the compensation of personnel that
7 the Board determines is necessary to carry into
8 effect the provisions of this Article and incur
9 other expenses necessary to effectuate this
10 Article.
 - 11 (5) Examine and determine the qualifications and
12 fitness of applicants for licensure, renewal of
13 licensure, and reciprocal licensure.
 - 14 (6) Issue, renew, deny, suspend, or revoke licenses and
15 carry out any disciplinary actions authorized by
16 this Article.
 - 17 (7) In accordance with G.S. 90-524, set fees for
18 licensure, license renewal, and other services
19 deemed necessary to carry out the purposes of this
20 Article.
 - 21 (8) Conduct investigations for the purpose of
22 determining whether violations of this Article or
23 grounds for disciplining licensees exist.
 - 24 (9) Maintain a record of all proceedings and make
25 available to licensees and other concerned parties
26 an annual report of all Board action.
 - 27 (10) Develop standards and adopt rules for the
28 improvement of athletic training services in the
29 State.
 - 30 (11) Adopt a seal containing the name of the Board for
31 use on all licenses and official reports issued by
32 it.

33 "§ 90-516. Custody and use of funds; contributions.

34 (a) All fees payable to the Board shall be deposited in the
35 name of the Board in financial institutions designated by the
36 Board as official depositories and shall be used to pay all
37 expenses incurred in carrying out the purposes of this Article.

38 (b) The Board may accept grants, contributions, bequests, and
39 gifts that shall be kept in a separate fund and shall be used by
40 it to enhance the practice of athletic trainers.

41 "§ 90-517. License required; exemptions from license
42 requirement.

43 (a) On or after January 1, 1998, no person shall practice or
44 offer to practice as an athletic trainer, perform activities of

1 an athletic trainer, or use any card, title, or abbreviation to
2 indicate that the person is an athletic trainer unless that
3 person is currently licensed as provided by this Article.

4 (b) The prohibition against performing the activities of an
5 athletic trainer does not apply to any of the following persons
6 as long as they do not hold themselves out to the public as
7 athletic trainers:

8 (1) A licensed, registered, or certified professional,
9 such as a nurse, a physical therapist, and a
10 chiropractor.

11 (2) A physician licensed under Article 1 of Chapter 90
12 of the General Statutes.

13 (3) A person serving as a student-trainer or in a
14 similar position under the supervision of a
15 physician or licensed athletic trainer.

16 (c) The prohibitions in subsection (a) of this section do not
17 apply to an athletic trainer who is employed by, or under
18 contract with, an organization, a corporation, or an educational
19 institution located in another state and who is representing that
20 organization, corporation, or educational institution at an event
21 held in this State.

22 "§ 90-518. Application for license; qualifications; issuance.

23 (a) An applicant for a license under this Article shall make a
24 written application to the Board on a form approved by the Board
25 and shall submit to the Board an application fee along with
26 evidence that demonstrates good moral character and graduation
27 from an accredited four-year college or university in a course of
28 study approved by the Board.

29 (b) The applicant shall also pass the examination administered
30 by the National Athletic Trainers' Association Board of
31 Certification, Inc.

32 (c) When the Board determines that an applicant has met all
33 the qualifications for licensure and has submitted the required
34 fee, the Board shall issue a license to the applicant. A license
35 is valid for a period of one year from the date of issuance and
36 may be renewed subject to the requirements of this Article.

37 "§ 90-519. Athletic trainers previously certified.

38 The Board shall issue a license to practice as an athletic
39 trainer to a person who applies to the Board on or before August
40 1, 1998, and furnishes to the Board on a form approved by the
41 Board proof of good moral character, graduation from an
42 accredited four-year college or university in a course of study
43 approved by the Board, and a current certificate from the

1 National Athletic Trainers' Association Board of Certification,
2 Inc.

3 "§ 90-520. Athletic trainers not certified.

4 (a) A person who has been actively engaged as an athletic
5 trainer since August 1, 1994, and who continues to practice up to
6 the time of application, shall be eligible for licensure without
7 examination by paying the required fee and by demonstrating the
8 following:

9 (1) Proof of good moral character.

10 (2) Proof of practice in this State since August 1,
11 1994.

12 (3) Proof of graduation from an accredited four-year
13 college or university in a course of study approved
14 by the Board.

15 (4) Fulfillment of any other requirements set by the
16 Board.

17 An application made pursuant to this section shall be filed
18 with the Board on or before August 1, 1998.

19 (b) A person is 'actively engaged' as an athletic trainer if
20 the person is a salaried employee of, or has contracted with, an
21 educational institution, an industry, a hospital, a
22 rehabilitation clinic or a professional athletic organization or
23 another bona fide athletic organization and the person performs
24 the duties of an athletic trainer.

25 "§ 90-521. Reciprocity with other states.

26 A license may be issued to a qualified applicant holding an
27 athletic trainer license in another state if that state
28 recognizes the license of this State in the same manner.

29 "§ 90-522. License renewal.

30 Every license issued under this Article shall be renewed during
31 the month of January. On or before the date the current license
32 expires, any person who desires to continue practice shall apply
33 for a license renewal and shall submit the required fee.
34 Licenses that are not renewed shall automatically lapse. In
35 accordance with rules adopted by the Board, a license that has
36 lapsed may be reissued within five years from the date it lapsed.
37 A license that has been expired for more than five years may be
38 reissued only in a manner prescribed by the Board.

39 "§ 90-523. Continuing education.

40 (a) As a condition of license renewal, a licensee must meet
41 the continuing education requirements set by the Board. The
42 Board shall determine the number of hours and subject matter of
43 continuing education required as a condition of license renewal.
44 The Board shall determine the qualifications of a provider of an

1 educational program that satisfies the continuing education
2 requirement.

3 (b) The Board shall grant approval to a continuing education
4 program or course upon finding that the program or course offers
5 an educational experience designed to enhance the practice of
6 athletic trainer, including the continuing education program of
7 the National Athletic Trainers' Association.

8 (c) If a continuing education program offers to teach
9 licensees to perform advanced skills, the Board may grant
10 approval for the program when it finds that the nature of the
11 procedure taught in the program and the program facilities and
12 faculty are such that a licensee fully completing the program can
13 reasonably be expected to carry out those procedures safely and
14 properly.

15 "§ 90-524. Expenses and fees.

16 (a) All salaries, compensation, and expenses incurred or
17 allowed to carry out the purposes of this Article shall be paid
18 by the Board exclusively out of the fees received by the Board as
19 authorized by this Article or funds received from other sources.
20 In no case shall any salary, expense, or other obligation of the
21 Board be charged against the State treasury.

22 (b) The schedule of fees shall not exceed the following:

23	<u>(1) Issuance of a license</u>	<u>\$100.00</u>
24	<u>(2) License renewal</u>	<u>50.00</u>
25	<u>(3) Reinstatement of lapsed license</u>	<u>75.00</u>
26	<u>(4) Reasonable charges for duplication services and</u>	
27	<u>material.</u>	

28 "§ 90-525. Hiring of athletic trainers by school units.

29 Local school administrative units may hire persons who are not
30 licensed under this Article. The persons hired may perform the
31 activities of athletic trainers in the scope of their employment
32 but may not claim to be licensed under this Article. The persons
33 hired may not perform the activities of athletic trainers outside
34 the scope of this employment unless they are authorized to do so
35 under G.S. 90-517(b).

36 "§ 90-526. Disciplinary authority of the Board; administrative
37 proceedings.

38 (a) Grounds for disciplinary action against a licensee shall
39 include the following:

40	<u>(1) Giving false information or withholding material</u>	
41	<u>information from the Board in procuring a license</u>	
42	<u>to practice as an athletic trainer.</u>	
43	<u>(2) Having been convicted of or pled guilty or no</u>	
44	<u>contest to a crime that indicates that the person</u>	

- 1 is unfit or incompetent to practice as an athletic
2 trainer or that indicates that the person has
3 deceived or defrauded the public.
4 (3) Having a mental or physical disability or using a
5 drug to a degree that interferes with the person's
6 fitness to practice as an athletic trainer.
7 (4) Engaging in conduct that endangers the public
8 health.
9 (5) Being unfit or incompetent to practice as an
10 athletic trainer by reason of deliberate or
11 negligent acts or omissions regardless of whether
12 actual injury to a patient is established.
13 (6) Willfully violating any provision of this Article
14 or rules adopted by the Board.
15 (7) Having been convicted of or pled guilty or no
16 contest to an offense under State or federal
17 narcotic or controlled substance laws.

18 (b) In accordance with Article 3A of Chapter 150B of the
19 General Statutes, the Board may require remedial education, issue
20 a letter of reprimand, restrict, revoke, or suspend any license
21 to practice as an athletic trainer in North Carolina or deny any
22 application for licensure if the Board determines that the
23 applicant or licensee has committed any of the above acts or is
24 no longer qualified to practice as an athletic trainer. The
25 Board may reinstate a revoked license or remove licensure
26 restrictions when it finds that the reasons for revocation or
27 restriction no longer exist and that the person can reasonably be
28 expected to practice as an athletic trainer safely and properly.
29 "§ 90-527. Enjoining illegal practices.

30 If the Board finds that a person who does not have a license
31 issued under this Article claims to be an athletic trainer or is
32 engaging in practice as an athletic trainer in violation of this
33 Article, the Board may apply in its own name to the Superior
34 Court of Wake County for a temporary restraining order or other
35 injunctive relief to prevent the person from continuing illegal
36 practices. The court may grant injunctions regardless of whether
37 criminal prosecution or other action has been or may be
38 instituted as a result of a violation.

39 "§ 90-528. Penalties.

40 A person who does not have a license issued under this Article
41 who either claims to be an athletic trainer or engages in
42 practice as an athletic trainer in violation of this Article is
43 guilty of a Class 1 misdemeanor. Each act of unlawful practice
44 constitutes a distinct and separate offense.

1 "§ 90-529. Reports; immunity from suit.

2 A person who has reasonable cause to suspect misconduct or
3 incapacity of a licensee, or who has reasonable cause to suspect
4 that a person is in violation of this Article, shall report the
5 relevant facts to the Board. Upon receipt of a charge, or upon
6 its own initiative, the Board may give notice of an
7 administrative hearing or may, after diligent investigation,
8 dismiss unfounded charges. A person who, in good faith, makes a
9 report pursuant to this section shall be immune from any criminal
10 prosecution or civil liability resulting therefrom.

11 "§ 90-530. No third-party reimbursement required.

12 Nothing in this Article shall be construed to require direct
13 third-party reimbursement to persons licensed under this
14 Article."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

D

SENATE BILL 660
Finance Committee Substitute Adopted 5/15/97
Proposed Committee Substitute S660-PCSX4603

Short Title: License Athletic Trainers.

(Public)

Sponsors:

Referred to:

April 2, 1997

1 A BILL TO BE ENTITLED

2 AN ACT TO LICENSE ATHLETIC TRAINERS.

3 The General Assembly of North Carolina enacts:

4 Section 1. Chapter 90 of the General Statutes is amended by adding a
5 new Article to read:

6 "ARTICLE 33.
7 "Athletic Trainers.

8 "§ 90-512. Title; purpose.

9 (a) This Article may be cited as the 'Athletic Trainers Licensing Act'.

10 (b) The practice of athletic trainer services affects the public health, safety, and
11 welfare. Licensure of the practice of athletic trainer services is necessary to ensure
12 minimum standards of competency and to provide the public with safe athletic
13 trainer services. It is the purpose of this Article to provide for the regulation of
14 persons offering athletic trainer services.

15 "§ 90-513. Definitions.

16 The following definitions apply in this Article:

17 (1) Athletic trainer. -- A person who, under a written protocol with a
18 physician licensed under Article 1 of Chapter 90 of the General
19 Statutes and filed with the North Carolina Medical Board, carries
20 out the practice of care, prevention, and rehabilitation of injuries
21 incurred by athletes, and who, in carrying out these functions, may
22 use physical modalities, including heat, light, sound, cold,

1 electricity, or mechanical devices related to rehabilitation and
2 treatment.

3 (2) Board. -- The North Carolina Board of Athletic Trainer
4 Examiners as created by G.S. 90-514.

5 (3) License. -- A certificate that evidences approval by the Board that
6 a person has successfully completed the requirements set forth in
7 G.S. 90-518 entitling the person to perform the functions and
8 duties of an athletic trainer.

9 **"§ 90-514. Board of Examiners created.**

10 (a) The North Carolina Board of Athletic Trainer Examiners is created.

11 (b) Composition and Terms. -- The Board shall consist of seven members who
12 shall serve staggered terms. Four members shall be athletic trainers certified by the
13 National Athletic Trainers' Association Board of Certification, Inc. One member
14 shall be a licensed orthopedic surgeon, one member shall be a licensed family
15 practice physician or pediatrician, and one member shall represent the public at
16 large.

17 The initial Board members shall be selected on or before August 1, 1997, as
18 follows:

19 (1) The General Assembly, upon the recommendation of the President
20 Pro Tempore of the Senate, shall appoint two certified athletic
21 trainers and an orthopedic surgeon. The certified athletic trainers
22 shall serve for terms of three years, and the orthopedic surgeon
23 shall serve for a term of one year.

24 (2) The General Assembly, upon the recommendation of the Speaker
25 of the House of Representatives, shall appoint two certified athletic
26 trainers and a family practice physician or pediatrician. The
27 certified athletic trainers and the family practice physician or
28 pediatrician shall serve for terms of two years.

29 (3) The Governor shall appoint for a three-year term a public member
30 to the Board.

31 Upon the expiration of the terms of the initial Board members, each member shall
32 be appointed for a term of three years and shall serve until a successor is appointed.
33 No member may serve more than two consecutive full terms.

34 (c) Qualifications. -- The athletic trainer members shall hold current licenses and
35 shall reside or be employed in North Carolina. They shall have at least five years'
36 experience as athletic trainers, including the three years immediately preceding
37 appointment to the Board, and shall remain in active practice and in good standing
38 with the Board as a licensee during their terms. The first athletic trainers appointed
39 to the Board pursuant to this section shall be eligible for licensure under G.S. 90-519
40 and, upon appointment, shall immediately apply for a license.

41 (d) Vacancies. -- A vacancy shall be filled in the same manner as the original
42 appointment, except that all unexpired terms of Board members appointed by the
43 General Assembly shall be filled in accordance with G.S. 120-122 and shall be filled
44 within 45 days after the vacancy occurs. Appointees to fill vacancies shall serve the

1 remainder of the unexpired term and until their successors have been duly appointed
2 and qualified.

3 (e) Removal. -- The Board may remove any of its members for neglect of duty,
4 incompetence, or unprofessional conduct. A member subject to disciplinary
5 proceedings as a licensee shall be disqualified from participating in the official
6 business of the Board until the charges have been resolved.

7 (f) Compensation. -- Each member of the Board shall receive per diem and
8 reimbursement for travel and subsistence as provided in G.S. 93B-5.

9 (g) Officers. -- The officers of the Board shall be a chair, who shall be a licensed
10 athletic trainer, a vice-chair, and other officers deemed necessary by the Board to
11 carry out the purposes of this Article. All officers shall be elected annually by the
12 Board for one-year terms and shall serve until their successors are elected and
13 qualified.

14 (h) Meetings. -- The Board shall hold at least two meetings each year to conduct
15 business and to review the standards and rules for improving athletic training
16 services. The Board shall establish the procedures for calling, holding, and
17 conducting regular and special meetings. A majority of Board members constitutes a
18 quorum.

19 **"§ 90-515. Powers of the Board.**

20 The Board shall have the power and duty to:

- 21 (1) Administer this Article.
- 22 (2) Issue interpretations of this Article.
- 23 (3) Adopt, amend, or repeal rules as may be necessary to carry out the
24 provisions of this Article.
- 25 (4) Employ and fix the compensation of personnel that the Board
26 determines is necessary to carry into effect the provisions of this
27 Article and incur other expenses necessary to effectuate this
28 Article.
- 29 (5) Examine and determine the qualifications and fitness of applicants
30 for licensure, renewal of licensure, and reciprocal licensure.
- 31 (6) Issue, renew, deny, suspend, or revoke licenses and carry out any
32 disciplinary actions authorized by this Article.
- 33 (7) In accordance with G.S. 90-524, set fees for licensure, license
34 renewal, and other services deemed necessary to carry out the
35 purposes of this Article.
- 36 (8) Conduct investigations for the purpose of determining whether
37 violations of this Article or grounds for disciplining licensees exist.
- 38 (9) Maintain a record of all proceedings and make available to
39 licensees and other concerned parties an annual report of all Board
40 action.
- 41 (10) Develop standards and adopt rules for the improvement of athletic
42 training services in the State.
- 43 (11) Adopt a seal containing the name of the Board for use on all
44 licenses and official reports issued by it.

1 **"§ 90-516. Custody and use of funds; contributions.**

2 (a) All fees payable to the Board shall be deposited in the name of the Board in
3 financial institutions designated by the Board as official depositories and shall be used
4 to pay all expenses incurred in carrying out the purposes of this Article.

5 (b) The Board may accept grants, contributions, bequests, and gifts that shall be
6 kept in a separate fund and shall be used by it to enhance the practice of athletic
7 trainers.

8 **"§ 90-517. License required; exemptions from license requirement.**

9 (a) On or after January 1, 1998, no person shall practice or offer to practice as an
10 athletic trainer, perform activities of an athletic trainer, or use any card, title, or
11 abbreviation to indicate that the person is an athletic trainer unless that person is
12 currently licensed as provided by this Article.

13 (b) The prohibition against performing the activities of an athletic trainer does not
14 apply to any of the following persons as long as they do not hold themselves out to
15 the public as athletic trainers:

16 (1) A licensed, registered, or certified professional, such as a nurse, a
17 physical therapist, and a chiropractor.

18 (2) A physician licensed under Article 1 of Chapter 90 of the General
19 Statutes.

20 (3) A person serving as a student-trainer or in a similar position under
21 the supervision of a physician or licensed athletic trainer.

22 (c) The prohibitions in subsection (a) of this section do not apply to an athletic
23 trainer who is employed by, or under contract with, an organization, a corporation,
24 or an educational institution located in another state and who is representing that
25 organization, corporation, or educational institution at an event held in this State.

26 **"§ 90-518. Application for license; qualifications; issuance.**

27 (a) An applicant for a license under this Article shall make a written application
28 to the Board on a form approved by the Board and shall submit to the Board an
29 application fee along with evidence that demonstrates good moral character and
30 graduation from an accredited four-year college or university in a course of study
31 approved by the Board.

32 (b) The applicant shall also pass the examination administered by the National
33 Athletic Trainers' Association Board of Certification, Inc.

34 (c) When the Board determines that an applicant has met all the qualifications for
35 licensure and has submitted the required fee, the Board shall issue a license to the
36 applicant. A license is valid for a period of one year from the date of issuance and
37 may be renewed subject to the requirements of this Article.

38 **"§ 90-519. Athletic trainers previously certified.**

39 The Board shall issue a license to practice as an athletic trainer to a person who
40 applies to the Board on or before August 1, 1998, and furnishes to the Board on a
41 form approved by the Board proof of good moral character, graduation from an
42 accredited four-year college or university in a course of study approved by the Board,
43 and a current certificate from the National Athletic Trainers' Association Board of
44 Certification, Inc.

1 "§ 90-520. Athletic trainers not certified.

2 (a) A person who has been actively engaged as an athletic trainer since August 1,
3 1994, and who continues to practice up to the time of application, shall be eligible for
4 licensure without examination by paying the required fee and by demonstrating the
5 following:

6 (1) Proof of good moral character.

7 (2) Proof of practice in this State since August 1, 1994.

8 (3) Proof of graduation from an accredited four-year college or
9 university in a course of study approved by the Board.

10 (4) Fulfillment of any other requirements set by the Board.

11 An application made pursuant to this section shall be filed with the Board on or
12 before August 1, 1998.

13 (b) A person is 'actively engaged' as an athletic trainer if the person is a salaried
14 employee of, or has contracted with, an educational institution, an industry, a
15 hospital, a rehabilitation clinic, or a professional athletic organization or another
16 bona fide athletic organization and the person performs the duties of an athletic
17 trainer.

18 "§ 90-521. Reciprocity with other states.

19 A license may be issued to a qualified applicant holding an athletic trainer license
20 in another state if that state recognizes the license of this State in the same manner.

21 "§ 90-522. License renewal.

22 Every license issued under this Article shall be renewed during the month of
23 January. On or before the date the current license expires, any person who desires to
24 continue practice shall apply for a license renewal and shall submit the required fee.
25 Licenses that are not renewed shall automatically lapse. In accordance with rules
26 adopted by the Board, a license that has lapsed may be reissued within five years
27 from the date it lapsed. A license that has been expired for more than five years may
28 be reissued only in a manner prescribed by the Board.

29 "§ 90-523. Continuing education.

30 (a) As a condition of license renewal, a licensee must meet the continuing
31 education requirements set by the Board. The Board shall determine the number of
32 hours and subject matter of continuing education required as a condition of license
33 renewal. The Board shall determine the qualifications of a provider of an
34 educational program that satisfies the continuing education requirement.

35 (b) The Board shall grant approval to a continuing education program or course
36 upon finding that the program or course offers an educational experience designed to
37 enhance the practice of athletic trainer, including the continuing education program
38 of the National Athletic Trainers' Association.

39 (c) If a continuing education program offers to teach licensees to perform
40 advanced skills, the Board may grant approval for the program when it finds that the
41 nature of the procedure taught in the program and the program facilities and faculty
42 are such that a licensee fully completing the program can reasonably be expected to
43 carry out those procedures safely and properly.

44 "§ 90-524. Expenses and fees.

1 (a) All salaries, compensation, and expenses incurred or allowed to carry out the
2 purposes of this Article shall be paid by the Board exclusively out of the fees
3 received by the Board as authorized by this Article or funds received from other
4 sources. In no case shall any salary, expense, or other obligation of the Board be
5 charged against the State treasury.

6 (b) The schedule of fees shall not exceed the following:

- 7 (1) Issuance of a license \$100.00
- 8 (2) License renewal 50.00
- 9 (3) Reinstatement of lapsed license 75.00
- 10 (4) Reasonable charges for duplication services and material.

11 **"§ 90-525. Hiring of athletic trainers by school units.**

12 Local school administrative units may hire persons who are not licensed under this
13 Article. The persons hired may perform the activities of athletic trainers in the scope
14 of their employment but may not claim to be licensed under this Article. The
15 persons hired may not perform the activities of athletic trainers outside the scope of
16 this employment unless they are authorized to do so under G.S. 90-517(b).

17 **"§ 90-526. Disciplinary authority of the Board; administrative proceedings.**

18 (a) Grounds for disciplinary action against a licensee shall include the following:

- 19 (1) Giving false information or withholding material information from
20 the Board in procuring a license to practice as an athletic trainer.
- 21 (2) Having been convicted of or pled guilty or no contest to a crime
22 that indicates that the person is unfit or incompetent to practice as
23 an athletic trainer or that indicates that the person has deceived or
24 defrauded the public.
- 25 (3) Having a mental or physical disability or using a drug to a degree
26 that interferes with the person's fitness to practice as an athletic
27 trainer.
- 28 (4) Engaging in conduct that endangers the public health.
- 29 (5) Being unfit or incompetent to practice as an athletic trainer by
30 reason of deliberate or negligent acts or omissions regardless of
31 whether actual injury to a patient is established.
- 32 (6) Willfully violating any provision of this Article or rules adopted by
33 the Board.
- 34 (7) Having been convicted of or pled guilty or no contest to an offense
35 under State or federal narcotic or controlled substance laws.

36 (b) In accordance with Article 3A of Chapter 150B of the General Statutes, the
37 Board may require remedial education, issue a letter of reprimand, restrict, revoke, or
38 suspend any license to practice as an athletic trainer in North Carolina or deny any
39 application for licensure if the Board determines that the applicant or licensee has
40 committed any of the above acts or is no longer qualified to practice as an athletic
41 trainer. The Board may reinstate a revoked license or remove licensure restrictions
42 when it finds that the reasons for revocation or restriction no longer exist and that the
43 person can reasonably be expected to practice as an athletic trainer safely and
44 properly.

1 "§ 90-527. Enjoining illegal practices.

2 If the Board finds that a person who does not have a license issued under this
3 Article claims to be an athletic trainer or is engaging in practice as an athletic trainer
4 in violation of this Article, the Board may apply in its own name to the Superior
5 Court of Wake County for a temporary restraining order or other injunctive relief to
6 prevent the person from continuing illegal practices. The court may grant injunctions
7 regardless of whether criminal prosecution or other action has been or may be
8 instituted as a result of a violation.

9 "§ 90-528. Penalties.

10 A person who does not have a license issued under this Article who either claims
11 to be an athletic trainer or engages in practice as an athletic trainer in violation of
12 this Article is guilty of a Class 1 misdemeanor. Each act of unlawful practice
13 constitutes a distinct and separate offense.

14 "§ 90-529. Reports; immunity from suit.

15 A person who has reasonable cause to suspect misconduct or incapacity of a
16 licensee, or who has reasonable cause to suspect that a person is in violation of this
17 Article, shall report the relevant facts to the Board. Upon receipt of a charge, or
18 upon its own initiative, the Board may give notice of an administrative hearing or
19 may, after diligent investigation, dismiss unfounded charges. A person who, in good
20 faith, makes a report pursuant to this section shall be immune from any criminal
21 prosecution or civil liability resulting therefrom.

22 "§ 90-530. No third-party reimbursement required.

23 Nothing in this Article shall be construed to require direct third-party
24 reimbursement to persons licensed under this Article."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 916

Short Title: Cosmetologists.

(Public)

Sponsors: Senator Kerr.

Referred to: Finance.

April 17, 1997

- 1 A BILL TO BE ENTITLED
2 AN ACT TO REWRITE THE LAWS REGULATING COSMETIC ART.
3 The General Assembly of North Carolina enacts:
4 Section 1. Chapter 88 of the General Statutes is repealed.
5 Section 2. The General Statutes are amended by adding the following
6 new Chapter to read:
7 "Chapter 88B.
8 "Cosmetic Art.
9 "§ 88B-1. Short title.
10 This act shall be known and may be cited as the North Carolina Cosmetic Art Act.
11 "§ 88B-2. Definitions.
12 The following definitions apply in this Chapter:
13 (1) Apprentice. -- A person who is not a manager or operator, and
14 who is engaged in learning the practice of cosmetic art under the
15 direction and supervision of a cosmetologist.
16 (2) Board. -- The North Carolina Board of Cosmetic Art Examiners.
17 (3) Booth. -- A workstation located within a licensed cosmetic art shop
18 that is operated primarily by one individual in performing cosmetic
19 art services for consumers.
20 (4) Booth renter. -- A person who rents a booth in a cosmetic art shop.
21 (5) Cosmetic art. -- All or any part or combination of: (i) the
22 systematic massaging with the hands or mechanical apparatus of
23 the scalp, face, neck, shoulders, hands, and feet; (ii) the use of
24 cosmetic chemicals and preparations and antiseptics; (iii)

- 1 manicuring, including the application of artificial nails; (iv)
2 esthetics; or (v) cutting, coloring, cleansing, arranging, dressing,
3 waving, and marcelling the hair, and the use of electricity for
4 stimulating growth of hair.
- 5 (6) Cosmetic art shop. -- Any building or part thereof where cosmetic
6 art is practiced for pay or reward, whether direct or indirect.
- 7 (7) Cosmetic art school. -- Any building or part thereof where
8 cosmetic art is taught.
- 9 (8) Cosmetologist. -- Any individual who is licensed to practice all
10 parts of cosmetic art.
- 11 (9) Cosmetology teacher. -- An individual licensed by the Board to
12 teach all parts of cosmetic art.
- 13 (10) Esthetician. -- An individual licensed by the Board to practice only
14 that part of cosmetic art that constitutes skin care.
- 15 (11) Esthetician teacher. -- An individual licensed by the Board to teach
16 only that part of cosmetic art that constitutes skin care.
- 17 (12) Manicurist. -- An individual licensed by the Board to practice only
18 that part of cosmetic art that constitutes manicuring.
- 19 (13) Manicuring. -- The care and treatment of the fingernails, toenails,
20 cuticles on fingernails and toenails, and the hands and feet,
21 including the decoration of the fingernails and the application of
22 nail extensions and artificial nails.
- 23 (14) Manicurist teacher. -- An individual licensed by the Board to teach
24 manicuring.
- 25 (15) Shampooing. -- The application and removal of commonly used,
26 room temperature, liquid hair cleaning and hair conditioning
27 products. Shampooing does not include the arranging, dressing,
28 waving, coloring, or other treatment of the hair.

29 **§ 88B-3. Creation and membership of the Board; term of office; removal for cause;**
30 **officers.**

31 (a) The North Carolina Board of Cosmetic Art Examiners is established. The
32 Board shall consist of six members who shall be appointed as follows:

- 33 (1) The General Assembly, upon the recommendation of the President
34 Pro Tempore of the Senate, shall appoint a cosmetologist.
- 35 (2) The General Assembly, upon the recommendation of the Speaker
36 of the House of Representatives, shall appoint a cosmetologist.
- 37 (3) The Governor shall appoint two cosmetologists, a cosmetology
38 teacher, and a member of the public who is not licensed under this
39 Chapter.

40 (b) Each cosmetologist member shall have practiced all parts of cosmetic art in
41 this State for at least five years immediately preceding appointment to the Board and
42 shall not have any connection with any cosmetic art school while serving on the
43 Board. The cosmetology teacher member shall be currently employed as a teacher by
44 a North Carolina public school, community college, or other public or private

1 cosmetic art school and shall have practiced or taught cosmetic art for at least five
2 years immediately preceding appointment to the Board.

3 (c) Cosmetologist members of the Board shall serve staggered terms of three years.
4 No Board member shall serve more than two consecutive terms, except that each
5 member shall serve until a successor is appointed and qualified. All other board
6 members shall serve three-year terms, but they shall not be staggered.

7 (d) The Governor may remove any member of the Board for cause.

8 (e) A vacancy shall be filled in the same manner as the original appointment,
9 except that unexpired terms in seats appointed by the General Assembly shall be
10 filled in accordance with G.S. 120-122. Appointees to fill vacancies shall serve the
11 remainder of the unexpired term and until their successors have been duly appointed
12 and qualified.

13 (f) The Board shall elect a chair, a vice-chair, and other officers as deemed
14 necessary by the Board to carry out the purposes of this Chapter. All officers shall be
15 elected annually by the Board for one-year terms and shall serve until their successors
16 are elected and qualified.

17 (g) The Board shall not issue a teacher's license to any Board member during that
18 member's term on the Board.

19 (h) No Board member may be employed by the Board for at least one year after
20 that member's term expires.

21 **"§ 88B-4. Powers and duties of the Board.**

22 (a) The Board shall have the following powers and duties:

- 23 (1) To administer and interpret this Chapter.
24 (2) To adopt, amend, and repeal rules to carry out the provisions of
25 this Chapter.
26 (3) To examine and determine the qualifications and fitness of
27 applicants for licensure under this Chapter.
28 (4) To issue, renew, deny, restrict, suspend, or revoke licenses.
29 (5) To conduct investigations of alleged violations of this Chapter or
30 the Board's rules.
31 (6) To collect fees required by G.S. 88B-20 and any other monies
32 permitted by law to be paid to the Board.
33 (7) To approve new cosmetic art schools.
34 (8) To inspect cosmetic art schools and shops.
35 (9) To adopt rules for the sanitary management and physical
36 requirements of cosmetic art shops and cosmetic art schools.
37 (10) To establish a curriculum for each course of study required for the
38 issuance of a license issued under this Chapter.
39 (11) To employ an executive director and any additional professional,
40 clerical, or special personnel necessary to carry out the provisions
41 of this Chapter, and to purchase or rent necessary office space,
42 equipment, and supplies.
43 (12) To adopt a seal.
44 (13) To carry out any other actions authorized by this Chapter.

1 (b) A member of the Board shall have the authority to inspect cosmetic art shops
2 and cosmetic art schools at any reasonable hour to determine compliance with the
3 provisions of this Chapter if the inspection is made: (i) at the request of the Board, or
4 with the approval of the chair or the executive director as the result of a complaint
5 made to the Board or a problem reported by an inspector, or (ii) at the request of an
6 inspector who deems it necessary to request the assistance of a Board member and
7 who has the prior approval of the chair or executive director to do so. A Board
8 member who makes an inspection pursuant to this subsection shall file a report with
9 the Board before requesting reimbursement for expenses.

10 (c) The Board shall keep a record of its proceedings relating to the issuance,
11 renewal, denial, restriction, suspension, and revocation of licenses. This record shall
12 also contain each licensee's name, business and home addresses, license number, and
13 the date the license was issued.

14 **"§ 88B-5. Meetings and compensation of the Board.**

15 (a) Each member of the Board shall receive compensation for services and
16 expenses as provided in G.S. 93B-5, but shall be limited to payment for services
17 deemed official business of the Board when such business exceeds three continuous
18 hours per day. Official business of the Board includes meetings called by the chair
19 and time spent inspecting cosmetic art shops and schools as permitted by this
20 Chapter. No payment for per diem or travel expenses shall be authorized or paid for
21 Board meetings other than those called by the chair. The Board may annually select
22 one member to attend a national state board of cosmetic arts meeting on official
23 business of the Board. No other Board members shall be authorized to attend trade
24 shows or to travel out of State at the Board's expense.

25 (b) The Board shall hold four regular meetings a year in the months of January,
26 April, July, and October. The chair may call additional meetings whenever
27 necessary.

28 **"§ 88B-6. Board office, employees, funds, budget requirements.**

29 (a) The Board shall maintain its office in Raleigh, North Carolina.

30 (b) The Board shall employ an executive director who shall not be a member of
31 the Board. The executive director shall keep all records of the Board, issue all
32 necessary notices, and perform any other duties required by the Board.

33 (c) With the approval of the Director of the Budget and the Office of State
34 Personnel, the Board may employ as many inspectors, investigators, and other staff as
35 necessary to perform inspections and other duties prescribed by the Board.
36 Inspectors and investigators shall be experienced in all parts of cosmetic art and shall
37 have authority to examine cosmetic art shops and cosmetic art schools during
38 business hours to determine compliance with this Chapter.

39 (d) The salaries of all employees of the Board, including the executive director,
40 shall be subject to the State Personnel Act.

41 (e) The executive director may collect in the Board's name and on its behalf the
42 fees prescribed in this Chapter and shall turn these and any other monies paid to the
43 Board over to the State Treasurer. These funds shall be credited to the Board and
44 shall be held and expended under the supervision of the Director of the Budget only

1 for the administration and enforcement of this Chapter. Nothing in this Chapter shall
2 authorize any expenditure in excess of the amount credited to the Board and held by
3 the State Treasurer as provided in this subsection.

4 (f) The Executive Budget Act and the State Personnel Act apply to the
5 administration of this Chapter.

6 **"§ 88B-7. Qualifications for licensing cosmetologists.**

7 The Board shall issue a license to practice as a cosmetologist to any individual who
8 meets all of the following requirements:

9 (1) Successful completion of at least 1,500 hours of a cosmetology
10 curriculum in an approved cosmetic art school, or at least 1,200
11 hours of a cosmetology curriculum in an approved cosmetic art
12 school and completion of an apprenticeship for a period of at least
13 six months under the direct supervision of a cosmetologist, as
14 certified by sworn affidavit of three licensed cosmetologists or by
15 other evidence satisfactory to the Board.

16 (2) Passage of an examination conducted by the Board.

17 (3) Payment of the fees required by G.S. 88B-20.

18 **"§ 88B-8. Qualifications for licensing apprentices.**

19 The Board shall issue a license to practice as an apprentice to any individual who
20 meets all of the following requirements:

21 (1) Successful completion of at least 1,200 hours of a cosmetology
22 curriculum in an approved cosmetic art school.

23 (2) Passage of an examination conducted by the Board.

24 (3) Payment of the fees required by G.S. 88B-20.

25 **"§ 88B-9. Qualifications for licensing as an esthetician.**

26 The Board shall issue a license to practice as an esthetician to any individual who
27 meets all of the following requirements:

28 (1) Successful completion of at least 600 hours of an esthetician
29 curriculum in an approved cosmetic art school.

30 (2) Passage of an examination conducted by the Board.

31 (3) Payment of the fees required by G.S. 88B-20.

32 **"§ 88B-10. Qualifications for licensing manicurists.**

33 The Board shall issue a license to practice as a manicurist to any individual who
34 meets all of the following requirements:

35 (1) Successful completion of at least 300 hours of a manicurist
36 curriculum in an approved cosmetic art school.

37 (2) Passage of an examination conducted by the Board.

38 (3) Payment of the fees required by G.S. 88B-20.

39 **"§ 88B-11. Qualifications for licensing teachers.**

40 (a) Applicants for any teacher's license issued by the Board shall meet all of the
41 following requirements:

42 (1) Possession of a high school diploma or a high school graduation
43 equivalency certificate.

44 (2) Payment of the fees required by G.S. 88B-20.

1 (b) The Board shall issue a license to practice as a cosmetology teacher to any
2 individual who meets the requirements of subsection (a) of this section and who
3 meets all of the following:

4 (1) Holds in good standing a cosmetologist license issued by the Board.

5 (2) Submits proof of either practice of cosmetic art in a cosmetic art
6 shop for a period equivalent to five years of full-time work
7 immediately prior to application or successful completion of at
8 least 800 hours of a cosmetology teacher curriculum in an
9 approved cosmetic art school.

10 (3) Passes an examination for cosmetology teachers conducted by the
11 Board.

12 (c) The Board shall issue a license to practice as an esthetician teacher to any
13 individual who meets the requirements of subsection (a) of this section and who
14 meets all of the following:

15 (1) Holds in good standing a cosmetologist or an esthetician license
16 issued by the Board.

17 (2) Submits proof of either practice as an esthetician in a cosmetic art
18 shop for a period equivalent to three years of full-time work
19 immediately prior to application or successful completion of at
20 least 650 hours of an esthetician teacher curriculum in an approved
21 cosmetic art school.

22 (3) Passes an examination for esthetician teachers conducted by the
23 Board.

24 (d) The Board shall issue a license to practice as a manicurist teacher to any
25 individual who meets the requirements of subsection (a) of this section and who
26 meets all of the following:

27 (1) Holds in good standing a cosmetologist or manicurist license issued
28 by the Board.

29 (2) Submits proof of either practice as a manicurist in a cosmetic art
30 shop for a period equivalent to two years of full-time work
31 immediately prior to application or successful completion of at
32 least 320 hours of a manicurist teacher curriculum in an approved
33 cosmetic art school.

34 (3) Passes an examination for manicurist teachers conducted by the
35 Board.

36 "§ 88B-12. Temporary employment permit; extensions; limits on practice.

37 (a) The Board shall issue a temporary employment permit to an applicant for
38 licensure as an apprentice, cosmetologist, esthetician, or manicurist who meets all of
39 the following:

40 (1) Has completed the required hours of a cosmetic art school
41 curriculum in the area in which the applicant wishes to be
42 licensed.

43 (2) Has applied to take the examination within three months of
44 completing the required hours.

1 (3) Is qualified to take the examination.

2 (b) A temporary employment permit shall expire six months from the date of
3 graduation from a cosmetic art school and shall not be renewed.

4 (c) The holder of a temporary employment permit may practice cosmetic art only
5 under the supervision of a licensed cosmetologist, manicurist, or esthetician, as
6 appropriate, and may not operate a cosmetic art shop.

7 **"§ 88B-13. Applicants licensed in other states.**

8 (a) The Board shall issue a license to an applicant licensed as an apprentice,
9 cosmetologist, esthetician, or manicurist in another state if the applicant shows:

10 (1) The applicant is an active practitioner in good standing.

11 (2) The applicant has practiced at least one out of the three years
12 immediately preceding the application for a license.

13 (3) There is no disciplinary proceeding or unresolved complaint
14 pending against the applicant at the time a license is to be issued
15 by this State.

16 (4) The licensure requirements in the state in which the applicant is
17 licensed are substantially equivalent to those required by this State.

18 (b) Instead of meeting the requirements in subsection (a) of this section, any
19 applicant who is licensed as a cosmetologist, esthetician, or manicurist in another
20 state shall be admitted to practice in this State under the same reciprocity or comity
21 provisions that the state in which the applicant is licensed grants to persons licensed
22 in this State.

23 (c) The Board may establish standards for issuing a license to an applicant who is
24 licensed as a teacher in another state. These standards shall include a requirement
25 that the licensure requirements in the state in which the teacher is licensed shall be
26 substantially equivalent to those required in this State and that the applicant shall be
27 licensed by the Board to practice in the area in which the applicant is licensed to
28 teach.

29 **"§ 88B-14. Licensing of cosmetic art shops.**

30 (a) The Board shall issue a license to operate a cosmetic art shop to any applicant
31 who submits a properly completed application, on a form approved by the Board,
32 pays the required fee, and is determined, after inspection, to be in compliance with
33 the provisions of this Chapter and the Board's rules.

34 (b) The applicant shall list all licensed cosmetologists who practice cosmetic art in
35 the shop and shall identify each as an employee or a booth renter.

36 (c) A cosmetic art shop shall be allowed to operate for a period of 30 days while
37 the Board inspects and determines the shop's compliance with this Chapter and the
38 Board's rules. If the Board is unable to complete the inspection within 30 days, the
39 shop will be authorized to operate until such an inspection can be completed.

40 (d) A license to operate a cosmetic art shop shall not be transferable from one
41 location to another or from one owner to another.

42 **"§ 88B-15. Practice outside cosmetic art shops.**

43 (a) Any individual licensed under this Chapter may visit the residences of
44 individuals who are sick or disabled and confined to their place of residence in order

1 to attend to their cosmetic needs. A licensed individual may also visit hospitals,
2 nursing homes, rest homes, retirement homes, mental institutions, correctional
3 facilities, funeral homes, and similar institutions to attend to the cosmetic needs of
4 those in these institutions.

5 (b) An individual licensed under this Chapter may practice in a licensed
6 barbershop as permitted by G.S. 86-15.

7 **"§ 88B-16. Licensing cosmetic art schools.**

8 (a) The Board shall issue a license to any cosmetic art school that submits a
9 properly completed application, on a form approved by the Board, pays the required
10 license fee, and is determined by the Board, after inspection, to be in compliance
11 with the provisions of this Chapter and the Board's rules.

12 (b) No one may open or operate a cosmetic art school before the Board has
13 approved a license for the school. The Board shall not issue a license before a
14 cosmetic art school has been inspected and determined to be in compliance with the
15 provisions of this Chapter and the Board's rules.

16 (c) Cosmetic art schools located in this State shall be licensed by the Board before
17 any credit may be given for curriculum hours taken in the school. The Board may
18 establish standards for approving hours from schools in other states that are licensed.

19 **"§ 88B-17. Bond required for private cosmetic art schools.**

20 (a) Each private cosmetic art school shall provide a guaranty bond unless the
21 school has already provided a bond or an alternative to a bond under G.S. 115D-95.
22 The Board may restrict, suspend, revoke, refuse to renew or reinstate the license of a
23 school that fails to maintain a bond or an alternative to a bond pursuant to this
24 section or G.S. 115D-95.

25 (b) (1) The applicant shall file the guaranty bond with the clerk of
26 superior court in the county in which the school is located. The
27 bond shall be in favor of the students. The bond shall be executed
28 by the applicant as principal and by a bonding company
29 authorized to do business in this State. The bond shall be
30 conditioned to provide indemnification to any student or the
31 student's parent or guardian who has suffered loss of tuition or any
32 fees by reason of the failure of the school to offer or complete
33 student instruction, academic services, or other goods and services
34 as related to course enrollment for any reason, including
35 suspension, revocation, or nonrenewal of a school's approval,
36 bankruptcy, foreclosure, or the school ceasing to operate.

37 (2) The bond amount shall be at least equal to the maximum amount
38 of prepaid tuition held at any time by the school during the last
39 fiscal year, but in no case shall be less than ten thousand dollars
40 (\$10,000). Each application for license or license renewal shall
41 include a letter signed by an authorized representative of the
42 school showing the calculations made and the method of
43 computing the amount of the bond in accordance with rules
44 prescribed by the Board. If the Board finds that the calculations

1 made and the method of computing the amount of the bond are
2 inaccurate or that the amount of the bond is otherwise inadequate
3 to provide indemnification under the terms of the bond, the Board
4 may require the applicant to provide an additional bond.

5 (3) The bond shall remain in force and effect until canceled by the
6 guarantor. The guarantor may cancel the bond upon 30 days'
7 notice to the Board. Cancellation of the bond shall not affect any
8 liability incurred or accrued prior to the termination of the notice
9 period.

10 (c) An applicant who is unable to secure a bond may seek from the Board a
11 waiver of the guaranty bond requirement and approval of one of the guaranty bond
12 alternatives set forth in this subsection. With the approval of the Board, an applicant
13 may file one of the following instead of a bond with the clerk of court in the county
14 in which the school is located:

15 (1) An assignment of a savings account in an amount equal to the
16 bond required that is in a form acceptable to the Board, and is
17 executed by the applicant and a state or federal savings and loan
18 association, state bank, or national bank that is doing business in
19 this State and whose accounts are insured by a federal depositor's
20 corporation, and access to the account is subject to the same
21 conditions as those for a bond in subsection (b) of this section.

22 (2) A certificate of deposit that is executed by a state or federal savings
23 and loan association, state bank, or national bank that is doing
24 business in this State and whose accounts are insured by a federal
25 depositor's corporation and access to the certificate of deposit is
26 subject to the same conditions as those for a bond in subsection (b)
27 of this section.

28 **§ 88B-18. Examinations.**

29 (a) Each applicant for any examination shall file an application with the Board,
30 on a form approved by the Board, which shall be verified by the applicant under
31 oath, and the applicant shall pay the required examination fee. Applications shall be
32 filed at least 30 days before the requested examination date.

33 (b) Each examination shall have both a practical and a written portion.

34 (c) Examinations for applicants for apprentice, cosmetologist, teacher, esthetician,
35 and manicurist licenses shall be given in at least three locations in the State that are
36 geographically scattered. The examinations shall be administered in the Board's office
37 or in a publicly supported two-year postsecondary educational institution with
38 appropriate facilities. The Board shall reimburse an institution, if requested, for the
39 use of its facilities in administering examinations.

40 (d) An applicant for a cosmetologist license who fails to pass the examination
41 three times may not reapply to take the examination again until after the applicant
42 has successfully completed any additional requirements prescribed by the Board.

43 **§ 88B-19. Expired school credits.**

1 No credit shall be approved by the Board if five years or more have elapsed from
2 the date a person enrolled in a cosmetic art school unless the person completed the
3 required number of hours and filed an application to take an examination
4 administered by the Board.

5 "§ 88B-20. Fees required.

6 (a) The Board may charge examination fees as follows:

- 7 (1) Cosmetologist\$ 20.00
8 (2) Apprentice.....\$ 5.00
9 (3) Manicurist.....\$ 15.00
10 (4) Esthetician\$ 20.00
11 (5) Teacher\$ 25.00.

12 (b) The Board may charge application fees as follows:

- 13 (1) Inspection of a newly established cosmetic
14 art shop\$ 25.00
15 (2) Reciprocity applicant under
16 G.S. 88B-13.....\$ 15.00.

17 (c) The Board may charge license fees as follows:

- 18 (1) Cosmetologist\$ 39.00 every 3 years
19 (2) Apprentice.....\$ 10.00 per year
20 (3) Esthetician\$ 10.00 per year
21 (4) Manicurist.....\$ 10.00 per year
22 (5) Teacher\$ 10.00 every 2 years
23 (6) Cosmetic art shop per active
24 booth per year.....\$ 3.00
25 (7) Cosmetic art school\$ 50.00 per year
26 (8) Duplicate license.....\$ 1.00.

27 (d) The Board may require payment of late fees and reinstatement fees as follows:

- 28 (1) Apprentice, cosmetologist, esthetician, manicurist, and teacher late
29 renewal.....\$ 10.00
30 (2) Cosmetic art schools and shops
31 late renewal\$ 10.00
32 (3) Reinstatement - cosmetic art schools
33 and shops.....\$ 25.00.

34 (e) The Board may prorate fees as appropriate.

35 "§ 88B-21. Renewals; expired licenses.

36 (a) Each license to operate a cosmetic art shop shall be renewed on or before the
37 first day of February of each year. As provided in G.S. 88B-20, a late fee shall be
38 charged for licenses renewed after February 1. Any license not renewed by March 1
39 of each year shall expire. A cosmetic art shop whose license has been expired for
40 one year or less shall have the license reinstated immediately upon payment of the
41 reinstatement fee, the late fee, and all unpaid license fees. The licensee shall submit
42 to the Board, as a part of the renewal process, a list of all licensed cosmetologists who
43 practice cosmetic art in the shop and shall identify each as an employee or a booth
44 renter.

1 (b) Cosmetologist licenses shall be renewed on or before October 1 every three
2 years beginning October 1, 1998. A late fee shall be charged for renewals after that
3 date. Any license not renewed shall expire on October 1 of the year that renewal is
4 required. The Board may develop and implement a plan for staggered license
5 renewal and may prorate license fees to implement such a plan.

6 (c) Apprentice, esthetician, and manicurist licenses shall be renewed annually on
7 or before October 1 of each year. A late fee shall be charged for the renewal of
8 licenses after that date. Any license not renewed shall expire on October 1 of that
9 year.

10 (d) Teacher licenses shall be renewed every two years on or before October 1. A
11 late fee shall be charged for the renewal of licenses after that date. Any license not
12 renewed shall expire on October 1 of that year.

13 (e) Prior to renewal of a teacher's license, the teacher shall annually complete a
14 minimum of eight hours of continuing education which shall be approved by the
15 Board. Teachers shall submit written documentation to the Board showing that they
16 have satisfied the requirements of this subsection.

17 (f) If an apprentice, cosmetologist, esthetician, manicurist, or teacher fails to
18 renew his or her license within five years following the expiration date, the licensee
19 shall be required to pay the license fee for each year that the fees are delinquent and
20 to pass an examination as prescribed by the Board before the license will be
21 reinstated.

22 (g) Cosmetic art school licenses shall be renewed on or before October 1 of each
23 year. A late fee shall be charged for licenses renewed after that date. Any license
24 not renewed by November 1 of that year shall expire. A cosmetic art school whose
25 license has been expired for one year or less shall have its license reinstated upon
26 payment of the reinstatement fee, the late fee, and all unpaid license fees.

27 **§ 88B-22. Licenses required; criminal penalty.**

28 (a) Except as provided in this Chapter, no person may practice or attempt to
29 practice cosmetic art for pay or reward in any form, either directly or indirectly,
30 without being licensed as an apprentice, cosmetologist, esthetician, or manicurist by
31 the Board.

32 (b) Except as provided in this Chapter, no person may practice cosmetic art or
33 any part of cosmetic art, for pay or reward in any form, either directly or indirectly,
34 outside of a licensed cosmetic art shop.

35 (c) No person may open or operate a cosmetic art shop in this State unless a
36 license has been issued by the Board for that shop.

37 (d) An individual licensed as an esthetician or manicurist may practice only that
38 part of cosmetic art for which the individual is licensed.

39 (e) An apprentice licensed under the provisions of this Chapter shall apprentice
40 under the direct supervision of a cosmetologist. An apprentice shall not operate a
41 cosmetic art shop.

42 (f) A violation of this act is a Class 3 misdemeanor.

43 **§ 88B-23. Licenses to be posted.**

1 (a) Every apprentice, cosmetologist, esthetician, manicurist, and teacher licensed
2 under this Chapter shall display the certificate of license issued by the Board within
3 the shop in which the person works.

4 (b) Every certificate of license to operate a cosmetic art shop or school shall be
5 conspicuously posted in the shop or school for which it is issued.

6 **"§ 88B-24. Revocation of licenses and other disciplinary measures.**

7 The Board may restrict, suspend, revoke, or refuse to issue, renew, or reinstate any
8 license for any of the following:

9 (1) Conviction of a felony shown by certified copy of the record of the
10 court of conviction.

11 (2) Gross malpractice or gross incompetency as determined by the
12 Board.

13 (3) Advertising by means of knowingly false or deceptive statements.

14 (4) Permitting any individual to practice cosmetic art without a license
15 or temporary employment permit, with an expired license or
16 temporary employment permit, or with an invalid license or
17 temporary employment permit.

18 (5) Obtaining or attempting to obtain a license for money or other
19 thing of value other than the required fee or by fraudulent
20 misrepresentation.

21 (6) Practicing or attempting to practice by fraudulent
22 misrepresentation.

23 (7) Willful failure to display a certificate of license as required by G.S.
24 88B-23.

25 (8) Willful violation of the rules adopted by the Board.

26 (9) Violation of G.S. 86-15 by a cosmetologist, esthetician, or
27 manicurist licensed by the Board and practicing cosmetic art in a
28 barber shop.

29 **"§ 88B-25. Exemptions.**

30 The following persons are exempt from the provisions of this Chapter while
31 engaged in the proper discharge of their professional duties:

32 (1) Undertakers and funeral establishments licensed under G.S. 90-
33 210.25.

34 (2) Persons authorized to practice medicine or surgery under Chapter
35 90 of the General Statutes.

36 (3) Nurses licensed under Chapter 90 of the General Statutes.

37 (4) Commissioned medical or surgical officers of the United States
38 Army, Air Force, Navy, Marine, or Coast Guard.

39 (5) A person employed in a cosmetic art shop to shampoo hair.

40 **"§ 88B-26. Rules to be posted.**

41 (a) The Board shall furnish a copy of its rules relating to sanitary management of
42 cosmetic art shops and cosmetic art schools to each shop and school licensed by the
43 Board. Each shop and school shall post the rules in a conspicuous place.

1 (b) The Board shall furnish a copy of its rules relating to curriculum and schools
2 to each licensed cosmetic art school. Each cosmetic art school shall make these rules
3 available to all teachers and students.

4 "§ 88B-27. Inspections.

5 Any inspector or other authorized representative of the Board may enter any
6 cosmetic art shop or school to inspect it for compliance with this Chapter and the
7 Board's rules. All persons practicing cosmetic art in a shop or school shall, upon
8 request, present satisfactory proof of identification. Satisfactory proof shall be in the
9 form of a photographic driver's license or photographic identification card issued by
10 any state, federal, or other government entity. The Board may require a cosmetic art
11 shop or school to be inspected as a condition for license renewal.

12 "§ 88B-28. Restraining orders.

13 The Board, the Department of Human Resources, or any county or district health
14 director may apply to the superior court for an injunction to restrain any person from
15 violating the provisions of this Chapter or the Board's rules. Actions under this
16 section shall be brought in the county where the defendant resides or maintains his or
17 her principal place of business or where the alleged acts occurred.

18 "§ 88B-29. Civil penalties.

19 (a) Authority to Assess Civil Penalties. -- In addition to taking any of the actions
20 permitted under G.S. 88B-24, the Board may assess a civil penalty not in excess of
21 one thousand dollars (\$1,000) for the violation of any section of this Chapter or the
22 violation of any rules adopted by the Board. All civil penalties collected by the
23 Board shall be remitted to the school fund of the county in which the violation
24 occurred.

25 (b) Consideration Factors. -- Before imposing and assessing a civil penalty and
26 fixing the amount thereof, the Board shall, as a part of its deliberations, take into
27 consideration the following factors:

- 28 (1) The nature, gravity, and persistence of the particular violation.
29 (2) The appropriateness of the imposition of a civil penalty when
30 considered alone or in combination with other punishment.
31 (3) Whether the violation was willful and malicious.
32 (4) Any other factors that would tend to mitigate or aggravate the
33 violations found to exist.

34 (c) Schedule of Civil Penalties. -- The Board shall establish a schedule of civil
35 penalties for violations of this Chapter. The schedule shall indicate for each type of
36 violation whether the violation can be corrected. Penalties shall be assessed for the
37 first, second, and third violations of specified sections of this Chapter and for
38 specified rules.

39 (d) Costs. -- The Board may in a disciplinary proceeding charge costs, including
40 reasonable attorneys' fees, to the licensee against whom the proceedings were
41 brought."

42 Section 3. Any esthetician who submits proof to the Board that the
43 esthetician is actively engaged in the practice of esthetics on the effective date of this
44 act, and who passes an examination conducted by the Board, and pays the required

1 fee shall be licensed without having to satisfy the requirements of G.S. 88B-9, as
2 enacted by Section 2 of this act. All persons who do not make application to the
3 Board within one year of the effective date of this act shall be required to complete
4 all training and examination requirements prescribed by the Board and to otherwise
5 comply with the provisions of Chapter 88B, as enacted by Section 2 of this act.

6 Section 4. Any manicurist who submits proof to the Board that the
7 manicurist is actively engaged in the practice of manicuring on the effective date of
8 this act, and who passes an examination conducted by the Board, and pays the
9 required fee shall be licensed without having to satisfy the requirements of G.S. 88B-
10 10, as enacted by Section 2 of this act. All persons who do not make application to
11 the Board within one year of the effective date of this act shall be required to
12 complete all training and examination requirements prescribed by the Board and to
13 otherwise comply with the provisions of Chapter 88B, as enacted by Section 2 of this
14 act.

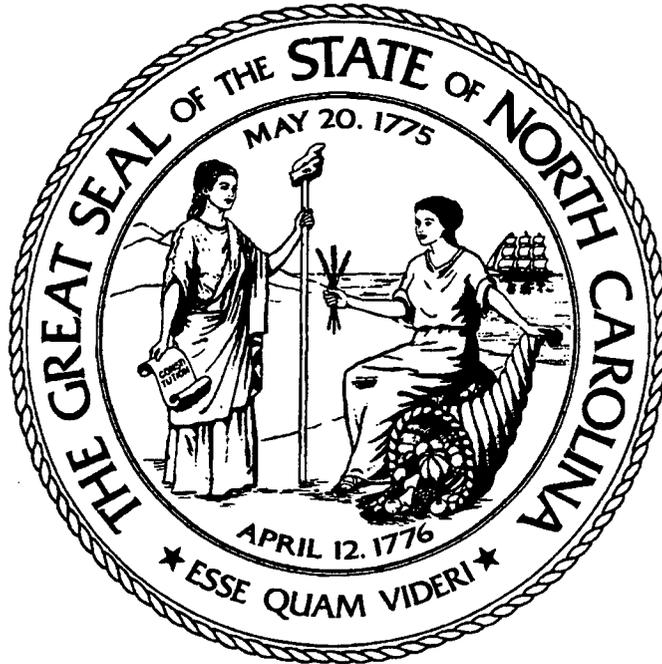
15 Section 5. Until the Board adopts a staggered license renewal plan under
16 G.S. 88B-21(b), as enacted by Section 2 of this act, any cosmetologist who applies for
17 licensure in a year other than the year all other cosmetologist licenses are due for
18 renewal shall pay the annual fee provided in G.S. 88B-20, as enacted by Section 2 of
19 this act, on or before October 1 of each year until the year all other cosmetologist
20 licenses are again due for renewal. Any license not renewed shall expire on October
21 1 of that year.

22 Section 6. Any license currently issued by the State Board of Cosmetic
23 Art Examiners shall remain valid until its expiration.

24 Section 7. The State Board of Cosmetic Art Examiners existing on the
25 effective date of this act shall continue in effect until the terms of the members expire
26 or a member is removed as authorized in G.S. 88B-3, as enacted by Section 2 of this
27 act. Vacancies on the Board shall be filled as authorized in G.S. 88B-3, as enacted by
28 Section 2 of this act. The rules of the State Board of Cosmetic Art Examiners in
29 effect on the effective date of this Chapter shall continue in effect until amended.

30 Section 8. Nothing in this Chapter shall require the North Carolina
31 Board of Cosmetic Art Examiners to issue esthetician's licenses until the General
32 Assembly enacts legislation allowing the Board to charge an examination fee of
33 twenty dollars (\$20.00) and a license fee of ten dollars (\$10.00) per year.

34 Section 9. This act becomes effective July 1, 1997, and shall apply to
35 applications made and acts occurring on or after that date.

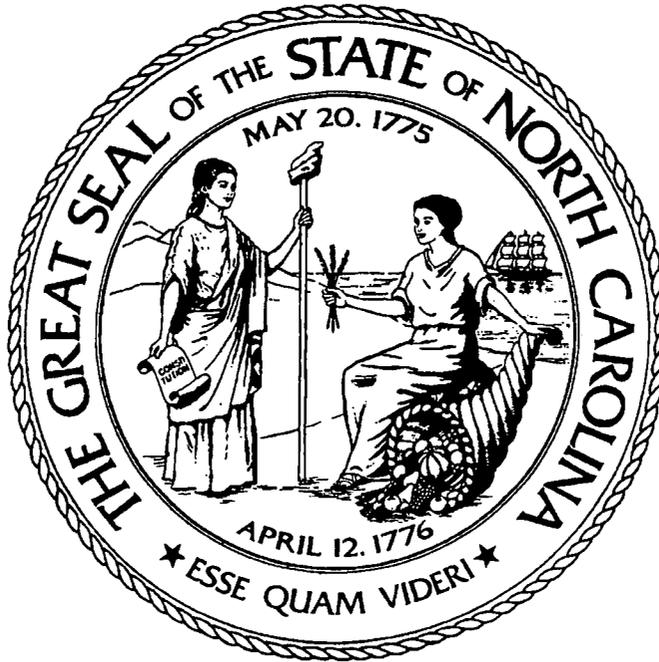


LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS

Assessment Report
for

Manicurists

Senate Bill 237
Senate Bill 916



LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS

Assessment Report
for

Estheticians

Senate Bill 916
Senate Bill 1042
House Bill 1056

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

2

SENATE BILL 875

State Government, Local Government, and Personnel Committee Substitute Adopted
4/24/97

Short Title: Revise Records Laws-2.

(Public)

Sponsors:

Referred to: Finance.

April 15, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO IMPROVE THE PROCEDURES FOR RECORDING MAPS AND
3 PLATS, TO REVISE THE LAW GOVERNING THE DISPOSITION OF
4 CERTAIN BIRTH AND DEATH CERTIFICATES, AND TO ESTABLISH A
5 STUDY OF LAND TITLE REGISTRATION PROCEDURES.

6 The General Assembly of North Carolina enacts:

7 Section 1. G.S. 39-32.3 reads as rewritten:

8 "**§ 39-32.3. Recordation of plat showing control corners.**

9 Upon designating a control corner and affixing a permanent marker, said person,
10 firm or corporation shall cause to be filed in the office of the register of deeds of the
11 county in which the real estate development is located a map or plat showing the
12 location of the control corner or corners and permanent marker or markers with
13 adequate and sufficient description to enable a surveyor to locate such control corner
14 or marker. ~~The register of deeds shall not accept for registration or record any map
15 or plat of a real estate subdivision or development made after July 1, 1947, unless the
16 location of such control corner or corners is shown thereon. No map or plat of a real
17 estate subdivision or development made after July 1, 1947, shall be certified for
18 recording pursuant to G.S 47-30.2 unless the location of control corners is shown
19 thereon.~~"

20 Section 2. G.S. 47-30 reads as rewritten:

21 "**§ 47-30. Plats and subdivisions; mapping requirements.**

1 (a) Size Requirements. -- All land plats presented to the register of deeds for
2 recording in the registry of a county in North Carolina after September 30, 1991,
3 having an outside marginal size of either 18 inches by 24 inches, 21 inches by 30
4 inches, or 24 inches by 36 inches, and having a minimum one and one-half inch
5 border on the left side and a minimum one-half inch border on the other sides shall
6 be deemed to meet the size requirements for recording under this section. Where
7 size of land areas, or suitable scale to assure legibility require, plats may be placed on
8 two or more sheets with appropriate match lines. Counties may specify either:

- 9 (1) Only 18 inches by 24 inches;
- 10 (2) A combination of 18 inches by 24 inches and 21 inches by 30
11 inches;
- 12 (3) A combination of 18 inches by 24 inches and 24 inches by 36
13 inches; or
- 14 (4) A combination of all three sizes.

15 Provided, that all registers of deeds where specific sizes other than the combination of
16 all three sizes have been specified, shall be required to submit said size specifications
17 to the North Carolina Association of Registers of Deeds for inclusion on a master list
18 of all such counties. The list shall be available in each register of deeds office by
19 October 1, 1991. For purposes of this section, the terms 'plat' and 'map' are
20 synonymous.

21 (b) Plats to Be Reproducible. -- Each plat presented for recording shall be a
22 reproducible plat, either original ink on polyester film (mylar), or a reproduced
23 drawing, transparent and archival (as defined by the American National Standards
24 Institute), and submitted in this form. The recorded plat must be such that the public
25 may obtain legible copies. A direct or photographic copy of each recorded plat shall
26 be placed in the plat book or plat file maintained for that purpose and properly
27 indexed for use. In those counties in which the register has made a security copy of
28 the plat from which legible copies can be made, the original may be returned to the
29 person indicated on the plat.

30 (c) Information Contained in Title of Plat. -- The title of each plat shall contain
31 the following information: property designation, name of owner (the name of owner
32 shall be shown for indexing purposes only and is not to be construed as title
33 certification), location to include township, county and state, the date or dates the
34 survey was made; scale or scale ratio in words or figures and bar graph; name and
35 address of surveyor or firm preparing the plat.

36 (d) Certificate; Form. -- There shall appear on each plat a certificate by the
37 person under whose supervision ~~such~~ the survey or ~~such~~ plat was made, stating the
38 origin of the information shown on the plat, including recorded deed and plat
39 references shown thereon. The ratio of precision before any adjustments must be
40 shown. Any lines on the plat that were not actually surveyed must be clearly
41 indicated and a statement included revealing the source of information. ~~The~~
42 ~~execution of such certificate shall be acknowledged before any officer authorized to~~
43 ~~take acknowledgments by the registered land surveyor preparing the plat. All plats to~~
44 ~~be recorded shall be probated as required by law for the registration of deeds.~~ Where

1 a plat consists of more than one sheet, only one sheet must contain the certification
2 and all other sheets must be signed and sealed.

3 The certificate required above shall include the source of information for the
4 survey and data indicating the ratio of precision of the survey before adjustments and
5 shall be in substantially the following form:

6 'I,, certify that this plat was drawn under my supervision from an
7 actual survey made under my supervision (deed description recorded in Book,
8 page, etc.) (other); that the boundaries not surveyed are clearly indicated as
9 drawn from information found in Book, page,; that the ratio of precision
10 as calculated is 1:.....; that this plat was prepared in accordance with G.S. 47-30 as
11 amended. Witness my original signature, registration number and seal this day
12 of, A.D., 19.....

13

14 Seal or Stamp

15

16

17

.....

18

Surveyor

19

20

Registration Number'

21 ~~The certificate of the Notary shall read as follows:~~

22

~~"North Carolina,County.~~

23

24 ~~I, a Notary Public of the County and State aforesaid, certify that....., a~~
25 ~~registered land surveyor, personally appeared before me this day and acknowledged~~
26 ~~the execution of the foregoing instrument. Witness my hand and official stamp or~~
27 ~~seal, this..... day of, 19.....~~

27

28 Seal or Stamp

29

Notary Public.....

30

My Commission expires

31

32 Nothing in this requirement shall prevent the recording of a map that was
33 prepared in accordance with a previous version of G.S. 47-30 as amended, properly
34 signed, and notarized under the statutes applicable at the time of the signing of the
35 map. However, it shall be the responsibility of the person presenting the map to
36 prove that the map was so prepared.

37 (e) Method of Computation. -- An accurate method of computation shall be used
38 to determine the acreage and ratio of precision shown on the plat. Area by
39 estimation is not acceptable nor is area by planimeter, area by scale, or area copied
40 from another source, except in the case of tracts containing inaccessible sections or
41 areas. In such case the surveyor may make use of aerial photographs or other
42 appropriate aids to determine the acreage of such any inaccessible areas when such
43 the areas are bounded by natural and visible monuments. In such case the methods

1 used must be stated on the plat and all accessible areas of the tract shall remain
2 subject to all applicable standards of this section.

3 (f) Plat to Contain Specific Information. -- Every plat shall contain the following
4 specific information:

5 (1) An accurately positioned north arrow coordinated with any
6 bearings shown on the plat. Indication shall be made as to
7 whether the north index is true, magnetic, North Carolina grid
8 ('NAD 83' or 'NAD 27'), or is referenced to old deed or plat
9 bearings. If the north index is magnetic or referenced to old deed
10 or plat bearings, the date and the source (if known) ~~such~~ the index
11 was originally determined shall be clearly indicated.

12 (2) The azimuth or course and distance of every property line
13 surveyed shall be shown. Distances shall be in feet or meters and
14 decimals thereof. The number of decimal places shall be
15 appropriate to the class of survey required.

16 (3) All plat distances shall be by horizontal or grid measurements. All
17 lines shown on the plat shall be correctly plotted to the scale
18 shown. Enlargement of portions of a plat are acceptable in the
19 interest of clarity, where shown as inserts. Where the North
20 Carolina grid system is used the grid factor shall be shown on the
21 face of the plat. If grid distances are used, it must be shown on the
22 plat.

23 (4) Where a boundary is formed by a curved line, the following data
24 must be given: actual survey data from the point of curvature to
25 the point of tangency shall be shown as standard curve data, or as
26 a traverse of bearings and distances around the curve. If standard
27 curve data is used the bearing and distance of the long chord (from
28 point of curvature to point of tangency) must be shown on the plat.

29 (5) Where a subdivision of land is set out on the plat, all streets and
30 lots shall be accurately plotted with dimension lines indicating
31 widths and all other information pertinent to reestablishing all lines
32 in the field. This shall include bearings and distances sufficient to
33 form a continuous closure of the entire perimeter.

34 (6) Where control corners have been established in compliance with
35 G.S. 39-32.1, 39-32.2, 39-32.3, and 39-32.4, as amended, the
36 location and pertinent information as required in the reference
37 statute shall be plotted on the plat. All other corners which are
38 marked by monument or natural object shall be so identified on all
39 plats, and where practical all corners of adjacent owners along the
40 boundary lines of the subject tract which are marked by monument
41 or natural object shall be shown.

42 (7) The names of adjacent landowners, or lot, block, parcel,
43 subdivision designations or other legal reference where applicable,
44 shall be shown where they could be determined by the surveyor.

- 1 (8) All visible and apparent rights-of-way, watercourses, utilities,
2 roadways, and other such improvements shall be accurately located
3 where crossing or forming any boundary line of the property
4 shown.
- 5 (9) Where the plat is the result of a survey, one or more corners shall,
6 by a system of azimuths or courses and distances, be accurately
7 tied to and coordinated with a horizontal control monument of
8 some United States or State Agency survey system, such as the
9 North Carolina Geodetic Survey where ~~such~~ the monument is
10 within 2,000 feet of the subject property. Where the North
11 Carolina Grid System coordinates of said monument are on file in
12 the North Carolina Department of Environment, Health, and
13 Natural Resources, the coordinates of both the referenced corner
14 and the monuments used shall be shown in X (easting) and Y
15 (northing) coordinates on the plat. The coordinates shall be
16 identified as based on 'NAD 83,' indicating North American
17 Datum of 1983, or as 'NAD 27,' indicating North American Datum
18 of 1927. The tie lines to the monuments shall also be sufficient to
19 establish true north or grid north bearings for the plat if the
20 monuments exist in pairs. Within a previously recorded
21 subdivision that has been tied to grid control, control monuments
22 within the subdivision may be used in lieu of additional ties to grid
23 control. Within a previously recorded subdivision that has not
24 been tied to grid control, if horizontal control monuments are
25 available within 2,000 feet, the above requirements shall be met;
26 but in the interest of bearing consistency with previously recorded
27 plats, existing bearing control should be used where practical. In
28 the absence of Grid Control, other appropriate natural monuments
29 or landmarks shall be used. In all cases, the tie lines shall be
30 sufficient to accurately reproduce the subject lands from the
31 control or reference points used.
- 32 (10) A vicinity map (location map) shall appear on the plat.
- 33 (11) Notwithstanding any other provision contained in this section, it is
34 the duty of the surveyor, by a certificate on the face of the plat, to
35 certify to one of the following:
- 36 a. That the survey creates a subdivision of land within the area
37 of a county or municipality that has an ordinance that
38 regulates parcels of land;
- 39 b. That the survey is located in ~~such~~ a portion of a county or
40 municipality that is unregulated as to an ordinance that
41 regulates parcels of land;
- 42 c. That the survey is of an existing parcel or parcels of land;

- 1 d. That the survey is of another category, such as the
2 recombination of existing parcels, a court-ordered survey, or
3 other exception to the definition of subdivision;
4 e. That the information available to the surveyor is such that
5 the surveyor is unable to make a determination to the best
6 of ~~his or her~~ the surveyor's professional ability as to
7 provisions contained in (a) through (d) above.

8 However, if the plat contains the certificate of a surveyor as stated
9 in a., d., or e. above, then the plat shall have, in addition to said
10 surveyor's certificate, a certification of approval, or no approval
11 required, as may be required by local ordinance from the
12 appropriate government authority before the plat is presented for
13 recordation. If the plat contains the certificate of a surveyor as
14 stated in b. or c. above, nothing shall prevent the recordation of
15 the plat if all other provisions have been met.

16 (g) Recording of Plat. ~~--For purposes of recording, the register of deeds shall not~~
17 ~~be responsible for.~~ In certifying a plat for recording pursuant to G.S. 47-30.2, the
18 Review Officer shall not be responsible for reviewing or certifying as to the following
19 requirements of this section:

- 20 (1) ~~The provisions of subsection (b);~~ Subsection (b) of this section as
21 to archival;
22 (2) ~~The provisions of subsection (d), except for the notary certificate;~~
23 (3) ~~The provisions of subsection (e);~~ Subsection (e) of this section; or
24 (4) ~~The provisions of subdivisions (2) through (9) of subsection (f).~~
25 Subdivisions (1) through (10) of subsection (f) of this section.

26 A plat, when certified pursuant to G.S. 47-30.2 ~~proven and probated as provided~~
27 ~~herein for deeds and other conveyances, when and~~ presented for recording, shall be
28 recorded in the plat book or plat file and when so recorded shall be duly indexed.
29 Reference in any instrument hereafter executed to the record of any plat herein
30 authorized shall have the same effect as if the description of the lands as indicated on
31 the record of the plat were set out in the instrument.

32 (h) Nothing in this section shall be deemed to prevent the filing of any plat
33 prepared by a registered land surveyor but not recorded prior to the death of the
34 registered land surveyor. However, it is the responsibility of the person presenting
35 the map to the Review Officer pursuant to G.S. 47-30.2 to prove that the plat was so
36 prepared. For preservation these plats may be filed without signature, notary
37 acknowledgement or probate, in a special plat file.

38 (i) Nothing in this section shall be deemed to invalidate any instrument or the title
39 thereby conveyed making reference to any recorded plat.

40 (j) The provisions of this section shall not apply to boundary plats of areas
41 annexed by municipalities nor to plats of municipal boundaries, whether or not
42 required by law to be recorded.

43 (k) The provisions of this section shall apply to all counties in North Carolina.
44 ~~Where local law is in conflict with this section, the provisions in this section shall~~

1 ~~apply. Failure of a plat to conform in all requirements of this statute shall be~~
 2 ~~sufficient grounds for the register of deeds to refuse to accept the plat for recordation.~~

3 (l) The provisions of this section shall not apply to the registration of highway
 4 right-of-way plans provided for in G.S. 136-19.4 nor to registration of roadway
 5 corridor official maps provided in Article 2E of Chapter 136.

6 (m) Except as provided in subsection (n), any map submitted for inclusion on the
 7 public record, whether submitted alone or attached to a deed or other instrument,
 8 shall be prepared by a registered land surveyor. Such a map shall either (i) have an
 9 original personal signature and original seal as approved by the North Carolina State
 10 Board of Registration for Professional Engineers and Land Surveyors or (ii) be a copy
 11 of a map, already on file in the public record, that is certified by the custodian of the
 12 public record to be a true and accurate copy of a map bearing an original personal
 13 signature and original seal. The presence of the original personal signature and seal
 14 shall constitute a certification that the map conforms to the standards of practice for
 15 land surveying in North Carolina, as defined in the rules of the North Carolina State
 16 Board of Registration for Professional Engineers and Land Surveyors.

17 (n) A map that does not meet the requirements of subsection (m) of this section
 18 may be attached to a deed or other instrument submitted for inclusion in the public
 19 record only for illustrative purposes and only if the map is conspicuously labelled,
 20 'THIS MAP IS NOT A CERTIFIED SURVEY AND NO RELIANCE MAY BE
 21 PLACED IN ITS ACCURACY.'

22 Section 3. Article 2 of Chapter 47 of the General Statutes is amended by
 23 adding a new section to read:

24 "§ 47-30.2. Review Officer.

25 (a) The board of commissioners of each county shall, by resolution, designate by
 26 name a person experienced in mapping or land records management as Review
 27 Officer to review each map and plat before it is presented to the register of deeds for
 28 recording. The person designated Review Officer shall, if possible, be certified as a
 29 property mapper pursuant to G.S. 147-54.4. The resolution designating the Review
 30 Officer shall be recorded in the county registry and indexed on the grantor index in
 31 the name of the Review Officer.

32 (b) The Review Officer shall review each map or plat before it is presented to the
 33 register of deeds for recording and certify that it complies with all statutory
 34 requirements for recording. The certification shall be in substantially the following
 35 form:

36

37 State of North Carolina

38 County of

39

40 I, Review Officer of County, certify that the map or plat to which
 41 this certification is affixed meets all statutory
 42 requirements for recording.

43

Review Officer

44

1 Date

2 (c) The register of deeds shall not accept for recording any map or plat that does
3 not have affixed a certification as provided in subsection (b) of this section."

4 Section 4. G.S. 136-102.6(d) reads as rewritten:

5 "(d) The right-of-way and construction plans for such public streets in residential
6 subdivisions, including plans for street drainage, shall be submitted to the Division of
7 Highways for review and approval, prior to the recording of the subdivision plat in
8 the office of the register of deeds. The plat or map required by this section shall not
9 be recorded by the register of deeds without a certification pursuant to G.S. 47-30.2
10 and, if determined to be necessary by the Review Officer, a certificate of approval by
11 the Division of Highways of the plans for the public street as being in accordance
12 with the minimum standards of the Board of Transportation for acceptance of the
13 subdivision street on the State highway system for maintenance. The Review Officer
14 shall not certify a map or plat subject to this section unless the new streets or changes
15 in existing streets are designated either public or private. The certificate of approval
16 shall not be deemed an acceptance of the dedication of ~~such~~ the streets on the
17 subdivision plat or map. Final acceptance by the Division of Highways of ~~such~~ the
18 public streets and placing them on the State highway system for maintenance shall be
19 conclusive proof that the streets have been constructed according to the minimum
20 standards of the Board of Transportation."

21 Section 5. G.S. 153A-321 reads as rewritten:

22 "**§ 153A-321. Planning agency.**

23 A county may by ordinance create or designate one or more agencies to perform
24 the following duties:

- 25 (1) Make studies of the county and surrounding areas;
26 (2) Determine objectives to be sought in the development of the study
27 area;
28 (3) Prepare and adopt plans for achieving these objectives;
29 (4) Develop and recommend policies, ordinances, administrative
30 procedures, and other means for carrying out plans in a
31 coordinated and efficient manner;
32 (5) Advise the board of commissioners concerning the use and
33 amendment of means for carrying out plans;
34 (6) Exercise any functions in the administration and enforcement of
35 various means for carrying out plans that the board of
36 commissioners may direct;
37 (7) Perform any other related duties that the board of commissioners
38 may direct.

39 An agency created or designated pursuant to this section may include but shall not
40 be limited to one or more of the following, ~~with any staff that the board of~~
41 ~~commissioners considers appropriate:~~ following:

- 42 (1) A planning board or commission of any size (with not less fewer
43 than three members) or composition considered appropriate,
44 organized in any manner considered appropriate;

1 (2) A joint planning board created by two or more local governments
2 according to the procedures and provisions of Chapter 160A,
3 Article 20, Part 1."

4 Section 6. G.S. 153A-332 reads as rewritten:

5 "**§ 153A-332. Ordinance to contain procedure for plat approval; approval prerequisite**
6 **to plat recordation; statement by owner.**

7 A subdivision ordinance adopted pursuant to this Part shall contain provisions
8 setting forth the procedures to be followed in granting or denying approval of a
9 subdivision plat before its registration.

10 The ordinance shall provide that the following agencies be given an opportunity to
11 make recommendations concerning an individual subdivision plat before the plat is
12 approved:

- 13 (1) The district highway engineer as to proposed State streets, State
14 highways, and related drainage systems;
- 15 (2) The county health director or local public utility, as appropriate, as
16 to proposed water or sewerage systems;
- 17 (3) Any other agency or official designated by the board of
18 commissioners.

19 The ordinance may provide that final approval of each individual subdivision plat
20 is to be given by:

- 21 (1) The board of commissioners,
- 22 (2) The board of commissioners on recommendation of a planning
23 agency, or
- 24 (3) A designated planning agency.

25 From the effective date of time that a subdivision ordinance that is adopted by the
26 county, filed with the register of deeds of the county, no subdivision plat of land
27 within the county's jurisdiction may be filed or recorded until it has been submitted
28 to and approved by the appropriate board or agency, as specified in the subdivision
29 ordinance, and until this approval is entered in writing on the face of the plat by an
30 authorized representative of the county, the chairman or head of the board or agency.
31 The Review Officer, pursuant to G.S. 47-30.2, shall not certify register of deeds may
32 not file or record a plat of a subdivision of land located within the territorial
33 jurisdiction of the county that has not been approved in accordance with these
34 provisions, and the clerk of superior court may not order or direct the recording of a
35 plat if the recording would be in conflict with this section. The owner of land shown
36 on a subdivision plat submitted for recording, or his authorized agent, shall sign a
37 statement on the plat stating whether any land shown thereon is within the
38 subdivision regulation jurisdiction of the county."

39 Section 7. G.S. 160A-361 reads as rewritten:

40 "**§ 160A-361. Planning agency.**

41 Any city may by ordinance create or designate one or more agencies to perform
42 the following duties:

- 43 (1) Make studies of the area within its jurisdiction and surrounding
44 areas;

- 1 (2) Determine objectives to be sought in the development of the study
- 2 area;
- 3 (3) Prepare and adopt plans for achieving these objectives;
- 4 (4) Develop and recommend policies, ordinances, administrative
- 5 procedures, and other means for carrying out plans in a
- 6 coordinated and efficient manner;
- 7 (5) Advise the council concerning the use and amendment of means
- 8 for carrying out plans;
- 9 (6) Exercise any functions in the administration and enforcement of
- 10 various means for carrying out plans that the council may direct;
- 11 (7) Perform any other related duties that the council may direct.

12 An agency created or designated pursuant to this section may include, but shall not
13 be limited to, one or more of the ~~following; with such staff as the council may deem~~
14 ~~appropriate; following:~~

- 15 (1) A planning board or commission of any size (with not less fewer
- 16 than three members) or composition deemed appropriate,
- 17 organized in any manner deemed appropriate;
- 18 (2) A joint planning board created by two or more local governments
- 19 pursuant to Article 20, Part 1, of this Chapter."

20 Section 8. G.S. 160A-373 reads as rewritten:

21 "**§ 160A-373. Ordinance to contain procedure for plat approval; approval prerequisite**
22 **to plat recordation; statement by owner.**

23 Any subdivision ordinance adopted pursuant to this Part shall contain provisions
24 setting forth the procedures to be followed in granting or denying approval of a
25 subdivision plat prior to its registration.

26 The ordinance may provide that final approval of each individual subdivision plat
27 is to be given by

- 28 (1) The city council,
- 29 (2) The city council on recommendation of a planning agency, or
- 30 (3) A designated planning agency.

31 From and after the effective date of ~~time that~~ a subdivision ordinance that is
32 adopted by the city, filed with the register of deeds of the county, no subdivision plat
33 of land within the city's jurisdiction shall be filed or recorded until it shall have been
34 submitted to and approved by the council or appropriate agency, as specified in the
35 subdivision ordinance, and until this approval shall have been entered on the face of
36 the plat in writing by ~~the chairman or head of the agency.~~ an authorized
37 representative of the city. The Review Officer, pursuant to G.S. 47-30.2 shall not
38 certify register of deeds shall not file or record a plat of a subdivision of land located
39 within the territorial jurisdiction of a city that has not been approved in accordance
40 with these provisions, nor shall the clerk of superior court order or direct the
41 recording of a plat if the recording would be in conflict with this section. ~~The owner~~
42 ~~of land shown on a subdivision plat submitted for recording, or his authorized agent,~~
43 ~~shall sign a statement on the plat stating whether or not any land shown thereon is~~
44 ~~within the subdivision regulation jurisdiction of any city."~~

1 Section 9. G.S. 161-10(a)(3) reads as rewritten:

2 "(3) Plats. -- For each original or revised plat recorded ~~nineteen dollars~~
3 ~~(\$19.00)~~ twenty-one dollars (\$21.00) per sheet or page; for
4 furnishing a certified copy of a plat three dollars (\$3.00)."

5 Section 10. G.S. 89C-26 is repealed.

6 Section 11. G.S. 130A-99 reads as rewritten:

7 "**§ 130A-99. Register of deeds to preserve copies of birth and death records.**

8 (a) The register of deeds of each county shall file and preserve the copies of birth
9 and death certificates furnished by the local registrar under the provisions of G.S.
10 130A-97, and shall make and keep a proper index of the certificates. These
11 certificates shall be open to inspection and examination. Copies or abstracts of these
12 certificates shall be provided to any person upon request. Certified copies of these
13 certificates shall be provided only to those persons described in G.S. 130A-93(c).

14 (b) The register of deeds may remove from the records and destroy copies of birth
15 or death certificates for persons born or dying in counties other than the county in
16 which the office of the register of deeds is located."

17 Section 12. G.S. 132-3(a) reads as rewritten:

18 "(a) Prohibition. -- No public official may destroy, sell, loan, or otherwise dispose
19 of any public record, except in accordance with ~~G.S. 121-5~~, G.S. 121-5 and G.S.
20 130A-99, without the consent of the Department of Cultural Resources. Whoever
21 unlawfully removes a public record from the office where it is usually kept, or alters,
22 defaces, mutilates or destroys it shall be guilty of a Class 3 misdemeanor and upon
23 conviction only fined not less than ten dollars (\$10.00) nor more than five hundred
24 dollars (\$500.00)."

25 Section 13. G.S. 121-5(b) reads as rewritten:

26 "(b) Destruction of Records Regulated. -- No person may destroy, sell, loan, or
27 otherwise dispose of any public record without the consent of the Department of
28 ~~Cultural Resources.~~ Resources, except as provided in G.S. 130A-99. Whoever
29 unlawfully removes a public record from the office where it is usually kept, or alters,
30 mutilates, or destroys it shall be guilty of a Class 3 misdemeanor and upon conviction
31 only fined at the discretion of the court.

32 When the custodian of any official State records certifies to the Department of
33 Cultural Resources that such records have no further use or value for official and
34 administrative purposes and when the Department certifies that such records appear
35 to have no further use or value for research or reference, then such records may be
36 destroyed or otherwise disposed of by the agency having custody of them.

37 When the custodian of any official records of any county, city, municipality, or
38 other subdivision of government certifies to the Department that such records have
39 no further use or value for official business and when the Department certifies that
40 such records appear to have no further use or value for research or reference, then
41 such records may be authorized by the governing body of said county, city,
42 municipality, or other subdivision of government to be destroyed or otherwise
43 disposed of by the agency having custody of them. A record of such certification and

1 authorization shall be entered in the minutes of the governing body granting the
2 authority.

3 The North Carolina Historical Commission is hereby authorized and empowered
4 to make such orders, rules, and regulations as may be necessary and proper to carry
5 into effect the provisions of this section. When any State, county, municipal, or other
6 governmental records shall have been destroyed or otherwise disposed of in
7 accordance with the procedure authorized in this subsection, any liability that the
8 custodian of such records might incur for such destruction or other disposal shall
9 cease and determine."

10 Section 14. The Legislative Research Commission may study the
11 procedures for land title registration pursuant to Chapter 43 of the General Statutes
12 and make recommendations regarding revisions to the procedures to improve them.
13 The Commission shall report its findings and recommendations to the 1998 Regular
14 Session of the 1997 General Assembly.

15 Section 15. Sections 1 through 10 of this act become effective October 1,
16 1997. The remainder of this act is effective when it becomes law. The removal and
17 destruction by a register of deeds of any out-of-county birth certificates prior to the
18 effective date of this act is valid, and the register of deeds is not in violation of G.S.
19 121-5 or G.S. 132-3.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 875

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

S875-ALJ-5/20

Date _____, 1997

Comm. Sub. [YES]
Amends Title []
2nd Edition

Senator Kerr

- 1 moves to amend the bill on page 7, line 27, by rewriting that line
2 to read:
3 "Officer to review each map and plat required to be submitted for
4 review before the map or plat is presented to the register of deeds
5 for";
6
7 and on page 7, line 32, by rewriting that line to read:
8 "(b) The Review Officer shall expeditiously review each map or
9 plat required to be submitted to the Officer before the map or plat
10 is presented to the";
11
12 and on page 8, lines 3 and 4, by inserting a new subsection to read:
13 "(d) A map or plat must be presented to the Review Officer unless
14 it is any of the following:
15 (1) A survey of one or more existing parcels, as certified
16 under G.S. 47-30(f)(11)c., ~~that~~ does not include a new
17 street or a change to an existing street.
18 (2) A survey of an existing man-made or natural feature of
19 a parcel, such as a building or a creek.
20 (3) A control survey.";
21
22

*and on page 8, line 2, by incorporating (c) into (b) and
renaming ^{proposed} (d) as (c).*

SIGNED J. Kerr
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 875

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

S875-ALJ-5/14

Date _____, 1997

Comm. Sub. [YES]
Amends Title []
2nd Edition

Senator _____

- 1 moves to amend the bill on page 5, lines 12 and 13, by rewriting
2 those lines to read:
3 "~~the North Carolina Department of Environment, Health, and Natural~~
4 ~~Resources, Office of State Planning,~~ the coordinates of both the
5 referenced corner";
6
7 and on page 6, line 17, by deleting "G.S" and substituting "G.S.";
8
9 and on page 7, line 26, by rewriting that line to read:
10 "name one or more persons experienced in land mapping or land records
11 management as a Review";
12
13 and on page 7, line 28, by deleting "The person designated" and
14 substituting "Each person designated a";
15
16 and on page 7, line 32, by inserting the word "expeditiously"
17 between "shall" and "review".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

H. B. No. _____

DATE _____

S. B. No. 875

Amendment No. _____

(to be filled in by
Principal Clerk)

Rep.) _____

COOPER

Sen.) _____

7

moves to amend the bill on page _____, line 32-35

by rewriting those lines to read

"(b) The Review Officer shall review expeditiously each map or plat before it is presented to the register of deeds for recording. The Review Officer shall certify the map or plat if it complies with the statutory requirements for recording. The certification shall be in substantially the following form: "

^{page 7,} and on line 28 by deleting the words "possible" and replacing them with the words "reasonably feasible".

SIGNED _____

Ray Cooper

ADOPTED _____

FAILED _____

TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

D

SENATE BILL 875

State Government, Local Government, and Personnel Committee Substitute Adopted
4/24/97

Proposed Committee Substitute S875-PCS1815

Short Title: Revise Records Laws-2.

(Public)

Sponsors:

Referred to:

April 15, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO IMPROVE THE PROCEDURES FOR RECORDING MAPS AND
3 PLATS, TO REVISE THE LAW GOVERNING THE DISPOSITION OF
4 CERTAIN BIRTH AND DEATH CERTIFICATES, AND TO ESTABLISH A
5 STUDY OF LAND TITLE REGISTRATION PROCEDURES.

6 The General Assembly of North Carolina enacts:

7 Section 1. G.S. 39-32.3 reads as rewritten:

8 "**§ 39-32.3. Recordation of plat showing control corners.**

9 Upon designating a control corner and affixing a permanent marker, said person,
10 firm or corporation shall cause to be filed in the office of the register of deeds of the
11 county in which the real estate development is located a map or plat showing the
12 location of the control corner or corners and permanent marker or markers with
13 adequate and sufficient description to enable a surveyor to locate such control corner
14 or marker. ~~The register of deeds shall not accept for registration or record any map~~
15 ~~or plat of a real estate subdivision or development made after July 1, 1947, unless the~~
16 ~~location of such control corner or corners is shown thereon.~~ No map or plat of a real
17 estate subdivision or development made after July 1, 1947, shall be certified for
18 recording pursuant to G.S 47-30.2 unless the location of control corners is shown
19 thereon."

20 Section 2. G.S. 47-30 reads as rewritten:

21 "**§ 47-30. Plats and subdivisions; mapping requirements.**

1 (a) Size Requirements. -- All land plats presented to the register of deeds for
2 recording in the registry of a county in North Carolina after September 30, 1991,
3 having an outside marginal size of either 18 inches by 24 inches, 21 inches by 30
4 inches, or 24 inches by 36 inches, and having a minimum one and one-half inch
5 border on the left side and a minimum one-half inch border on the other sides shall
6 be deemed to meet the size requirements for recording under this section. Where
7 size of land areas, or suitable scale to assure legibility require, plats may be placed on
8 two or more sheets with appropriate match lines. Counties may specify either:

- 9 (1) Only 18 inches by 24 inches;
10 (2) A combination of 18 inches by 24 inches and 21 inches by 30
11 inches;
12 (3) A combination of 18 inches by 24 inches and 24 inches by 36
13 inches; or
14 (4) A combination of all three sizes.

15 Provided, that all registers of deeds where specific sizes other than the combination of
16 all three sizes have been specified, shall be required to submit said size specifications
17 to the North Carolina Association of Registers of Deeds for inclusion on a master list
18 of all such counties. The list shall be available in each register of deeds office by
19 October 1, 1991. For purposes of this section, the terms 'plat' and 'map' are
20 synonymous.

21 (b) Plats to Be Reproducible. -- Each plat presented for recording shall be a
22 reproducible plat, either original ink on polyester film (mylar), or a reproduced
23 drawing, transparent and archival (as defined by the American National Standards
24 Institute), and submitted in this form. The recorded plat must be such that the public
25 may obtain legible copies. A direct or photographic copy of each recorded plat shall
26 be placed in the plat book or plat file maintained for that purpose and properly
27 indexed for use. In those counties in which the register has made a security copy of
28 the plat from which legible copies can be made, the original may be returned to the
29 person indicated on the plat.

30 (c) Information Contained in Title of Plat. -- The title of each plat shall contain
31 the following information: property designation, name of owner (the name of owner
32 shall be shown for indexing purposes only and is not to be construed as title
33 certification), location to include township, county and state, the date or dates the
34 survey was made; scale or scale ratio in words or figures and bar graph; name and
35 address of surveyor or firm preparing the plat.

36 (d) Certificate; Form. -- There shall appear on each plat a certificate by the
37 person under whose supervision ~~such~~ the survey or ~~such~~ plat was made, stating the
38 origin of the information shown on the plat, including recorded deed and plat
39 references shown thereon. The ratio of precision before any adjustments must be
40 shown. Any lines on the plat that were not actually surveyed must be clearly
41 indicated and a statement included revealing the source of information. ~~The~~
42 ~~execution of such certificate shall be acknowledged before any officer authorized to~~
43 ~~take acknowledgments by the registered land surveyor preparing the plat. All plats to~~
44 ~~be recorded shall be probated as required by law for the registration of deeds. Where~~

1 a plat consists of more than one sheet, only one sheet must contain the certification
2 and all other sheets must be signed and sealed.

3 The certificate required above shall include the source of information for the
4 survey and data indicating the ratio of precision of the survey before adjustments and
5 shall be in substantially the following form:

6 'I,, certify that this plat was drawn under my supervision from an
7 actual survey made under my supervision (deed description recorded in Book,
8 page, etc.) (other); that the boundaries not surveyed are clearly indicated as
9 drawn from information found in Book, page; that the ratio of precision
10 as calculated is 1:; that this plat was prepared in accordance with G.S. 47-30 as
11 amended. Witness my original signature, registration number and seal this day
12 of, A.D., 19

13

14 Seal or Stamp

15

16

17

.....

18

Surveyor

19

Registration Number'

20

21 ~~The certificate of the Notary shall read as follows:~~

22

~~"North Carolina,County:~~

23

24 ~~I, a Notary Public of the County and State aforesaid, certify that....., a~~
25 ~~registered land surveyor, personally appeared before me this day and acknowledged~~
26 ~~the execution of the foregoing instrument. Witness my hand and official stamp or~~
27 ~~seal, this..... day of, 19.....~~

27

28 ~~Seal or Stamp~~

29

~~Notary Public.....~~

30

~~My Commission expires~~

31

32 Nothing in this requirement shall prevent the recording of a map that was
33 prepared in accordance with a previous version of G.S. 47-30 as amended, properly
34 signed, and notarized under the statutes applicable at the time of the signing of the
35 map. However, it shall be the responsibility of the person presenting the map to
36 prove that the map was so prepared.

37 (e) Method of Computation. -- An accurate method of computation shall be used
38 to determine the acreage and ratio of precision shown on the plat. Area by
39 estimation is not acceptable nor is area by planimeter, area by scale, or area copied
40 from another source, except in the case of tracts containing inaccessible sections or
41 areas. In such case the surveyor may make use of aerial photographs or other
42 appropriate aids to determine the acreage of ~~such~~ any inaccessible areas when ~~such~~
43 the areas are bounded by natural and visible monuments. In such case the methods

1 used must be stated on the plat and all accessible areas of the tract shall remain
2 subject to all applicable standards of this section.

3 (f) Plat to Contain Specific Information. -- Every plat shall contain the following
4 specific information:

5 (1) An accurately positioned north arrow coordinated with any
6 bearings shown on the plat. Indication shall be made as to
7 whether the north index is true, magnetic, North Carolina grid
8 ('NAD 83' or 'NAD 27'), or is referenced to old deed or plat
9 bearings. If the north index is magnetic or referenced to old deed
10 or plat bearings, the date and the source (if known) ~~such~~ the index
11 was originally determined shall be clearly indicated.

12 (2) The azimuth or course and distance of every property line
13 surveyed shall be shown. Distances shall be in feet or meters and
14 decimals thereof. The number of decimal places shall be
15 appropriate to the class of survey required.

16 (3) All plat distances shall be by horizontal or grid measurements. All
17 lines shown on the plat shall be correctly plotted to the scale
18 shown. Enlargement of portions of a plat are acceptable in the
19 interest of clarity, where shown as inserts. Where the North
20 Carolina grid system is used the grid factor shall be shown on the
21 face of the plat. If grid distances are used, it must be shown on the
22 plat.

23 (4) Where a boundary is formed by a curved line, the following data
24 must be given: actual survey data from the point of curvature to
25 the point of tangency shall be shown as standard curve data, or as
26 a traverse of bearings and distances around the curve. If standard
27 curve data is used the bearing and distance of the long chord (from
28 point of curvature to point of tangency) must be shown on the plat.

29 (5) Where a subdivision of land is set out on the plat, all streets and
30 lots shall be accurately plotted with dimension lines indicating
31 widths and all other information pertinent to reestablishing all lines
32 in the field. This shall include bearings and distances sufficient to
33 form a continuous closure of the entire perimeter.

34 (6) Where control corners have been established in compliance with
35 G.S. 39-32.1, 39-32.2, 39-32.3, and 39-32.4, as amended, the
36 location and pertinent information as required in the reference
37 statute shall be plotted on the plat. All other corners which are
38 marked by monument or natural object shall be so identified on all
39 plats, and where practical all corners of adjacent owners along the
40 boundary lines of the subject tract which are marked by monument
41 or natural object shall be shown.

42 (7) The names of adjacent landowners, or lot, block, parcel,
43 subdivision designations or other legal reference where applicable,
44 shall be shown where they could be determined by the surveyor.

- 1 (8) All visible and apparent rights-of-way, watercourses, utilities,
2 roadways, and other such improvements shall be accurately located
3 where crossing or forming any boundary line of the property
4 shown.
- 5 (9) Where the plat is the result of a survey, one or more corners shall,
6 by a system of azimuths or courses and distances, be accurately
7 tied to and coordinated with a horizontal control monument of
8 some United States or State Agency survey system, such as the
9 North Carolina Geodetic Survey where ~~such~~ the monument is
10 within 2,000 feet of the subject property. Where the North
11 Carolina Grid System coordinates of ~~said~~ the monument are on file
12 in the North Carolina ~~Department of Environment, Health, and~~
13 ~~Natural Resources, Office of State Planning,~~ the coordinates of
14 both the referenced corner and the monuments used shall be
15 shown in X (easting) and Y (northing) coordinates on the plat.
16 The coordinates shall be identified as based on 'NAD 83,'
17 indicating North American Datum of 1983, or as 'NAD 27,'
18 indicating North American Datum of 1927. The tie lines to the
19 monuments shall also be sufficient to establish true north or grid
20 north bearings for the plat if the monuments exist in pairs. Within
21 a previously recorded subdivision that has been tied to grid
22 control, control monuments within the subdivision may be used in
23 lieu of additional ties to grid control. Within a previously
24 recorded subdivision that has not been tied to grid control, if
25 horizontal control monuments are available within 2,000 feet, the
26 above requirements shall be met; but in the interest of bearing
27 consistency with previously recorded plats, existing bearing control
28 should be used where practical. In the absence of Grid Control,
29 other appropriate natural monuments or landmarks shall be used.
30 In all cases, the tie lines shall be sufficient to accurately reproduce
31 the subject lands from the control or reference points used.
- 32 (10) A vicinity map (location map) shall appear on the plat.
- 33 (11) Notwithstanding any other provision contained in this section, it is
34 the duty of the surveyor, by a certificate on the face of the plat, to
35 certify to one of the following:
- 36 a. That the survey creates a subdivision of land within the area
37 of a county or municipality that has an ordinance that
38 regulates parcels of land;
- 39 b. That the survey is located in ~~such~~ a portion of a county or
40 municipality that is unregulated as to an ordinance that
41 regulates parcels of land;
- 42 c. That the survey is of an existing parcel or parcels of land;

1 d. That the survey is of another category, such as the
2 recombination of existing parcels, a court-ordered survey, or
3 other exception to the definition of subdivision;

4 e. That the information available to the surveyor is such that
5 the surveyor is unable to make a determination to the best
6 of ~~his or her~~ the surveyor's professional ability as to
7 provisions contained in (a) through (d) above.

8 However, if the plat contains the certificate of a surveyor as stated
9 in a., d., or e. above, then the plat shall have, in addition to said
10 surveyor's certificate, a certification of approval, or no approval
11 required, as may be required by local ordinance from the
12 appropriate government authority before the plat is presented for
13 recordation. If the plat contains the certificate of a surveyor as
14 stated in b. or c. above, nothing shall prevent the recordation of
15 the plat if all other provisions have been met.

16 (g) Recording of Plat. -- ~~For purposes of recording, the register of deeds shall not~~
17 ~~be responsible for.~~ In certifying a plat for recording pursuant to G.S. 47-30.2, the
18 Review Officer shall not be responsible for reviewing or certifying as to any of the
19 following requirements of this section:

20 (1) ~~The provisions of subsection (b);~~ Subsection (b) of this section as
21 to archival; archival.

22 (2) ~~The provisions of subsection (d), except for the notary certificate;~~

23 (3) ~~The provisions of subsection (e); or~~ Subsection (e) of this section.

24 (4) ~~The provisions of subdivisions (2) through (9) of subsection (f);~~
25 Subdivisions (1) through (10) of subsection (f) of this section.

26 A plat, when certified pursuant to G.S. 47-30.2 ~~proven and probated as provided~~
27 ~~herein for deeds and other conveyances, when and~~ presented for recording, shall be
28 recorded in the plat book or plat file and when so recorded shall be duly indexed.
29 Reference in any instrument hereafter executed to the record of any plat herein
30 authorized shall have the same effect as if the description of the lands as indicated on
31 the record of the plat were set out in the instrument.

32 (h) Nothing in this section shall be deemed to prevent the filing of any plat
33 prepared by a registered land surveyor but not recorded prior to the death of the
34 registered land surveyor. However, it is the responsibility of the person presenting
35 the map to the Review Officer pursuant to G.S. 47-30.2 to prove that the plat was so
36 prepared. For preservation these plats may be filed without signature, notary
37 acknowledgement or probate, in a special plat file.

38 (i) Nothing in this section shall be deemed to invalidate any instrument or the title
39 thereby conveyed making reference to any recorded plat.

40 (j) The provisions of this section shall not apply to boundary plats of areas
41 annexed by municipalities nor to plats of municipal boundaries, whether or not
42 required by law to be recorded.

43 (k) The provisions of this section shall apply to all counties in North Carolina.
44 ~~Where local law is in conflict with this section, the provisions in this section shall~~

1 ~~apply. Failure of a plat to conform in all requirements of this statute shall be~~
2 ~~sufficient grounds for the register of deeds to refuse to accept the plat for recordation.~~

3 (l) The provisions of this section shall not apply to the registration of highway
4 right-of-way plans provided for in G.S. 136-19.4 nor to registration of roadway
5 corridor official maps provided in Article 2E of Chapter 136.

6 (m) Except as provided in subsection (n), any map submitted for inclusion on the
7 public record, whether submitted alone or attached to a deed or other instrument,
8 shall be prepared by a registered land surveyor. Such a map shall either (i) have an
9 original personal signature and original seal as approved by the North Carolina State
10 Board of Registration for Professional Engineers and Land Surveyors or (ii) be a copy
11 of a map, already on file in the public record, that is certified by the custodian of the
12 public record to be a true and accurate copy of a map bearing an original personal
13 signature and original seal. The presence of the original personal signature and seal
14 shall constitute a certification that the map conforms to the standards of practice for
15 land surveying in North Carolina, as defined in the rules of the North Carolina State
16 Board of Registration for Professional Engineers and Land Surveyors.

17 (n) A map that does not meet the requirements of subsection (m) of this section
18 may be attached to a deed or other instrument submitted for inclusion in the public
19 record only for illustrative purposes and only if the map is conspicuously labelled,
20 'THIS MAP IS NOT A CERTIFIED SURVEY AND NO RELIANCE MAY BE
21 PLACED IN ITS ACCURACY.'

22 Section 3. Article 2 of Chapter 47 of the General Statutes is amended by
23 adding a new section to read:

24 "**§ 47-30.2. Review Officer.**

25 (a) The board of commissioners of each county shall, by resolution, designate by
26 name one or more persons experienced in mapping or land records management as a
27 Review Officer to review each map and plat required to be submitted for review
28 before the map or plat is presented to the register of deeds for recording. Each
29 person designated a Review Officer shall, if reasonably feasible, be certified as a
30 property mapper pursuant to G.S. 147-54.4. A resolution designating a Review
31 Officer shall be recorded in the county registry and indexed on the grantor index in
32 the name of the Review Officer.

33 (b) The Review Officer shall review expeditiously each map or plat required to be
34 submitted to the Officer before the map or plat is presented to the register of deeds
35 for recording. The Review Officer shall certify the map or plat if it complies with all
36 statutory requirements for recording.

37 The register of deeds shall not accept for recording any map or plat required to be
38 submitted to the Review Officer unless the map or plat has the certification of the
39 Review Officer affixed to it. A certification shall be in substantially the following
40 form:

41
42 State of North Carolina

43 County of

44

1 I,, Review Officer of County, certify that the map or plat
2 to which this certification is affixed meets all statutory requirements for recording.

3
4
Review Officer

5 Date

6
7 (c) A map or plat must be presented to the Review Officer unless it is any of the
8 following:

- 9 (1) A survey of one or more existing parcels, as certified under G.S.
10 47-30(f)(11)c., and does not include a new street or a change to an
11 existing street.
- 12 (2) A survey of an existing man-made or natural feature of a parcel,
13 such as a building or a creek.
- 14 (3) A control survey."

15 Section 4. G.S. 136-102.6(d) reads as rewritten:

16 "(d) The right-of-way and construction plans for such public streets in residential
17 subdivisions, including plans for street drainage, shall be submitted to the Division of
18 Highways for review and approval, prior to the recording of the subdivision plat in
19 the office of the register of deeds. The plat or map required by this section shall not
20 be recorded by the register of deeds without a certification pursuant to G.S. 47-30.2
21 and, if determined to be necessary by the Review Officer, a certificate of approval by
22 the Division of Highways of the plans for the public street as being in accordance
23 with the minimum standards of the Board of Transportation for acceptance of the
24 subdivision street on the State highway system for maintenance. The Review Officer
25 shall not certify a map or plat subject to this section unless the new streets or changes
26 in existing streets are designated either public or private. The certificate of approval
27 shall not be deemed an acceptance of the dedication of ~~such~~ the streets on the
28 subdivision plat or map. Final acceptance by the Division of Highways of ~~such~~ the
29 public streets and placing them on the State highway system for maintenance shall be
30 conclusive proof that the streets have been constructed according to the minimum
31 standards of the Board of Transportation."

32 Section 5. G.S. 153A-321 reads as rewritten:

33 **"§ 153A-321. Planning agency.**

34 A county may by ordinance create or designate one or more agencies to perform
35 the following duties:

- 36 (1) Make studies of the county and surrounding areas;
- 37 (2) Determine objectives to be sought in the development of the study
38 area;
- 39 (3) Prepare and adopt plans for achieving these objectives;
- 40 (4) Develop and recommend policies, ordinances, administrative
41 procedures, and other means for carrying out plans in a
42 coordinated and efficient manner;
- 43 (5) Advise the board of commissioners concerning the use and
44 amendment of means for carrying out plans;

1 (6) Exercise any functions in the administration and enforcement of
2 various means for carrying out plans that the board of
3 commissioners may direct;

4 (7) Perform any other related duties that the board of commissioners
5 may direct.

6 An agency created or designated pursuant to this section may include but shall not
7 be limited to one or more of the ~~following, with any staff that the board of~~
8 ~~commissioners considers appropriate:~~ following:

9 (1) A planning board or commission of any size (with not less fewer
10 than three members) or composition considered appropriate,
11 organized in any manner considered appropriate;

12 (2) A joint planning board created by two or more local governments
13 according to the procedures and provisions of Chapter 160A,
14 Article 20, Part 1."

15 Section 6. G.S. 153A-332 reads as rewritten:

16 "**§ 153A-332. Ordinance to contain procedure for plat approval; approval prerequisite**
17 **to plat recordation; statement by owner.**

18 A subdivision ordinance adopted pursuant to this Part shall contain provisions
19 setting forth the procedures to be followed in granting or denying approval of a
20 subdivision plat before its registration.

21 The ordinance shall provide that the following agencies be given an opportunity to
22 make recommendations concerning an individual subdivision plat before the plat is
23 approved:

24 (1) The district highway engineer as to proposed State streets, State
25 highways, and related drainage systems;

26 (2) The county health director or local public utility, as appropriate, as
27 to proposed water or sewerage systems;

28 (3) Any other agency or official designated by the board of
29 commissioners.

30 The ordinance may provide that final approval of each individual subdivision plat
31 is to be given by:

32 (1) The board of commissioners,

33 (2) The board of commissioners on recommendation of a planning
34 agency, or

35 (3) A designated planning agency.

36 From the effective date of time that a subdivision ordinance that is adopted by the
37 county, filed with the register of deeds of the county, no subdivision plat of land
38 within the county's jurisdiction may be filed or recorded until it has been submitted
39 to and approved by the appropriate board or agency, as specified in the subdivision
40 ordinance, and until this approval is entered in writing on the face of the plat by an
41 authorized representative of the county, the chairman or head of the board or agency.

42 The Review Officer, pursuant to G.S. 47-30.2, shall not certify register of deeds may
43 not file or record a plat of a subdivision of land located within the territorial
44 jurisdiction of the county that has not been approved in accordance with these

1 provisions, and the clerk of superior court may not order or direct the recording of a
2 plat if the recording would be in conflict with this section. ~~The owner of land shown~~
3 ~~on a subdivision plat submitted for recording, or his authorized agent, shall sign a~~
4 ~~statement on the plat stating whether any land shown thereon is within the~~
5 ~~subdivision regulation jurisdiction of the county."~~

6 Section 7. G.S. 160A-361 reads as rewritten:

7 "**§ 160A-361. Planning agency.**

8 Any city may by ordinance create or designate one or more agencies to perform
9 the following duties:

- 10 (1) Make studies of the area within its jurisdiction and surrounding
11 areas;
- 12 (2) Determine objectives to be sought in the development of the study
13 area;
- 14 (3) Prepare and adopt plans for achieving these objectives;
- 15 (4) Develop and recommend policies, ordinances, administrative
16 procedures, and other means for carrying out plans in a
17 coordinated and efficient manner;
- 18 (5) Advise the council concerning the use and amendment of means
19 for carrying out plans;
- 20 (6) Exercise any functions in the administration and enforcement of
21 various means for carrying out plans that the council may direct;
- 22 (7) Perform any other related duties that the council may direct.

23 An agency created or designated pursuant to this section may include, but shall not
24 be limited to, one or more of the ~~following; with such staff as the council may deem~~
25 ~~appropriate; following:~~

- 26 (1) A planning board or commission of any size (with not less fewer
27 than three members) or composition deemed appropriate,
28 organized in any manner deemed appropriate;
- 29 (2) A joint planning board created by two or more local governments
30 pursuant to Article 20, Part 1, of this Chapter."

31 Section 8. G.S. 160A-373 reads as rewritten:

32 "**§ 160A-373. Ordinance to contain procedure for plat approval; approval prerequisite**
33 **to plat recordation; statement by owner.**

34 Any subdivision ordinance adopted pursuant to this Part shall contain provisions
35 setting forth the procedures to be followed in granting or denying approval of a
36 subdivision plat prior to its registration.

37 The ordinance may provide that final approval of each individual subdivision plat
38 is to be given by

- 39 (1) The city council,
- 40 (2) The city council on recommendation of a planning agency, or
- 41 (3) A designated planning agency.

42 From and after the effective date of time ~~that~~ a subdivision ordinance that is
43 adopted by the city, filed with the register of deeds of the county, no subdivision plat
44 of land within the city's jurisdiction shall be filed or recorded until it shall have been

1 submitted to and approved by the council or appropriate agency, as specified in the
2 subdivision ordinance, and until this approval shall have been entered on the face of
3 the plat in writing by ~~the chairman or head of the agency:~~ an authorized
4 representative of the city. The Review Officer, pursuant to G.S. 47-30.2, shall not
5 certify register of deeds shall not file or record a plat of a subdivision of land located
6 within the territorial jurisdiction of a city that has not been approved in accordance
7 with these provisions, nor shall the clerk of superior court order or direct the
8 recording of a plat if the recording would be in conflict with this section. ~~The owner~~
9 ~~of land shown on a subdivision plat submitted for recording, or his authorized agent,~~
10 ~~shall sign a statement on the plat stating whether or not any land shown thereon is~~
11 ~~within the subdivision regulation jurisdiction of any city."~~

12 Section 9. G.S. 161-10(a)(3) reads as rewritten:

13 "(3) Plats. -- For each original or revised plat recorded ~~nineteen dollars~~
14 ~~(\$19.00)~~ twenty-one dollars (\$21.00) per sheet or page; for
15 furnishing a certified copy of a plat three dollars (\$3.00)."

16 Section 10. G.S. 89C-26 is repealed.

17 Section 11. G.S. 130A-99 reads as rewritten:

18 "**§ 130A-99. Register of deeds to preserve copies of birth and death records.**

19 (a) The register of deeds of each county shall file and preserve the copies of birth
20 and death certificates furnished by the local registrar under the provisions of G.S.
21 130A-97, and shall make and keep a proper index of the certificates. These
22 certificates shall be open to inspection and examination. Copies or abstracts of these
23 certificates shall be provided to any person upon request. Certified copies of these
24 certificates shall be provided only to those persons described in G.S. 130A-93(c).

25 (b) The register of deeds may remove from the records and destroy copies of birth
26 or death certificates for persons born or dying in counties other than the county in
27 which the office of the register of deeds is located."

28 Section 12. G.S. 132-3(a) reads as rewritten:

29 "(a) Prohibition. -- No public official may destroy, sell, loan, or otherwise dispose
30 of any public record, except in accordance with ~~G.S. 121-5,~~ G.S. 121-5 and G.S.
31 130A-99, without the consent of the Department of Cultural Resources. Whoever
32 unlawfully removes a public record from the office where it is usually kept, or alters,
33 defaces, mutilates or destroys it shall be guilty of a Class 3 misdemeanor and upon
34 conviction only fined not less than ten dollars (\$10.00) nor more than five hundred
35 dollars (\$500.00)."

36 Section 13. G.S. 121-5(b) reads as rewritten:

37 "(b) Destruction of Records Regulated. -- No person may destroy, sell, loan, or
38 otherwise dispose of any public record without the consent of the Department of
39 ~~Cultural Resources.~~ Resources, except as provided in G.S. 130A-99. Whoever
40 unlawfully removes a public record from the office where it is usually kept, or alters,
41 mutilates, or destroys it shall be guilty of a Class 3 misdemeanor and upon conviction
42 only fined at the discretion of the court.

43 When the custodian of any official State records certifies to the Department of
44 Cultural Resources that such records have no further use or value for official and

1 administrative purposes and when the Department certifies that such records appear
2 to have no further use or value for research or reference, then such records may be
3 destroyed or otherwise disposed of by the agency having custody of them.

4 When the custodian of any official records of any county, city, municipality, or
5 other subdivision of government certifies to the Department that such records have
6 no further use or value for official business and when the Department certifies that
7 such records appear to have no further use or value for research or reference, then
8 such records may be authorized by the governing body of said county, city,
9 municipality, or other subdivision of government to be destroyed or otherwise
10 disposed of by the agency having custody of them. A record of such certification and
11 authorization shall be entered in the minutes of the governing body granting the
12 authority.

13 The North Carolina Historical Commission is hereby authorized and empowered
14 to make such orders, rules, and regulations as may be necessary and proper to carry
15 into effect the provisions of this section. When any State, county, municipal, or other
16 governmental records shall have been destroyed or otherwise disposed of in
17 accordance with the procedure authorized in this subsection, any liability that the
18 custodian of such records might incur for such destruction or other disposal shall
19 cease and determine."

20 Section 14. The Legislative Research Commission may study the
21 procedures for land title registration pursuant to Chapter 43 of the General Statutes
22 and make recommendations regarding revisions to the procedures to improve them.
23 The Commission shall report its findings and recommendations to the 1998 Regular
24 Session of the 1997 General Assembly.

25 Section 15. Sections 1 through 10 of this act become effective October 1,
26 1997. The remainder of this act is effective when it becomes law. The removal and
27 destruction by a register of deeds of any out-of-county birth certificates prior to the
28 effective date of this act is valid, and the register of deeds is not in violation of G.S.
29 121-5 or G.S. 132-3.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 374

Short Title: Chiropractor Supplements Exempt.

(Public)

Sponsors: Senators Odom; Conder, Gulley, Plyler, Soles, and Weinstein.

Referred to: Finance.

March 11, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO EXEMPT FROM SALES AND USE TAX CERTAIN NUTRITIONAL
3 SUPPLEMENTS DISPENSED BY CHIROPRACTORS.
4 The General Assembly of North Carolina enacts:
5 Section 1. G.S. 105-164.13 is amended by adding a new subdivision to
6 read:
7 "(13c) Nutritional supplements that may be dispensed only by licensed
8 health care providers and are dispensed by a chiropractor licensed
9 under Article 8 of Chapter 90 of the General Statutes to a patient
10 for therapeutic purposes as part of the patient's plan of treatment."
11 Section 2. This act becomes effective October 1, 1997, and applies to
12 sales made on or after that date.

**NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL ESTIMATE**

BILL NUMBER: SENATE BILL 374
SHORT TITLE: CHIROPRACTOR SUPPLEMENTS EXEMPT
SPONSOR(S): SEN. ODOM

FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 1997-98</u>	<u>FY 1998-99</u>	<u>FY 1999-00</u>	<u>FY 2000-01</u>	<u>FY 2001-02</u>
REVENUES					
State General Fund			Insignificant Loss*		
Local Government			Insignificant Loss**		
EXPENDITURES					
PRINCIPAL DEPARTMENT AFFECTED: Department of Revenue					
EFFECTIVE DATE: Sales occurring on or after October 1, 1997.					
*No tax collection data available from Department of Revenue. It is estimated that the 1997-98 cost to the General Fund will be less than \$25,000.					
**No tax collection data available from Department of Revenue. It is estimated that the 1997-98 cost to cities and counties will be less than \$12,500.					

BILL SUMMARY: Exempts from the state and local sales tax nutritional supplements that may be dispensed only by licensed health care providers and are dispensed by a licensed chiropractor for therapeutic purposes as part of the patient's plan of treatment.

ASSUMPTIONS AND METHODOLOGY: Monthly sales and use tax collection data is provided by the Department of Revenue on a "type of business" reporting basis. The applicable business codes would be Code 502: Drugstores; drug and medical supply houses and Code 715: Hospitals, physicians, veterinarians, etc. Unfortunately, the gross tax collection and retail sales data is not broken down by type of product. In addition, data from the Census of Service Industries published every 5 years by the Census Bureau does not break down receipts by type of service or tangible personal property.

FISCAL RESEARCH DIVISION (733-4910)
PREPARED BY: Dave Crotts
APPROVED BY:
DATE: May 14, 1997

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

D

SENATE BILL 374
Proposed Senate Finance Committee Substitute
S374-CSLJ-5/20

Short Title: No Tax On Chiropractor Supplements. (Public)

Sponsors:

Referred to: Finance.

March 11, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO EXEMPT FROM SALES AND USE TAX NUTRITIONAL SUPPLEMENTS
3 SOLD BY CHIROPRACTORS.
4 The General Assembly of North Carolina enacts:
5 Section 1. Article 8 of Chapter 90 of the General
6 Statutes is amended by adding a new section to read:
7 "§ 90-151.1. Selling nutritional supplements to patients.
8 A chiropractic physician may sell nutritional supplements at a
9 chiropractic office to a patient as part of the patient's plan of
10 treatment but may not otherwise sell nutritional supplements at a
11 chiropractic office. A chiropractic physician who sells
12 nutritional supplements to a patient must keep a record of the
13 sale that complies with G.S. 105-164.21, except that the record
14 may not disclose the name of the patient."
15 Section 2. G.S. 105-164.13 is amended by adding a new
16 subdivision to read:
17 "(13c) Nutritional supplements sold by a chiropractic
18 physician at a chiropractic office to a
19 patient as part of the patient's plan of
20 treatment, as authorized by G.S. 90-151.1."
21 Section 3. This act becomes effective October 1, 1997,
22 and applies to sales made on or after that date.

EXPLANATION OF SENATE BILL 374
Proposed Senate Finance Committee Substitute
No Tax On Chiropractor Supplements

TO: Senate Finance Committee
FROM: Sabra Faires, Committee Counsel
DATE: May 20, 1997
SPONSOR: Senator Fountain Odom

Senate Bill 374 creates a new State and local sales and use tax exemption. The new exemption is for nutritional supplements sold by a chiropractic physician at the chiropractor's office to a patient as part of the patient's plan of treatment. A nutritional supplement is a vitamin, a mineral, an herb, an amino acid, or another dietary substance that is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form. The exemption becomes effective October 1, 1997.

Under current law, medicine sold under a prescription is exempt from State and local sales and use taxes but, with one exception, medicine that is sold without a prescription is subject to sales and use tax. The one exception is for insulin. The exemption for medicine sold under a prescription applies whether or not the item prescribed requires a prescription.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1997

S

D

SENATE BILL 374
Proposed Committee Substitute S374-PCS4606

Short Title: No Tax on Chiropractor Supplements.

(Public)

Sponsors:

Referred to:

March 11, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO EXEMPT FROM SALES AND USE TAX NUTRITIONAL
3 SUPPLEMENTS SOLD BY CHIROPRACTORS.
4 The General Assembly of North Carolina enacts:
5 Section 1. Article 8 of Chapter 90 of the General Statutes is amended by
6 adding a new section to read:
7 "**§ 90-151.1. Selling nutritional supplements to patients.**
8 A chiropractic physician may sell nutritional supplements at a chiropractic office
9 to a patient as part of the patient's plan of treatment but may not otherwise sell
10 nutritional supplements at a chiropractic office. A chiropractic physician who sells
11 nutritional supplements to a patient must keep a record of the sale that complies with
12 G.S. 105-164.24, except that the record may not disclose the name of the patient."
13 Section 2. G.S. 105-164.13 is amended by adding a new subdivision to
14 read:
15 "(13c) Nutritional supplements sold by a chiropractic physician at a
16 chiropractic office to a patient as part of the patient's plan of
17 treatment, as authorized by G.S. 90-151.1."
18 Section 3. This act becomes effective October 1, 1997, and applies to
19 sales made on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1997

S

2

SENATE BILL 439*
Commerce Committee Substitute Adopted 4/10/97

Short Title: Securities/Investment Advisers/AB.

(Public)

Sponsors:

Referred to:

March 20, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO CONFORM THE NORTH CAROLINA SECURITIES ACT AND
3 THE INVESTMENT ADVISERS ACT TO THE NATIONAL SECURITIES
4 MARKETS IMPROVEMENT ACT OF 1996.
5 The General Assembly of North Carolina enacts:
6 I. Securities
7 Section 1. G.S. 78A-2(2)d.1. reads as rewritten:
8 "1. The security is exempted under subdivisions (1), (2),
9 (3), (4), (5), (7), (9), (10), (11), (13), or (14) of G.S.
10 78A-16, or the transaction is exempted under G.S.
11 78A-17, and such exemption has not been denied or
12 revoked under G.S. 78A-18, or the transaction is in a
13 security covered under federal law, or".
14 Section 2. G.S. 78A-2(9) reads as rewritten:
15 "(9) 'Salesman' means any individual other than a dealer who
16 represents a dealer in effecting or attempting to effect purchases or
17 sales of securities. 'Salesman' does not include an individual who
18 represents (i) an issuer in effecting transactions in a security
19 described in sub-subdivision (2)d. of this section or a security
20 covered under federal law, provided no commission or other
21 special remuneration is paid or given directly or indirectly for
22 soliciting any prospective purchaser in this State; or (ii) a dealer in
23 effecting transactions in this State limited to those transactions

1 described in Section 15(h)(2) of the Securities Exchange Act of
2 1934 [15 U.S.C. § 78o(h)(2)]. A partner, executive officer, or
3 director of a dealer, or a person occupying a similar status or
4 performing similar functions, is a salesman only if he otherwise
5 comes within this definition."

6 Section 3. G.S. 78A-2 is amended by adding a new subdivision to read:

7 "(11a) 'Security covered under federal law' means any security that is a
8 covered security under Section 18(b) of the Securities Act of 1933
9 [15 U.S.C. § 77r(b)] or rules or regulations adopted under that
10 section. 'Security covered under federal law' does not include a
11 security for which a fee required by this Article has not been paid
12 and promptly remedied following written notification from the
13 Administrator to the issuer of the nonpayment or underpayment of
14 the fee."

15 Section 4. Effective October 10, 1999, G.S. 78A-2(11a), as enacted by
16 Section 3 of this act, reads as rewritten:

17 "(11a) 'Security covered under federal law' means any security that is a
18 covered security under Section 18(b) of the Securities Act of 1933
19 [15 U.S.C. § 77r(b)] or rules or regulations adopted under that
20 section. ~~'Security covered under federal law' does not include a~~
21 ~~security for which a fee required by this Article has not been paid~~
22 ~~and promptly remedied following written notification from the~~
23 ~~Administrator to the issuer of the nonpayment or underpayment of~~
24 ~~the fee."~~

25 Section 5. G.S. 78A-17(16) reads as rewritten:

26 "(16) Any offer to purchase or to sell or any sale or issuance of a
27 security ~~security, other than a security covered under federal law,~~
28 pursuant to a plan approved by the Administrator after a hearing
29 conducted pursuant to the provisions of ~~G.S. 78A-30 of this~~
30 ~~Chapter. G.S. 78A-30."~~

31 Section 6. The title to Article 4 of Chapter 78A reads as rewritten:

32 "ARTICLE 4.

33 "Registration and Notice Filing Procedures of Securities."

34 Section 7. G.S. 78A-24 reads as rewritten:

35 "**§ 78A-24. Registration requirement.**

36 It is unlawful for any person to offer or sell any security in this State unless (i) it is
37 registered under this ~~Chapter~~ or Chapter, (ii) the security or transaction is exempted
38 under G.S. 78A-16 or 78A-17 and such exemption has not been denied or revoked
39 under ~~G.S. 78A-18~~. G.S. 78A-18, or (iii) it is a security covered under federal law."

40 Section 8. G.S. 78A-30(d) reads as rewritten:

41 "(d) The Administrator's authority under this section shall extend to the issuance
42 or the delivery of securities or ~~the delivery~~ of other consideration:

43 (1) By any corporation organized under the laws of this State; or

1 (2) In any transaction which is subject to the registration or
2 qualification requirements of this Chapter or which would be so
3 subject except for the availability of an exemption under G.S.
4 78A-16 or ~~78A-17~~ or by reason of ~~G.S. 78A-2(8)(f)~~. 78A-17, by
5 reason of G.S. 78A-2(8)(f), or by reason that the security is a
6 security covered under federal law."

7 Section 9. Article 4 of Chapter 78A of the General Statutes is amended
8 by adding a new section to read:

9 "§ 78A-31. Securities covered under federal law.

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

13 (1) Prior to the initial offer of the security in this State, all documents
14 that are part of a federal registration statement filed with the
15 Securities and Exchange Commission under the Securities Act of
16 1933, together with a consent to service of process signed by the
17 issuer and with the payment of a notice filing fee of one-tenth of
18 one percent (1/10 of 1%) of the maximum aggregate offering price
19 at which the securities covered under federal law are to be offered
20 in this State, but the notice filing fee shall not be less than twenty-
21 five dollars (\$25.00) or more than one thousand six hundred
22 dollars (\$1,600).

23 (2) After the initial offer of the security in this State, all documents
24 that are part of an amendment to a federal registration statement
25 filed with the Securities and Exchange Commission under the
26 Securities Act of 1933, which shall be filed concurrently with the
27 Administrator.

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

30 (b) With regard to any security that is covered under Section 18(b)(4)(D) of the
31 Securities Act of 1933 [15 U.S.C. § 77r(b)(4)(d)], the Administrator, by rule or order,
32 may require the issuer to file a notice on SEC Form D [17 C.F.R. § 239.500] and a
33 consent to service of process signed by the issuer no later than 15 days after the first
34 sale of the security in this State. The Administrator may, by rule, establish a fee to
35 recover costs for filing required by this section, not to exceed one hundred fifty
36 dollars (\$150.00).

37 (c) The Administrator, by rule or order, may require the filing of any document
38 filed with the Securities and Exchange Commission under the Securities Act of 1933,
39 with respect to a security covered under Section 18(b)(3) or (4) of the Securities Act
40 of 1933 [15 U.S.C. § 77r(b)(3) or (4)]. The Administrator may, by rule, establish a fee
41 to recover costs for any filing required under this section, not to exceed one hundred
42 fifty dollars (\$150.00).

43 (d) The Administrator may issue a stop order or a cease and desist order
44 suspending the offer and sale of a covered security except a covered security under

1 Section 18(b)(1) of the Securities Act of 1933 [15 U.S.C. § 77r(b)(1)], if the
2 Administrator finds that (i) the order is in the public interest, and (ii) there is a
3 failure to comply with any condition established under this section.

4 (e) The Administrator, by rule or order, may waive any of the requirements set by
5 this section."

6 Section 10. G.S. 78A-38 reads as rewritten:

7 "**§ 78A-38. Post-registration provisions.**

8 (a) Every registered dealer shall make and keep such accounts, correspondence,
9 memoranda, papers, books, and other records as the Administrator by rule ~~prescribes:~~
10 prescribes, except as provided by Section 15 of the Securities Exchange Act of 1934
11 [15 U.S.C. § 78o]. All records so required shall be preserved for three years unless
12 the Administrator by rule prescribes otherwise for particular types of records.

13 (b) Every registered dealer shall file such financial reports as the Administrator by
14 rule ~~prescribes.~~ prescribes, except as provided by Section 15 of the Securities
15 Exchange Act of 1934 [15 U.S.C. § 78o].

16 (c) If the information contained in any document filed with the Administrator is
17 or becomes inaccurate or incomplete in any material respect, the registrant shall
18 promptly file a correcting amendment unless notification of the correction has been
19 given under G.S. 78A-36(b).

20 (d) All the records referred to in subsection (a) of this section are subject at any
21 time or from time to time to such reasonable periodic, special, or other examinations
22 by representatives of the Administrator, within or without this State, as the
23 Administrator deems necessary or appropriate in the public interest or for the
24 protection of investors. For the purpose of avoiding unnecessary duplication of
25 examinations, the Administrator, insofar as he deems it practicable in administering
26 this subsection, may cooperate with the securities administrators of other states, the
27 Securities and Exchange Commission, and any national securities exchange or
28 national securities association registered under the Securities Exchange Act of 1934."

29 Section 11. G.S. 78A-49(d) reads as rewritten:

30 "(d) The Administrator may by rule or order require the filing of any prospectus,
31 pamphlet, circular, form letter, advertisement, or other sales literature or advertising
32 communication addressed or intended for distribution to prospective investors, unless
33 the security or transaction is exempted by G.S. 78A-16 or 78A-17 (except 78A-17(9),
34 (17)) and such exemption has not been denied or revoked under ~~G.S. 78A-18.~~ G.S.
35 78A-18 or is a security covered under federal law."

36 Section 12. G.S. 78A-63(a) reads as rewritten:

37 "(a) Sections 78A-8, 78A-10, 78A-24, 78A-31, 78A-36(a), and 78A-56 apply to
38 persons who sell or offer to sell when (i) an offer to sell is made in this State, or (ii)
39 an offer to buy is made and accepted in this State."

40 Section 13. G.S. 78A-63(f) reads as rewritten:

41 "(f) Every applicant for registration under this Chapter and every issuer who
42 proposes to offer a security in this State through any person acting on an agency basis
43 in the common-law sense shall file with the Administrator, in such form as he by rule
44 prescribes, an irrevocable consent appointing the Administrator or his successor in

1 office to be his attorney to receive service of any lawful process in any noncriminal
2 suit, action or proceeding against him or his successor, executor or administrator
3 which arises under this Chapter or any rule or order hereunder after the consent has
4 been filed, with the same force and validity as if served personally on the person
5 filing the consent. A person who has filed such a consent in connection with a
6 previous registration or notice filing need not file another. Service may be made by
7 leaving a copy of the process in the office of the Administrator, but it is not effective
8 unless (i) the plaintiff, who may be the Administrator in a suit, action, or proceeding
9 instituted by him, forthwith sends notice of the service and a copy of the process by
10 registered mail to the defendant or respondent at his address on file with the
11 Administrator, and (ii) the plaintiff's affidavit of compliance with the subsection is
12 filed in the case on or before the return day of the process, if any, or within such
13 further time as the court allows."

14

15 II. Investment Advisers

16 Section 14. G.S. 78C-2 reads as rewritten:

17 "§ 78C-2. Definitions.

18 When used in this Chapter, the definitions of G.S. 78A-2 shall apply along with
19 the following, unless the context otherwise requires:

20 (1) 'Investment adviser' means any person who, for compensation,
21 engages in the business of advising others, either directly or
22 through publications or writings, as to the value of securities or as
23 to the advisability of investing in, purchasing, or selling securities,
24 or who, for compensation and as part of a regular business, issues
25 or promulgates analyses or reports concerning securities. 'Investment adviser' also includes financial planners and other
26 persons who, as an integral component of other financially related
27 services, provide the foregoing investment advisory services to
28 others for compensation and as a part of a business or who hold
29 themselves out as providing the foregoing investment advisory
30 services to others for compensation. 'Investment adviser' does not
31 include:
32

- 33 a. An investment adviser representative or a person excluded
34 from the definition of investment adviser representative
35 pursuant to G.S. 78C-2(3)c.;
- 36 b. A bank, savings institution, or trust company;
- 37 c. A lawyer, accountant, engineer, or teacher whose
38 performance of any such services is solely incidental to the
39 practice of his profession;
- 40 d. A dealer or its salesman whose performance of these
41 services is solely incidental to the conduct of its business as
42 a dealer and who receives no special compensation for
43 them;

- 1 e. A publisher of any newspaper, news column, newsletter,
2 news magazine, or business or financial publication or
3 service, whether communicated in hard copy form, or by
4 electronic means, or otherwise, that does not consist of the
5 rendering of advice on the basis of the specific investment
6 situation of each client;
- 7 f. A person solely by virtue of such person's services to or on
8 behalf of any 'business development company' as defined in
9 Section 202(a)(22) of the Investment Advisers Act of 1940
10 provided the business development company is not an
11 'investment company' by reason of Section 3(c)(1) of the
12 Investment Company Act of 1940, as both acts were in effect
13 on June 1, 1988;
- 14 g. A personal representative of a decedent's estate, guardian,
15 conservator, receiver, attorney in fact, trustee in bankruptcy,
16 trustee of a testamentary trust, or a trustee of an inter vivos
17 trust, not otherwise engaged in providing investment
18 advisory services, and the performance of these services is
19 not a part of a plan or scheme to evade registration or the
20 substantive requirements of this Chapter;
- 21 h. A licensed real estate agent or broker whose only
22 compensation is a commission on real estate sold;
- 23 i. An individual or company primarily engaged in acting as a
24 business broker whose only compensation is a commission
25 on the sale of a business;
- 26 j. An individual who, as an employee, officer or director of, or
27 general partner in, another person and in the course of
28 performance of his duties as such, provides investment
29 advice to such other person, or to entities that are affiliates
30 of such other person, or to employee benefit plans of such
31 other person or its affiliated entities, or, with respect to such
32 employee benefit plans, to employees of such other person
33 or its affiliated entities;
- 34 k. Any person who is exempt from registration under the
35 Investment Advisers Act of 1940 by operation of Section
36 203(b)(3) of said act or by operation of any rule or
37 regulation promulgated by the United States Securities and
38 Exchange Commission under or related to said Section
39 203(b)(3) provided that any reference in this sub-subsection
40 to any statute, rule or regulation shall be deemed to
41 incorporate said statute, rule or regulation (and any statute,
42 rule or regulation referenced therein) as in effect on June 1,
43 1988;

- 1 l. An employee of a person described in subdivision b., e., f.,
2 g., h., or j. of G.S. 78C-2(1) acting on behalf of such person
3 within the scope of his employment;
- 4 m. An investment adviser who is covered under federal law as
5 defined in subdivision (4) of this section.
- 6 ~~m.~~ n. Such other persons not within the intent of this subsection
7 as the Administrator may by rule or order designate.
- 8 (2) 'Investment Advisers Act of 1940' means the federal statute of that
9 name as amended before or after the effective date of this Chapter.
- 10 (3) 'Investment adviser representative' means any partner, officer,
11 director (or a person occupying a similar status or performing
12 similar functions) or other individual ~~employed by or associated~~
13 ~~with an investment adviser, except clerical personnel, who: except~~
14 clerical or ministerial personnel, who is employed by or associated
15 with an investment adviser that is registered or required to be
16 registered under this Chapter, or who has a place of business
17 located in this State and is employed by or associated with an
18 adviser excluded under the definition of 'investment adviser
19 covered under federal law', and who:
- 20 a. Makes any recommendations or otherwise renders advice
21 regarding securities directly to clients,
- 22 b. Manages accounts or portfolios of clients,
- 23 c. Determines which recommendations or advice regarding
24 securities should be given; provided, however if there are
25 more than five such persons employed by or associated
26 with an investment adviser, who do not otherwise come
27 within the meaning of G.S. 78C-2(3)a., b., d., or e., then
28 only the direct supervisors of such persons are deemed to
29 be investment adviser representatives under G.S. 78C-
30 2(3)c.,
- 31 d. Solicits, offers or negotiates for the sale of or sells
32 investment advisory services, unless such person is a dealer
33 or salesman registered under Chapter 78A of the General
34 Statutes and the person would not be an investment
35 adviser representative except for the performance of the
36 activities described in G.S. 78C-2(3)d., or
- 37 e. Directly supervises investment adviser representatives as
38 defined in G.S. 78C-2(3)a., b., c. (unless such investment
39 adviser representatives are already required to register due
40 to their role as supervisors by operation of G.S. 78C-
41 2(3)c.), or d. in the performance of the foregoing activities.
- 42 (4) 'Investment adviser covered under federal law' means any adviser
43 who is (i) registered under Section 203 of the Investment Advisers
44 Act of 1940 [15 U.S.C. § 80b-3]; or (ii) excluded from the

1 definition of 'investment adviser' under Section 202(a)(11) of the
2 Investment Advisers Act of 1940 [15 U.S.C. § 80b-2(a)(11)].
3 'Investment adviser covered under federal law' does not include
4 advisers who have received written notification of nonpayment or
5 underpayment of a fee and have failed and refused to pay the fee."

6 Section 15. Effective October 10, 1999, G.S. 78C-2(4) as enacted by
7 Section 14 of this act, reads as rewritten:

8 "(4) 'Investment adviser covered under federal law' means any adviser
9 who is (i) registered under Section 203 of the Investment Advisers
10 Act of 1940 [15 U.S.C. § 80b-3]; or (ii) excluded from the
11 definition of 'investment adviser' under Section 202(a)(11) of the
12 Investment Advisers Act of 1940 [15 U.S.C. § 80b-2(a)(11)].
13 ~~'Investment adviser covered under federal law' does not include~~
14 ~~advisers who have received written notification of nonpayment or~~
15 ~~underpayment of a fee and have failed and refused to pay the fee."~~

16 Section 16. The title to Article 3 of Chapter 78C reads as rewritten:

17 "ARTICLE 3.

18 "Registration and Notice Filing Procedures of Investment
19 Advisers and Investment Adviser Representatives."

20 Section 17. G.S. 78C-16 reads as rewritten:

21 "**§ 78C-16. Registration and notice filing requirement.**

22 (a) It is unlawful for any person to transact business in this State as an investment
23 adviser or as an investment adviser representative unless:

- 24 (1) ~~He~~ The person is ~~so~~ registered under this Chapter;
- 25 (2) ~~His~~ The person's only clients in this State are investment
26 companies as defined in the Investment Company Act of 1940,
27 other investment advisers, investment advisers covered under
28 federal law, dealers, banks, trust companies, savings institutions,
29 savings and loan associations, insurance companies, employee
30 benefit plans with assets of not less than one million dollars
31 (\$1,000,000), and governmental agencies or instrumentalities,
32 whether acting for themselves or as trustees with investment
33 control, or other institutional investors as are designated by rule or
34 order of the Administrator;
- 35 (3) ~~He has no place of business in the State and during any period of~~
36 ~~12 consecutive months does not direct business communications~~
37 ~~into this State in any manner to more than 10 clients, other than~~
38 ~~those specified in subdivision (2), whether or not he or any of the~~
39 ~~persons to whom the communications are directed is then present~~
40 ~~in the State; or~~ The person has no place of business in this State,
41 and during the preceding 12-month period has had not more than
42 five clients, other than those specified in subdivision (2) of this
43 subsection, who are residents of this State; or

1 (4) ~~He~~ The person is an investment adviser representative employed
2 by or associated with an investment adviser exempt from
3 registration under subdivisions (2) or (3), above.

4 (b) ~~It is unlawful for any investment adviser required to be registered to employ~~
5 ~~or associate an investment adviser representative unless the investment adviser~~
6 ~~representative is registered under this Chapter. The registration of an investment~~
7 ~~adviser representative is not effective during any period when he is not employed by~~
8 ~~or associated with an investment adviser registered under this Chapter. When an~~
9 ~~investment adviser representative begins or terminates employment or association~~
10 ~~with an investment adviser, the investment adviser shall promptly notify the~~
11 ~~Administrator. It is unlawful for any (i) person required to be registered as an~~
12 ~~investment adviser under this Chapter to employ an investment adviser representative~~
13 ~~unless the investment adviser representative is registered under this Chapter,~~
14 ~~provided that the registration of an investment adviser representative is not effective~~
15 ~~during any period when the representative is not employed by an investment adviser~~
16 ~~registered under this Chapter; or (ii) investment adviser covered under federal law to~~
17 ~~employ, supervise, or associate with an investment adviser representative having a~~
18 ~~place of business located in this State, unless the investment adviser representative is~~
19 ~~registered under this Chapter, or is exempt from registration. When an investment~~
20 ~~adviser representative begins or terminates employment with an investment adviser,~~
21 ~~the investment adviser (in case of G.S. 78C-16(b)(i)), or the investment adviser~~
22 ~~representative (in case of G.S. 78C-16(b)(ii)) shall notify promptly the Administrator.~~
23 No investment adviser representative may be registered with more than one
24 investment adviser unless each of the investment advisers which employs or associates
25 the investment adviser representative is under common ownership or control.

26 (c) Every registration or notice filing expires December 31st of each year unless
27 renewed.

28 (d) Except with respect to investment advisers whose only clients are those
29 described in G.S. 78C-16(a)(2), it is unlawful for any investment adviser covered
30 under federal law to conduct advisory business in this State unless the investment
31 adviser complies with the provisions of G.S. 78C-17."

32 Section 18. G.S. 78C-17 reads as rewritten:

33 "**§ 78C-17. Registration procedures.**

34 (a) An investment adviser, or investment adviser representative may obtain an
35 initial or renewal registration by filing with the Administrator or his designee an
36 application together with a consent to service of process pursuant to G.S. 78C-46(b).
37 The application shall contain whatever information the Administrator by rule
38 requires concerning such matters as:

- 39 (1) The applicant's form and place of organization;
40 (2) The applicant's proposed method of doing business;
41 (3) The qualifications and business history of the applicant; in the case
42 of an investment adviser, the qualifications and business history of
43 any partner, officer, or director, any person occupying a similar

1 status or performing similar functions, or any person directly or
2 indirectly controlling the investment adviser;

3 (4) Any injunction or administrative order or conviction of a
4 misdemeanor involving a security or any aspect of the securities
5 business and any conviction of a felony;

6 (5) The applicant's financial condition and history; and

7 (6) Any information to be furnished or disseminated to any client or
8 prospective client.

9 If no denial order is in effect and no proceeding is pending under G.S. 78C-19,
10 registration becomes effective at noon of the 30th day after an application is filed.
11 The Administrator may by rule or order specify an earlier effective date, and he may
12 by order defer the effective date until noon of the 30th day after the filing of any
13 amendment. Registration of an investment adviser automatically constitutes
14 registration of any investment adviser representative who is a partner, executive
15 officer, or director, or a person occupying a similar status or performing similar
16 functions.

17 (a1) The Administrator may require investment advisers covered under federal law
18 to file with the Administrator any documentation filed with the Securities and
19 Exchange Commission as a condition of doing business in this State. This subsection
20 does not apply to investment advisers covered under federal law whose only clients
21 are those described in G.S. 78C-16(a)(2).

22 (b) Every applicant for initial or renewal registration shall pay a filing fee of two
23 hundred dollars (\$200.00) in the case of an investment adviser, and forty-five dollars
24 (\$45.00) in the case of an investment adviser representative. When an application is
25 denied or withdrawn, the Administrator shall retain the fee.

26 (c) A registered investment adviser may file an application for registration of a
27 successor, whether or not the successor is then in existence, for the unexpired portion
28 of the year. There shall be no filing fee.

29 (c1) Every person acting as an investment adviser covered under federal law in this
30 State shall pay an initial filing fee of one hundred dollars (\$100.00) and a renewal
31 notice filing fee of one hundred dollars (\$100.00).

32 (d) The Administrator may by rule establish minimum net capital requirements
33 not to exceed one hundred thousand dollars (\$100,000) for registered investment
34 advisers, subject to the limitations of Section 222 of the Investment Advisers Act of
35 1940 [15 U.S.C. § 80(b)-18a], which may include different requirements for those
36 investment advisers who maintain custody of clients' funds or securities or who have
37 discretionary authority over same and those investment advisers who do not.

38 (e) The Administrator may by rule require registered investment advisers who
39 have custody of or discretionary authority over client funds or securities to post
40 surety bonds in amounts up to one hundred thousand dollars (\$100,000), subject to
41 the limitations of Section 222 of the Investment Advisers Act of 1940 [15 U.S.C. §
42 80(b)-18a], and may determine their conditions. Any appropriate deposit of cash or
43 securities shall be accepted in lieu of any bond so required. No bond may be
44 required of any investment adviser whose minimum net capital, which may be

1 defined by rule, exceeds one hundred thousand dollars (\$100,000). Every bond shall
2 provide for suit thereon by any person who has a cause of action under G.S. 78C-38
3 and, if the Administrator by rule or order requires, by any person who has a cause of
4 action not arising under this Chapter. Every bond shall provide that no suit may be
5 maintained to enforce any liability on the bond unless brought within the time
6 limitations of G.S. 78C-38(d)."

7 Section 19. G.S. 78C-18 reads as rewritten:

8 "**§ 78C-18. Post-Registration provisions.**

9 (a) Every registered investment adviser shall make and keep such accounts,
10 correspondence, memoranda, papers, books and records as the Administrator by rule
11 ~~prescribes.~~ prescribes, except as provided by Section 222 of the Investment Advisers
12 Act of 1940 [15 U.S.C. § 80(b)-18a].

13 All records so required shall be preserved for three years unless the Administrator
14 by rule prescribes otherwise for particular types of records.

15 (b) With respect to investment advisers, the Administrator may require that
16 certain information be furnished or disseminated as necessary or appropriate in the
17 public interest or for the protection of investors and advisory clients. To the extent
18 determined by the Administrator in his discretion, information furnished to clients or
19 prospective clients of an investment adviser pursuant to the Investment Advisers Act
20 of 1940 and the rules thereunder may be used in whole or partial satisfaction of this
21 requirement.

22 (c) Every registered investment adviser shall file such financial reports as the
23 Administrator by rule ~~prescribes.~~ prescribes, except as provided by Section 222 of the
24 Investment Advisers Act of 1940 [15 U.S.C. § 80(b)-18a].

25 (d) If the information contained in any document filed with the Administrator is
26 or becomes inaccurate or incomplete in any material respect, the registrant or an
27 investment adviser covered under federal law shall promptly file a correcting
28 ~~amendment~~ amendment, if the document is filed with respect to a registrant or when
29 the amendment is required to be filed with respect to an investment adviser covered
30 under federal law, unless notification of the correction has been given under G.S.
31 78C-16(b).

32 (e) All the records referred to in subsection (a) of this section are subject at any
33 time or from time to time to such reasonable periodic, special, or other examinations
34 by representatives of the Administrator, within or without this State, as the
35 Administrator deems necessary or appropriate in the public interest or for the
36 protection of investors. For the purpose of avoiding unnecessary duplication of
37 examinations, the Administrator, insofar as he deems it practicable in administering
38 this subsection, may cooperate with the securities administrators of other states, the
39 Securities and Exchange Commission, and any national securities exchange or
40 national securities association registered under the Securities Exchange Act of 1934."

41 Section 20. G.S. 78C-46(b) reads as rewritten:

42 "(b) Every applicant for registration under this Chapter shall file with the
43 Administrator, in such form as he by rule prescribes, an irrevocable consent
44 appointing the Administrator or his successor in office to be his attorney to receive

1 service of any lawful process in any noncriminal suit, action or proceeding against
2 him or his successor, executor or administrator which arises under this Chapter or
3 any rule or order hereunder after the consent has been filed, with the same force and
4 validity as if served personally on the person filing the consent. A person who has
5 filed such a consent in connection with a previous registration or notice filing need
6 not file another. Service may be made by leaving a copy of the process in the office
7 of the Administrator, but it is not effective unless (i) the plaintiff, who may be the
8 Administrator in a suit, action, or proceeding instituted by him, forthwith sends
9 notice of the service and a copy of the process by registered or certified mail to the
10 defendant or respondent at his last address on file with the Administrator, and (ii) the
11 plaintiff's affidavit of compliance with the subsection is filed in the case on or before
12 the return day of the process, if any, or within such further time as the court allows."

13 Section 21. Sections 4 and 15 of this act become effective October 10,
14 1999. The remainder of this act becomes effective October 1, 1997. Sections 1
15 through 13 of this act apply to securities offered or sold and to persons who offer or
16 sell securities on or after the applicable effective date of each of these sections.
17 Sections 14 through 20 of this act apply to advisory business conducted on or after
18 the applicable effective date of each of these sections.



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 439

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

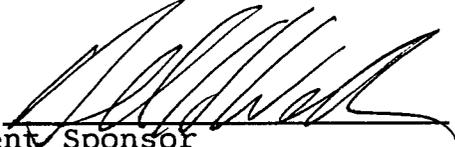
S439-ALJ-5/19

Date _____, 1997

Comm. Sub. [YES]
Amends Title []
2nd Edition

Senator _____

1 moves to amend the bill on page 10, lines 30 and 31, by rewriting
2 those lines to read:
3 "State shall pay an initial filing fee of two hundred dollars
4 (\$200.00) and a renewal notice filing fee of two hundred dollars
5 (\$200.00)."

SIGNED 
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 466

Short Title: Tax Exempt Parental Savings Trust Fund.

(Public)

Sponsors: Senators Hartsell; and Lee.

Referred to: Finance.

March 24, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO EXEMPT CERTAIN INCOME FROM THE PARENTAL SAVINGS
3 TRUST FUND FROM STATE INCOME TAX.
4 The General Assembly of North Carolina enacts:
5 Section 1. G.S. 105-134.6(b) is amended to add a new subdivision to
6 read:
7 "(12) Earnings or distributions from the Parental Savings Trust Fund of
8 the State Education Assistance Authority used for the
9 postsecondary education expenses of a beneficiary of the Fund.
10 For the purposes of this subdivision, the term 'postsecondary
11 education expenses' has the meaning provided in G.S. 116-
12 201(b)(7a)."
13 Section 2. G.S. 116-201(b) is amended to add a new subdivision to read
14 as follows:
15 "(7a) 'Postsecondary education expenses' means expenses, as further
16 described in rules and contracts adopted by the Authority for
17 participation in the Parental Savings Trust Fund, for tuition, fees,
18 books, supplies, equipment, room, and board, and other expenses
19 incurred in connection with enrollment at an eligible institution."
20 Section 3. This act is effective for taxable years beginning on or after
21 January 1, 1998.

EXPLANATION OF SENATE BILL 466
Parental Savings Trust Fund

TO: Senate Finance Committee
FROM: Sabra Faires, Committee Counsel
DATE: May 13, 1997
SPONSOR: Senator Fletcher Hartsell

Senate Bill 466 excludes two types of income from State individual income tax. The items excluded are the annual earnings on amounts contributed to the Parental Savings Trust Fund for the future payment of room or board at an institution of higher education and the amount distributed to a beneficiary of the Fund that is used to pay for higher education expenses. The bill is effective for taxable years beginning on or after January 1, 1998.

The Parental Savings Trust Fund is part of the State Education Assistance Authority. The Fund is authorized by G.S. 116-209.25, which was enacted by the 1996 General Assembly. The Authority plans to begin the Fund in the fall of this year. The Parental Savings Trust Fund is a kind of qualified state tuition program under section 529 of the Internal Revenue Code.

Section 529 of the Code excludes some of the amounts earned by contributors to the Parental Savings Trust Fund from federal tax and, therefore, North Carolina tax as well. Under federal law, earnings on amounts contributed for the payment of tuition, fees, books, supplies, and equipment at an institution of higher education are excluded from tax but not the earnings on amounts contributed for room and board. Also under federal law, the amount distributed to a beneficiary of the Fund that exceeds the amount contributed is taxable. Under federal law, the tax on the investment earnings is deferred until a distribution is made, at which time the earnings are taxable to the beneficiary rather than the contributor.

This bill establishes a different tax treatment for federal and state purposes for earnings on amounts contributed for the payment of room and board and for distributions from the Fund. The State exclusion is accomplished by deducting these amounts from federal taxable income. Federal taxable income is the starting point for determining State taxable income.

Under the Parental Savings Trust Fund, a person can contribute amounts for a child who is less than 16 years old. Either the child or the person making the contributions must be a resident of this State. The amount in the account can

be used to pay expenses at any accredited public or private college or community college.



NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

DRAFT/FRD

BILL NUMBER: SB 466 (First Edition)

SHORT TITLE: Tax Exempt Parental Savings Trust Fund

SPONSOR(S): Senators Hartsell and Lee

FISCAL IMPACT

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

FY 1997-98 FY 1998-99 FY 1999-00 FY 2000-01 FY 2001-02

REVENUES

General Fund	-	(\$3,269)	(\$20,413)	(\$54,244)	(\$105,704)
--------------	---	-----------	------------	------------	-------------

NOTE: The revenue loss will increase to \$819,000 in year 2007 and remain at that level. See assumptions and methodology.

PRINCIPAL DEPARTMENT(S) &

PROGRAM(S) AFFECTED: State Education Assistance Authority, Department of State Treasurer

EFFECTIVE DATE: The act is effective for taxable years beginning on or after January 1, 1998.

BILL SUMMARY: The bill exempts the earnings of the Parental Savings Trust Fund from state individual income tax.

BACKGROUND: The 1996 General Assembly established a Parental Savings Trust Fund to encourage parents and others to save for postsecondary education expenses. (1996, 2nd Extra Session, c. 18, s.16.7) The Fund is administered by the State Education Assistance Authority and Fund investments are made by the State Treasurer. Within the Fund there will be two accounts. One account will be for qualified expenses - tuition, fees, books, supplies and equipment. Earnings from this account are exempt from federal and state individual income tax until the proceeds are distributed to the beneficiary (and taxed at the beneficiary's tax rate). The second account will be for non-qualified expenses - travel, room, board, and incidentals. Earnings from this account are assigned to the contributor and taxed in the year earned. The Authority will ask contributors to the Fund whether they are saving for a public or private institution, then determine how much should be placed in each account based on average college costs.

To assist those parents or interested parties whose savings in the Fund are insufficient to pay for all college expenses, the General Assembly authorized the State Education Assistance Authority to develop a loan program in conjunction with the Parental Savings Trust Fund.

ASSUMPTIONS AND METHODOLOGY: The consultant that developed the Parental Savings Trust Fund concept for the State Education Assistance Authority assumes the following criteria in projecting the number of participants in the Fund:

- 1) Children age birth to 16 are eligible for the account. Establishing an account for a person over age 16 would not yield sufficient savings in time for college.
- 2) Approximately 64,000 children finish high school in the state each year and approximately 43% of them pursue higher education (excluding community college).
- 3) Using the data above, the target population is approximately 448,000

16 (age levels) X 64,000 (high school graduates in each age group) X .43 (percent going to college)

- 4) Each year between .6% and 1.2% of this target population will start savings accounts.

This fiscal note assumes the Fund will attract 1.2% of the target population or 5,376 new accounts each year. The Fund anticipates receiving its first accounts in October 1997. The average account holder will contribute \$125 a month. The average interest rate earned by these contributions is 5.5%. (This is equivalent to the State Treasurer's short term interest rate of 6.5% minus 1% in administrative charges.) There will be no payouts from the Fund for the first six years.

Based on the above assumptions, the interest earned by the Fund each calendar year is as follows:

1998	\$	93,426
1999	\$	583,240
2000	\$	1,549,839
2001	\$	3,020,115
2002	\$	5,022,482

2007 \$12,600,000 (max)

For this fiscal note, it is assumed that half of the Fund earnings will be credited to qualified expenses and tax deferred. Federal tax law allows the earnings on qualified expenses (tuition, fees, books) in the Fund to be tax deferred until the student attends college. State tax law conforms with the federal law on this topic. For private schools, tuition and fees might be 70% of the overall cost of attending the university. For public schools, tuition and fees may average about 30% of the cost of a university education. Since there is no sound basis to judge the college

destination of future Fund participants, this fiscal note chooses the mid-point of 50%. Thus 50% of the earnings will be taxed at the student's tax rate when the funds are paid out and 50% of the earnings will be taxed at the contributors' rate when earned each year.

Under SB 466, the interest earned in 1998 on non-qualified expenses accounts in the Fund will be tax exempt when individuals file their income tax returns in the spring of 1999. It is assumed that the average Fund contributor pays a 7% individual income tax rate. The tax loss for non-qualified expenses is 50% of the estimated earnings on page 2 times the 7% tax rate.

FY 1998-99	\$ 3,269
FY 1999-00	\$ 20,413
FY 2000-01	\$ 57,244
FY 2001-02	\$105,704
FY 2006-07	\$441,000

The interest on qualified expenses would be taxable under current law when the first payouts are made in FY 2004-05. SB 466 would exempt the earnings on qualified expenses from tax. If the average student works in the summer, works part-time in school, and is claimed as a dependent on his/her parents' tax return, then it is possible that the distribution from the Fund will be subject to the minimum state income tax of 6%. In FY 2006-07, the total earnings in the Fund are estimated to be \$12.6 million, with 50% of this amount or \$6.3 million designated for qualified expenses. Applying a 6% tax rate to \$6.3 million is equal to \$378,000.

The maximum tax loss for qualified and non-qualified expenses based on the scenario outlined above is \$819,000 beginning in FY 2006-07.

FISCAL RESEARCH DIVISION

733-4910

PREPARED BY: Richard Bostic

APPROVED BY: Tom Covington

DATE: May 13, 1997

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

D

SENATE BILL 466
Proposed Senate Finance Committee Substitute
S466-CSLJ-5/13

Short Title: No Tax On Parental Savings Trust Fund. (Public)

Sponsors:

Referred to: Finance.

March 24, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO EXEMPT FROM STATE INCOME TAX ALL OF THE ANNUAL
3 INVESTMENT INCOME EARNED BY CONTRIBUTORS ON DEPOSITS IN THE
4 PARENTAL SAVINGS TRUST FUND AS WELL AS THE DISTRIBUTIONS TO
5 BENEFICIARIES OF THAT FUND.
6 The General Assembly of North Carolina enacts:
7 Section 1. G.S. 105-134.6(b) is amended by adding two
8 new subdivisions to read:
9 "(12) Interest and other investment earnings on
10 amounts contributed to the Parental Savings
11 Trust Fund of the State Education Assistance
12 Authority for the payment of room or board at
13 an eligible educational institution, as
14 defined in section 135(c)(3) of the Code.
15 (13) The amount that is distributed to a
16 beneficiary of the Parental Savings Trust Fund
17 of the State Education Assistance Authority if
18 the earnings on the amount are excluded from
19 income under subdivision (12) of this
20 subsection or section 529 of the Code."

1 Section 2. This act is effective for taxable years
2 beginning on or after January 1, 1998.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

H. B. No. _____

DATE _____

S. B. No. 1035, PCS

Amendment No. _____

(to be filled in by
Principal Clerk)

Rep.) _____
Sen.) _____

moves to amend the bill on page 2, line 40

by deleting "In 1999" and substituting "Thereafter";

and on page 2, line 41, by deleting the line;

and on page 5, line 34,
by deleting "three percent (3%)" and substituting
"two percent (2%)";

and on page 5, lines 36-37,
by deleting "Fifty dollars (\$50.00)" and substituting
"Forty dollars (\$40.00)";

and on page 5, line 41,
by deleting "one thousand dollars (\$1,000)" and substituting
"seven hundred fifty dollars (\$750.00)";

and on page 6, line 6, by deleting "to 1999" and substituting "Thereafter";

and on page 6, line 7, by deleting the line;
SIGNED Debbie Wimer

and on page 6, line 14, by deleting "2000," and substituting "1999";

ADOPTED _____ FAILED _____ TABLED _____

and on page 6, line 1, by deleting "five hundred dollars (\$500.00)" and substituting
"two hundred fifty dollars (\$250.00)"

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

Name of Committee

5/20/97
DateVISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

<i>Ilo Moses</i>	NCATA
<i>Jim Bazluki</i>	NCATA
<i>Rick Proctor</i>	NCATA
<i>Craig Baker</i>	NCATA
<i>Dan TARRA</i>	NCATA
<i>Jack Hawke</i>	
<i>VANCE KINLAN</i>	NCCA
<i>CM Caron</i>	NCCA
<i>Guy Ralph</i>	NC DOR
<i>George Long</i>	NC DOR

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

FINANCE COMMITTEE REPORT

Senator David Hoyle, Co-Chair
Senator John Kerr, Co-Chair

Tuesday, May 20, 1997

SENATOR HOYLE,

submits the following with recommendations as to passage:

**UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1,
BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2**

S.B.(CS #1)660

License Athletic Trainers

Draft Number: PCSX4603
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 1

Committee Clerk Comment: SB 660cs was adopted in Sen. Finance on 5-14-97, reported out on 5-15-97, returned to Sen. Finance on 5-19-97 for assessment report and heard again in Sen. Finance on 5-20-97 where the 2nd com. sub. was adopted

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT

Senator David Hoyle, Co-Chair
Senator John Kerr, Co-Chair

Tuesday, May 20, 1997

SENATOR HOYLE,

submits the following with recommendations as to passage:

FAVORABLE

S.B.	916	Cosmetologists	
		Sequential Referral:	None
		Recommended Referral:	None

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B.	649	Lobbyist Penalty	
		Draft Number:	PCS1811
		Sequential Referral:	None
		Recommended Referral:	None
		Long Title Amended:	No

Notes
 S. 649 taken up
 in 5/14/97 Meeting
 had to wait on com.
 sub to report out today

TOTAL REPORTED: 2

Committee Clerk Comment: None

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

FINANCE COMMITTEE REPORT

Senator David Hoyle, Co-Chair
Senator John Kerr, Co-Chair

Monday, May 26, 1997

SENATOR HOYLE,

submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B.	374	Chiropractor Supplements Exempt
		Draft Number: PCS4606
		Sequential Referral: None
		Recommended Referral: None
		Long Title Amended: Yes

TOTAL REPORTED: 1

Committee Clerk Comment: SB 374 taken up on 5/20

SENATE FINANCE COMMITTEE

WEDNESDAY, MAY 21, 1997

12 NOON - ROOM 544 LOB

The Senate Finance Committee met on May 21, 1997, with Senator Kerr presiding. There were 23 committee members present.

H.B. 65 - Canton Deannexation

Representative Beall was recognized to explain S.B. 65 and at the conclusion of his explanation, Senator Weinstein moved for a "favorable" report. The motion carried. Copy of bill included in the minutes.

H.B. 474 - Industrial Revenue Bonds/AB

Representative Sutton was recognized and explained this bill. Senator Dalton moved for a "favorable" report and the motion carried. Copy of bill and fiscal note included in the minutes.

H.B. 810 - Nash Room Tax

Representative Tolson was recognized and explained this bill. Senator Albertson moved for a "favorable" report and the motion carried. Copy of bill included in the minutes.

H.B. 348 - Cider/Vinegar Manufacturer Permit

Senator Reeves was recognized to explain this bill for Representative Eddins. After his explanation and a short discussion by the members, Senator Foxx moved for a "favorable" report and the motion carried. Copy of bill and fiscal note included in the minutes.

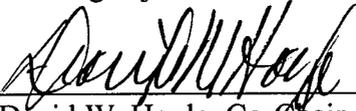
S.B. 1035 - Modify Food Tax/Merchant's Discount

Senator Kerr was recognized to continue the discussion on this bill from Tuesday. Senator Winner sent forth an amendment. Dave Crofts, Fiscal Research, explained the fiscal note. Senator Winner explained the amendment. Fran Preston, representing the North Carolina Merchants' Association, and speaking for other groups, was introduced and spoke in favor of this bill. Senator Larry Shaw moved for adoption of the amendment and the motion carried. On motion by Senator Foxx, S.B. 1035 was given a "favorable" report, as amended, and will be re-referred to Appropriations as a new committee substitute. Copy of bill, committee substitute, amendment, new committee substitute, explanation and fiscal note.

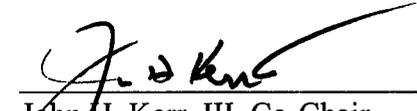
Minutes - Senate Finance Committee
May 21, 1997
Page 2

Senator Hoyle announced that Senator Dalton's birthday is today and everybody is invited for cake. Also, a subcommittee will be appointed tomorrow to work on Senator Lucas's S.B. 482.

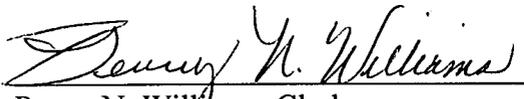
Meeting adjourned.



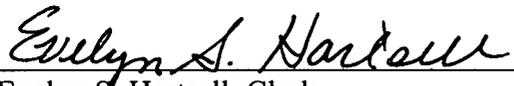
David W. Hoyle, Co-Chair
Senate Finance Committee



John H. Kerr, III, Co-Chair
Senate Finance Committee



Penny N. Williams, Clerk



Evelyn S. Hartsell, Clerk

NOTE:

Agenda is Attachment # 1
Visitors' Sign Up Sheet is Attachment # 2
Committee Reports are Attachment # 3

S.B. 712 on the Agenda was not heard at this committee meeting.

AGENDA

SENATE FINANCE COMMITTEE

Wednesday, May 21, 1997

12 Noon - Room 544

S.B. 712 - Substance Abuse Specialists. - Sen. Reeves

S.B. 1035 - Modify Food Tax/Merchant's Discount - Sen. Kerr

H.B. 65 - Canton Deannexation - Rep. Beall

H.B. 348 - Cider/Vinegar Manufacturer Permit. - Rep. Eddins

H.B. 474 - Industrial Revenue Bonds/AB. - Rep. Sutton

H.B. 810 - Nash Room Tax - Rep. Tolson

1 of S.R. 1833 and the Westerly line of Food Lion, Inc., (DB 429, Pg 34); thence with
2 said right-of-way and property line, along the Present Town Limits the following
3 three calls: South 07° 08' 48" West, 96.00'; South 11° 58' 31" West, 193.99'; and
4 South 23° 18' 08" West, 138.77' to the Point of Beginning, containing 0.58 Acre
5 within the right-of-way of S.R. 1833 and 12.19 Acres of the 15.73-Acre Ingles
6 Markets, Inc., Tract, all as shown on a map prepared by Roger M. Lyda, R.L.S.,
7 dated April 25th, 1995.

8 Section 2. This act shall have no effect upon the validity of any liens of
9 the Town of Canton for ad valorem taxes or special assessments outstanding before
10 the effective date of this act. Such liens may be collected or foreclosed upon after
11 the effective date of this act as though the property were still within the corporate
12 limits of the Town of Canton.

13 Section 3. This act becomes effective June 30, 1997.

1 nevertheless be valid and sufficient for all purposes the same as if ~~he~~ the person had
2 remained in office until such delivery. The authority may also provide for the
3 authentication of the bonds by a trustee or fiscal agent. The bonds may be issued in
4 coupon or in fully registered form, or both, as the authority may determine, and
5 provision may be made for the registration of any coupon bonds as to principal alone
6 and also as to both principal and interest, and for the reconversion into coupon
7 bonds of any bonds registered as to both principal and interest, and for the
8 interchange of registered and coupon bonds.

9 The proceeds of the bonds of each issue shall be used solely for the payment of the
10 cost of the project or projects, or a portion thereof, for which ~~such~~ the bonds ~~shall~~
11 ~~have been~~ were issued, and shall be disbursed in such manner and under such
12 restrictions, if any, as the authority may provide in the financing agreement and the
13 security document. If the proceeds of the bonds of any issue, by reason of increased
14 construction costs or error in estimates or otherwise, shall be less than such cost,
15 additional bonds may in like manner be issued to provide the amount of ~~such~~ the
16 deficiency. ~~The~~

17 The proceeds of bonds shall not be used to refinance the cost of a project. For the
18 purposes of this section, a cost of a project is considered refinanced if both of the
19 following conditions are met:

20 (1) The cost is initially paid from sources other than bond proceeds,
21 and the original expenditure is to be reimbursed from bond
22 proceeds.

23 (2) The original expenditure was paid more than 60 days before the
24 authority took some action indicating its intent that the
25 expenditure would be financed or reimbursed from bond proceeds.

26 However, preliminary expenditures that are incurred prior to the commencement of
27 the acquisition, construction, or rehabilitation of a project, such as architectural costs,
28 engineering costs, surveying costs, soil testing costs, bond issuance costs, and other
29 similar costs, may be reimbursed from bond proceeds even if these costs are incurred
30 or paid more than 60 days prior to the authority's action. This exception that allows
31 preliminary expenditures to be reimbursed from bond proceeds, regardless of whether
32 or not they are incurred or paid within 60 days of the authority's action, does not
33 include costs that are incurred incident to the commencement of the construction of a
34 project, such as expenditures for land acquisition and site preparation. In any event,
35 an expenditure originally paid before the authority took some action indicating its
36 intent that the expenditures would be financed or reimbursed from bond proceeds
37 may only be reimbursed from bond proceeds if the authority finds that reimbursing
38 those costs from bond proceeds will promote the purposes of this Chapter.

39 The authority may issue interim receipts or temporary bonds, with or without
40 coupons, exchangeable for definitive bonds when such bonds have been executed and
41 are available for delivery. The authority may also provide for the replacement of any
42 bonds which shall become mutilated or shall be destroyed or lost.

43 Bonds may be issued under the provisions of this Chapter without obtaining,
44 except as otherwise expressly provided in this Chapter, the consent of the State or of

1 any political subdivision or of any agency of either thereof, and without any other
2 proceedings or the happening of any conditions or things other than those
3 proceedings, conditions or things which are specifically required by this Chapter and
4 the provisions of the financing agreement and security document authorizing the
5 issuance of such bonds and securing the same."

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

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: House Bill 474 (Finance Committee Substitute)

SHORT TITLE: Industrial Revenue Bonds

SPONSOR(S): Rep. Sutton

FISCAL IMPACT

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

**PRINCIPAL DEPARTMENT(S) &
PROGRAM(S) AFFECTED:** Department of Commerce
Local Government Commission
County Bond Authorities

EFFECTIVE DATE: Effective upon ratification

BILL SUMMARY: The bill clarifies the expenditures that may be financed with industrial revenue bonds 60 days prior to an inducement agreement.

BACKGROUND: An inducement agreement is an official letter of intent between a company and a county bond authority to signify that an industrial revenue bond is requested for a project. The Internal Revenue Service recognizes this agreement as the first official action in establishing such bonds. Federal law allows companies to receive reimbursement for expenses they incur 60 days before an inducement agreement is signed. States bordering North Carolina conform to the federal law in this matter.

ASSUMPTIONS AND METHODOLOGY: The bill makes a technical change that broadens the use of bond proceeds. In any event, there would be no cost to the state or to counties because industrial revenue bonds are backed by bank letters of credit arranged by the companies seeking the bonds.

**FISCAL RESEARCH DIVISION
733-4910**

PREPARED BY: Richard Bostic

APPROVED BY: Tom Covington

DATE: April 1, 1997

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: House Bill 474 (Finance Committee Substitute)

SHORT TITLE: Industrial Revenue Bonds

SPONSOR(S): Rep. Sutton

FISCAL IMPACT

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

**PRINCIPAL DEPARTMENT(S) &
PROGRAM(S) AFFECTED:** Department of Commerce
Local Government Commission
County Bond Authorities

EFFECTIVE DATE: Effective upon ratification

BILL SUMMARY: The bill clarifies the expenditures that may be financed with industrial revenue bonds 60 days prior to an inducement agreement.

BACKGROUND: An inducement agreement is an official letter of intent between a company and a county bond authority to signify that an industrial revenue bond is requested for a project. The Internal Revenue Service recognizes this agreement as the first official action in establishing such bonds. Federal law allows companies to receive reimbursement for expenses they incur 60 days before an inducement agreement is signed. States bordering North Carolina conform to the federal law in this matter.

ASSUMPTIONS AND METHODOLOGY: The bill makes a technical change that broadens the use of bond proceeds. In any event, there would be no cost to the state or to counties because industrial revenue bonds are backed by bank letters of credit arranged by the companies seeking the bonds.

**FISCAL RESEARCH DIVISION
733-4910**

PREPARED BY: Richard Bostic

APPROVED BY: Tom Covington

DATE: April 1, 1997

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

2

HOUSE BILL 810
Committee Substitute Favorable 4/21/97

Short Title: Nash Room Tax.

(Local)

Sponsors:

Referred to:

April 7, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE NASH COUNTY TO LEVY AN ADDITIONAL
3 ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.
4 The General Assembly of North Carolina enacts:
5 Section 1. Nash Occupancy Tax. Section 1 of Chapter 32 of the 1987
6 Session Laws, as amended by Chapter 545 of the 1993 Session Laws, reads as
7 rewritten:
8 "Section 1. Occupancy tax. (a) Authorization and scope. The Nash County
9 Board of Commissioners may ~~by resolution, after not less than ten (10) days' public~~
10 ~~notice and after a public hearing held pursuant thereto,~~ levy a room occupancy tax of
11 three percent (3%) of the gross receipts derived from the rental of any room, lodging,
12 or similar accommodation furnished by a hotel, motel, inn, or similar place within the
13 county that is subject to sales tax imposed by the State under G.S. ~~105-164.4(3).~~
14 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does
15 not apply to accommodations furnished by nonprofit charitable, educational, or
16 religious organizations.
17 (a1) Authorization of Additional Tax. In addition to the tax authorized by
18 subsection (a) of this section, the Nash County Board of Commissioners may levy an
19 additional room occupancy tax of up to three percent (3%) of the gross receipts
20 derived from the rental of accommodations taxable under subsection (a). The levy,
21 collection, administration, and repeal of the tax authorized by this subsection shall be
22 in accordance with the provisions of this section. Nash County may not levy a tax

1 under this subsection unless it also levies the tax authorized under subsection (a) of
2 this section.

3 (b) Administration. A tax levied under this section shall be levied, administered,
4 collected, and repealed as provided in G.S. 153A-155. The penalties provided in
5 G.S. 153A-155 apply to a tax levied under this section.

6 ~~Collection. Every operator of a business subject to the tax levied under this act shall,~~
7 ~~on and after the effective date of the levy of the tax, collect the tax. This tax shall be~~
8 ~~collected as part of the charge for furnishing a taxable accommodation. The tax shall~~
9 ~~be stated and charged separately from the sales records, and shall be paid by the~~
10 ~~purchaser to the operator of the business as trustee for and on account of the county.~~
11 ~~The tax shall be added to the sales price and shall be passed on to the purchaser~~
12 ~~instead of being borne by the operator of the business. The county shall design,~~
13 ~~print, and furnish to all appropriate businesses and persons in the county the~~
14 ~~necessary forms for filing returns and instructions to ensure the full collection of the~~
15 ~~tax. An operator of a business who collects the occupancy tax levied under this act~~
16 ~~may deduct from the amount remitted to the county a discount equal to the discount~~
17 ~~the State allows the operator for collecting State sales and use taxes.~~

18 ~~(c) Administration. The county shall administer a tax levied under this act. A tax~~
19 ~~levied under this act is due and payable to the county finance officer in monthly~~
20 ~~installments on or before the 15th day of the month following the month in which the~~
21 ~~tax accrues. Every person, firm, corporation, or association liable for the tax shall, on~~
22 ~~or before the 15th day of each month, prepare and render a return on a form~~
23 ~~prescribed by the county. The return shall state the total gross receipts derived in the~~
24 ~~preceding month from rentals upon which the tax is levied.~~

25 ~~A return filed with the county finance officer under this act is not a public record~~
26 ~~as defined by G.S. 132-1 and may not be disclosed except as required by law.~~

27 ~~(d) Penalties. A person, firm, corporation, or association who fails or refuses to~~
28 ~~file the return required by this act is subject to the civil and criminal penalties set by~~
29 ~~G.S. 105-236 for failure to pay or file a return for State sales and use taxes. The~~
30 ~~Board of Commissioners has the same authority to waive the penalties for a room~~
31 ~~occupancy tax that the Secretary of Revenue has to waive the penalties for State sales~~
32 ~~and use taxes.~~

33 (e) Distribution and use of tax revenue. Nash County shall, on a quarterly basis,
34 remit the net proceeds of the occupancy tax to the Nash Tourism Development
35 Authority. The Authority shall spend at least two-thirds of the funds remitted to it
36 under this subsection only to promote travel and tourism in Nash County, and shall
37 spend the remainder on tourism-related expenditures. The following definitions
38 apply in this subsection:

39 (1) Net proceeds. -- Gross proceeds less the cost to the county of
40 administering and collecting the tax, as determined by the finance
41 officer, not to exceed seven percent (7%) of the amount collected.

42 (2) Promote travel and tourism. -- To advertise or market an area or
43 activity, publish and distribute pamphlets and other materials,
44 conduct market research, or engage in similar promotional

1 activities that attract tourists or business travelers to the area; the
2 term includes administrative expenses incurred in engaging in the
3 listed activities.

- 4 (3) Tourism-related expenditures. -- Expenditures that are designed to
5 increase the use of lodging facilities in a county or to attract
6 tourists or business travelers to the county and expenditures
7 incurred by the county in collecting the tax. The term includes
8 expenditures to construct, maintain, operate, or market a
9 convention center and other expenditures that, in the judgment of
10 the Authority, will facilitate and support tourism.

11 ~~(f) Effective date of levy. A tax levied under this act shall become effective on~~
12 ~~the date specified in the resolution levying the tax. That date must be the first day of~~
13 ~~a calendar month, however, and may not be earlier than the first day of the second~~
14 ~~month after the date the resolution is adopted.~~

15 ~~(g) Repeal. A tax levied under this act may be repealed by a resolution adopted~~
16 ~~by the Nash County Board of Commissioners. Repeal of a tax levied under this act~~
17 ~~does not affect a liability for a tax that was attached before the effective date of the~~
18 ~~repeal, nor does it affect a right to a refund of a tax that accrued before the effective~~
19 ~~date of the repeal."~~

20 Section 2. County administrative provisions. (a) Article 7 of Chapter
21 153A of the General Statutes is amended by adding a new section to read:

22 "§ 153A-155. Uniform provisions for room occupancy taxes.

23 (a) Scope. -- This section applies only to counties the General Assembly has
24 authorized to levy room occupancy taxes.

25 (b) Levy. -- A room occupancy tax may be levied only by resolution, after not less
26 than 10 days' public notice and after a public hearing held pursuant thereto. A room
27 occupancy tax shall become effective on the date specified in the resolution levying
28 the tax. That date must be the first day of a calendar month, however, and may not
29 be earlier than the first day of the second month after the date the resolution is
30 adopted.

31 (c) Collection. -- Every operator of a business subject to a room occupancy tax
32 shall, on and after the effective date of the levy of the tax, collect the tax. The tax
33 shall be collected as part of the charge for furnishing a taxable accommodation. The
34 tax shall be stated and charged separately from the sales records, and shall be paid by
35 the purchaser to the operator of the business as trustee for and on account of the
36 taxing county. The tax shall be added to the sales price and shall be passed on to the
37 purchaser instead of being borne by the operator of the business. The taxing county
38 shall design, print, and furnish to all appropriate businesses and persons in the county
39 the necessary forms for filing returns and instructions to ensure the full collection of
40 the tax. An operator of a business who collects a room occupancy tax may deduct
41 from the amount remitted to the taxing county a discount equal to the discount the
42 State allows the operator for State sales and use tax.

43 (d) Administration. -- The taxing county shall administer a room occupancy tax it
44 levies. A room occupancy tax is due and payable to the county finance officer in

1 monthly installments on or before the 15th day of the month following the month in
2 which the tax accrues. Every person, firm, corporation, or association liable for the
3 tax shall, on or before the 15th day of each month, prepare and render a return on a
4 form prescribed by the taxing county. The return shall state the total gross receipts
5 derived in the preceding month from rentals upon which the tax is levied. A room
6 occupancy tax return filed with the county finance officer is not a public record and
7 may not be disclosed except in accordance with G.S. 153A-148.1 or G.S. 160A-208.1.

8 (e) Penalties. -- A person, firm, corporation, or association who fails or refuses to
9 file a room occupancy tax return or pay a room occupancy tax as required by law is
10 subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file
11 a return for State sales and use taxes. The governing board of the taxing county has
12 the same authority to waive the penalties for a room occupancy tax that the Secretary
13 of Revenue has to waive the penalties for State sales and use taxes.

14 (f) Repeal or reduction. -- A room occupancy tax levied by a county may be
15 repealed or reduced by a resolution adopted by the governing body of the county.
16 Repeal or reduction of a room occupancy tax shall become effective on the first day
17 of a month and may not become effective until the end of the fiscal year in which the
18 resolution was adopted. Repeal or reduction of a room occupancy tax does not affect
19 a liability for a tax that was attached before the effective date of the repeal or
20 reduction, nor does it affect a right to a refund of a tax that accrued before the
21 effective date of the repeal or reduction."

22 (b) This section applies only to Nash County.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1997

H

2

HOUSE BILL 348
Committee Substitute Favorable 3/19/97

Short Title: Cider/Vinegar Manufacturer Permit.

(Public)

Sponsors:

Referred to:

February 27, 1997

- 1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR A CIDER AND VINEGAR MANUFACTURER
3 PERMIT TO BE ISSUED BY THE ALCOHOLIC BEVERAGE CONTROL
4 COMMISSION.
5 The General Assembly of North Carolina enacts:
6 Section 1. G.S. 18B-1100 reads as rewritten:
7 "**§ 18B-1100. Commercial permits.**
8 The Commission may issue the following commercial permits:
9 (1) Unfortified winery
10 (2) Fortified winery
11 (3) Limited winery
12 (4) Brewery
13 (5) Distillery
14 (6) Fuel alcohol
15 (7) Wine importer
16 (8) Wine wholesaler
17 (9) Malt beverages importer
18 (10) Malt beverages wholesaler
19 (11) Bottler
20 (12) Salesman
21 (13) Vendor representative
22 (14) Nonresident malt beverage vendor

- 1 (15) Nonresident wine vendor
- 2 (16) Winery special show
- 3 (17) Liquor importer/bottler ~~permit~~; permit
- 4 (18) Cider and vinegar manufacturer."

5 Section. 2. Chapter 18B of the General Statutes is amended by adding a
6 new section to read:

7 "§ 18B-1114.2. Effect of cider and vinegar manufacturer permit.

8 The holder of a cider and vinegar manufacturer permit may purchase and
9 transport unlimited quantities of out-of-date unfortified or fortified wines from wine
10 wholesalers for the sole purpose of manufacturing a food product item. Any
11 manufacturer of cider or vinegar may apply for this permit."

12 Section 3. G.S. 18B-902(d) reads as rewritten:

13 "(d) Fees. -- An application for an ABC permit shall be accompanied by payment
14 of the following application fee:

- 15 (1) On-premises malt beverage permit -- \$200.00.
- 16 (2) Off-premises malt beverage permit -- \$200.00.
- 17 (3) On-premises unfortified wine permit -- \$200.00.
- 18 (4) Off-premises unfortified wine permit -- \$200.00.
- 19 (5) On-premises fortified wine permit -- \$200.00.
- 20 (6) Off-premises fortified wine permit -- \$200.00.
- 21 (7) Brown-bagging permit -- \$200.00, unless the application is for a
22 restaurant seating less than 50, in which case the fee shall be
23 \$100.00.
- 24 (8) Special occasion permit -- \$200.00.
- 25 (9) Limited special occasion permit -- \$25.00.
- 26 (10) Mixed beverages permit -- \$750.00.
- 27 (11) Culinary permit -- \$100.00.
- 28 (12) Unfortified winery permit -- \$150.00.
- 29 (13) Fortified winery permit -- \$150.00.
- 30 (14) Limited winery permit -- \$150.00.
- 31 (15) Brewery permit -- \$150.00.
- 32 (16) Distillery permit -- \$150.00.
- 33 (17) Fuel alcohol permit -- \$50.00.
- 34 (18) Wine importer permit -- \$150.00.
- 35 (19) Wine wholesaler permit -- \$150.00.
- 36 (20) Malt beverage importer permit -- \$150.00.
- 37 (21) Malt beverage wholesaler permit -- \$150.00.
- 38 (22) Bottler permit -- \$150.00.
- 39 (23) Salesman permit -- \$25.00.
- 40 (24) Vendor representative permit -- \$25.00.
- 41 (25) Nonresident malt beverage vendor permit -- \$50.00.
- 42 (26) Nonresident wine vendor permit -- \$50.00.
- 43 (27) Any special one-time permit under G.S. 18B-1002 -- \$25.00.
- 44 (28) Winery special event permit -- \$100.00.

- 1 (29) Mixed beverages catering permit -- \$100.00.
2 (30) Guest room cabinet permit -- \$750.00.
3 (31) Liquor importer/bottler permit -- \$250.00.
4 (32) Cider and vinegar manufacturer permit -- \$100.00."

5 Section 4. G.S. 18B-1107(a) reads as rewritten:

6 "(a) Authorization. -- The holder of a wine wholesaler permit may:

- 7 (1) Receive, possess and transport shipments of fortified and
8 unfortified wine;
9 (2) Sell, deliver and ship wine in closed containers for purposes of
10 resale to wholesalers or retailers licensed under this Chapter as
11 authorized by the ABC laws;
12 (3) Furnish and sell wine to its employees, subject to the rules of the
13 Commission and the Department of Revenue;
14 (4) In locations where the sale is legal, furnish wine to guests and any
15 other person who does not hold an ABC permit, for promotional
16 purposes, subject to rules of the ~~Commission~~. Commission;
17 (5) Sell out-of-date unfortified and fortified wines to holders of cider
18 and vinegar manufacturer permits, provided that each bottle is
19 marked 'out-of-date' by the wholesaler."

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

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: House Bill 348 (First Edition)
SHORT TITLE: Cider/Vinegar Manufacturer Permit
SPONSOR(S): Rep. Eddins

FISCAL IMPACT

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

FY 1997-98 FY 1998-99 FY 1999-00 FY 2000-01 FY 2001-02

REVENUES

General Fund

Less than \$500 gain each year.

PRINCIPAL DEPARTMENT(S) &

PROGRAM(S) AFFECTED: Alcoholic Beverage Control Commission

EFFECTIVE DATE: Effective upon ratification.

BILL SUMMARY: The bill allows the Alcohol Beverage Control Commission to sell a cider and vinegar manufacturer permit for \$100 to those wishing to purchase out-of-date unfortified and fortified wines from wine wholesalers for the purpose of making a food product item.

ASSUMPTIONS AND METHODOLOGY: According to the Alcoholic Beverage Control Commission (ABC), the N. C. Beer and Wine Wholesalers Association and one of the largest wine wholesalers in the state, there is very little demand for this type of permit. The Chief Counsel for the ABC knows of only one company that has asked for this permit. The lobbyist for the N. C. Beer and Wine Wholesalers Association has not heard one request from his clientele for this permit.

FISCAL RESEARCH DIVISION

733-4910

PREPARED BY: Richard Bostic

APPROVED BY: Tom Covington

DATE: March 31, 1997

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 1035

Short Title: Modify Food Tax/Merchant's Discount.

(Public)

Sponsors: Senators Kerr and Kincaid.

Referred to: Finance.

April 21, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO REVISE THE DEFINITION OF FOOD FOR SALES TAX
3 PURPOSES AND ALLOW A PERCENTAGE DISCOUNT TO MERCHANTS
4 FOR COLLECTING STATE SALES AND USE TAXES.
5 The General Assembly of North Carolina enacts:
6 Section 1. G.S. 105-164.4(5) reads as rewritten:
7 "(5) The rate of three percent (3%) applies to the sales price of food
8 that meets the following conditions:
9 a. It is sold at a retail food business qualified under subsection
10 (d) of this section.
11 b. It is not otherwise exempt pursuant to G.S. 105-164.13 but
12 would be exempt pursuant to G.S. 105-164.13 if it were
13 purchased with coupons issued under the Food Stamp
14 Program, 7 U.S.C. § 51."
15 Section 2. G.S. 105-164.4 is amended by adding a new subsection to
16 read:
17 "(d) For the purpose of this Article, a retailer is a qualified retail food business if
18 either (i) it sells all of the staple food items listed in this subsection or (ii) more than
19 eighty percent (80%) of its gross sales are sales of one or more staple food items
20 listed in this subsection. The following are staple food items for the purpose of this
21 subsection:
22 (1) Raw meat.
23 (2) Raw poultry.
24 (3) Raw fish.

- 1 (4) Bread.
- 2 (5) Breadstuffs.
- 3 (6) Cereal.
- 4 (7) Vegetables.
- 5 (8) Fruit.
- 6 (9) Fruit or vegetable juices.
- 7 (10) Dairy products.

8 A retailer's sales for the most recent 12-month period shall be considered in
 9 determining whether the retailer is a qualified retail food business. If the retailer has
 10 been in business less than 12 months, the period the retailer has been in business
 11 shall be considered. If the retailer has been in business for less than one reporting
 12 period, the determination shall be based on the retailer's expected sales for the first
 13 reporting period."

14 Section 3. G.S. 105-164.21 is reenacted and rewritten to read:

15 **"§ 105-164.21. Merchant's discount.**

16 (a) Amount. -- Except as provided in subsection (b) of this section, a retailer who
 17 pays the retail sales or use tax imposed by this Article may deduct from the amount
 18 of the tax paid the applicable percentage discount provided in the table below, up to
 19 the following maximum discounts:

- 20 (1) The applicable per-location cap per month for each place of
 21 business at a separate location.
- 22 (2) For taxpayers who are not required to report on a semimonthly
 23 basis, the applicable retailer group cap per month for each retailer
 24 group.
- 25 (3) For taxpayers who are required to report on a semimonthly basis,
 26 one-half of the applicable retailer group cap per semimonthly
 27 period for each retailer group.

<u>Returns Filed</u>	<u>Percentage Discount</u>	<u>Per-Location Cap</u>	<u>Retailer Group Cap</u>
30 <u>In 1998</u>	<u>1%</u>	<u>\$30</u>	<u>\$ 500</u>
31 <u>In 1999</u>	<u>2%</u>	<u>\$40</u>	<u>\$ 750</u>
32 <u>Thereafter</u>	<u>3%</u>	<u>\$50</u>	<u>\$1,000</u>

33 The discount for each location may be deducted only from the tax paid with
 34 regard to that location. For the purposes of this section, a retailer group includes all
 35 retail establishments that have one of the following relationships with one another: (i)
 36 one corporation owns, directly or indirectly, at least eighty percent (80%) of the
 37 voting stock of the others; (ii) at least eighty percent (80%) of the voting stock of the
 38 corporation is owned, directly or indirectly, by the same interests; or (iii) in the case
 39 of establishments that are not incorporated, the establishments are under the same
 40 general management, supervision, or ownership.

41 (b) Restrictions. -- The Secretary may deny a retailer the benefit of this section for
 42 failure to pay the full tax when due as well as in cases of fraud, evasion, or failure to
 43 keep accurate and clear records as required by this Article. In order to receive the
 44 discount provided in this section, a retailer must deduct the discount when it remits

1 the tax to the Department of Revenue. A utility may not deduct the discount
 2 provided in this section on sales of electricity, piped natural gas, or
 3 telecommunications services."

4 Section 4. G.S. 105-474 reads as rewritten:

5 "~~§ 105-474. Definitions; construction of Article; remedies and penalties.~~
 6 Administration and construction of Article.

7 This Article shall be harmonized with the North Carolina Sales and Use Tax Act
 8 to the extent practical. The merchant's discount provided in G.S. 105-164.21 does
 9 not apply to this Article. The remaining provisions of Articles 5 and 9 of this
 10 Chapter apply to this Article to the extent they are consistent with this Article.

11 ~~The definitions set forth in G.S. 105-164.3 shall apply to this Article insofar as such~~
 12 ~~definitions are not inconsistent with the provisions of this Article, and all other~~
 13 ~~provisions of Article 5 and of Article 9 of Subchapter 1, Chapter 105 of the General~~
 14 ~~Statutes, as the same relate to the North Carolina Sales and Use Tax Act shall be~~
 15 ~~applicable to this Article unless such provisions are inconsistent with the provisions~~
 16 ~~of this Article. The administrative interpretations made by the Secretary of Revenue~~
 17 ~~with respect to the North Carolina Sales and Use Tax Act, to the extent not~~
 18 ~~inconsistent with the provisions of this Article, may be uniformly applied in the~~
 19 ~~construction and interpretation of this Article. It is the intention of this Article that~~
 20 ~~the provisions of this Article and the provisions of the North Carolina Sales and Use~~
 21 ~~Tax Act, insofar as practicable, shall be harmonized.~~

22 ~~The provisions with respect to remedies and penalties applicable to the North~~
 23 ~~Carolina Sales and Use Tax Act, as contained in Article 5 and Article 9, Subchapter~~
 24 ~~1, Chapter 105 of the General Statutes, shall be applicable in like manner to the tax~~
 25 ~~authorized to be levied and collected under this Article, to the extent that the same~~
 26 ~~are not inconsistent with the provisions of this Article."~~

27 Section 5. The first sentence of Section 10 of Chapter 1096 of the 1967
 28 Session Laws is amended by adding after the word "Act" the phrase ", other than
 29 G.S. 105-164.21,".

30 Section 6. G.S. 105-164.21(a), as amended by Section 3 of this act, reads
 31 as rewritten:

32 "(a) Amount. -- Except as provided in subsection (b), a retailer who pays the
 33 retail sales or use tax imposed by this Article may deduct from the amount of the tax
 34 paid ~~the applicable percentage discount provided in the table below;~~ a discount of
 35 three percent (3%), up to the following maximum discounts:

- 36 (1) ~~The applicable per location cap~~ Fifty dollars (\$50.00) per month
 37 for each place of business at a separate location.
- 38 (2) For taxpayers who are not required to report on a semimonthly
 39 basis, ~~the applicable retailer group cap~~ one thousand dollars
 40 (\$1,000) per month for each retailer group.
- 41 (3) For taxpayers who are required to report on a semimonthly basis,
 42 ~~one-half of the applicable retailer group cap~~ five hundred dollars
 43 (\$500.00) per semimonthly period for each retailer group.

44 ~~Returns Filed~~ ~~Percentage~~ ~~Per-Location~~ ~~Retailer Group~~

	Discount	Cap	Cap
1			
2 In 1998	1%	\$30	\$ 500
3 In 1999	2%	\$40	\$ 750
4 Thereafter	3%	\$50	\$1,000

5 The discount for each location may be deducted only from the tax paid with
6 regard to that location. For the purposes of this section, a retailer group includes all
7 retail establishments that have one of the following relationships with one another: (i)
8 one corporation owns, directly or indirectly, at least eighty percent (80%) of the
9 voting stock of the others; (ii) at least eighty percent (80%) of the voting stock of the
10 corporations is owned, directly or indirectly, by the same interests; or (iii) in the case
11 of establishments that are not incorporated, the establishments are under the same
12 general management, supervision, or ownership."

13 Section 7. Sections 1 and 2 of this act become effective July 1, 1997, and
14 apply to sales made on or after that date. Sections 3 through 5 of this act become
15 effective January 1, 1998, and apply to returns filed on or after that date. Section 6
16 of this act becomes effective January 1, 2000, and applies to returns filed on or after
17 that date. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

D

SENATE BILL 1035
Proposed Senate Finance Committee Substitute
S1035-CSLCX-5/20

Short Title: Modify Food Tax/Merchant's Discount. (Public)

Sponsors:

Referred to: Finance.

April 21, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO REVISE THE DEFINITION OF FOOD FOR SALES TAX PURPOSES
3 AND ALLOW A PERCENTAGE DISCOUNT TO MERCHANTS FOR COLLECTING
4 STATE SALES AND USE TAXES.
5 The General Assembly of North Carolina enacts:
6 Section 1. G.S. 105-164.4(5) reads as rewritten:
7 "(5) The rate of three percent (3%) applies to the sales
8 price of food that meets the following conditions:
9 a. It is sold at a retail food business qualified
10 under subsection (d) of this section.
11 b. It is not otherwise exempt pursuant to G.S.
12 105-164.13 but would be exempt pursuant to
13 G.S. 105-164.13 if it were purchased with
14 coupons issued under the Food Stamp Program, 7
15 U.S.C. § 51."
16 Section 2. G.S. 105-164.4 is amended by adding a new
17 subsection to read:
18 "(d) For the purpose of this Article, a retailer is a qualified
19 retail food business if either (i) it sells all of the staple
20 food items listed in this subsection or (ii) more than eighty
21 percent (80%) of its gross sales are sales of one or more staple

1 food items listed in this subsection. The following are staple
 2 food items for the purpose of this subsection:

- 3 (1) Raw meat.
- 4 (2) Raw poultry.
- 5 (3) Raw fish.
- 6 (4) Bread.
- 7 (5) Breadstuffs.
- 8 (6) Cereal.
- 9 (7) Vegetables.
- 10 (8) Fruit.
- 11 (9) Fruit or vegetable juices.
- 12 (10) Dairy products.

13 A retailer's sales for the most recent 12-month period shall be
 14 considered in determining whether the retailer is a qualified
 15 retail food business. If the retailer has been in business less
 16 than 12 months, the period the retailer has been in business
 17 shall be considered. If the retailer has been in business for
 18 less than one reporting period, the determination shall be based
 19 on the retailer's expected sales for the first reporting period."

20 Section 3. G.S. 105-164.21 is reenacted and rewritten
 21 to read:

22 "§ 105-164.21. Merchant's discount.

23 (a) Amount. -- Except as provided in subsection (c) of this
 24 section, a retailer who pays the retail sales or use tax imposed
 25 by this Article may deduct from the amount of the tax paid the
 26 applicable percentage discount provided in the table below, up to
 27 the following maximum discounts:

- 28 (1) The applicable per-location cap per month for each
 29 place of business at a separate location.
- 30 (2) For taxpayers who are not required to report on a
 31 semimonthly basis, the applicable retailer group
 32 cap per month for each retailer group.
- 33 (3) For taxpayers who are required to report on a
 34 semimonthly basis, one-half of the applicable
 35 retailer group cap per semimonthly period for each
 36 retailer group.

37 <u>Returns Filed</u>	38 <u>Percentage</u>	39 <u>Per-Location</u>	40 <u>Retailer Group</u>
	<u>Discount</u>	<u>Cap</u>	<u>Cap</u>
41 <u>In 1998</u>	<u>1%</u>	<u>\$30</u>	<u>\$ 500</u>
42 <u>In 1999</u>	<u>2%</u>	<u>\$40</u>	<u>\$ 750</u>
43 <u>Thereafter</u>	<u>3%</u>	<u>\$50</u>	<u>\$1,000</u>

44 The discount for each location may be deducted only from the
 45 tax paid with regard to that location.

1 (b) Retailer Group. -- For the purposes of this section, a
2 retailer group includes all retail establishments that have one
3 of the following relationships with one another:

4 (1) One corporation owns, directly or indirectly, at
5 least eighty percent (80%) of the voting stock of
6 the others.

7 (2) At least eighty percent (80%) of the voting stock
8 of the corporation is owned, directly or
9 indirectly, by the same interests.

10 (3) In the case of establishments that are not
11 incorporated, the establishments are under the same
12 general management, supervision, or ownership.

13 (c) Restrictions. -- The Secretary may deny a retailer the
14 benefit of this section for failure to pay the full tax when due
15 as well as in cases of fraud, evasion, or failure to keep
16 accurate and clear records as required by this Article. In order
17 to receive the discount provided in this section, a retailer must
18 deduct the discount when it remits the tax to the Department of
19 Revenue. A utility may not deduct the discount provided in this
20 section on sales of electricity, piped natural gas, or
21 telecommunications services."

22 Section 4. G.S. 105-474 reads as rewritten:

23 ~~"§ 105-474. Definitions; construction of Article; remedies and~~
24 ~~penalties. Administration and construction of Article.~~

25 This Article shall be harmonized with the North Carolina Sales
26 and Use Tax Act to the extent practical. The merchant's discount
27 provided in G.S. 105-164.21 does not apply to this Article. The
28 remaining provisions of Articles 5 and 9 of this Chapter apply to
29 this Article to the extent they are consistent with this Article.
30 ~~The definitions set forth in G.S. 105-164.3 shall apply to this~~
31 ~~Article insofar as such definitions are not inconsistent with the~~
32 ~~provisions of this Article, and all other provisions of Article 5~~
33 ~~and of Article 9 of Subchapter 1, Chapter 105 of the General~~
34 ~~Statutes, as the same relate to the North Carolina Sales and Use~~
35 ~~Tax Act shall be applicable to this Article unless such~~
36 ~~provisions are inconsistent with the provisions of this Article.~~
37 ~~The administrative interpretations made by the Secretary of~~
38 ~~Revenue with respect to the North Carolina Sales and Use Tax Act,~~
39 ~~to the extent not inconsistent with the provisions of this~~
40 ~~Article, may be uniformly applied in the construction and~~
41 ~~interpretation of this Article. It is the intention of this~~
42 ~~Article that the provisions of this Article and the provisions of~~
43 ~~the North Carolina Sales and Use Tax Act, insofar as practicable,~~
44 ~~shall be harmonized.~~

~~1 The provisions with respect to remedies and penalties
2 applicable to the North Carolina Sales and Use Tax Act, as
3 contained in Article 5 and Article 9, Subchapter 1, Chapter 105
4 of the General Statutes, shall be applicable in like manner to
5 the tax authorized to be levied and collected under this Article,
6 to the extent that the same are not inconsistent with the
7 provisions of this Article."~~

8 Section 5. The first sentence of Section 10 of Chapter
9 1096 of the 1967 Session Laws is amended by adding after the word
10 "Act" the phrase ", other than G.S. 105-164.21,".

11 Section 6. G.S. 105-187.5(d) reads as rewritten:

12 "(d) Administration. -- The Division shall notify the
13 Secretary of Revenue of a retailer who makes the election under
14 this section. A retailer who makes this election shall report and
15 remit to the Secretary the tax on the gross receipts of the lease
16 or rental of the motor vehicle. The Secretary shall administer
17 the tax imposed by this section on gross receipts in the same
18 manner as the tax levied under G.S. 105-164.4(a)(2). The
19 administrative provisions and powers of the Secretary that apply
20 to the tax levied under G.S. 105-164.4(a)(2) apply to the tax
21 imposed by this section. In addition, the The merchant's discount
22 provided in G.S. 105-164.21 does not apply to this section.

23 The Division may request the Secretary to audit a retailer who
24 elects to pay tax on gross receipts under this section. When the
25 Secretary conducts an audit at the request of the Division, the
26 Division shall reimburse the Secretary for the cost of the audit,
27 as determined by the Secretary. In conducting an audit of a
28 retailer under this section, the Secretary may audit any sales of
29 motor vehicles made by the retailer."

30 Section 7. G.S. 105-187.17 reads as rewritten:

31 "§ 105-187.17. Administration.

32 (a) Retail Sale or Use. -- The privilege tax this Article
33 imposes on a tire retailer who sells new tires at retail is an
34 additional State sales tax and the excise tax this Article
35 imposes on the storage, use, or consumption of a new tire in this
36 State is an additional State use tax. Except as otherwise
37 provided in this Article, these taxes shall be collected and
38 administered in the same manner as the State sales and use taxes
39 imposed by Article 5 of this Chapter. As under Article 5 of this
40 Chapter, the additional State sales tax paid when a new tire is
41 sold is a credit against the additional State use tax imposed
42 the storage, use, or consumption of the same tire.

43 (b) Wholesale Sale or Use. -- The privilege tax this Article
44 imposes on a tire retailer and on a tire wholesale merchant who

1 sell new tires for placement in this State on a vehicle offered
2 for sale, lease, or rental is a tax on the wholesale sale of the
3 tires. This tax and the excise tax this Article imposes on a new
4 tire purchased for placement in this State on a vehicle offered
5 for sale, lease, or rental shall, to the extent practical, be
6 collected and administered as if they were additional State sales
7 and use taxes. The privilege tax paid when a new tire is sold
8 for placement on a vehicle offered for sale, lease, or rental is
9 a credit against the use tax imposed on the purchase of the same
10 tire for placement in this State on a vehicle offered for sale,
11 lease, or rental.

12 (c) Discount. -- The merchant's discount provided in G.S.
13 105-164.21 does not apply to this Article."

14 Section 8. G.S. 105-187.22 reads as rewritten:

15 "§ 105-187.22. Administration.

16 The privilege tax this Article imposes on a white goods
17 retailer is an additional State sales tax and the excise tax this
18 Article imposes on the storage, use, or consumption of a new
19 white good in this State is an additional State use tax. Except
20 as otherwise provided in this Article, these taxes shall be
21 collected and administered in the same manner as the State sales
22 and use taxes imposed by Article 5 of this Chapter. As under
23 Article 5 of this Chapter, the additional State sales tax paid
24 when a new white good is sold at retail is a credit against the
25 additional State use tax imposed on the storage, use, or
26 consumption of the same white good. The merchant's discount
27 provided in G.S. 105-164.21 does not apply to this Article."

28 Section 9. G.S. 105-164.21(a), as amended by Section 3
29 of this act, reads as rewritten:

30 "(a) Amount. -- Except as provided in subsection (c) of this
31 section, a retailer who pays the retail sales or use tax imposed
32 by this Article may deduct from the amount of the tax paid ~~the~~
33 ~~applicable percentage discount provided in the table below, a~~
34 discount of three percent (3%), up to the following maximum
35 discounts:

- 36 (1) ~~The applicable per-location cap~~ Fifty dollars
37 (\$50.00) per month for each place of business at a
38 separate location.
- 39 (2) For taxpayers who are not required to report on a
40 semimonthly basis, ~~the applicable retailer group~~
41 ~~cap~~ one thousand dollars (\$1,000) per month for
42 each retailer group.
- 43 (3) For taxpayers who are required to report on a
44 semimonthly basis, ~~one-half of the applicable~~

1 ~~retailer group cap~~ five hundred dollars (\$500.00)
 2 † per semimonthly period for each retailer group.

3 Returns Filed	Percentage	Per-Location	Retailer Group
4	Discount	Cap	Cap
5 In 1998	1%	\$30	\$ 500
6 In 1999	2%	\$40	\$ 750
7 Thereafter	3%	\$50	\$1,000

8 The discount for each location may be deducted only from the
 9 tax paid with regard to that location."

10 Section 10. Sections 1 and 2 of this act become
 11 effective July 1, 1997, and apply to sales made on or after that
 12 date. Sections 3 through 8 of this act become effective January
 13 1, 1998, and apply to returns filed on or after that date.
 14 Section 9 of this act becomes effective January 1, 2000, and
 15 applies to returns filed on or after that date. The remainder of
 16 this act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

H. B. No. _____

DATE _____

S. B. No. 1035, PCS

Amendment No. _____

(to be filled in by
Principal Clerk)

Rep.) _____
Sen.) _____

moves to amend the bill on page 2, line 40,

by by deleting "In 1999" and substituting "Thereafter";

and on page 2, line 41, by deleting the line;

and on page 5, line 34,

by deleting "three percent (3%) " and substituting
"two percent (2%) " ;

and on page 5, lines 36-37,

by deleting "Fifty dollars (\$50.00) " and substituting
"Forty dollars (\$40.00) " ;

and on page 5, line 41,

by deleting "one thousand dollars (\$1,000) " and substituting
" seven hundred fifty dollars (\$750.00) " ;

and on page 6, line 6, by deleting "in 1999" and substituting "Thereafter";

and on page 6, line 7, by deleting the line;

SIGNED Debbie Wimer

and on page 6, line 14, by deleting "2000," and substituting "1999";

Chairman

ADOPTED _____ FAILED _____ TABLED _____

and on page 6, line 1, by deleting "five hundred dollars (\$500.00) and substituting
"two hundred fifty dollars (\$250.00)";

- 1 (3) Raw fish.
- 2 (4) Bread.
- 3 (5) Breadstuffs.
- 4 (6) Cereal.
- 5 (7) Vegetables.
- 6 (8) Fruit.
- 7 (9) Fruit or vegetable juices.
- 8 (10) Dairy products.

9 A retailer's sales for the most recent 12-month period shall be considered in
 10 determining whether the retailer is a qualified retail food business. If the retailer has
 11 been in business less than 12 months, the period the retailer has been in business
 12 shall be considered. If the retailer has been in business for less than one reporting
 13 period, the determination shall be based on the retailer's expected sales for the first
 14 reporting period."

15 Section 3. G.S. 105-164.21 is reenacted and rewritten to read:

16 **"§ 105-164.21. Merchant's discount.**

17 (a) Amount. -- Except as provided in subsection (c) of this section, a retailer who
 18 pays the retail sales or use tax imposed by this Article may deduct from the amount
 19 of the tax paid the applicable percentage discount provided in the table below, up to
 20 the following maximum discounts:

- 21 (1) The applicable per-location cap per month for each place of
 22 business at a separate location.
- 23 (2) For taxpayers who are not required to report on a semimonthly
 24 basis, the applicable retailer group cap per month for each retailer
 25 group.
- 26 (3) For taxpayers who are required to report on a semimonthly basis,
 27 one-half of the applicable retailer group cap per semimonthly
 28 period for each retailer group.

29 <u>Returns Filed</u>	30 <u>Percentage</u>	30 <u>Per-Location</u>	30 <u>Retailer Group</u>
	31 <u>Discount</u>	31 <u>Cap</u>	31 <u>Cap</u>
31 <u>In 1998</u>	31 <u>1%</u>	31 <u>\$30</u>	31 <u>\$ 500</u>
32 <u>Thereafter</u>	32 <u>2%</u>	32 <u>\$40</u>	32 <u>\$ 750</u>
	33 <u>3%</u>	33 <u>\$50</u>	33 <u>\$1,000</u>

34 The discount for each location may be deducted only from the tax paid with
 35 regard to that location.

36 (b) Retailer Group. -- For the purposes of this section, a retailer group includes all
 37 retail establishments that have one of the following relationships with one another:

- 38 (1) One corporation owns, directly or indirectly, at least eighty percent
 39 (80%) of the voting stock of the others.
- 40 (2) At least eighty percent (80%) of the voting stock of the
 41 corporation is owned, directly or indirectly, by the same interests.
- 42 (3) In the case of establishments that are not incorporated, the
 43 establishments are under the same general management,
 44 supervision, or ownership.

1 (c) Restrictions. -- The Secretary may deny a retailer the benefit of this section for
2 failure to pay the full tax when due as well as in cases of fraud, evasion, or failure to
3 keep accurate and clear records as required by this Article. In order to receive the
4 discount provided in this section, a retailer must deduct the discount when it remits
5 the tax to the Department of Revenue. A utility may not deduct the discount
6 provided in this section on sales of electricity, piped natural gas, or
7 telecommunications services."

8 Section 4. G.S. 105-474 reads as rewritten:

9 "~~§ 105-474. Definitions; construction of Article; remedies and penalties.~~
10 Administration and construction of Article.

11 This Article shall be harmonized with the North Carolina Sales and Use Tax Act
12 to the extent practical. The merchant's discount provided in G.S. 105-164.21 does
13 not apply to this Article. The remaining provisions of Articles 5 and 9 of this
14 Chapter apply to this Article to the extent they are consistent with this Article.

15 ~~The definitions set forth in G.S. 105-164.3 shall apply to this Article insofar as such~~
16 ~~definitions are not inconsistent with the provisions of this Article, and all other~~
17 ~~provisions of Article 5 and of Article 9 of Subchapter 1, Chapter 105 of the General~~
18 ~~Statutes, as the same relate to the North Carolina Sales and Use Tax Act shall be~~
19 ~~applicable to this Article unless such provisions are inconsistent with the provisions~~
20 ~~of this Article. The administrative interpretations made by the Secretary of Revenue~~
21 ~~with respect to the North Carolina Sales and Use Tax Act, to the extent not~~
22 ~~inconsistent with the provisions of this Article, may be uniformly applied in the~~
23 ~~construction and interpretation of this Article. It is the intention of this Article that~~
24 ~~the provisions of this Article and the provisions of the North Carolina Sales and Use~~
25 ~~Tax Act, insofar as practicable, shall be harmonized.~~

26 ~~The provisions with respect to remedies and penalties applicable to the North~~
27 ~~Carolina Sales and Use Tax Act, as contained in Article 5 and Article 9, Subchapter~~
28 ~~1, Chapter 105 of the General Statutes, shall be applicable in like manner to the tax~~
29 ~~authorized to be levied and collected under this Article, to the extent that the same~~
30 ~~are not inconsistent with the provisions of this Article."~~

31 Section 5. The first sentence of Section 10 of Chapter 1096 of the 1967
32 Session Laws is amended by adding after the word "Act" the phrase ", other than
33 G.S. 105-164.21,".

34 Section 6. G.S. 105-187.5(d) reads as rewritten:

35 "(d) Administration. -- The Division shall notify the Secretary of Revenue of a
36 retailer who makes the election under this section. A retailer who makes this election
37 shall report and remit to the Secretary the tax on the gross receipts of the lease or
38 rental of the motor vehicle. The Secretary shall administer the tax imposed by this
39 section on gross receipts in the same manner as the tax levied under G.S. 105-
40 164.4(a)(2). The administrative provisions and powers of the Secretary that apply to
41 the tax levied under G.S. 105-164.4(a)(2) apply to the tax imposed by this section. ~~In~~
42 ~~addition, the~~ The merchant's discount provided in G.S. 105-164.21 does not apply to
43 this section.

1 The Division may request the Secretary to audit a retailer who elects to pay tax on
2 gross receipts under this section. When the Secretary conducts an audit at the request
3 of the Division, the Division shall reimburse the Secretary for the cost of the audit, as
4 determined by the Secretary. In conducting an audit of a retailer under this section,
5 the Secretary may audit any sales of motor vehicles made by the retailer."

6 Section 7. G.S. 105-187.17 reads as rewritten:

7 "**§ 105-187.17. Administration.**

8 (a) Retail Sale or Use. -- The privilege tax this Article imposes on a tire retailer
9 who sells new tires at retail is an additional State sales tax and the excise tax this
10 Article imposes on the storage, use, or consumption of a new tire in this State is an
11 additional State use tax. Except as otherwise provided in this Article, these taxes
12 shall be collected and administered in the same manner as the State sales and use
13 taxes imposed by Article 5 of this Chapter. As under Article 5 of this Chapter, the
14 additional State sales tax paid when a new tire is sold is a credit against the
15 additional State use tax imposed on the storage, use, or consumption of the same tire.

16 (b) Wholesale Sale or Use. -- The privilege tax this Article imposes on a tire
17 retailer and on a tire wholesale merchant who sell new tires for placement in this
18 State on a vehicle offered for sale, lease, or rental is a tax on the wholesale sale of the
19 tires. This tax and the excise tax this Article imposes on a new tire purchased for
20 placement in this State on a vehicle offered for sale, lease, or rental shall, to the
21 extent practical, be collected and administered as if they were additional State sales
22 and use taxes. The privilege tax paid when a new tire is sold for placement on a
23 vehicle offered for sale, lease, or rental is a credit against the use tax imposed on the
24 purchase of the same tire for placement in this State on a vehicle offered for sale,
25 lease, or rental.

26 (c) Discount. -- The merchant's discount provided in G.S. 105-164.21 does not
27 apply to this Article."

28 Section 8. G.S. 105-187.22 reads as rewritten:

29 "**§ 105-187.22. Administration.**

30 The privilege tax this Article imposes on a white goods retailer is an additional
31 State sales tax and the excise tax this Article imposes on the storage, use, or
32 consumption of a new white good in this State is an additional State use tax. Except
33 as otherwise provided in this Article, these taxes shall be collected and administered
34 in the same manner as the State sales and use taxes imposed by Article 5 of this
35 Chapter. As under Article 5 of this Chapter, the additional State sales tax paid when
36 a new white good is sold at retail is a credit against the additional State use tax
37 imposed on the storage, use, or consumption of the same white good. The merchant's
38 discount provided in G.S. 105-164.21 does not apply to this Article."

39 Section 9. G.S. 105-164.21(a), as amended by Section 3 of this act, reads
40 as rewritten:

41 "(a) Amount. -- Except as provided in subsection (c) of this section, a retailer who
42 pays the retail sales or use tax imposed by this Article may deduct from the amount
43 of the tax paid ~~the applicable percentage discount provided in the table below, a~~
44 discount of two percent (2%), up to the following maximum discounts:

- 1 (1) ~~The applicable per location cap~~ Forty dollars (\$40.00) per month
- 2 for each place of business at a separate location.
- 3 (2) For taxpayers who are not required to report on a semimonthly
- 4 basis, ~~the applicable retailer group cap~~ seven hundred fifty dollars
- 5 (\$750.00) per month for each retailer group.
- 6 (3) For taxpayers who are required to report on a semimonthly basis,
- 7 ~~one half of the applicable retailer group cap~~ three hundred
- 8 seventy-five dollars (\$375.00) per semimonthly period for each
- 9 retailer group.

10 Returns Filed	Percentage	Per-Location	Retailer-Group
11	Discount	Cap	Cap
12 In 1998	1%	\$30	\$500
13 Thereafter	2%	\$40	\$750

14 The discount for each location may be deducted only from the tax paid with
 15 regard to that location."

16 Section 10. Sections 1 and 2 of this act become effective July 1, 1997,
 17 and apply to sales made on or after that date. Sections 3 through 8 of this act
 18 become effective January 1, 1998, and apply to returns filed on or after that date.
 19 Section 9 of this act becomes effective January 1, 1999, and applies to returns filed on
 20 or after that date. The remainder of this act is effective when it becomes law.

EXPLANATION OF SENATE BILL 1035
Proposed Senate Finance Committee Substitute
Modify Food Tax/Merchant's Discount

TO: Senate Finance Committee
FROM: Sabra Faires, Committee Counsel
DATE: May 20, 1997
SPONSOR: Senator John Kerr

Senate Bill 1035 makes two changes in the State sales and use tax laws. First, it changes the definition of food that determines whether the food is subject to tax at the reduced State rate of 3% rather than the full State rate of 4%. Second, it reinstates and modifies the merchant's discount, which is an allowance to merchants for collecting and remitting State sales and use taxes. The change in the definition of food becomes effective July 1, 1997, and the reinstatement of the merchant's discount becomes effective January 1, 1998.

Chapter 13 of the Second 1996 Extra Session of the General Assembly reduced the State sales tax rate on food that can be purchased with food stamps from 4% to 3% effective January 1, 1997. The act did not reduce the 2% local sales tax on these items. Thus, under current law, food that can be purchased with food stamps is subject to tax at the combined State and local rate of 5% and food items that cannot be purchased with food stamps are subject to tax at the combined State and local rate of 6%.

This bill adds a new condition that must be met for food to be subject to the lower rate. The new condition is that the food is sold at a business that either sells all of a list of ten staple food items or derives more than 80% of its gross sales revenue from sales of one or more of the ten staples on the list. The ten staples are raw meat, raw poultry, raw fish, bread, breadstuffs, cereal, vegetables, fruit, fruit or vegetable juices, and dairy products.

The purpose of adding a new condition to the State sales tax reduction for food is to make sales of food at grocery stores and similar businesses subject to tax at the lower rate but to keep a standard 6% rate on sales of food at businesses, like convenience stores and gas stations, that may sell crackers, candy, and soda but do not sell much food. The bill was requested and is supported by the North Carolina Retail Merchants' Association, the North Carolina Association of Convenience Stores, and the Petroleum Marketers Association.

The second change made by the bill is to reinstate a merchant's discount. The discount would apply to all retailers, not just those who sell food. The discount increases over a three-year period starting January 1, 1998. The discount starts at 1% in 1998 and increases another percentage each year to reach 3% in 2000. The discount has a monthly per-location cap that starts at \$30 and increases to \$50 and a monthly retailer group cap that starts at \$500 and goes to \$1,000.

For many years, the State allowed merchants a 3% discount from both State and local sales and use taxes. The discount was repealed in 1987 in the same act that excluded inventories of retail and wholesale merchants from property tax and reimbursed cities and counties for part of the loss.

**NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL ESTIMATE**

BILL NUMBER: SENATE BILL 1035 (WITH PROPOSED AMENDMENT)
SHORT TITLE: MODIFY FOOD TAX/MERCHANTS' DISCOUNT/2
SPONSOR(S): SENATORS KERR AND KINCAID

FISCAL IMPACT

	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 1997-98</u>	<u>FY 1998-99</u>	<u>FY 1999-00</u>	<u>FY 2000-01</u>	<u>FY 2001-02</u>
REVENUES (\$Mill.)					
State General Fund					
Redefinition of Food					
Exempt	\$14.0	\$15.6	\$16.1	\$16.6	\$17.0
Merchants' Discount	-4.6	-12.9	-16.8	-17.3	-17.8
Total	\$ 9.4	\$ 2.7	(\$-.7)	(\$-.7)	(\$-.8)

Principal Department (s) Affected: The sales and use tax is administered by the Department of Revenue.

BILL SUMMARY:

(1) The 1985 General Assembly exempted from the state and local sales tax items purchased with Food Stamps. The 1996 General Assembly reduced the state sales tax on food intended for off-premises consumption from 4% to 3%, effective January 1, 1997. However, many small retail merchants have expressed concern about the difficulty of separating fully taxable food items from reduced rate items. **The bill revises the reduced rate provisions to apply to food items sold at a "retail food business" if the business sells all of the items from a list of staple food items or more than 80% of its gross sales are sales of one or more of the listed staple items.** The retailer's sales for the most recent 12-month period shall be used to determine whether a retailer is a qualified food business. If the retailer has been in business for less than 12 months, the sales experience of the retailer up to the time of determination will be used. For new retailers the determination shall be based on the retailer's expected sales for the first reporting period. This change is effective for sales occurring on or after July 1, 1997.

(OVER)

(2) Prior to the 1987 session merchants were allowed to retain 3% of gross state and local sales tax collected in remitting their sales and use tax return. **The bill establishes a new merchants' discount that is based on a percentage of tax collected, with a monthly per location cap and a monthly retailer group limit. The discount schedule is as follows:**

<u>Returns Filed</u>	<u>Percentage Discount</u>	<u>Per Location</u>	<u>Retailer Group</u>
In 1998	1%	\$30	\$ 500
Thereafter	2%	40	750

The change is effective for **tax returns filed on or after January 1, 1998.**

ASSUMPTIONS AND METHODOLOGY: The Department of Revenue provided estimates of the current year cost of each step of the phase-in of the merchants' discount restoration. This analysis arrayed the 180,000 merchants by size and reviewed departmental information on number of locations. An FRD analysis converted the data to state fiscal years. In addition, the Department analyzed the sales tax reports for February, 1997 (the first full month of the reduction in the food tax rate) to determine the impact of the food tax redefinition for the 1997-98 and 1998-99 fiscal years. An FRD growth rate of 3% was used to project the food tax and merchants' discount numbers. For information purposes the first two full months of the food tax reduction have indicated a monthly cost of \$6.3 million, versus the budget estimate of \$6.9 million. Part of the reason could be the difficulty of separating purchases by tax rate. In addition, retail sales are usually higher in the Summer and around the Christmas season so the first two months might not be a reliable indicator.

FISCAL RESEARCH DIVISION (733-4910)

PREPARED BY: Dave Crotts

DATE: May 21, 1997

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

5-21-97

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Amy Nindum	Tanton & Williams
Gary Harris	NC Petroleum Marketers Assoc.
Bill Scoggin	NCBA
PERRI MORGAN	NFIB
VL McBride	NETA
Zon McConqudale	NCRMA
Fran Preston	"
William W. Slater	Citizen
Ann S. Fulton	ABC Commission
R. B. Schield	NC JCDC
Chris Fitzsimon	Common Sense Foundation

Marion Dudd League of Women Voters NC
 Jack Coyne NC Ct of Appeals
 Estherine Davis Electricities

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

FINANCE COMMITTEE REPORT

John H. Kerr, III, Co-Chair
David W. Hoyle, Co-Chair

Thursday, May 22, 1997

SENATOR JOHN KERR,

submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B. 1035 Modify Food Tax/Merchant's Discount.
Draft Number: PCSX8704
Sequential Referral: Appropriations
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 1

Committee Clerk Comment: None
S.B. 1035

1997

**SENATE
FINANCE
COMMITTEE**

MINUTES

SENATE FINANCE COMMITTEE

THURSDAY, MAY 22, 1997

8:30 A.M. - ROOM 643 LOB

The Senate Finance Committee met. There were 22 members of the committee present. Senator David W. Hoyle, Co-Chairman, presided. Senator Hoyle called the meeting to order and introduced the Pages, they are Joseph Patton from Nags Head, N. C., sponsored by Senator Basnight, Jamie Bonnett from Kitty Hawk, N. C., sponsored by Senator Basnight and Ben Eisner from Kill Devil Hills, N. C., sponsored by Senator Basnight.

H. B. 643 - Belmont Annexation Agreement

Representative Rayfield came to explain the bill. Senator Weinstein made a motion for a "favorable" report, motion passed.

H. B. 136 - Late Video Return/Sales Tax

Representative Weatherly came to explain the bill. Mr. George Long with the Sales Tax Division with the Department of Revenue spoke on the bill. After many questions and comments on the bill from members of the committee, Senator Hoyle stated that there would not be a vote taken on this bill today.

H. B. 529 - No Tax Rollback on Condemnation

Senator Dalton explained this bill for Representative Clary. Senator Wellons moved for a "favorable" report, motion passed.

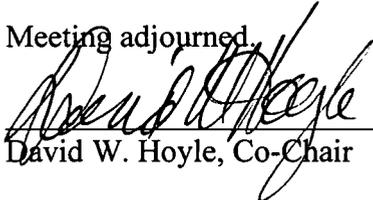
S. B. 784 - Conform Tax Extension Rules

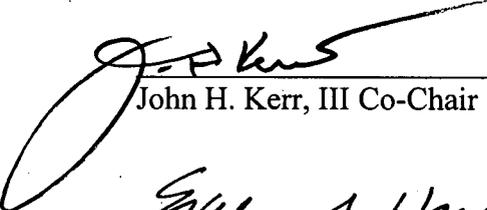
Senator Webster made a motion for adoption of proposed committee substitute, motion passed. Senator Webster explained the committee substitute. Mr. Billy Daniel of the Corporate Tax Division of the Department of Revenue spoke on the bill. After discussion and questions from members of the Committee, Senator McDaniel made a motion to give the bill a "favorable" report, motion passed.

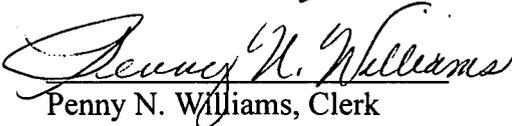
S. B. 41 - No Sales Tax on Prescription Drugs

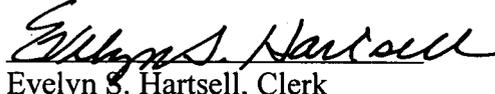
Senator Webster explained the bill and stated that this was the last place in the drug tax law to be closed. After discussion on the bill, Senator Hoyle stated that we would not take a vote on this bill today.

Meeting adjourned.


David W. Hoyle, Co-Chair


John H. Kerr, III Co-Chair


Penny N. Williams, Clerk


Evelyn S. Hartsell, Clerk

NOTE:

Agenda is Attachment # 1
Visitor's Registration is Attachment # 2
Committee Report is Attachment # 3

AGENDA

SENATE FINANCE COMMITTEE MEETING

THURSDAY, MAY 22, 1997

ROOM 643 AT 8:30 AM

SB 41 - NO SALES TAX ON PRESCRIPTION DRUGS -
SEN. WEBSTER

SB 784 - CONFORM TAX EXTENSION RULES -
SEN. WEBSTER

HB 136 - LATE VIDEO RETURN/SALES TAX -
REP. WEATHERLY

HB 529 - NO TAX ROLLBACK ON CONDEMNATION -
REP. CLARY

HB 643 - BELMONT ANNEXATION AGREEMENT -
REP. RAYFIELD

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 643

Short Title: Belmont Annexation Agreement.

(Local)

Sponsors: Representatives Rayfield; Clary, Dedmon, Dickson, Gamble, Kiser, and Weatherly.

Referred to: Local and Regional Government II, if favorable, Finance.

March 27, 1997

A BILL TO BE ENTITLED

1
2 AN ACT TO AUTHORIZE THE CITY OF BELMONT TO ENTER INTO AN
3 AGREEMENT FOR PAYMENTS IN LIEU OF ANNEXATION.

4 The General Assembly of North Carolina enacts:

5 Section 1. Notwithstanding any applicable provision of the General
6 Statutes or any other public or local law, the City of Belmont is granted certain
7 contract powers as follows:

- 8 (1) The City of Belmont may, by agreement, provide that certain
9 property described in the agreement as the "Allen Plant Property"
10 may not be involuntarily annexed by the City prior to December
11 30, 2009, under the General Statutes as they now exist or may be
12 subsequently amended. The City of Belmont shall not seek to
13 repeal this act upon its approval by the General Assembly.
14 Nothing in this act impairs the right of the General Assembly to
15 annex any such property by special local act.
- 16 (2) Any agreement entered into as provided in subdivision (1) of this
17 section is deemed by this section to be proprietary and commercial
18 in nature and is specifically determined to be consistent with the
19 public policy of the State of North Carolina.
- 20 (3) Any agreement entered into as provided in subdivision (1) of this
21 section is a continuing agreement and is binding on and
22 enforceable against the current and future members of the City

1 Council of the City of Belmont during the full term of such
2 agreement and any extension thereof.

- 3 (4) The parties to any agreement entered into as provided in
4 subdivision (1) of this section are authorized by this section to
5 modify, amend, and extend such agreement on mutual written
6 consent, without the approval of the General Assembly, provided
7 that any such modification or amendment does not materially alter
8 the concept of the agreement.

9 Section 2. The City of Belmont may accept, as consideration for such
10 agreement, "Payments in lieu of taxes".

11 Section 3. Payments in lieu of taxes under this act shall be annually
12 computed based upon the tax assessment of the Allen Plant Property as determined
13 by the North Carolina Department of Revenue, Ad Valorem Tax Division, pursuant
14 to Article 23 of Chapter 105 of the General Statutes, with the formula for making the
15 computation being stated in the agreement referenced under Section 1 of this act.

16 Section 4. The agreement under Section 1 of this act shall apply to the
17 Allen Plant Property described as follows:

18 Beginning at a point in the center line of Southpoint Road and running from said
19 beginning point N 87-07 E-528.3 ft. to a concrete monument in the southeasterly
20 corner of the property now or formerly of Louise B. Wilson; thence N 01-36 E-750.2
21 ft. to an iron pipe; thence N 0-46 E-349.4 ft. to an iron pin; thence N 0-27 E-259.8 ft.
22 to a concrete monument; thence S 86-49 E-407.7 ft. to an iron pin; thence S 86-36 E-
23 338.1 ft. to an iron pipe; thence S 86-59 E-230.2 ft. to an iron pin; thence S 87-06 E-
24 374.6 ft. to a concrete monument; thence N 0-39 E-692.3 ft. to an iron pin; thence N
25 0-52 E-256.2 ft. to an iron pin; thence N 0-17 E-305.8 ft. to an iron pin; thence N 0-25
26 E-59.4 ft. to an iron pipe; thence S 85-45 E-1584.0 ft. to an iron pipe in the boundary
27 of Duke Power Company's Lake Wylie Hydroelectric Project; thence with the
28 boundary of Lake Wylie Hydroelectric Project approximately 11,822 ft. to an iron pin
29 in the northeasterly corner of the property now or formerly Crescent Resources, Inc.;
30 thence with the northerly line of said property N 89-29 W-2255.3 ft. to an iron pin;
31 thence N 42-56 W-661.1 ft. to a concrete monument; thence S 69-18 W-1019.0 ft. to a
32 concrete monument the southeasterly corner of the property of Vernie Holton (now
33 or formerly); thence with the easterly line of the Vernie Holton property N 5-55 E-
34 929.5 ft. to an iron pipe; thence S 80-42 W-448.3 ft. to a concrete monument; thence
35 N 4-19 W-130.2 ft. to a concrete monument; thence S 85-28 W-10.0 ft. to an iron pin;
36 thence N 2-00 W-169.9 ft. to a iron pin; thence S 85-44 W-252.8 ft. to a point in the
37 center line of Southpoint Road; thence with the center line of Southpoint Road N 2-
38 01 W-168.9 ft. to a point; thence N 82-51 E-248.8 ft. to an iron pin; thence N 7-09 W-
39 124.2 ft to a point; thence S 82-58 W-27.5 ft. to a concrete monument; thence N 10-42
40 E-206.3 ft. to an iron pin; thence N 81-12 E-149.2 ft. to a concrete monument; thence
41 N 14-03 E-503.5 ft. to a concrete monument; thence N 14-58 W-226.8 ft. to an iron
42 pin; thence N 18-27 E-178.9 ft. to a point in the center line of County Road No. 2703;
43 thence with the center line of said road N 82-39 E-594.1 ft. to a point; thence S 5-29
44 W-255.7 ft. to an iron pin; thence N 83-25 E-126.8 ft. to an iron pin; thence N 5-29 E-

1 255.7 ft. to a point in the center line of County Road No. 2703; thence with center
2 line of said road N 82-39 E-216.4 ft. to an iron pin; thence N 5-52 E-230.0 ft. to an
3 iron pin; thence S 82-52 W-101.9 ft. to an iron pin; thence N 5-29 E-448.6 ft. to a
4 concrete monument; thence N 5-52 E-518.3 ft. to a concrete monument; thence N 78-
5 16 W-208.1 ft. to a concrete monument; thence N 15-58 E-100.0 ft. to a concrete
6 monument; thence N 73-08 W-197.5 ft. to a concrete monument; thence S 17-34 W-
7 75.0 ft. to an iron pin; thence N 63-05 W-49.5 ft. to a concrete monument; thence S
8 82-47 W-158.9 ft. to a concrete monument; thence S 2-03 E-25.0 ft. to an iron pipe;
9 thence S 82-49 W-300.0 ft. to an iron pipe; thence N 2-03 W-25.0 ft. to a concrete
10 monument; thence S 82-49 W-196.9 ft. to a concrete monument; thence N 1-51 W-
11 150.5 ft. to an I beam; thence N 82-58 E-196.4 ft. to an iron pipe; thence N 2-03 W-
12 50.3 ft. to an iron pin; thence S 82-53 W-196.7 ft. to an iron rod; thence N 2-19 W-
13 143.1 ft. to a concrete monument; thence N 37-03 W-179.4 ft. to a concrete
14 monument; thence N 56-22 E-150.2 ft. to an iron pipe; thence N 1-39 E-931.1 ft. to a
15 concrete monument; thence N 60-57 W-316.8 ft. to a concrete monument; thence S
16 30-03 W-205.4 ft. to an iron pin; thence S 20-28 W-75.9 ft. to a nail and cap in
17 Southpoint Road; thence N 66-10 W-5.8 ft. to a point in the center line of Southpoint
18 Road; thence with the center line of said road N 12-52 E-264.1 ft. to a railroad spike
19 in the center line of said road; thence N 77-08 W-506.1 ft. to an iron pin; thence S 12-
20 51 W-365.9 ft. to a concrete monument; thence N 66-10 W-164.1 ft. to a concrete
21 monument; thence S 15-24 W-301.8 ft. to a concrete monument; thence N 89-41 W-
22 925.1 ft. to a concrete monument; thence S 20-44 W-99.8 ft. to a concrete monument;
23 thence N 62-37 W-490.8 ft. to an angle iron; thence S 24-54 W-767.6 ft. to an angle
24 iron; thence N 47-37 W-158.0 ft. to an iron pipe; thence N 55-37 W-373.3 ft. to an
25 iron pipe in Duke Power Company's Allen Fishing Access Area; thence with the
26 southeasterly line of the Duke Power Company Allen Fishing Access Area,
27 approximately 1,051 to an iron pin; thence N 2-00 W-1612.7 ft. to a concrete
28 monument; thence N 63-51 E-576.1 ft. to a point; thence with the arc of a circular
29 curve to the right having a radius of 950.21 ft. an arc distance of 281.02 ft. to a point;
30 thence N 80-50-30 E 81.95 ft. to a point; thence with the arc of a circular curve to the
31 right, having a radius of 364.64 ft. an arc distance of 211.77 ft. to a point; thence S 65-
32 53-00 E 195.05 ft. to a point; thence with the arc of a circular curve to the left having
33 a radius of 195.28 ft., an arc distance of 162.51 ft.; thence N 66-26-14 E 205.06 ft. to a
34 point; thence with the arc of a circular curve to the right having a radius of 307.75 ft.
35 an arc distance of 108.96 ft. to a concrete monument, thence N 86-43 E-278.8 ft. to a
36 concrete monument; thence N 86-39 E-316.3 ft. to the point of beginning, containing
37 1003.0 acres more or less.

SCHEDULE 1

38
39 (1) Certified Value: The parties agree that the tax equivalent payments
40 made by Duke Power to Belmont with respect to its Allen Plant Property shall be
41 based on the annual value of the Allen Plant Property as certified to the Gaston
42 County Tax Department by the North Carolina Department of Revenue, Ad Valorem
43 Tax Division, which value is hereinafter referred to as "Certified Value." The
44 Certified Value for the then current year shall be used in computing the annual tax

1 equivalent payments to be made by Duke Power to Belmont each year during the
2 term of this Agreement.

3 (2) Tax Equivalent Payments: The tax equivalent payments shall be
4 made annually for 12 consecutive calendar years. Each annual payment shall be
5 made on or before the thirtieth day of June of each year beginning with the year
6 1998.

7 Each year, the dollar amount of the tax equivalent payments shall be
8 determined as follows: (a) - Determination of amount of tax equivalency - Multiply
9 the Certified Value of the Allen Plant Property for the then current year by the tax
10 rate of Belmont which is in effect on January 1 of the then current year; and (b) -
11 Determination of amount of payment in lieu - Multiply the determination of the
12 amount of tax equivalency in (a) above, stated in dollars, by the percentage set out in
13 the following table:

14	<u>Current Year</u>	<u>Percent</u>
15	1996	0
16	1997	0
17	1998	8.5
18	1999	17.0
19	2000	25.5
20	2001	34.0
21	2002	42.5
22	2003	51.0
23	2004	59.5
24	2005	68.0
25	2006	76.5
26	2007	85.0
27	2008	92.5
28	2009	100.00

30
31 Subject to any other adjustments required by the Agreement, the product,
32 stated in dollars, shall be the dollar amount of the payment in lieu of taxes which
33 shall be paid by Duke Power to Belmont for the then current year.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

3

HOUSE BILL 529
Committee Substitute Favorable 5/6/97
Third Edition Engrossed 5/8/97

Short Title: No Tax Rollback on Condemnation.

(Public)

Sponsors:

Referred to:

March 18, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE THAT DEFERRED TAXES DUE ON PROPERTY THAT
3 IS TAXED AT ITS PRESENT-USE VALUE WILL BE PAID BY THE PERSON
4 TO WHOM THE LAND IS TRANSFERRED IF THE PROPERTY IS
5 TRANSFERRED BECAUSE OF CONDEMNATION OR IMPENDING
6 CONDEMNATION.
7 The General Assembly of North Carolina enacts:
8 Section 1. G.S. 40A-6 reads as rewritten:
9 "**§ 40A-6. Reimbursement of owner for taxes paid on condemned property.**
10 An owner whose property is totally taken in fee simple by a condemnor exercising
11 the power of eminent domain, under this Chapter or any other ~~statute~~ statute, shall
12 be entitled to reimbursement from the condemnor of the following:
13 (1) The pro rata portion of real property taxes paid by the owner
14 ~~which that~~ are allocable to a period subsequent to vesting of title
15 in the condemnor, or the effective date of possession of such the
16 real property, whichever is earlier.
17 (2) All deferred taxes paid by the owner pursuant to G.S. 105-277.4(c)
18 as a result of the condemnation."
19 Section 2. G.S. 136-121.1 reads as rewritten:
20 "**§ 136-121.1. Reimbursement of owner for taxes paid on condemned property.**
21 A property owner whose property is totally taken in fee simple by any condemning
22 agency (as defined in G.S. 133-7(1)) exercising the power of eminent domain, under

1 this Chapter or any other statute or charter provision, shall be entitled to
2 reimbursement from the condemning agency of the following:

3 (1) The pro rata portion of real property taxes paid ~~which~~ that are
4 allocable to a period subsequent to vesting of title in the agency, or
5 the effective date of possession of ~~such~~ the real property,
6 whichever is earlier.

7 (2) All deferred taxes paid by the owner pursuant to G.S. 105-277.4(c)
8 as a result of the condemnation."

9 Section 3. G.S. 105-277.4 reads as rewritten:

10 **"§ 105-277.4. Agricultural, horticultural and forestland -- ~~Application for taxation at~~**
11 **~~present-use value. Application; appraisal at use value; appeal; deferred taxes.~~**

12 (a) Application. -- Property coming within one of the classes defined in G.S. 105-
13 277.3 shall be eligible for taxation on the basis of the value of the property in its
14 present use if a timely and proper application is filed with the assessor of the county
15 in which the property is located. The application shall clearly show that the property
16 comes within one of the classes and shall also contain any other relevant information
17 required by the assessor to properly appraise the property at its present-use value.
18 An initial application shall be filed during the regular listing period of the year for
19 which the benefit of this classification is first claimed, or within 30 days of the date
20 shown on a notice of a change in valuation made pursuant to G.S. 105-286 or G.S.
21 105-287. A new application is not required to be submitted unless the property is
22 transferred or becomes ineligible for use-value appraisal because of a change in use
23 or acreage.

24 (b) Appraisal at Present-use Value. -- Upon receipt of a properly executed
25 application, the assessor shall appraise the property at its present-use value as
26 established in the schedule prepared pursuant to G.S. 105-317. In appraising the
27 property at its present-use value, the assessor shall appraise the improvements located
28 on qualifying land according to the schedules and standards used in appraising other
29 similar improvements in the county. If all or any part of a qualifying tract of land is
30 located within the limits of an incorporated city or town, the assessor shall furnish a
31 copy of the property record showing both the present-use appraisal and the valuation
32 upon which the property would have been taxed in the absence of this classification
33 to the collector of the city or town. He shall also notify the tax collector of any
34 changes in the appraisals or in the eligibility of the property for the benefit of this
35 classification.

36 (b1) Appeal. -- Decisions of the assessor regarding the qualification or appraisal of
37 property under this section may be appealed to the county board of equalization and
38 review or, if that board is not in session, to the board of county commissioners.
39 Decisions of the county board may be appealed to the Property Tax Commission.

40 (c) Deferred Taxes. -- Property meeting the conditions for classification under G.S.
41 105-277.3 shall be taxed on the basis of the value of the property for its present use.
42 The difference between the taxes due on the present-use basis and the taxes which
43 would have been payable in the absence of this classification, together with any
44 interest, ~~penalties~~ penalties, or costs that may accrue thereon, shall be a lien on the

1 real property of the taxpayer as provided in G.S. 105-355(a). The difference in taxes
2 shall be carried forward in the records of the taxing unit or units as deferred taxes,
3 but shall not be payable, unless and until the property loses its eligibility for the
4 benefit of this classification. The tax for the fiscal year that opens in the calendar
5 year in which a disqualification occurs shall be computed as if the property had not
6 been classified for that year, and taxes for the preceding three fiscal years which have
7 been deferred ~~as provided herein~~, shall immediately be payable, together with interest
8 thereon as provided in G.S. 105-360 for unpaid taxes which shall accrue on the
9 deferred taxes due ~~herein~~ as if they had been payable on the dates on which they
10 originally became due. If only a part of the qualifying tract of land loses its
11 eligibility, a determination shall be made of the amount of deferred taxes applicable
12 to that part and that amount shall become payable with interest as provided above.
13 Upon the payment of any taxes deferred in accordance with this section for the three
14 years immediately preceding a disqualification, all liens arising under this subsection
15 shall be extinguished.

16 (d) Exceptions. -- Notwithstanding the provisions of subsection (e), ~~if a farm unit~~
17 ~~loses (c) of this section, if property loses its eligibility for present use value treatment~~
18 classification solely due to a one of the following reasons, no deferred taxes are due
19 and the lien for the deferred taxes is extinguished:

20 (1) There is a change in income caused by enrollment of land in the
21 federal Conservation Reserve Program authorized by Title XII of
22 the Food Security Act of 1985 (Pub. L. 99-198), as amended, no
23 deferred taxes shall be owed and all present use value tax liens
24 shall be extinguished. the property in the federal conservation
25 reserve program established under 16 U.S.C. Chapter 58.

26 (e) ~~Notwithstanding the provisions of subsection (e) of this section, if real property~~
27 ~~qualified for present use appraisal~~

28 (2) The property is conveyed by gift to a nonprofit organization and
29 qualifies for exclusion from the tax base pursuant to G.S. 105-
30 275(12) or ~~G.S. 105-275(29)~~ or G.S. 105-275(29).

31 (3) The property is conveyed by gift to the State, a political
32 subdivision of the State, or the United States, no deferred taxes
33 shall be owed, and all present use value tax liens are extinguished.
34 States."

35 Section 4. This act is effective when it becomes law and applies to
36 transfers made on or after June 1, 1997.

**NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE**

BILL NUMBER: House Bill 529
SHORT TITLE: No Tax Rollback on Condemnation
SPONSOR(S): Committee Substitute (Third Edition)

	FISCAL IMPACT				
	Yes (x)	No ()	No Estimate Available ()		
	<u>FY 1997-98</u>	<u>FY 1998-99</u>	<u>FY 1999-00</u>	<u>FY 2000-01</u>	<u>FY 2001-02</u>
REVENUES	See section on assumptions and methodology.				
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:	Local units of government that levy a property tax.				
EFFECTIVE DATE:	Transfers of property made on or after June 1, 1997.				

BILL SUMMARY: Property meeting one of the three classes defined in G.S. 105-277.3 is eligible for taxation on the basis of the value of the property in its present-use instead of its market value. The difference in the taxes due on the present-use and the taxes which would have been payable in the absence of the "present-use classifications" are carried forward as deferred taxes. If the classification of the property changes due to ownership, the deferred taxes are due. The amount payable is equal to the amount deferred for the three previous years plus the current year's property tax based on the market value.

Under this act, the amount of deferred tax is to be paid by the party condemning the property.

ASSUMPTIONS AND METHODOLOGY:

In order to gauge an impact, the Department of Transportation provided a partial list of the property condemned in 1996 for right-of-way acquisitions. The counties listed by the DOT were Catawba, Chatham, Cherokee, Edgecombe, Guilford, Madison, Mecklenburg, Pender, Randolph, Wake, and Watauga. A questionnaire was sent to each of the counties listed by the Department, asking if any of the property listed was taxed at use value. Eight of the counties responded, five of which reported an amount in deferred taxes paid in tax year 1996. These five counties reported collecting \$287,852 in deferred taxes on condemned property for the tax year.

The Department of Transportation is not the only State agency that has power of immanent domain. Local units of government too have such authority as well as public utility companies.

FISCAL RESEARCH DIVISION

PREPARED BY: Warren Plonk

APPROVED BY:

DATE: May 21, 1997

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 784

Short Title: Conform Tax Extension Rules.

(Public)

Sponsors: Senators Webster, Hartsell, Kerr; Allran, Ballantine, Blust, Carpenter, Clark, Cochrane, East, Forrester, Garwood, Horton, Hoyle, Kincaid, Ledbetter, McDaniel, Page, Reeves, and Shaw of Guilford.

Referred to: Finance.

April 10, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE TAX RELIEF AND SIMPLIFICATION BY
3 CONFORMING STATE TAX LAW TO THE FEDERAL RULE THAT
4 GRANTS A FILING EXTENSION EVEN IF THE REQUEST IS NOT
5 ACCOMPANIED BY PAYMENT.
6 The General Assembly of North Carolina enacts:
7 Section 1. G. S. 105-263 reads as rewritten:
8 "§ 105-263. Extensions of time for filing a report or return.
9 The Secretary may extend the time in which a person must file a report or return
10 with the Secretary. To obtain an extension of time for filing a report or return, a
11 person must comply with any application requirement set by the Secretary. ~~In~~
12 ~~addition, if the extension is for~~ An extension of time for filing a franchise tax return,
13 an income tax return, or a gift tax return, ~~the person must pay the amount of tax~~
14 ~~expected to be due with the return by the original due date of the return; an~~
15 ~~extension of time for filing one of these returns~~ return does not extend the time for
16 paying the tax due or the time when a penalty attaches for failure to pay the tax. An
17 extension of time for filing
18 ~~If the extension is for~~ a report or any return other than a franchise tax return, an
19 income tax return, or a gift tax return, ~~the person is not required to pay the amount~~
20 ~~of tax expected to be due with the report or return by the original due date of the~~
21 ~~report or return; an extension of time for filing a report or one of these other returns~~
22 return extends the time for paying the tax due and the time when a penalty attaches

1 for failure to pay the tax. When an extension of time for filing a report or return
2 extends the time for paying the tax expected to be due with the report or return,
3 interest, at the rate established pursuant to G.S. 105-241.1(i), accrues on the tax due
4 from the original due date of the report or return to the date the tax is paid."

5 Section 2. The Secretary of Revenue shall draw from collections under
6 Article 4 of Chapter 105 of the General Statutes for the 1997-98 fiscal year the one-
7 time computer programming costs of implementing this act.

8 Section 3. This act becomes effective January 1, 1998, and applies to
9 returns due on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

D

SENATE BILL 784
Proposed Senate Finance Committee Substitute
S784-CSLJ-5/21

Short Title: Conform Tax Extension Rules.

(Public)

Sponsors:

Referred to: Finance.

April 10, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE TAX RELIEF AND SIMPLIFICATION BY CONFORMING
3 STATE TAX LAW TO THE FEDERAL RULE THAT GRANTS A FILING
4 EXTENSION EVEN IF THE REQUEST IS NOT ACCOMPANIED BY PAYMENT.
5 The General Assembly of North Carolina enacts:
6 Section 1. G. S. 105-263 reads as rewritten:
7 "§ 105-263. Extensions of time for filing a report or return.
8 The Secretary may extend the time in which a person must file a
9 report or return with the Secretary. To obtain an extension of
10 time for filing a report or return, a person must comply with any
11 application requirement set by the Secretary. ~~In addition, if the~~
12 ~~extension is for~~ An extension of time for filing a franchise tax
13 return, an income tax return, or a gift tax return, the person
14 ~~must pay the amount of tax expected to be due with the return by~~
15 ~~the original due date of the return; an extension of time for~~
16 ~~filing one of these returns~~ return does not extend the time for
17 paying the tax due or the time when a penalty attaches for
18 failure to pay the tax. An extension of time for filing
19 ~~If the extension is for~~ a report or any return other than a
20 franchise tax return, an income tax return, or a gift tax return,
21 ~~the person is not required to pay the amount of tax expected to~~

1 ~~be due with the report or return by the original due date of the~~
2 ~~report or return; an extension of time for filing a report or one~~
3 ~~of these other returns~~ return extends the time for paying the tax
4 due and the time when a penalty attaches for failure to pay the
5 tax. When an extension of time for filing a report or return
6 extends the time for paying the tax expected to be due with the
7 report or return, interest, at the rate established pursuant to
8 G.S. 105-241.1(i), accrues on the tax due from the original due
9 date of the report or return to the date the tax is paid."

10 Section 2. G.S. 105-122(d) reads as rewritten:

11 "(d) After determining the proportion of its total capital
12 stock, surplus and undivided profits as set out in subsection (c)
13 of this section, which amount so determined shall in no case be
14 less than fifty-five percent (55%) of the appraised value as
15 determined for ad valorem taxation of all the real and tangible
16 personal property in this State of each such corporation plus the
17 total appraised value of intangible property returned for
18 taxation of intangible personal property as herein specified nor
19 less than its total actual investment in tangible property in
20 this State, every corporation taxed under this section shall
21 ~~annually pay to the Secretary of Revenue, at the time the report~~
22 ~~and statement are due, Revenue~~ a franchise or privilege tax,
23 which is hereby levied at the rate of one dollar and fifty cents
24 (\$1.50) per one thousand dollars (\$1,000) of the total amount of
25 capital stock, surplus and undivided profits as herein provided.
26 The tax imposed in this section shall in no case be less than
27 thirty-five dollars (\$35.00) and shall be for the privilege of
28 carrying on, doing business, and/or the continuance of articles
29 of incorporation or domestication of each such corporation in
30 this State. Appraised value of tangible property including real
31 estate shall be the ad valorem valuation for the calendar year
32 next preceding the due date of the franchise tax return.
33 Appraised value of intangible property shall be the total gross
34 valuation required to be reported for intangible tax purposes on
35 April 15 coincident with or next preceding the due date of the
36 franchise tax return. The term "total actual investment in
37 tangible property" as used in this section shall be construed to
38 mean the total original purchase price or consideration to the
39 reporting taxpayer of its tangible properties, including real
40 estate, in this State plus additions and improvements thereto
41 less reserve for depreciation as permitted for income tax
42 purposes, and also less any indebtedness incurred and existing by
43 virtue of the purchase of any real estate and any permanent
44 improvements made thereon. In computing "total actual investment

1 in tangible personal property" there shall also be deducted
2 reserves for the entire cost of any air-cleaning device or sewage
3 or waste treatment plant, including waste lagoons, and pollution
4 abatement equipment purchased or constructed and installed which
5 reduces the amount of air or water pollution resulting from the
6 emission of air contaminants or the discharge of sewage and
7 industrial wastes or other polluting materials or substances into
8 the outdoor atmosphere or into streams, lakes, or rivers, upon
9 condition that the corporation claiming such deduction shall
10 furnish to the Secretary a certificate from the Department of
11 Environment, Health, and Natural Resources or from a local air
12 pollution control program for air-cleaning devices located in an
13 area where the Environmental Management Commission has certified
14 a local air pollution control program pursuant to G.S. 143-
15 215.112 certifying that said Department or local air pollution
16 control program has found as a fact that the air-cleaning device,
17 waste treatment plant or pollution abatement equipment purchased
18 or constructed and installed as above described has actually been
19 constructed and installed and that such device, plant or
20 equipment complies with the requirements of the Environmental
21 Management Commission or local air pollution control program with
22 respect to such devices, plants or equipment, that such device,
23 plant or equipment is being effectively operated in accordance
24 with the terms and conditions set forth in the permit,
25 certificate of approval, or other document of approval issued by
26 the Environmental Management Commission or local air pollution
27 control program and that the primary purpose thereof is to reduce
28 air or water pollution resulting from the emission of air
29 contaminants or the discharge of sewage and waste and not merely
30 incidental to other purposes and functions. The cost of
31 constructing facilities of any private or public utility built
32 for the purpose of providing sewer service to residential and
33 outlying areas shall be treated as deductible for the purposes of
34 this section; the deductible liability allowed by this section
35 shall apply only with respect to such pollution abatement plants
36 or equipment constructed or installed on or after January 1,
37 1955.

38 In determining the total tax payable by any corporation under
39 this section, there shall be allowed as a credit on such tax the
40 amount of the credit authorized by Division V of Article 4 of
41 this Chapter."

42 Section 3. G.S. 105-129 reads as rewritten:
43 "§ 105-129. Extension of time for filing returns.

1 The A return required by this Article shall be is due on or
2 before the dates specified unless the Secretary of Revenue grants
3 an extension on or before the due date of the return. The
4 Secretary of Revenue for good cause may extend the time for
5 filing any return under this Article. A taxpayer requesting an
6 extension of time for filing shall, on or before the date the
7 return is due, submit an application for an extension of time for
8 filing on a form prescribed by the Secretary and pay the full
9 amount of the tax anticipated to be due. date set in this
10 Article. A taxpayer may ask the Secretary for an extension of
11 time to file a return under G.S. 105-263."

12 Section 4. G.S. 105-130.17(d) reads as rewritten:
13 "(d) In case of sickness, absence, or other disability or
14 whenever in his judgment good cause exists, the Secretary may
15 allow further time for filing returns. A taxpayer requesting an
16 extension of time for filing shall, on or before the date the
17 return is due, submit an application for an extension of time for
18 filing on a form prescribed by the Secretary and pay the full
19 amount of the tax anticipated to be due. A taxpayer may ask the
20 Secretary for an extension of time to file a return under G.S.
21 105-263."

22 Section 5. The Secretary of Revenue shall draw from
23 collections under Article 4 of Chapter 105 of the General
24 Statutes for the 1997-98 fiscal year the one-time computer
25 programming costs of implementing this act.

26 Section 6. This act becomes effective January 1, 1998,
27 and applies to returns due on or after that date.

**NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL ESTIMATE**

BILL NUMBER: SB 784
SHORT TITLE: CONFORM TAX EXTENSION RULES
SPONSOR(S): SEN. WEBSTER

FISCAL IMPACT

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

PRINCIPAL DEPARTMENT AFFECTED: The income tax is administered by the Department of Revenue.

EFFECTIVE DATE: Tax returns due on or after January 1, 1998

BILL SUMMARY: Conforms state tax law to federal rule that grants a filing extension even if the request is not accompanied by payment. Also, the bill allows the Department of Revenue to earmark from 1997-98 income tax payments the one-time cost of implementing the change.

ASSUMPTIONS AND METHODOLOGY: The practical effect of the bill is to **eliminate late filing penalties on extension returns not accompanied by the tax due**. It does not eliminate any penalties for late payment of the tax due. The Department of Revenue does not have a break-down of income tax penalties by type of penalty.

FISCAL RESEARCH DIVISION (733-4910)
PREPARED BY: DAVE CROTTS
DATE: MAY 22, 1997

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

D

SENATE BILL 784
Proposed Committee Substitute S784-PCSA754

Short Title: Conform Tax Extension Rules.

(Public)

Sponsors:

Referred to:

April 10, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE TAX RELIEF AND SIMPLIFICATION BY
3 CONFORMING STATE TAX LAW TO THE FEDERAL RULE THAT
4 GRANTS A FILING EXTENSION EVEN IF THE REQUEST IS NOT
5 ACCOMPANIED BY PAYMENT.

6 The General Assembly of North Carolina enacts:

7 Section 1. G. S. 105-263 reads as rewritten:

8 "**§ 105-263. Extensions of time for filing a report or return.**

9 The Secretary may extend the time in which a person must file a report or return
10 with the Secretary. To obtain an extension of time for filing a report or return, a
11 person must comply with any application requirement set by the Secretary. ~~In~~
12 ~~addition, if the extension is for~~ An extension of time for filing a franchise tax return,
13 an income tax return, or a gift tax return, ~~the person must pay the amount of tax~~
14 ~~expected to be due with the return by the original due date of the return; an~~
15 ~~extension of time for filing one of these returns~~ return does not extend the time for
16 paying the tax due or the time when a penalty attaches for failure to pay the tax. An
17 extension of time for filing

18 ~~If the extension is for~~ a report or any return other than a franchise tax return, an
19 income tax return, or a gift tax return, ~~the person is not required to pay the amount~~
20 ~~of tax expected to be due with the report or return by the original due date of the~~
21 ~~report or return; an extension of time for filing a report or one of these other returns~~
22 return extends the time for paying the tax due and the time when a penalty attaches
23 for failure to pay the tax. When an extension of time for filing a report or return

1 extends the time for paying the tax expected to be due with the report or return,
2 interest, at the rate established pursuant to G.S. 105-241.1(i), accrues on the tax due
3 from the original due date of the report or return to the date the tax is paid."

4 Section 2. G.S. 105-122(d) reads as rewritten:

5 "(d) After determining the proportion of its total capital stock, surplus and
6 undivided profits as set out in subsection (c) of this section, which amount so
7 determined shall in no case be less than fifty-five percent (55%) of the appraised
8 value as determined for ad valorem taxation of all the real and tangible personal
9 property in this State of each such corporation plus the total appraised value of
10 intangible property returned for taxation of intangible personal property as herein
11 specified nor less than its total actual investment in tangible property in this State,
12 every corporation taxed under this section shall ~~annually~~ pay to the Secretary of
13 ~~Revenue, at the time the report and statement are due,~~ Revenue a franchise or
14 privilege tax, which is hereby levied at the rate of one dollar and fifty cents (\$1.50)
15 per one thousand dollars (\$1,000) of the total amount of capital stock, surplus and
16 undivided profits as herein provided. The tax imposed in this section shall in no case
17 be less than thirty-five dollars (\$35.00) and shall be for the privilege of carrying on,
18 doing business, and/or the continuance of articles of incorporation or domestication
19 of each such corporation in this State. Appraised value of tangible property including
20 real estate shall be the ad valorem valuation for the calendar year next preceding the
21 due date of the franchise tax return. Appraised value of intangible property shall be
22 the total gross valuation required to be reported for intangible tax purposes on April
23 15 coincident with or next preceding the due date of the franchise tax return. The
24 term 'total actual investment in tangible property' as used in this section shall be
25 construed to mean the total original purchase price or consideration to the reporting
26 taxpayer of its tangible properties, including real estate, in this State plus additions
27 and improvements thereto less reserve for depreciation as permitted for income tax
28 purposes, and also less any indebtedness incurred and existing by virtue of the
29 purchase of any real estate and any permanent improvements made thereon. In
30 computing 'total actual investment in tangible personal property' there shall also be
31 deducted reserves for the entire cost of any air-cleaning device or sewage or waste
32 treatment plant, including waste lagoons, and pollution abatement equipment
33 purchased or constructed and installed which reduces the amount of air or water
34 pollution resulting from the emission of air contaminants or the discharge of sewage
35 and industrial wastes or other polluting materials or substances into the outdoor
36 atmosphere or into streams, lakes, or rivers, upon condition that the corporation
37 claiming such deduction shall furnish to the Secretary a certificate from the
38 Department of Environment, Health, and Natural Resources or from a local air
39 pollution control program for air-cleaning devices located in an area where the
40 Environmental Management Commission has certified a local air pollution control
41 program pursuant to G.S. 143-215.112 certifying that said Department or local air
42 pollution control program has found as a fact that the air-cleaning device, waste
43 treatment plant or pollution abatement equipment purchased or constructed and
44 installed as above described has actually been constructed and installed and that such

1 device, plant or equipment complies with the requirements of the Environmental
2 Management Commission or local air pollution control program with respect to such
3 devices, plants or equipment, that such device, plant or equipment is being effectively
4 operated in accordance with the terms and conditions set forth in the permit,
5 certificate of approval, or other document of approval issued by the Environmental
6 Management Commission or local air pollution control program and that the primary
7 purpose thereof is to reduce air or water pollution resulting from the emission of air
8 contaminants or the discharge of sewage and waste and not merely incidental to other
9 purposes and functions. The cost of constructing facilities of any private or public
10 utility built for the purpose of providing sewer service to residential and outlying
11 areas shall be treated as deductible for the purposes of this section; the deductible
12 liability allowed by this section shall apply only with respect to such pollution
13 abatement plants or equipment constructed or installed on or after January 1, 1955.

14 In determining the total tax payable by any corporation under this section, there
15 shall be allowed as a credit on such tax the amount of the credit authorized by
16 Division V of Article 4 of this Chapter."

17 Section 3. G.S. 105-129 reads as rewritten:

18 "**§ 105-129. Extension of time for filing returns.**

19 ~~The A return required by this Article shall be is due on or before the dates~~
20 ~~specified unless the Secretary of Revenue grants an extension on or before the due~~
21 ~~date of the return. The Secretary of Revenue for good cause may extend the time for~~
22 ~~filing any return under this Article. A taxpayer requesting an extension of time for~~
23 ~~filing shall, on or before the date the return is due, submit an application for an~~
24 ~~extension of time for filing on a form prescribed by the Secretary and pay the full~~
25 ~~amount of the tax anticipated to be due. date set in this Article. A taxpayer may ask~~
26 ~~the Secretary for an extension of time to file a return under G.S. 105-263.~~"

27 Section 4. G.S. 105-130.17(d) reads as rewritten:

28 "(d) ~~In case of sickness, absence, or other disability or whenever in his judgment~~
29 ~~good cause exists, the Secretary may allow further time for filing returns. A taxpayer~~
30 ~~requesting an extension of time for filing shall, on or before the date the return is~~
31 ~~due, submit an application for an extension of time for filing on a form prescribed by~~
32 ~~the Secretary and pay the full amount of the tax anticipated to be due. A taxpayer~~
33 ~~may ask the Secretary for an extension of time to file a return under G.S. 105-263.~~"

34 Section 5. The Secretary of Revenue shall draw from collections under
35 Article 4 of Chapter 105 of the General Statutes for the 1997-98 fiscal year the one-
36 time computer programming costs of implementing this act.

37 Section 6. This act becomes effective January 1, 1998, and applies to
38 returns due on or after that date.

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

5-22-97

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Billy Daint	DOR
John Bate	DOR
Nancy Pomeoana	DOR
George Long	DOR
Patricia Sewell	DOR
D. Powell	DOR
Paul Zepin	OSBM
LEIKHTA Poffa	ZDA, PA
David Bowie	DA CDC ZPL
Ed Regan	N.C.A.C.C.
Steve Keene	Nc Med. Society

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

5-22-97

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

NAME	FIRM OR AGENCY AND ADDRESS
Tommy West	Carolina Research Syst
Rob Schofield	NCJ CDC
Phil Schofield	cc

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT

Senator David Hoyle, Co-Chair

Senator John Kerr, Co-Chair

Thursday, May 22, 1997

SENATOR HOYLE,

submits the following with recommendations as to passage:

FAVORABLE

H.B.(CS) 529 No Tax Rollback on Condemnation
 Sequential Referral: None
 Recommended Referral: None

H.B. 643 Belmont Annexation Agreement
 Sequential Referral: None
 Recommended Referral: None

FAVORABLE, AS AMENDED

S.B.(CS #1)439 Securities/Investment Advisers/AB.
 Sequential Referral: None
 Recommended Referral: None
 Long Title Amended: No

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B. 466 Tax Exempt Parental Savings Trust Fund
 Draft Number: PCS8705
 Sequential Referral: None
 Recommended Referral: None
 Long Title Amended: Yes

S.B. 784 Conform Tax Extension Rules
 Draft Number: PCSA754
 Sequential Referral: None
 Recommended Referral: None
 Long Title Amended: No

**UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1,
BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2**

May 22, 1997

S.B.(CS #1)875

Revise Records Laws-2

Draft Number:	PCS1815
Sequential Referral:	none
Recommended Referral:	none
Long Title Amended:	No

TOTAL REPORTED: 6

Committee Clerk Comment: SB 439, SB 466, and SB 875 were taken up in Sen. Finance Comm. on 5/20/97.

SENATE FINANCE COMMITTEE

WEDNESDAY, MAY 28, 1997

12:00 NOON - ROOM 544 LOB

The Senate Finance Committee met. There were 23 members of the Committee present. Senator David W. Hoyle, Co-Chairman, presided. Senator Hoyle introduced the Pages, they are Natalie Harvey from Lincolnton, N. C., sponsored by Senator Hoyle and Drew Ledbetter from Lincolnton, N. C., sponsored by Senator Hoyle.

Senator Hoyle pointed out that we would be hearing discussion only on S. B. 913-Local Transit Revenue Options and that a vote would not be taken on this bill today.

S. B. 913 - Local Transit Revenue Options

Senator Gulley came to explain the bill. He moved for adoption of committee substitute to the bill, motion passed. The following people spoke in support of the bill:

1. Mayor Margaret Kluttz of the City of Salisbury.
2. Mr. Willie "Bill" Pitt, who is Member of the City Council in Wilson, N. C. and is also a Member of the Board of Directors of the League of Municipalities.
3. Mr. Parks Helms from the Charlotte Chamber of Commerce
4. Ms. Christie Cameron, who is a former Member of the Triangle Transit Authority.
5. Mr. Peter Keeber, Vice President of NATIONS BANK.
6. Mr. Dave King, Director of Railroad Division of Department of Transportation.

The following persons spoke in opposition to the Bill:

1. Mr. Marvin Mussellwhite spoke in opposition to the part of the bill that deals with rental cars. He represents Hertz Rental Cars.

SENATE FINANCE COMMITTEE

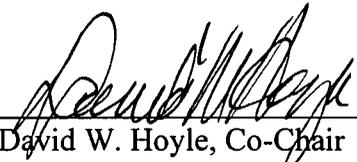
Wednesday, May 28, 1997

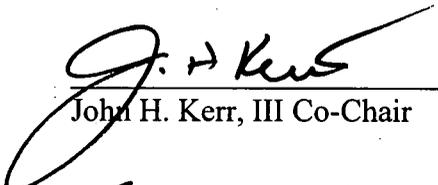
Page -2-

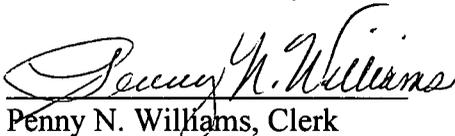
2. Mr. Glenn Jernigan who represents Dollar Rent-A-Car spoke in opposition to the sales tax portion of the Bill.

The Meeting was opened for discussion and questions by Members of the Committee.

Meeting was adjourned.


David W. Hoyle, Co-Chair


John H. Kerr, III Co-Chair


Penny N. Williams, Clerk


Evelyn S. Hartsell, Clerk

NOTE:

Agenda is Attachment # 1

Visitor's Registration is Attachment # 2

AGENDA

SENATE FINANCE COMMITTEE MEETING

WEDNESDAY, MAY 28, 1997

12:00 NOON, ROOM 544

S.B. 913 - LOCAL TRANSIT REVENUE OPTIONS -
SENATOR GULLEY

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 913

Short Title: Local Transit Revenue Options.

(Public)

Sponsors: Senators Gulley, Shaw of Cumberland; Ballance, Cooper, Dannelly, Horton, Hoyle, Jordan, Kinnaird, Ledbetter, Lucas, Miller, Odom, Phillips, Reeves, Rucho, Weinstein, Wellons, and Winner.

Referred to: Finance.

April 17, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE SUPPLEMENTAL SOURCES OF REVENUE FOR
3 LOCAL GOVERNMENT TRANSIT FINANCING.
4 The General Assembly of North Carolina enacts:
5 Section 1. The title of Subchapter VIII of Chapter 105 of the General
6 Statutes reads as rewritten:
7 "SUBCHAPTER VIII. LOCAL GOVERNMENT ~~SALES AND USE TAX. TAXES.~~"
8 Section 2. Subchapter VIII of Chapter 105 of the General Statutes is
9 amended by adding two new Articles to read:
10 "ARTICLE 43.
11 "Local Government Sales and
12 Vehicle Rental Taxes for Public Transit.
13 "§ 105-505. Short title; purpose.
14 This Article shall be known as the Local Government Public Transit Tax Act.
15 This Article gives Regional Public Transportation Authorities and the counties of this
16 State an opportunity to obtain additional sources of revenue with which to meet their
17 needs for financing local public transportation systems. It provides these local
18 governments with authority to levy one-half percent (1/2%) sales and use taxes and
19 five percent (5%) gross receipts taxes on short-term vehicle rentals.
20 "§ 105-506. Definitions.
21 The definitions in G.S. 160A-601 and G.S. 105-164.3 and the following definitions
22 apply to this Article:

- 1 (1) Long-term lease or rental. -- Defined in G.S. 105-187.1.
2 (2) Motorcycle. -- Defined in G.S. 20-4.01.
3 (3) Net proceeds. -- Gross proceeds less the cost of administering and
4 collecting the tax. In the case of a tax collected by a taxing unit,
5 the cost of administering and collecting the tax shall be determined
6 by the finance officer, but may not exceed seven percent (7%) of
7 the gross proceeds.
8 (4) Private passenger vehicle. -- Defined in G.S. 20-4.01.
9 (5) Public transportation system. -- Any combination of real and
10 personal property established for purposes of public transportation.
11 The systems may include one or more of the following: structures,
12 improvements, buildings, equipment, vehicle parking or passenger
13 transfer facilities, railroads and railroad rights-of-way,
14 rights-of-way, bus services, shared-ride services, high-occupancy
15 vehicle facilities, car-pool and vanpool programs, voucher
16 programs, telecommunications and information systems, integrated
17 fare systems, bus lanes, and busways. The term does not include,
18 however, streets, roads, or highways except to the extent they are
19 dedicated to public transportation vehicles or to the extent they are
20 necessary for access to vehicle parking or passenger transfer
21 facilities.
22 (6) Short-term lease or rental. -- A lease or rental that is not a long-
23 term lease or rental.
24 (7) Taxing unit. -- A Regional Public Transportation Authority or a
25 county that levies a tax under this Article.

26 **"§ 105-507. Limitations.**

27 (a) Levy by County. -- A county may not levy a tax under this Article unless the
28 county or at least one unit of local government in the county operates a public
29 transportation system.

30 (b) Levy by County Located in Authority. -- A county may not levy a tax under
31 this Article that has been levied by an Authority in which the county is located. A
32 county may not levy a tax under this Article without giving an Authority in which it
33 is located six months' written notice of its intent to levy. If a county located within
34 an Authority has levied a tax under this Article, the Authority may levy the same tax,
35 but the Authority's levy may not become effective before the end of six months after
36 the adoption of a resolution levying the tax. The county's authority to levy the tax
37 terminates upon the effective date of the levy of the same tax by the Authority in
38 which the county is located.

39 (c) Levy by Authority. -- An Authority may not levy or increase a tax under this
40 Article unless the special tax board of the Authority and the board of county
41 commissioners of each county organizing the Authority have first passed a resolution
42 approving the levy or increase, except where the levy or increase in tax is necessary
43 for debt service on bonds or notes that the special tax board and each of the boards
44 of county commissioners had previously approved under G.S. 159-51.

1 "§ 105-508. Local election on adoption of sales and use tax.

2 (a) Resolution. -- The board of commissioners of a county or the board of trustees
3 of an Authority may direct the county board or boards of elections to conduct an
4 advisory referendum within the county or within the jurisdiction of the Authority on
5 the questions of whether a local sales and use tax at the rate of one-half percent
6 (1/2%) will be levied in accordance with this Article. The election shall be held on a
7 date jointly agreed upon by the boards and shall be held in accordance with the
8 procedures of G.S. 163-287. The board of commissioners or board of trustees shall
9 hold a public hearing on the question at least 30 days before the date the election is
10 to be held.

11 (b) Ballot Question. -- The form of the question to be presented on a ballot for a
12 special election concerning the levy of each tax authorized by this Article shall be:

13 '[] FOR [] AGAINST

14 One-half percent (1/2%) local sales and use taxes, in addition to the current two
15 percent (2%) local sales and use taxes, to be used only for public transportation
16 systems.'

17 "§ 105-509. Levy and collection of sales and use tax.

18 (a) Levy. -- If the majority of those voting in a referendum held pursuant to this
19 Article vote for the levy of the tax, the board of commissioners of the county or the
20 board of trustees of the Authority may, by resolution, levy one-half percent (1/2%)
21 local sales and use taxes in addition to any other State and local sales and use taxes
22 levied pursuant to law. In addition, if no referendum has been held pursuant to this
23 Article within five years at which the tax has been defeated, the board of
24 commissioners of a county or the board of trustees of an Authority may, by
25 resolution, after not less than 10 days' public notice and after a public hearing, levy
26 one-half percent (1/2%) local sales and use taxes in addition to any other State and
27 local sales and use taxes levied pursuant to law.

28 (b) Administration. -- Except as provided in this Article, the adoption, levy,
29 collection, administration, and repeal of these additional taxes shall be in accordance
30 with Article 39 of this Chapter. In applying the provisions of Article 39 of this
31 Chapter to this Article, references to 'this Article' mean 'Article 43 of Chapter 105 of
32 the General Statutes'.

33 (c) Food Exempt. -- A tax levied under this Article does not apply to the sales
34 price of food that is not otherwise exempt from tax pursuant to G.S. 105-164.13 but
35 would be exempt from the State sales and use tax pursuant to G.S. 105-164.13 if it
36 were purchased with coupons issued under the Food Stamp Program, 7 U.S.C. § 51.

37 "§ 105-510. Levy and collection of vehicle rental tax.

38 (a) Levy. -- The board of commissioners of a county or the board of trustees of an
39 Authority may, by resolution, after not less than 10 days' public notice and after a
40 public hearing, levy on a retailer who is engaged in the business of leasing or renting
41 private passenger vehicles or motorcycles a tax at a rate of up to five percent (5%) of
42 the gross receipts derived by the retailer from the short-term lease or rental of these
43 vehicles. A tax imposed under this section applies to short-term leases or rentals

1 made by a retailer whose place of business or inventory is located within the
2 jurisdiction of the taxing unit. This tax is in addition to all other taxes.

3 (b) Effective Date. -- A tax imposed under this section becomes effective on the
4 date set by the board of commissioners or the board of trustees in the resolution
5 imposing the tax. The effective date must be the first day of a month and may not be
6 earlier than the first day of the second month after the board adopts the resolution.

7 (c) Collection. -- A tax imposed under this section shall be collected by the
8 taxing unit but shall otherwise be administered in the same manner as the optional
9 gross receipts tax imposed by G.S. 105-187.5. Like the optional gross receipts tax, a
10 tax imposed under this section is to be added to the lease or rental price of a private
11 passenger vehicle or motorcycle and thereby be paid by the person to whom it is
12 leased or rented.

13 A tax imposed under this section applies regardless of whether the retailer who
14 leases or rents the private passenger vehicle or motorcycle has elected to pay the
15 optional gross receipts tax on the lease or rental receipts from the vehicle. A tax
16 imposed under this section must be paid to the taxing unit by the date an optional
17 gross receipts tax would be payable to the Secretary of Revenue under G.S. 105-187.5
18 if the retailer who leases or rents the private passenger vehicle or motorcycle had
19 elected to pay the optional gross receipts tax.

20 (d) Penalties and Remedies. -- The penalties and remedies that apply to local
21 sales and use taxes imposed under this Subchapter apply to a tax imposed under this
22 section. A taxing unit may exercise the same powers in collecting the tax imposed
23 under this section that a county may exercise in collecting local sales and use taxes
24 under this Subchapter.

25 (e) Exemptions and Refunds. -- No exemptions are allowed from a tax imposed
26 under this section. No refunds are allowed for a tax lawfully imposed under this
27 section.

28 **"§ 105-511. Distribution and use of taxes.**

29 (a) Distribution of Sales and Use Taxes. -- The Secretary shall, on a quarterly
30 basis, allocate to each taxing unit the net proceeds of the tax levied under G.S. 105-
31 509 by that unit. If the Secretary collects taxes under this Article in a month and the
32 taxes cannot be identified as being attributable to a particular taxing unit, the
33 Secretary shall allocate these taxes among the taxing units in proportion to the
34 amount of taxes collected in each unit under this Article in that month and shall
35 include them in the quarterly distribution.

36 The Secretary shall distribute to each Authority the net proceeds of the tax levied
37 by the Authority. The Secretary shall distribute the net proceeds of the tax levied by
38 a county on a per capita basis among the county and the units of local government in
39 the county that operate public transportation systems. No proceeds shall be
40 distributed to a county that does not operate a public transportation system or to a
41 unit of local government that does not operate a public transportation system.

42 (b) Distribution of Vehicle Rental Taxes. -- An Authority that levies a tax under
43 G.S. 105-510 shall retain the proceeds of the tax. A county that levies a tax under
44 G.S. 105-510 shall distribute the net proceeds of the tax quarterly on a per capita

1 basis among the taxing county and the units of local government in the county that
2 operate public transportation systems. No proceeds shall be distributed to a county
3 that does not operate a public transportation system or to a unit of local government
4 that does not operate a public transportation system.

5 (c) Use. -- An Authority may use the proceeds of a tax levied under this Article to
6 carry out its purposes provided in Article 26 of Chapter 160A of the General
7 Statutes. A county or other unit of local government may use the net proceeds
8 distributed to it under this Article only for financing, constructing, operating, and
9 maintaining local public transportation systems.

10 "ARTICLE 44.

11 "Local Government Vehicle

12 Registration Tax for Public Transit.

13 "§ 105-514. Limitations.

14 This Article applies only to counties that are not located within the territorial
15 jurisdiction of a Regional Public Transit Authority created pursuant to Article 26 of
16 Chapter 160A of the General Statutes. A county may not levy a tax under this
17 Article unless the county or at least one unit of local government in the county
18 operates a public transportation system.

19 "§ 105-515. Levy of vehicle registration tax.

20 The board of commissioners of a county may, by resolution, after not less than 10
21 days' public notice and a public hearing, levy an annual registration tax on motor
22 vehicles with a tax situs within the county. The tax must be a full dollar amount and
23 may not exceed five dollars (\$5.00). A tax levied under this section is in addition to
24 any other motor vehicle license or registration tax.

25 The tax applies to vehicles required to pay a tax under G.S. 20-88, except trailers,
26 or pay a tax under G.S. 20-87(1), (2), (4), (5), (6), or (7). The tax situs of a motor
27 vehicle for the purpose of this Article is its ad valorem tax situs. If the vehicle is not
28 subject to ad valorem tax, its tax situs for the purpose of this Article is the ad
29 valorem tax situs it would have if it were subject to ad valorem tax.

30 The effective date of a tax levied under this section must be the first day of a
31 calendar month set by the board of commissioners in the resolution levying the tax
32 and shall be no earlier than the first day of the third calendar month after the
33 adoption of the resolution.

34 "§ 105-516. Administration.

35 The Division of Motor Vehicles of the Department of Transportation shall collect
36 and administer a tax levied under this section. Immediately after adopting a
37 resolution levying, modifying, or repealing a tax under this section, the Commission
38 shall deliver a certified copy of the resolution to the Division of Motor Vehicles. A
39 tax levied under this section is due at the same time and subject to the same
40 restrictions as the tax levied in G.S. 20-87 and G.S. 20-88. The tax shall be prorated
41 in accordance with G.S. 20-95. The Commissioner of Motor Vehicles may adopt rules
42 necessary to administer the tax.

43 "§ 105-517. Modification or repeal of tax.

1 The board of commissioners of a county may, by resolution, repeal the levy of the
2 tax under this section, or increase or decrease the rate of tax, under the same
3 procedures as provided in G.S. 105-515. The repeal, increase, or decrease of the tax
4 shall become effective on the first day of a month and may not become effective
5 before the first day of the third calendar month after the adoption of the resolution.
6 The repeal or reduction of a tax under this Article does not affect a liability for a tax
7 that attached before the effective date of the repeal or reduction, nor does it affect a
8 right to a refund of a tax that accrued before the effective date of the repeal or
9 reduction.

10 **"§ 105-518. Distribution and use of tax proceeds.**

11 The Commissioner of Motor Vehicles shall credit the proceeds of each tax levied
12 under this Article to a special account and distribute the net proceeds on a quarterly
13 basis. Interest on the special account shall be credited quarterly to the Highway
14 Fund to reimburse the Division of Motor Vehicles for the cost of collecting and
15 administering the tax.

16 The Commissioner of Motor Vehicles shall allocate to each taxing county the net
17 proceeds of the tax levied by that county. The Commissioner shall distribute the tax
18 proceeds on a per capita basis among the taxing county and the units of local
19 government in the county that operate public transportation systems. No proceeds
20 shall be distributed to a county that does not operate a public transportation system
21 or to a unit of local government that does not operate a public transportation system.

22 A unit of local government may use the proceeds distributed to it under this
23 Article only for financing, constructing, operating, and maintaining local public
24 transportation systems. As used in this section, the term 'public transportation
25 system' has the meaning provided in G.S. 105-506."

26 Section 3. Article 9 of Chapter 160A of the General Statutes is amended
27 by adding a new section to read:

28 **"§ 160A-211.2. Privilege license tax on nonresidential parking spaces.**

29 (a) Authorization. -- A city may levy an annual privilege license tax on every
30 person who owns parking spaces and provides them to others, at the rate of up to five
31 dollars (\$5.00) per parking space. The tax applies whether the spaces are provided to
32 others free of charge, pursuant to a lease, or for a fee. The tax applies to parking
33 spaces owned as of January 1. If the owner disposes of a parking space during the
34 year, the tax on that space for the year shall be reduced in proportion to the number
35 of months during the year it was not owned by the taxpayer.

36 (b) Exemptions. -- A tax levied under this section does not apply to:

- 37 (1) A person who owns 10 or fewer parking spaces.
- 38 (2) A federal, State, or local government agency.
- 39 (3) Parking spaces provided exclusively for residential parking.
- 40 (4) Parking spaces owned by a nonprofit religious organization and
41 provided to others free of charge.

42 (c) Collection. -- A tax levied under this section shall be billed with the taxpayer's
43 property taxes, is payable in the same manner as property taxes, and, in the case of
44 nonpayment, may be collected in any manner by which delinquent personal or real

1 property taxes can be collected. Delinquent taxes are a lien on the real property that
2 includes the parking spaces on which the taxes are levied."

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

4 Section 5. A tax levied under Article 43 of Chapter 105 of the General
5 Statutes, as enacted by this act, does not apply to construction materials purchased to
6 fulfill a lump sum or unit price contract entered into or awarded before the effective
7 date of the levy or entered into or awarded pursuant to a bid made before the
8 effective date of the levy when the construction materials would otherwise be subject
9 to the tax levied under Article 43 of Chapter 105 of the General Statutes.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

D

SENATE BILL 913
Proposed Senate Finance Committee Substitute
S913-CSLCX-5/27

Short Title: Local Transit Revenue Options.

(Public)

Sponsors:

Referred to: Finance.

April 17, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE SUPPLEMENTAL SOURCES OF REVENUE FOR LOCAL
3 GOVERNMENT TRANSIT FINANCING.
4 The General Assembly of North Carolina enacts:
5 Section 1. The title of Subchapter VIII of Chapter 105
6 of the General Statutes reads as rewritten:
7 "SUBCHAPTER VIII. LOCAL GOVERNMENT ~~SALES AND USE TAX.~~ TAXES."
8 Section 2. Subchapter VIII of Chapter 105 of the
9 General Statutes is amended by adding a new Article to read:
10 "ARTICLE 43.
11 "Local Government Sales and Use Taxes for Public Transportation.
12 "§ 105-505. Short title; purpose.
13 This Article is the Local Government Public Transportation
14 Sales Tax Act and may be cited by that name. This Article gives
15 Regional Public Transportation Authorities and the counties of
16 this State an opportunity to obtain an additional source of
17 revenue with which to meet their needs for financing local public
18 transportation systems. It provides these local governments with
19 authority to levy one-half percent (1/2%) sales and use taxes.
20 "§ 105-506. Definitions.

1 The definitions in G.S. 105-164.3 and G.S. 160A-601 and the
2 following definitions apply in this Article:

3 (1) Net proceeds. -- Gross proceeds less the cost of
4 administering and collecting the tax.

5 (2) Public transportation system. -- Any combination of
6 real and personal property established for purposes
7 of public transportation. The systems may include
8 one or more of the following: structures,
9 improvements, buildings, equipment, vehicle parking
10 or passenger transfer facilities, railroads and
11 railroad rights-of-way, rights-of-way, bus
12 services, shared-ride services, high-occupancy
13 vehicle facilities, car-pool and vanpool programs,
14 voucher programs, telecommunications and
15 information systems, integrated fare systems, bus
16 lanes, and busways. The term does not include,
17 however, streets, roads, or highways except to the
18 extent they are dedicated to public transportation
19 vehicles or to the extent they are necessary for
20 access to vehicle parking or passenger transfer
21 facilities.

22 (3) Taxing unit. -- A Regional Public Transportatio
23 Authority or a county that levies a tax under this
24 Article.

25 "§ 105-507. Limitations.

26 (a) Levy by County. -- A county may not levy a tax under this
27 Article unless the county or at least one unit of local
28 government in the county operates a public transportation system.

29 (b) Levy by County Located in Authority. -- A county may not
30 levy a tax under this Article that has been levied by an
31 Authority in which the county is located. A county may not levy
32 a tax under this Article without giving an Authority in which it
33 is located six months' written notice of its intent to levy the
34 tax. If a county located within an Authority has levied a tax
35 under this Article, the Authority may levy the same tax, but the
36 Authority's levy may not become effective before the end of six
37 months after the adoption of a resolution levying the tax. The
38 county's authority to levy the tax terminates upon the effective
39 date of the levy of the same tax by the Authority in which the
40 county is located.

41 (c) Levy by Authority. -- An Authority may not levy a tax
42 under this Article unless the following conditions have been met

43 (1) The Authority has developed a financial plan tha
44 has been reviewed and approved by each unit of

1 government that appoints members to the board of
2 trustees. The financial plan must provide for
3 equitable distribution of the tax proceeds in
4 consideration of the identified needs of local
5 public transportation systems, county-wide human
6 service transportation systems, regional system
7 development, and expansion of public transportation
8 service to unserved areas within the jurisdiction
9 of the Authority.

10 (2) The special tax board of the Authority and the
11 board of county commissioners of each county
12 organizing the Authority have passed a resolution
13 approving the levy, except where the levy is
14 necessary for debt service on bonds or notes that
15 the special tax board and each of the boards of
16 county commissioners had previously approved under
17 G.S. 159-51.

18 **"§ 105-508. Local election on adoption of sales and use tax.**

19 (a) Resolution. -- The board of commissioners of a county or
20 the board of trustees of an Authority may direct the county board
21 or boards of elections to conduct an advisory referendum within
22 the county or within the jurisdiction of the Authority on the
23 question of whether a local sales and use tax at the rate of
24 one-half percent (1/2%) may be levied in accordance with this
25 Article. The election shall be held on a date jointly agreed
26 upon by the boards and shall be held in accordance with the
27 procedures of G.S. 163-287. The board of commissioners or board
28 of trustees shall hold a public hearing on the question at least
29 30 days before the date the election is to be held.

30 (b) Ballot Question. -- The form of the question to be
31 presented on a ballot for a special election concerning the levy
32 of a tax authorized by this Article shall be:

33 '[] FOR [] AGAINST

34 One-half percent (1/2%) local sales and use taxes, in addition to
35 the current two percent (2%) local sales and use taxes, to be
36 used only for public transportation systems.'

37 **"§ 105-509. Levy and collection of sales and use tax.**

38 If the majority of those voting in a referendum held pursuant
39 to this Article vote for the levy of the tax, the board of
40 commissioners of the county or the board of trustees of the
41 Authority may, by resolution, levy one-half percent (1/2%) local
42 sales and use taxes in addition to any other State and local
43 sales and use taxes levied pursuant to law. Except as provided
44 in this Article, the adoption, levy, collection, administration,

1 and repeal of these additional taxes shall be in accordance with
2 Article 39 of this Chapter. In applying the provisions of
3 Article 39 of this Chapter to this Article, references to 'this
4 Article' mean 'Article 43 of Chapter 105 of the General
5 Statutes'.

6 A tax levied under this Article does not apply to the sales
7 price of food that is not otherwise exempt from tax pursuant to
8 G.S. 105-164.13 but would be exempt from the State sales and use
9 tax pursuant to G.S. 105-164.13 if it were purchased with coupons
10 issued under the Food Stamp Program, 7 U.S.C. § 51.

11 "§ 105-510. Distribution and use of taxes.

12 (a) Distribution. -- The Secretary shall, on a quarterly basis,
13 allocate to each taxing unit the net proceeds of the tax levied
14 under this Article by that unit. If the Secretary collects taxes
15 under this Article in a month and the taxes cannot be identified
16 as being attributable to a particular taxing unit, the Secretary
17 shall allocate these taxes among the taxing units in proportion
18 to the amount of taxes collected in each unit under this Article
19 in that month and shall include them in the quarterly
20 distribution.

21 The Secretary shall distribute to each Authority the net
22 proceeds of the tax levied by the Authority. The Secretary shall
23 distribute the net proceeds of the tax levied by a county on a
24 per capita basis among the county and the units of local
25 government in the county that operate public transportation
26 systems. No proceeds shall be distributed to a county that does
27 not operate a public transportation system or to a unit of local
28 government that does not operate a public transportation system.

29 (b) Use. -- An Authority may use the proceeds of a tax levied
30 under this Article to carry out its purposes provided in Article
31 26 of Chapter 160A of the General Statutes. The Authority shall
32 allocate the proceeds in accordance with its financial plan
33 developed pursuant to G.S. 105-507 and any periodic updates of
34 the plan.

35 Before using the net proceeds distributed to it under this
36 Article, a county must develop a financial plan and distribute it
37 to each unit of local government in the county that operates a
38 local public transportation system. The financial plan must
39 provide for equitable allocation of the net proceeds distributed
40 to the county in consideration of the identified needs of local
41 public transportation systems in the county, county-wide human
42 service transportation systems, and expansion of public
43 transportation service to unserved areas in the county. The
44 county must update the financial plan periodically. The county

1 must allocate the net proceeds distributed to it in accordance
2 with this financial plan and use the net proceeds only for
3 financing, constructing, operating, and maintaining local public
4 transportation systems.

5 Any other unit of local government may use the net proceeds
6 distributed to it under this Article only for financing,
7 constructing, operating, and maintaining local public
8 transportation systems."

9 Section 3. G.S. 20-97 reads as rewritten:

10 "§ 20-97. Taxes ~~compensatory; no additional tax, credited to~~
11 Highway Fund; municipal vehicle taxes.

12 (a) State Taxes to Highway Fund. -- All taxes levied under the
13 provisions of this Article are intended as compensatory taxes for
14 the use and privileges of the public highways of this State, and
15 shall be paid by the Commissioner to the State Treasurer, to
16 State. The taxes collected shall be credited by him to the State
17 Highway Fund; and no to the State Highway Fund. Except as
18 provided in this section, no county or municipality shall levy
19 any license or privilege tax upon any motor vehicle licensed by
20 the State of North Carolina, except that cities State.

21 (b) General Municipal Vehicle Tax. -- Cities and towns may levy
22 a tax of not more than five dollars (\$5.00) per year upon any
23 vehicle resident therein. Provided, further, that cities and
24 towns may levy, in addition to the amounts hereinabove provided
25 for, a sum not to exceed in the city or town. The proceeds of
26 the tax may be used for any lawful purpose.

27 (c) Municipal Vehicle Tax for Public Transportation. -- A city
28 or town that that operates a public transportation system as
29 defined in G.S. 105-506 may levy a tax of not more than five
30 dollars (\$5.00) per year upon any vehicle resident in the city or
31 town. The tax authorized by this subsection is in addition to
32 the tax authorized by subsection (b) of this section. A city or
33 town may not levy a tax under this section, however, to the
34 extent the rate of tax, when added to the general motor vehicle
35 taxes levied by the city or town under subsection (b) of this
36 section and under any local legislation, would exceed thirty
37 dollars (\$30.00) per year. The proceeds of the tax may be used
38 only for financing, constructing, operating, and maintaining
39 local public transportation systems.

40 (d) Municipal Taxi Tax. -- Cities and towns may levy a tax of
41 not more than fifteen dollars (\$15.00) per year upon each vehicle
42 operated in such the city or town as a taxicab. The proceeds of
43 the tax may be used for any lawful purpose.

44 ~~(a1) to (a5). Repealed by Session Laws 1983, c. 188, s. 2.~~

1 ~~(b) (e) No Additional Local Tax. -- No additional franchise~~
2 ~~tax, license tax, or other fee shall be imposed by the State~~
3 ~~against any franchise motor vehicle carrier taxed under this~~
4 ~~Article nor shall any county, city or town may impose a franchise~~
5 ~~tax tax, license tax, or other fee upon them, except that cities~~
6 ~~and towns may levy a license tax not in excess of fifteen dollars~~
7 ~~(\$15.00) per year on each vehicle operated in such city as a~~
8 ~~taxicab as provided in subsection (a) hereof. a motor carrier~~
9 ~~unless the tax is authorized by this section.~~

10 ~~(c) Repealed by Session Laws 1993, c. 321, s. 146."~~

11 Section 4. Chapter 105 of the General Statutes is
12 amended by adding a new Subchapter to read:

13 "SUBCHAPTER IX. MULTICOUNTY TAXES.

14 "§ 105-550. Definitions.

15 The definitions in G.S. 105-164.3 and 160A-601 and the
16 following definitions apply in this Article:

- 17 (1) Long-term lease or rental. -- Defined in G.S.
18 105-187.1.
19 (2) Motorcycle. -- Defined in G.S. 20-4.01.
20 (3) Private passenger vehicle. -- Defined in G.S.
21 20-4.01.
22 (4) Short-term lease or rental. -- A lease or rental
23 that is not a long-term lease or rental.

24 "§ 105-551. Tax on gross receipts authorized.

25 (a) Tax. -- The Board of Trustees of an Authority may levy a
26 privilege tax on a retailer who is engaged in the business of
27 leasing or renting private passenger vehicles or motorcycles
28 based on the gross receipts derived by the retailer from the
29 short-term lease or rental of these vehicles. The tax rate must
30 be a percentage and may not exceed five percent (5%). A tax
31 levied under this section applies to short-term leases or rentals
32 made by a retailer whose place of business or inventory is
33 located within the territorial jurisdiction of the Authority.
34 This tax is in addition to all other taxes.

35 (b) Restrictions. -- The Board of Trustees of an Authority may
36 not levy a tax under this section or increase the tax rate of a
37 tax levied under this section until all of the following
38 requirements have been met:

- 39 (1) The Board of Trustees has held a public hearing on
40 the tax or the increase in the tax rate after
41 giving at least 10 days' notice of the hearing.
42 (2) The special tax board of the Authority has adopted
43 a resolution approving the levy of the tax or the
44 increase in the tax rate.

1 (3) The board of commissioners of each county included
2 in the territorial jurisdiction of the Authority
3 has adopted a resolution approving the levy of the
4 tax or the increase in the tax rate.

5 "§ 105-552. Collection and administration of gross receipts tax.

6 (a) Effective Date. -- A tax or a tax increase levied under
7 this Subchapter becomes effective on the date set by the Board of
8 Trustees in the resolution levying the tax or the tax increase.
9 The effective date must be the first day of a month and may not
10 be earlier than the first day of the second month after the Board
11 of Trustees adopts the resolution.

12 (b) Collection. -- A tax levied by an Authority under this
13 Subchapter shall be collected by the Authority but shall
14 otherwise be administered in the same manner as the optional
15 gross receipts tax levied by G.S. 105-187.5. Like the optional
16 gross receipts tax, a tax levied under this Subchapter is to be
17 added to the lease or rental price of a private passenger vehicle
18 or motorcycle and thereby be paid by the person to whom it is
19 leased or rented.

20 A tax levied under this Subchapter applies regardless of
21 whether the retailer who leases or rents the private passenger
22 vehicle or motorcycle has elected to pay the optional gross
23 receipts tax on the lease or rental receipts from the vehicle. A
24 tax levied under this Subchapter must be paid to the Authority
25 that levied the tax by the date an optional gross receipts tax
26 would be payable to the Secretary of Revenue under G.S. 105-187.5
27 if the retailer who leases or rents the private passenger vehicle
28 or motorcycle had elected to pay the optional gross receipts tax.

29 (c) Penalties and Remedies. -- The penalties and remedies that
30 apply to local sales and use taxes levied under Subchapter VIII
31 of this Chapter apply to a tax levied under this Subchapter. The
32 Board of Trustees of an Authority may exercise any power the
33 Secretary of Revenue or a board of county commissioners may
34 exercise in collecting local sales and use taxes.

35 "§ 105-553. Exemptions and refunds.

36 No exemptions are allowed from a tax levied under this
37 Subchapter. No refunds are allowed for a tax lawfully levied
38 under this Subchapter.

39 "§ 105-554. Use of tax proceeds.

40 An Authority that levies a tax under this Subchapter may use
41 the proceeds of the tax for any purpose for which the Authority
42 is authorized to use funds. Authorized purposes for which an
43 Authority may use funds include the following:

1 (1) Pledging funds in connection with the financing of
2 a public transportation system or any part of a
3 public transportation system.

4 (2) Paying a note, bond, or other obligation entered
5 into by the Authority pursuant to Article 26 of
6 Chapter 160A.

7 "§ 105-555. Repeal of tax or decrease in tax rate.

8 The Board of Trustees of an Authority may repeal a tax levied
9 under this Subchapter or decrease the tax rate of a tax levied
10 under this Subchapter. The same restrictions that apply to the
11 levy of a tax or an increase in a tax rate under this Subchapter
12 apply to the repeal of the tax or a decrease in the tax rate.

13 A tax repeal or a tax decrease becomes effective on the date
14 set by the Board of Trustees in the resolution repealing or
15 decreasing the tax. The effective date must be on the first day
16 of a month and may not be earlier than the first day of the
17 second month after the Board of Trustees adopts the resolution.
18 Repeal or decrease of a tax levied under this Subchapter does not
19 affect the rights or liabilities of an Authority, a taxpayer, or
20 another person arising before the repeal or decrease."

21 Section 5. A tax levied under Article 43 of Chapter 10
22 of the General Statutes, as enacted by this act, does not apply
23 to construction materials purchased to fulfill a lump sum or unit
24 price contract entered into or awarded before the effective date
25 of the levy or entered into or awarded pursuant to a bid made
26 before the effective date of the levy when the construction
27 materials would otherwise be subject to the tax levied under
28 Article 43 of Chapter 105 of the General Statutes.

29 Section 6. This act is effective when it becomes law.

EXPLANATION OF SENATE BILL 913

Proposed Committee Substitute

Local Transit Revenue Options

TO: Senate Finance Committee
FROM: Martha H. Harris, Staff Attorney
DATE: May 28, 1997
SPONSOR: Senator Gulley

This bill provides local governments with revenue options to finance local public transportation systems, as follows:

1. It authorizes counties and regional public transportation authorities to levy a ½ cent local sales tax if approved by the voters of the county or region.
2. It authorizes cities to levy an additional \$5 motor vehicle tax.
3. It authorizes regional public transportation authorities to levy a gross receipts tax of up to 5% on short-term motor vehicle rentals.

A regional public transportation authority is an entity created by three counties under Article 26 of Chapter 160A of the General Statutes to provide a public transportation system for the region. The authority is governed by a board of trustees appointed by the counties creating the authority and larger cities within the counties. Currently, there is only one regional transportation authority, the Triangle Transit Authority for Wake, Durham, and Orange Counties.

A public transportation system is defined broadly in the bill to include any combination of real and personal property established for purposes of public transportation. It does not include, however, streets, roads, and highways not dedicated to public transportation or related parking.

Section 2 of the bill authorizes counties and regional transportation authorities to levy a ½ cent sales tax only if the tax is approved by the voters of the county or region, as applicable. The proceeds of the tax must be used to finance, construct, operate, and maintain local public transportation systems. The tax does not apply to food. In other respects, it will be administered in the same way as the existing local sales and use taxes.

A county may not levy the sales tax unless the county or at least one unit of government within the county operates a local public transportation system. A sales tax levied by a county will be distributed between the county and other

units in the county that operate local public transportation systems, on a per capita basis. The county must develop a financial plan for equitable allocation of the proceeds it receives based on the identified needs of local public transportation systems in the county and planned expansion of public transportation to unserved areas. The county must allocate the tax proceeds it receives based on this financial plan.

An authority may not levy the sales tax unless every county within the region has approved the levy. Before levying the sales tax, the authority must also adopt a financial plan that has been reviewed and approved by the local governments within the region. The authority must allocate tax proceeds it receives in accordance with the financial plan.

A county that is located within the jurisdiction of a regional public transportation may not levy the sales tax if the authority levies it, and must give the authority six months' advance notice of the intent to levy. Thus, you would never have a duplicate tax levied by both a county within a regional transportation authority and the authority itself.

Section 3 of the bill authorizes municipalities to levy an additional \$5 motor vehicle tax, to be used only to finance, construct, operate, and maintain local public transportation systems. Current law already authorizes municipalities to levy a \$5 annual motor vehicle tax. Many municipalities have local legislation authorizing them to levy an increased amount. Section 3 adds an extra authorization for \$5 more. If that \$5 would cause the municipality's total local motor vehicle tax to exceed \$30, however, the additional \$5 tax may not be levied. The City of Charlotte and the Town of Matthews are authorized by local act to levy annual motor vehicle taxes of \$30. These local units are the only ones that would currently be affected by this limitation.

Section 4 of the bill authorizes a regional public transportation authority to levy a gross receipts tax of up to 5% on retailers within the region engaged in the business of renting private passenger motor vehicles and motorcycles. The tax applies to short-term rentals only. The tax will be collected by the authority but is otherwise administered in the same way as the optional highway use tax on gross receipts from vehicle rentals. That tax is 8% on short-term rentals, so the combined tax within the jurisdiction of the authority would be 13%. The authority may use the proceeds of the tax for its public transportation purposes. Before levying or increasing the tax, the authority must obtain approval from each county in the region.

**NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE**

BILL NUMBER: Senate Bill 913
SHORT TITLE: Local Transit Revenue Options
SPONSOR(S): Senator Gulley

\$ Millions					
FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 1997-98</u>	<u>FY 1998-99</u>	<u>FY 1999-00</u>	<u>FY 2000-01</u>	<u>FY 2001-02</u>
Local Gov.					
REVENUES					
Sales Tax	\$92.13	\$ 194.9	\$205.6	\$216.9	\$228.8
Gross Receipts	19.8	20.5	21.2	21.9	22.7
Vehicle Registrations	17.2	17.2	17.2	17.2	17.2
TOTAL	\$ 129.13	232.6	244.0	256.0	268.7
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:	Local units of government that provide public transportation Department of Revenue Sales and Use Tax Division Department of Revenue Corp., Excise, and Ins. Tax Division				
EFFECTIVE DATE:	When it becomes law.				

BILL SUMMARY:

The proposed legislation authorizes local governments to implement several new revenue sources for financing public transit systems.

- County units of government and transit authorities are given the right to levy a ½ cent sales and use tax and a 5% vehicle rental tax. The taxing unit of government or the authority must pass a resolution and hold a public hearing before an effective date for a transportation tax can be set. If an additional ½ cent sales tax is to be imposed, the board of commissioners must hold an election.

The vehicle rental tax applies only to passenger vehicles and motorcycles held for lease and located within the territorial jurisdiction of the transportation authority. The transportation authority is given the power to levy this tax after a public hearing has been held and a resolution has been adopted. The governing board of commissioners must also adopt a resolution.

The revenues from the sales and use tax are to be collected in the same manner as the ½ cent sales and use tax under Article 39 of the Revenue Laws. The 5% gross receipts tax is to be collected by the authority. The additional revenue from ½ cent sales tax and the 5% transportation tax are to be used by the unit of local government or the authority for financing public transportation needs.

- Cities and towns are authorized to levy a \$5.00 municipal vehicle tax for public transportation. This tax is in addition to the general municipal vehicle tax authorized under G.S. 20-97(B). The revenue from this registration tax is to be used for public transportation funding only.

ASSUMPTIONS AND METHODOLOGY:

There are thirty counties that are either a part of a transit authority or have at least one municipality that provides public transportation services. Table 1, shows the amount of revenue expected from the imposition of a ½ cent sales and use tax fiscal year 1997-98. The distribution is per capita, in accordance with Article 39 of the sales and use tax statutes. The revenue amounts recorded under the fiscal impact section assumes a six month collection period for the first year. County units of government and existing authorities will have to prepare resolutions, hold public hearings, and referendums before the tax can be imposed. The estimate also assumes that voters in each county will vote in favor of the tax. The growth in the revenue projections for an additional ½ cent sales and use tax are based on forecast values used in the General Fund financial model.

The act does not prohibit a county from establishing a public transportation service and implementing the ½ cent sales tax. If all 100 counties of the State were to levy such a tax the revenue for fiscal year 1997-98 is estimated to be \$365.2 million.

There is currently a gross receipts tax on the lease of motor vehicles authorized under General Statutes 105-187.5. The rate is 3% on long term leases and 8% on short term leases. This act proposes a tax of 5% on the short term leases. In fiscal year 1995-96 the revenue from the gross receipts tax on short term leases of motor vehicles was \$28.7 million. The expected revenue from an additional 5% tax to be applied to the same base is \$18.6 million for the same period. The growth in the 5% estimate is the same growth expected in Highway Trust Fund Revenues for fiscal years 1996-97 through 2001-02.

The \$5.00 municipal vehicle tax for public transportation can be levied without restriction to an existing public transportation service. The estimate is based on registration records provided by the Department of Transportation on vehicle registrations by municipality.

TABLE I

County	1/2 Cent Tax	County	1/2 Cent Tax
Bertie	\$1,032,359	Hertford	\$1,115,243
Buncombe	\$9,564,967	Mecklenburg	\$29,554,658
Camden	\$321,412	Nash	\$4,268,274
Carawba	\$6,380,468	New Hanover	\$7,183,425
Chowan	\$705,162	Northampton	\$1,033,007
Cumberland	\$14,901,655	Orange	\$5,385,561
Currituck	\$810,737	Pasquotank	\$1,670,695
Davidson	\$6,907,045	Perquimans	\$534,407
Durham	\$9,708,941	Person	\$1,626,161
Forsyth	\$14,170,910	Pitt	\$5,948,294
Franklin	\$2,124,712	Vance	\$2,009,612
Gaston	\$8,927,628	Wake	\$26,836,593
Granville	\$4,141,504	Warren	\$914,167
Guilford	\$18,854,202	Watauga	\$2,025,071
Halifax	\$2,877,499	Wilson	\$3,420,234
Total	\$194,954,597		

FISCAL RESEARCH DIVISION

733-4910

PREPARED BY: Warren Plonk

APPROVED BY:

DATE: May28, 1997

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

Name of Committee

Date

5/28/97

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
JAMES BELL	ATTORNEY
WHITE WATKINS	AFMA
Christie Cameron	TTA
Pat Moran	City of Hickory
Doug McFee	City of Hickory
Samford Crow	NC DOT - PID
JOYCE BROWN	TOWN OF CHAPEL HILL
VELBHTON PAPPZ	ZDA PA
Joe Olinger	Sierra Club, CCNC
Ethelene Davis	Electric Cities
Gene Cauby	E-EBE

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

5/28/97

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
<i>Lyntee</i>	<i>Moore & Van Allen</i>
<i>Don Tweed</i>	<i>Thomasville</i>
<i>Sam Misenheimer</i>	<i>THOMASVILLE / CITY MGR</i>
<i>Thomas Harlett</i>	<i>News + Observer</i>
<i>Curt Williams</i>	<i>Gov's Office</i>
<i>Sam Kirby</i>	<i>NCUC</i>
<i>Jim Cain</i>	<i>Kilpatrick Stockton</i>
<i>Raff Messer</i>	<i>Bessemer City</i>
<i>Buty Quint</i>	<i>DOR</i>
<i>Jay Hare</i>	<i>DOR</i>

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

5/28/97

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jim Loftin	NCAFI
Margaret Klath	City of Salisbury
Richard Wiggins	Town of Spring Lake
Foster Owen	City of Salisbury
Willie "Bill" Pitt	Weldon N.C.
George Long	NC DOR
John Lyman	N.C. State Exchange
Alon Miles	Barlow & Dixon, LLP
R. Paul Wilms	NCHBA
Mike Carpenter	NCHBA
Walter Newman	Neptune of C.

SENATE FINANCE COMMITTEE

THURSDAY, MAY 29, 1997

8:30 A.M. - ROOM 421 LOB

The Senate Finance Committee met on May 29, 1997, with Senator Kerr presiding. There were 23 committee members present.

S.B. 712 - Substance Abuse Specialists

Senator Reeves was recognized to explain this bill and offered a proposed committee substitute. On his motion, this PCS was adopted for discussion. At the conclusion of his explanation of this bill, Senator Reeves introduced the following people who are in support of this bill:

Lee Walton, Consultant with the Division of Mental Health
Jane Albers, President of the Certification Board
Jim Scarborough, Administrator for the Board
Ajula Joy, member of the Board
Ann Christian, Legal counsel to the Certification Board

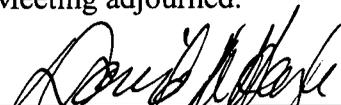
There were several questions from the committee members to the bill sponsor and to the people supporting the bill. Mr. Doug Baker, Substance Abuse Section of the Department of Mental Health, also spoke in support of this bill.

Senator Larry Shaw was recognized for a motion that this bill be given a "favorable" report as to the committee substitute bill and the motion passed. Copy of bill, committee substitute bill, fiscal note and assessment report included in the minutes.

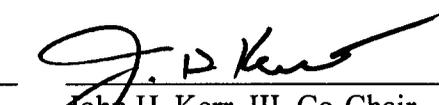
S.B. 516 - Lead-Based Paint Mgmt/AB

Senator Lee was recognized to give a report for the subcommittee on S.B. 516. The subcommittee members agreed that this bill needs to move forward and on motion by Senator Lee, the committee substitute was given a "favorable" report by the committee. Senator Ballantine informed the committee that he plans to offer a floor amendment to this bill. Copy of bill, committee substitute, and fiscal note included in the minutes.

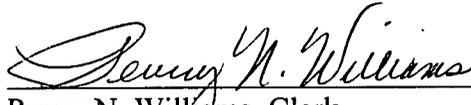
Meeting adjourned.



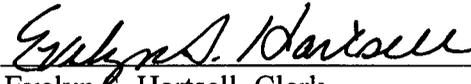
David W. Hoyle, Co-Chair
Senate Finance Committee



John H. Kerr, III, Co-Chair
Senate Finance Committee



Penny N. Williams, Clerk



Evelyn S. Hartsell, Clerk

NOTE:

Agenda is Attachment # 1
Visitors' Sign Up Sheet is Attachment # 2
Committee Report is Attachment # 3

S.B. 271 and S.B. 938 were not heard in this committee meeting.

AGENDA

SENATE FINANCE

May 29, 1997

8:30 A.M. - Room 421

S.B. 271 - Small Business Capital & Growth Act. - Sen. Larry Shaw

S.B. 516 - Lead-Based Paint Mgmt/AB. - Sen. Ballance

S.B. 712 - Substance Abuse Specialists. - Sen. Reeves

S.B. 938 - Construction Worker Training Credit. - Sen. Jordan

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 712

Short Title: Substance Abuse Specialists.

(Public)

Sponsors: Senator Reeves.

Referred to: Finance.

April 7, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO CERTIFY CLINICAL ADDICTIONS SPECIALISTS, PROVIDE
3 SPECIFIC AUTHORITY FOR CERTIFICATION OF CLINICAL
4 SUPERVISORS AND RESIDENTIAL FACILITY DIRECTORS, AND TO
5 MAKE A TECHNICAL CHANGE.
6 The General Assembly of North Carolina enacts:
7 Section 1. G.S. 90-113.30 reads as rewritten:
8 "**§ 90-113.30. Declaration of purpose.**
9 The North Carolina Substance Abuse ~~Professionals~~ Professional Certification
10 Board, established by G.S. 90-113.32, is recognized as the certifying authority for
11 ~~certified substance abuse counselors and certified substance abuse prevention~~
12 ~~consultants~~ substance abuse professionals described in this Article in order to
13 safeguard the public health, safety, and welfare, to protect the public from being
14 harmed by unqualified persons, to assure the highest degree of professional care and
15 conduct on the part of certified substance abuse ~~counselors and certified substance~~
16 ~~abuse prevention consultants,~~ professionals, to provide for the establishment of
17 standards for the education of ~~substance abuse counselors and substance abuse~~
18 ~~prevention consultants,~~ certified substance abuse professionals, and to ensure the
19 availability of ~~substance abuse counseling services and substance abuse prevention~~
20 ~~services~~ certified substance abuse professional services of high quality to persons in
21 need of these services. It is the purpose of this Article to provide for the regulation of
22 Board-certified persons offering substance abuse counseling services, substance abuse
23 prevention services, or any other substance abuse services for which the Board may
24 grant certification."

1 Section 2. G.S. 90-113.31 reads as rewritten:

2 "§ 90-113.31. Definitions.

3 ~~In this Article, unless the context clearly requires otherwise, the~~ The following
4 definitions ~~shall~~ apply in this Article:

5 (1) ~~"Board" means the Board.~~ -- The North Carolina Substance Abuse
6 Professionals Professional Certification Board.

7 (1a) Certified clinical addictions specialist. -- A person certified by the
8 Board to practice as a clinical addictions specialist in accordance
9 with the provisions of this Article.

10 (1b) Certified clinical supervisor. -- A person certified by the Board to
11 practice as a clinical supervisor in accordance with the provisions
12 of this Article.

13 (1c) Certified residential facility director. -- A person certified by the
14 Board to practice as a residential facility director in accordance
15 with the provisions of this Article.

16 (2) ~~"Certified substance abuse counselor" means any~~ Certified
17 substance abuse counselor. -- A person certified by the Board to
18 practice as a substance abuse counseling counselor in accordance
19 with the provisions of this Article.

20 (3) ~~"Substance abuse counseling" means the assessment, evaluation, or~~
21 ~~provision of counseling to persons suffering from substance abuse~~
22 ~~or dependency, alcohol abuse or dependency, or drug abuse or~~
23 ~~dependency.~~

24 (4) ~~"Certified substance abuse prevention consultant" means any~~
25 Certified substance abuse prevention consultant. -- A person
26 certified by the Board to practice substance abuse prevention in
27 accordance with the provisions of this Article.

28 (4a) Credentialing body. -- A board that licenses, certifies, or regulates
29 a profession or practice.

30 (4b) Deemed status. -- Recognition by the Board of the credentials
31 offered by a professional discipline whereby the individuals
32 certified, licensed, or otherwise recognized by the discipline as
33 having met the standards of a substance abuse specialist may apply
34 individually for certification as a certified clinical addictions
35 specialist.

36 (4c) Human services field. -- An area of study that focuses on the
37 biological, psychological, and social aspects of human beings.

38 (4d) Intern. -- A person who successfully completes 300 hours of Board
39 approved supervised practical training and a written examination
40 in pursuit of certification as a substance abuse counselor.

41 (5) ~~"Prevention" means the~~ Prevention. -- The reduction, delay, or
42 avoidance of alcohol and of other drug use behavior. 'Prevention'
43 includes the promotion of positive environments and individual
44 strengths that contribute to personal health and well-being over an

1 entire life and the development of strategies that encourage
2 individuals, families, and communities to take part in assessing and
3 changing their lifestyle and environments.

4 (6) Professional discipline. -- A field of study characterized by the
5 technical, educational, and ethical standards of a profession.

6 (7) Substance abuse counseling. -- The assessment, evaluation, and
7 provision of counseling to persons suffering from substance, drug,
8 or alcohol abuse or dependency.

9 (8) Substance abuse professional. -- A certified substance abuse
10 counselor, certified substance abuse prevention consultant, certified
11 clinical supervisor, certified clinical addictions specialist, or
12 certified residential facility director."

13 Section 3. G.S. 90-113.32 reads as rewritten:

14 "**§ 90-113.32. ~~Board.~~ Board; composition; voting.**

15 (a) The Board is created as the certifying authority for substance abuse ~~counselors~~
16 counselors, and substance abuse prevention ~~consultants~~ consultants, clinical
17 supervisors, clinical addictions specialists, and residential facility directors in North
18 Carolina.

19 (b) Until the full Board is elected or appointed pursuant to subsection (c) of this
20 section, the Board shall consist of 16 members with one member appointed by the
21 General Assembly upon the recommendation of the Speaker of the House of
22 Representatives in accordance with G.S. 120-121, and one member appointed by the
23 General Assembly upon the recommendation of the President Pro Tempore of the
24 Senate in accordance with G.S. 120-121. The remaining 14 shall be those members of
25 the current North Carolina Substance Abuse ~~Professionals~~ Professional Certification
26 Board, Inc., who have terms that are unexpired as of the effective date of this Article.
27 The initial Board shall appoint an initial Nominating and Elections Committee to fill
28 immediate vacancies on the Board, using the process established in subsection (d) of
29 this section. The election and appointment process of the initial Board shall result in
30 a Board of 19 members by April 1, 1995. As these initial members' terms expire, their
31 successors shall be appointed as described in subsection (c) of this section, until the
32 permanent Board is established, as described in subsection (c) of this section. Time
33 spent as an initial member counts in determining the limitation on consecutive terms
34 prescribed in subsection (e) of this section.

35 (c) After the initial Board members' terms expire, the Board shall consist of ~~19~~
36 the following members, all of whom shall reside in North Carolina, appointed or
37 elected as follows:

38 (1) Eleven professionals certified pursuant to this Article and elected
39 by the certified professionals, at least two of whom shall serve each
40 of the four Division of Mental Health, Developmental Disabilities,
41 and Substance Abuse Services regions of the ~~State;~~ State. Three
42 members shall serve as members at large.

43 (2) Three members at large chosen from laypersons or other
44 professional disciplines who have shown a special interest in the

1 field of substance abuse, nominated by the Nominations and
2 Elections Committee established by subsection (d) of this section
3 and elected by the ~~Board~~; Board.

4 (3) Two members from the Division of Mental Health, Developmental
5 Disabilities, and Substance Abuse Services, Department of Human
6 Resources, appointed by the Chief of Substance Abuse Services
7 Section, Division of Mental Health, Developmental Disabilities,
8 and Substance Abuse Services, Department of Human Resources,
9 at least one of whom is from the Substance Abuse Services
10 ~~Section~~; Section.

11 (4) One member of the public at large appointed by the ~~Governor~~;
12 and Governor.

13 (5) One member of the public at large appointed by the General
14 Assembly upon the recommendation of the Speaker of the House
15 of Representatives in accordance with G.S. 120-121 and one
16 member of the public at large appointed by the General Assembly
17 upon the recommendation of the President Pro Tempore of the
18 Senate in accordance with G.S. 120-121.

19 (6) One member shall represent each of the professional disciplines
20 granted deemed status under G.S. 90-113.41A. The member may
21 be appointed by the professional discipline on or before a date set
22 by the Board. If the professional discipline has at least one
23 association in the State, the member shall be chosen from a list of
24 nominees submitted to the association. The members appointed or
25 elected under this subdivision shall be certified as substance abuse
26 specialists by the professional discipline that the members
27 represent.

28 No member of the General Assembly shall serve on the Board.

29 (c1) Every member of the Board shall have the right to vote on all matters before
30 the Board, except for the President who shall vote only in case of a tie or when
31 another member of the Board abstains on the question of whether the professional
32 discipline the member represents shall retain its deemed status.

33 (d) The Board shall appoint five professionals from the field of substance abuse
34 counseling and substance abuse prevention consulting to serve on the Nominating
35 and Elections Committee. Of these five, at least three shall not be members of the
36 Board. The Board shall appoint a member of the Nominating and Elections
37 Committee to serve as chair. The Committee's purpose is to accept nominations from
38 professionals certified by the Board to fill vacancies on the Board in membership
39 categories prescribed by subdivisions (1) and (2) of subsection (c) of this section and
40 to conduct the election of Board members. The Committee shall solicit nominations
41 from all professionals it has certified under this Article ~~whenever such a vacancy~~
42 ~~occurs and~~ when elected members' terms are due to expire. The certified
43 professionals shall submit to the Committee all nominations ~~within 90 days beginning~~
44 90 days and ending 14 days before the election of new Board members. The

1 Committee shall furnish all certified professionals with a ballot containing all the
2 nominees for each elected Board member vacancy. In soliciting and making
3 nominations for this process, the Committee shall give consideration to factors that
4 promote representation on the Board by professionals certified by the Board. The
5 Committee shall serve for a two-year term, its successors to be appointed for the same
6 term by the Board.

7 (e) Members of the Board shall serve for three-year terms. No Board member
8 shall serve for more than two consecutive terms, but a person who has been a
9 member for two consecutive terms may be reappointed after being off the Board for a
10 period of at least one year. When a vacancy occurs in an unexpired term, the Board
11 ~~shall~~ shall, as soon as practicable, appoint temporary members to serve until the next
12 membership election. Time spent as a temporary member does not count in
13 determining the limitation on consecutive terms.

14 (f) If a member becomes ineligible to serve on the Board for any reason, except
15 when the member has committed an ethical violation that results in the suspension or
16 revocation of the member's professional credentials, the member may fulfill the
17 remainder of the member's term on the Board."

18 Section 4. G.S. 90-113.33 reads as rewritten:

19 "**§ 90-113.33. Board; powers and duties.**

20 The Board shall:

- 21 (1) Examine and determine the qualifications and fitness of applicants
22 for certification to practice in this State ~~as substance abuse~~
23 ~~counselors and as substance abuse prevention consultants;~~ State.
24 (1a) Determine the qualifications and fitness of organizations applying
25 for deemed status.
26 (2) Issue, renew, deny, suspend, or revoke certification to practice in
27 this State or reprimand or otherwise discipline ~~substance abuse~~
28 ~~counselors and substance abuse prevention consultants~~ certificate
29 holders in this State; State. However, disciplinary actions
30 involving a clinical addictions specialist whose certification is
31 achieved through deemed status shall be initially heard by the
32 specialist's credentialing body. The specialist may appeal the
33 body's decision to the Board. The Board shall, however, have the
34 authority to hear the initial disciplinary action involving a clinical
35 addictions specialist.
36 (3) Deal with issues concerning ~~reciprocity;~~ reciprocity.
37 (4) Conduct investigations for the purpose of determining whether
38 violations of this Article or grounds for disciplining ~~exist;~~ exists.
39 (5) Employ the professional and clerical personnel necessary to carry
40 out the provisions of this Article. The Board may purchase or rent
41 necessary office space, equipment, and ~~supplies;~~ supplies.
42 (6) Conduct administrative hearings in accordance with Chapter 150B
43 of the General Statutes when a 'contested case', as defined in
44 Chapter 150B, ~~arises;~~ arises.

- 1 (7) Appoint from its own membership one or more members to act as
2 representatives of the Board at any meeting in which it considers
3 this representation is ~~desirable~~; desirable.
- 4 (8) Establish fees for applications for examination, certificates of
5 certification and renewal, and other services provided by the
6 ~~Board~~; and Board.
- 7 (9) Adopt any rules necessary to carry out the purpose of this Article
8 and its duties and responsibilities pursuant to this Article.

9 The powers and duties enumerated in this section are granted for the purposes of
10 enabling the Board to safeguard the public health, safety, and welfare against
11 unqualified or incompetent practitioners and are to be liberally construed to
12 accomplish this objective. When the Board exercises its authority under this Article to
13 discipline a person, it may, as part of the decision imposing the discipline, charge the
14 costs of investigations and the hearing to the person disciplined."

15 Section 5. G.S. 90-113.34 reads as rewritten:

16 "**§ 90-113.34. Records to be kept; copies of records.**

17 The Board shall obtain documentation of all proceedings under this Article and a
18 record of all persons certified under it. The record shall show the name, last known
19 place of business, last known place of residence, and date and number of the
20 certificate of certification as a certified substance abuse ~~counselor~~ or counselor,
21 certified substance abuse prevention ~~consultant~~ consultant, certified clinical
22 supervisor, certified clinical addictions specialist, or certified residential facility
23 director for every living certified person. Any interested person in the State is entitled
24 to obtain a copy of that record on application to the Board and upon payment of a
25 reasonable charge that is based on the costs involved in providing the copy. The
26 Board shall keep a hard copy of all records."

27 Section 6. G.S. 90-113.37 reads as rewritten:

28 "**§ 90-113.37. Renewal of certification; lapse; revival.**

29 (a) Every person certified pursuant to this Article who desires to maintain
30 certification status shall apply to the Board for a renewal of certification every other
31 year and pay to the secretary-treasurer the prescribed fee. Renewal of certification is
32 subject to completion of no more than 60 hours of those continuing education
33 requirements established by the Board. A clinical supervisor shall also complete 15
34 hours of substance abuse clinical supervision or training prior to the certificate being
35 renewed. Certification that is not renewed automatically lapses, unless the Board
36 provides for the late renewal of certification upon the payment of a late fee. No late
37 renewal shall be granted more than five years after a certification expires. A
38 suspended certification is subject to this section's renewal requirements and may be
39 renewed as provided in this section. This renewal does not entitle the certified person
40 to engage in the certified activity or in any other conduct or activity in violation of
41 the order or judgment by which the certification was suspended, until the certification
42 is reinstated. If a certification revoked on disciplinary grounds is reinstated and
43 requires renewal, the certified person shall pay the renewal fee and any applicable
44 late fee.

1 (b) The Board shall establish the manner in which lapsed certification may be
2 revived or extended."

3 Section 7. G.S. 90-113.38 reads as rewritten:

4 "**§ 90-113.38. Maximums for certain fees.**

5 (a) The combined fees fee to obtain a certificate of certification as a substance
6 abuse counselor, substance abuse prevention consultant, clinical supervisor, or
7 residential facility director may not exceed three hundred dollars (\$300.00). three
8 hundred twenty-five dollars (\$325.00). The fee to renew a certificate may not exceed
9 one hundred dollars (\$100.00).

10 (b) The fee to obtain a certificate of certification for a clinical addictions specialist
11 pursuant to G.S. 90-113.41A may not exceed one hundred dollars (\$100.00). The fee
12 to renew a certificate may not exceed fifty dollars (\$50.00). The fee to obtain a
13 certificate of certification for a clinical addictions specialist under G.S. 90-113.40 may
14 not exceed three hundred twenty-five dollars (\$325.00). The fee to renew the
15 certificate may not exceed one hundred dollars (\$100.00).

16 (c) There shall be a reexamination fee of one hundred dollars (\$100.00) which
17 shall be paid for each reexamination in addition to the fees required under subsection
18 (a) of this section."

19 Section 8. G.S. 90-113.39 reads as rewritten:

20 "**§ 90-113.39. Standards for certification.**

21 The Board shall establish standards for certification of substance abuse
22 professionals. The certification standards of the International Certification Reciprocity
23 Consortium/Alcohol and Other Drug Abuse and ~~of the National Association of~~
24 ~~Alcoholism and Drug Abuse Counselors~~ the standards adopted by professional
25 disciplines granted deemed status may be used as guidelines for the Board's
26 standards. The Board shall publish these required standards separately from its rules
27 so as to provide easy access to the standards."

28 Section 9. G.S. 90-113.40 reads as rewritten:

29 "**§ 90-113.40. Requirements for certification.**

30 (a) The Board shall issue a certificate certifying an applicant as a "~~Certified~~
31 ~~Substance Abuse Counselor~~" 'Certified Substance Abuse Counselor' or as a
32 'Certified Substance Abuse Prevention Consultant' ~~"Certified Substance Abuse~~
33 ~~Prevention Consultant'~~ if:

- 34 (1) The applicant is of good moral ~~character;~~ character.
- 35 (2) The applicant is not and has not engaged in any practice or
36 conduct that would be grounds for disciplinary action under ~~G.S.~~
37 ~~90-113.44;~~ G.S. 90-113.44.
- 38 (3) The applicant is qualified for certification pursuant to the
39 requirements of this Article and any rules adopted pursuant to ~~it;~~
40 it.
- 41 (4) The applicant has, at a minimum, a high school diploma or a high
42 school equivalency ~~certificate;~~ certificate.
- 43 (5) The applicant has signed a form attesting to the intention to adhere
44 fully to the ethical standards adopted by the ~~Board;~~ Board.

- 1 (6) The applicant has completed 270 hours of Board-approved
2 education; education. The Board may prescribe that a certain
3 number of hours be in a course of study for substance abuse
4 counseling and that a certain number of hours be in a course of
5 study for substance abuse prevention consulting.
- 6 (7) The applicant has documented completion of a minimum of 300
7 hours of Supervised Practical Training and has provided a Board-
8 approved supervision contract between the applicant and an
9 approved ~~supervisor; supervisor.~~
- 10 (8) The applicant for substance abuse counselor has completed either
11 a total of ~~three years~~ 6,000 hours of supervised experience in the
12 field, whether paid or volunteer, or, if a graduate of a Board-
13 approved masters degree program, a total of ~~18 months~~ 3,000 hours
14 of supervised experience in the field, whether paid or volunteer;
15 and volunteer. The applicant for substance abuse prevention
16 consultant has completed a total of 10,000 hours supervised
17 experience in the field, whether paid or volunteer, or 4,000 hours
18 if the applicant has at least a bachelors degree in a human services
19 field.
- 20 (9) The applicant has successfully completed a written examination
21 and an oral examination promulgated and administered by the
22 Board.
- 23 **(b) The Board shall issue a certificate certifying an individual as a 'Certified**
24 **Clinical Supervisor' if, in addition to meeting the requirements of subdivisions (a)(1)**
25 **through (5) of this section, the applicant:**
- 26 (1) Has been certified as a substance abuse counselor or a clinical
27 addictions specialist.
- 28 (2) Prior to June 30, 1998, the applicant presents proof that the
29 applicant has 12,000 hours experience in alcohol and drug abuse
30 counseling and a bachelors degree or 8,000 hours experience in
31 alcohol and drug abuse counseling and a minimum of a masters
32 degree. After June 30, 1998, the applicant shall present proof that
33 the applicant has a minimum of a masters degree.
- 34 (3) Has 6,000 hours experience as a substance abuse clinical supervisor
35 if the applicant has a bachelors degree or 4,000 hours experience if
36 the applicant has a masters degree.
- 37 (4) Has 30 hours of substance abuse clinical supervision specific
38 education or training. These hours shall be reflective of the 12
39 core functions in the applicant's clinical application and practice
40 and may also be counted toward the applicant's recertification as a
41 substance abuse counselor.
- 42 (5) Submits a letter of reference from a professional who can attest to
43 the applicant's supervisory competence and two letters of reference

1 from either counselors who have been supervised by the applicant
2 or professionals who can attest to the applicant's competence.

3 (6) Successfully completes a written examination administered by the
4 Board.

5 (c) The Board shall issue a certificate certifying an applicant as a 'Certified
6 Clinical Addictions Specialist' if, in addition to meeting the requirements of
7 subdivisions (a)(1) through (5) of this section, the applicant meets one of the
8 following criteria:

9 (1) Criteria A. -- The applicant:

10 a. Has a minimum or a masters degree with a clinical
11 application in a human services field.

12 b. Has two years postgraduate supervised substance abuse
13 counseling experience.

14 c. Submits three letters of reference from certified clinical
15 addictions specialists or certified substance abuse
16 professionals.

17 d. Has achieved a combined score set by the Board on a
18 masters level written and oral examination administered by
19 the Board.

20 e. Has attained 180 hours of substance abuse specific training
21 as described in G.S. 90-113.41A.

22 (2) Criteria B. -- The applicant:

23 a. Has a minimum of a masters degree with a clinical
24 application in a human services field.

25 b. Has been certified as a substance abuse counselor.

26 c. Has one year of postgraduate supervised substance abuse
27 counseling experience.

28 d. Has achieved a passing score on a masters level written
29 examination administered by the Board.

30 e. Submits three letters of reference from certified clinical
31 addictions specialists or certified substance abuse
32 professionals.

33 (3) Criteria C. -- The applicant:

34 a. Has a minimum of a masters degree in a human services
35 field with a substance abuse specialty that includes 180
36 hours of substance abuse specific education and training
37 pursuant to G.S. 113.41A.

38 b. Has one year of postgraduate supervised substance abuse
39 counseling experience.

40 c. Has achieved a passing score on an oral examination
41 administered by the Board.

42 d. Submits three letters of reference from certified clinical
43 addictions specialists or certified substance abuse
44 professionals.

1 (4) Criteria D. -- The applicant has a substance abuse certification
2 from a professional discipline that has been granted deemed status
3 by the Board.

4 (d) Notwithstanding subsection (c) of this section, the Board may certify a person
5 as a 'Clinical Addictions Specialist' for a limited period of one year from the
6 effective date of this Article upon the submission of proof of one of the following to
7 the Board:

8 (1) Certification as a substance abuse counselor holding a masters
9 degree with a clinical application in a human services field; the
10 equivalent of two years of full-time postgraduate supervised
11 substance abuse experience; and three letters of reference from
12 certified substance abuse professionals who have masters degrees.

13 (2) Certification as a substance abuse counselor with a bachelors
14 degree in a human services field; the equivalent of five years of
15 full-time, postgraduate, supervised substance abuse experience; a
16 passing score on a masters level written examination; and
17 submission of three letters of reference from certified substance
18 abuse professionals who have masters degrees.

19 (3) Certification as a clinical supervisor; a masters degree with a
20 clinical application in a human services field with a substance
21 abuse specialty; and three letters of reference from certified
22 substance abuse professionals who have masters degrees.

23 (4) Certification as a substance abuse counselor; a masters degree with
24 a clinical application in a human services field with a substance
25 abuse specialty; and three letters of reference from certified
26 substance abuse professionals who have masters degrees.

27 (5) Certification prior to the effective date of this Article as an alcohol
28 counselor, a drug and alcohol counselor, or a substance abuse
29 counselor; the equivalent of 10 years of documented full-time
30 substance abuse work experience; and three letters of reference
31 from certified substance abuse professionals who have masters
32 degrees.

33 (6) Certification, licensure, or membership in good standing with a
34 professional discipline that has been granted deemed status.

35 Renewal of the one-year clinical addictions specialist certification shall be pursuant
36 to G.S. 90-113.37.

37 (e) Notwithstanding subsection (c) of this section, the Board may certify an
38 applicant as a 'Clinical Addictions Specialist' for a limited period of three years from
39 or beginning October 1, 1998, if the applicant completes and submits proof to the
40 Board that the applicant; (i) has been certified as a substance abuse counselor; (ii) has
41 the equivalent of 10 years of supervised, full-time, substance abuse counseling
42 experience; (iii) has passed a masters level oral and written examination and; (iv)
43 submits three letters of reference from certified substance abuse professionals who
44 hold masters degrees.

1 (f) The Board shall issue a certificate certifying an applicant as a 'Certified
2 Residential Facility Director' if, in addition to meeting the requirements of
3 subdivisions (a)(1) through (5) of this section, the applicant:

- 4 (1) Has been certified as a substance abuse counselor.
5 (2) Has 50 hours of Board approved academic or didactic management
6 specific training or a combination thereof.
7 (3) Submits letters of reference from the applicant's current supervisor
8 and a colleague or co-worker.

9 (g) The Board shall publish from time to time information in order to provide
10 specifics for potential applicants of an acceptable educational curriculum and the
11 terms of acceptable supervised fieldwork experience."

12 Section 10. G.S. 90-113.41 reads as rewritten:

13 **"§ 90-113.41. Examination.**

14 (a) Except for those individuals applying for certification under G.S. 90-113.41A,
15 Applicants applicants for certification under this Article shall file an application at
16 least 60 days prior to the date of examination and upon the forms and in the manner
17 prescribed by the Board. The application shall be accompanied by the appropriate
18 fee. No portion of this fee is refundable. Applicants who fail an examination may
19 apply for reexamination upon the payment of another examination fee.

20 (b) Each applicant for certification under this Article shall be examined in an
21 examination that is consistent with the examination requirements of the International
22 Certification Reciprocity Consortium/Alcohol and Other Drug Abuse. Abuse and the
23 standards adopted by professional disciplines granted deemed status.

24 (c) Applicants for certification shall be examined at a time and place and under
25 the supervision that the Board determines. Examinations shall be given in this State
26 at least twice each year.

27 (d) Applicants may obtain their examination scores and may review their
28 examination papers in accordance with rules the Board adopts."

29 Section 11. Article 5C of Chapter 90 of the General Statutes is amended
30 to add a new section to read:

31 **"§ 90-113.41A. Deemed status.**

32 (a) To be granted deemed status by the Board, a credentialing body of a
33 professional discipline or its designee shall demonstrate that its substance abuse
34 certification program substantially meets the following:

35 (1) Each person to whom the credentialing body awards credentials
36 following the effective date of this act meets and maintains
37 minimum requirements in substance abuse specific content areas.
38 Each person also has a minimum of a masters degree with a
39 clinical application in a human services field.

40 (2) The body requires 180 hours, or the equivalent thereof, of
41 substance abuse specific education and training that covers the
42 following content areas:

43 a. Basic addiction and cross addiction Physiology and
44 Pharmacology of Psychoactive drugs that are abused.

- 1 **b.** Screening, assessment, and intake of clients.
2 **c.** Individual, group, and family counseling.
3 **d.** Treatment, planning, reporting, and record keeping.
4 **e.** Crisis intervention.
5 **f.** Case management and treatment resources.
6 **g.** Ethics, legal issues, and confidentiality.
7 **h.** Psychological, emotional, personality, and developmental
8 issues.
9 **i.** Coexisting physical and mental disabilities.
10 **i.** Special population issues, including age, gender, race,
11 ethnicity, and health status.
12 **k.** Traditions and philosophies of recovery treatment models
13 and support groups.

14 **(3)** The program requires one year or its equivalent of post-degree
15 supervised clinical substance abuse practice. At least fifty percent
16 (50%) of the practice shall consist of direct substance abuse clinical
17 care.

18 **(b)** The professional discipline seeking deemed status shall require its members to
19 adhere to a code of ethical conduct and shall enforce that code with disciplinary
20 action.

21 **(c)** The Board may grant deemed status to any professional discipline that
22 substantially meets the standards in this section. Once such status has been granted,
23 an individual within the professional discipline may apply to the Board for
24 certification as a certified clinical addictions specialist.

25 **(d)** The Standards and Credentialing Committee of the Board shall review the
26 standards of each professional discipline every third year from the date it was granted
27 deemed status to determine if the discipline continues to substantially meet the
28 requirements of this section. If the Committee finds that a professional discipline no
29 longer meets the requirements of this section, it shall report its findings to the Board
30 at the Board's next regularly scheduled meeting. The deemed status standing of a
31 professional discipline's credential may be discontinued by a two-thirds vote of the
32 Board."

33 Section 12. G.S. 90-113.42 reads as rewritten:

34 "**§ 90-113.42. Exemptions.**

35 It is not the intent of this Article to regulate members of other regulated
36 professions who provide substance abuse services or consultation in the normal
37 course of the practice of their profession. Accordingly, this Article does not apply to
38 any person registered, certified, or licensed by the State to practice any other
39 occupation or profession while rendering substance abuse services or consultation in
40 the performance of the occupation or profession for which ~~he~~ the person is
41 registered, certified, or licensed. Only individuals certified under this Article may use
42 the title "~~certified substance abuse counselor~~" or "~~certified substance abuse~~
43 ~~prevention consultant~~" certified substance abuse counselor, certified substance abuse

1 prevention consultant, certified clinical supervisor, certified clinical addictions
 2 specialist, or certified residential facility director."

3 Section 13. G.S. 90-113.43 reads as rewritten:

4 "**§ 90-113.43. Illegal practice; misdemeanor penalty.**

5 Except as otherwise authorized in this Article, no person shall:

- 6 (1) Practice, attempt to practice, or supervise while holding out to be a
 7 certified substance abuse ~~counselor or a~~ counselor, certified
 8 substance abuse prevention ~~consultant~~ consultant, certified clinical
 9 supervisor, certified clinical addictions specialist, or certified
 10 residential facility director without first having obtained a
 11 certificate of certification from the ~~Board;~~ Board.
- 12 (2) Use in connection with any name any letters, words, numerical
 13 codes, or insignia indicating or implying that this person is a
 14 certified substance abuse ~~counselor or a~~ counselor, certified
 15 substance abuse prevention ~~consultant~~ consultant, certified clinical
 16 supervisor, certified clinical addictions specialist, or certified
 17 residential facility director unless this person is certified pursuant
 18 to this ~~Article;~~ Article.
- 19 (3) Practice or attempt to practice as a certified substance abuse
 20 ~~counselor or~~ counselor, certified substance abuse prevention
 21 ~~consultant~~ consultant, certified clinical supervisor, certified clinical
 22 addictions specialist, or certified residential facility director with a
 23 ~~revoked, lapsed, or suspended certification;~~ certification.
- 24 (4) Aid, abet, or assist any uncertified person to practice as a certified
 25 substance abuse ~~counselor or~~ counselor, certified substance abuse
 26 prevention ~~consultant~~ consultant, certified clinical supervisor,
 27 certified clinical addictions specialist, or certified residential facility
 28 director in violation of this ~~Article;~~ Article.
- 29 (5) Knowingly serve in a position required by State law or rule or
 30 federal law or regulation to be filled by a certified substance abuse
 31 ~~counselor or a~~ counselor, certified substance abuse prevention
 32 ~~consultant~~ consultant, certified clinical supervisor, certified clinical
 33 addictions specialist, or certified residential facility director unless
 34 that person is ~~so~~ certified under this ~~Article;~~ Article.
- 35 (6) ~~Otherwise violate any of the provisions of this Article or any of the~~
 36 ~~rules adopted pursuant to it.~~
- 37 (7) Practice, supervise, or attempt to practice or supervise or
 38 knowingly serve in a position required by State law or rule or
 39 federal law or regulation to be filled by a designated substance
 40 abuse intern without being designated as such by the Board.

41 A person who engages in any of the illegal practices enumerated by this section is
 42 guilty of a Class 1 misdemeanor. Each act of unlawful practice constitutes a distinct
 43 and separate offense."

44 Section 14. G.S. 90-113.44 reads as rewritten:

1 **"§ 90-113.44. Grounds for disciplinary action.**

2 Grounds for disciplinary action include:

- 3 (1) The employment of fraud, deceit, or misrepresentation in obtaining
4 or attempting to obtain certification or renewal of ~~certification;~~
5 certification.
- 6 (2) The use of drugs or alcoholic beverages to the extent that
7 professional competency is affected, until proof of rehabilitation
8 can be ~~established;~~ established.
- 9 (3) Conviction of an offense under any municipal, State, or federal
10 narcotic or controlled substance law, until proof of rehabilitation
11 can be ~~established;~~ established.
- 12 (4) Conviction of a felony or other public offense involving moral
13 turpitude, until proof of rehabilitation can be ~~established;~~
14 established.
- 15 (5) An adjudication of insanity or incompetency, until proof of
16 recovery from this condition can be ~~established;~~ established.
- 17 (6) Engaging in any act or practice violative of any of the provisions of
18 this Article or any of the rules adopted pursuant to it, or aiding,
19 abetting, or assisting any other person in such a ~~violation;~~ violation.
- 20 (7) The commission of an act of malpractice, gross negligence, or
21 incompetence in the practice of substance abuse ~~counseling or in~~
22 counseling, substance abuse prevention ~~consulting;~~ consulting,
23 clinical supervising, or in serving as a clinical addictions specialist
24 or residential facility director.
- 25 (8) Practicing as a certified substance abuse ~~counselor or as a~~
26 counselor, certified substance abuse prevention ~~consultant~~
27 consultant, certified clinical supervisor, certified clinical addictions
28 specialist or certified residential facility director without a valid
29 ~~certificate;~~ and certificate.
- 30 (9) Engaging in conduct that could result in harm or injury to the
31 public."

32 Section 15. G.S. 90-113.46 reads as rewritten:

33 **"§ 90-113.46. Application of requirements of Article.**

34 All persons certified by the North Carolina Substance Abuse ~~Professionals~~
35 Professional Certification Board, Inc., as of July 1, 1994, shall be certified by the
36 Board pursuant to this Article. All these persons are subject to all the other
37 requirements of this Article and of the rules adopted pursuant to it."

38 Section 16. Article 5C of Chapter 90 of the General Statues is amended
39 by adding the following new section:

40 **"§ 90-113.47. Third-party reimbursement.**

41 Nothing in this Article shall be construed to require direct third-party
42 reimbursements to persons certified under this Article."

43 Section 17. This act becomes effective October 1, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1997

S

D

SENATE BILL 712
Proposed Committee Substitute S712-PCS4610

Short Title: Substance Abuse Specialists.

(Public)

Sponsors:

Referred to:

April 7, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO CERTIFY CLINICAL ADDICTIONS SPECIALISTS, PROVIDE
3 SPECIFIC AUTHORITY FOR CERTIFICATION OF CLINICAL
4 SUPERVISORS AND RESIDENTIAL FACILITY DIRECTORS, AND TO
5 MAKE A TECHNICAL CHANGE.

6 The General Assembly of North Carolina enacts:

7 Section 1. G.S. 90-113.30 reads as rewritten:

8 "§ 90-113.30. Declaration of purpose.

9 The North Carolina Substance Abuse ~~Professionals~~ Professional Certification
10 Board, established by G.S. 90-113.32, is recognized as the certifying authority for
11 ~~certified substance abuse counselors and certified substance abuse prevention~~
12 ~~consultants~~ substance abuse professionals described in this Article in order to
13 safeguard the public health, safety, and welfare, to protect the public from being
14 harmed by unqualified persons, to assure the highest degree of professional care and
15 conduct on the part of certified substance abuse ~~counselors and certified substance~~
16 ~~abuse prevention consultants~~, professionals, to provide for the establishment of
17 standards for the education of ~~substance abuse counselors and substance abuse~~
18 ~~prevention consultants~~, certified substance abuse professionals, and to ensure the
19 availability of ~~substance abuse counseling services and substance abuse prevention~~
20 ~~services~~ certified substance abuse professional services of high quality to persons in
21 need of these services. It is the purpose of this Article to provide for the regulation of
22 Board-certified persons offering substance abuse counseling services, substance abuse

1 prevention services, or any other substance abuse services for which the Board may
2 grant certification."

3 Section 2. G.S. 90-113.31 reads as rewritten:

4 "**§ 90-113.31. Definitions.**

5 ~~In this Article, unless the context clearly requires otherwise, the~~ The following
6 definitions shall apply in this Article:

7 (1) ~~"Board" means the Board. -- The North Carolina Substance Abuse~~
8 ~~Professionals Professional Certification Board.~~

9 (1a) Certified clinical addictions specialist. -- A person certified by the
10 Board to practice as a clinical addictions specialist in accordance
11 with the provisions of this Article.

12 (1b) Certified clinical supervisor. -- A person certified by the Board to
13 practice as a clinical supervisor in accordance with the provisions
14 of this Article.

15 (1c) Certified residential facility director. -- A person certified by the
16 Board to practice as a residential facility director in accordance
17 with the provisions of this Article.

18 (2) ~~"Certified substance abuse counselor" means any Certified~~
19 ~~substance abuse counselor. -- A person certified by the Board to~~
20 ~~practice as a substance abuse counseling counselor in accordance~~
21 ~~with the provisions of this Article.~~

22 (3) ~~"Substance abuse counseling" means the assessment, evaluation, or~~
23 ~~provision of counseling to persons suffering from substance abuse~~
24 ~~or dependency, alcohol abuse or dependency, or drug abuse or~~
25 ~~dependency.~~

26 (4) ~~"Certified substance abuse prevention consultant" means any~~
27 ~~Certified substance abuse prevention consultant. -- A person~~
28 ~~certified by the Board to practice substance abuse prevention in~~
29 ~~accordance with the provisions of this Article.~~

30 (4a) Credentialing body. -- A board that licenses, certifies, or regulates
31 a profession or practice.

32 (4b) Deemed status. -- Recognition by the Board of the credentials
33 offered by a professional discipline whereby the individuals
34 certified, licensed, or otherwise recognized by the discipline as
35 having met the standards of a substance abuse specialist may apply
36 individually for certification as a certified clinical addictions
37 specialist.

38 (4c) Human services field. -- An area of study that focuses on the
39 biological, psychological, and social aspects of human beings.

40 (4d) Intern. -- A person who successfully completes 300 hours of Board
41 approved supervised practical training and a written examination
42 in pursuit of certification as a substance abuse counselor.

43 (5) ~~"Prevention" means the Prevention. -- The reduction, delay, or~~
44 ~~avoidance of alcohol and of other drug use behavior. 'Prevention'~~

1 includes the promotion of positive environments and individual
2 strengths that contribute to personal health and well-being over an
3 entire life and the development of strategies that encourage
4 individuals, families, and communities to take part in assessing and
5 changing their lifestyle and environments.

6 (6) Professional discipline. -- A field of study characterized by the
7 technical, educational, and ethical standards of a profession.

8 (7) Substance abuse counseling. -- The assessment, evaluation, and
9 provision of counseling to persons suffering from substance, drug,
10 or alcohol abuse or dependency.

11 (8) Substance abuse professional. -- A certified substance abuse
12 counselor, certified substance abuse prevention consultant, certified
13 clinical supervisor, certified clinical addictions specialist, or
14 certified residential facility director."

15 Section 3. G.S. 90-113.32 reads as rewritten:

16 "**§ 90-113.32. ~~Board.~~ Board; composition; voting.**

17 (a) The Board is created as the certifying authority for substance abuse ~~counselors~~
18 counselors, and substance abuse prevention consultants consultants, clinical
19 supervisors, clinical addictions specialists, and residential facility directors in North
20 Carolina.

21 (b) Until the full Board is elected or appointed pursuant to subsection (c) of this
22 section, the Board shall consist of 16 members with one member appointed by the
23 General Assembly upon the recommendation of the Speaker of the House of
24 Representatives in accordance with G.S. 120-121, and one member appointed by the
25 General Assembly upon the recommendation of the President Pro Tempore of the
26 Senate in accordance with G.S. 120-121. The remaining 14 shall be those members of
27 the current North Carolina Substance Abuse ~~Professionals~~ Professional Certification
28 Board, Inc., who have terms that are unexpired as of the effective date of this Article.
29 The initial Board shall appoint an initial Nominating and Elections Committee to fill
30 immediate vacancies on the Board, using the process established in subsection (d) of
31 this section. The election and appointment process of the initial Board shall result in
32 a Board of 19 members by April 1, 1995. As these initial members' terms expire, their
33 successors shall be appointed as described in subsection (c) of this section, until the
34 permanent Board is established, as described in subsection (c) of this section. Time
35 spent as an initial member counts in determining the limitation on consecutive terms
36 prescribed in subsection (e) of this section.

37 (c) After the initial Board members' terms expire, the Board shall consist of ~~19~~
38 the following members, all of whom shall reside in North Carolina, appointed or
39 elected as follows:

40 (1) Eleven professionals certified pursuant to this Article and elected
41 by the certified professionals, at least two of whom shall serve each
42 of the four Division of Mental Health, Developmental Disabilities,
43 and Substance Abuse Services regions of the ~~State;~~ State. Three
44 members shall serve as members at large.

- 1 (2) Three members at large chosen from laypersons or other
2 professional disciplines who have shown a special interest in the
3 field of substance abuse, nominated by the Nominations and
4 Elections Committee established by subsection (d) of this section
5 and elected by the ~~Board~~, Board.
- 6 (3) Two members from the Division of Mental Health, Developmental
7 Disabilities, and Substance Abuse Services, Department of Human
8 Resources, appointed by the Chief of Substance Abuse Services
9 Section, Division of Mental Health, Developmental Disabilities,
10 and Substance Abuse Services, Department of Human Resources,
11 at least one of whom is from the Substance Abuse Services
12 ~~Section~~; Section.
- 13 (4) One member of the public at large appointed by the ~~Governor~~;
14 and Governor.
- 15 (5) One member of the public at large appointed by the General
16 Assembly upon the recommendation of the Speaker of the House
17 of Representatives in accordance with G.S. 120-121 and one
18 member of the public at large appointed by the General Assembly
19 upon the recommendation of the President Pro Tempore of the
20 Senate in accordance with G.S. 120-121.
- 21 (6) One member shall represent each of the professional disciplines
22 granted deemed status under G.S. 90-113.41A. The member may
23 be appointed by the professional discipline on or before a date set
24 by the Board. If the professional discipline has at least one
25 association in the State, the member shall be chosen from a list of
26 nominees submitted to the association. The members appointed or
27 elected under this subdivision shall be certified as substance abuse
28 specialists by the professional discipline that the members
29 represent.

30 No member of the General Assembly shall serve on the Board.

31 (c1) Every member of the Board shall have the right to vote on all matters before
32 the Board, except for the President who shall vote only in case of a tie or when
33 another member of the Board abstains on the question of whether the professional
34 discipline the member represents shall retain its deemed status.

35 (d) The Board shall appoint five professionals from the field of substance abuse
36 counseling and substance abuse prevention consulting to serve on the Nominating
37 and Elections Committee. Of these five, at least three shall not be members of the
38 Board. The Board shall appoint a member of the Nominating and Elections
39 Committee to serve as chair. The Committee's purpose is to accept nominations from
40 professionals certified by the Board to fill vacancies on the Board in membership
41 categories prescribed by subdivisions (1) and (2) of subsection (c) of this section and
42 to conduct the election of Board members. The Committee shall solicit nominations
43 from all professionals it has certified under this Article ~~whenever such a vacancy~~
44 ~~occurs and~~ when elected members' terms are due to expire. The certified

1 professionals shall submit to the Committee all nominations ~~within 90 days~~ beginning
2 90 days and ending 14 days before the election of new Board members. The
3 Committee shall furnish all certified professionals with a ballot containing all the
4 nominees for each elected Board member vacancy. In soliciting and making
5 nominations for this process, the Committee shall give consideration to factors that
6 promote representation on the Board by professionals certified by the Board. The
7 Committee shall serve for a two-year term, its successors to be appointed for the same
8 term by the Board.

9 (e) Members of the Board shall serve for three-year terms. No Board member
10 shall serve for more than two consecutive terms, but a person who has been a
11 member for two consecutive terms may be reappointed after being off the Board for a
12 period of at least one year. When a vacancy occurs in an unexpired term, the Board
13 ~~shall~~ shall, as soon as practicable, appoint temporary members to serve until the next
14 membership election. Time spent as a temporary member does not count in
15 determining the limitation on consecutive terms.

16 (f) If a member becomes ineligible to serve on the Board for any reason, except
17 when the member has committed an ethical violation that results in the suspension or
18 revocation of the member's professional credentials, the member may fulfill the
19 remainder of the member's term on the Board."

20 Section 4. G.S. 90-113.33 reads as rewritten:

21 "**§ 90-113.33. Board; powers and duties.**

22 The Board shall:

- 23 (1) Examine and determine the qualifications and fitness of applicants
24 for certification to practice in this State ~~as substance abuse~~
25 ~~counselors and as substance abuse prevention consultants;~~ State.
26 (1a) Determine the qualifications and fitness of organizations applying
27 for deemed status.
28 (2) Issue, renew, deny, suspend, or revoke certification to practice in
29 this State or reprimand or otherwise discipline ~~substance abuse~~
30 ~~counselors and substance abuse prevention consultants~~ certificate
31 holders in this State; State. However, disciplinary actions
32 involving a clinical addictions specialist whose certification is
33 achieved through deemed status shall be initially heard by the
34 specialist's credentialing body. The specialist may appeal the
35 body's decision to the Board. The Board shall, however, have the
36 authority to hear the initial disciplinary action involving a clinical
37 addictions specialist.
38 (3) Deal with issues concerning ~~reciprocity;~~ reciprocity.
39 (4) Conduct investigations for the purpose of determining whether
40 violations of this Article or grounds for disciplining ~~exist;~~ exists.
41 (5) Employ the professional and clerical personnel necessary to carry
42 out the provisions of this Article. The Board may purchase or rent
43 necessary office space, equipment, and ~~supplies;~~ supplies.

- 1 (6) Conduct administrative hearings in accordance with Chapter 150B
2 of the General Statutes when a 'contested case', as defined in
3 Chapter 150B, ~~arises; arises.~~
4 (7) Appoint from its own membership one or more members to act as
5 representatives of the Board at any meeting in which it considers
6 this representation is ~~desirable; desirable.~~
7 (8) Establish fees for applications for examination, certificates of
8 certification and renewal, and other services provided by the
9 ~~Board; and Board.~~
10 (9) Adopt any rules necessary to carry out the purpose of this Article
11 and its duties and responsibilities pursuant to this Article.

12 The powers and duties enumerated in this section are granted for the purposes of
13 enabling the Board to safeguard the public health, safety, and welfare against
14 unqualified or incompetent practitioners and are to be liberally construed to
15 accomplish this objective. When the Board exercises its authority under this Article to
16 discipline a person, it may, as part of the decision imposing the discipline, charge the
17 costs of investigations and the hearing to the person disciplined."

18 Section 5. G.S. 90-113.34 reads as rewritten:

19 "**§ 90-113.34. Records to be kept; copies of records.**

20 The Board shall obtain documentation of all proceedings under this Article and a
21 record of all persons certified under it. The record shall show the name, last known
22 place of business, last known place of residence, and date and number of the
23 certificate of certification as a certified substance abuse ~~counselor or counselor,~~
24 certified substance abuse prevention ~~consultant~~ consultant, certified clinical
25 supervisor, certified clinical addictions specialist, or certified residential facility
26 director for every living certified person. Any interested person in the State is entitled
27 to obtain a copy of that record on application to the Board and upon payment of a
28 reasonable charge that is based on the costs involved in providing the copy. The
29 Board shall keep a hard copy of all records."

30 Section 6. G.S. 90-113.37 reads as rewritten:

31 "**§ 90-113.37. Renewal of certification; lapse; revival.**

32 (a) Every person certified pursuant to this Article who desires to maintain
33 certification status shall apply to the Board for a renewal of certification every other
34 year and pay to the secretary-treasurer the prescribed fee. Renewal of certification is
35 subject to completion of no more than 60 hours of those continuing education
36 requirements established by the Board. A clinical supervisor shall also complete 15
37 hours of substance abuse clinical supervision or training prior to the certificate being
38 renewed. Certification that is not renewed automatically lapses, unless the Board
39 provides for the late renewal of certification upon the payment of a late fee. No late
40 renewal shall be granted more than five years after a certification expires. A
41 suspended certification is subject to this section's renewal requirements and may be
42 renewed as provided in this section. This renewal does not entitle the certified person
43 to engage in the certified activity or in any other conduct or activity in violation of
44 the order or judgment by which the certification was suspended, until the certification

1 is reinstated. If a certification revoked on disciplinary grounds is reinstated and
2 requires renewal, the certified person shall pay the renewal fee and any applicable
3 late fee.

4 (b) The Board shall establish the manner in which lapsed certification may be
5 revived or extended."

6 Section 7. G.S. 90-113.38 reads as rewritten:

7 "**§ 90-113.38. Maximums for certain fees.**

8 (a) ~~The combined fees fee to obtain a certificate of certification as a substance~~
9 ~~abuse counselor, substance abuse prevention consultant, clinical supervisor, or~~
10 ~~residential facility director may not exceed three hundred dollars (\$300.00); three~~
11 ~~hundred twenty-five dollars (\$325.00).~~ The fee to renew a certificate may not exceed
12 one hundred dollars (\$100.00).

13 (b) The fee to obtain a certificate of certification for a clinical addictions specialist
14 pursuant to G.S. 90-113.41A may not exceed one hundred dollars (\$100.00). The fee
15 to renew a certificate may not exceed fifty dollars (\$50.00). The fee to obtain a
16 certificate of certification for a clinical addictions specialist under G.S. 90-113.40 may
17 not exceed three hundred twenty-five dollars (\$325.00). The fee to renew the
18 certificate may not exceed one hundred dollars (\$100.00).

19 (c) There shall be a reexamination fee of one hundred dollars (\$100.00) which
20 shall be paid for each reexamination in addition to the fees required under subsection
21 (a) of this section."

22 Section 8. G.S. 90-113.39 reads as rewritten:

23 "**§ 90-113.39. Standards for certification.**

24 The Board shall establish standards for certification of substance abuse
25 professionals. The certification standards of the International Certification Reciprocity
26 Consortium/Alcohol and Other Drug Abuse and ~~of the National Association of~~
27 ~~Alcoholism and Drug Abuse Counselors~~ the standards adopted by professional
28 disciplines granted deemed status may be used as guidelines for the Board's
29 standards. The Board shall publish these required standards separately from its rules
30 so as to provide easy access to the standards."

31 Section 9. G.S. 90-113.40 reads as rewritten:

32 "**§ 90-113.40. Requirements for certification.**

33 (a) The Board shall issue a certificate certifying an applicant as a "~~Certified~~
34 ~~Substance Abuse Counselor~~" 'Certified Substance Abuse Counselor' or as a
35 "~~Certified Substance Abuse Prevention Consultant~~" 'Certified Substance Abuse
36 Prevention Consultant' if:

- 37 (1) The applicant is of good moral ~~character;~~ character.
- 38 (2) The applicant is not and has not engaged in any practice or
39 conduct that would be grounds for disciplinary action under ~~G.S.~~
40 90-113.44; G.S. 90-113.44.
- 41 (3) The applicant is qualified for certification pursuant to the
42 requirements of this Article and any rules adopted pursuant to ~~it;~~
43 it.

- 1 (4) The applicant has, at a minimum, a high school diploma or a high
2 school equivalency ~~certificate~~; certificate.
- 3 (5) The applicant has signed a form attesting to the intention to adhere
4 fully to the ethical standards adopted by the ~~Board~~; Board.
- 5 (6) The applicant has completed 270 hours of Board-approved
6 ~~education~~; education. The Board may prescribe that a certain
7 number of hours be in a course of study for substance abuse
8 counseling and that a certain number of hours be in a course of
9 study for substance abuse prevention consulting.
- 10 (7) The applicant has documented completion of a minimum of 300
11 hours of Supervised Practical Training and has provided a Board-
12 approved supervision contract between the applicant and an
13 approved ~~supervisor~~; supervisor.
- 14 (8) The applicant for substance abuse counselor has completed either
15 a total of ~~three years~~ 6,000 hours of supervised experience in the
16 field, whether paid or volunteer, or, if a graduate of a Board-
17 approved master's degree program, a total of ~~18 months~~ 3,000
18 hours of supervised experience in the field, whether paid or
19 ~~volunteer~~; and volunteer. The applicant for substance abuse
20 prevention consultant has completed a total of 10,000 hours
21 supervised experience in the field, whether paid or volunteer, or
22 4,000 hours if the applicant has at least a bachelors degree in a
23 human services field.
- 24 (9) The applicant has successfully completed a written examination
25 and an oral examination promulgated and administered by the
26 Board.

27 (b) The Board shall issue a certificate certifying an individual as a 'Certified
28 Clinical Supervisor' if, in addition to meeting the requirements of subdivisions (a)(1)
29 through (5) of this section, the applicant:

- 30 (1) Has been certified as a substance abuse counselor or a clinical
31 addictions specialist.
- 32 (2) Prior to June 30, 1998, the applicant presents proof that the
33 applicant has 12,000 hours experience in alcohol and drug abuse
34 counseling and a bachelors degree or 8,000 hours experience in
35 alcohol and drug abuse counseling and a minimum of a master's
36 degree. After June 30, 1998, the applicant shall present proof that
37 the applicant has a minimum of a master's degree.
- 38 (3) Has 6,000 hours experience as a substance abuse clinical supervisor
39 if the applicant has a bachelors degree or 4,000 hours experience if
40 the applicant has a master's degree.
- 41 (4) Has 30 hours of substance abuse clinical supervision specific
42 education or training. These hours shall be reflective of the 12
43 core functions in the applicant's clinical application and practice

- 1 and may also be counted toward the applicant's recertification as a
2 substance abuse counselor.
- 3 (5) Submits a letter of reference from a professional who can attest to
4 the applicant's supervisory competence and two letters of reference
5 from either counselors who have been supervised by the applicant
6 or professionals who can attest to the applicant's competence.
- 7 (6) Successfully completes a written examination administered by the
8 Board.
- 9 (c) The Board shall issue a certificate certifying an applicant as a 'Certified
10 Clinical Addictions Specialist' if, in addition to meeting the requirements of
11 subdivisions (a)(1) through (5) of this section, the applicant meets one of the
12 following criteria:
- 13 (1) Criteria A. -- The applicant:
- 14 a. Has a minimum or a master's degree with a clinical
15 application in a human services field.
- 16 b. Has two years postgraduate supervised substance abuse
17 counseling experience.
- 18 c. Submits three letters of reference from certified clinical
19 addictions specialists or certified substance abuse
20 professionals.
- 21 d. Has achieved a combined score set by the Board on a
22 master's level written and oral examination administered by
23 the Board.
- 24 e. Has attained 180 hours of substance abuse specific training
25 as described in G.S. 90-113.41A.
- 26 (2) Criteria B. -- The applicant:
- 27 a. Has a minimum of a master's degree with a clinical
28 application in a human services field.
- 29 b. Has been certified as a substance abuse counselor.
- 30 c. Has one year of postgraduate supervised substance abuse
31 counseling experience.
- 32 d. Has achieved a passing score on a master's level written
33 examination administered by the Board.
- 34 e. Submits three letters of reference from certified clinical
35 addictions specialists or certified substance abuse
36 professionals.
- 37 (3) Criteria C. -- The applicant:
- 38 a. Has a minimum of a master's degree in a human services
39 field with a substance abuse specialty that includes 180
40 hours of substance abuse specific education and training
41 pursuant to G.S. 113.41A.
- 42 b. Has one year of postgraduate supervised substance abuse
43 counseling experience.

- 1 c. Has achieved a passing score on an oral examination
2 administered by the Board.
- 3 d. Submits three letters of reference from certified clinical
4 addictions specialists or certified substance abuse
5 professionals.
- 6 (4) Criteria D. -- The applicant has a substance abuse certification
7 from a professional discipline that has been granted deemed status
8 by the Board.
- 9 (d) The Board shall issue a certificate certifying an applicant as a 'Certified
10 Residential Facility Director' if, in addition to meeting the requirements of
11 subdivisions (a)(1) through (5) of this section, the applicant:
- 12 (1) Has been certified as a substance abuse counselor.
13 (2) Has 50 hours of Board approved academic or didactic management
14 specific training or a combination thereof.
15 (3) Submits letters of reference from the applicant's current supervisor
16 and a colleague or coworker.
- 17 (e) The Board shall publish from time to time information in order to provide
18 specifics for potential applicants of an acceptable educational curriculum and the
19 terms of acceptable supervised fieldwork experience."

20 Section 10. G.S. 90-113.41 reads as rewritten:

21 "**§ 90-113.41. Examination.**

22 (a) Except for those individuals applying for certification under G.S. 90-113.41A,
23 Applicants applicants for certification under this Article shall file an application at
24 least 60 days prior to the date of examination and upon the forms and in the manner
25 prescribed by the Board. The application shall be accompanied by the appropriate
26 fee. No portion of this fee is refundable. Applicants who fail an examination may
27 apply for reexamination upon the payment of another examination fee.

28 (b) Each applicant for certification under this Article shall be examined in an
29 examination that is consistent with the examination requirements of the International
30 Certification Reciprocity Consortium/Alcohol and Other Drug ~~Abuse~~. Abuse and the
31 standards adopted by professional disciplines granted deemed status.

32 (c) Applicants for certification shall be examined at a time and place and under
33 the supervision that the Board determines. Examinations shall be given in this State
34 at least twice each year.

35 (d) Applicants may obtain their examination scores and may review their
36 examination papers in accordance with rules the Board adopts."

37 Section 11. Article 5C of Chapter 90 of the General Statutes is amended
38 to add a new section to read:

39 "**§ 90-113.41A. Deemed status.**

40 (a) To be granted deemed status by the Board, a credentialing body of a
41 professional discipline or its designee shall demonstrate that its substance abuse
42 certification program substantially meets the following:

- 43 (1) Each person to whom the credentialing body awards credentials
44 following the effective date of this act meets and maintains

- 1 minimum requirements in substance abuse specific content areas.
2 Each person also has a minimum of a master's degree with a
3 clinical application in a human services field.
- 4 (2) The body requires 180 hours, or the equivalent thereof, of
5 substance abuse specific education and training that covers the
6 following content areas:
- 7 a. Basic addiction and cross addiction Physiology and
8 Pharmacology of Psychoactive drugs that are abused.
9 b. Screening, assessment, and intake of clients.
10 c. Individual, group, and family counseling.
11 d. Treatment, planning, reporting, and record keeping.
12 e. Crisis intervention.
13 f. Case management and treatment resources.
14 g. Ethics, legal issues, and confidentiality.
15 h. Psychological, emotional, personality, and developmental
16 issues.
17 i. Coexisting physical and mental disabilities.
18 j. Special population issues, including age, gender, race,
19 ethnicity, and health status.
20 k. Traditions and philosophies of recovery treatment models
21 and support groups.
- 22 (3) The program requires one year or its equivalent of post-degree
23 supervised clinical substance abuse practice. At least fifty percent
24 (50%) of the practice shall consist of direct substance abuse clinical
25 care.
- 26 (b) The professional discipline seeking deemed status shall require its members to
27 adhere to a code of ethical conduct and shall enforce that code with disciplinary
28 action.
- 29 (c) The Board may grant deemed status to any professional discipline that
30 substantially meets the standards in this section. Once such status has been granted,
31 an individual within the professional discipline may apply to the Board for
32 certification as a certified clinical addictions specialist.
- 33 (d) The Standards and Credentialing Committee of the Board shall review the
34 standards of each professional discipline every third year from the date it was granted
35 deemed status to determine if the discipline continues to substantially meet the
36 requirements of this section. If the Committee finds that a professional discipline no
37 longer meets the requirements of this section, it shall report its findings to the Board
38 at the Board's next regularly scheduled meeting. The deemed status standing of a
39 professional discipline's credential may be discontinued by a two-thirds vote of the
40 Board."
- 41 Section 12. G.S. 90-113.42 reads as rewritten:
42 "§ 90-113.42. Exemptions.
43 It is not the intent of this Article to regulate members of other regulated
44 professions who provide substance abuse services or consultation in the normal

1 course of the practice of their profession. Accordingly, this Article does not apply to
2 any person registered, certified, or licensed by the State to practice any other
3 occupation or profession while rendering substance abuse services or consultation in
4 the performance of the occupation or profession for which ~~he~~ the person is
5 registered, certified, or licensed. Only individuals certified under this Article may use
6 the title "~~certified substance abuse counselor~~" or "~~certified substance abuse~~
7 ~~prevention consultant~~" certified substance abuse counselor, certified substance abuse
8 prevention consultant, certified clinical supervisor, certified clinical addictions
9 specialist, or certified residential facility director."

10 Section 13. G.S. 90-113.43 reads as rewritten:

11 "**§ 90-113.43. Illegal practice; misdemeanor penalty.**

12 Except as otherwise authorized in this Article, no person shall:

- 13 (1) Practice, attempt to practice, or supervise while holding out to be a
14 certified substance abuse ~~counselor~~ counselor, certified
15 substance abuse prevention ~~consultant~~ consultant, certified clinical
16 supervisor, certified clinical addictions specialist, or certified
17 residential facility director without first having obtained a
18 certificate of certification from the ~~Board~~; Board.
- 19 (2) Use in connection with any name any letters, words, numerical
20 codes, or insignia indicating or implying that this person is a
21 certified substance abuse ~~counselor~~ counselor, certified
22 substance abuse prevention ~~consultant~~ consultant, certified clinical
23 supervisor, certified clinical addictions specialist, or certified
24 residential facility director unless this person is certified pursuant
25 to this ~~Article~~; Article.
- 26 (3) Practice or attempt to practice as a certified substance abuse
27 ~~counselor~~ counselor, certified substance abuse prevention
28 ~~consultant~~ consultant, certified clinical supervisor, certified clinical
29 addictions specialist, or certified residential facility director with a
30 revoked, lapsed, or suspended ~~certification~~; certification.
- 31 (4) Aid, abet, or assist any uncertified person to practice as a certified
32 substance abuse ~~counselor~~ counselor, certified substance abuse
33 prevention ~~consultant~~ consultant, certified clinical supervisor,
34 certified clinical addictions specialist, or certified residential facility
35 director in violation of this ~~Article~~; Article.
- 36 (5) Knowingly serve in a position required by State law or rule or
37 federal law or regulation to be filled by a certified substance abuse
38 ~~counselor~~ counselor, certified substance abuse prevention
39 ~~consultant~~ consultant, certified clinical supervisor, certified clinical
40 addictions specialist, or certified residential facility director unless
41 that person is ~~so~~ certified under this ~~Article~~; Article.
- 42 (6) ~~Otherwise violate any of the provisions of this Article or any of the~~
43 ~~rules adopted pursuant to it.~~

1 (7) Practice, supervise, or attempt to practice or supervise or
 2 knowingly serve in a position required by State law or rule or
 3 federal law or regulation to be filled by a designated substance
 4 abuse intern without being designated as such by the Board.

5 A person who engages in any of the illegal practices enumerated by this section is
 6 guilty of a Class 1 misdemeanor. Each act of unlawful practice constitutes a distinct
 7 and separate offense."

8 Section 14. G.S. 90-113.44 reads as rewritten:

9 "**§ 90-113.44. Grounds for disciplinary action.**

10 Grounds for disciplinary action include:

- 11 (1) The employment of fraud, deceit, or misrepresentation in obtaining
 12 or attempting to obtain certification or renewal of ~~certification;~~
 13 certification.
- 14 (2) The use of drugs or alcoholic beverages to the extent that
 15 professional competency is affected, until proof of rehabilitation
 16 can be ~~established;~~ established.
- 17 (3) Conviction of an offense under any municipal, State, or federal
 18 narcotic or controlled substance law, until proof of rehabilitation
 19 can be ~~established;~~ established.
- 20 (4) Conviction of a felony or other public offense involving moral
 21 turpitude, until proof of rehabilitation can be ~~established;~~
 22 established.
- 23 (5) An adjudication of insanity or incompetency, until proof of
 24 recovery from this condition can be ~~established;~~ established.
- 25 (6) Engaging in any act or practice violative of any of the provisions of
 26 this Article or any of the rules adopted pursuant to it, or aiding,
 27 abetting, or assisting any other person in such a ~~violation;~~ violation.
- 28 (7) The commission of an act of malpractice, gross negligence, or
 29 incompetence in the practice of substance abuse ~~counseling or in~~
 30 counseling, substance abuse prevention consulting; consulting,
 31 clinical supervising, or in serving as a clinical addictions specialist
 32 or residential facility director.
- 33 (8) Practicing as a certified substance abuse ~~counselor or as a~~
 34 counselor, certified substance abuse prevention consultant
 35 consultant, certified clinical supervisor, certified clinical addictions
 36 specialist or certified residential facility director without a valid
 37 ~~certificate; and~~ certificate.
- 38 (9) Engaging in conduct that could result in harm or injury to the
 39 public."

40 Section 15. G.S. 90-113.46 reads as rewritten:

41 "**§ 90-113.46. Application of requirements of Article.**

42 All persons certified by the North Carolina Substance Abuse Professionals
 43 Professional Certification Board, Inc., as of July 1, 1994, shall be certified by the

1 Board pursuant to this Article. All these persons are subject to all the other
2 requirements of this Article and of the rules adopted pursuant to it."

3 Section 16. Article 5C of Chapter 90 of the General Statutes is amended
4 by adding the following new section:

5 "§ 90-113.47. Third-party reimbursement.

6 Nothing in this Article shall be construed to require direct third-party
7 reimbursements to persons certified under this Article."

8 Section 17. Notwithstanding G.S. 90-113.40(c), as enacted by Section 9 of
9 this act, the North Carolina Substance Abuse Professional Certification Board
10 (Board) may certify a person as a 'Clinical Addictions Specialist' during a limited
11 period of one year after the effective date of this act upon the submission of proof of
12 one of the following to the Board:

- 13 (1) Certification as a substance abuse counselor holding a master's
14 degree with a clinical application in a human services field; the
15 equivalent of two years of full-time post-graduate supervised
16 substance abuse experience; and three letters of reference from
17 certified substance abuse professionals who have master's degrees.
- 18 (2) Certification as a substance abuse counselor with a bachelors
19 degree in a human services field; the equivalent of five years of
20 full-time, post-graduate, supervised substance abuse experience; a
21 passing score on a master's level written examination; and
22 submission of three letters of reference from certified substance
23 abuse professionals who have master's degrees.
- 24 (3) Certification as a clinical supervisor; a master's degree with a
25 clinical application in a human services field; and three letters of
26 reference from certified substance abuse professionals who have
27 master's degrees.
- 28 (4) Certification as a substance abuse counselor; a master's degree with
29 a clinical application in a human services field with a substance
30 abuse specialty; and three letters of reference from certified
31 substance abuse professionals who have master's degrees.
- 32 (5) Certification before July 1, 1994, as an alcohol counselor, a drug
33 and alcohol counselor, or a substance abuse counselor; the
34 equivalent of 10 years of documented full-time substance abuse
35 work experience; and three letters of reference from certified
36 substance abuse professionals who have master's degrees.
- 37 (6) Certification, licensure, or membership in good standing with a
38 professional discipline that has been granted deemed status under
39 G.S. 90-113.41A, as enacted by Section 11 of this act.

40 Section 18. Notwithstanding G.S. 90-113.40(c), as enacted by Section 9 of
41 this act, the Board may certify an applicant as a "Clinical Addictions Specialist"
42 during a limited period of three years beginning October 1, 1998, if the applicant
43 completes and submits proof to the Board that the applicant: (i) has been certified as
44 a substance abuse counselor; (ii) has the equivalent of 10 years of supervised, full-

1 time, substance abuse counseling experience; (iii) has passed a master's level oral and
2 written examination and; (iv) submits three letters of reference from certified
3 substance abuse professionals who hold master's degrees.

4 Section 19. This act becomes effective October 1, 1997.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 712 (First Edition)
SHORT TITLE: Substance Abuse Specialists
SPONSOR(S): Senator Reeves

DRAFT

FISCAL IMPACT

	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 1997-98</u>	<u>FY 1998-99</u>	<u>FY 1999-00</u>	<u>FY 2000-01</u>	<u>FY 2001-02</u>
REVENUES					
Board Receipts	\$20,000	\$20,000	\$30,000	\$30,000	\$40,000
EXPENDITURES					
Board Expenses	NA	NA	NA	NA	NA

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: North Carolina Substance Abuse Professional Certification Board

EFFECTIVE DATE: This act is effective on October 1, 1997.

BILL SUMMARY: The bill adds clinical addictions specialist, clinical supervisor, and residential facility director to the list of job types the N. C. Substance Abuse Professional Certification Board certifies. The maximum fee for certification is increased from \$300 to \$325. The bill enables the professions of psychiatry, psychology, social work, licensed professional counselors, certified rehabilitation counselors and nurses to be certified by the Board under a "deemed status" provision. The fee for deemed status certification is \$100 initially and \$50 every two years.

ASSUMPTIONS AND METHODOLOGY: There are two fee changes in SB 712. The first is in Section 7, part(a) where the maximum fee to obtain a certificate of certification is increased from \$300 to \$325. The Executive Director of the Board, Jim Scarborough, explained that the increase in the certification fee is actually a transfer of a \$25 fee for testing materials to the certification fee. There is no increase in revenue from this action. The second change is in section 7, part (b), where professionals certified by the Board under "deemed status" are charged an

initial \$100 fee and a \$50 renewal fee every two years. Mr. Scarborough estimates there will be 1,000 professionals over the next five years to apply for certification. This fiscal note assumes that 200 professionals will apply each year. The revenue from this fee is calculated as follows:

	<u>1997-98</u>	<u>1998-99</u>	<u>1999-00</u>	<u>2000-01</u>	<u>2001-02</u>
Year 1	\$ 20,000		\$10,000		\$10,000
Year 2		\$ 20,000		\$10,000	
Year 3			\$20,000		\$10,000
Year 4				\$20,000	
Year 5					\$20,000
Total Revenue	\$ 20,000	\$ 20,000	\$30,000	\$30,000	\$40,000
	200 initial	200 initial	200 initial 200 renewal	200 initial 200 renewal	200 initial 400 renewal

NOTE: The Board's cash balance as of June 30, 1996 was \$31,258.

FISCAL RESEARCH DIVISION

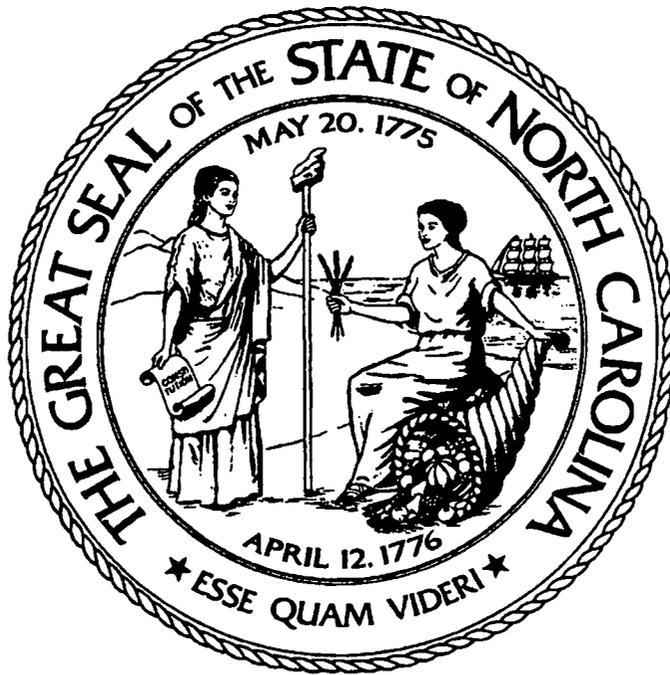
733-4910

PREPARED BY: Richard Bostic

APPROVED BY: Tom Covington

DATE: May 28, 1997

DRAFT

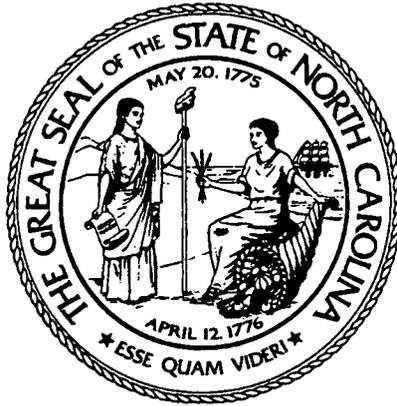


LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS

Assessment Report
for

Substance Abuse Specialists

Senate Bill 712



LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS

May 19, 1997

The Legislative Committee on New Licensing Boards is pleased to release this assessment report on the licensing of substance abuse professionals. This report constitutes both the preliminary and final assessment report.

W. Frank Mitchell

Representative Frank Mitchell, Chairman

Linwood Jones

Prepared by:

Linwood Jones, Counsel

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 516

Short Title: Lead-Based Paint Mgmt/AB.

(Public)

Sponsors: Senators Ballance; Jordan, Kinnaird, Lee, Odom, and Winner.

Referred to: Finance.

March 26, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH A LEAD-BASED PAINT HAZARD MANAGEMENT
3 PROGRAM.

4 The General Assembly of North Carolina enacts:

5 Section 1. Chapter 130A of the General Statutes is amended by adding
6 the following new Article to read:

7 "ARTICLE 19A.

8 "Lead-Based Paint Hazard Management Program.

9 "§ 130A-453. Definitions.

10 As used in this Article:

- 11 (1) 'Abatement' means any set of measures designed to identify lead-
12 based paint or lead-based paint hazards or eliminate lead-based
13 paint hazards; it does not include measures designed to identify or
14 eliminate lead-based paint and lead-based paint hazards on
15 bridges, water towers, superstructures, and industrial structures.
16 (2) 'Elevated blood lead level' means a level established by the
17 Commission pursuant to G.S. 130A-131.5.
18 (3) 'Inspection' means an investigation to determine the presence of
19 lead-based paint.
20 (4) 'Lead-based paint' means paint or other surface coatings that
21 contain lead in excess of a level to be established by the
22 Commission.
23 (5) 'Lead-based paint hazard' means any condition that may cause
24 adverse human health effects as a result of exposure to lead from

1 lead-contaminated dust, lead-contaminated soil, or lead-
2 contaminated paint.

3 (6) 'Person' has the same meaning as in G.S. 130A-444.

4 (7) 'Risk assessment' means an on-site investigation to determine and
5 report the existence, nature, severity, and location of lead-based
6 paint hazards.

7 **"§ 130A-454. Certification of persons performing lead abatement; accreditation of**
8 **training courses and training providers.**

9 (a) No person shall commence or continue to perform abatement without first
10 obtaining certification from the Department. Persons who perform abatement within
11 a residential dwelling that they own and in which they reside are exempt from the
12 above certification requirement. The Commission shall adopt rules governing
13 certification including, but not limited to, categories of certification, education,
14 training, examination requirements, and an implementation schedule for certification
15 requirements. Any entity engaged in abatement activities shall only use persons
16 certified by the Department to perform abatements.

17 (b) No person shall commence or continue to provide certification training in
18 abatement unless the training and training provider have been accredited by the
19 Department. The Commission shall adopt rules governing accreditation of training
20 and training providers including, but not limited to, categories of training course
21 accreditation, standards for training, and an implementation schedule for
22 accreditation requirements.

23 **"§ 130A-454.1. Certification and accreditation fees.**

24 (a) The Department shall establish and collect certification fees and examination
25 fees. These fees shall be used to support the Lead-Based Paint Hazard Management
26 Program in the Department. The annual certification fees shall not exceed one
27 hundred fifty dollars (\$150.00) for each certified person for each category of
28 certification. The examination fees shall not exceed one hundred dollars (\$100.00)
29 for each examination.

30 (b) The Department shall establish and collect fees for the accreditation of lead
31 abatement training courses. These fees shall be used to support the Lead-Based Paint
32 Hazard Management Program in the Department. The fees shall not exceed two
33 thousand dollars (\$2,000) for initial accreditation for each course and shall not
34 exceed seven hundred fifty dollars (\$750.00) for annual renewal of each course.

35 (c) The fees established under this section shall not apply to any State, local
36 government, or nonprofit lead abatement training program.

37 (d) The fees established under this section shall not apply to governmental
38 regulatory personnel performing or inspecting abatement solely for the purpose of
39 determining compliance with applicable statutes or regulations.

40 **"§ 130A-454.2. Lead abatement permits.**

41 No person shall engage in lead abatement without a lead abatement permit issued
42 by the Department. The Commission shall adopt rules governing lead abatement
43 permits. No permit under this section shall be required for inspections or risk
44 assessments.

1 "§ 130A-454.3. Application fees for lead abatement permits.

2 (a) The Department shall establish and collect an application fee for lead
3 abatement permits. These fees shall be used to support the Lead-Based Paint Hazard
4 Management Program in the Department. The application fee shall not exceed two
5 percent (2%) of the contracted price.

6 (b) The owner of any single-family dwelling, in which the owner will reside after
7 the lead abatement is complete, is not required to pay an application fee under
8 subsection (a) of this section. The owner of any single-family dwelling that is not
9 occupied by the owner is required to pay the application fee under subsection (a) of
10 this section.

11 "§ 130A-454.4. Commission to adopt work practice standards.

12 The Commission shall adopt standards to ensure that abatements performed under
13 this Article result in the elimination of lead-based paint hazards.

14 "§ 130A-454.5. Commission to adopt rules.

15 The Commission shall adopt rules to implement this Article."

16 Section 2. G.S. 130A-22 is amended by adding a new subsection to read:

17 "(b3) The Secretary may impose an administrative penalty on a person
18 who violates Article 19A of this Chapter or any rules adopted
19 pursuant to Article 19A of this Chapter. Each day of a continuing
20 violation shall constitute a separate violation. The penalty shall
21 not exceed one thousand dollars (\$1,000) for each day the
22 violation continues."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

D

SENATE BILL 516
Proposed Committee Substitute S516-PCS8711

Short Title: Lead-Based Paint Mgmt/AB.

(Public)

Sponsors:

Referred to:

March 26, 1997

- 1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH A STATE-ADMINISTERED LEAD-BASED PAINT
3 HAZARD MANAGEMENT PROGRAM IN LIEU OF HAVING A FEDERALLY
4 ADMINISTERED PROGRAM APPLY IN THIS STATE.
5 The General Assembly of North Carolina enacts:
6 Section 1. Chapter 130A of the General Statutes is amended by adding
7 the following new Article to read:
8 "ARTICLE 19A.
9 "Lead-Based Paint Hazard Management Program.
10 "§ 130A-453. Definitions.
11 The following definitions apply in this Article:
12 (1) Abatement. -- Identifying lead-based paint, identifying or assessing
13 a lead-based paint hazard, or undertaking any of the following
14 measures to eliminate a lead-based paint hazard:
15 a. Removing lead-based paint from a surface and repainting
16 the surface.
17 b. Removing a component, such as a windowsill, painted with
18 lead-based paint and replacing the component.
19 c. Enclosing a surface painted with lead-based paint with
20 paneling, vinyl siding, or another approved material.
21 d. Encapsulating a surface painted with lead-based paint with a
22 sealant.
23 e. Any other measure approved by the Commission.

1 The term includes an inspection and a risk assessment.

2 (2) Child-occupied facility. -- Defined in 40 C.F.R. § 745.223.

3 (3) Inspection. -- An investigation to determine the presence of lead-
4 based paint.

5 (4) Lead-based paint. -- Paint or another surface coating that contains
6 lead in excess of a level that is safe, as established by the
7 Commission.

8 (5) Lead-based paint hazard. -- A condition that is likely to cause
9 adverse human health effects as a result of exposure to lead-based
10 paint or to soil or dust that contains lead derived from lead-based
11 paint.

12 (6) Person. -- Defined in G.S. 130A-444.

13 (7) Risk assessment. -- An on-site investigation to determine and
14 report the source, severity, and location of a lead-based paint
15 hazard.

16 (8) Target housing. -- Defined in 40 C.F.R. § 745.223.

17 **"§ 130A-454. Certification of individuals who perform abatements.**

18 (a) Requirement. -- An individual shall not perform or offer to perform an
19 abatement of target housing or a child-occupied facility unless the individual is
20 certified by the Department to perform the activity. Performance of an abatement
21 encompasses a range of activities. To ensure proper performance of all aspects of an
22 abatement, the certification requirement imposed on an individual applies to each
23 category of abatement activity.

24 The categories of individual certification are inspector, risk-assessor, designer,
25 supervisor, worker, and any other category required by federal law. The category of
26 risk-assessor includes the category of inspector. Thus, a person who is certified as a
27 risk-assessor is not required to be certified as an inspector. Otherwise, an individual
28 who performs or offers to perform activities within the scope of more than one
29 category must be certified in each category.

30 (b) Exemption. -- The certification requirement imposed by this section does not
31 apply to an individual who performs an abatement of a residential dwelling the
32 person owns and occupies as a residence.

33 **"§ 130A-454.1. Certification and other requirements of firms that perform**
34 **abatements.**

35 A firm or other entity shall not perform or offer to perform an abatement of target
36 housing or a child-occupied facility unless the entity is certified by the Department as
37 a firm that is qualified to perform the activity. An entity that performs an abatement
38 of target housing or a child-occupied facility shall not use an individual to perform
39 the abatement unless the individual is certified by the Department to perform the
40 activity.

41 **"§ 130A-454.2. Qualifications for certification of individuals and firms.**

42 To be certified under this Article, a person must meet the qualification
43 requirements set by the Commission. Qualification requirements include education,

1 training, experience, the successful completion of an examination, and payment of
 2 any applicable fee.

3 **"§ 130A-454.3. Renewal of certification.**

4 A certification of an individual or a firm issued under this Article expires on the
 5 last day of the 12th month after the certification is issued. A certification may be
 6 renewed by paying the renewal fee and meeting any standards for renewal, such as
 7 refresher training, established by the Commission.

8 **"§ 130A-454.4. Accreditation of training courses and training providers.**

9 Completion of a training course on abatement does not satisfy a training
 10 requirement that is a condition for certification under this Article unless both the
 11 course provider and the course have been accredited by the Department. The
 12 Commission shall establish the procedure and standards for a course provider and a
 13 course to be accredited.

14 **"§ 130A-454.5. Certification and accreditation fee schedule.**

15 (a) The Commission shall establish fees for the items listed in the table below. A
 16 fee for an item may not exceed the maximum amount set in the table. The fees for
 17 examination and certification apply to each category in which a person is examined
 18 for certification or is certified.

<u>Item</u>	<u>Maximum Fee</u>
20 <u>Examination for certification</u>	<u>\$75</u>
21 <u>Certification as worker</u>	<u>50</u>
22 <u>Certification in any category other</u> 23 <u>than worker</u>	<u>150</u>
24 <u>Course provider accreditation</u>	<u>150</u>
25 <u>Initial course accreditation</u>	<u>2,000</u>
26 <u>Renewal course accreditation</u>	<u>750.</u>

27 (b) Use. -- The fees imposed under this section are departmental receipts and shall
 28 be used by the Department to administer this Article.

29 (c) Exemptions. -- The examination and certification fees imposed under this
 30 section do not apply to governmental regulatory personnel who perform abatements
 31 solely for the purpose of determining compliance with applicable statutes or rules.
 32 The course provider and course accreditation fees imposed under this section do not
 33 apply to the State, a unit of local government, or a nonprofit entity or a course
 34 offered by one of these persons.

35 **"§ 130A-454.6. Abatement permits.**

36 (a) Requirement. -- No person shall conduct an abatement of target housing or a
 37 child-occupied facility unless the person has obtained a permit for the abatement
 38 from the Department. The Commission shall establish the procedure for obtaining a
 39 permit. The permit requirement does not apply to an inspection or a risk assessment.

40 (b) Permit Fee. -- An applicant for an abatement permit must pay an application
 41 fee to the Department. The fee is two percent (2%) of the contracted price for the
 42 corrective action to be performed in the abatement, not to exceed five hundred
 43 dollars (\$500.00). The fee imposed under this section is a departmental receipt and
 44 shall be used by the Department to administer this Article.

1 (c) Homeowner. -- An individual who owns a single-family dwelling, conducts an
2 abatement on the dwelling, and will reside in the dwelling after the abatement is
3 completed is required to obtain a permit to conduct the abatement but is not
4 required to pay the permit fee for the permit.

5 "§ 130A-454.7. Standards to ensure elimination of hazards; consumer information.

6 (a) Standards. -- The Commission shall establish standards to ensure that
7 abatements performed under this Article result in the elimination of lead-based paint
8 hazards. An abatement performed under this Article must be performed in
9 accordance with these standards.

10 (b) Information. -- The Department shall prepare a fact sheet on abatement for
11 distribution to consumers. The sheet shall list the various measures for abatement of
12 a child-occupied facility or target housing and give the relative cost of each measure.
13 A person who is certified under this Article shall give a copy of the sheet to a person
14 for whom the certified person performs an abatement.

15 "§ 130A-454.8. Commission to adopt rules.

16 The Commission shall adopt rules to implement this Article."

17 Section 2. G.S. 130A-22 is amended by adding a new subsection to read:

18 "(b3) The Secretary may impose an administrative penalty on a person who
19 violates Article 19A of this Chapter or any rules adopted pursuant to Article 19A of
20 this Chapter. Each day of a continuing violation is a separate violation. The penalty
21 shall not exceed one thousand dollars (\$1,000) for each day the violation continues.
22 The penalty authorized by this section does not apply to a person who is not required
23 to be certified under this Article nor to a failure to obtain certification."

24 Section 3. G.S. 130A-454.8, as enacted by this act, and this section are
25 effective when they become law. The remainder of this act becomes effective July 1,
26 1998. This act does not affect the interim certification program requirements that
27 apply before July 1, 1998, for individuals who perform lead-based paint activities
28 funded by a grant from the federal government.

for each lead abatement project (excluding homeowners) at a price equal to 2% of the contracted price of the project. Violation of this statute carries a \$1,000 a day administrative penalty.

ASSUMPTIONS AND METHODOLOGY:

Revenue

I. Accreditation of Training Courses

The Department estimates that it will accredit 10 lead abatement training courses in each of the first two years of the program, then accredit only 4 each year thereafter. Each program will be charged \$2,000 for accreditation review and \$750 for annual renewal of their accreditation. In the first year, the Department will also verify the courses and instructors of programs accredited in 26 states such as Maryland, Virginia, Georgia, and Kentucky. The Department will charge \$750 for the course verification or the same as a renewal. It is anticipated that some training programs will drop out each year beginning in the year 2000.

FY 1997-98	10 Initial	X \$2,000 = \$20,000
	30 Verification	X \$750 = <u>\$22,500</u>
		\$42,500

FY 1998-99	10 Initial	X \$2,000 = \$20,000
	40 Renewals	X \$750 = <u>\$30,000</u>
		\$50,000

FY 1999-00	4 Initial	X \$2,000 = \$8,000
	50 Renewals	X \$750 = <u>\$37,500</u>
		\$45,500

FY 2000-01	4 Initial	X \$2,000 = \$8,000
	40 Renewals	X \$750 = <u>\$30,000</u>
		\$38,000

FY 2001-02	4 Initial	X \$2,000 = \$8,000
	40 Renewals	X \$750 = <u>\$30,000</u>
		\$38,000

II. Lead abatement certification

The Department may charge up to \$150 to certify a person to perform lead abatement. The Department has set the following rates for each category of personnel:

- worker = \$25
- supervisor = \$150
- inspector = \$150
- risk assessor = \$150
- designer = \$150
- firm = \$100

Due to rule-making and other startup delays, the program is anticipated to begin in January 1998. Revenue from lead abatement certification for the first fiscal year reflects only 6 months of program operation. Department officials expect certifications to rise until the year 2000 then level off as shown in the chart below.

	<u>1997-98</u>	<u>1998-99</u>	<u>1999-00</u>	<u>2000-01</u>	<u>2001-02</u>
Worker	300	500	800	800	800
Supervisor	75	100	150	150	150
Inspector	150	350	500	500	500
Risk Assessor	40	80	120	120	120
Designer	5	15	25	25	25
Firms	40	60	80	80	80
Total	610	1,105	1,675	1,675	1,675
Annual Fees	\$52,000	\$100,250	\$147,250	\$147,250	\$147,250

III. Lead certification exams

The Department projects the number of exams it will administer as follows (at \$75 per exam):

	<u>Exams</u>	<u>Revenues</u>
FY 1997-98	270	\$ 20,250
FY 1998-99	500	\$ 37,500
FY 1999-00	200	\$ 15,000
FY 2000-01	200	\$ 15,000
FY 2001-02	200	\$ 15,000

IV. Lead-based paint removal permits

The fee for lead-based paint removal permits is equal to 2% of the contract price. Half of the permits will be used by homeowners and will be exempt from the charge. The Department believes much of the permit activity in the first two years will be driven by federal HUD housing funds, but the work will decline in 1999 and beyond as the federal dollars end.

	<u>Permits</u>	<u>Revenues</u>
FY 1997-98	500	\$ 13,000
FY 1998-99	900	\$ 23,400
FY 1999-00	500	\$ 13,000
FY 2000-01	500	\$ 13,000
FY 2001-02	500	\$ 13,000

Expenditures

The Lead-Based Paint Hazard Management Program created by this act will be partially supported with revenues generated from the accreditation, certification, examination and permit fees to be established by the Department. A federal lead grant will be used to offset the remaining program costs.

Program responsibilities and activities include:

- ◆ certification of persons performing lead abatement activities to ensure that qualified persons conduct lead hazard reduction activities,
- ◆ accreditation of training courses and persons providing training to individuals seeking certification to assure adequacy of course materials and competency of instructors,
- ◆ regulatory guidance, oversight and compliance, including the establishment of a lead abatement notification system to facilitate monitoring of abatement activities by the state.

According to the Department, a total of six full-time positions will be required to administer the program with an initial startup cost of \$369,192, including \$4,500 for a nonrecurring equipment purchase. Since program revenues are expected to be less the first year because of rule-making and other startup delays, the federal grant will be used to fund four positions for the 1997-98 fiscal year. The remaining two positions will be supported with certification and other program receipts during the 1997-98 fiscal year. As program revenues increase, beginning with the 1998-99 fiscal year, federally funded positions will be shifted to certification, accreditation, examination and/or permit receipts. The department expects sufficient federal funds to be available to offset any costs not covered by program fees.

The total estimated budget requirements for the Lead-Based Paint Hazard Management Program are outlined in the following table:

	FY 1997-98	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
Personnel					
2 Industrial Hygiene Inspectors	102,995	106,379	109,878	113,602	117,567
2 Industrial Hygiene Consultants	117,213	121,080	125,079	129,335	133,866
1 Technical Trainer	53,867	55,640	57,472	59,423	61,500
1 Processing Assistant	26,617	27,463	28,337	29,269	30,260
Total Salaries & Benefits *	300,692	310,561	320,766	331,629	343,192
Positions	6	6	6	6	6
Operating Expenses	68,500	64,000	64,000	64,000	64,000
Total Requirements	\$369,192	\$374,561	\$384,766	\$395,629	\$407,192

* Beginning with the 1998-99 fiscal year, salaries are adjusted to reflect the projected growth estimated for average hourly earnings in manufacturing. The inflation rates used are based on forecasts by Data Resources, Inc.

FISCAL RESEARCH DIVISION

733-4910

PREPARED BY: Mona Moon & Richard Bostic

APPROVED BY: Tom Covington

DATE: April 28, 1997

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

5-29-97

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

E. Ann Christian	Atty
Jane E. Albers	NCSAPCB
Aruba Joy	NCSAPCB
Jim Zarbof	NCSAPCB
Richard E. Chod	NCABHC/NCPA
Lynne McDaniel	citizen
Andrea Harris	NCIMED
Audra Shaw	NC Low Income Housing Coalition
Janice Burch	NCSAPCB
William A. Downey	CAROLINA'S AEC
Marcia Z. Barney	NCAEC
DAVE CROTTS	FISCAL RESEARCH

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

5-29-97

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Henry Clegg	Carolina ABC
Dave Simpson	" "
Stewart Dickerson	Commerce Finance Center
Joe Pennington	Piedmont Nat. Const Company
PERRI MORGAN	NFIB
John Rustin	NCFPC
Lenah. Ward	DEHNR
Dorothy Hunt	NCCCS
Myrna Miller	NASW-NC
Nancy Pomeranz	NC DOR
J. ...	NC Assoc of REALTORS

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

5-29-97

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Jim Bell	Textiles
Lee Watten	SA Certification Board
Leslie Swogger	NCCBT
Kim Smith	NCLM
R. ROGERS	DEHNR
Pat Curran	DEHNR
Alan Miles	Bailey & Dixon LLP
Doug Baker	DMH / DDFSAS
J. Ziss	OSBA
Henry Jones	Attorney - Raleigh
Dr. Lynn	POC

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT

John H. Kerr, III, Co-Chair
David W. Hoyle, Co-Chair

Monday, June 02, 1997

SENATOR JOHN KERR,

submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B.	516	Lead-Based Paint Mgmt/AB.	
		Draft Number:	PCS8711
		Sequential Referral:	None
		Recommended Referral:	None
		Long Title Amended:	Yes

S.B.	712	Substance Abuse Specialists.	
		Draft Number:	PCS4610
		Sequential Referral:	None
		Recommended Referral:	None
		Long Title Amended:	No

TOTAL REPORTED: 2

Committee Clerk Comment: S.B. 515 and S.B. 712

SENATE FINANCE COMMITTEE

TUESDAY, JUNE 3, 1997

12:00 NOON - ROOM 544 LOB

The Senate Finance Committee met. There were 26 members of the Committee present. Senator David W. Hoyle, Co-Chairman, presiding. Senator Hoyle called the meeting to order and introduced the Pages, they are Victor Ahdieh from Hamlet, N. C., sponsored by Senator Conder and Fabyan Saxe from Plano, Texas, sponsored by Senator Rand.

S. B. 915 - Intangibles Tax Remedy

Senator Kerr came to explain the bill, he moved for adoption of a committee substitute to the bill, motion passed. After a time of discussion and questions on the bill, Senator Conder made a motion for a "favorable" report, motion passed. Bill to be re-referred to Senate Appropriations Committee. NOTE: Bill was not reported out of Committee until June 26, 1997.

H. B. 283 - Perquimans School Acquisition

Representative Culpepper came to explain the bill. Senator Soles made a motion for a "favorable" report, motion passed.

H. B. 411 - Currituck Game Comm. Changes

Representative Owens explained the bill. Senator Lee moved for a "favorable" report, motion passed.

H. B. 260 - Increase Conservation Tax Credit

Representative Gray explained the bill. Senator Cooper made a motion for adoption of a committee substitute, motion passed. Senators Foxx and Lee jointly made a motion for a "favorable" report, motion passed. NOTE: Bill was reported out as "unfavorable as to Senate Committee Substitute No. 1, but favorable as to Senate Committee Substitute No. 2.

SENATE FINANCE COMMITTEE

Tuesday, June 3, 1997

Page -2-

S. B. 271 - Small Business Capital & Growth Act

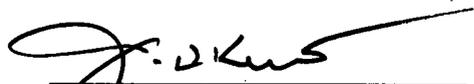
Senator Larry Shaw came to explain the bill, he made a motion for adoption of a committee substitute, motion passed. Ms. Perri Morgan with the National Small Business Federation spoke in support of the bill. Senator Wellons moved for a "favorable" report, motion passed with notation that this bill would be re-referred to Senate Appropriations Committee.

S. B. 938 - Construction Worker Training Credit

Senator Jordan came to explain the bill. Senator Lee made a motion for adoption of a committee substitute, motion passed. Mr. William A. Downey with L. A. Downey & Son, Inc., a Durham construction company, spoke in support of the bill. Mr. Dave Simpson with the Carolina Association of General Contractors stated that they supported the bill. It was decided by the Chair that due to other meetings and not being able to finish the discussion on this bill that we would bring this bill back to Committee for discussion later.

Meeting was adjourned.


David W. Hoyle, Co-Chair


John H. Kerr, III Co-Chair


Penny N. Williams, Clerk


Evelyn S. Hartsell, Clerk

NOTE:

Agenda is Attachment # 1

Visitor's Registration Sheet is Attachment # 2

Committee Report dated 6-26-97 for SB 915 is Attachment # 3

Committee Report dated 6-3-97 for HB 283 and 411 is Attachment # 4

Committee Report dated 6-4-97 for SB 271 and HB 260 is Attachment # 5

AGENDA

SENATE FINANCE COMMITTEE MEETING

TUESDAY, JUNE 3, 1997 - ROOM 544

- SB 915 - Intangibles Tax Remedy - Sen. Kerr
- HB 283 - Perquimans School Acquisition - Rep. Culpepper
- HB 411 - Currituck Game Comm. Changes - Rep. Owens and H. Hunter
- SB 271 - Small Business Capital & Growth Act - Sen. Larry Shaw
- SB 938 - Construction Worker Training Credit - Sen. Jordan
- HB.260 - Conservation Easements/Tax Credit - Rep. Gray

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 915

Short Title: Intangibles Tax Remedy.

(Public)

Sponsors: Senators Kerr and Hoyle.

Referred to: Finance.

April 17, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO DIRECT THE SECRETARY OF REVENUE TO MAKE REFUNDS
3 OF THE INTANGIBLES TAX TO TAXPAYERS WHO ARE ENTITLED TO
4 REFUNDS.

5 The General Assembly of North Carolina enacts:

6 Section 1. Upon enactment of a law prohibiting the Secretary of Revenue
7 from collecting intangibles tax liability arising from a taxpayer's use of the taxable
8 percentage deductions in former G.S. 105-203 (repealed) for any of the tax years from
9 1990 through 1994, G.S. 105-267 as it applies to those tax years entitles a taxpayer to
10 a refund for one or more of those tax years to the extent the taxpayer meets all of the
11 following requirements with respect to the applicable tax year:

- 12 (1) The taxpayer paid intangibles tax on shares of stock for the tax
13 year.
14 (2) The taxpayer protested payment of the tax within 30 days of
15 payment and met the other requirements of G.S. 105-267, as it then
16 existed, to establish and preserve the taxpayer's refund claim for
17 the tax year.
18 (3) The taxpayer's established and preserved refund claim was
19 pending on February 21, 1996, the date the United States Supreme
20 Court held the taxable percentage deduction in former G.S. 105-
21 203 unconstitutional.

22 Section 2. The Secretary of Revenue shall make these refunds in
23 accordance with G.S. 105-267. The Secretary of Revenue shall draw the amount of

- 1 the refunds and the cost of making the refunds from the Savings Reserve Account
- 2 established in G.S. 143-15.3.
- 3 Section 3. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

D

SENATE BILL 915
Proposed Senate Finance Committee Substitute
S915-CSLJ-6/2

Short Title: Intangibles Tax Remedy.

(Public)

Sponsors:

Referred to: Finance.

April 17, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO DIRECT THE SECRETARY OF REVENUE TO MAKE REFUNDS OF THE
3 INTANGIBLES TAX TO TAXPAYERS WHO ARE ENTITLED TO REFUNDS.
4 The General Assembly of North Carolina enacts:
5 Section 1. Because the General Assembly has enacted
6 S.L. 1997-17, prohibiting the Secretary of Revenue from
7 collecting intangibles tax liability arising from a taxpayer's
8 use of the taxable percentage deductions in former G.S. 105-203
9 (repealed) for any of the tax years from 1990 through 1994, G.S.
10 105-267 as it applies to those tax years entitles a taxpayer to a
11 refund for one or more of those tax years to the extent the
12 taxpayer meets all of the following requirements with respect to
13 the applicable tax year:
14 (1) The taxpayer paid intangibles tax on shares of
15 stock for the tax year.
16 (2) The taxpayer protested payment of the tax within 30
17 days of payment and met the other requirements of
18 G.S. 105-267, as it then existed, to establish and
19 preserve the taxpayer's refund claim for the tax
20 year.

1 (3) The taxpayer's established and preserved refund
2 claim was pending on February 21, 1996, the date
3 the United States Supreme Court held the taxable
4 percentage deduction in former G.S. 105-203
5 unconstitutional.

6 Section 2. The Secretary of Revenue shall make these
7 refunds in accordance with G.S. 105-267.

8 Section 3. This act becomes effective July 1, 1997.

9

EXPLANATION OF SENATE BILL 915
Proposed Committee Substitute
Intangibles Tax Remedy

TO: Senate Finance Committee
FROM: Sabra Faires, Committee Counsel
DATE: June 3, 1997
Sponsor: Senators Kerr and Hoyle

The proposed committee substitute for Senate Bill 915 provides an intangibles tax refund, with interest, to intangibles taxpayers who made a timely protest. Since the enactment of Senate Bill 388, S.L. 1997-17, the General Assembly is obligated to pay protesters their refunds. The bill does not provide relief to nonprotesters. The Attorney General's office issued an opinion in April that it would be unconstitutional for the General Assembly to refund intangible taxes not filed under protest.

On February 10, 1997, the North Carolina Supreme Court held that the taxable percentage deduction in the North Carolina intangible tax on stock violated the commerce clause by discriminating against out-of-state companies. The deduction reduced a taxpayer's liability for the tax in proportion to the amount of business the corporation did in North Carolina. The court did not order refunds. Instead, it allowed the possibility of curing the past discrimination by the assessment of intangibles tax on those who did not pay in reliance on the unconstitutional taxable percentage deduction. The Secretary of Revenue began preparing to take this action in early March.

However, on April 9, 1997, the General Assembly ratified Senate Bill 388, and the Governor signed it into law, S.L. 1997-17, on April 10, 1997. That legislation directed the Secretary of Revenue to take no action to collect or assess back intangibles tax for tax years 1990 through 1994. This legislation forecloses the possibility of assessments on those who relied on the taxable percentage deduction. Therefore, to cure the past discrimination, the General Assembly must now provide intangibles tax refunds to those intangibles taxpayers who paid tax on shares of stock and who protested the payment of the tax within 30 days of payment.

The issue of refunds to protesters has been addressed recently in the Smith case, another intangibles tax case, in which the group of intangible tax protesters has been certified as a class for purposes of the suit. Within the last two weeks, the superior court judge in that case issued a verbal order to pay the

protesters refunds with simple interest at 8%. A written judgment has not been issued yet in that case. The enactment of this bill will fulfill the General Assembly's obligation to provide for refunds after prohibiting the assessments, may speed the refunds, and may help taxpayers decide whether they would receive any benefit by remaining part of the Smith class. A taxpayer who is part of the class may be required to pay attorneys fees from the refund the taxpayer will otherwise receive.

The bill does not provide relief to nonprotesters. The reason for this is that, because the State has no legal obligation to these taxpayers, any payments to them would be an exclusive emolument prohibited by Article I, Section 32 of the North Carolina Constitution. The exclusive emoluments provision of the State Constitution prohibits the legislature from extending special privileges to a select group of individuals except in consideration of public services. The tax refunds granted by the 1996 General Assembly to federal retirees who did not pay the tax on their federal retirement income under protest were stated to be in consideration of their public service.

1 Section 2. The Secretary of Revenue shall make these refunds in
2 accordance with G.S. 105-267.

3 Section 3. This act becomes effective July 1, 1997.

- 1 (d) Board of Education May Contract for Construction. -- Notwithstanding the
2 provisions of G.S. 115C-40 and G.S. 115C-521, a local board of education may enter
3 into contracts for the erection or repair of school buildings upon sites owned in fee
4 simple by one or more counties in which the local school administrative unit is
5 located.
- 6 (e) Scope. -- This section applies to Alleghany, Ashe, Avery, Bladen, Brunswick,
7 Cabarrus, Carteret, Cherokee, Chowan, Columbus, Currituck, Dare, Duplin,
8 Edgecombe, Forsyth, Franklin, Graham, Greene, Guilford, Halifax, Harnett,
9 Haywood, Hyde, Iredell, Jackson, Johnston, Jones, Lee, Macon, Madison, Martin,
10 Moore, Nash, New Hanover, Orange, Pasquotank, Pender, Perquimans, Person, Pitt,
11 Randolph, Richmond, Rockingham, Rowan, Sampson, Scotland, Stanly, Surry,
12 Union, Vance, Wake, Wilson, and Watauga Counties."
- 13 Section 2. This act is effective when it becomes law.

1 terminates if the blind license is not renewed during any subsequent annual renewal
2 period and is not transferable to any different blind location.

3 Float blinds when licensed shall bear the license number or tag, and the same shall
4 be displayed in a prominent or conspicuous place upon the blind."

5 Section 2. Subsection (b) of Section 10 of Chapter 1436 of the 1957
6 Session Laws, as amended by Section 7 of Chapter 622 of the 1981 Session Laws and
7 Section 4 of Chapter 764 of the 1983 Session Laws, reads as rewritten:

8 "(b) Application must be filed on or before August 1 of each year to insure timely
9 consideration. To obtain a license for a point blind, the applicant shall apply in
10 writing to the clerk to the Game Commission enclosing twenty-five dollars (\$25.00).
11 ~~Of the amount remitted, the clerk to the Game Commission shall retain two dollars~~
12 ~~(\$2.00) as an issuance fee for each license issued.~~ In addition to the application fee,
13 each application shall be accompanied by a nonrefundable processing fee of ten
14 dollars (\$10.00)."

15 Section 3. Section 18 of Chapter 1436 of the 1957 Session Laws, as
16 rewritten by Section 9 of Chapter 622 of the 1981 Session Laws, reads as rewritten:

17 "Sec. 18. The Game Commission of Currituck County is empowered to pay the
18 necessary fees of attorneys, surveyors, and accountants; the costs of printing license
19 forms for hunting blind licenses to be furnished to the clerk to the Game
20 Commission; and other necessary expenses of carrying out the duties imposed by this
21 act. Each member shall be paid a per diem of ten dollars (\$10.00) and travel
22 expenses of fifteen cents (15¢) per mile while engaged in official business of the
23 Game Commission. the Chairman of the Game Commission shall be paid one
24 thousand dollars (\$1,000) per year in addition to per diem and travel for the
25 fulfillment of his duties as chairman, in such installments as the Commission may
26 direct. Each Game Commission member shall be paid five hundred dollars (\$500.00)
27 per year in addition to per diem and travel in such installments as the Game
28 Commission may direct. The clerk to the Game Commission shall receive an annual
29 salary of five hundred dollars (\$500.00) for the performance of his duties for the
30 Game Commission in addition to his fees for issuing licenses.

31 ~~The Game Commission may accumulate an operating reserve of funds to carry out~~
32 ~~the necessary duties imposed by this act in an amount deemed necessary by the Game~~
33 ~~Commission, but not to exceed five thousand dollars (\$5,000). At the end of each~~
34 ~~fiscal year any funds held by the Game Commission in excess of the operating reserve~~
35 ~~must be paid to the North Carolina Wildlife Commission for deposit in the Wildlife~~
36 ~~Resources Fund.~~

37 In addition, the Game Commission may disburse excess funds generated from fees
38 to an organization established as a nonprofit corporation under North Carolina law
39 for the purpose of conservation, habitat enhancement, and waterfowl protection in
40 Currituck County. The board of directors of this corporation shall be appointed by
41 the Currituck County Board of Commissioners and shall include a representative
42 designated by the Wildlife Resources Commission as a nonvoting member.

43 Prior to the beginning of the Game Commission's fiscal year it shall file a copy of
44 its budget for that year with the North Carolina Wildlife Resources Commission.

1 Within 30 days following receipt of the audit report made after the close of a fiscal
2 year, the Game Commission shall file a copy of the audit report with the Wildlife
3 Commission."

4 Section 4. Section 24 of Chapter 1436 of the 1957 Session Laws, as
5 rewritten by Section 5 of Chapter 808 of the 1989 Session Laws, reads as rewritten:

6 "Sec. 24. (a) The Unless modified by the Game Commission pursuant to
7 subsection (d) of this section, in all areas of Currituck County lying east and north of
8 the line described in subsection (c) of this section, the starting time for waterfowl
9 hunting each day, and the quitting time for waterfowl hunting each day prior to
10 November 1 and after January 31 of the hunting season, shall be as set by the North
11 Carolina Wildlife Resources Commission, or as required by the statewide game law.
12 The quitting time for waterfowl hunting each day after from November 1 through
13 January 31 of the hunting season shall be 4:20 p.m. Eastern Standard Time.

14 (b) Unless modified by the Game Commission pursuant to subsection (d) of this
15 section, in all areas of Currituck County lying west of the line described in subsection
16 (c) of this section, the starting time for waterfowl hunting each day, and the quitting
17 time for waterfowl hunting each day, shall be as set by the North Carolina Wildlife
18 Resources Commission, or as required by the statewide game law.

19 (c) The line of demarcation between the waterfowl hunting regions referred to in
20 subsections (a) and (b) of this section is as follows:

21 Beginning at a point located on the boundary line between the State of North
22 Carolina and the Commonwealth of Virginia and which point marks the center of the
23 Atlantic Intracoastal Waterway (AICW) as established by the United States Army
24 Corps of Engineers and thence following the center of the AICW channel in a
25 southerly direction to the point which marks the intersection with the center of the
26 ferry channel for the Currituck-Knotts Island Ferry; thence running in a southeasterly
27 direction to the northeastern point of Churches Island at a point where the right-of-
28 way of NCSR 1142 (the road from Coinjock to Churches Island) would terminate if
29 extended in a northerly direction to the high water mark of the sound; thence
30 following the center line of NCSR 1142 and the northerly extension thereof in a
31 southerly and westerly direction through Churches Island and continuing to a point
32 where the right-of-way intersects the center of U.S. Highway 158 near the bridge
33 crossing the AICW at Coinjock; thence following the center line of U.S. Highway 158
34 in a southerly direction to the center of the Currituck Sound and the line marking
35 the boundary between Dare County and Currituck County.

36 (d) Subject to the approval of the Currituck County Board of Commissioners, the
37 Game Commission may modify the times for waterfowl hunting set forth in this
38 section upon specific findings, after duly advertised public hearing, that the
39 modifications will benefit the waterfowl flyway and habitat within Currituck County
40 and will promote safety and conservation of resources. However, the Game
41 Commission may not modify the times for waterfowl hunting to allow hunting during
42 times when waterfowl hunting is otherwise prohibited by the Wildlife Resources
43 Commission in other areas of the State."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

3

HOUSE BILL 260*
Committee Substitute Favorable 4/8/97
Senate Finance Committee Substitute Adopted 4/22/97

Short Title: Increase Conservation Tax Credit.

(Public)

Sponsors:

Referred to:

February 17, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO INCREASE THE CAP ON THE INCOME TAX CREDIT FOR REAL
3 PROPERTY DONATED FOR CONSERVATION PURPOSES AND TO
4 ENSURE THAT CONSERVATION AND PRESERVATION AGREEMENTS
5 ARE CONSIDERED IN DETERMINING THE APPRAISED VALUE OF LAND
6 AND IMPROVEMENTS.
7 The General Assembly of North Carolina enacts:
8 Section 1. G.S. 105-130.34 reads as rewritten:
9 "**§ 105-130.34. Credit for certain real property donations.**
10 (a) Any corporation that makes a qualified donation of an interest in real property
11 located in North Carolina during the taxable year that is useful for public beach
12 access or use, public access to public waters or trails, fish and wildlife conservation,
13 or other similar land conservation ~~purposes, shall be~~ purposes is allowed a credit
14 against the ~~taxes~~ tax imposed by this Division equal to twenty-five percent (25%) of
15 the fair market value of the donated property interest. To be eligible for this credit,
16 the interest in real property must be donated to and accepted by either the State,
17 ~~local government~~ a local government, or a body that is both organized to receive and
18 administer lands for conservation purposes and is qualified to receive charitable
19 contributions pursuant to G.S. ~~105-130.9, provided, however, that lands~~ 105-130.9.
20 Lands required to be dedicated pursuant to local governmental regulation or
21 ordinance and dedications made to increase building density levels permitted under
22 ~~such regulations or ordinances shall not be~~ a regulation or ordinance are not eligible

1 for this credit. The credit allowed under this section may not exceed ~~twenty-five~~
2 ~~thousand dollars (\$25,000).~~ two hundred fifty thousand dollars (\$250,000). To
3 support the credit allowed by this section, the taxpayer ~~shall~~ must file with its income
4 tax ~~return~~ return, for the taxable year in which the credit is claimed, a certification by
5 the Department of Environment, Health, and Natural Resources that the property
6 donated is suitable for one or more of the valid public benefits set forth in this
7 subsection.

8 (b) The credit allowed by this section may not exceed the amount of tax imposed
9 by this Division for the taxable year reduced by the sum of all credits ~~allowed under~~
10 ~~this Division,~~ allowed, except payments of tax made by or on behalf of the taxpayer.

11 (c) Any unused portion of this credit may be carried forward for the next
12 succeeding five years.

13 (d) ~~The fair market value, or any portion thereof, of a~~ That portion of a
14 qualifying donation that is not eligible for a credit pursuant to this section may be
15 ~~considered as a charitable contribution pursuant to G.S. 105-130.9. That portion of~~
16 ~~the donation~~ the basis for a credit allowed as a credit pursuant to under this section
17 ~~shall not be~~ is not eligible for deduction as a charitable contribution. contribution
18 under G.S. 105-130.9."

19 Section 2. G.S. 105-151.12 reads as rewritten:

20 "§ 105-151.12. Credit for certain real property donations.

21 (a) A person who makes a qualified donation of ~~interests~~ an interest in real
22 property located in North Carolina during the taxable year that is useful for (i) public
23 beach access or use, (ii) public access to public waters or trails, (iii) fish and wildlife
24 conservation, or (iv) other similar land conservation ~~purposes,~~ shall be purposes is
25 allowed as a credit against the tax imposed by this Division ~~an amount~~ equal to
26 twenty-five percent (25%) of the fair market value of the donated property interest.
27 To be eligible for this credit, the interest in property must be donated to and
28 accepted by either the State, a local government, or a body that is both organized to
29 receive and administer lands for conservation purposes and ~~is~~ qualified to receive
30 charitable contributions under the ~~Code;~~ provided, however, that lands Code. Lands
31 required to be dedicated pursuant to local governmental regulation or ordinance and
32 dedications made to increase building density levels permitted under ~~such regulations~~
33 ~~or ordinances~~ a regulation or ordinance are not eligible for this credit. The credit
34 allowed under this section may not exceed ~~twenty-five thousand dollars (\$25,000).~~
35 one hundred thousand dollars (\$100,000). To support the credit allowed by this
36 section, the taxpayer ~~shall~~ must file with the income tax return for the taxable year in
37 which the credit is claimed a certification by the Department of Environment, Health,
38 and Natural Resources that the property donated is suitable for one or more of the
39 valid public benefits set forth ~~by~~ in this subsection.

40 (b) The credit allowed by this section may not exceed the amount of tax imposed
41 by this Division for the taxable year reduced by the sum of all credits ~~allowed under~~
42 ~~this Division,~~ allowed, except payments of tax made by or on behalf of the taxpayer.

43 Any unused portion of this credit may be carried forward for the next succeeding
44 five years.

1 (c) In order to claim the credit allowed under this section, the taxpayer must add
2 the fair market value of the donated property interest, up to a maximum of ~~one~~
3 ~~hundred thousand dollars (\$100,000)~~, four hundred thousand dollars (\$400,000), to
4 taxable income as provided in G.S. 105-134.6(c).

5 (d) In the case of property owned by a married couple, if both spouses are
6 required to file North Carolina income tax returns, the credit allowed by this section
7 may be claimed only if the spouses file a joint return. If only one spouse is required
8 to file a North Carolina income tax return, that spouse may claim the credit allowed
9 by this section on a separate return.

10 (e) In the case of marshland for which a claim has been filed pursuant to G.S.
11 113-205, the offer of donation must be made before December 31, 1998, to qualify for
12 the credit allowed by this section."

13 Section 3. G.S. 105-134.6(c)(5) reads as rewritten:

14 "(5) The fair market value, up to a maximum of ~~one hundred thousand~~
15 ~~dollars (\$100,000)~~, four hundred thousand dollars (\$400,000), of
16 the donated property interest for which the taxpayer claims a
17 credit for the taxable year under G.S. 105-151.12 and the market
18 price of the gleaned crop for which the taxpayer claims a credit for
19 the taxable year under G.S. 105-151.14."

20 Section 4. G.S. 105-287(a) reads as rewritten:

21 "(a) In a year in which a general reappraisal or horizontal adjustment of real
22 property in the county is not made, the assessor shall increase or decrease the
23 appraised value of real property, as determined under G.S. 105-286, ~~to~~ to accomplish
24 any one or more of the following:

25 (1) Correct a clerical or mathematical ~~error~~; error.

26 (2) Correct an appraisal error resulting from a misapplication of the
27 schedules, standards, and rules used in the county's most recent
28 general reappraisal or horizontal ~~adjustment~~; or adjustment.

29 (2a) Recognize an increase or decrease in the value of the property
30 resulting from a conservation or preservation agreement subject to
31 Article 4 of Chapter 121 of the General Statutes, the Conservation
32 and Historic Preservation Agreements Act.

33 (3) Recognize an increase or decrease in the value of the property
34 resulting from a factor other than one listed in subsection (b)."

35 Section 5. G.S. 105-317(a) reads as rewritten:

36 "(a) Whenever any real property is appraised it shall be the duty of the persons
37 making appraisals:

38 (1) In determining the true value of land, to consider as to each tract,
39 parcel, or lot separately listed at least its advantages and
40 disadvantages as to location; zoning; quality of soil; waterpower;
41 water privileges; dedication as a nature preserve; conservation or
42 preservation agreements; mineral, quarry, or other valuable
43 deposits; fertility; adaptability for agricultural, timber-producing,
44 commercial, industrial, or other uses; past income; probable future

1 income; and any other factors that may affect its value except
2 growing crops of a seasonal or annual nature.

3 (2) In determining the true value of a building or other improvement,
4 to consider at least its location; type of construction; age;
5 replacement cost; cost; adaptability for residence, commercial,
6 industrial, or other uses; past income; probable future income; and
7 any other factors that may affect its value.

8 (3) To appraise partially completed buildings in accordance with the
9 degree of completion on January 1."

10 Section 6. Sections 1 through 3 of this act are effective for taxable years
11 beginning on or after January 1, 1998. The remaining sections of this act become
12 effective July 1, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

HOUSE BILL 260*
Committee Substitute Favorable 4/8/97
Senate Finance Committee Substitute Adopted 4/22/97
Proposed Senate Finance Committee Substitute #2
H260-CSLJ-6/3

Short Title: Conservation Tax Credit/Fund.

(Public)

Sponsors:

Referred to:

February 17, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO INCREASE THE CAP ON THE INCOME TAX CREDIT FOR REAL
3 PROPERTY DONATED FOR CONSERVATION PURPOSES, TO ENSURE THAT
4 CONSERVATION AND PRESERVATION AGREEMENTS ARE CONSIDERED IN
5 DETERMINING THE APPRAISED VALUE OF LAND AND IMPROVEMENTS, AND
6 TO ESTABLISH THE CONSERVATION GRANT FUND.
7 The General Assembly of North Carolina enacts:
8 Section 1. G.S. 105-130.34 reads as rewritten:
9 "§ 105-130.34. Credit for certain real property donations.
10 (a) Any corporation that makes a qualified donation of an
11 interest in real property located in North Carolina during the
12 taxable year that is useful for public beach access or use,
13 public access to public waters or trails, fish and wildlife
14 conservation, or other similar land conservation ~~purposes, shall~~
15 ~~be purposes is~~ allowed a credit against the ~~taxes~~ tax imposed by
16 this Division equal to twenty-five percent (25%) of the fair
17 market value of the donated property interest. To be eligible
18 for this credit, the interest in real property must be donated to
19 and accepted by either the State, ~~local government~~ a local
20 government, or a body that is both organized to receive and

1 administer lands for conservation purposes and ~~is~~ qualified to
2 receive charitable contributions pursuant to G.S. ~~105-130.9;~~
3 ~~provided, however, that lands 105-130.9.~~ Lands required to be
4 dedicated pursuant to local governmental regulation or ordinance
5 and dedications made to increase building density levels
6 permitted under ~~such regulations or ordinances shall not be a~~
7 ~~regulation or ordinance are not~~ eligible for this credit. The
8 credit allowed under this section may not exceed ~~twenty-five~~
9 ~~thousand dollars (\$25,000).~~ two hundred fifty thousand dollars
10 (\$250,000). To support the credit allowed by this section, the
11 taxpayer ~~shall~~ must file with its income tax ~~return~~ return, for
12 the taxable year in which the credit is claimed, a certification
13 by the Department of Environment, Health, and Natural Resources
14 that the property donated is suitable for one or more of the
15 valid public benefits set forth in this subsection.

16 (b) The credit allowed by this section may not exceed the
17 amount of tax imposed by this Division for the taxable year
18 reduced by the sum of all credits ~~allowed under this Division,~~
19 allowed, except payments of tax made by or on behalf of the
20 taxpayer.

21 (c) Any unused portion of this credit may be carried forward
22 for the next succeeding five years.

23 (d) ~~The fair market value, or any portion thereof, of a~~ That
24 portion of a qualifying donation that is ~~not eligible for a~~
25 ~~credit pursuant to this section may be considered as a charitable~~
26 ~~contribution pursuant to G.S. 105-130.9.~~ That portion of the
27 donation the basis for a credit allowed as a credit pursuant to
28 under this section shall not be is not eligible for deduction as
29 a charitable contribution, contribution under G.S. 105-130.9."

30 Section 2. G.S. 105-151.12 reads as rewritten:

31 "§ 105-151.12. Credit for certain real property donations.

32 (a) A person who makes a qualified donation of ~~interests~~ an
33 interest in real property located in North Carolina during the
34 taxable year that is useful for (i) public beach access or use,
35 (ii) public access to public waters or trails, (iii) fish and
36 wildlife conservation, or (iv) other similar land conservation
37 ~~purposes, shall be~~ purposes is allowed as a credit against the
38 tax imposed by this Division ~~an amount~~ equal to twenty-five
39 percent (25%) of the fair market value of the donated property
40 interest. To be eligible for this credit, the interest in
41 property must be donated to and accepted by either the State, a
42 local government, or a body that is both organized to receive and
43 administer lands for conservation purposes and ~~is~~ qualified to
44 receive charitable contributions under the Code; ~~provided,~~

1 ~~however, that lands~~ Code. Lands required to be dedicated
2 pursuant to local governmental regulation or ordinance and
3 dedications made to increase building density levels permitted
4 ~~under such regulations or ordinances~~ a regulation or ordinance
5 are not eligible for this credit. The credit allowed under this
6 section may not exceed ~~twenty-five thousand dollars (\$25,000).~~
7 one hundred thousand dollars (\$100,000). To support the credit
8 allowed by this section, the taxpayer ~~shall~~ must file with the
9 income tax return for the taxable year in which the credit is
10 claimed a certification by the Department of Environment, Health,
11 and Natural Resources that the property donated is suitable for
12 one or more of the valid public benefits set forth by in this
13 subsection.

14 (b) The credit allowed by this section may not exceed the
15 amount of tax imposed by this Division for the taxable year
16 reduced by the sum of all credits ~~allowed under this Division,~~
17 allowed, except payments of tax made by or on behalf of the
18 taxpayer.

19 Any unused portion of this credit may be carried forward for
20 the next succeeding five years.

21 (c) In order to claim the credit allowed under this section,
22 the taxpayer must add the fair market value of the donated
23 property interest, up to a maximum of ~~one hundred thousand~~
24 ~~dollars (\$100,000),~~ four hundred thousand dollars (\$400,000), to
25 taxable income as provided in G.S. 105-134.6(c).

26 (d) In the case of property owned by a married couple, if both
27 spouses are required to file North Carolina income tax returns,
28 the credit allowed by this section may be claimed only if the
29 spouses file a joint return. If only one spouse is required to
30 file a North Carolina income tax return, that spouse may claim
31 the credit allowed by this section on a separate return.

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

36 Section 3. G.S. 105-134.6(c)(5) reads as rewritten:

37 "(5) The fair market value, up to a maximum of ~~one~~
38 ~~hundred thousand dollars (\$100,000),~~ four hundred
39 thousand dollars (\$400,000), of the donated
40 property interest for which the taxpayer claims a
41 credit for the taxable year under G.S. 105-151.12
42 and the market price of the gleaned crop for which
43 the taxpayer claims a credit for the taxable year
44 under G.S. 105-151.14."

1 Section 4. G.S. 105-287(a) reads as rewritten:

2 "(a) In a year in which a general reappraisal or horizontal
3 adjustment of real property in the county is not made, the
4 assessor shall increase or decrease the appraised value of real
5 property, as determined under G.S. 105-286, ~~to~~ to accomplish any
6 one or more of the following:

- 7 (1) Correct a clerical or mathematical ~~error;~~ error.
8 (2) Correct an appraisal error resulting from a
9 misapplication of the schedules, standards, and
10 rules used in the county's most recent general
11 reappraisal or horizontal adjustment; ~~or~~
12 adjustment.
13 (2a) Recognize an increase or decrease in the value of
14 the property resulting from a conservation or
15 preservation agreement subject to Article 4 of
16 Chapter 121 of the General Statutes, the
17 Conservation and Historic Preservation Agreements
18 Act.
19 (3) Recognize an increase or decrease in the value of
20 the property resulting from a factor other than one
21 listed in subsection (b)."

22 Section 5. G.S. 105-317(a) reads as rewritten:

23 "(a) Whenever any real property is appraised it shall be the
24 duty of the persons making appraisals:

- 25 (1) In determining the true value of land, to consider
26 as to each tract, parcel, or lot separately listed
27 at least its advantages and disadvantages as to
28 location; zoning; quality of soil; waterpower;
29 water privileges; dedication as a nature preserve;
30 conservation or preservation agreements; mineral,
31 quarry, or other valuable deposits; fertility;
32 adaptability for agricultural, timber-producing,
33 commercial, industrial, or other uses; past income;
34 probable future income; and any other factors that
35 may affect its value except growing crops of a
36 seasonal or annual nature.
37 (2) In determining the true value of a building or
38 other improvement, to consider at least its
39 location; type of construction; age; replacement
40 cost; cost; adaptability for residence, commercial,
41 industrial, or other uses; past income; probable
42 future income; and any other factors that may
43 affect its value.

1 (3) To appraise partially completed buildings in
2 accordance with the degree of completion on January
3 1."

4 Section 6. Chapter 113A of the General Statutes is
5 amended by adding a new Article to read:

6 "ARTICLE 16.

7 "Conservation Easements Program.

8 "§ 113A-230. Legislative findings; intent.

9 The General Assembly finds that a statewide network of
10 protected natural areas, riparian buffers, and greenways can best
11 be accomplished through a conservation easements program. The
12 General Assembly further finds that other public conversation and
13 use programs, such as natural area protection, beach access,
14 trail systems, historic landscape protection, and agricultural
15 preservation, can benefit from increased conservation tools. In
16 this Article, the General Assembly therefore intends to extend
17 the ability of the Department of Environment, Health, and Natural
18 Resources to achieve these purposes and to strengthen the
19 capability of private nonprofit land trusts to participate in
20 land and water conservation.

21 "§ 113A-231. Program to accomplish conservation purposes.

22 The Department of Environment, Health, and Natural Resources
23 shall develop a nonregulatory program that uses conservation tax
24 credits as a prominent tool to accomplish conservation purposes,
25 including the maintenance of ecological systems.

26 "§ 113A-232. Conservation Grant Fund.

27 (a) Fund Created. -- The Conservation Grant Fund is created
28 within the Department of Environment, Health, and Natural
29 Resources. The Fund shall be administered by that Department.
30 The purpose of the Fund is to stimulate the use of conservation
31 easements, to improve the capacity of private nonprofit land
32 trusts to successfully accomplish conservation projects, to
33 better equip real estate related professionals to pursue
34 opportunities for conservation, to increase citizen participation
35 in land and water conservation, and to provide an opportunity to
36 leverage private and other public monies for conservation
37 easements.

38 (b) Fund Sources. -- The Conservation Grant Fund shall consist
39 of any monies appropriated to it by the General Assembly and any
40 monies received from public or private sources. Unexpended
41 monies in the Fund that were appropriated from the General Fund
42 by the General Assembly shall revert at the end of the fiscal
43 year unless the General Assembly otherwise provides. Unexpended

1 monies in the Fund from other sources shall not revert and shall
2 remain available for expenditure in accordance with this Article.

3 (c) Eligibility. -- In order for land to be the subject of a
4 grant under this Article, the land must possess or have a high
5 potential to possess ecological value, must be reasonably
6 restorable, and must qualify for tax credits under G.S. 105-
7 130.34. or G.S. 105-151.12. Private nonprofit land trust
8 organizations must be qualified pursuant to G.S. 105-130.34 and
9 G.S. 105-151.12 and must be certified under section 501(c)(3) of
10 the Internal Revenue Code.

11 (d) Use of Revenue. -- Revenue in the Conservation Fund may be
12 used only for the following purposes:

- 13 (1) The administrative costs of the Department in
14 administering the Fund.
- 15 (2) Conservation grants made in accordance with this
16 Article.
- 17 (3) To establish an endowment account, the interest
18 from which will be used for a purpose described in
19 G.S. 113A-233(a)(3) or (a)(5).

20 "§ 113A-233. Uses of a grant from the Conservation Grant Fund.

21 (a) Allowable Uses. -- A grant from the Conservation Grant
22 Fund may be used only to pay for one or more of the following
23 costs:

- 24 (1) Reimbursement for total or partial transaction
25 costs for donations from individuals or
26 corporations satisfying either of the following:
 - 27 a. Insufficient financial ability to pay all
28 costs or insufficient taxable income to allow
29 these costs to be included in the donated
30 value.
 - 31 b. Insufficient tax burdens to allow these costs
32 to be offset by the value of tax credits under
33 G.S. 105-130.34 or G.S. 105-151.12 or by
34 charitable deductions.
- 35 (2) Management support, including initial baseline
36 inventory and planning.
- 37 (3) Monitoring compliance with conservation easements.
38 the related use of riparian buffers, natural areas,
39 and greenways, and the presence of ecological
40 integrity.
- 41 (4) Education on conservation, including information
42 materials intended for landowners and education for
43 staff and volunteers.
- 44 (5) Stewardship of land.

1 (6) Transaction costs, including legal expenses,
2 closing and title costs, and unusual direct costs,
3 such as overnight travel.

4 (7) Administrative costs for short-term growth or for
5 building capacity.

6 (b) Prohibition. -- The Fund shall not be used to pay the
7 purchase price for any interest in land.

8 "§ 113A-234. Administration of grants.

9 The Secretary of Environment, Health, and Natural Resources
10 shall establish the procedures and criteria for awarding grants
11 from the Conservation Grant Fund. The criteria shall focus
12 grants on those areas, approaches, and techniques that are likely
13 to provide the optimum positive effect on environmental
14 protection. The Secretary shall make the final decision on the
15 award of grants and shall announce the award publicly in a timely
16 manner.

17 The Secretary may administer the grants under this Article or
18 may contract for selected activities under this Article. If
19 administrative services are contracted, the Department shall
20 establish guidance and criteria for its operation and contract
21 with a statewide nonprofit land trust service organization.

22 "§ 113A-235. Conservation easements.

23 Ecological systems and appropriate public use of these systems
24 may be protected through conservation easements, including
25 conservation agreements under Article 4 of Chapter 121 of the
26 General Statutes, the Conservation and Historic Preservation
27 Agreements Act. The Department of Environment, Health, and
28 Natural Resources shall work cooperatively with State and local
29 agencies and qualified nonprofit organizations to monitor
30 compliance with conservation easements and conservation
31 agreements and to ensure the continued viability of the protected
32 ecosystems."

33 Section 7. Sections 1 through 3 of this act are
34 effective for taxable years beginning on or after January 1,
35 1997. The remaining sections of this act become effective July
36 1, 1997.

**NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE**

BILL NUMBER: House Bill 260 (Second Version)
SHORT TITLE: Conservation Easements/Tax Credit
SPONSOR(S): Proposed Committee Substitute

(\$ Million)					
FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 1997-98</u>	<u>FY 1998-99</u>	<u>FY 1999-00</u>	<u>FY 2000-01</u>	<u>FY 2001-02</u>
General Fund					
REVENUES					
Individual	\$1.5 million (loss) a year in additional income tax credits certified				
Corporation	\$1.7 million (loss) a year in additional income tax credits certified				
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:					
	Department of Revenue Personal Tax Division				
	Department of Revenue Corporate Tax Division				
	Department of Environment, Health, and Natural Resources				
EFFECTIVE DATE: For tax years beginning on or after January 1, 1998					

BILL SUMMARY:

The proposed act increases the income tax credit for donations of real property made to the State, a unit of local government, or to a body organized to receive land for conservation purposes. The corporate credit under G. S. 105-130.34 is increased from \$25,000 to \$250,000. The individual credit under G. S. 105-151.12 is increased from \$25,000 to \$100,000. .
 Makes a clarifying change to the property tax statutes under G. S. 105-287(a) and G. S. 105-317(a).

ASSUMPTIONS AND METHODOLOGY:

It is impossible to determine how much real property will be donated in a given year under this act. Donors are motivated to make such gifts for many different reasons. However, it is logical to assume that the greater the tax credit received from the donation, the more real property individuals and corporations are willing to donate. This assumption is evident in the increase in donations and their characteristics when the credit was increased from a \$5,000 cap to the current \$25,000. (The percentage increase in the cap effective tax year 1989 was 500% or five times the 1983 cap.)

For tax years 1983 through 1988, 37 donations were made by 169 donors. Each donor gave an average of 66 acres for a total acreage of 2,383. The estimated value of this acreage is \$5.6 million. For tax years 1989 through 1995, 95 donations were made by 215 donors. Each donor gave an average of 252 acres for a total acreage of 23,714. The estimated value of this acreage is \$34.5 million. The cumulative credit for the period 1983 to 1988 was \$574,151 and for the period 1989 to 1995 was \$2,805,488. The percentage increase over this period is 488% or almost five times the cumulative credit for 1983 through 1988. The ratio of the increase in the credit cap to the increase in certified credits is almost 1 to 1; 488% increase in credits to a 500% increase in the cap.

This act raises the credit cap 1000% for corporations and 400% for individuals. If this ratio continues the level of additional certified credit, on average, for the next five years is expected to be \$1.7 million a year for corporations and \$1.5 million a year for individuals.

Equations shown below:

Corporations

The base data for credits certified to corporations is the seven year average of cumulative credits for the period 1989 to 1995 times 30%, the corporate share of total credits for the period; \$841,646. This value times 10 divided by five years equals \$1.7 million a year in new credits.

- $\$2,805,488 * .30 = \$841,646$
- $(\$841,646 * 10) / 5 = \1.7 million

Individuals

The base data for credits certified to individuals is the seven year average of cumulative credits for the period 1989 to 1995 times 69%, the individual share of total credits for the period; \$1,935,787. This value times 4 divided by five years equals \$1.5 million a year in new credits.

- $\$2,805,488 * .69 = \$1,935,787$
- $(\$1,935,787 * 4) / 5 = \1.5 million

FISCAL RESEARCH DIVISION

733-4910

PREPARED BY: H. Warren Plonk

APPROVED BY:

DATE: April 22, 1997

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 271

Short Title: Small Business Capital & Growth Act.

(Public)

Sponsors: Senators Shaw of Cumberland; Jenkins and Phillips.

Referred to: Finance.

February 27, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH THE NORTH CAROLINA CAPITAL ACCESS
3 AUTHORITY, WHICH WILL CREATE 25,000 JOBS FOR NORTH CAROLINA
4 BY PROVIDING LOAN GUARANTEES FOR SMALL AND MEDIUM-SIZED
5 BUSINESSES.
6 The General Assembly of North Carolina enacts:
7 TABLE OF CONTENTS
8 I. CAPITAL ACCESS AUTHORITY AND FUND
9 II. INVESTMENTS BY STATE TREASURER
10 III. CONFORMING CHANGES
11 IV. EFFECTIVE DATE
12 PART I.
13 CAPITAL ACCESS AUTHORITY AND FUND
14 Section 1. This act is the Small Business Capital and Growth Act of
15 1997.
16 Section 2. G.S. 53A-35 through G.S. 53A-37 are designated Part 1 of
17 Article 3 of Chapter 53A of the General Statutes, entitled "General Provisions", and
18 the remainder of Article 3 of Chapter 53A of the General Statutes is designated Part
19 2, entitled "North Carolina Enterprise Corporations".
20 Section 3. Article 3 of Chapter 53A of the General Statutes, as amended
21 by this act, is further amended by adding a new Part to read:
22 "Part 3. The North Carolina Capital Access Authority.
23 "§ 53A-50. Creation of Authority; purpose.

1 (a) Creation. -- The North Carolina Capital Access Authority is created as a body
2 corporate and politic having the powers and jurisdiction as provided under this Part
3 or any other law. The Authority is a State agency created to perform essential
4 governmental and public functions. The Authority shall be located within the
5 Department of Commerce, but shall exercise all of its powers, including the power to
6 employ, direct, and supervise all personnel, independently of the Secretary of
7 Commerce and, notwithstanding any other provision of law, shall be subject to the
8 direction and supervision of the Secretary only with respect to the management
9 functions of coordinating and reporting.

10 (b) Purpose. -- The purpose of The North Carolina Capital Access Authority is to
11 promote, stimulate, develop, and advance economic prosperity and stimulate job
12 creation in rural areas, underdeveloped communities, depressed urban commercial
13 areas, and economically distressed areas of North Carolina through loan guarantees to
14 Qualified North Carolina Businesses. To stimulate development broadly across the
15 State, the Authority shall, to the maximum extent feasible consistent with sound
16 business practices, provide loan guarantees to businesses located throughout the State.
17 The Authority shall support nonspeculative, mainstream businesses as provided in
18 this Part.

19 "§ 53A-51. Governing body of Authority.

20 (a) Board of Directors. -- The Authority shall be governed by a Board of
21 Directors. The Board shall consist of nine appointed members and two ex officio
22 members. As the holder of an office, each member of the Board shall take the oath
23 required by Section 7 of Article VI of the North Carolina Constitution before
24 assuming the duties of a Board member. The Governor shall designate a chair and a
25 vice-chair of the Board. The chair shall convene the first meeting of the Board.

26 (b) Appointed Members. -- Three members shall be appointed by the Governor,
27 one who represents the banking industry, created pursuant to Part 2 of this Article,
28 one who represents small business interests, and one who represents public interests.
29 Three members shall be appointed by the General Assembly upon the
30 recommendation of the Speaker of the House of Representatives in accordance with
31 G.S. 120-121, one who represents community development corporations, one who
32 represents medium-sized business interests, and one who represents public interests.
33 Three members shall be appointed by the General Assembly upon the
34 recommendation of the President Pro Tempore of the Senate in accordance with G.S.
35 120-121, one who owns a minority business as defined in G.S. 143-128, one who
36 represents a nonprofit organization active in infrastructure development under the
37 Community Reinvestment Act, and one who represents public interests.

38 In making appointments to the Board, the Governor and the General Assembly
39 shall give consideration to the geographical representation of the Western region, the
40 Piedmont region, and the Eastern region of the State. In addition, the appointments
41 should reflect the ethnic and gender diversity of the State as nearly as practical. The
42 appointing authority shall make a replacement appointment to serve for the
43 unexpired term in the case of a vacancy. A vacancy in an appointment made by the
44 General Assembly shall be filled in accordance with G.S. 120-122.

1 The initial appointments to the Board shall be for terms beginning on July 1, 1997.
2 Of the initial appointments made by the General Assembly upon the
3 recommendation of the Speaker of the House of Representatives and by the General
4 Assembly upon the recommendation of the President Pro Tempore of the Senate, one
5 appointment from each group shall be designated to expire on July 1, 1999. Of the
6 initial appointments made by the Governor, two appointments shall be designated to
7 expire on July 1, 1999. The remaining terms shall expire July 1, 2001. Thereafter,
8 each appointment shall be for a term of four years.

9 The Governor may remove any appointed member of the Board for misfeasance,
10 malfeasance, or nonfeasance in accordance with G.S. 143B-13(d). The Authority who
11 appointed a member of the Board may remove the member for using improper
12 influence in accordance with G.S. 143B-13(c).

13 (c) Ex Officio Members. -- The following members shall be ex officio, voting
14 members of the Board:

15 (1) The State Treasurer, or the Treasurer's designee.

16 (2) The Secretary of Commerce, or the Secretary's designee.

17 (d) Organization of the Board. -- The Board shall adopt bylaws with respect to the
18 calling of meetings, quorums, voting procedures, the keeping of records, and other
19 organizational and administrative matters as the Board may determine. A quorum
20 shall consist of a majority of the members of the Board. No vacancy in the
21 membership of the Board shall impair the right of a quorum to exercise all rights and
22 to perform all the duties of the Board and the Authority.

23 (e) Compensation of the Board. -- No part of the revenues or assets of the
24 Authority shall inure to the benefit of or be distributable to the members of the
25 Board or officers or other private persons. The members of the Board shall receive
26 no salary for their services but shall be entitled to receive per diem and necessary
27 travel and subsistence expenses payable to members of State boards and agencies
28 generally pursuant to G.S. 138-5 and G.S. 138-6, as the case may be.

29 (f) Treasurer. -- The Board shall select the Authority's treasurer. The Board shall
30 require a surety bond of the appointee in an amount fixed by the Board, and the
31 premium shall be paid by the Authority as a necessary expense of the Authority.

32 (g) Executive Director and Other Employees. -- The Board shall appoint an
33 executive director, whose salary shall be fixed by the Board, to serve at its pleasure.
34 The executive director or a person designated by the executive director shall appoint,
35 employ, dismiss, and, within the limits of available funding, fix the compensation of
36 other employees as considered necessary.

37 (h) Office. -- The Board shall establish an office for the transaction of the
38 Authority's business at the place the Board finds advisable or necessary to implement
39 the provisions of this Part.

40 "§ 53A-52. Capital Access Financing Fund.

41 The Authority shall establish the Capital Access Financing Fund as a special
42 revenue fund. The Fund shall consist of loans, gifts, grants, appropriations, and any
43 other funds made available for the Fund. Revenue in the Fund does not revert at the

1 end of a fiscal year, and interest and other investment income earned by the Fund
2 accrues to the Fund.

3 The Authority shall use monies in the Fund only to guarantee private loans made
4 by federally insured lending institutions to Qualified North Carolina Businesses. The
5 total amount of loan guarantees issued may not exceed five times the amount of
6 money in the Fund.

7 "§ 53A-53. Capital Access Financing Program.

8 (a) Program Established. -- The Authority shall establish and implement a Capital
9 Access Financing Program in accordance with this section to guarantee private loans
10 made by federally insured lending institutions to Qualified North Carolina Businesses
11 in rural areas, underdeveloped communities, depressed urban commercial areas, and
12 economically distressed areas of the State. Financing shall be targeted to businesses
13 that will create well-paying jobs for North Carolina citizens.

14 (b) Procedures; Fee. -- The Authority shall establish a procedure for participating
15 lending institutions to apply for loan guarantees on behalf of loan applicants. Each
16 application shall include documentation of the number of jobs to be created as a
17 result of the financing and the expected average wage the jobs will pay. The
18 Authority shall adopt rules and standards to assure that all loan guarantees provided
19 from the Fund are consistent with sound business practices, including requirements
20 that all loans be collateralized, that applicants have sound credit ratings and meet
21 experience standards set by the Authority, and that financing not be speculative. The
22 Authority shall assure that guaranteed loans meet standards such that the loans can
23 be sold on the secondary market.

24 The Authority shall charge a fee of one percent (1%) of the guaranteed amount of
25 the loan. The face of each guarantee issued must contain a statement that the
26 Authority is obligated to pay the guarantee only from the revenue in the Fund and
27 that neither the taxing power nor the faith and credit of the State or any of its
28 political subdivisions is pledged in payment of the guarantee.

29 (c) Minimum Wage Standards. -- The Authority shall require as a condition of
30 receiving a loan guarantee from the Fund that jobs to be created by a business must
31 pay at least twenty-five percent (25%) above the median weekly wage paid in the
32 county in which the jobs will be located. For the purpose of this subsection, the
33 median wage in a county is the median average wage for all insured industries in the
34 county as computed by the Employment Security Commission for the most recent
35 period for which data are available. The Authority may waive or alter the minimum
36 wage requirement if the area in which the jobs are to be created has an especially
37 severe rate of unemployment or in similar cases involving extreme circumstances.

38 (d) Minimum and Maximum Guarantee. -- A loan guarantee may not exceed
39 ninety percent (90%) of the unpaid balance of the loan. The Authority shall provide
40 loan guarantees in amounts no less than fifty thousand dollars (\$50,000) per business
41 and no greater than one hundred fifty thousand dollars (\$150,000) per business. The
42 amount of loan guarantees should not exceed twenty thousand dollars (\$20,000) per
43 job to be created, on average.

1 (e) Priority of Financing. -- In choosing businesses to finance, the Authority shall
2 give priority to start-up businesses; businesses that engage primarily in manufacturing,
3 processing, warehousing, wholesaling, research and development, or a service-related
4 industry; businesses that will create high-quality jobs; and businesses that cannot
5 obtain sufficient financing through traditional financial institutions. The Authority
6 shall assign a lower priority to real estate related businesses as defined in G.S. 105-
7 163.010 and to businesses that engage primarily in providing a professional service as
8 defined in Chapter 55B of the General Statutes, construction or contracting, selling or
9 leasing at retail, providing personal grooming or cosmetic services, or offering any
10 form of entertainment, amusement, recreation, or athletic or fitness activity for which
11 an admission or a membership is charged. The Authority shall not finance a business
12 engaged as a substantial part of its business in the purchase, sale, or development, or
13 purchasing, selling, or holding for investment of commercial paper, notes, other
14 indebtedness, financial instruments, securities, or real property, or otherwise in
15 making investments. The Authority shall not finance a business formed for the
16 primary purpose of acquiring all or part of the stock or assets of one or more existing
17 businesses.

18 (f) Disbursements. -- The Authority shall pay a participating lender the amount
19 owed under a guarantee on a defaulted loan upon certification of the lender that all
20 collateral for that loan that can reasonably be liquidated has been liquidated.

21 (g) Technical Assistance. -- The Authority shall provide technical assistance and
22 support to businesses to enable them to obtain loan guarantees and other support
23 from federal agencies and other sources.

24 "§ 53A-54. Powers of the Authority.

25 (a) The Authority shall have all of the powers necessary to execute the provisions
26 of this Part, which shall include at least the following powers:

- 27 (1) The powers of a corporate body, including the power to sue and
28 be sued and to adopt and use a common seal.
- 29 (2) To own, acquire, finance, rent, lease, dispose of, encumber,
30 mortgage, or manage real or personal property, but not to acquire
31 property by eminent domain.
- 32 (3) To pay all necessary costs and expenses in the formation,
33 organization, administration, and operation of the Authority.
- 34 (4) To apply for, accept, and administer loans and grants of money
35 from any federal agency, from the State or its political subdivisions,
36 or from any other public or private sources available, to expend
37 the money in accordance with the requirements imposed by the
38 lender or donor, and to give any evidences of indebtedness that are
39 required. No indebtedness of any kind incurred or created by the
40 Authority shall constitute an indebtedness of the State or its
41 political subdivisions, and no indebtedness of the Authority shall
42 involve or be secured by the faith, credit, or taxing power of the
43 State or its political subdivisions.

1 (5) To make loans to or deposits with lending institutions and
2 purchase or sell loans.

3 (6) To adopt bylaws or rules implementing the provisions of this Part.

4 (7) To indemnify the Authority and its officers, directors, agents,
5 employees, and adjoining property owners, or the general public
6 against loss or liability resulting from any act or omission by or on
7 behalf of the Authority.

8 (8) To arrange for the State Treasurer to invest in its obligations
9 pursuant to G.S. 147-69.2(b)(10a).

10 (b) To execute the powers provided in subsection (a) of this section, the Board
11 shall determine the policies of the Authority by majority vote of the members of the
12 Board present and voting, a quorum having been established. Once a policy is
13 determined, the Board shall communicate it to the executive director, who shall have
14 the sole and exclusive authority to execute the policy of the Authority. No member
15 of the Board shall have the responsibility or authority to give operational directives to
16 any employee of the Authority other than the executive director.

17 **"§ 53A-55. Purchases and sales of loans.**

18 If the Authority becomes the owner of a defaulted loan it may purchase or
19 contract to purchase and sell or contract to sell the loan.

20 **"§ 53A-56. Taxation of property of Authority.**

21 Property owned by the Authority is exempt from taxation in accordance with
22 Section 2 of Article V of the North Carolina Constitution.

23 **"§ 53A-57. Authority funds; pledge.**

24 (a) All Authority funds shall be deposited in one or more banks to be designated
25 by the Board. Funds of the Authority shall be paid out only upon warrants signed by
26 the treasurer or assistant treasurer of the Authority and countersigned by the chair,
27 the acting chair, or the executive director. Warrants shall be drawn or issued
28 disbursing the funds of the Authority only for a purpose authorized by this Part and
29 only when the account or expenditure has been audited and approved by the
30 Authority or its executive director.

31 (b) The Authority may not pledge any money other than money in the Fund for
32 payment of a loss. No action by the Authority constitutes the creation of a debt
33 secured by a pledge of the taxing power or of the faith and credit of the State or any
34 of its political subdivisions.

35 Any pledge made by the Authority shall be valid and binding from time to time
36 when the pledge is made. The money, assets, or revenues of the Authority so pledged
37 and thereafter received by the Authority shall immediately be subject to the lien of
38 the pledge without any physical delivery or further act, and the lien of any pledge
39 shall be valid and binding as against all parties having claims of any kind in tort,
40 contract, or otherwise against the Authority, irrespective of whether the parties have
41 notice of the lien. Neither the resolution nor any other instrument by which a pledge
42 is created need be recorded or filed in order to establish and perfect a lien or security
43 interest in the property so pledged by the Authority. This section does not prohibit
44 the Authority from selling any assets subject to any pledge except to the extent that

1 the sale may be restricted by the trust agreement or resolution providing for the
2 issuance of such obligations.

3 **"§ 53A-58. Cooperation by other State agencies.**

4 All State officers and agencies shall render the services to the Authority within
5 their respective functions as may be requested by the Authority.

6 **"§ 53A-59. Annual reports.**

7 The Authority shall, promptly following the close of each fiscal year, submit an
8 annual report of its activities for the preceding year to the Governor, the General
9 Assembly, and the State Treasurer. Each report shall be accompanied by an audit of
10 its books and accounts. The costs of all audits, whether conducted by the State
11 Auditor's staff or contracted with a private auditing firm, shall be paid from funds of
12 the Authority.

13 **"§ 53A-60. Dissolution.**

14 Whenever the Board determines by resolution that the purposes for which the
15 Authority was formed have been substantially fulfilled and that all obligations
16 incurred by the Authority have been fully paid or satisfied, the Board may declare
17 the Authority to be dissolved. On the effective date of the resolution, the title to all
18 funds and other property owned by the Authority at the time of the dissolution shall
19 vest in the State and possession of the funds and other property shall be delivered to
20 the State."

PART II.

INVESTMENTS BY STATE TREASURER

21
22 Section 4. G.S. 147-69.2(b) reads as rewritten:

23
24 "(b) It shall be the duty of the State Treasurer to invest the cash of the funds
25 enumerated in subsection (a) of this section in excess of the amount required to meet
26 the current needs and demands on such funds, selecting from among the following:

- 27 (1) Any of the investments authorized by G.S. 147-69.1(c);
- 28 (2) General obligations of other states of the United States;
- 29 (3) General obligations of cities, counties and special districts in North
30 Carolina;
- 31 (4) Obligations of any company, other organization or legal entity
32 incorporated or otherwise created or located within or without the
33 United States if such obligations bear one of the three highest
34 ratings of at least one nationally recognized rating service and do
35 not bear a rating below the three highest by any nationally
36 recognized rating service which rates the particular security;
- 37 (5) Notes secured by mortgages insured by the Federal Housing
38 Administration or guaranteed by the Veterans Administration on
39 real estate located within the State of North Carolina;
- 40 (6) Asset-backed securities (whether considered debt or equity)
41 provided they bear ratings by nationally recognized rating services
42 as provided in G.S. 147-69.2(b)(4) and that they do not bear a
43 rating below the three highest by any nationally recognized rating
44 service which rates the particular securities;

- 1 (7) With respect to Retirement Systems' assets referred to in G.S. 147-
2 69.2(b)(8), (i) insurance contracts which provide for participation
3 in individual or pooled separate accounts of insurance companies,
4 (ii) group trusts, (iii) individual, common or collective trust funds
5 of banks and trust companies and (iv) real estate investment trusts;
6 provided the investment manager has assets under management of
7 at least one hundred million dollars (\$100,000,000); provided such
8 investment assets are managed primarily for the purpose of
9 investing in or owning real estate or related debt financing located
10 in the United States; and provided that the investment authorized
11 by this subsection shall not exceed ten percent (10%) of the book
12 value of all invested assets of the Retirement Systems;
- 13 (8) With respect to assets of the Teachers' and State Employees'
14 Retirement System, the Consolidated Judicial Retirement System,
15 the Firemen's and Rescue Workers' Pension Fund, the Local
16 Governmental Employees' Retirement System, and the Legislative
17 Retirement System (hereinafter referred to collectively as the
18 Retirement Systems), preferred or common stocks issued by any
19 company incorporated or otherwise created or located within or
20 without the United States, provided:
- 21 a. That common stock or preferred stock of such corporation
22 is registered on a national securities exchange as provided in
23 the Federal Securities Exchange Act or quoted through the
24 National Association of Securities Dealers' Automated
25 Quotations (NASDAQ) system;
- 26 b. That such corporation shall have paid a cash dividend on its
27 common stock in each year of the 5-year period next
28 preceding the date of investment and the aggregate net
29 earnings available for dividends on the common stock of
30 such corporation for the whole of such period shall have
31 been at least equal to the amount of such dividends paid;
- 32 c. That in applying the dividend and earnings test under this
33 section to any issuing, assuming, or guaranteeing
34 corporation, where such corporation shall have acquired its
35 property or any substantial part thereof within a five-year
36 period immediately preceding the date of investment by
37 consolidation, merger, or by the purchase of all or a
38 substantial portion of the property of any other corporation
39 or corporations, or shall have acquired the assets of any
40 unincorporated business enterprise by purchase or
41 otherwise, the dividends and net earnings of the several
42 predecessor or constituent corporations or enterprises shall
43 be consolidated and adjusted so as to ascertain whether or

- 1 not the applicable requirements of this section have been
2 complied with;
- 3 d. That the book value of common and preferred stocks
4 including securities convertible into common stocks shall not
5 exceed fifty ~~per centum~~ percent (50%) of the book value of
6 all invested assets of the Retirement Systems; provided,
7 further:
- 8 1. Not more than one and one-half ~~per centum~~ percent
9 (1 1/2%) of the book value of such assets shall be
10 invested in the stock of a single corporation, and
11 provided further;
- 12 2. The total number of shares in a single corporation
13 shall not exceed eight ~~per centum~~ percent (8%) of the
14 issued and outstanding stock of such corporation, and
15 provided further;
- 16 3. As used in this subdivision d. and elsewhere in this
17 section, book value shall mean adjusted cost basis as
18 shown on the records of the State Treasurer.
- 19 e. Up to five ~~per cent~~ percent (5%) of the limits authorized in
20 subdivision d. may be invested in the stocks or shares of a
21 diversified investment company registered under the
22 'Investment Company Act of 1940' which has total assets of
23 at least fifty million dollars (\$50,000,000).
- 24 f. Individual, common or collective trust funds of banks or
25 trust companies provided that the investment manager has
26 assets under management of at least one hundred million
27 dollars (\$100,000,000).
- 28 g. That investments may be made in securities convertible into
29 common stocks issued by any such company, if such
30 securities bear one of the four highest ratings of at least one
31 nationally recognized rating service and do not bear a rating
32 below the four highest by any nationally recognized rating
33 service which may then rate the particular security.
- 34 (9) Obligations and securities of the North Carolina Enterprise
35 Corporation, or of a limited partnership in which the North
36 Carolina Enterprise Corporation is the only general partner, not to
37 exceed twenty million dollars (\$20,000,000) from all funds.
- 38 (10) A limited partnership interest in a partnership whose primary
39 purpose is to invest in venture capital or corporate buyout
40 transactions, not to exceed thirty million dollars (\$30,000,000) from
41 all funds.
- 42 (10a) Obligations of the North Carolina Capital Access Authority
43 created in Article 3 of Chapter 53A of the General Statutes. To the
44 extent possible consistent with the State Treasurer's duties, the

1 and to be empowered to alleviate these severe shortages of mezzanine finance capital
 2 and credit for investment in rural areas of the State. North Carolina Enterprise
 3 Corporations shall help eliminate barriers to rural economic development by
 4 providing mezzanine finance capital and credit, and other types of financing as
 5 appropriate, to businesses in rural areas that have been unable to obtain sufficient
 6 financing through traditional financial institutions.

7 (d) The General Assembly finds that it is a matter of grave public necessity that
 8 the North Carolina Capital Access Authority be created and empowered to alleviate
 9 these severe shortages of capital and credit for investment in rural areas,
 10 underdeveloped communities, depressed urban commercial areas, and economically
 11 distressed areas of the State. The Authority shall help eliminate barriers to economic
 12 development by providing loans, loan guarantees, and other types of financing as
 13 appropriate, to small and medium-sized businesses that may have been unable to
 14 obtain sufficient financing through traditional financial institutions."

15 Section 9. G.S. 53A-37 reads as rewritten:

16 "§ 53A-37. Definitions.

17 The following definitions apply in this Article:

- 18 (1) Authority. -- The North Carolina Capital Access Authority created
 19 in Part 3 of this Article.
- 20 (2) Business. -- A corporation, partnership, association, or sole
 21 proprietorship operated for profit.
- 22 (3) Depressed urban commercial area. -- A commercial or industrial
 23 area of a city in which blight exists in the form of dilapidated,
 24 deteriorated, poorly ventilated, obsolete, overcrowded, unsanitary,
 25 or unsafe buildings; inadequate and unsafe streets; inadequate lots;
 26 or other conditions detrimental to the sound growth of the
 27 community, which tend to depress the value of neighboring
 28 properties, impair the tax base of the community, and inhibit
 29 private efforts to rehabilitate or improve other structures in the
 30 area.
- 31 (4) Distressed area. -- A county that is designated one of the most
 32 economically distressed counties of the State under G.S. 143B-
 33 437A or a census tract that has more than fifteen percent (15%) of
 34 its population below the poverty line according to the latest federal
 35 decennial census.
- 36 ~~(2)~~ (5) Equity security. -- Common stock, preferred stock, an
 37 interest in a partnership, subordinated debt, or a warrant
 38 that is convertible into, or entitles the holder to receive
 39 upon its exercise, common stock, preferred stock, or an
 40 interest in a partnership.
- 41 ~~(6), (7), (8)~~ Reserved.
- 42 ~~(3)~~ (9) Mezzanine finance. -- An investment in the equity securities or
 43 subordinated debt of a Qualified North Carolina Business.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

D

SENATE BILL 271
Proposed Committee Substitute S271-CSLC-5/21
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION
28-MAY-97

Short Title: Small Business Capital & Growth Act. (Public)

Sponsors:

Referred to: Finance.

February 27, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO CREATE AT LEAST 25,000 JOBS FOR NORTH CAROLINA BY
3 PROVIDING ACCESS TO CAPITAL FOR SMALL AND MEDIUM-SIZED NORTH
4 CAROLINA BUSINESSES THROUGH LOAN GUARANTEES.
5 The General Assembly of North Carolina enacts:
6 Section 1. This act is the Small Business Capital and
7 Growth Act of 1997.
8 Section 2. Part 2 of Article 10 of Chapter 143B of the
9 General Statutes is amended by adding a new section to read:
10 "§ 143B-437B. Capital Access Loan Guarantee Fund.
11 (a) Creation; Purpose. -- The Capital Access Loan Guarantee
12 Fund is created as a special revenue account in the Department of
13 Commerce to provide loan guarantees to qualified North Carolina
14 businesses, as defined in G.S. 53A-37. Revenue in the Fund does
15 not revert at the end of a fiscal year, and interest and other
16 investment income earned by the Fund accrues to the Fund.
17 (b) Capital Access Loan Guarantee Program. -- The Capital
18 Access Loan Guarantee Fund shall be used to guarantee private
19 loans made by federally insured lending institutions to qualified
20 North Carolina businesses for capital costs of business start-ups
21 and expansions. A loan guarantee from the Fund may not exceed

1 ninety percent (90%) of the unpaid balance of the loan. The loan
2 guarantees shall be in amounts no less than twenty-five thousand
3 dollars (\$25,000) per business and no more than one hundred fifty
4 thousand dollars (\$150,000) per business. The loan proceeds must
5 be used to acquire, construct, or improve capital assets and may
6 not be used for operating expenses. The term of the loan may not
7 exceed 20 years and the loan must be callable at up to seven
8 years. The loan applicant must invest equity of at least ten
9 percent (10%) of the project amount. The Fund shall charge a fee
10 of one percent (1%) of the guaranteed amount of a loan.

11 (c) Conditions for Loan Guarantees. -- The Department of
12 Commerce shall assure that all loan guarantees provided from the
13 Fund are consistent with sound business practices by requiring
14 that the loans be collateralized, that the applicants have sound
15 credit ratings and meet experience standards set by the
16 Department, and that financing not be speculative. The
17 Department of Commerce shall assure that guaranteed loans meet
18 standards such that the loans can be sold on the secondary
19 market.

20 The Fund shall guarantee only loans that will result in the
21 creation of new jobs. The amount of loan guarantees should not
22 exceed twenty thousand dollars (\$20,000) per job to be created,
23 on average. The Department shall require as a condition of
24 receiving a loan guarantee from the Fund that jobs to be created
25 by a business as a result of the loan guarantee must meet the
26 wage standard established in G.S. 105-129.4(b). The Department
27 may waive or alter this minimum wage requirement if the area in
28 which the jobs are to be created has an especially severe rate of
29 unemployment or in similar cases involving extreme circumstances.

30 (d) Priority of Financing. -- In choosing businesses to
31 finance, the Department of Commerce shall give priority to
32 start-up businesses; businesses that engage primarily in
33 manufacturing, processing, warehousing, wholesaling, research and
34 development, or a service-related industry; businesses that will
35 create high-quality jobs; and businesses that cannot obtain
36 sufficient financing through traditional financial institutions.
37 The Department shall assign a lower priority to real estate
38 related businesses as defined in G.S. 105-163.010 and to
39 businesses that engage primarily in providing a professional
40 service as defined in Chapter 55B of the General Statutes,
41 construction or contracting, selling or leasing at retail,
42 providing personal grooming or cosmetic services, or offering any
43 form of entertainment, amusement, recreation, or athletic or
44 fitness activity for which an admission or a membership is

1 charged. The Department shall not finance a business engaged as
2 a substantial part of its business in the purchase, sale, or
3 development, or purchasing, selling, or holding for investment of
4 commercial paper, notes, other indebtedness, financial
5 instruments, securities, or real property, or otherwise in making
6 investments. The Department shall not finance a business formed
7 for the primary purpose of acquiring all or part of the stock or
8 assets of one or more existing businesses.

9 (e) Application. -- A participating lender may apply to the
10 Department of Commerce for a loan guarantee on behalf of a loan
11 applicant. The application must include the following:

- 12 (1) Borrower's name.
- 13 (2) Borrower's address and business address, if it is
14 different.
- 15 (3) Documentation that the borrower is a qualified
16 North Carolina business as defined in G.S. 53A-37.
- 17 (4) Loan amount.
- 18 (5) Terms of the loan.
- 19 (6) Purpose of the loan.
- 20 (7) Documentation of the number of jobs to be created
21 as a result of the financing and the expected
22 average wage the jobs will pay.
- 23 (9) Any other information required by the Department of
24 Commerce.

25 (f) Administration. -- All loan guarantees must be approved by
26 the Department of Commerce. The total amount of loan guarantees
27 issued may not exceed ten times the amount of money in the Fund.
28 The Department may not pledge any money other than money in the
29 Fund for payment of a loss. No action by the Department
30 constitutes the creation of a debt secured by a pledge of the
31 taxing power or of the faith and credit of the State or any of
32 its political subdivisions. The face of each guarantee issued
33 must contain a statement that the Department is obligated to pay
34 the guarantee only from the revenue in the Fund and that neither
35 the taxing power nor the faith and credit of the State or any of
36 its political subdivisions is pledged in payment of the
37 guarantee.

38 (g) Disbursements. -- The Department of Commerce shall pay a
39 participating lender the amount owed under a guarantee on a
40 defaulted loan upon certification of the lender that all
41 collateral for that loan that can be reasonably liquidated has
42 been liquidated.

43 (h) Reports. -- The Department of Commerce shall report
44 annually to the General Assembly concerning the applications made

1 to the fund and the loan guarantees made from the fund, and the
2 impact of the guarantees on job creation in the State. The
3 Department of Commerce shall also report quarterly to the Joint
4 Legislative Commission on Governmental Operations and the Fiscal
5 Research Division on the use of the moneys in the fund, including
6 information regarding to whom loan guarantees were made, in what
7 amounts, and for what purposes."

8 Section 3. There is appropriated from the General Fund
9 to the Capital Access Loan Guarantee Fund created by this act the
10 sum of twenty-five million dollars (\$25,000,000) for the 1997-98
11 fiscal year and the sum of twenty-five million dollars
12 (\$25,000,000) for the 1998-99 fiscal year to be used as provided
13 in this act. It is the intent of the General Assembly that this
14 appropriation represents nonrecurring funds and shall not become
15 part of the Department of Commerce's continuation budget after
16 the 1997-99 fiscal biennium.

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

EXPLANATION OF SENATE BILL 271
Proposed Committee Substitute
Small Business Capital & Growth Act

TO: Senate Finance Committee
FROM: Sabra Faires, Committee Counsel
DATE: June 3, 1997
SPONSOR: Senator Larry Shaw

The proposed committee substitute for **Senate Bill 271** establishes the Capital Access Loan Guarantee Fund and appropriates \$50 million from the General Fund to this new Fund during the 1997-99 biennium. Revenue in the Fund is to be used to guarantee private loans made by federally insured lending institutions to qualified North Carolina businesses for the purpose of acquiring, constructing, or improving capital assets. A qualified North Carolina business is a business whose headquarters and principal business operations are located in this State and that, together with any affiliates, had gross income during the preceding fiscal year of less than \$40 million dollars. The bill becomes effective July 1, 1997.

The Fund is to be administered by the Department of Commerce. A loan guarantee from the Fund is subject to certain limits. The amount guaranteed may not exceed 90% of the unpaid balance of the loan. The guarantee must be for at least \$25,000 and cannot exceed \$150,000. The term of the loan that is guaranteed cannot exceed 20 years and the loan must be callable at up to seven years. The loan must result in the creation of new jobs. The new jobs must meet the wage standards for the existing jobs tax credit, unless the Department waives the wage standard because of extreme circumstances in the locality. To be eligible for a loan guarantee, the loan applicant must invest equity in the business of at least 10% of the loan amount. The loan must be collateralized and the loan applicant must have a sound credit rating and meet the experience standards set by the Department.

The bill establishes a priority for making loan guarantees. The priorities are for start-up businesses, businesses that engage primarily in manufacturing, processing, warehousing, wholesaling, research and development, or a service-related industry, businesses that will create high-quality jobs, and businesses that cannot obtain sufficient financing from traditional sources. Businesses that engage primarily in making investments or in financing are not eligible for a loan guarantee from the Fund.

A fee applies to a person who receives a loan guarantee from the Fund. The fee is 1% of the guaranteed amount of the loan.

A cap applies to the total amount of loans that the Fund can guarantee. The cap is 10 times the amount of money in the Fund. The Department of Commerce must report annually on the activities of the Fund.



North Carolina Department of Revenue

James B. Hunt, Jr.
Governor

June 2, 1997

Muriel K. Offerman
Secretary

MEMORANDUM

TO: Senator Larry Shaw
North Carolina General Assembly

FROM: Niki Underwood, Director *TU*
Tax Research Division

SUBJECT: Information for Senate Bill 271

Per your request, following is a rough presentation based on the addition of 25,000 jobs into North Carolina's economy at an average wage of \$20,000, for a total of \$500,000,000. Of course, we have no knowledge of how many jobs would actually be created if Senate Bill 271 were enacted, nor what the actual average wage would be. Given the uncertainty attached to these estimates, they should not be considered as estimates of the fiscal impact of Senate Bill 271, but only as an indicator of the potential effect, given the assumptions which you provided.

The percentages used to distinguish state and local taxes are based primarily on estimates of state and local taxes related to total personal income from data found in Governmental Finances: 1992-93, published by the Bureau of the Census, US Department of Commerce, and presented by OSBM in the North Carolina Tax Guide 1996. It was further assumed that 80% of total state and local taxes would be paid by individuals.

- 25,000 jobs @ \$20,000 = \$500,000,000
- Estimated % of personal income of individuals going to state taxes: 6.40%
- Estimated state taxes: 6.40% X \$500,000,000 = \$32,000,000
 - Individual income taxes: 50% \$16,000,000
 - Sales tax: 30% 9,600,000
 - All other state taxes: 20% 6,400,000
- Estimated % of personal income of individuals going to local taxes: 2.64%
- Estimated local taxes: 2.64% X \$500,000,000 = 13,200,000
 - Property taxes: 72% \$9,504,000
 - Sales tax: 25% 3,300,000
 - All other local taxes: 3% 396,000
- Total from above computations \$45,200,000

cc: Jack L. Harper
David Crotts

P.O. Box 25000, Raleigh, North Carolina 27640
State Courier 51-71-00

An Equal Opportunity / Affirmative Action Employer



Summary of Top Twenty Recommendations

1 – 4A ¹	.17	Reengineer the public school system
2 – 3A	.19	Revise Worker's Compensation
3 – 8A	.15	Enact a state-level medical savings account
4 – 8B	.21	Allow 100% deduction for health insurance
5 – 6A	.11	Equitable participation of small business in State procurement
6 – 1A	.1	Establish loan program for start-up small business
7 – 2A	.15	Encourage cost-effective remediation of environmentally-tainted properties
8 – 5B	.10	Pay fair market compensation for "takings"
9 – 5A	.1	Conduct cost/benefit analysis of new regulations or legislation
10 -- 6E	.7	Modernize and enforce the Umstead Act
11 – 2B	.12	Assure that environmental laws will not undermine small business
12 – 3C	.15	Support health insurance purchasing alliances for small business
13 – 3B	.14	Reform the State's occupational safety laws
14 – 7B(t)	.12	Establish an Ombudsman's office for small business
14 – 7A(t)	.6	Allow wage garnishment for debts
16 -- 8E	.20	Eliminate inheritance tax burden on small businesses
17 -- 1B	.25	Provide business funding outside of traditional capital sources
18 – 8D	.9	Provide a more favorable tax treatment for sales of small business
19 – 5H	.8	Prevent public-funded organizations from competing with private enterprise
20 - 8C	.2	Enact graduated corporate tax rate.

¹ Bold number identifies issue area; letter is priority as identified by delegates from that issue session.

Rhode Island Ranks High in Helping Small Businesses

By UDAYAN GUPTA
 Staff Reporter of THE WALL STREET JOURNAL
WANT FINANCIAL SUPPORT for a small business? Try Rhode Island.

The tiny New England state, followed by Massachusetts, Minnesota and Illinois, provides the best financial support for small and medium-sized businesses, according to the Corporation for Enterprise Development, a Washington, D.C., nonprofit group that tracks economic development activity. Arkansas, Mississippi and New Mexico rank as the weakest states in such support, the group said in its annual development report card.



According to the report, Rhode Island has the nation's most active banks in small-business lending. Moreover, Rhode Island introduced an economic development program in 1974 to offset the effects of the closing of military bases, says Paul Barrett, the state's director of economic development. As part of the program, Rhode Island has floated or guaranteed nearly \$1 billion in bonds to help small-sized and medium-sized businesses, he adds.

For instance, when Alpha Beta Technology, a Massachusetts biotechnology start-up, wanted to finance a manufacturing facility and couldn't find the capital, the state guaranteed a \$30 million bond issue and also invested in Alpha Beta stock warrants. The deal, which called for Alpha Beta to put up \$10 million in cash, has brought 200 manufacturing jobs to Rhode Island, notes Mr. Barrett.

In the past three years, a state small-business loan fund has lent over \$7.2 million to 89 companies "that were first rejected by at least two commercial

banks," Mr. Barrett says. For example, Rhode Island provided \$150,000 in working capital loans to Rau Fasteners Inc., a Canadian fastener maker that wanted to relocate in the area but couldn't find a bank to lend it money.

The Washington research group ranked Massachusetts and Minnesota high on the list because both provide high levels of venture-capital financing. Massachusetts banks, "while having only moderate amounts of capital and overall loan activity, are concentrating on a lot of commercial and industrial loans," the report says. Minnesota ranked high because of its strong levels of non-traditional financing and high level of venture capital financing.

In most states that ranked poorly in the report, banks were relatively passive in small-business development and state governments did little to take up the slack. Arkansas, for instance, has the 16th highest rate of deposits per capita but ranks in the bottom 10 for all loan activity.

"Although there is money in Arkansas banks, they just aren't using it," the report said.

* * *

FISCAL ANALYSIS MEMORANDUM

DATE: June 3, 1997

TO: Members, Senate Finance Committee

FROM: Mark Trogdon 
Fiscal Research Division

RE: SB 271 – Proposed Committee Substitute S271-CSLC-5/21

FISCAL IMPACT

	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 1997-98</u>	<u>FY 1998-99</u>	<u>FY 1999-00</u>	<u>FY 2000-01</u>	<u>FY 2001-02</u>
GENERAL FUND					
EXPENDITURES					
Program Costs	\$164,643	\$92,572	\$95,602	\$98,826	\$102,259
Fund Capitalization	\$25,000,000	\$25,000,000			
SPECIAL FUND					
REVENUES					
1% Loan Fee	\$22,500	\$22,500	\$22,500	\$22,500	\$22,500
POSITIONS:	2.0	2.0	2.0	2.0	2.0
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:	Department of Commerce, Industrial Finance Center				
EFFECTIVE DATE:	July 1, 1997				

BILL SUMMARY -- The proposed committee substitute creates the "Capital Access Loan Guarantee Fund," and the "Capital Access Loan Guarantee Program," for the purpose of providing loan guarantees to qualified North Carolina businesses; a "qualified North Carolina business" is generally defined as a business (including affiliates) that has gross income of \$40 million or less (GS 53A-37). The proposed legislation appropriates a total of \$50 million in non recurring appropriations over the 1997-99 biennium to capitalize the Fund (\$25 million in each fiscal year); in addition, the legislation authorizes the levying of a 1% loan fee on the guaranteed amount of a loan provided by a participating lender. Receipts generated from the 1% loan fee

and any investment earnings are deposited to the Fund. The proposed committee substitute requires the Department of Commerce to administer the Fund and its associated program requirements. The bill does not authorize the use of Fund earnings or appropriations for administrative expenditures.

ASSUMPTIONS AND METHODOLOGY:

Loan Guarantee Fund

CAPITAL ACCESS LOAN GUARANTEE FUND – PROJECTED OPERATING IMPACT

	FY 1997-98	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
REVENUES					
1% Loan Fee	22,500	22,500	22,500	22,500	22,500
GF Appropriation	25,000,000	25,000,000			
Interest Earnings @ 6%	1,541,945	3,192,872	3,380,087	3,578,849	3,789,870
EXPENDITURES					
Estimated Fund Losses	-	(180,000)	(180,000)	(180,000)	(180,000)
FUND BALANCE	26,564,445	54,599,817	57,822,404	61,243,753	64,876,124

- 1) The estimated number of loan requests per year: 100
- 2) The estimated number of actual loans guaranteed per year: 50
- 3) The estimated average per loan amount guaranteed by the Fund: \$45,000
- 4) The estimated amount of receipts generated by the 1% loan fee authorized in the legislation is estimated at \$22,500 per year. This sum is calculated as follows: estimated average loan amount guaranteed, (\$45,000) *multiplied* by the estimated number of actual loans guaranteed per year (50), *multiplied* by the 1% loan fee – [$\$45,000 \times 50 \times 1\% = \$22,500$].
- 5) It is estimated that 5 loans will default on an annual basis and will require the Fund to compensate participating lending institutions for up to 90% of these loan losses. The amount of default losses are estimated at \$180,000 per year. This number is calculated by assuming that 5 loan defaults per year, *multiplied* by the estimated average per loan guarantee of \$45,000, *minus* any collectable loan collateral (estimated at a value of 20% of the original loan guarantee) -- [$(5 \times \$45,000) - (225,000 \times 20\%) = \$180,000$].
- 6) Interest earnings on the Fund’s cash balance are estimated at 6% per year over the five-year projection.

Program Administration Costs

- 1) Administrative program costs include recurring expenditures for salaries and benefits for one Industrial Finance Specialist (\$57,132) and one Accounting Clerk V (\$32,511), and non recurring costs in the first year for legal fees (\$30,000), marketing materials (\$25,000), computer equipment (\$10,000) and office equipment (\$10,000).
- 2) Salary expenditures have been adjusted for inflation over the projected five-year estimate under the following schedule: FY 1997-98: 3.9%, FY 1998-99: 3.4%, FY 1999-00: 3.4%, FY 2000-01: 3.5%, and FY 2001-02: 3.6%.

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

6-3-97

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Keshi Bevoagan	WCCSI
Jay Peters	JPA Assoc.
Alice Parlana	Electricities
Estherine Davis	Electricities
Sarah Fieder	DE HNR
LEIGHA POFER	ZDA, PA
JOHN BONDISHA	"
REM - WARD	Georgia - Pacific
SYCRET JACKSON	LT. GOV.
John Cyrus	N C State Grange
Patty Berry	CCNC

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

6-3-97

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Ray Harold	First Baptist Church Lexington, NC
PETE MARTIN	D MADDSAS
JOHN BOYD	C.E.C.A.
Henry Jones	Attorney Raleigh
Patti Seawell	DOR
Patrice Mitchell	UNC-Greensboro Grad Student
Nancy Pomeranz	DOR
Danny Massey	"
Alki Henderson	"
Michael Carpenter	NCHBA
Paul Williams	NCHBA

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

6-3-97

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Jane P. Gray	DOJ
ANDY VANORE	DOJ
William A. Downey	L.A. Downey & Son, Inc
DAVE SIMPSON	Carolina's ABC
Henry Clegg	" "
V. McBride	WOTD
Charles Francis	Woods & Francis
David Deon	UNIB
Normy Hunt	NCCCS
I. B. Broke	NCAGS
Ed Rega	NCACC
I. B. Po	self

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

FINANCE COMMITTEE REPORT

Senator David Hoyle, Co-Chair

Senator John Kerr, Co-Chair

Thursday, June 26, 1997

SENATOR HOYLE,

submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B.	915	Intangibles Tax Remedy	
		Draft Number:	PCS7808
		Sequential Referral:	Appropriations
		Recommended Referral:	None
		Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comment: Bill 6/3/97

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

FINANCE COMMITTEE REPORT

Senator David Hoyle, Co-Chair

Senator John Kerr, Co-Chair

Tuesday, June 03, 1997

SENATOR HOYLE,

submits the following with recommendations as to passage:

FAVORABLE

H.B. 283 Perquimans School Acquisition
Sequential Referral: None
Recommended Referral: None

H.B. 411 Currituck Game Comm. Changes
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 2

Committee Clerk Comment: None

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT

Senator David Hoyle, Co-Chair
Senator John Kerr, Co-Chair

Wednesday, June 04, 1997

SENATOR HOYLE,

submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B. 271 Small Business Capital & Growth Act
Draft Number: PCS8715
Sequential Referral: Appropriations
Recommended Referral: None
Long Title Amended: Yes

**UNFAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 1,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 2**

H.B.(SCS #1) 260 Increase Conservation Tax Credit
Draft Number: PCS2343
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

TOTAL REPORTED 2

Committee Clerk Comment: Bills on report heard in Sen. Finance on 6/3/97

NOTE: CORRECTED REPORT

SENATE FINANCE COMMITTEE

WEDNESDAY, JUNE 4, 1997

12 NOON - ROOM 544 LOB

The Senate Finance Committee met on June 4, 1997, with Senator Kerr presiding. There were 18 committee members present.

H.B. 97 - Gastonia Supplemental Funds

Representative Dickson was recognized to explain H.B. 97 and at the conclusion of his explanation, Senator Lee moved for "favorable" report and the motion carried. Copy of bill included in the minutes.

H.B. 933 - Up Pharmacy Fees

Representative Jarrell was recognized to explain this bill. Senator Hoyle sent forth an amendment which was adopted on his motion. At the conclusion of Representative Jarrell's explanation and after discussion, Senator Lee moved for a "favorable" report, as amended, and the motion carried. Copy of bill, amendment and fiscal note included in the minutes.

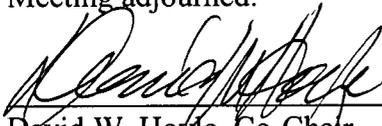
H.B. 804 - Lincoln Local Roads

Senator Odom was recognized to explain this bill for Representative Kiser. At the conclusion of his explanation, there were several questions from the committee members to Senator Odom and to staff. Don Goins, Chief Engineer for Operations with the North Carolina Department of Transportation gave a further explanation of this bill. Senator McDaniel moved for a "favorable" report and the motion carried. Copy of bill included in the minutes.

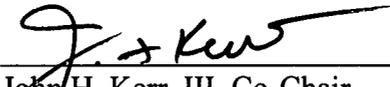
S.B. 1234 - Revenue/Finance Personnel Changes

This bill was added on to honor Sabra J. Faires who will be leaving the legislature to become Assistant Secretary of Revenue for Tax Administration. The committee members and visitors were given an opportunity to express their best wishes to Ms. Faires. Senator Kerr also announced that Ms. Martha Walston would be coming on board to work with the Senate Finance Committee. Copy of bill included in the minutes.

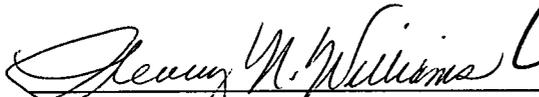
Meeting adjourned.



David W. Hoyle, Co-Chair
Senate Finance Committee



John H. Kerr, III, Co-Chair
Senate Finance Committee



Penny N. Williams, Clerk



Evelyn S. Hartsell, Clerk

NOTE:

Agenda is Attachment # 1
Visitors' Sign Up Sheet is Attachment # 2
Committee Report is Attachment # 3

AGENDA

SENATE FINANCE COMMITTEE

WEDNESDAY, JUNE 4, 1997

12 NOON - ROOM 544

H.B. 97 - GASTONIA SUPPLEMENTAL FUNDS - REP. DICKSON

H.B. 804 - LINCOLN LOCAL ROADS - REP. KISER

H.B. 933 - UP PHARMACY FEES - REP. JARRELL

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

2

HOUSE BILL 97
Committee Substitute Favorable 2/27/97

Short Title: Gastonia Supplemental Funds.

(Local)

Sponsors:

Referred to:

February 11, 1997

A BILL TO BE ENTITLED

1 AN ACT TO EXEMPT THE ADMINISTRATION OF THE GASTONIA
2 POLICEMEN'S SUPPLEMENTAL RETIREMENT FUND AND THE
3 GASTONIA FIREMEN'S SUPPLEMENTAL RETIREMENT FUND FROM THE
4 LOCAL GOVERNMENT BUDGET AND FISCAL CONTROL ACT.
5

6 The General Assembly of North Carolina enacts:

7 Section 1. Article VIII of the Charter of the City of Gastonia, being
8 Chapter 557 of the 1991 Session Laws, reads as rewritten:

9 "ARTICLE VIII. RETIREMENT.

10 "Sec. 8.1. **Gastonia Firemen's Supplemental Retirement Fund.** The Gastonia
11 Firemen's Supplemental Retirement Fund shall continue as authorized by Chapter
12 537, Session Laws of 1949, as amended by Chapter 111, Session Laws of 1957;
13 Chapter 51, Session Laws of 1975; and Chapter 1016, Session Laws of 1983 (Reg.
14 Sess. 1984). The Gastonia Firemen's Supplemental Retirement Fund is not subject to
15 Article 3 of Chapter 159 of the General Statutes.

16 "Sec. 8.2. **Gastonia Policemen's Supplemental Retirement Fund.** The Gastonia
17 Policemen's Supplemental Retirement Fund shall continue as authorized by Chapter
18 946, Session Laws of 1955, as amended by Chapter 112, Session Laws of 1957;
19 Chapter 301, Session Laws of 1959; Chapter 198, Session Laws of 1965; Chapter 979,
20 Session Laws of 1965; and Chapter 809, Session Laws of 1983. The Gastonia
21 Policemen's Supplemental Retirement Fund is not subject to Article 3 of Chapter 159
22 of the General Statutes."

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

1 dollars (\$300.00) per year. All fees shall be paid before any applicant may be
2 admitted to examination or the applicant's name may be placed upon the register of
3 pharmacists or before any license or permit, or any renewal thereof, may be issued by
4 the Board."

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



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 933

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

H933-ARB-1

Date June 4, 1997

Comm. Sub.
Amends Title

Senator [Signature]

1 moves to amend the bill on page 2, line 5, by rewriting the line to
2 read:
3 "Section 2. This act becomes effective October 1, 1997."

SIGNED [Signature]
Amendment Sponsor

SIGNED [Signature]
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: House 933 (First Edition)

SHORT TITLE: Up Pharmacy Fees

SPONSOR(S): Rep. Jarrell, et al

FISCAL IMPACT

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

FY 1997-98 FY 1998-99 FY 1999-00 FY 2000-01 FY 2001-02

REVENUES

Pharmacy Operating Acct. \$567,700 \$567,700 \$567,700 \$567,700 \$567,700

EXPENDITURES

Pharmacy Operating Acct. (see ASSUMPTIONS AND METHODOLOGY)

POSITIONS: 4 4 4 4 4

**PRINCIPAL DEPARTMENT(S) &
PROGRAM(S) AFFECTED:** North Carolina Board of Pharmacy

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

BILL SUMMARY: The act increases the fees collected under the Pharmacy Practice Act. The act also adds new fees for dispensing physicians, dispensing physician assistants, dispensing nurse practitioner, pharmacist personnel, and duplicate license.

ASSUMPTIONS AND METHODOLOGY:

REVENUE

The following chart assumes the North Carolina Board of Pharmacy will charge the maximum fee allowed by the bill. The Board of Pharmacy provided the number of current licenses and an estimate of the number of new licenses. Many of the fees in the bill have not been increased since 1988.

	Current <u>Fee</u>	Proposed <u>Fee</u>	Number <u>Issued</u>	FY 95-96 <u>Actual Revenue</u>	FY 97-98 <u>Projected Revenue</u>
Pharmacist Renewals	\$ 65	\$ 110	7,638	\$ 496,470	\$ 840,180
Pharmacist Reinstatements	80	125	72	5,760	9,000
Pharmacy Permits - Original	250	350	178	44,500	62,300
Pharmacy Renewals	125	175	2,019	252,375	353,325
Pharmacy Reinstatements	250	350	25	6,250	8,750
Reciprocity	300	400	165	49,500	66,000
Exam fee (plus cost of test)	150	160	285	90,300	93,150
Physician Dispensing	0	50	478	0	23,900
PA/FNP Dispensing	0	50	100	0	5,000
Pharmacist Personnel	0	25	2000	0	50,000
Dup. License, Permit/Reg.	0	25	50	0	1,250
Total Revenue				\$ 945,155	\$ 1,512,855
Difference					\$ 567,700

EXPENDITURES

The Board of Pharmacy plans to double their inspection/investigation staff to do routine annual inspections and to investigate complaints. The hiring of four additional inspectors will cost at least \$240,000 per year. The Board has not hired a new pharmacy inspector since 1987.

The proposed new fees in HB 933 will cover the costs of registering physician assistants, nurse practitioners, and physicians that dispense drugs. The Board has been registering these professionals since 1977 (1988 for doctors) without charge. The Board estimates that it has spent \$250,000 on registering these groups and investigating complaints about these professionals.

FISCAL RESEARCH DIVISION

733-4910

PREPARED BY: Richard Bostic

APPROVED BY: Tom CovingtonTomC

DATE: April 28, 1997

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1997

H

2

HOUSE BILL 804
Committee Substitute Favorable 4/28/97

Short Title: Lincoln Local Roads.

(Local)

Sponsors:

Referred to:

April 3, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO GIVE LINCOLN COUNTY AUTHORITY TO BUILD AND
3 IMPROVE ROADS WITHIN LINCOLN COUNTY THAT ARE NOT PART OF
4 THE STATE HIGHWAY SYSTEM.
5 The General Assembly of North Carolina enacts:
6 Section 1. A county may build, construct, improve, reconstruct, widen,
7 pave, install curbs and gutters, and otherwise build and improve roads and streets
8 that are located in the county and outside a city and that are not part of the State
9 highway system and may advertise, accept bids, enter into contracts, and undertake
10 any other action reasonably necessary to carry out the powers granted by this act. A
11 county shall make special assessments against benefitted property to pay for any work
12 in accordance with the procedures set forth in this act. The authority granted by this
13 act shall include the authority to make any improvements necessary to bring roads up
14 to State standards so that they may be accepted into the State highway system.
15 Section 2. Before a county may finance all or a portion of the cost of
16 improvements to a subdivision or residential street, it must receive a petition for the
17 improvements signed by at least seventy-five percent (75%) of the owners of property
18 to be assessed, who must represent at least seventy-five percent (75%) of all the lineal
19 feet of frontage of the lands abutting on the street or portion thereof to be improved.
20 The petition shall state that portion of the cost of the improvement to be assessed,
21 which shall be the local share required by policies of the Secondary Roads Council.
22 A county may treat as a unit and consider as one street two or more connecting
23 State-maintained subdivision or residential streets in a petition filed under this

1 subsection calling for the improvement of subdivision or residential streets subject to
2 property owner sharing in the cost of improvement under policies of the Department
3 of Transportation.

4 Property owned by the United States shall not be included in determining
5 the lineal feet of frontage on the improvement, nor shall the United States be
6 included in determining the number of owners of property abutting the improvement.
7 Property owned by the State of North Carolina shall be included in determining
8 frontage and the number of owners only if the State has consented to assessment as
9 provided in G.S. 153A-189. Property owned, leased, or controlled by railroad
10 companies shall be included in determining frontage and the number of owners to
11 the extent the property is subject to assessment under G.S. 160A-222. Property
12 owned, leased, or controlled by railroad companies that is not subject to assessment
13 shall not be included in determining frontage or the number of owners.

14 No right of action or defense asserting the invalidity of street assessments
15 on grounds that the county did not comply with this subsection in securing a valid
16 petition may be asserted except in an action or proceeding begun within 90 days after
17 the day of publication of the notice of adoption of the preliminary assessment
18 resolution.

19 Section 3. This act is intended to provide a means of assisting in
20 financing improvements to streets and roads that are not on the State highway system.
21 By financing improvements under this act, a county does not acquire or assume any
22 responsibility for the streets or roads involved, and a county has no liability arising
23 from the construction of an improvement to a road or the maintenance of the street
24 or road.

25 Section 4. A county may make assessments against benefitted property to
26 recoup all or part of the costs of the work authorized in this act on the basis of:

- 27 (1) The frontage abutting on the project, at an equal rate per foot of
28 frontage; or
29 (2) The street frontage of the lots served, or subject to being served, by
30 the project, at an equal rate per foot of frontage; or
31 (3) The area of land served, or subject to being served, by the project,
32 at an equal rate per unit of area; or
33 (4) The valuation of land served, or subject to being served, by the
34 project, being the value of the land without improvements as
35 shown on the tax records of the county, at an equal rate per dollar
36 of valuation; or
37 (5) A combination of two or more of these bases. For each project,
38 the Board of Commissioners shall endeavor to establish an
39 assessment method from among the bases set out in this section
40 that will most accurately assess each lot or parcel of land according
41 to the benefit conferred upon it by the project. The Board's
42 decision as to the method of assessment is final and not subject to
43 further review and challenge.

1 Section 5. The Board of Commissioners shall develop guidelines for
2 determining which projects, authorized by this act, to pursue and in what order. The
3 Board of Commissioners may consider, among other reasonable factors:

4 (1) The chronological order in which it receives petitions as provided
5 for in this act;

6 (2) The number of citizens to be served per mile by the proposed
7 project;

8 (3) The severity of the need to be alleviated by the proposed project
9 relative to other similar situations in the county; or

10 (4) Funds advanced, if any, by the citizens to be served by the
11 proposed project to participate in paying for the project.

12 Section 6. Except as otherwise provided in this act, a county shall follow
13 the procedures set forth in Article 9 of Chapter 153A of the General Statutes in
14 making, giving notice of, providing for payment of, and enforcing assessments for
15 projects authorized in this act.

16 Section 7. This act applies to Lincoln County only.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 1234

Short Title: Revenue/Finance Personnel Changes.

(Public)

Sponsors: Senators Kerr and Hoyle.

Referred to: Finance, if favorable, Appropriations.

April 21, 1997

1 A BILL TO BE ENTITLED
2 AN ACT RELATING TO POLICY, LEADERSHIP, AND PERSONNEL OF THE
3 DEPARTMENT OF REVENUE AND THE SENATE COMMITTEE ON
4 FINANCE.
5 The General Assembly of North Carolina enacts:
6 Section 1. The Governor may not appoint any attorney currently
7 employed by the Fiscal Research Division of the Legislative Services Office to any
8 position in the Executive Branch of State Government.
9 Section 2. Effective May 1, 1997, the position of Assistant Secretary of
10 Revenue for Tax Administration is eliminated. The budget of the Department of
11 Revenue for the 1997-99 fiscal biennium is reduced by two hundred thousand dollars
12 (\$200,000) a year.
13 Section 3. Sabra J. Faires of Wake County is appointed honorary
14 co-chair of the Senate Committee on Finance and shall serve in that capacity for the
15 remainder of the 1997-98 Session of the General Assembly.
16 Section 4. This act is effective when it becomes law.

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

6-4-97

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Muriel Offerman	DOR
Joe Holman	Wend / Sierra Club/TNC
DAVID GERBACH	BTC
Paul Zign	OSBM
Patti Seabell	DOR
Dale Underwood	DOR
Nancy Pomeranz	DOR
Bernard Allen	SOS
Larry Peters	DOT
Don Goins	N.C.D.O.T.
Ruth Sappie	NCDOT
Joe Ramgobam	NBANA

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Cam Cover	BPMHL
Ed Regan	N.C.A.C.C.
Don McCorquodale	NCRMA
Andy Lomant	NCLM
Mary Cornilia	Mecklenburg County
Helen Lipman	Meck. Co.
B.K. Wilson	Duplin County
Nancy Moore	Duplon County

SENATE FINANCE COMMITTEE

TUESDAY, JUNE 10, 1997

12 NOON - ROOM 544 LOB

The Senate Finance Committee met on June 10, 1997, with Senator Kerr presiding. There were 22 committee members present.

Senator Kerr welcomed Ms. Martha Walston who will be working with the Senate Finance since Sabra Faires has left the Legislature to go with the Department of Revenue. Ms. Walston worked with the Legislature some 10 years ago and is returning. She was recognized for remarks and gave a brief review of her background.

H.B. 604 - Morehead-Newport ETJ Authority

Senator Ballantine was recognized to explain this bill for Representative Smith. At the conclusion of his explanation, there were several questions from the committee members. Senator Dannelly moved for a "favorable" report and the motion carried. Copy of bill included in the minutes.

H.B. 698 - Morehead-Newport Annexations

Senator Ballantine was also recognized to explain this bill for Representative Smith. At the conclusion of his explanation, Senator moved for a "favorable" report and the motion carried. Copy of bill and explanation included in the minutes.

S.B. 730 - Industrial Revenue Bond Changes

Senator Ballance was recognized to explain this bill. There was a proposed committee substitute and on motion by Senator Lee, the PCS was adopted by the committee. At the conclusion of Senator Ballance's explanation, Martha Harris, Staff Attorney, gave a further explanation of the bill. Mr. Richard Rogers, DEHNR, spoke in support of this bill. After a discussion of this bill, Senator Larry Shaw made a motion that this committee substitute be given a "favorable" report and the motion carried. Copy of bill, committee substitute and explanation included in the minutes.

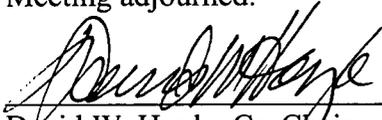
Senator Kerr announced that Representative Hurley has requested that **H. B. 476 - Vital Records Access** - be held over until tomorrow.

S.B. 1012 - Publication of Appellate Decisions

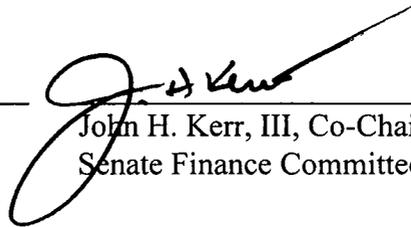
Senator Rucho was recognized to explain this bill. Also, Senator Odom spoke in support of this bill. At the conclusion of Senator Rucho's explanation and Senator Odom's presentation, there was a lengthy discussion on this bill with questions from the committee members to the bill sponsor and to staff. Speaking in opposition to the bill was Chief Judge S. Gerald Arnold, Court of Appeals. Copy of bill with information, explanation and fiscal note included in the minutes.

Senator Kerr had previously announced that this bill would not be voted on today.

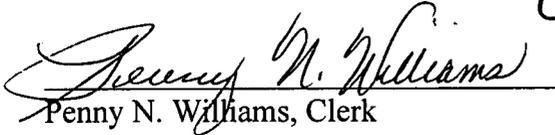
Meeting adjourned.



David W. Hoyle, Co-Chair
Senate Finance Committee



John H. Kerr, III, Co-Chair
Senate Finance Committee



Penny N. Williams, Clerk



Evelyn S. Hartsell, Clerk

NOTE:

Agenda is Attachment # 1
Visitors' Sign Up Sheet is Attachment # 2
Committee Report is Attachment # 3

SENATE FINANCE COMMITTEE

JUNE 10, 1997

12 NOON - ROOM 544

S.B. 730 Industrial Revenue Bond Changes. - Sen. Ballance

S.B. 1012 Publication of Appellate Decisions. - Sen. Rucho

H.B. 476 Vital Records Access. - Rep. Hurley

H.B. 604 Morehead-Newport ETJ Authority. - Rep. Smith

H.B. 698 Morehead-Newport Annexations. - Rep. Smith

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

2

HOUSE BILL 604
Committee Substitute Favorable 4/29/97

Short Title: Morehead-Newport ETJ Authority.

(Local)

Sponsors:

Referred to:

March 25, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW THE TOWNS OF MOREHEAD CITY AND NEWPORT
3 TO EXERCISE EXTRATERRITORIAL PLANNING JURISDICTION OVER AN
4 AREA EXTENDING NOT MORE THAN TWO MILES FROM THEIR
5 CORPORATE LIMITS.

6 The General Assembly of North Carolina enacts:

7 Section 1. The Towns of Morehead City and Newport may exercise
8 extraterritorial planning jurisdiction as provided in Article 19 of Chapter 160A of the
9 General Statutes within an area extending not more than two miles beyond their
10 respective corporate limits. In the area where the Towns' extraterritorial planning
11 jurisdiction overlaps, the dividing line shall begin where the run of Hull Swamp
12 Creek empties into the Newport River, and then runs with the run of Hull Swamp
13 Creek to the northwest corner of the property of Merritt-Williams Ford in the
14 southern right-of-way margin of U.S. Highway 70, thence northwestwardly with the
15 southern margin of U.S. Highway 70 to the northwesternmost corner of the property
16 of Paul Wysocki (tax parcel number 634608990762), and thence with the Wysocki
17 northwest line in a southwestern direction to the North property line of Mamie
18 Murdoch (tax parcel number 634704708233), and thence westwardly and southwardly
19 with the north and West lines of the Murdoch property back to the run of Hull
20 Swamp Creek.

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

1 within the satellite corporate limits of the Town of Apex, exceeds the limit set by
2 general law in G.S. 160A-58.1(b)(5)."

3 Section 3. G.S. 160A-58.1(b)(5) does not apply to the Town of
4 Mooresville.

5 Section 4. G.S. 160A-58.4, as amended by Chapter 289 of the 1991
6 Session Laws, reads as rewritten:

7 "**§ 160A-58.4. Extraterritorial powers.**

8 Satellite corporate limits for areas annexed prior to January 1, 1997, shall be
9 considered a part of the city's corporate limits for the purposes of extraterritorial
10 land-use regulation pursuant to G.S. 160A-360, but not for purposes of abatement of
11 public health nuisances pursuant to G.S. 160A-193. Satellite corporate limits for
12 areas annexed on or after January 1, 1997, shall not be considered a part of the city's
13 corporate limits for the purposes of extraterritorial land-use regulation pursuant to
14 G.S. 160A-360. However, a city's power to regulate land use pursuant to Chapter
15 160A, Article 19, or to abate public health nuisances pursuant to G.S. 160A-193, shall
16 be the same within satellite corporate limits as within its primary corporate limits."

17 Section 5. Section 4 of this act applies only to the Town of Mooresville.

18 Section 6. This act is effective when it becomes law.

EXPLANATION OF HOUSE BILL 698:
Morehead-Newport Annexations (3rd Edition)

TO: Senate Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: June 10, 1997
SPONSOR: Representative Smith

House Bill 698 limits the authority of the Towns of Morehead City and Newport to annex noncontiguous areas and it modifies the laws relating to the annexation of noncontiguous areas by the Town of Mooresville.

G.S. 160A-58.1 governs the voluntary annexation of noncontiguous property. Property owners may petition a city for voluntary annexation of noncontiguous property if the property meets all of the following standards:

1. The nearest point on the proposed satellite corporate limits must be not more than 3 miles from the primary corporate limits of the annexing city.
2. No point on the proposed satellite corporate limits may be closer to the primary corporate limits of another city than to the primary corporate limits of the annexing city.
3. The area must be so situated that the annexing city will be able to provide the same services within the proposed satellite corporate limits that it provides within its primary corporate limits.
4. If the area proposed for annexation is a subdivision, all of the subdivision must be included.
5. The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, may not exceed 10% of the area within the primary corporate limits of the annexing city.

Section 1 of the bill modifies G.S. 160A-58.1(b)(2) for the Towns of Morehead City and Newport. Under the bill, the Towns may annex property within their extraterritorial planning jurisdiction, even if that property is closer to primary corporation limits of the other town than it is to the primary corporate limits of the annexing town.

Section 3 of the bill will allow the Town of Mooresville to annex property that is not contiguous with its primary corporate limits even though the annexed property will exceed 10% of the area within the primary city limits. Five other cities have also eliminated this standard altogether: Hickory, New Bern, Statesville, Kenly, and Troy. Several other cities have modified this standard.

Under current law, this standard has been modified for the Town of Mooresville for annexation ordinances adopted on or before December 31, 2000. Section 2 repeals this modification in lieu of the broader modification allowed by this bill. Section 4 of the bill provides that the increased satellite corporate limits of Mooresville will not increase the area within its extraterritorial land-use regulation authority.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 730

Short Title: Industrial Revenue Bond Changes.

(Public)

Sponsors: Senator Ballance.

Referred to: Finance.

April 7, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE LAW RELATING TO THE ISSUANCE OF BONDS
3 BY INDUSTRIAL FACILITIES AND POLLUTION CONTROL FINANCING
4 AUTHORITIES.
5 The General Assembly of North Carolina enacts:
6 Section 1. G.S. 159C-6 reads as rewritten:
7 "§ 159C-6. Bonds.
8 Each authority is hereby authorized to provide for the issuance, at one time or
9 from time to time, of bonds of the authority for the purpose of paying all or any part
10 of the cost of any project. The principal of, the interest on and any premium payable
11 upon the redemption of such bonds shall be payable solely from the funds herein
12 authorized for such payment. The bonds of each issue shall bear interest as may be
13 determined by the Local Government Commission of North Carolina with the
14 approval of the authority and the obligor irrespective of the limitations of G.S. 24-1.1,
15 as amended, and successor provisions. The bonds of each issue shall be dated, shall
16 mature at such time or times not exceeding ~~30 years from~~ 35 years after the date of
17 their issuance, and may be made redeemable before maturity at such price or prices
18 and under such terms and conditions, as may be fixed by the authority prior to the
19 issuance of the bonds. The authority shall determine the form and the manner of
20 execution of the bonds, including any interest coupons to be attached thereto, and
21 shall fix the denomination or denominations of the bonds and the place or places of
22 payment of principal and interest. In case any officer whose signature or a facsimile
23 of whose signature ~~shall appear~~ appears on any bonds or coupons ~~shall cease~~ ceases
24 to be ~~such~~ that officer before the delivery of such bonds, such signature or such

1 facsimile shall nevertheless be valid and sufficient for all purposes the same as if he
2 the officer had remained in office until such delivery. The authority may also provide
3 for the authentication of the bonds by a trustee or fiscal agent. The bonds may be
4 issued in coupon or in fully registered form, or both, as the authority may determine,
5 and provision may be made for the registration of any coupon bonds as to principal
6 alone and also as to both principal and interest, and for the reconversion into coupon
7 bonds of any bonds registered as to both principal and interest, and for the
8 interchange of registered and coupon bonds.

9 The proceeds of the bonds of each issue shall be used solely for the payment of the
10 cost of the project or projects, or a portion thereof, for which ~~such bonds shall~~ the
11 bonds have been issued, and shall be disbursed in such manner and under such
12 restrictions, if any, as the authority may provide in the financing agreement and the
13 security document. If the proceeds of the bonds of any issue, by reason of increased
14 construction costs or error in estimates or otherwise, ~~shall be~~ are less than such cost,
15 additional bonds may in like manner be issued to provide the amount of ~~such~~ the
16 deficiency. The authority may issue interim receipts or temporary bonds, with or
17 without coupons, exchangeable for definitive bonds when such bonds have been
18 executed and are available for delivery. The authority may also provide for the
19 replacement of any bonds ~~which shall~~ that become mutilated or ~~shall be~~ are
20 destroyed or lost.

21 Bonds may be issued under the provisions of this Chapter without obtaining,
22 except as otherwise expressly provided in this Chapter, the consent of the State or of
23 any political subdivision or of any agency of ~~either thereof,~~ either, and without any
24 other proceedings or the happening of any conditions or things other than those
25 proceedings, conditions or things which are specifically required by this Chapter and
26 the provisions of the financing agreement and security document authorizing the
27 issuance of such bonds and securing the same."

28 Section 2. G.S. 159C-7 reads as rewritten:

29 "**§ 159C-7. Approval of ~~project-~~ project by Secretary of Commerce.**

30 (a) Approval Required. -- No bonds may be issued by an authority unless the
31 project for which ~~the issuance thereof~~ their issuance is proposed is first approved by
32 the Secretary of Commerce. The authority shall file an application for approval of its
33 proposed project with the Secretary of Commerce, and shall notify the Local
34 Government Commission of such filing.

35 (b) Findings. -- The Secretary shall not approve any proposed project unless ~~he~~
36 ~~shall make~~ the Secretary makes all of the following, applicable findings:

- 37 (1) In the case of a proposed industrial project,
38 a. That the operator of the proposed project pays, or has
39 agreed to pay thereafter, an average weekly manufacturing
40 wage that (i) ~~which~~ is above the average weekly
41 manufacturing wage paid in the county, or (ii) ~~which~~ is not
42 less than ten percent (10%) above the average weekly
43 manufacturing wage paid in the State, and

- 1 b. That the proposed project will not have a materially adverse
2 effect on the ~~environment~~; environment.
- 3 (2) In the case of a proposed pollution control project, that such
4 project will have a materially favorable impact on the environment
5 or will prevent or diminish materially the impact of pollution
6 which would otherwise ~~occur~~; and occur.
- 7 (2a) In the case of a hazardous waste facility or low-level radioactive
8 waste facility ~~which~~ that is used as a reduction, recovery or
9 recycling facility, that such project will further the waste
10 management goals of North Carolina and will not have an adverse
11 effect upon public health or a significant adverse effect on the
12 environment.
- 13 (3) In any case (whether the proposed project is an industrial or a
14 pollution control project), except a pollution control project for a
15 public utility,
16 a. That the jobs to be generated or saved, directly or indirectly,
17 by the proposed project will be large enough in number to
18 have a measurable impact on the area immediately
19 surrounding the proposed project and will be commensurate
20 with the size and cost of the proposed project,
21 b. That the proposed operator of the proposed project has
22 demonstrated or can demonstrate the capability to operate
23 such project, and
24 c. That the financing of such project by the authority will not
25 cause or result in the abandonment of an existing industrial
26 or manufacturing facility of the proposed operator or an
27 affiliate elsewhere within the State unless the facility is to be
28 abandoned because of obsolescence, lack of available labor
29 in the area, or site limitations.

30 If the initial proposed operator of a project is not expected to be the operator for
31 the term of the bonds proposed to be issued, the Secretary may make the findings
32 required pursuant to subdivisions (1)a. and (3)b. only with respect to the initial
33 operator. The initial operator shall be identified in the application for approval of the
34 proposed project. ~~In no case shall the Secretary of Commerce~~

35 (c) Public Hearing. -- The Secretary of Commerce shall not approve any proposed
36 project pursuant to this section unless the governing body of the county in which the
37 project is located has first conducted a public hearing and, at or after the public
38 hearing, approved in principle the issuance of bonds under this Chapter for the
39 purpose of paying all or part of the cost of the proposed project. Notice of the public
40 hearing shall be published at least once in at least one newspaper of general
41 circulation in the county not less than 14 days before the public hearing. The notice
42 shall describe generally the bonds proposed to be issued and the proposed project,
43 including its general location, and any other information the governing body
44 considers appropriate or the Secretary of Commerce prescribes for the purpose of

1 providing the Secretary with the views of the community. The notice shall also state
2 that following the public hearing the authority intends to file an application for
3 approval of the proposed project with the Secretary of Commerce, and that any
4 person who has an objection or reservation with respect to the proposed project must
5 file a written notice of the objection or reservation with the authority or with the
6 Secretary of Commerce before the Secretary approves the project.

7 (d) Certificate of Department of Environment, Health, and Natural Resources. --
8 The Secretary of Commerce shall not make the findings required by subdivisions (1)b
9 and (2) of this section unless he shall have the Secretary has first received a
10 certification from the Department of Environment, Health, and Natural Resources
11 that, in the case of a proposed industrial project, the proposed project will not have a
12 materially adverse effect on the environment and that, in the case of a proposed
13 pollution control project, the proposed project will have a materially favorable impact
14 on the environment or will prevent or diminish materially the impact of pollution
15 which would otherwise occur. In no case shall the The Secretary of Commerce shall
16 not make the findings required by subdivision (2a) unless he shall have the Secretary
17 has first received a certification from the Department of Environment, Health, and
18 Natural Resources that the proposed project is environmentally sound, will not have
19 an adverse effect on public health and will further the waste management goals of
20 North Carolina. The Secretary of Commerce shall deliver a copy of the application to
21 the Department of Environment, Health, and Natural Resources within two working
22 days after it is filed. The Department of Environment, Health, and Natural Resources
23 shall provide each certification to the Secretary of Commerce within seven days after
24 the applicant satisfactorily demonstrates to it that all permits, including environmental
25 permits, necessary for the construction of the proposed project have been obtained,
26 unless the authority consents to a longer period of time. In any case, for a project
27 that is subject to the findings required by subdivision (b)(2) of this section, the
28 Secretary shall approve or disapprove the proposed project within 10 days after
29 receiving the required certification from the Department of Environment, Health, and
30 Natural Resources required, unless the authority consents to a longer period of time.
31 In any case where the Secretary shall make

32 (e) Waiver of Wage Requirement. -- If the Secretary of Commerce has made all of
33 the required findings respecting a proposed industrial project except that prescribed
34 in subparagraph (1)a of this section, the Secretary may, in his the Secretary's
35 discretion, approve the proposed project if he shall have the Secretary has received
36 (i) a resolution of the governing body of the county requesting that the proposed
37 project be approved notwithstanding that the operator will not pay an average weekly
38 manufacturing wage above the average weekly manufacturing wage in the county and
39 (ii) a letter from an appropriate State official, selected by the Secretary, to the effect
40 that unemployment in the county is especially severe.

41 (f) Rules. -- To facilitate his review of each proposed project, the Secretary may
42 require the authority to obtain and submit such data and information about such
43 project as the Secretary may prescribe. In addition, the Secretary may, in his
44 discretion, request the authority to hold a public hearing on the proposed project for

1 ~~the purpose of providing the Secretary directly with the views of the community to be~~
2 ~~affected.~~ The Secretary may also prescribe such forms and such rules and regulations
3 ~~as he shall deem~~ as the Secretary considers reasonably necessary to implement the
4 provisions of this section.

5 (g) Certificate of Approval. -- If the Secretary approves the proposed project, ~~he~~
6 the Secretary shall prepare a certificate of approval evidencing such approval and
7 setting forth his findings and the findings. If no objections or reservations with
8 respect to the proposed project were filed with the county at or before the public
9 hearing or with the Secretary during the period of time that the application was
10 pending, the certificate of approval shall become effective immediately upon issuance,
11 the validity of the approval shall be conclusively presumed, and no court shall have
12 the authority to inquire into the approval. In all other cases the Secretary shall cause
13 ~~said~~ the certificate of approval to be published in a newspaper of general circulation
14 within the county. Any such approval shall be reviewable as provided in Article 4 of
15 Chapter 150B of the General Statutes of North Carolina only by an action filed,
16 within 30 days after notice of such findings and approval shall have been so
17 published, in the Superior Court of Wake County. ~~Such~~ The superior court is hereby
18 vested with jurisdiction to hear such action, but if no such action is filed within the
19 30 days herein prescribed, the validity of such approval shall be conclusively
20 presumed, and no court shall have authority to inquire into such approval. Copies of
21 the certificate of approval of the proposed project will be given to the authority, the
22 governing body of the county and the Secretary of the Local Government
23 Commission.

24 ~~Such~~ The certificate of approval shall become effective immediately upon issuance
25 where no publication is required, or shall become effective immediately following the
26 expiration of ~~such~~ the 30-day period or the expiration of any appeal period after a
27 final determination by any court of any action timely filed pursuant to this section.
28 ~~Such~~ The certificate shall expire one year after its date unless extended by the
29 Secretary who shall not extend ~~such~~ the certificate unless ~~he shall again approve the~~
30 Secretary again approves the proposed project as provided in this ~~section.~~ section. If
31 bonds are issued within that year pursuant to the authorization of this Chapter to pay
32 all or part of the costs of the project, however, the certificate shall expire three years
33 after the date of the first issuance of the bonds."

34 Section 3. G.S. 159C-8 reads as rewritten:

35 "§ 159C-8. Approval of bonds. bonds by Local Government Commission.

36 (a) No bonds may be issued by an authority unless the issuance thereof is first
37 approved by the Local Government Commission.

38 The authority shall file an application for approval of its proposed bond issue with
39 the Secretary of the Local Government Commission, and shall notify the Secretary of
40 the Department of Commerce of such filing.

41 In determining whether a proposed bond issue should be approved, the Local
42 Government Commission may consider, without limitation, the following:

43 (1) Whether the proposed operator and obligor have demonstrated or
44 can demonstrate the financial responsibility and capability to fulfill

1 their obligations with respect to the financing agreement. In
2 making such determination, the Commission may consider the
3 operator's experience and the obligor's ratio of current assets to
4 current liabilities, net worth, earnings trends and coverage of fixed
5 charges, the nature of the industry or business involved and its
6 stability and any additional security such as insurance, guaranties
7 or property to be pledged to secure such bonds.

8 (2) Whether the political subdivisions in or near which the proposed
9 project is to be located have the ability to cope satisfactorily with
10 the impact of such project and to provide, or cause to be provided,
11 the public facilities and services, including utilities, that will be
12 necessary for such project and on account of any increase in
13 population which are expected to result therefrom.

14 (3) Whether the proposed date and manner of sale will have an
15 adverse effect upon any scheduled or anticipated sale of obligations
16 by the State or any political subdivision or any agency of either of
17 them.

18 If the initial proposed operator of the project is not expected to be the operator for
19 the term of the bonds proposed to be issued, the Local Government Commission may
20 consider the matters required under subdivision (1) only with respect to the initial
21 operator. The obligor shall be obligated to perform all of the duties of the obligor
22 required hereunder during the term the bonds are outstanding. The Local
23 Government Commission shall evaluate the obligor's ability to perform these duties
24 without regard to whether the initial proposed operator of the project is expected to
25 be the operator for the term of the bonds proposed to be issued. To facilitate the
26 review of the proposed bond issue by the Commission, the Secretary may require the
27 authority to obtain and submit such financial data and information about the
28 proposed bond issue and the security therefor, including the proposed prospectus or
29 offering circular, the proposed financing agreement and security document and
30 annual and other financial reports and statements of the obligor, as the Secretary may
31 prescribe. The Secretary may also prescribe such forms and such rules and
32 regulations as he shall deem reasonably necessary to implement the provisions of this
33 section.

34 (b) This section does not prohibit, prevent, or delay the distribution of a
35 preliminary prospectus or offering circular before the Local Government Commission
36 approves the bonds if the following conditions are met:

- 37 (1) The prospectus or circular is prepared by a nationally recognized
38 underwriter counsel.
39 (2) The authority has issued bonds under this Chapter for the operator
40 of the proposed project within 24 months before the application
41 for approval was filed with the Local Government Commission."

42 Section 4. G.S. 159C-10 reads as rewritten:

43 "§ 159C-10. Location of projects.

1 Except as provided in this section, any project or projects of an authority shall be
2 located within the boundaries of the county for which the authority was created. A
3 portion or portions of any project including, but not limited to, any real or personal
4 property or improvements necessary or convenient for the construction, maintenance,
5 and operation of the project, may be located in a county or counties other than the
6 county in which the principal part of the project is located so long as the additional
7 portion or portions constitute functionally appurtenant or incidental facilities and the
8 governing body of each other county in which the additional portion or portions of
9 the project is or are located approves the project. In addition, if a project or a group
10 of related projects is located in two or more adjacent counties, the project or related
11 group of projects may be considered to be one project located in any one of the
12 counties with the consent of each authority and each county for all purposes of this
13 Chapter."

14 Section 5. G.S. 159C-19(a) reads as rewritten:

15 "(a) Each authority is hereby authorized to provide by resolution for the issuance
16 of refunding bonds of the authority for the purpose of refunding any bonds then
17 outstanding ~~which shall~~ that have been issued under the provisions of this Chapter,
18 including the payment of any redemption premium thereon and any interest accrued
19 or to accrue to the date of redemption of such bonds, and, if deemed advisable by the
20 authority, for either or both of the following additional purposes:

- 21 (1) Constructing improvements, additions, extensions or enlargements
22 of the project or projects in connection with which the bonds to be
23 refunded ~~shall~~ have been issued, and
- 24 (2) Paying all or any part of the cost of any additional project or
25 projects.

26 The issuance of such bonds, the maturities and other details thereof, the rights of
27 the holders thereof, and the rights, duties and obligations of the authority in respect
28 to the same shall be governed by the provisions of this Chapter ~~which that~~ relate to
29 the issuance of bonds, insofar as such provisions may be appropriate ~~therefor~~.
30 therefor, including that any such bonds may have a single maturity within the limit
31 prescribed by G.S. 159C-6.

32 The approvals required by G.S. 159C-7 and 159C-8 shall be obtained prior to the
33 issuance of any refunding bonds; provided, however, that in the case where the
34 refunding bonds of all or a portion of an issue are to be issued solely for the purpose
35 of refunding outstanding bonds issued under this Chapter, the approval required by
36 G.S. 159C-7 shall not be required as to the project financed with the bonds to be
37 refunded."

38 Section 6. This act is effective when it becomes law.

1 that officer before the delivery of the bonds, the signature or the facsimile shall
2 nevertheless be valid and sufficient for all purposes the same as if the person had
3 remained in office until such delivery. The authority may also provide for the
4 authentication of the bonds by a trustee or fiscal agent. The bonds may be issued in
5 coupon or in fully registered form, or both, as the authority may determine, and
6 provision may be made for the registration of any coupon bonds as to principal alone
7 and also as to both principal and interest, and for the reconversion into coupon
8 bonds of any bonds registered as to both principal and interest, and for the
9 interchange of registered and coupon bonds.

10 The proceeds of the bonds of each issue shall be used solely for the payment of the
11 cost of the project or projects, or a portion thereof, for which the bonds were issued,
12 and shall be disbursed in such manner and under such restrictions, if any, as the
13 authority may provide in the financing agreement and the security document. If the
14 proceeds of the bonds of any issue, by reason of increased construction costs or error
15 in estimates or otherwise, ~~shall be~~ are less than such cost, additional bonds may in
16 like manner be issued to provide the amount of the deficiency.

17 The proceeds of bonds shall not be used to refinance the cost of a project. For the
18 purposes of this section, a cost of a project is considered refinanced if both of the
19 following conditions are met:

20 (1) The cost is initially paid from sources other than bond proceeds,
21 and the original expenditure is to be reimbursed from bond
22 proceeds.

23 (2) The original expenditure was paid more than 60 days before the
24 authority took some action indicating its intent that the
25 expenditure would be financed or reimbursed from bond proceeds.

26 However, preliminary expenditures that are incurred prior to the commencement of
27 the acquisition, construction, or rehabilitation of a project, such as architectural costs,
28 engineering costs, surveying costs, soil testing costs, bond issuance costs, and other
29 similar costs, may be reimbursed from bond proceeds even if these costs are incurred
30 or paid more than 60 days prior to the authority's action. This exception that allows
31 preliminary expenditures to be reimbursed from bond proceeds, regardless of whether
32 or not they are incurred or paid within 60 days of the authority's action, does not
33 include costs that are incurred incident to the commencement of the construction of a
34 project, such as expenditures for land acquisition and site preparation. In any event,
35 an expenditure originally paid before the authority took some action indicating its
36 intent that the expenditures would be financed or reimbursed from bond proceeds
37 may only be reimbursed from bond proceeds if the authority finds that reimbursing
38 those costs from bond proceeds will promote the purposes of this Chapter.

39 The authority may issue interim receipts or temporary bonds, with or without
40 coupons, exchangeable for definitive bonds when such bonds have been executed and
41 are available for delivery. The authority may also provide for the replacement of any
42 bonds ~~which shall~~ that become mutilated or ~~shall be~~ are destroyed or lost.

43 Bonds may be issued under the provisions of this Chapter without obtaining,
44 except as otherwise expressly provided in this Chapter, the consent of the State or of

1 any political subdivision or of any agency of ~~either thereof~~, either, and without any
2 other proceedings or the happening of any conditions or things other than those
3 proceedings, conditions or things which are specifically required by this Chapter and
4 the provisions of the financing agreement and security document authorizing the
5 issuance of such bonds and securing the same."

6 Section 2. G.S. 159C-7 reads as rewritten:

7 "§ 159C-7. Approval of project. ~~project by Secretary of Commerce.~~

8 (a) Approval Required. -- No bonds may be issued by an authority unless the
9 project for which ~~the issuance thereof~~ their issuance is proposed is first approved by
10 the Secretary of Commerce. The authority shall file an application for approval of its
11 proposed project with the Secretary of Commerce, and shall notify the Local
12 Government Commission of such filing.

13 (b) Findings. -- The Secretary shall not approve any proposed project unless ~~he~~
14 shall make the Secretary makes all of the following, applicable findings:

- 15 (1) In the case of a proposed industrial project,
16 a. That the operator of the proposed project pays, or has
17 agreed to pay thereafter, an average weekly manufacturing
18 wage that (i) ~~which~~ is above the average weekly
19 manufacturing wage paid in the county, or (ii) ~~which~~ is not
20 less than ten percent (10%) above the average weekly
21 manufacturing wage paid in the State, and
22 b. That the proposed project will not have a materially adverse
23 effect on the ~~environment~~, environment.
- 24 (2) In the case of a proposed pollution control project, that such
25 project will have a materially favorable impact on the environment
26 or will prevent or diminish materially the impact of pollution
27 which would otherwise ~~occur~~, and occur.
- 28 (2a) In the case of a hazardous waste facility or low-level radioactive
29 waste facility ~~which~~ that is used as a reduction, recovery or
30 recycling facility, that such project will further the waste
31 management goals of North Carolina and will not have an adverse
32 effect upon public health or a significant adverse effect on the
33 environment.
- 34 (3) In any case (whether the proposed project is an industrial or a
35 pollution control project), except a pollution control project for a
36 public utility,
37 a. That the jobs to be generated or saved, directly or indirectly,
38 by the proposed project will be large enough in number to
39 have a measurable impact on the area immediately
40 surrounding the proposed project and will be commensurate
41 with the size and cost of the proposed project,
42 b. That the proposed operator of the proposed project has
43 demonstrated or can demonstrate the capability to operate
44 such project, and

1 c. That the financing of such project by the authority will not
2 cause or result in the abandonment of an existing industrial
3 or manufacturing facility of the proposed operator or an
4 affiliate elsewhere within the State unless the facility is to be
5 abandoned because of obsolescence, lack of available labor
6 in the area, or site limitations.

7 If the initial proposed operator of a project is not expected to be the operator for
8 the term of the bonds proposed to be issued, the Secretary may make the findings
9 required pursuant to subdivisions (1)a. and (3)b. only with respect to the initial
10 operator. The initial operator shall be identified in the application for approval of the
11 proposed project. ~~In no case shall the Secretary of Commerce~~

12 (c) Public Hearing. -- The Secretary of Commerce shall not approve any proposed
13 project pursuant to this section unless the governing body of the county in which the
14 project is located has first conducted a public hearing and, at or after the public
15 hearing, approved in principle the issuance of bonds under this Chapter for the
16 purpose of paying all or part of the cost of the proposed project. Notice of the public
17 hearing shall be published at least once in at least one newspaper of general
18 circulation in the county not less than 14 days before the public hearing. The notice
19 shall describe generally the bonds proposed to be issued and the proposed project,
20 including its general location, and any other information the governing body
21 considers appropriate or the Secretary of Commerce prescribes for the purpose of
22 providing the Secretary with the views of the community. The notice shall also state
23 that following the public hearing the authority intends to file an application for
24 approval of the proposed project with the Secretary of Commerce.

25 (d) Certificate of Department of Environment, Health, and Natural Resources. --
26 The Secretary of Commerce shall not make the findings required by subdivisions (1)b
27 and (2) of this section unless he shall have the Secretary has first received a
28 certification from the Department of Environment, Health, and Natural Resources
29 that, in the case of a proposed industrial project, the proposed project will not have a
30 materially adverse effect on the environment and that, in the case of a proposed
31 pollution control project, the proposed project will have a materially favorable impact
32 on the environment or will prevent or diminish materially the impact of pollution
33 which would otherwise occur. In no case shall the The Secretary of Commerce shall
34 not make the findings required by subdivision (2a) unless he shall have the Secretary
35 has first received a certification from the Department of Environment, Health, and
36 Natural Resources that the proposed project is environmentally sound, will not have
37 an adverse effect on public health and will further the waste management goals of
38 North Carolina. The Secretary of Commerce shall deliver a copy of the application
39 to the Department of Environment, Health, and Natural Resources. The Department
40 of Environment, Health, and Natural Resources shall provide each certification to the
41 Secretary of Commerce within seven days after the applicant satisfactorily
42 demonstrates to it that all permits, including environmental permits, necessary for the
43 construction of the proposed project have been obtained, unless the authority
44 consents to a longer period of time. In any case where the Secretary shall make

1 (e) Waiver of Wage Requirement. -- If the Secretary of Commerce has made all of
2 the required findings respecting a proposed industrial project except that prescribed
3 in subparagraph (1)a of this section, the Secretary may, in ~~his~~ the Secretary's
4 discretion, approve the proposed project if ~~he shall have~~ the Secretary has received
5 (i) a resolution of the governing body of the county requesting that the proposed
6 project be approved notwithstanding that the operator will not pay an average weekly
7 manufacturing wage above the average weekly manufacturing wage in the county and
8 (ii) a letter from an appropriate State official, selected by the Secretary, to the effect
9 that unemployment in the county is especially severe.

10 (f) Rules. -- To facilitate ~~his~~ review of each proposed project, the Secretary may
11 require the authority to obtain and submit such data and information about such
12 project as the Secretary may prescribe. ~~In addition, the Secretary may, in his~~
13 ~~discretion, request the authority to hold a public hearing on the proposed project for~~
14 ~~the purpose of providing the Secretary directly with the views of the community to be~~
15 ~~affected.~~ The Secretary may also prescribe such forms and such rules ~~and regulations~~
16 ~~as he shall deem~~ as the Secretary considers reasonably necessary to implement the
17 provisions of this section.

18 (g) Certificate of Approval. -- If the Secretary approves the proposed project, ~~he~~
19 the Secretary shall prepare a certificate of approval evidencing such approval and
20 setting forth ~~his~~ the findings and shall cause ~~said~~ the certificate of approval to be
21 published in a newspaper of general circulation within the county. Any such approval
22 shall be reviewable as provided in Article 4 of Chapter 150B of the General Statutes
23 of North Carolina only by an action filed, within 30 days after notice of such findings
24 and approval shall have been so published, in the Superior Court of Wake County.
25 ~~Such~~ The superior court is hereby vested with jurisdiction to hear such action, but if
26 no such action is filed within the 30 days herein prescribed, the validity of such
27 approval shall be conclusively presumed, and no court shall have authority to inquire
28 into such approval. Copies of the certificate of approval of the proposed project will
29 be given to the authority, the governing body of the county and the Secretary of the
30 Local Government Commission.

31 ~~Such~~ The certificate of approval shall become effective immediately following the
32 expiration of ~~such~~ the 30-day period or the expiration of any appeal period after a
33 final determination by any court of any action timely filed pursuant to this section.
34 ~~Such~~ The certificate shall expire one year after its date unless extended by the
35 Secretary who shall not extend ~~such~~ the certificate unless ~~he shall again approve~~ the
36 Secretary again approves the proposed project as provided in this section. If bonds
37 are issued within that year pursuant to the authorization of this Chapter to pay all or
38 part of the costs of the project, however, the certificate shall expire three years after
39 the date of the first issuance of the bonds."

40 Section 3. G.S. 159C-10 reads as rewritten:

41 "**§ 159C-10. Location of projects.**

42 Except as provided in this section, any project or projects of an authority shall be
43 located within the boundaries of the county for which the authority was created. A
44 portion or portions of any project including, but not limited to, any real or personal

1 property or improvements necessary or convenient for the construction, maintenance,
2 and operation of the project, may be located in a county or counties other than the
3 county in which the principal part of the project is located so long as the additional
4 portion or portions constitute functionally appurtenant or incidental facilities and the
5 governing body of each other county in which the additional portion or portions of
6 the project is or are located approves the project. In addition, if a project or a group
7 of related projects is located in two or more adjacent counties, the authority created
8 for any one of the counties may issue bonds as provided in G.S. 159C-6 for the
9 purpose of paying all or any part of the cost of the project or group of related
10 projects if the following conditions are met:

- 11 (1) The board of commissioners of each county in which the project or
12 group of related projects is located has consented.
- 13 (2) The governing body of the authority created for each county in
14 which the project or group of related projects is located has
15 consented.
- 16 (3) The bonds are issued in compliance with all other provisions of
17 this Chapter."

18 Section 4. G.S. 159C-19(a) reads as rewritten:

19 "(a) Each authority is hereby authorized to provide by resolution for the issuance
20 of refunding bonds of the authority for the purpose of refunding any bonds then
21 outstanding ~~which shall~~ that have been issued under the provisions of this Chapter,
22 including the payment of any redemption premium thereon and any interest accrued
23 or to accrue to the date of redemption of such bonds, and, if deemed advisable by the
24 authority, for either or both of the following additional purposes:

- 25 (1) Constructing improvements, additions, extensions or enlargements
26 of the project or projects in connection with which the bonds to be
27 refunded ~~shall~~ have been issued, and
- 28 (2) Paying all or any part of the cost of any additional project or
29 projects.

30 The issuance of such bonds, the maturities and other details thereof, the rights of
31 the holders thereof, and the rights, duties and obligations of the authority in respect
32 to the same shall be governed by the provisions of this Chapter ~~which that~~ relate to
33 the issuance of bonds, insofar as such provisions may be appropriate ~~therefor.~~
34 therefor, including that any such bonds may have a single maturity within the limit
35 prescribed by G.S. 159C-6.

36 The approvals required by G.S. 159C-7 and 159C-8 shall be obtained prior to the
37 issuance of any refunding bonds; provided, however, that in the case where the
38 refunding bonds of all or a portion of an issue are to be issued solely for the purpose
39 of refunding outstanding bonds issued under this Chapter, the approval required by
40 G.S. 159C-7 shall not be required as to the project financed with the bonds to be
41 refunded."

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

EXPLANATION OF SENATE BILL 730:
Industrial Revenue Bond Changes (PCS)

TO: Senate Finance Committee
FROM: Martha H. Harris, Staff Attorney
DATE: June 9, 1997
SPONSOR: Senator Ballance

Senate Bill 730 makes the following changes to the law authorizing county authorities to issue industrial revenue bonds to finance qualifying industrial or pollution control projects for private manufacturing firms:

1. It increases the maximum term of the bonds from 30 to 35 years, and provides that refunding bonds may have the same maximum term. (Sections 1 and 4)
2. It requires a county to hold a public hearing before asking the Secretary of Commerce to approve the issuance of bonds for a proposed project. Under current law, the Secretary of Commerce has discretion to request the county authority to hold a public hearing; by rule, the Secretary requires a public hearing to be held in every case. (Section 2)
3. It imposes a seven-day turn-around time on DEHNR's required certification that a proposed industrial project will not have an adverse effect on the environment or that a proposed pollution control project will have a favorable impact on the environment or will prevent or diminish pollution. This certification is necessary before the Secretary of Commerce can approve bonds for a proposed project. (Section 2)
4. It provides that the Secretary of Commerce's certificate of approval, which is valid for one year, will remain valid for three years after bonds are first issued if bonds are issued during the initial one-year period of validity. This change will allow a company to get certification of a large project and then issue bonds over a three-year period. (Section 2)
5. It provides that if a proposed project is located in two or more counties, the county authority of any of those counties may issue the bonds if each affected county and county authority has consented. (Section 3)

Industrial Revenue Bonds offer companies engaged in manufacturing long-term debt financing at interest rates substantially below the current prime

rate. There are three types of bonds: tax-exempt bonds for industrial projects, tax-exempt bonds for pollution control projects, and federally taxable bonds for industrial projects. Under the program, a county authority may enter into a financing agreement with a company to provide revenue bond proceeds to the company to be used to finance capital expenditures, such as fixed assets, land, buildings, and equipment. The amounts payable by the company to the authority under the financing agreement must be sufficient to pay all of the principal and interest on the bonds.

Before bonds can be issued, the proposed project must be approved by the Secretary of Commerce and the bonds must be approved by the Local Government Commission. Bond proceeds cannot be used to refinance existing debt or as venture capital. Nor can they be used for a project that will result in the closing of another facility in North Carolina. The proposed project must generate a number of jobs that is commensurate with the cost of the project and will have a measurable impact on the local economy.

Typical industrial projects are new or expanded product manufacturing facilities, distribution centers, and research and development facilities necessary to the manufacturing process. To qualify for bonds for an industrial project, the company must agree to pay its employees at least the average weekly manufacturing wage of the county or the State average weekly manufacturing wage plus 10%. This wage requirement may be waived if the project is to be located in an area of especially severe unemployment.

After a project has been approved by the Department of Commerce, there is no mechanism to follow up to make sure the standards for job creation and wage level are actually met. The Department of Commerce has not been provided the resources that would be necessary for this type of oversight and auditing.

The federal government designates the maximum amount of tax-exempt industrial revenue bonds each state may issue, based on population. The 1997 amount for North Carolina is \$377 million. For a single project, tax-exempt bonds may be used to finance capital expenditures of no more than \$10 million for a single project over a six-year period. In addition, a company may not have more than \$40 million in tax-exempt bonds outstanding nationwide at any given time.

The following chart shows the history of Industrial Revenue Bonds, both

taxable and tax-exempt:

<u>Year</u>	<u>Projects</u>	<u>(\$Mil)</u>
1987	11	44.05
1988	19	70.00
1989	45	265.25
1990	20	103.30
1991	18	223.40
1992	11	53.10
1993	7	88.00
1994	10	46.40
1995	29	380.60
1996	26	153.20
to date		
1997	18	\$110.73

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 1012*

Short Title: Publication of Appellate Decisions.

(Public)

Sponsors: Senators Rucho; and Odom.

Referred to: Judiciary.

April 21, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE PARTIES WITH THE RIGHT TO THE PUBLICATION
3 OF ANY OPINION ISSUED BY THE COURT OF APPEALS.
4 The General Assembly of North Carolina enacts:
5 Section 1. Article 2 of Chapter 7A of the General Statutes is amended
6 by adding a new section to read:
7 "§ 7A-6.1. Right to publication of Court of Appeals opinions.
8 When a case is decided by the Court of Appeals without publication of an opinion
9 under Rule 30(e) of the Rules of Appellate Procedure, either party may, within 30
10 days of the issuance of the court's decision, pay to the Judicial Department an
11 amount equal to the cost of publication and providing storage for the publishing of
12 the opinion, and the court's opinion shall be published and treated in all respects as a
13 published opinion. The amount paid to the Judicial Department shall be set by the
14 Judicial Department based upon a methodology developed by the Department for
15 reflecting the actual cost of publication and storage of additional opinions, and may
16 not exceed the sum of five hundred dollars (\$500.00)."
17 Section 2. This act is effective when it becomes law and applies to
18 decisions issued on or after that date.

Proposal to amend Rule 30(e)(1) by adding the underlined paragraph.

Rule 30 Oral Argument

(e) Decision of Appeal Without Publication of an Opinion.

(1) In order to minimize the cost of publication and of providing storage space for the published reports, the Court of Appeals is not required to publish an opinion on every decided case. If the panel which hears the case determines that the appeal involves no new legal principles and that an opinion, if published, would have no value as a precedent, it may direct that no opinion be published.

Within 20 days after an unpublished opinion is filed with the Clerk of the Court of Appeals, any party to the appeal may file with the court a motion to publish the opinion. The motion shall set forth the new legal principles involved, any value as precedent or any other basis, stated with particularity, upon which the party asserts that the opinion should be published. A response may be filed by any other party to the appeal within 10 days after service of the motion.

Constitutionality of statutes which are in conflict with
provisions in the Rules of Appellate Procedure

The North Carolina Supreme Court has held on numerous occasions that statutes which are in conflict with provisions of the Rules of Appellate Procedure violate the Constitution of North Carolina and are therefore ineffective.

In *State v. Elam*, 302 N.C. 157, 273 S.E.2d 661 (1981), Justice Huskins wrote:

Subsection (6) of G.S. 15A-1446(d) is in direct conflict with Rules 10 and 14(b)(2) of the Rules of Appellate Procedure and our case law on the point. The Constitution of North Carolina provides that “[t]he Supreme Court shall have exclusive authority to make rules of practice and procedure for the Appellate Division.” N.C. Const. Art. IV § 13(2). The General Assembly was without authority to enact G.S. 15A-1446(d)(6). It violates our Constitution. Our Rule 14(b)(2) and our case law are authoritative on this point.

Id. at 160, 273 S.E.2d at 664.

This rule of constitutional interpretation has been followed on many occasions by both the North Carolina Supreme Court and Court of Appeals. For examples, see *State v. Spaugh*, 321 N.C. 550, 364 S.E.2d 368 (1988), and *State v. Bradley*, 91 N.C. App. 559, 373 S.E.2d 130 (1988).

Thus, to the extent HB 1042 and SB 1012 (allowing a party to an appeal to decide whether an opinion shall be published) is in conflict with Rule 30(e) of the Rules of Appellate Procedure promulgated by the Supreme Court (providing that the panel hearing the case in the Court of Appeals shall decide whether to publish the opinion), HB 1042/SB 1012 would appear to violate Article IV, § 13(2) of the Constitution of North Carolina and would be ineffective.

Supreme Court has no original jurisdiction over claims against the State. and the General Assembly has no authority to confer such jurisdiction upon it. *Smith v. State*, 289 N.C. 303, 222 S.E.2d 412 (1976).

The Supreme Court's jurisdiction over claims against the State is the same as over all other claims. *Smith v. State*, 289 N.C. 303, 222 S.E.2d 412 (1976).

Trial Court Must Adjudicate Claims against State. — The appropriate trial court of the General Court of Justice now has original jurisdiction to adjudicate claims against the State. *Smith v. State*, 289 N.C. 303, 222 S.E.2d 412 (1976).

Repeal and Unconstitutionality of § 7A-25. — Section 7A-25 was rendered null and void when the electorate approved revised N.C. Const., Art. IV, which deleted the provision granting the Supreme Court original jurisdiction of claims against the State. *Smith v. State*, 289 N.C. 303, 222 S.E.2d 412 (1976).

Even if the General Assembly did not intend to repeal § 7A-25, providing for original jurisdiction of claims against the State in the Supreme Court, by ratification of the 1971 revision of N.C. Const.,

Art. IV, § 7A-25 is unconstitutional. *Smith v. State*, 289 N.C. 303, 222 S.E.2d 412 (1976).

As to the original jurisdiction formerly conferred upon the Supreme Court over claims against the State, see *Bledsoe v. State*, 64 N.C. 392 (1870); *Sinclair, Owens & Brown v. State*, 69 N.C. 47 (1873); *Clements v. State*, 76 N.C. 199 (1877); *Horne v. State*, 82 N.C. 382 (1880); *Bain v. State*, 86 N.C. 49 (1882); *Baltzer v. State*, 104 N.C. 265, 10 S.E. 153 (1889); *Burton v. Furman*, 115 N.C. 166, 20 S.E. 443 (1894); *Cowles v. State*, 115 N.C. 173, 20 S.E. 384 (1894); *Miller v. State*, 134 N.C. 270, 46 S.E. 514 (1904); *Carpenter v. Atlanta & C. Air Line Ry.*, 184 N.C. 400, 114 S.E. 693 (1922); *Calkins Dredging Co. v. State*, 191 N.C. 243, 131 S.E. 665 (1926); *Lacy v. State*, 195 N.C. 284, 141 S.E. 886 (1928); *Rotan v. State*, 195 N.C. 291, 141 S.E. 733 (1928); *Warren v. State*, 199 N.C. 211, 153 S.E. 864 (1930); *Cohoon v. State*, 201 N.C. 312, 160 S.E. 183 (1931); *Dalton v. State Hwy. & Pub. Works Comm'n.*, 223 N.C. 406, 27 S.E.2d 1 (1943); *Sale v. State Hwy. & Pub. Works Comm'n.*, 242 N.C. 612, 89 S.E.2d 290 (1955).

Sec. 13. Forms of action; rules of procedure.

(1) *Forms of Action.* There shall be in this State but one form of action for the enforcement or protection of private rights or the redress of private wrongs, which shall be denominated a civil action, and in which there shall be a right to have issues of fact tried before a jury. Every action prosecuted by the people of the State as a party against a person charged with a public offense, for the punishment thereof, shall be termed a criminal action.

(2) *Rules of Procedure.* The Supreme Court shall have exclusive authority to make rules of procedure and practice for the Appellate Division. The General Assembly may make rules of procedure and practice for the Superior Court and District Court Divisions, and the General Assembly may delegate this authority to the Supreme Court. No rule of procedure or practice shall abridge substantive rights or abrogate or limit the right of trial by jury. If the General Assembly should delegate to the Supreme Court the rule-making power, the General Assembly may, nevertheless, alter, amend, or repeal any rule of procedure or practice adopted by the Supreme Court for the Superior Court or District Court Divisions.

History. — The provisions of this section are similar to those to Art. IV, § 11, Const. 1868, as that article was rewritten in 1962.

Legal Periodicals. — For article,

"The 1980 Amendments to the Federal Rules of Civil Procedure and Proposals for North Carolina Practice," see 16 *Wake Forest L. Rev.* 915 (1980).

Constitution of the United States

Tables

Administrative History

Adopted: 13 June 1975.

Amended: 3 March 1982—29(a)(1); 3 September 1987—29(a)(1); 26 July 1990—29(b)—effective 1 October 1990.

RULE 30. ORAL ARGUMENT

(a) **Order and Content of Argument.** The appellant is entitled to open and conclude the argument. The opening argument shall include a fair statement of the case. Oral arguments should complement the written briefs, and counsel will therefore not be permitted to read at length from briefs, records, and authorities.

(b) Time Allowed for Argument.

(1) *In General.* Ordinarily a total of thirty minutes will be allowed all appellants and a total of thirty minutes will be allowed all appellees for oral argument. Upon written or oral application of any party, the court for good cause shown may extend the times limited for argument. Among other causes, the existence of adverse interests between multiple appellants or between multiple appellees may be suggested as good cause for such an extension. The court of its own initiative may direct argument on specific points outside the times limited. Counsel is not obliged to use all the time allowed, and the court may terminate argument whenever it considers further argument unnecessary.

(2) *Numerous Counsel.* Any number of counsel representing individual appellants or appellees proceeding separately or jointly may be heard in argument within the times herein limited or allowed by order of court. When more than one counsel is heard, duplication or supplementation of argument on the same points shall be avoided unless specifically directed by the court.

(c) **Non-appearance of Parties.** If counsel for any party fails to appear to present oral argument, the court will hear argument from opposing counsel. If counsel for no party appears, the court will decide the case on the written briefs unless it orders otherwise.

(d) **Submission on Written Briefs.** By agreement of the parties, a case may be submitted for decision on the written briefs; but the court may nevertheless order oral argument prior to deciding the case.

(e) Decision of Appeal Without Publication of an Opinion.

(1) In order to minimize the cost of publication and of providing storage space for the published reports, the Court of Appeals is not required to publish an opinion in every decided case. If the panel which hears the case determines that the appeal involves no new legal principles and that an opinion, if published, would have no value as a precedent, it may direct that no opinion be published.

(2) Decisions without published opinion shall be reported only by listing the case and the decision in the Advance Sheets and the bound volumes of the Court of Appeals Reports.

(3) A decision without a published opinion is authority only in the case in which such decision is rendered and should not be cited in any other case in any court for any purpose, nor should any court consider any such decision for any purpose except in the case in which such decision is rendered.

(f) Pre-argument Review; Decision of Appeal Without Oral Argument.

(1) At any time that the Supreme Court concludes that oral argument in any case pending before it will not be of assistance to the Court, it may dispose of the case on the record and briefs. In those cases, counsel will be notified not to appear for oral argument.

(2) The Chief Judge of the Court of Appeals may from time to time designate a panel to review any pending case, after all briefs are filed but before argument, for decision under this rule. If all of the judges of the panel to which a pending appeal has been referred conclude that oral argument will not be of assistance to the Court, the case may be disposed of on record and briefs. Counsel will be notified not to appear for oral argument.

Administrative History

Adopted: 13 June 1975.

Amended: 18 December 1975—(e); 3 May 1976—(f); 5 February 1979—(e); 10 June 1981—(f)—to become effective 1 July 1981.

RULE 31. PETITION FOR REHEARING

(a) **Time for Filing; Content.** A petition for rehearing may be filed in a civil action within 15 days after the mandate of the court has been issued. The petition shall state with particularity the points of fact or law which, in the opinion of the petitioner, the court has overlooked or misapprehended, and shall contain such argument in support of the petition as petitioner desires to present. It shall be accompanied by a certificate of at least two attorneys who for periods of at least five years respectively, shall have been members of the bar of this State and who have no interest in the subject of the action and have not been counsel for any party to the action, that they have carefully examined the appeal and the authorities cited in the decision, and that they consider the decision in error on points specifically and concisely identified. Oral argument in support of the petition will not be permitted.

(b) **How Addressed; Filed.** A petition for rehearing shall be addressed to the court which issued the opinion sought to be reconsidered. Two copies thereof shall be filed with the clerk.

State v. Spaugh

The State's evidence at trial tended to show, *inter alia*, that the victim lived with her parents in September of 1985, which was the month prior to her thirteenth birthday. The defendant is her father. The victim testified that she came home from school and was watching television in the family living room. The defendant was the only other person in the home at the time.

The defendant asked the victim to come to his bedroom. When she entered the bedroom, the defendant was naked and lying on the bed. He told the victim to take her clothes off and lie down with him. She did as the defendant, her father, commanded and he committed sexual intercourse and sodomy upon her. She cried but the defendant yelled at her to be quiet. After completing the acts of sexual intercourse and sodomy upon the victim, the defendant told her to dress and to make the bed. He instructed her not to tell anyone about what had happened, or she "could get hurt."

The defendant offered evidence tending to show that neither his wife nor his other children had any reason to believe that the defendant had engaged in any sexual activities with the victim. The defendant testified that he had never had sexual relations with the victim at any time. He specifically denied that he had sex with the victim on an afternoon in September of 1985.

[1] Appellate counsel for the defendant first contends that the evidence as submitted to the jury was insufficient with regard to the victim's age to support the defendant's conviction for first degree rape. Although the defendant's counsel at trial made a motion for dismissal at the close of the State's evidence, that motion was waived when the defendant introduced evidence. N.C.G.S. § 15-173 (1983); App. R. 10(b)(3). Trial counsel for the defendant did not renew the motion to dismiss at the close of all of the evidence. Although N.C.G.S. § 15A-1446(d)(5) provides that questions of insufficiency of the evidence may be the subject of appellate review, even when no objection or motion has been made at trial, North Carolina Rule of Appellate Procedure 10(b)(3) provides that a defendant who fails to make a motion to dismiss at the close of all of the evidence may not attack on appeal the sufficiency of the evidence at trial. We have specifically held in this regard that: "To the extent that N.C.G.S. 15A-1446(d)(5) is inconsistent with N.C.R. App. P. 10(b)(3), the statute must fail." *State*

State v. Spaugh

v. Stocks, 319 N.C. 437, 439, 355 S.E. 2d 492, 493 (1987). Accordingly, we reject this contention by appellate counsel.

[2] The defendant next contends that he is entitled to a new trial because the trial court failed to conduct a voir dire examination to determine the competency of the victim as a witness and failed to make findings of fact and conclusions in this regard. We do not agree.

In support of his contention that the trial court was required to conduct a voir dire hearing and make findings and conclusions as to the competency of the victim as a witness, the defendant relies on the recent statement of this Court that:

The obligation of a trial judge to make a preliminary determination of a witness's competency is embodied in Rules 104(a) and 601(a) and (b) of the new North Carolina Evidence Code. . . . Underlying the evidence rules as codified and the traditional case law analysis is the assumption that, in exercising his discretion in ruling on the competency of a child witness to testify, a trial judge must rely on his personal observation of the child's demeanor and responses to inquiry on *voir dire* examination. . . . Obviously, there can be no informed exercise of discretion where a trial judge merely adopts the stipulations of counsel that a child is not competent to testify without ever having personally examined or observed the child on *voir dire*. The competency of a child witness to testify at trial is not a proper subject for stipulation of counsel absent the trial judge's independent finding pursuant to his opportunity to personally examine or observe the child on *voir dire*.

State v. Fearing, 315 N.C. 167, 173-74, 337 S.E. 2d 551, 555 (1985). In *Fearing* we held that the trial court erred in relying on a stipulation of counsel as to the competency of a child witness, rather than relying on its own observation of the child in exercising its discretion in determining the child's competency to testify. As can be seen from the foregoing quotation from *Fearing*, our primary concern was that the trial court exercise its independent discretion in deciding competency after observation of the child and not the particular procedure whereby the court conducted its observation. *Fearing* is not authority for the proposition that a defendant is entitled to a new trial in every instance in which a

State v. Bradley

Mack, however, the Court sought to distinguish *Massey* by finding that N.C.G.S. § 15A-1446(d) waives the requirement for an objection. The statute provides that:

Errors based upon the following grounds . . . may be subject to appellate review even though no objection . . . has been made in the trial division.

* * * *

(5) The evidence was insufficient as a matter of law.

This reasoning may be doubtful because N.C.G.S. § 15A-1446(d)(5) was not intended to be used in a sentencing context, but rather was designed to allow a defendant to question the sufficiency of the evidence to support a verdict against him without objecting or excepting at trial to the trial court's denial of his motion to dismiss. There is no authority to support the Court's extension of the statute to the sentencing context. We do note, however, that our Supreme Court has found that when N.C.G.S. § 15A-1446(d)(5) attempts to allow for the appeal on the sufficiency of the evidence, absent a motion or objection at trial, it is inconsistent with the provisions of Appellate Rule 10(b)(3), and as such that provision must fail. *See State v. Stocks*, 319 N.C. 437, 355 S.E. 2d 492 (1987). There is no authority to revive the statute for sentencing purposes.

Nevertheless, assuming *arguendo* that N.C.G.S. § 15A-1446(d)(5) is applicable to sentencing issues, defendant has failed to properly preserve his exceptions for review. Pursuant to Appellate Rule 10(b)(2) in order to preserve a right to appeal a party must object to the jury charge, or any omission therefrom, before the jury retires. The rule also explicitly requires a party to object to the failure of the trial court to make necessary findings and conclusions in order to advance these issues on appeal.

The purpose of this rule appears to be to provide the trial court an opportunity to correct any obvious defects and thereby eliminate the need for an appeal and a new proceeding. Implicit in this rule is also an obligation on a party to object to erroneous findings made by the trial court. This requirement is consistent with the spirit of the rule which can be ascertained from the requirements for objection with regard to errors in the jury charge. Therefore, insofar as the provisions of N.C.G.S. § 15A-1446(d)(5)

Cummings v. Snyder

allows a party to raise arguments regarding the sufficiency of the evidence to support a finding of fact at sentencing, it is inconsistent with the spirit and purpose of Rule 10(b)(2). Statutes which are in conflict with the Rules of Appellate Procedure are ineffective. See *State v. Elam*, 302 N.C. 157, 273 S.E. 2d 661 (1981). Therefore, N.C.G.S. § 15A-1446(d)(5) is ineffective to override the purpose of Rule 10(b)(2) and the case law set forth in *Massey*. Thus, defendant waived his right to appeal any possible error regarding the district attorney's statements at sentencing by failing to object to them.

No error.

Chief Judge HEDRICK and Judge WELLS concur.

CLARA S. CUMMINGS, TRUSTEE UNDER THE WILL OF PEGGY FOX SNYDER v.
CHARLES WILLIAM SNYDER, AND LISA KIRBY, GUARDIAN AD LITEM FOR
BRADLEY SNYDER

No. 8810SC269

(Filed 18 October 1988)

Wills § 28.4; Trusts § 5— marital home held in trust for benefit of husband— termination clause— construction

In an action to terminate a life estate in respondent which had been created by his deceased wife's will and held in trust for his benefit during his lifetime, the only logical interpretation of the language "in the event my said husband shall fail to reside in my said residence for at least six consecutive months during any five-year period during the term of this trust, then it shall be deemed that he thereby released his lifetime right to reside in the residence and my trustee shall then have the power to lease or sell my said residence . . ." is that respondent need only reside in the home for a single six consecutive month period during any five-year period. The trial court's order terminating the life estate was remanded for entry of judgment in favor of respondent.

Judge WELLS dissenting.

APPEAL by petitioner from *Bowen, Judge*. Order entered 8 October 1987 in Superior Court, WAKE County. Heard in the Court of Appeals 26 September 1988.

EXPLANATION OF SENATE BILL 1012:
Publication of Appellate Decisions

TO: Senate Finance Committee
FROM: Robin S. Johnson, Staff Attorney
DATE: June 10, 1997
SPONSOR: Senator Rucho

SENATE BILL 1012 would allow either party in a case decided by the Court of Appeals to request publication of the Court's opinion. Once published, the opinion is to be treated in all respects as a published opinion. The party seeking publication must pay, within 30 days of the issuance of the court's opinion, a fee to the Judicial Department. The fee, which cannot exceed \$500, would be an amount based upon the Department's methodology that reflects the actual cost of publication and storage. The bill becomes effective when it becomes law and applies to decisions issued on or after that date.

Under Rule 30(e) of the Rules of Appellate Procedure, the Court of Appeals may issue an unpublished opinion when the three-judge panel that hears the case determines that the appeal involves no new legal principles and that the opinion, if published, would have no precedent value. This Rule also provides that an unpublished decision is authority only in the case in which the decision is rendered and shall not be cited in any other case in any court for any purpose, nor should any court consider an unpublished decision for any purpose except in the case in which the decision is rendered. Senate Bill 1012 appears to change the effect of opinions that, absent this bill, would be unpublished. The bill would require these opinions to be given the same effect as any other published opinion.

Currently, most opinions of the Court of Appeals are not published. The opinions themselves must be unanimous and the decision not to publish them is also unanimous. In addition, either party may appeal the decision not to publish an opinion. Unpublished opinions are public records and are listed in published reports that identify the names of the parties and the results of the appeals. Also, copies of unpublished opinions are sent to the parties, are available to the public, including the media, and are sent to any person who requests a copy.

Constitutional Issue: Under the North Carolina Constitution, the Supreme Court has "exclusive authority to make rules of procedure and practice for the Appellate Division." As a result, the courts have consistently refused to uphold statutes that enact appellate rules or that are inconsistent with appellate rules. Senate Bill 1012 appears to contradict an appellate rule or procedure and is likely to be found unconstitutional, if enacted in its present form.

Constitutionality of statutes which are in conflict with
provisions in the Rules of Appellate Procedure

The North Carolina Supreme Court has held on numerous occasions that statutes which are in conflict with provisions of the Rules of Appellate Procedure violate the Constitution of North Carolina and are therefore ineffective.

In *State v. Elam*, 302 N.C. 157, 273 S.E.2d 661 (1981), Justice Huskins wrote:

Subsection (6) of G.S. 15A-1446(d) is in direct conflict with Rules 10 and 14(b)(2) of the Rules of Appellate Procedure and our case law on the point. The Constitution of North Carolina provides that “[t]he Supreme Court shall have exclusive authority to make rules of practice and procedure for the Appellate Division.” N.C. Const. Art. IV § 13(2). The General Assembly was without authority to enact G.S. 15A-1446(d)(6). It violates our Constitution. Our Rule 14(b)(2) and our case law are authoritative on this point.

Id. at 160, 273 S.E.2d at 664.

This rule of constitutional interpretation has been followed on many occasions by both the North Carolina Supreme Court and Court of Appeals. For examples, see *State v. Spaugh*, 321 N.C. 550, 364 S.E.2d 368 (1988), and *State v. Bradley*, 91 N.C. App. 559, 373 S.E.2d 130 (1988).

Thus, to the extent HB 1042 and SB 1012 (allowing a party to an appeal to decide whether an opinion shall be published) is in conflict with Rule 30(e) of the Rules of Appellate Procedure promulgated by the Supreme Court (providing that the panel hearing the case in the Court of Appeals shall decide whether to publish the opinion), HB 1042/SB 1012 would appear to violate Article IV, § 13(2) of the Constitution of North Carolina and would be ineffective.

**NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE**

BILL NUMBER: Senate Bill 1012

SHORT TITLE: Publication of Appellate Decisions

SPONSOR(S): Senators Rucho and Odom

FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 1997-98</u>	<u>FY 1998-99</u>	<u>FY 1999-00</u>	<u>FY 2000-01</u>	<u>FY 2001-02</u>
<u>Judicial Expenditures</u>					
Recurring	\$84,864	\$102,287	\$102,287	\$102,287	\$102,287
Nonrecurring	\$6,700				
<u>Estimated Revenues</u>	\$30,720	\$30,720	\$30,720	\$30,720	\$30,720
<u>Net Expenditures</u>	\$60,844	\$71,567	\$71,567	\$71,567	\$71,567
 POSITIONS: Assistant Appellate Reporter					
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Judicial Department					
EFFECTIVE DATE: When bill becomes law and applies to decisions issued on or after that date.					

BILL SUMMARY: *TO PROVIDE PARTIES WITH THE RIGHT TO THE PUBLICATION OF ANY OPINION ISSUED BY THE COURT OF APPEALS.* Adds new GS 7A-6.1, permitting any party to an action to pay Judicial Department costs (not to exceed \$500) for printing, publishing, and storing a court opinion when the Court of Appeals decides a case without publication of an opinion under Rule 30(e).

ASSUMPTIONS AND METHODOLOGY: Judicial Department

The Judicial Department anticipates this bill would have some fiscal impact on the court system. Currently, Court of Appeals opinions are not published when the Court determines "that the appeal involves no new legal principles and that an opinion, if published, would have no value as precedent." The proposed bill would allow any party to require publication of any opinion upon paying up to \$500 of the costs of publication. The fiscal impact would be twofold: (1) There would be a need for one additional staff person in the Appellate Reporter Office (who

administers publication of appellate opinions); and, (2) A need for additional operating funds to publish the additional opinions.

Number of Opinions

Presently, most Court of Appeals opinions are *not* published. The Clerk of the Court of Appeals reported that of the 1,399 opinions filed in 1996, approximately 959, or nearly 70%, were not published.

It is very difficult to determine how often parties would demand that opinions be published, although there appear to be several factors which seem to militate against publication. First, unpublished opinions are public records. The Court sends copies to the parties, any person may request a copy, and the media can report on cases decided by unpublished opinion. Published reports already list the cases decided by unpublished opinion, identifying the parties and briefly stating the results of the appeals. In addition, many parties, especially losing parties, may not see a large incentive to have an opinion published. A dissatisfied party may seek review by the Supreme Court or may by motion ask the Court of Appeals to reconsider its determination that an opinion will not be published. (Motions that request publication of an opinion are most often granted, but such motions are infrequent, some twelve per year.) Finally, a dissatisfied party might prefer that the decision not be published, since forcing publication would give precedential force to an opinion with which the party disagrees.

On the other hand, there are factors which may contribute to parties wanting to have opinions published. For instance, there may be some losing parties who believe that publication is necessary to hold the Court's decision up to greater public scrutiny. In addition, there may be many prevailing parties and/or their attorneys who would want an opinion to be published because they prevailed.

For purposes of this fiscal note, it is estimated that parties would request publication for 10% of the opinions that are not published now which would total approximately 96 additional opinions each year (959 opinions not published last year). These 96 additional opinions would result in an 22% increase of the number of published opinions.

Estimated Fiscal Impact

Personnel

The Appellate Reporter Office prepares appellate opinions for publication (both for the Court of Appeals and the Supreme Court). Currently, there are two full-time and one part-time Assistant Appellate Reporters, who prepare the headnotes and other legal references for all appellate opinions. (Headnotes are succinct summaries of the legal issues decided by the Court, printed for convenient reference before each opinion; the reports also include an analytical index of legal issues.) Additional staff consist of two Editorial Assistants who handle all of the non-legal indexing (including case and attorney lists), and all other administrative tasks for publication.

Based on consultations with the Clerk of the Court of Appeals, the Department estimates the potential 22% increase in the number of published opinions would necessitate one Assistant Appellate Reporter position. The costs for this position are \$54,144 recurring (position effective 10/1/97) and \$6,700 nonrecurring for FY 1997-98 and \$71,567 recurring for future years.

Costs of Publication

Appellate opinions are published in both "advance sheets" and later, in permanent bound volumes. (Advance sheets are pamphlet-like publications which are produced so that the legal profession and public have prompt access to appellate opinions which under present law the Court has determined to have value as legal precedent.) Once enough opinions have been issued, a bound volume is produced, and advance sheets are generally discarded. The Judicial Branch contracts for the printing of the appellate reports and advance sheets. Based on the most recent three editions of the advance sheets and bound volumes, the costs for printing and distribution of Court of Appeals opinions is \$64.00 *per page*. The average length of an unpublished opinion is about five printed pages. Thus, printing the 96 additional opinions would cost approximately \$30,720 each year.

Potential Revenues

Based on five pages per opinion, the average cost to a party would be \$320 (five pages times \$64 per page), which is less than the maximum of \$500 that a party could be charged under this bill. However, in instances where an opinion exceeds 8 pages in length, the party would not pay the full costs of publication (\$500 divided by \$64 per page is 7.8 pages). It is probable that some opinions would exceed eight pages. For purposes of this fiscal note, it is estimated that revenues will equal \$320 per request (\$64 X 5 pages), thus totaling about \$30,720 in fees collected each year (\$320 X 96 opinions).

TECHNICAL CONSIDERATIONS:

FISCAL RESEARCH DIVISION

733-4910

PREPARED BY: Charles Perusse

APPROVED BY: Tom L. CovingtonTomC

DATE: May 9, 1997

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

6-10-97

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Josh Cezust	NC Ct of Appeals
Gerald Arnold	NC of App
Jan Ellington	DEHNR
Howell Lile	Commerce
Angie Harris	"
Don Levine	DE HNR
Ful Bennett	CITY OF RALEIGH
Stuart Dixon	N.C. NATURAL GAS CORP
Joe Pensulio	Piedmont Natural Gas Company
Andy Romanet	W.C.L.M.
Bob Hay	Dept of State Treas.
Tom Killian	More-Van Allen
Monte Legue	"

SENATE FINANCE COMMITTEE

WEDNESDAY, JUNE 11, 1997

12:00 NOON - ROOM 544 LOB

The Senate Finance Committee met. There were 24 members of the Committee present. Senator David W. Hoyle called the meeting to order and introduced the Pages, they are Same Rose from Durham, N. C., sponsored by Senator Basnight, Robert Lee from Murfreesboro, N. C., sponsored by Senator Ballance, Emily Moore from Thomasville, N. C., sponsored by Senator Cochrane.

H. B. 342 - Mecklenburg Bid Limit Increased

Representative Alexander came to explain the bill. Senator Soles moved for a "favorable" report, motion passed.

H. B. 989 - School Administrator's Fee

Representative Rogers came and explained the bill. Senator Lee moved for a "favorable" report, motion passed.

S. B. 938 - Construction Worker Training Credit

Senator Cochrane came to explain the bill. She moved for adoption of a proposed committee substitute, motion passed. Senator Kerr sent forth an amendment to make a technical correction in the bill and moved for the amendment's adoption, motion passed. Senator Kerr moved for a "favorable" report with amendment to be rolled into adopted committee substitute for a new committee substitute, motion passed with notation that bill be re-referred to the Senate Appropriations Committee.

H. B. 476 - Vital Records Access

Representative Hurley came to explain the bill. Senator Lee moved for adoption of a proposed committee substitute, motion passed. Mr. Tory McLean, State Registrar, spoke on the bill. Mr. Ken Eudy with the N. C. Press Association spoke on the bill. Senator Conder made a motion for a "favorable" report, motion passed.

SENATE FINANCE COMMITTEE
Wednesday, June 11, 1997
Page -2-

S. B. 1037 - N. C. Railroad Act

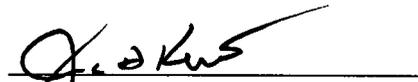
Senator Kerr came to explain the bill. Senator Hoyle stated that bill would be explained and discussed in committee but would not be voted on today.

NOTE: H. B. 340 was removed from the Agenda at the request of sponsor, Rep. Moore.

Meeting was adjourned.



David W. Hoyle, Co-Chair



John H. Kerr, III Co-Chair



Penny N. Williams, Clerk



Evelyn S. Hartsell, Clerk

NOTE:

Agenda is Attachment # 1
Visitor's Registration is Attachment # 2
Committee Report is Attachment # 3

AGENDA

SENATE FINANCE COMMITTEE

WEDNESDAY, JUNE 11, 1997

12:00 NOON - ROOM 544

SB 938 - Construction Worker Training Credit - Sen. Jordan

SB 1037 - N. C. Railroad Act - Sen. Kerr

HB 340 - Kannapolis Property Acquisitions - Rep. Moore

HB 342 - Mecklenburg Bid Limit Increased - Rep. Alexander

HB 989 - School Administrator's Fee - Rep. Rogers

HB 476 - Vital Records Access - Rep. Hurley

1 gasoline, diesel fuel, alcohol fuel, motor oil or fuel oil. Such purchases shall be
2 subject to G.S. 143-131."

3 Section 2. Section 1 of Chapter 712 of the 1993 Session Laws is repealed.

4 Section 3. Section 1 of this act applies to the County of Mecklenburg

5 only.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

3

HOUSE BILL 989*
Committee Substitute Favorable 4/23/97
Committee Substitute #2 Favorable 5/12/97

Short Title: School Administrator's Exam Fee.

(Public)

Sponsors:

Referred to:

April 17, 1997

- 1 A BILL TO BE ENTITLED
2 AN ACT TO REMOVE THE FEE FOR THE SCHOOL ADMINISTRATORS'
3 EXAM.
4 The General Assembly of North Carolina enacts:
5 Section 1. G.S. 115C-290.5(a) reads as rewritten:
6 "(a) The Standards Board shall administer this Article. In fulfilling this duty, the
7 Standards Board shall:
8 (1) In accordance with subsection (c) of this section, develop and
9 implement a North Carolina Public School Administrator Exam,
10 based on the professional standards established by the Standards
11 Board.
12 (2) Establish and collect an application fee not to exceed fifty dollars
13 ~~(\$50.00). (\$50.00), and an exam fee not to exceed one hundred~~
14 ~~fifty dollars (\$150.00).~~ Fees collected under this Article shall be
15 credited to the General Fund as nontax revenue.
16 (3) Review the educational achievements of an applicant to take the
17 exam to determine whether the achievements meet the
18 requirements set by G.S. 115C-290.7.
19 (4) Notify the State Board of Education of the names and addresses of
20 the persons who passed the exam and are thereby recommended to
21 be certified as public school administrators by the State Board of
22 Education.

- 1 (5) Maintain accounts and records in accordance with the Executive
- 2 Budget Act, Article 1 of Chapter 143 of the General Statutes.
- 3 (6) Adopt rules in accordance with Chapter 150B of the General
- 4 Statutes to implement this Article.
- 5 (7) Submit an annual report by December 1 of each year to the Joint
- 6 Legislative Education Oversight Committee of its activities during
- 7 the preceding year, together with any recommendations and
- 8 findings regarding improvement of the profession of public school
- 9 administration."
- 10 Section 2. This act becomes effective July 1, 1997.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 989 (Third Edition)

SHORT TITLE: School Administrator's Exam Fee

SPONSOR(S): Rep. Rogers

FISCAL IMPACT

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

FY 1997-98 FY 1998-99 FY 1999-00 FY 2000-01 FY 2001-02

REVENUES

EXPENDITURES

PRINCIPAL DEPARTMENT(S) &

PROGRAM(S) AFFECTED: State Board of Education - N C Standards Board for Public School Administration

EFFECTIVE DATE: The act becomes effective July 1, 1997.

BILL SUMMARY: The bill removes the fee for the school administrator's exam from the statutes.

BACKGROUND: The General Assembly created the North Carolina Standards Board for Public School Administration in 1993. For administrative purposes, the seven member board is under the State Board of Education. The Board is charged with developing and implementing a North Carolina Public School Administrator Exam effective January 1, 1998. To be eligible for the exam, a person must have a bachelors degree and a graduate degree from an accredited public school administration program. Passage of the exam is required to be certified by the State Board of Education as a public school administrator. Certification by the State Board of Education is a condition that must be met prior to assuming a job as an assistant principal or principal. Those currently serving as principals or assistant principals are grandfathered in and do not take the exam. However, for those persons who were previously certified as a principal, but are not in a principal position now, would have to take the exam in order to return to a school administrative post.

ASSUMPTIONS AND METHODOLOGY: The State Board of Education estimates that 500 individuals will take the public school administrators exam each year. The Board has chosen ETS (Education Testing Service) to administer the exam at a cost of \$400 per exam. The school administrators will pay ETS directly for the exams. The \$150 exam fee was originally placed in the statute in 1993 before the Standards Board had determined what type of exam would be given and who would administer the exam.

FISCAL RESEARCH DIVISION

733-4910

PREPARED BY: Richard Bostic

APPROVED BY: Tom Covington

DATE: June 11, 1997

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 938

Short Title: Construction Worker Training Credit.

(Public)

Sponsors: Senators Jordan; Albertson, Conder, Hoyle, Lucas, Plyler, Rand, Reeves, Soles, Warren, and Weinstein.

Referred to: Finance.

April 17, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE TAX CREDITS FOR CONSTRUCTION EMPLOYERS
3 WHO PROVIDE CRAFTWORKER TRAINING TO EMPLOYEES AND WHO
4 HIRE WELFARE RECIPIENTS.

5 The General Assembly of North Carolina enacts:

6 Section 1. G.S. 105-129.2 reads as rewritten:

7 "§ 105-129.2. (Repealed effective January 1, 2002 -- see note) Definitions.

8 The following definitions apply in this Article:

- 9 (1) Construction. -- Any of the following businesses as defined in
10 Major Groups 15, 16, and 17 of the Standard Industrial
11 Classification Manual issued by the United States Bureau of the
12 Census:
13 a. Construction.
14 b. Heavy construction.
15 c. Building-related special trades.
16 (1a) Cost. -- Defined in section 179 of the Code.
17 (2) Data processing. -- Defined in the Standard Industrial
18 Classification Manual issued by the United States Bureau of the
19 Census.
20 (3) Enterprise tier. -- The classification assigned to an area pursuant to
21 G.S. 105-129.3.
22 (4) Full-time job. -- A position that requires at least 1,600 hours of
23 work per year and is intended to be held by one employee during

1 the entire year. A full-time employee is an employee who holds a
2 full-time job.

3 (5) Machinery and equipment. -- Engines, machinery, tools, and
4 implements that are capitalized by the taxpayer for tax purposes
5 under the Code and are used or designed to be used in
6 manufacturing or processing, warehousing and distribution, or data
7 processing. The term does not include real property as defined in
8 G.S. 105-273 or rolling stock as defined in G.S. 105-333.

9 (6) Manufacturing and processing. -- Defined in the Standard
10 Industrial Classification Manual issued by the United States Bureau
11 of the Census.

12 (7) Purchase. -- Defined in section 179 of the Code.

13 (8) Warehousing and distribution. -- Defined in the Standard Industrial
14 Classification Manual issued by the United States Bureau of the
15 Census.

16 (9) Welfare recipient. -- A person who was a recipient of aid to
17 families with dependent children within the 12-month period
18 before being hired by the taxpayer."

19 Section 2. G.S. 105-129.4 reads as rewritten:

20 "**§ 105-129.4. (Repealed effective January 1, 2002) Eligibility; forfeiture.**

21 (a) Type of Business. -- A taxpayer is eligible for the credit for creating a
22 construction job for a welfare recipient under G.S. 105-129.8(a1) or the credit for
23 construction craftworker training under G.S. 105-129.11(b) if the taxpayer is engaged
24 in the business of construction. A taxpayer is eligible for ~~a credit~~ the remaining
25 credits allowed by this Article if the taxpayer engages in manufacturing or processing,
26 warehousing or distributing, or data processing, and the jobs with respect to which a
27 credit is claimed are created in that business, the machinery and equipment with
28 respect to which a credit is claimed are used in that business, and the research and
29 development for which a credit is claimed are carried out as part of that business.

30 (b) Wage Standard. -- A taxpayer is eligible for the credit for creating jobs or the
31 credit for worker training if the jobs for which the credit is claimed meet the wage
32 standard at the time the taxpayer applies for the credit. A taxpayer is eligible for the
33 credit for investing in machinery and equipment or the credit for research and
34 development if the jobs at the location with respect to which the credit is claimed
35 meet the wage standard at the time the taxpayer applies for the credit. Jobs meet the
36 wage standard if they pay an average weekly wage that is at least ten percent (10%)
37 above the average weekly wage paid in the county in which the jobs will be located.
38 In calculating the average weekly wage of jobs, positions that pay a wage or salary at
39 a rate that exceeds one hundred thousand dollars (\$100,000) a year shall be excluded.
40 For the purpose of this subsection, the average wage in a county is the average wage
41 for all insured industries in the county as computed by the Employment Security
42 Commission for the most recent period for which data are available.

43 (c) Worker Training. -- A taxpayer is eligible for the tax credit for worker training
44 only for training workers who occupy jobs for which the taxpayer is eligible to claim

1 an installment of the credit for creating jobs or which are full-time positions at a
2 location with respect to which the taxpayer is eligible to claim an installment of the
3 credit for investing in machinery and equipment for the taxable year.

4 The credit for worker training is allowed only with respect to employees in
5 positions not classified as exempt under the Fair Labor Standards Act, 29 U.S.C. §
6 213(a)(1) and for expenditures for training that would be eligible for expenditure or
7 reimbursement under the Department of Community Colleges' New and Expanding
8 Industry Program, as determined by guidelines adopted by the State Board of
9 Community Colleges. To establish eligibility, the taxpayer must obtain as part of the
10 application process under G.S. 105-129.6 the certification of the Department of
11 Community Colleges that the taxpayer's planned worker training would satisfy the
12 requirements of this paragraph. A taxpayer shall apply to the Department of
13 Community Colleges for this certification. The application must be on a form
14 provided by the Department of Community Colleges, must provide a detailed plan of
15 the worker training to be provided, and must contain any information required by the
16 Department of Community Colleges to determine whether the requirements of this
17 paragraph will be satisfied. If the Department of Community Colleges determines that
18 the planned worker training meets the requirements of this paragraph, the
19 Department of Community Colleges shall issue a certificate describing the location
20 with respect to which the credit is claimed and stating that the planned worker
21 training meets the requirements of this paragraph. The State Board of Community
22 Colleges may adopt rules in accordance with Chapter 150B of the General Statutes
23 that are needed to carry out its responsibilities under this paragraph.

24 (c) Construction Craftworker Training. -- A taxpayer is eligible for the tax credit
25 for construction craftworker training only for training construction craftworkers in
26 positions not classified as exempt under the Fair Labor Standards Act, 29 U.S.C. §
27 213(a)(1), and only for training provided pursuant to a program that satisfies the
28 following conditions:

- 29 (1) It combines classroom instruction and jobsite training in
30 construction craftwork.
31 (2) It includes competency testing to verify completion of each stage of
32 training.
33 (3) It is approved by the Department of Labor, the Department of
34 Community Colleges, or a statewide trade association that
35 represents employers engaged in the construction business.

36 To establish eligibility, the taxpayer must obtain as part of the application process
37 under G.S. 105-129.6 the certification of the Department of Community Colleges that
38 the taxpayer's planned construction craftworker training would satisfy the
39 requirements of this subsection. A taxpayer shall apply to the Department of
40 Community Colleges for this certification. The application must be on a form
41 provided by the Department of Community Colleges, must provide a detailed plan of
42 the construction craftworker training to be provided, and must contain any
43 information required by the Department of Community Colleges to determine
44 whether the requirements of this subsection will be satisfied. If the Department of

1 Community Colleges determines that the planned construction craftworker training
 2 meets the requirements of this subsection, the Department of Community Colleges
 3 shall issue a certificate describing the taxpayer, identifying the entity that approved
 4 the training program, and stating that the planned construction craftworker training
 5 meets the requirements of this subsection. The State Board of Community Colleges
 6 may adopt rules in accordance with Chapter 150B of the General Statutes that are
 7 needed to carry out its responsibilities under this subsection.

8 (d) Forfeiture. -- A taxpayer forfeits a credit allowed under this Article if the
 9 taxpayer was not eligible for the credit at the time the taxpayer applied for the credit.
 10 A taxpayer that forfeits a credit under this Article is liable for all past taxes avoided
 11 as a result of the credit plus interest at the rate established under G.S. 105-241.1(i),
 12 computed from the date the taxes would have been due if the credit had not been
 13 allowed. The past taxes and interest are due 30 days after the date the credit is
 14 forfeited; a taxpayer that fails to pay the past taxes and interest by the due date is
 15 subject to the penalties provided in G.S. 105-236. If a taxpayer forfeits the credit for
 16 creating jobs or the credit for investing in machinery and equipment, the taxpayer
 17 also forfeits any credit for worker training claimed for the jobs for which the credit
 18 for creating jobs was claimed or the jobs at the location with respect to which the
 19 credit for investing in machinery and equipment was claimed.

20 (e) Change in Ownership of Business. -- The sale, merger, acquisition, or
 21 bankruptcy of a business, or any other transaction by which an existing business
 22 reformulates itself as another business, does not create new eligibility in a succeeding
 23 business with respect to credits for which the predecessor was not eligible under this
 24 Article. A successor business may, however, take any installment of or carried-over
 25 portion of a credit that its predecessor could have taken if it had a tax liability."

26 Section 3. G.S. 105-129.8 reads as rewritten:

27 "**§ 105-129.8. (Repealed effective January 1, 2002) Credit Credits for creating jobs.**

28 (a) ~~Credit.~~ Creating Jobs. -- A taxpayer that meets the eligibility requirements set
 29 out in G.S. 105-129.4, has five or more employees for at least 40 weeks during the
 30 taxable year, and hires an additional full-time employee during that year to fill a
 31 position located in this State is allowed a credit for creating a new full-time job. The
 32 amount of the credit for each new full-time job created is set out in the table below
 33 and is based on the enterprise tier of the area in which the position is located:

34 Area Enterprise Tier	Amount of Credit
35 Tier One	\$12,500
36 Tier Two	4,000
37 Tier Three	3,000
38 Tier Four	1,000
39 Tier Five	500

40 A position is located in an area if more than fifty percent (50%) of the employee's
 41 duties are performed in the area.

42 (a1) Creating Construction Jobs for Welfare Recipients. -- A taxpayer that is
 43 engaged in the construction business, has five or more employees for at least 40
 44 weeks during the taxable year, and hires a welfare recipient as an additional full-time

1 employee during the year is allowed a credit of five hundred dollars (\$500.00) for the
2 job.

3 (a2) The credit may not be taken in the taxable year in which the additional
4 employee is hired. Instead, the credit shall be taken in equal installments over the
5 four years following the taxable year in which the additional employee was hired and
6 shall be conditioned on the continued employment by the taxpayer of the number of
7 full-time employees the taxpayer had upon hiring the employee that caused the
8 taxpayer to qualify for the credit.

9 If, in one of the four years in which the installment of a credit accrues, the number
10 of the taxpayer's full-time employees falls below the number of full-time employees
11 the taxpayer had in the year in which the taxpayer qualified for the credit, the credit
12 expires and the taxpayer may not take any remaining installment of the credit. The
13 taxpayer may, however, take the portion of an installment that accrued in a previous
14 year and was carried forward to the extent permitted under G.S. 105-129.5.

15 If, in one of the four years in which the installment of a credit accrues, a job for
16 which the welfare recipient credit was allowed is no longer filled by a welfare
17 recipient, the credit expires and the taxpayer may not take any remaining installment
18 of the welfare recipient credit with respect to that job.

19 Jobs transferred from one area in the State to another area in the State shall not be
20 considered new jobs for purposes of this section. If, in one of the four years in which
21 the installment of a credit accrues, the position filled by the employee is moved to an
22 area in a higher- or lower-numbered enterprise tier, the remaining installments of the
23 credit shall be calculated as if the position had been created initially in the area to
24 which it was moved.

25 (b) Repealed by Session Laws 1989, c. 111, s. 1.

26 (b1), (c) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.3.

27 (d) Planned Expansion. -- A taxpayer that signs a letter of commitment with the
28 Department of Commerce to create at least twenty new full-time jobs in a specific
29 area within two years of the date the letter is signed qualifies for the credit in the
30 amount allowed by subsection (a) of this section based on the area's enterprise tier
31 for that year even though the employees are not hired that year. The credit shall be
32 available in the taxable year after at least twenty employees have been hired if the
33 hirings are within the two-year commitment period. The conditions outlined in
34 subsection (a) apply to a credit taken under this subsection except that if the area is
35 redesignated to a higher-numbered enterprise tier after the year the letter of
36 commitment was signed, the credit is allowed based on the area's enterprise tier for
37 the year the letter was signed. If the taxpayer does not hire the employees within the
38 two-year period, the taxpayer does not qualify for the credit. However, if the taxpayer
39 qualifies for a credit under subsection (a) in the year any new employees are hired,
40 the taxpayer may take the credit under that subsection.

41 (e), (f) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.3 for
42 taxable years beginning on or after January 1, 1996."

43 Section 4. G.S. 105-129.11 reads as rewritten:

1 "§ 105-129.11. (Repealed effective January 1, 2002) ~~Credit for worker training.~~
2 Credits for worker training and construction craftworker training.

3 (a) ~~Credit.~~ Worker Training. -- A taxpayer that provides worker training for five
4 or more of its eligible employees during the taxable year is allowed a credit equal to
5 fifty percent (50%) of its eligible expenditures for the training. For positions located
6 in an enterprise tier one area, the credit may not exceed one thousand dollars
7 (\$1,000) per employee trained during the taxable year. For other positions, the credit
8 may not exceed five hundred dollars (\$500.00) per employee trained during the
9 taxable year. A position is located in an area if more than fifty percent (50%) of the
10 employee's duties are performed in the area.

11 (b) ~~Eligibility.~~ ~~The eligibility of a taxpayer's expenditures and employees is~~
12 ~~determined as provided in G.S. 105-129.4.~~ Construction Craftworker Training. -- A
13 taxpayer that is engaged in the construction business and provides construction
14 craftworker training to its eligible employees is allowed a credit equal to five hundred
15 dollars (\$500.00) for each employee who completes his or her 1,000th hour of the
16 provided training during the taxable year.

17 (c) Eligibility. -- The eligibility of a taxpayer's training, expenditures, and
18 employees is determined as provided in G.S. 105-129.4."

19 Section 5. This act is effective for taxable years beginning on or after
20 January 1, 1998.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

D

SENATE BILL 938
Proposed Senate Finance Committee Substitute
S938-CSLJ-5/29

Short Title: Construction Worker Training Credit. (Public)

Sponsors:

Referred to: Finance.

April 17, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE TAX CREDITS FOR CONSTRUCTION EMPLOYERS WHO
3 PROVIDE CRAFTWORKER TRAINING TO EMPLOYEES AND WHO HIRE WELFARE
4 RECIPIENTS.
5 The General Assembly of North Carolina enacts:
6 Section 1. G.S. 105-129.2 reads as rewritten:
7 "§ 105-129.2. (Repealed effective January 1, 2002 -- see note)
8 Definitions.
9 The following definitions apply in this Article:
10 (1) Construction. -- Any of the following businesses as
11 defined in Major Groups 15, 16, and 17 of the
12 Standard Industrial Classification Manual issued by
13 the United States Bureau of the Census:
14 a. Construction.
15 b. Heavy construction.
16 c. Building-related special trades.
17 (1a) Cost. -- Defined in section 179 of the Code.
18 (2) Data processing. -- Defined in the Standard
19 Industrial Classification Manual issued by the
20 United States Bureau of the Census.

- 1 (3) Enterprise tier. -- The classification assigned to
2 an area pursuant to G.S. 105-129.3.
- 3 (4) Full-time job. -- A position that requires at least
4 1,600 hours of work per year and is intended to be
5 held by one employee during the entire year. A
6 full-time employee is an employee who holds a full-
7 time job.
- 8 (5) Machinery and equipment. -- Engines, machinery,
9 tools, and implements that are capitalized by the
10 taxpayer for tax purposes under the Code and are
11 used or designed to be used in manufacturing or
12 processing, warehousing and distribution, or data
13 processing. The term does not include real property
14 as defined in G.S. 105-273 or rolling stock as
15 defined in G.S. 105-333.
- 16 (6) Manufacturing and processing. -- Defined in the
17 Standard Industrial Classification Manual issued by
18 the United States Bureau of the Census.
- 19 (7) Purchase. -- Defined in section 179 of the Code.
- 20 (8) Warehousing and distribution. -- Defined in the
21 Standard Industrial Classification Manual issued by
22 the United States Bureau of the Census.
- 23 (9) Welfare recipient. -- A person who was a recipient
24 of aid to families with dependent children within
25 the 12-month period before being hired by the
26 taxpayer."

27 Section 2. G.S. 105-129.4 reads as rewritten:

28 "§ 105-129.4. (Repealed effective January 1, 2002) Eligibility;
29 forfeiture.

30 (a) Type of Business. -- A taxpayer is eligible for the credit
31 for creating a construction job for a welfare recipient under
32 G.S. 105-129.8(a1) or the credit for construction craftworker
33 training under G.S. 105-129.11(b) if the taxpayer is engaged in
34 the business of construction. A taxpayer is eligible for a
35 credit the remaining credits allowed by this Article if the
36 taxpayer engages in manufacturing or processing, warehousing or
37 distributing, or data processing, and the jobs with respect to
38 which a credit is claimed are created in that business, the
39 machinery and equipment with respect to which a credit is claimed
40 are used in that business, and the research and development for
41 which a credit is claimed are carried out as part of that
42 business.

43 (b) Wage Standard. -- A taxpayer is eligible for the credit
44 for creating jobs or the credit for worker training if the jobs

1 for which the credit is claimed meet the wage standard at the
2 time the taxpayer applies for the credit. A taxpayer is eligible
3 for the credit for investing in machinery and equipment or the
4 credit for research and development if the jobs at the location
5 with respect to which the credit is claimed meet the wage
6 standard at the time the taxpayer applies for the credit. Jobs
7 meet the wage standard if they pay an average weekly wage that is
8 at least ten percent (10%) above the average weekly wage paid in
9 the county in which the jobs will be located. In calculating the
10 average weekly wage of jobs, positions that pay a wage or salary
11 at a rate that exceeds one hundred thousand dollars (\$100,000) a
12 year shall be excluded. For the purpose of this subsection, the
13 average wage in a county is the average wage for all insured
14 industries in the county as computed by the Employment Security
15 Commission for the most recent period for which data are
16 available.

17 (c) Worker Training. -- A taxpayer is eligible for the tax
18 credit for worker training only for training workers who occupy
19 jobs for which the taxpayer is eligible to claim an installment
20 of the credit for creating jobs or which are full-time positions
21 at a location with respect to which the taxpayer is eligible to
22 claim an installment of the credit for investing in machinery and
23 equipment for the taxable year.

24 The credit for worker training is allowed only with respect to
25 employees in positions not classified as exempt under the Fair
26 Labor Standards Act, 29 U.S.C. § 213(a)(1) and for expenditures
27 for training that would be eligible for expenditure or
28 reimbursement under the Department of Community Colleges' New and
29 Expanding Industry Program, as determined by guidelines adopted
30 by the State Board of Community Colleges. To establish
31 eligibility, the taxpayer must obtain as part of the application
32 process under G.S. 105-129.6 the certification of the Department
33 of Community Colleges that the taxpayer's planned worker training
34 would satisfy the requirements of this paragraph. A taxpayer
35 shall apply to the Department of Community Colleges for this
36 certification. The application must be on a form provided by the
37 Department of Community Colleges, must provide a detailed plan of
38 the worker training to be provided, and must contain any
39 information required by the Department of Community Colleges to
40 determine whether the requirements of this paragraph will be
41 satisfied. If the Department of Community Colleges determines
42 that the planned worker training meets the requirements of this
43 paragraph, the Department of Community Colleges shall issue a
44 certificate describing the location with respect to which the

1 credit is claimed and stating that the planned worker training
2 meets the requirements of this paragraph. The State Board of
3 Community Colleges may adopt rules in accordance with Chapter
4 150B of the General Statutes that are needed to carry out its
5 responsibilities under this paragraph.

6 (c1) Construction Craftworker Training. -- A taxpayer is
7 eligible for the tax credit for construction craftworker training
8 only for training construction craftworkers in positions not
9 classified as exempt under the Fair Labor Standards Act, 29
10 U.S.C. § 213(a)(1), and only for training provided pursuant to a
11 program that satisfies the following conditions:

- 12 (1) It combines jobsite training and related
13 instruction in construction craftwork.
- 14 (2) It includes competency testing to verify completion
15 of each stage of training.
- 16 (3) It is approved by the Department of Labor, the
17 Department of Community Colleges, or a statewide
18 trade association that represents employers engaged
19 in the construction business.

20 To establish eligibility, the taxpayer must obtain as part of the
21 application process under G.S. 105-129.6 certification that the
22 taxpayer's planned construction craftworker training would
23 satisfy the requirements of this subsection. A taxpayer must
24 apply to the Department of Labor for certification of registered
25 apprenticeships and certified on-the-job training and to the
26 Department of Community Colleges for certification of all other
27 training. The application must be on a form provided by the
28 certifying Department, must provide a detailed plan of the
29 construction craftworker training to be provided, and must
30 contain any information required by the certifying Department to
31 determine whether the requirements of this subsection will be
32 satisfied. If the certifying Department determines that the
33 planned construction craftworker training meets the requirements
34 of this subsection, it shall issue a certificate describing the
35 taxpayer, identifying the entity that approved the training
36 program, and stating that the planned construction craftworker
37 training meets the requirements of this subsection. The State
38 Board of Community Colleges and the Department of Labor may adopt
39 rules in accordance with Chapter 150B of the General Statutes
40 that are needed to carry out their responsibilities under this
41 subsection.

42 (d) Forfeiture. -- A taxpayer forfeits a credit allowed under
43 this Article if the taxpayer was not eligible for the credit at
44 the time the taxpayer applied for the credit. A taxpayer that

1 forfeits a credit under this Article is liable for all past taxes
 2 avoided as a result of the credit plus interest at the rate
 3 established under G.S. 105-241.1(i), computed from the date the
 4 taxes would have been due if the credit had not been allowed. The
 5 past taxes and interest are due 30 days after the date the credit
 6 is forfeited; a taxpayer that fails to pay the past taxes and
 7 interest by the due date is subject to the penalties provided in
 8 G.S. 105-236. If a taxpayer forfeits the credit for creating jobs
 9 or the credit for investing in machinery and equipment, the
 10 taxpayer also forfeits any credit for worker training claimed for
 11 the jobs for which the credit for creating jobs was claimed or
 12 the jobs at the location with respect to which the credit for
 13 investing in machinery and equipment was claimed.

14 (e) Change in Ownership of Business. -- The sale, merger,
 15 acquisition, or bankruptcy of a business, or any other
 16 transaction by which an existing business reformulates itself as
 17 another business, does not create new eligibility in a succeeding
 18 business with respect to credits for which the predecessor was
 19 not eligible under this Article. A successor business may,
 20 however, take any installment of or carried-over portion of a
 21 credit that its predecessor could have taken if it had a tax
 22 liability."

23 Section 3. G.S. 105-129.8 reads as rewritten:
 24 "§ 105-129.8. (Repealed effective January 1, 2002) ~~Credit~~
 25 Credits for creating jobs.

26 (a) ~~Credit.~~ Creating Jobs. -- A taxpayer that meets the
 27 eligibility requirements set out in G.S. 105-129.4, has five or
 28 more employees for at least 40 weeks during the taxable year, and
 29 hires an additional full-time employee during that year to fill a
 30 position located in this State is allowed a credit for creating a
 31 new full-time job. The amount of the credit for each new
 32 full-time job created is set out in the table below and is based
 33 on the enterprise tier of the area in which the position is
 34 located:

35 Area Enterprise Tier	Amount of Credit
36 Tier One	\$12,500
37 Tier Two	4,000
38 Tier Three	3,000
39 Tier Four	1,000
40 Tier Five	500

41 A position is located in an area if more than fifty percent
 42 (50%) of the employee's duties are performed in the area.

43 (a1) Creating Construction Jobs for Welfare Recipients. -- A
 44 taxpayer that is engaged in the construction business, has five

1 or more employees for at least 40 weeks during the taxable year,
2 and hires a welfare recipient as an additional full-time employee
3 during the year is allowed a credit of five hundred dollars
4 (\$500.00) for the job.

5 (a2) The credit may not be taken in the taxable year in which
6 the additional employee is hired. Instead, the credit shall be
7 taken in equal installments over the four years following the
8 taxable year in which the additional employee was hired and shall
9 be conditioned on the continued employment by the taxpayer of the
10 number of full-time employees the taxpayer had upon hiring the
11 employee that caused the taxpayer to qualify for the credit.

12 If, in one of the four years in which the installment of a
13 credit accrues, the number of the taxpayer's full-time employees
14 falls below the number of full-time employees the taxpayer had in
15 the year in which the taxpayer qualified for the credit, the
16 credit expires and the taxpayer may not take any remaining
17 installment of the credit. The taxpayer may, however, take the
18 portion of an installment that accrued in a previous year and was
19 carried forward to the extent permitted under G.S. 105-129.5.

20 If, in one of the four years in which the installment of a
21 credit accrues, a job for which the welfare recipient credit was
22 allowed is no longer filled by a welfare recipient, the credit
23 expires and the taxpayer may not take any remaining installment
24 of the welfare recipient credit with respect to that job.

25 Jobs transferred from one area in the State to another area in
26 the State shall not be considered new jobs for purposes of this
27 section. If, in one of the four years in which the installment of
28 a credit accrues, the position filled by the employee is moved to
29 an area in a higher- or lower-numbered enterprise tier, the
30 remaining installments of the credit shall be calculated as if
31 the position had been created initially in the area to which it
32 was moved.

33 (b) Repealed by Session Laws 1989, c. 111, s. 1.

34 (b1), (c) Repealed by Session Laws 1996, Second Extra Session,
35 c. 13, s. 3.3.

36 (d) Planned Expansion. -- A taxpayer that signs a letter of
37 commitment with the Department of Commerce to create at least
38 twenty new full-time jobs in a specific area within two years of
39 the date the letter is signed qualifies for the credit in the
40 amount allowed by subsection (a) of this section based on the
41 area's enterprise tier for that year even though the employees
42 are not hired that year. The credit shall be available in the
43 taxable year after at least twenty employees have been hired if
44 the hirings are within the two-year commitment period. The

1 conditions outlined in subsection (a) apply to a credit taken
2 under this subsection except that if the area is redesignated to
3 a higher-numbered enterprise tier after the year the letter of
4 commitment was signed, the credit is allowed based on the area's
5 enterprise tier for the year the letter was signed. If the
6 taxpayer does not hire the employees within the two-year period,
7 the taxpayer does not qualify for the credit. However, if the
8 taxpayer qualifies for a credit under subsection (a) in the year
9 any new employees are hired, the taxpayer may take the credit
10 under that subsection.

11 (e), (f) Repealed by Session Laws 1996, Second Extra Session,
12 c. 13, s. 3.3 for taxable years beginning on or after January 1,
13 1996."

14 Section 4. G.S. 105-129.11 reads as rewritten:

15 "§ 105-129.11. (Repealed effective January 1, 2002) Credit for
16 worker training. Credits for worker training and construction
17 craftworker training.

18 (a) Credit. Worker Training. -- A taxpayer that provides
19 worker training for five or more of its eligible employees during
20 the taxable year is allowed a credit equal to fifty percent (50%)
21 of its eligible expenditures for the training. For positions
22 located in an enterprise tier one area, the credit may not exceed
23 one thousand dollars (\$1,000) per employee trained during the
24 taxable year. For other positions, the credit may not exceed five
25 hundred dollars (\$500.00) per employee trained during the taxable
26 year. A position is located in an area if more than fifty percent
27 (50%) of the employee's duties are performed in the area.

28 (b) Eligibility. -- The eligibility of a taxpayer's
29 expenditures and employees is determined as provided in G.S.
30 105-129.4. Construction Craftworker Training. -- A taxpayer that
31 is engaged in the construction business and provides construction
32 craftworker training to its eligible employees is allowed a
33 credit equal to five hundred dollars (\$500.00) for each employee
34 who completes his or her 1,000th hour of the provided training
35 during the taxable year.

36 (c) Eligibility. -- The eligibility of a taxpayer's training,
37 expenditures, and employees is determined as provided in G.S.
38 105-129.4."

39 Section 5. This act is effective for taxable years
40 beginning on or after January 1, 1998.

EXPLANATION OF SENATE BILL 938
Proposed Committee Substitute
Construction Worker, Training Tax Credits

TO: Senate Finance Committee
FROM: Committee Staff
DATE: June 10, 1997
SPONSOR: Senator Luther Jordan

Senate Bill 938 establishes two new tax credits that can be taken against income tax or franchise tax. Both credits apply to construction employers. The first credit is for a construction employer who provides craftworker training for an employee. The second credit is for a construction employer who hires a welfare recipient. The credits are effective for taxable years beginning on or after January 1, 1998. The proposed committee substitute modifies the requirements and the application process for certification of a craftworker training program.

A construction employer is eligible to take the credit for providing craftworker training when one of the employer's employees completes his or her 1,000th hour of approved instruction. The credit is \$500 for each employee. Approved instruction is instruction that combines jobsite training and related instruction in construction craftwork, includes competency testing, and has been certified by the Department of Labor (for apprenticeships and on-the-job training) or the Department of Community Colleges (for all other training). To take the credit, the taxpayer must also obtain a certification from the Secretary of Commerce that the taxpayer is eligible for the credit. The training for which a credit is provided does not have to be for a job that meets the wage standards established for the existing jobs tax credit and worker training tax credit.

A construction employer is eligible to take the credit for hiring a welfare recipient if the employer has five or more employees for at least 40 weeks during the taxable year and hires a welfare recipient as an additional full-time employee. The credit is \$500 for each welfare recipient hired.

Unlike the existing jobs tax credit, the job for which the welfare recipient is hired does not have to meet the wage standards. Like the jobs tax credit, the credit may not be taken in the year in which the employee is hired but is taken in four annual installments beginning in the following year. The credit expires if, in any of these four years, the position is no longer filled by a welfare recipient or the number of full-time employees of the employer falls below the number the employer had when the welfare recipient was hired. A welfare recipient is a

person who received AFDC (aid to families with dependent children) within 12 months before being hired.

The total credits allowed by this bill, when combined with all other tax credits for new and expanding businesses, cannot exceed 50% of the taxpayer's liability for the year. Any unused portion of the credits can be carried forward for five years.

A construction employer is an employer engaged in one of three types of construction: general construction, heavy construction, or building-related special trades. General construction includes businesses primarily engaged in the construction of residential, farm, industrial, commercial, or other buildings. Heavy construction includes businesses primarily engaged in heavy construction other than building, such as highways and streets, bridges, sewers, railroads, irrigation projects, flood control projects, and marine construction. Heavy construction also includes special trade contractors primarily engaged in activities specialized to heavy construction rather than building construction. Building-related special trades includes businesses whose activities are specialized to building construction or to both building and nonbuilding projects. They include plumbing, heating and air conditioning, painting and paper hanging, electrical work, masonry, stonework, tile setting, plastering, carpentry, floor work, roofing, siding, sheet metal work, concrete work, water well drilling, excavation, demolition, antenna installation, steam cleaning, etc.

**NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL ESTIMATE**

BILL NUMBER: SB 938
SHORT TITLE: CONSTRUCTION WORKER TRAINING CREDIT
SPONSOR(S): SEN. JORDAN

FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 1997-98</u>	<u>FY 1998-99</u>	<u>FY 1999-00</u>	<u>FY 2000-01</u>	<u>FY 2001-02</u>
REVENUES					
State General Fund*			-100,000	-400,000	-800,000
EXPENDITURES: Unknown at this time					
PRINCIPAL DEPARTMENTS AFFECTED: The tax credits will be administered by the Department of Revenue along with other jobs tax credits and the regular worker training tax credit. The construction worker training tax credit will require approval by either the Department of Labor, the Department of Community Colleges, or a statewide construction trade association.					
EFFECTIVE DATE: Tax years beginning on or after January 1, 1998.					
*See "Assumptions and Methodology"					

BILL SUMMARY: (1) Amends the state income tax credit for job creation to add a \$500 credit for a construction firm (with 5 or more employees for 40 or more weeks during a tax year) for each welfare recipient hired by the employer. The credit is to be taken over 4 years, beginning with the year after the job is created. For credit purposes, a welfare recipient is defined as a person who received Aid to Families With Dependent Children dollars within the 12-month period before being hired by the employer. If during on of the four years in which the installment of the credit is taken the job is no longer filled by a welfare recipient, the credit expires and the remaining installments may not be used. The credit may not exceed 50% of the employer's tax liability with a five-year carryforward. The credit sunsets on January 1, 2002.

(2) Amends the existing worker training tax credit law to allow an income tax credit for a construction firm who provides construction craftworker training to its eligible employees. The credit is \$500 for each employee who completes 1,000 hours of the provided training during the tax year. To be eligible for the credit, the training must combine classroom instruction and jobsite training, include competency testing for each stage of training, and be approved by the state Department of Labor, the Department of Community Colleges, or a statewide trade

association that represents construction firms. The credit may not exceed 50% of the employer's tax liability with a five-year carryforward. The credit sunsets January 1, 2002.

ASSUMPTIONS AND METHODOLOGY: There is no hard data as to the number of welfare recipients that will be hired and trained by construction firms. Thus, the approach used in this note is to simulate the tax consequences based on certain assumptions. The first assumption, based on discussions with construction industry representatives about the training capacity in the industry, uses 400 additional trainees for the 1998 tax year, 1200 for the 1999 tax year, 1600 for tax year 2000, and then 1700 additional trainees for the tax year 2001. A second assumption is that the employer will receive both the hiring credit and the training credit in the year in which the training takes place. Third, it is assumed that each employer will be able to use all of the credit in the appropriate year (no carryforwards).

For information purposes, the affected construction firms had a payroll of 174,000 in 1995. In addition, the Work First program indicates that 117,500 households in the state received case assistance for 1994-95. Of this total, adult men represented 4999 (4.25%). The Work First program anticipates 50% of adult men going to work by the Year 2002. Finally, the program estimates that 2211-7775 welfare recipients will leave welfare for work during the next 5 years.

FISCAL RESEARCH DIVISION (733-4910)

PREPARED BY: Dave Crotts

APPROVED BY:

DATE: May 28, 1997



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 938

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

S938-ALCF-18



Date _____, 1997

Comm. Sub. [YES]
Amends Title []

1 moves to amend the bill on page 2, line 24,
2 by rewriting the line to read:
3 "of public assistance under Part 2 of Article 2 of Chapter 108A of
4 the General Statutes within"

SIGNED *J. Kern*
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

D

SENATE BILL 938
Proposed Committee Substitute S938-PCS6689

Short Title: Construction Worker Training Credit.

(Public)

Sponsors:

Referred to:

April 17, 1997

- 1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE TAX CREDITS FOR CONSTRUCTION EMPLOYERS
3 WHO PROVIDE CRAFTWORKER TRAINING TO EMPLOYEES AND WHO
4 HIRE WELFARE RECIPIENTS.
5 The General Assembly of North Carolina enacts:
6 Section 1. G.S. 105-129.2 reads as rewritten:
7 "§ 105-129.2. (Repealed effective January 1, 2002 -- see note) Definitions.
8 The following definitions apply in this Article:
9 (1) Construction. -- Any of the following businesses as defined in
10 Major Groups 15, 16, and 17 of the Standard Industrial
11 Classification Manual issued by the United States Bureau of the
12 Census:
13 a. Construction.
14 b. Heavy construction.
15 c. Building-related special trades.
16 (1a) Cost. -- Defined in section 179 of the Code.
17 (2) Data processing. -- Defined in the Standard Industrial
18 Classification Manual issued by the United States Bureau of the
19 Census.
20 (3) Enterprise tier. -- The classification assigned to an area pursuant to
21 G.S. 105-129.3.
22 (4) Full-time job. -- A position that requires at least 1,600 hours of
23 work per year and is intended to be held by one employee during

1 the entire year. A full-time employee is an employee who holds a
2 full-time job.

3 (5) Machinery and equipment. -- Engines, machinery, tools, and
4 implements that are capitalized by the taxpayer for tax purposes
5 under the Code and are used or designed to be used in
6 manufacturing or processing, warehousing and distribution, or data
7 processing. The term does not include real property as defined in
8 G.S. 105-273 or rolling stock as defined in G.S. 105-333.

9 (6) Manufacturing and processing. -- Defined in the Standard
10 Industrial Classification Manual issued by the United States Bureau
11 of the Census.

12 (7) Purchase. -- Defined in section 179 of the Code.

13 (8) Warehousing and distribution. -- Defined in the Standard Industrial
14 Classification Manual issued by the United States Bureau of the
15 Census.

16 (9) Welfare recipient. -- A person who was a recipient of public
17 assistance under Part 2 of Article 2 of Chapter 108A of the
18 General Statutes within the 12-month period before being hired by
19 the taxpayer."

20 Section 2. G.S. 105-129.4 reads as rewritten:

21 "**§ 105-129.4. (Repealed effective January 1, 2002) Eligibility; forfeiture.**

22 (a) Type of Business. -- A taxpayer is eligible for the credit for creating a
23 construction job for a welfare recipient under G.S. 105-129.8(a1) or the credit for
24 construction craftworker training under G.S. 105-129.11(b) if the taxpayer is engaged
25 in the business of construction. A taxpayer is eligible for ~~a credit~~ the remaining
26 credits allowed by this Article if the taxpayer engages in manufacturing or processing,
27 warehousing or distributing, or data processing, and the jobs with respect to which a
28 credit is claimed are created in that business, the machinery and equipment with
29 respect to which a credit is claimed are used in that business, and the research and
30 development for which a credit is claimed are carried out as part of that business.

31 (b) Wage Standard. -- A taxpayer is eligible for the credit for creating jobs or the
32 credit for worker training if the jobs for which the credit is claimed meet the wage
33 standard at the time the taxpayer applies for the credit. A taxpayer is eligible for the
34 credit for investing in machinery and equipment or the credit for research and
35 development if the jobs at the location with respect to which the credit is claimed
36 meet the wage standard at the time the taxpayer applies for the credit. Jobs meet the
37 wage standard if they pay an average weekly wage that is at least ten percent (10%)
38 above the average weekly wage paid in the county in which the jobs will be located.
39 In calculating the average weekly wage of jobs, positions that pay a wage or salary at
40 a rate that exceeds one hundred thousand dollars (\$100,000) a year shall be excluded.
41 For the purpose of this subsection, the average wage in a county is the average wage
42 for all insured industries in the county as computed by the Employment Security
43 Commission for the most recent period for which data are available.

1 (c) Worker Training. -- A taxpayer is eligible for the tax credit for worker training
2 only for training workers who occupy jobs for which the taxpayer is eligible to claim
3 an installment of the credit for creating jobs or which are full-time positions at a
4 location with respect to which the taxpayer is eligible to claim an installment of the
5 credit for investing in machinery and equipment for the taxable year.

6 The credit for worker training is allowed only with respect to employees in
7 positions not classified as exempt under the Fair Labor Standards Act, 29 U.S.C. §
8 213(a)(1) and for expenditures for training that would be eligible for expenditure or
9 reimbursement under the Department of Community Colleges' New and Expanding
10 Industry Program, as determined by guidelines adopted by the State Board of
11 Community Colleges. To establish eligibility, the taxpayer must obtain as part of the
12 application process under G.S. 105-129.6 the certification of the Department of
13 Community Colleges that the taxpayer's planned worker training would satisfy the
14 requirements of this paragraph. A taxpayer shall apply to the Department of
15 Community Colleges for this certification. The application must be on a form
16 provided by the Department of Community Colleges, must provide a detailed plan of
17 the worker training to be provided, and must contain any information required by the
18 Department of Community Colleges to determine whether the requirements of this
19 paragraph will be satisfied. If the Department of Community Colleges determines that
20 the planned worker training meets the requirements of this paragraph, the
21 Department of Community Colleges shall issue a certificate describing the location
22 with respect to which the credit is claimed and stating that the planned worker
23 training meets the requirements of this paragraph. The State Board of Community
24 Colleges may adopt rules in accordance with Chapter 150B of the General Statutes
25 that are needed to carry out its responsibilities under this paragraph.

26 (c1) Construction Craftworker Training. -- A taxpayer is eligible for the tax credit
27 for construction craftworker training only for training construction craftworkers in
28 positions not classified as exempt under the Fair Labor Standards Act, 29 U.S.C. §
29 213(a)(1), and only for training provided pursuant to a program that satisfies the
30 following conditions:

- 31 (1) It combines jobsite training and related instruction in construction
32 craftwork.
33 (2) It includes competency testing to verify completion of each stage of
34 training.
35 (3) It is approved by the Department of Labor, the Department of
36 Community Colleges, or a statewide trade association that
37 represents employers engaged in the construction business.

38 To establish eligibility, the taxpayer must obtain as part of the application process
39 under G.S. 105-129.6 certification that the taxpayer's planned construction
40 craftworker training would satisfy the requirements of this subsection. A taxpayer
41 must apply to the Department of Labor for certification of registered apprenticeships
42 and certified on-the-job training and to the Department of Community Colleges for
43 certification of all other training. The application must be on a form provided by the
44 certifying Department, must provide a detailed plan of the construction craftworker

1 training to be provided, and must contain any information required by the certifying
 2 Department to determine whether the requirements of this subsection will be
 3 satisfied. If the certifying Department determines that the planned construction
 4 craftworker training meets the requirements of this subsection, it shall issue a
 5 certificate describing the taxpayer, identifying the entity that approved the training
 6 program, and stating that the planned construction craftworker training meets the
 7 requirements of this subsection. The State Board of Community Colleges and the
 8 Department of Labor may adopt rules in accordance with Chapter 150B of the
 9 General Statutes that are needed to carry out their responsibilities under this
 10 subsection.

11 (d) Forfeiture. -- A taxpayer forfeits a credit allowed under this Article if the
 12 taxpayer was not eligible for the credit at the time the taxpayer applied for the credit.
 13 A taxpayer that forfeits a credit under this Article is liable for all past taxes avoided
 14 as a result of the credit plus interest at the rate established under G.S. 105-241.1(i),
 15 computed from the date the taxes would have been due if the credit had not been
 16 allowed. The past taxes and interest are due 30 days after the date the credit is
 17 forfeited; a taxpayer that fails to pay the past taxes and interest by the due date is
 18 subject to the penalties provided in G.S. 105-236. If a taxpayer forfeits the credit for
 19 creating jobs or the credit for investing in machinery and equipment, the taxpayer
 20 also forfeits any credit for worker training claimed for the jobs for which the credit
 21 for creating jobs was claimed or the jobs at the location with respect to which the
 22 credit for investing in machinery and equipment was claimed.

23 (e) Change in Ownership of Business. -- The sale, merger, acquisition, or
 24 bankruptcy of a business, or any other transaction by which an existing business
 25 reformulates itself as another business, does not create new eligibility in a succeeding
 26 business with respect to credits for which the predecessor was not eligible under this
 27 Article. A successor business may, however, take any installment of or carried-over
 28 portion of a credit that its predecessor could have taken if it had a tax liability."

29 Section 3. G.S. 105-129.8 reads as rewritten:

30 "**§ 105-129.8. (Repealed effective January 1, 2002) Credit Credits for creating jobs.**

31 (a) Credit. Creating Jobs. -- A taxpayer that meets the eligibility requirements set
 32 out in G.S. 105-129.4, has five or more employees for at least 40 weeks during the
 33 taxable year, and hires an additional full-time employee during that year to fill a
 34 position located in this State is allowed a credit for creating a new full-time job. The
 35 amount of the credit for each new full-time job created is set out in the table below
 36 and is based on the enterprise tier of the area in which the position is located:

37 Area Enterprise Tier	Amount of Credit
38 Tier One	\$12,500
39 Tier Two	4,000
40 Tier Three	3,000
41 Tier Four	1,000
42 Tier Five	500

43 A position is located in an area if more than fifty percent (50%) of the employee's
 44 duties are performed in the area.

1 (a1) Creating Construction Jobs for Welfare Recipients. -- A taxpayer that is
2 engaged in the construction business, has five or more employees for at least 40
3 weeks during the taxable year, and hires a welfare recipient as an additional full-time
4 employee during the year is allowed a credit of five hundred dollars (\$500.00) for the
5 job.

6 (a2) The credit may not be taken in the taxable year in which the additional
7 employee is hired. Instead, the credit shall be taken in equal installments over the
8 four years following the taxable year in which the additional employee was hired and
9 shall be conditioned on the continued employment by the taxpayer of the number of
10 full-time employees the taxpayer had upon hiring the employee that caused the
11 taxpayer to qualify for the credit.

12 If, in one of the four years in which the installment of a credit accrues, the number
13 of the taxpayer's full-time employees falls below the number of full-time employees
14 the taxpayer had in the year in which the taxpayer qualified for the credit, the credit
15 expires and the taxpayer may not take any remaining installment of the credit. The
16 taxpayer may, however, take the portion of an installment that accrued in a previous
17 year and was carried forward to the extent permitted under G.S. 105-129.5.

18 If, in one of the four years in which the installment of a credit accrues, a job for
19 which the welfare recipient credit was allowed is no longer filled by a welfare
20 recipient, the credit expires and the taxpayer may not take any remaining installment
21 of the welfare recipient credit with respect to that job.

22 Jobs transferred from one area in the State to another area in the State shall not be
23 considered new jobs for purposes of this section. If, in one of the four years in which
24 the installment of a credit accrues, the position filled by the employee is moved to an
25 area in a higher- or lower-numbered enterprise tier, the remaining installments of the
26 credit shall be calculated as if the position had been created initially in the area to
27 which it was moved.

28 (b) Repealed by Session Laws 1989, c. 111, s. 1.

29 (b1), (c) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.3.

30 (d) Planned Expansion. -- A taxpayer that signs a letter of commitment with the
31 Department of Commerce to create at least twenty new full-time jobs in a specific
32 area within two years of the date the letter is signed qualifies for the credit in the
33 amount allowed by subsection (a) of this section based on the area's enterprise tier
34 for that year even though the employees are not hired that year. The credit shall be
35 available in the taxable year after at least twenty employees have been hired if the
36 hirings are within the two-year commitment period. The conditions outlined in
37 subsection (a) apply to a credit taken under this subsection except that if the area is
38 redesignated to a higher-numbered enterprise tier after the year the letter of
39 commitment was signed, the credit is allowed based on the area's enterprise tier for
40 the year the letter was signed. If the taxpayer does not hire the employees within the
41 two-year period, the taxpayer does not qualify for the credit. However, if the taxpayer
42 qualifies for a credit under subsection (a) in the year any new employees are hired,
43 the taxpayer may take the credit under that subsection.

1 (e), (f) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.3 for
2 taxable years beginning on or after January 1, 1996."

3 Section 4. G.S. 105-129.11 reads as rewritten:

4 "§ 105-129.11. (Repealed effective January 1, 2002) Credit for worker training.
5 Credits for worker training and construction craftworker training.

6 (a) Credit. Worker Training. -- A taxpayer that provides worker training for five
7 or more of its eligible employees during the taxable year is allowed a credit equal to
8 fifty percent (50%) of its eligible expenditures for the training. For positions located
9 in an enterprise tier one area, the credit may not exceed one thousand dollars
10 (\$1,000) per employee trained during the taxable year. For other positions, the credit
11 may not exceed five hundred dollars (\$500.00) per employee trained during the
12 taxable year. A position is located in an area if more than fifty percent (50%) of the
13 employee's duties are performed in the area.

14 (b) Eligibility. -- The eligibility of a taxpayer's expenditures and employees is
15 determined as provided in G.S. 105-129.4. Construction Craftworker Training. -- A
16 taxpayer that is engaged in the construction business and provides construction
17 craftworker training to its eligible employees is allowed a credit equal to five hundred
18 dollars (\$500.00) for each employee who completes his or her 1,000th hour of the
19 provided training during the taxable year.

20 (c) Eligibility. -- The eligibility of a taxpayer's training, expenditures, and
21 employees is determined as provided in G.S. 105-129.4."

22 Section 5. This act is effective for taxable years beginning on or after
23 January 1, 1998.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

3

HOUSE BILL 476
Committee Substitute Favorable 4/23/97
Committee Substitute #2 Favorable 4/30/97

Short Title: Vital Records Access/AB.

(Public)

Sponsors:

Referred to:

March 10, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE VITAL RECORDS LAWS PERTAINING TO
3 ACCESS TO, COPIES AND PUBLIC NATURE OF, AND APPLICATION OF
4 AUTHORIZED FEES FOR VITAL RECORDS.
5 The General Assembly of North Carolina enacts:
6 Section 1. G.S. 130A-93 reads as rewritten:
7 "**§ 130A-93. Access to vital records; copies.**
8 (a) Only the State Registrar shall have access to original vital records and to
9 indices to the original vital records. County offices authorized to issue certificates
10 and the North Carolina State Archives also shall have access to indices to these
11 original vital records, when specifically authorized by the State Registrar.
12 (b) Individual-specific birth records, in any form and on any medium, in the
13 possession of the Department, local health departments, or local register of deeds
14 offices shall not be public records pursuant to Chapter 132 of the General Statutes.
15 Access to and copies of vital records and abstracts of vital records shall be provided
16 in accordance with G.S. 130A-99, Chapter 161 of the General Statutes, and with this
17 section. Birth data other than the names of children and parents, the addresses of
18 parents, and social security numbers of parents shall be available in accordance with
19 Chapter 132 of the General Statutes. All such records and data are State property
20 and shall be managed only in accordance with official disposition instructions
21 prepared by the Department of Cultural Resources. The application of this Chapter
22 is subject to the provisions of Article 1 of Chapter 121 of the General Statutes, the

1 North Carolina Archives and History Act. The State Registrar and other officials
2 authorized to issue certified copies of vital records shall provide copies or abstracts of
3 vital records, except those described in subsections (d), (e), (f) and ~~(g)~~, (g) of this
4 section, to any person upon request.

5 (c) The State Registrar and other officials authorized to issue certified copies of
6 vital records shall provide certified copies of vital records, except those described in
7 subsections (d), (e), (f), and ~~(g)~~, (g) of this section, only to the following:

- 8 (1) A person requesting a copy of the person's own vital records or
9 that of the person's spouse, ~~child, parent, brother or sister~~, sibling,
10 direct ancestor or descendant, or stepparent or stepchild;
11 (2) A person seeking information for a legal determination of personal
12 or property rights; or
13 (3) An authorized agent, attorney or legal representative of a person
14 described above.

15 (c1) A funeral director or funeral service licensee shall be entitled upon request to
16 a certified copy of a death certificate.

17 (d) Copies, certified copies or abstracts of birth certificates of adopted persons
18 shall be provided in accordance with G.S. 48-9-107.

19 (e) Copies or abstracts of the health and medical information contained on birth
20 certificates shall be provided only to a person requesting a copy of the health and
21 medical information contained on the person's own birth certificate, a person
22 authorized by that person, or a person who will use the information for medical
23 research purposes. Copies of or abstracts from any computer or microform database
24 which contains individual-specific health or medical birth data, whether the database
25 is maintained by the Department, a local health department, or any other public
26 official, shall be provided only to an individual requesting his or her own data, a
27 person authorized by that individual, or a person who will use the information for
28 medical research purposes. The State Registrar shall adopt rules providing for the
29 use of this information for medical research purposes. The rules shall, at a minimum,
30 require a written description of the proposed use of the data, including protocols for
31 protecting confidentiality of the data.

32 (f) Copies, certified copies or abstracts of new birth certificates issued to persons
33 in the federal witness protection program shall be provided only to a person
34 requesting a copy of the person's own birth certificate and that person's supervising
35 federal marshal.

36 (g) No copies, certified copies or abstracts of vital records shall be provided to a
37 person purporting to request copies, certified copies or abstracts of that person's own
38 vital records upon determination that the person whose vital records are being
39 requested is deceased.

40 (h) A certified copy issued under the provisions of this section shall have the same
41 evidentiary value as the original and shall be prima facie evidence of the facts stated
42 in the document. The State Registrar may appoint agents who shall have the
43 authority to issue certified copies under a facsimile signature of the State Registrar.

1 These copies shall have the same evidentiary value as those issued by the State
2 Registrar.

3 (i) Fees for issuing any copy of a vital record or for conducting a search of the
4 files when no copy is made shall be as established in G.S. ~~130A-93.1~~, 130A-93.1 and
5 G.S. 161-10.

6 (j) No person shall prepare or issue any certificate which purports to be an official
7 certified copy of a vital record except as authorized in this Article or the rules."

8 Section 2. G.S. 130A-93.1 reads as rewritten:

9 "**§ 130A-93.1. Fees for vital records copies or search; automation fund.**

10 (a) The State Registrar shall collect, process, and utilize fees for services as
11 follows:

12 (1) A fee not to exceed ten dollars (\$10.00) shall be charged for
13 issuing any copy of a vital record or for conducting a routine
14 search of the files for the record when no copy is made. When
15 certificates are issued or searches conducted by local agencies using
16 databases maintained by the State Registrar, the local agency shall
17 charge this fee and shall forward five dollars (\$5.00) of this fee to
18 the State Registrar for purposes established in subsection (b) of this
19 section.

20 (2) A fee not to exceed ten dollars (\$10.00) shall be charged in
21 addition to the fee charged under subdivision (1) of this subsection
22 and to all shipping and commercial charges when expedited
23 service is specifically requested.

24 (2a) The fee for a copy of a computer or microform database shall not
25 exceed the cost to the agency of making and providing the copy.

26 (3) Except as provided in subsection ~~(b)~~; (b) of this section, fees
27 collected under this subsection shall be used by the Department for
28 public health purposes.

29 (b) The Vital Records Automation Account is established as a nonreverting
30 account within the Department. Five dollars (\$5.00) of each fee collected pursuant
31 to subdivision (a)(1) shall be credited to this Account. The Department shall use the
32 revenue in the Account to fully automate and maintain the vital records system.
33 When funds sufficient to fully automate and maintain the system have accumulated in
34 the Account, fees shall no longer be credited to the Account but shall be used as
35 specified in subdivision ~~(a)(3)~~; (a)(3) of this section."

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

EXPLANATION OF HOUSE BILL 476:
Vital Records Access (3rd Edition)

TO: Senate Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: June 10, 1997
SPONSOR: Representative Hurley
Agency Bill

House Bill 476 makes the following changes to the vital records statutes in anticipation of the automation of the birth registration system:

- Provides that general birth data is a public record.
- Provides that specific birth data, such as the person's name, the parents' names, the addresses of the parents, the social security number of the parents, and health and medical information is not a public record.
- Expands the list of people who may obtain a certified copy of a vital record to include stepparents, stepchildren, and grandparents.
- Allows a funeral director or a funeral service licensee to obtain a certified copy of a death certificate.
- Provides that copies of or abstracts from any computer or microform database which contains individual-specific health or medical birth data may be provided only to the specific individual or a person authorized by that individual to obtain the records and to a person who will use the information for medical research purposes. This provision conforms to the current limitations on who may receive copies or abstracts of the health and medical information contained on birth certificates.
- Imposes the same fee on local agencies using the State database that the State imposes for the database's use. That fee is \$10. Five dollars of this fee is credited to the Vital Records Automation Account.
- Authorizes a fee for a copy of a computer or microform database. The fee may not exceed the cost to the agency of making and providing the copy.
- Provides that the revenue in the Vital Records Automation Account may be used to maintain the automated vital records system. Currently, the money in the Account may only be used to automate the system.

Vital records include birth certificates, death certificates, marriage certificates, and the registration of divorces and annulments. The vital records are maintained by the State Registrar. Copies of vital records may be obtained from the State Registrar as well as registers of deeds and local health departments. Currently, the records registered, maintained, and issued by local officials are limited to individual counties.

In 1991, the General Assembly created a nonreverting automation account for the purpose of automating the system of vital records in this State. The electronic system will allow statewide access to vital records, enabling the local officials to issue copies of birth certificates for persons born throughout North Carolina. Full automation is expected to be completed during late 1998. The program will be pilot-tested to allow further development of the program. Statewide access to birth certification data is expected to be available within the next three years. Statewide access to death, marriage, and divorce registration will begin in stages and is expected to be completed within the next 10 years.

The Account derives its revenues from \$5 of the fee charged by the State Registrar for issuing a copy of a vital record or for conducting a routine search of the files for a record when no copy is made. This bill requires local agencies using the State Registrar's database to charge the standard \$10 fee for searches and to forward \$5 of the fee to the State for the Vital Records Automation Account.

As the information contained on vital records becomes more available, there is growing concern about its protection. This bill specifies what information on a vital record is considered a public record. The purpose of this clarification is to prevent a person from using the Public Records Law to obtain computerized birth databases that could easily be used to generate counterfeit copies of birth certificates.

The bill becomes effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 476 (Second Edition)

SHORT TITLE: Vital Records Access/AB

SPONSOR(S): Reps. Hurley and Baddour

FISCAL IMPACT

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

FY 1997-98 FY 1998-99 FY 1999-00 FY 2000-01 FY 2001-02

REVENUES

Vital Records Automation Account (see **ASSUMPTIONS AND METHODOLOGY**)
General Fund
County Registers of Deeds

EXPENDITURES

General Fund (see **ASSUMPTIONS AND METHODOLOGY**)

PRINCIPAL DEPARTMENT(S) &

PROGRAM(S) AFFECTED: Department of Environment, Health and Natural Resources - State Center for Health Statistics ; County Registers of Deeds

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

BILL SUMMARY: The bill expands the availability of certified birth or death records to a person's direct ancestor or descendant, stepparent or stepchild, or funeral director. The bill clarifies individual-specific birth records are not public records. When a County Register of Deeds uses the state database to issue a copy of a vital record or conduct a routine search of the files for a record, then a \$10 fee is charged with \$5 kept by the local agency and \$5 forwarded to the State Registrar for deposit into the Vital Records Automation Account. The bill also expands the use of funds credited to the Vital Records Automation Account to include maintenance of the vital records automated system.

BACKGROUND: From 1991 until March 1997, the nonreverting Vital Records Automation Account has received \$1,965,835. This account has been used to equip the Vital Records Section with personal computers, to purchase and install an electronic birth registration system throughout the state, to install a system to issue computer-generated copies of birth certificates, and other automation uses. Receipts into this fund have been as follows:

FY 91-92	\$267,131
FY 92-93	\$352,214
FY 93-94	\$366,466
FY 94-95	\$363,985
FY 95-96	\$377,730
FY 96-97	\$238,310 (as of 3/1/97)

ASSUMPTIONS AND METHODOLOGY: The fiscal impact of this bill hinges on the implementation of an automated system for the statewide issuance of birth certificates. The system is scheduled for a pilot test in Harnett county next year. According to a Department of Environment, Health and Natural Resources (DEHNR) official, statewide access to birth certification would not be available until 3 years after the pilot testing. That would push statewide access to FY 2000-01. The automation of death, marriage, and divorce registration is not expected to be completed until FY 2006-07.

When county Register of Deeds are able to access the state database, every transaction will cost the consumer \$10, the same as it does today. The current \$10 is divided between the Vital Records Automation Account (\$5) and DEHNR receipts (\$5). DEHNR receipts are currently used to support the personnel and operating costs of the state's Vital Records Registration program. In the future, when a county does the transaction, the \$10 will be divided between the county (\$5) and the Vital Records Automation Account (\$5). **When transactions are performed on the state database on a regular basis by counties, then county revenues will increase, DEHNR receipts will be reduced, and the Vital Records Automation Account will be held harmless. The concern for DEHNR is that to maintain their Vital Records Registration program they may need to seek an increase in their General Fund appropriation or increase receipts to make up for the deficit due to lost transactions fees.**

DEHNR believes that expanding the access to vital records to grandparents, stepparents, stepchildren, as required in HB 476, will increase revenues. Alabama is used as an example where state revenues increased when access to vital records was expanded. Access may increase transactions, but it would seem that those transactions would occur where the customer has the easiest and fastest way to get the information and that would be at the County Register of Deeds. In the short term, an increased number of transactions may affect the department's ability to absorb the impact of lost transaction receipts on the Vital Records Registration program. However, an increase in the number of transactions, whether performed by the state or by a county, will increase the revenue credited to the Vital Records Automation Account and will in the long term benefit the Vital Records Registration program. When revenues credited to the Vital Records Automation Account exceed the level required to automate and maintain the state's vital records system, any excess funds may be used to support the Vital Records

Registration program in accordance with G.S. 130A-93.1(b), which limits the amount the amount credited to the automation account.

FISCAL RESEARCH DIVISION

733-4910

PREPARED BY: Richard Bostic & Mona Moon

APPROVED BY: Tom CovingtonTomC

DATE: April 28, 1997

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

HOUSE BILL 476
Committee Substitute Favorable 4/23/97
Committee Substitute #2 Favorable 4/30/97
Proposed Committee Substitute H476-CSLC-1
WARNING: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Vital Records Access/AB.

(Public)

Sponsors:

Referred to:

March 10, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE VITAL RECORDS LAWS PERTAINING TO ACCESS TO,
3 COPIES, AND PUBLIC NATURE OF, AND APPLICATION OF AUTHORIZED
4 FEES, FOR VITAL RECORDS.
5 The General Assembly of North Carolina enacts:
6 Section 1. G.S. 130A-93 reads as rewritten:
7 "§ 130A-93. Access to vital records; copies.
8 (a) Only the State Registrar shall have access to original
9 vital records and to indices to the original vital records.
10 County offices authorized to issue certificates and the North
11 Carolina State Archives also shall have access to indices to
12 these original vital records, when specifically authorized by the
13 State Registrar.
14 (b) The following birth data, in any form and on any medium,
15 in the possession of the Department, local health departments, or
16 local register of deeds offices shall not be public records
17 pursuant to Chapter 132 of the General Statutes: the names of
18 children and parents, the addresses of parents (other than county
19 of residence and postal code), and the social security numbers of
20 parents. Access to copies and abstracts of these data shall be

1 provided in accordance with G.S. 130A-99, Chapter 161 of the
2 General Statutes, and this section. All other birth data shall
3 be public records pursuant to Chapter 132 of the General
4 Statutes. All birth records and data are State property and
5 shall be managed only in accordance with official disposition
6 instructions prepared by the Department of Cultural Resources.
7 The application of this Chapter is subject to the provisions of
8 Article 1 of Chapter 121 of the General Statutes, the North
9 Carolina Archives and History Act. The State Registrar and other
10 officials authorized to issue certified copies of vital records
11 shall provide copies or abstracts of vital records, except those
12 described in subsections (d), (e), (f) and ~~(g)~~, (g) of this
13 section, to any person upon request.

14 (c) The State Registrar and other officials authorized to
15 issue certified copies of vital records shall provide certified
16 copies of vital records, except those described in subsections
17 (d), (e), (f), and ~~(g)~~, (g) of this section, only to the
18 following:

19 (1) A person requesting a copy of the person's own
20 vital records or that of the person's spouse,
21 ~~child, parent, brother or sister,~~ sibling, direct
22 ancestor or descendant, or stepparent or stepchild;

23 (2) A person seeking information for a legal
24 determination of personal or property rights; or

25 (3) An authorized agent, attorney or legal
26 representative of a person described above.

27 (c1) A funeral director or funeral service licensee shall be
28 entitled upon request to a certified copy of a death certificate.

29 (d) Copies, certified copies or abstracts of birth
30 certificates of adopted persons shall be provided in accordance
31 with G.S. 48-9-107.

32 (e) Copies or abstracts of the health and medical information
33 contained on birth certificates shall be provided only to a
34 person requesting a copy of the health and medical information
35 contained on the person's own birth certificate, a person
36 authorized by that person, or a person who will use the
37 information for medical research purposes. Copies of or
38 abstracts from any computer or microform database which contains
39 individual-specific health or medical birth data, whether the
40 database is maintained by the Department, a local health
41 department, or any other public official, shall be provided only
42 to an individual requesting his or her own data, a person
43 authorized by that individual, or a person who will use the
44 information for medical research purposes. The State Registrar

1 shall adopt rules providing for the use of this information for
2 medical research purposes. The rules shall, at a minimum,
3 require a written description of the proposed use of the data,
4 including protocols for protecting confidentiality of the data.

5 (f) Copies, certified copies or abstracts of new birth
6 certificates issued to persons in the federal witness protection
7 program shall be provided only to a person requesting a copy of
8 the person's own birth certificate and that person's supervising
9 federal marshall.

10 (g) No copies, certified copies or abstracts of vital records
11 shall be provided to a person purporting to request copies,
12 certified copies or abstracts of that person's own vital records
13 upon determination that the person whose vital records are being
14 requested is deceased.

15 (h) A certified copy issued under the provisions of this
16 section shall have the same evidentiary value as the original and
17 shall be prima facie evidence of the facts stated in the
18 document. The State Registrar may appoint agents who shall have
19 the authority to issue certified copies under a facsimile
20 signature of the State Registrar. These copies shall have the
21 same evidentiary value as those issued by the State Registrar.

22 (i) Fees for issuing any copy of a vital record or for
23 conducting a search of the files when no copy is made shall be as
24 established in G.S. ~~130A-93.1~~ 130A-93.1 and G.S. 161-10.

25 (j) No person shall prepare or issue any certificate which
26 purports to be an official certified copy of a vital record
27 except as authorized in this Article or the rules."

28 Section 2. G.S. 130A-93.1 reads as rewritten:

29 "§ 130A-93.1. Fees for vital records copies or search;
30 automation fund.

31 (a) The State Registrar shall collect, process, and utilize
32 fees for services as follows:

33 (1) A fee not to exceed ten dollars (\$10.00) shall be
34 charged for issuing any copy of a vital record or
35 for conducting a routine search of the files for
36 the record when no copy is made. When certificates
37 are issued or searches conducted by local agencies
38 using databases maintained by the State Registrar,
39 the local agency shall charge this fee and shall
40 forward five dollars (\$5.00) of this fee to the
41 State Registrar for purposes established in
42 subsection (b) of this section.

43 (2) A fee not to exceed ten dollars (\$10.00) shall be
44 charged in addition to the fee charged under

- 1 subdivision (1) of this subsection and to all
2 shipping and commercial charges when expedited
3 service is specifically requested.
- 4 (2a) The fee for a copy of a computer or microform
5 database shall not exceed the cost to the agency of
6 making and providing the copy.
- 7 (3) Except as provided in subsection ~~(b)~~, (b) of this
8 section, fees collected under this subsection shall
9 be used by the Department for public health
10 purposes.
- 11 (b) The Vital Records Automation Account is established as a
12 nonreverting account within the Department. Five dollars (\$5.00)
13 of each fee collected pursuant to subdivision (a)(1) shall be
14 credited to this Account. The Department shall use the revenue
15 in the Account to fully automate and maintain the vital records
16 system. When funds sufficient to fully automate and maintain the
17 system have accumulated in the Account, fees shall no longer be
18 credited to the Account but shall be used as specified in
19 subdivision ~~(a)(3)~~, (a)(3) of this section."
- 20 Section 3. This act is effective when it becomes law.

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

6/11/97
Date

Name of Committee

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Ken Eudy	Capital Strategies
Andrew Harris	NCIMED
Henry Jones	Attorney Raleigh
Dane Simpkins	CANDINAS AGC
Doug Hoff	Centurion Const. Co.
Henry Clegg	Carolina AGC
Ruth Jappie	NCDOT
Harold C. Prosser	ICAA
Paul Zessin	OSB of
DuCowell	DOR
DONNY HUNTER	NCCES

Scott NC AGC-CEO

Lynne McDaniel citizen

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

6/11/97
Date

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Hal Miller	NCACCT
DAVID BEAM	NC INSULATION CONTRACTORS ASSOC.
D. Long	DOJ
Torrey McLean	DEHNR
Jan Ellington	DEHNR
Gayle P. Holder	Harnett Co. Register of Deeds
Mallie Hestins	Charlotte Chamber of Commerce
Mary Carnilia	Mecklenburg County
Janice Roy	Mecklenburg County
Marcy Bradley	NCCBO
James Stem	UTU

SENATE FINANCE COMMITTEE

TUESDAY, JUNE 17, 1997

12 NOON - ROOM 544 LOB

The Senate Finance Committee met on June 17, 1997, with Senator Kerr presiding. There were 25 committee members present.

H.B. 773 - Bald Head Island Charter

Representative Redwine was recognized to explain his H.B. 773. A proposed committee substitute was adopted on motion by Senator Weinstein. At the conclusion of Representative Redwine's explanation, Senator Weinstein moved for a "favorable" report for the committee substitute and the motion carried. Copy of bill and committee substitute included in the minutes.

H.B. 363 - Child Support Options/Fees

Representative Gardner was recognized to explain H.B. 363. At the conclusion of her explanation, Senator Phillips moved for a "favorable" report and the motion carried. Copy of bill, explanation and fiscal note included in the minutes.

S.B. 475 - Women Work Fund

Senator Perdue was recognized to explain S.B. 475. At the conclusion of her explanation, Richard Bostic, Fiscal Research, gave a brief explanation of the fiscal note for this bill. Ms. Elaine Monaghan, Department of Administration and Coordinator for the Displaced Homemaker Programs, spoke in favor of this bill and answered questions from the committee members. Also speaking in support of this bill was Ms. Joyce Allen, Department of Administration.

Senator Kerr recognized the following people who also spoke briefly in support of this bill:

Marion Ackerman, Winston-Salem - Council on the Status of Women
Helen Worrell, Mt. Airy, Director of Women's Center in Surry County
Lois Steele, Wilmington, YWCA in Wilmington, NC

Senator Perdue offered an amendment to the bill and on her motion, this amendment was adopted by the committee. At the conclusion of discussion on this amendment, Senator Phillips moved for a "favorable" report to the bill, as amended, and there will be a committee substitute prepared for this bill. Copy of bill, amendment, committee substitute, explanation and fiscal note included in the minutes.

H.B. 337 - Randolph Occupancy Tax

Representative Culp was recognized to explain this bill. On motion by Senator Weinstein, a proposed committee substitute was adopted for discussion by the committee. On motion by Senator Dannelly, the committee substitute was given a "favorable" report by the committee. Copy of bill, committee substitute and fiscal note included in the minutes.

H.B. 748 - Matthews/Charlotte Boundary

Representative Gulley was recognized to explain this bill. At the conclusion of his explanation, Senator Rand moved for a "favorable" report and the motion carried. Copy of bill included in the minutes.

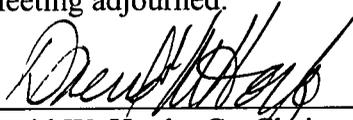
Senator Kerr announced that **H. B. 867 - Matthews Annexation/Zoning** would be pulled and discussed further at a later date.

H.B. 989 - School Administrator's Exam Fees

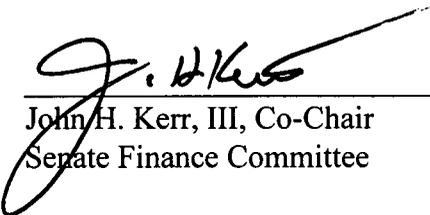
Senator Lee was recognized to explain this bill for Representative Rogers. Senator Lee offered an amendment to this bill and Cindy Avrette, Staff Attorney, explained the amendment. Ms. Anne Berlan, Legislative Director for the State Board of Education spoke in support of this bill, as it is to be amended. Also speaking in support of the bill was Ms. Linda Stevens, Director of the Standard Boards for Public School Administration. Senator Winner offered a change in the amendment. After a general discussion of this amendment, on motion by Senator Lee, the amendment was adopted. After further discussion and all questions being answered, there was a motion by Senator Dannelly that this bill, as amended, be given a "favorable" report and the motion carried. The bill, as amended, will be rolled into a Senate Committee Substitute. Copy of bill, amendment, committee substitute and explanation included in the minutes.

Minutes - Senate Finance Committee
June 17, 1997
Page 3

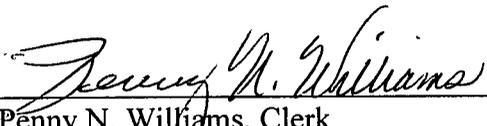
Meeting adjourned.



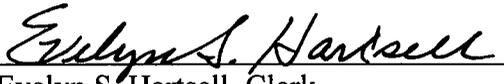
David W. Hoyle, Co-Chair
Senate Finance Committee



John H. Kerr, III, Co-Chair
Senate Finance Committee



Penny N. Williams, Clerk



Evelyn S. Hartsell, Clerk

NOTE:

Agenda is Attachment # 1
Visitors' Sign Up Sheet is Attachment # 2
Committee Reports are Attachment # 3

AGENDA

Tuesday, June 17, 1997 - 12 Noon

Room 544

S.B. 475 - Women Work Fund - Sen. Perdue

H.B. 337 - Randolph Occupancy Tax - Rep. Culp

H.B. 363 - Child Support Options/Fees - Rep. Gardner

H.B. 748 - Matthews/Charlotte Boundary - Rep. Gulley

H.B. 773 - Bald Head Island Charter - Rep. Redwine

H.B. 867 - Matthews Annexation/Zoning - Rep. Gulley

H.B. 989 - School Administrator's Exam Fees - Rep. Rogers

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 773

Short Title: Bald Head Island Charter.

(Local)

Sponsors: Representatives Redwine and Hill (Cosponsors).

Referred to: Ways and Means.

April 3, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO REVISE AND CONSOLIDATE THE CHARTER OF THE VILLAGE
3 OF BALD HEAD ISLAND.

4 Whereas, Bald Head Island is suitably located in a subtropic environment
5 and blessed with temperate climates from the Atlantic Ocean and is conducive to the
6 maintenance of permanent and retirement residences and other buildings and
7 structures with an emphasis on environmental controls and a planned community;
8 and

9 Whereas, the Village of Bald Head Island, in company with all its
10 residents and property owners and their representatives, is fully aware of the unique
11 nature of Bald Head Island with its combination of structures, land, and vegetation,
12 including the oldest standing lighthouse along the coast of the State and
13 approximately 172 acres of publicly owned prime maritime forest, that exist in a
14 delicate ecological balance requiring careful planning, nurture, and support, as
15 evidenced in the development plan for the island; and

16 Whereas, Bald Head Island is solely situated between the waters of the
17 Atlantic Ocean and the Cape Fear River and is not connected to the mainland of the
18 State by either natural or man-made structures, necessitating a unique form of
19 transportation unlike any other in the State; and

20 Whereas, the Village of Bald Head Island recognizes the inordinately
21 large numbers of nonresident property owners and values their past contributions to
22 the orderly and successful development of Bald Head Island; and

23 Whereas, while there exists no formal arrangement to continue an
24 ongoing obligatory relationship with the nonresident property owners, the Village of

1 Bald Head Island has long recognized such a relationship to be beneficial to all
2 persons who have an interest in the island and the advisability of continuing to call
3 upon nonresidents for their expertise and counsel; and

4 Whereas, the Village of Bald Head Island has served and will continue to
5 serve as a model for cooperation between government and property owners and their
6 representatives in efficient service and good planning without duplication in
7 expenditures or unnecessary taxation; and

8 Whereas, Bald Head Island with its variance in seasonal population has
9 benefited from the advantages of a municipal form of government, with the
10 modifications and limitations as specified herein, in order to achieve its goals as a
11 planned community; Now, therefore,

12 The General Assembly of North Carolina enacts:

13 Section 1. The Charter of the Village of Bald Head Island is revised and
14 consolidated to read as follows:

15 "THE CHARTER OF THE VILLAGE OF BALD HEAD ISLAND.

16 "ARTICLE I. INCORPORATION, CORPORATE POWERS, AND BOUNDARIES.

17 "Section 1.1. **Incorporation.** The Village of Bald Head Island, North Carolina, in
18 Brunswick County, and the inhabitants thereof shall continue to be a municipal body
19 politic and corporate, under the name of the 'Village of Bald Head Island',
20 hereinafter at times referred to as the 'Village'.

21 "Section 1.2. **Powers.** The Village shall have and may exercise all of the powers,
22 duties, rights, privileges, and immunities conferred upon the Village of Bald Head
23 Island specifically by this Charter or upon municipal corporations by general law.
24 The term 'general law' is employed herein as defined in G.S. 160A-1.

25 "Section 1.3. **Corporate Boundaries.** The corporate boundaries shall be those
26 existing at the time of ratification of this Charter, as set forth on the official map of
27 the Village and as they may be altered from time to time in accordance with law. An
28 official map of the Village, showing the current municipal boundaries, shall be
29 maintained permanently in the office of the Village Clerk and shall be available for
30 public inspection. Upon alteration of the corporate limits pursuant to law, the
31 appropriate changes to the official map shall be made and copies shall be filed in the
32 offices of the Secretary of State, the Brunswick County Register of Deeds, and the
33 appropriate board of elections.

34 "ARTICLE II. GOVERNING BODY.

35 "Section 2.1. **Village Governing Body; Composition.** The Mayor and the Village
36 Council shall be the governing body of the Village.

37 "Section 2.2. **Village Council; Composition; Terms of Office.** The Council shall be
38 composed of five members to be elected by all the qualified voters of the Village for
39 terms of four years, or until their successors are elected and qualified.

40 "Section 2.3. **Mayor; Term of Office; Duties.** The Mayor shall be elected by the
41 Council from among its membership, to serve for a term of two years. The Mayor
42 shall be the official head of the Village government and preside at meetings of the
43 Council, shall have the right to vote on all matters before the Council, but shall not
44 have the power to vote again in instances where there is an equal division on a

1 question, and shall exercise the powers and duties conferred by law or as directed by
2 the Council.

3 "Section 2.4. **Mayor Pro Tempore.** The Council shall elect one of its members as
4 Mayor Pro Tempore to perform the duties of the Mayor during the Mayor's absence
5 or disability, in accordance with general law.

6 "Section 2.5. **Meetings.** In accordance with general law, the Council shall
7 establish a suitable time and place for its regular meetings. Special and emergency
8 meetings may be held as provided by general law.

9 "Section 2.6. **Quorum; Voting Requirements.** Official actions of the Council and
10 all votes shall be taken in accordance with applicable provisions of general law,
11 particularly G.S. 160A-75. The quorum provisions of G.S. 160A-74 shall apply.

12 "Section 2.7. **Qualifications for Office; Compensation; Vacancies.** The
13 qualifications of the Mayor and Council members shall be in accordance with general
14 law. The Mayor and Council members shall receive no compensation for their
15 services but may be reimbursed for ordinary and necessary expenses. Vacancies shall
16 be filled as provided in G.S. 160A-63.

17 "ARTICLE III. ELECTIONS.

18 "Section 3.1. **Regular Municipal Elections.** Regular municipal elections shall be
19 held in each odd-numbered year in accordance with the uniform municipal election
20 laws of North Carolina. Elections shall be conducted on a nonpartisan basis and the
21 results determined using the nonpartisan plurality method as provided in G.S. 163-
22 292.

23 "Section 3.2. **Election of Council Members.** The Council members serving on the
24 date of ratification of this Charter shall serve until the expiration of their terms or
25 until their successors are elected and qualified. Except for the filling of vacancies as
26 provided for in G.S. 160A-63, two Council members shall be elected at the regular
27 municipal election in 1997 and every four years thereafter, and three Council
28 members shall be elected at the regular municipal election in 1999 and every four
29 years thereafter.

30 "Section 3.3. **Special Elections and Referenda.** Special elections and referenda
31 may be held only as provided by general law or applicable local acts of the General
32 Assembly.

33 "ARTICLE IV. ORGANIZATION AND ADMINISTRATION.

34 "Section 4.1. **Form of Government.** The Village shall operate under the council-
35 manager form of government, in accordance with G.S. 160A, Article 7, Part 2.

36 "Section 4.2. **Village Manager; Appointment; Powers and Duties.** The Council
37 shall appoint a Village Manager who shall be responsible for the administration of all
38 departments of the Village government. The Village Manager shall have all the
39 powers and duties conferred by general law, except as expressly limited by the
40 provisions of this Charter, and the additional powers and duties conferred by the
41 Council, so far as authorized by general law.

42 "Section 4.3. **Manager's Personnel Authority; Role of Elected Officials.** As chief
43 administrator, the Village Manager shall have the power to appoint, suspend, and
44 remove all officers, department heads, and employees in the administrative service of

1 the Village, with the exception of the Village Attorney, the Village Clerk, and any
2 other official whose appointment or removal is specifically vested in the Council by
3 this Charter or by general law. Neither the Council nor any of its members shall take
4 part in the appointment or removal of officers and employees in the administrative
5 service of the Village, except as provided by this Charter. Except for the purpose of
6 inquiry, or for consultation with the Village Attorney, the Council and its members
7 shall deal with the administrative service solely through the Village Manager, Acting
8 Manager, or Interim Manager, and neither the Council nor any of its members shall
9 give any specific orders to any subordinates of the Village Manager, Acting Manager,
10 or Interim Manager, either publicly or privately.

11 "Section 4.4. **Village Attorney.** The Village Council shall appoint a Village
12 Attorney licensed to practice law in North Carolina. It shall be the duty of the
13 Village Attorney to represent the Village, advise Village officials, and perform other
14 duties required by law or as the Council may direct.

15 "Section 4.5. **Village Clerk.** The Village Council shall appoint a Village Clerk to
16 keep a journal of the proceedings of the Council, to maintain official records and
17 documents, to give notice of meetings, and to perform such other duties required by
18 law or as the Council may direct.

19 "Section 4.6. **Tax Collector.** The Village shall have a Tax Collector to collect all
20 taxes owed to the Village, subject to general law, this Charter, and Village ordinances
21 and to perform those duties specified in G.S. 105-350 and such other duties as
22 prescribed by law or assigned by the Village Manager. Notwithstanding the
23 provisions of G.S. 105-349, the Village Manager is authorized to appoint and remove
24 the Tax Collector and any deputy tax collectors.

25 "Section 4.7. **Finance Director.** The Village Manager shall appoint a Finance
26 Officer to perform the duties designated in G.S. 159-25 and such other duties as may
27 be prescribed by law or as the Council may direct, or the Village Council may, at its
28 election, confer the duties of Finance Officer on the Village Manager as Budget
29 Officer. The Finance Officer may be entitled 'Accountant,' 'Treasurer,' 'Finance
30 Director,' 'Finance Officer,' or any other reasonably descriptive title.

31 "Section 4.8. **Other Administrative Officers and Employees.** The Council may
32 authorize other positions to be filled by appointment by the Village Manager, and
33 may organize the Village government as deemed appropriate, subject to the
34 requirements of general law.

35 "ARTICLE V. FINANCE AND TAXATION.

36 "Section 5.1. **Room Occupancy and Tourism Development Tax.** The authority of
37 the Village to levy a room occupancy and tourism tax shall continue as authorized by
38 Chapter 664 of the 1991 Session Laws, and any subsequent acts.

39 "ARTICLE VI. CONTRACT POST OFFICE.

40 "Section 6.1. **Contract Post Office.** The authority of the Village to operate a
41 contract post office shall continue as authorized by Chapter 16 of the 1991 Session
42 Laws, as amended by Chapter 350 of the 1991 Session Laws, and any subsequent acts.

43 "ARTICLE VII. NO-WAKE SPEED ZONE.

1 "Section 7.1. 'No-Wake' Speed Zone. The 'no-wake' speed zone established by
2 Chapter 688 of the 1987 Session Laws, and any subsequent acts, shall continue as
3 authorized.

4 "ARTICLE VIII. MISCELLANEOUS.

5 "Section 8.1. **Motorboat Operation.** The Village may regulate the speed and
6 operation of motorboats within the Village jurisdiction to preserve the tranquility
7 and environment of the Village.

8 "Section 8.2. **Sand Dunes.** The Village may construct, reconstruct, plant, and
9 maintain sand dunes and regulate access to and across dunes to prevent or repair
10 damage to dunes so as to provide protection against erosion or overwash.

11 "Section 8.3. **Beach Regulation.** The Village may, by ordinance, establish
12 standards of dress, conduct, and decorum on the beaches of Bald Head Island and
13 may otherwise regulate the use of those beaches within the Village jurisdiction.

14 "ARTICLE IX. PHASED DEVELOPMENT PLAN.

15 "Section 9.1. **Phased Development Plan.** In accordance with an act to incorporate
16 the Village of Bald Head Island, Chapter 156 of the 1985 Session Laws, the Village
17 Council was required to adopt by ordinance plans of development consistent with the
18 historical land-use patterns and densities in existence on Bald Head Island at the time
19 of ratification of the act. The Village Council, after public hearing and upon
20 recommendation of its Planning Board, adopted a zoning ordinance for the
21 undeveloped portions of Bald Head Island consistent with those historical land-use
22 patterns and densities. Such zoning ordinance is based upon a 'Phased Development
23 Plan' (as that term is defined in G.S. 160A-385.1(b)(3)), which plan was prepared by
24 Bald Head Island Limited.

25 "Section 9.2. **Vested Rights.** The owners of the undeveloped portions of Bald
26 Head Island are declared hereby to have acquired vested rights in accordance with
27 G.S. 160A-385.1 as to the 'Phased Development Plan' entitled 'Revised June 29, 1995
28 STAGE 2 MASTER PLAN BALD HEAD ISLAND NORTH CAROLINA BALD
29 HEAD ISLAND PLANNING DEPARTMENT' and approved by the State Division
30 of Coastal Management on August 7, 1995. Notwithstanding the provisions of G.S.
31 160A-385.1(d), these vested rights shall be valid through December 31, 1999, and no
32 longer. Nothing in this section shall be construed to prohibit the further granting of
33 vested rights by the Village pursuant to the provisions of G.S. 160A-385.1.

34 "Section 9.3. **Alteration of Vested Rights.** As specifically authorized by G.S.
35 160A-385.1(e)(1)a., the vested rights herein granted may only be changed, prior to
36 December 31, 1999, as allowed by the exceptions set forth in G.S. 160A-385.1(e). In
37 addition, subject to the approval of the Village and within the limits established by
38 the Village zoning and other land-use ordinances, vested densities may be transferred
39 within the area depicted on the Stage 2 Master Plan referred to in Section 9.2 of this
40 Charter so long as the density of development within the total area is not increased.

41 "Section 9.4. **Land-Use Regulation.** Except as herein expressly provided, nothing
42 in this Charter shall be construed to prohibit the Village from amending its current
43 land-use regulatory ordinances, in whole or in part, or otherwise regulating the use of
44 land within the planning and zoning jurisdiction of the Village.

1 **"ARTICLE X. MOTOR VEHICLE REGULATION.**

2 **"Section 10.1. Motor Vehicle Regulation.** The Village may by ordinance exempt
3 from the provisions of Articles 3, 3A, 11, and 13 of Chapter 20 of the General
4 Statutes, in whole or in part, the registration, licensing, regulation, inspection, or
5 equipping of motor vehicles and may regulate the use, operation, possession, and
6 ownership of motor vehicles within the jurisdiction of the Village of Bald Head
7 Island. Additionally, notwithstanding the provisions of Chapter 20 of the General
8 Statutes or any other statute, and in addition to those powers now or hereafter
9 conferred by law, the Village shall have the authority to regulate motor vehicles and
10 other means of transportation within the jurisdiction of the Village, including the
11 following:

12 (1) Regulation of the use and operation of all vehicles, as defined in G.S. 20-
13 4.01(49).

14 (2) Regulation of all electrically powered vehicles or vehicles powered by fossil
15 fuel or internal combustion engines.

16 (3) Regulation of the size, weight, lighting, safety standards, and engine or motor
17 size or power characteristics of all vehicles or other means of transportation within
18 the jurisdiction of the Village.

19 **"Section 10.2. Street Regulation.** In order to establish and preserve the unique
20 character and aesthetics of Bald Head Island, the Village may adopt, by ordinance,
21 such standards for the establishment and maintenance of streets and roads within the
22 jurisdiction of the Village as it deems appropriate. The streets and roads within the
23 jurisdiction of the Village shall not be under the authority of the North Carolina
24 Department of Transportation. The provisions of Articles 2 and 2A of Chapter 136
25 of the General Statutes shall not apply within the jurisdiction of the Village. The
26 Village shall be exempt from the provisions of G.S. 136-66.2.

27 **"ARTICLE XI. SEA TURTLE SANCTUARY.**

28 **"Section 11.1. Sea Turtle Sanctuary.** The Village of Bald Head Island may create
29 and establish a sea turtle sanctuary within the areas of the Village limits above the
30 mean low watermark, to include the foreshore. Any ordinances adopted by the
31 Village to regulate activities within the sea turtle sanctuary that may or will disturb or
32 destroy a sea turtle, a sea turtle nest, or sea turtle eggs, must be consistent with the
33 ordinance powers found in G.S. 160A-174, G.S. 160A-308, and any other law. The
34 ordinances adopted by the Village may by cross-reference incorporate the criminal
35 statutes regarding the taking of sea turtles at G.S. 113-189 and G.S. 113-337. It shall
36 be unlawful for any person within the sea turtle sanctuary to disturb or destroy a sea
37 turtle, a sea turtle nest, or sea turtle eggs in violation of an ordinance adopted by the
38 Village of Bald Head Island."

39 Section 2. The purpose of this act is to revise the Charter of the Village
40 of Bald Head Island and to consolidate certain acts concerning the property, affairs,
41 and government of the Village. It is intended to continue without interruption those
42 provisions of prior acts which are expressly consolidated into this act, so that all
43 rights and liabilities which have accrued are preserved and may be enforced.

1 Section 3. This act does not repeal or affect any acts concerning the
2 property, affairs, or government of public schools or any acts validating official
3 actions, proceedings, contracts, or obligations of any kind.

4 Section 4. The provisions of Chapter 156 of the 1985 Session Laws,
5 except for the provisions of Section 4-3(f), (g), and (h), having served the purposes
6 for which they were enacted or having been consolidated into this act, are expressly
7 repealed. The provisions of Section 4-3(f), (g), and (h) of Chapter 156 of the 1985
8 Session Laws are expressly not repealed and shall continue as authorized.

9 Section 5. The Mayor and Council members serving on the date of
10 ratification of this act shall serve until the expiration of their terms or until their
11 successors are elected and qualified. Thereafter those offices shall be filled as
12 provided in Articles II and III of Section 1 of this Charter.

13 Section 6. This act does not affect any rights or interests which arose
14 under any provisions repealed by this act.

15 Section 7. All existing ordinances, resolutions, and other provisions of
16 the Village of Bald Head Island not inconsistent with the provisions of this act shall
17 continue in effect until repealed or amended.

18 Section 8. No action or proceeding pending on the effective date of this
19 act by or against the Village or any of its departments or agencies shall be abated or
20 otherwise affected by this act.

21 Section 9. Whenever a reference is made in this act to a particular
22 provision of the General Statutes, and that provision is later amended, superseded, or
23 recodified, the reference shall be deemed amended to refer to the amended General
24 Statute or to the General Statute that most clearly corresponds to the statutory
25 provision that is superseded or recodified.

26 Section 10. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

HOUSE BILL 773
Proposed Senate Committee Substitute H773-PCS6276

Short Title: Bald Head Island Charter/Leland Annexation.

(Local)

Sponsors:

Referred to:

April 3, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO REVISE AND CONSOLIDATE THE CHARTER OF THE VILLAGE
3 OF BALD HEAD ISLAND AND TO EXTEND THE CORPORATE LIMITS OF
4 THE TOWN OF LELAND.

5 Whereas, Bald Head Island is suitably located in a subtropic environment
6 and blessed with temperate climates from the Atlantic Ocean and is conducive to the
7 maintenance of permanent and retirement residences and other buildings and
8 structures with an emphasis on environmental controls and a planned community;
9 and

10 Whereas, the Village of Bald Head Island, in company with all its
11 residents and property owners and their representatives, is fully aware of the unique
12 nature of Bald Head Island with its combination of structures, land, and vegetation,
13 including the oldest standing lighthouse along the coast of the State and
14 approximately 172 acres of publicly owned prime maritime forest, that exist in a
15 delicate ecological balance requiring careful planning, nurture, and support, as
16 evidenced in the development plan for the island; and

17 Whereas, Bald Head Island is solely situated between the waters of the
18 Atlantic Ocean and the Cape Fear River and is not connected to the mainland of the
19 State by either natural or man-made structures, necessitating a unique form of
20 transportation unlike any other in the State; and

21 Whereas, the Village of Bald Head Island recognizes the inordinately
22 large numbers of nonresident property owners and values their past contributions to
23 the orderly and successful development of Bald Head Island; and

1 Whereas, while there exists no formal arrangement to continue an
2 ongoing obligatory relationship with the nonresident property owners; the Village of
3 Bald Head Island has long recognized such a relationship to be beneficial to all
4 persons who have an interest in the island and the advisability of continuing to call
5 upon nonresidents for their expertise and counsel; and

6 Whereas, the Village of Bald Head Island has served and will continue to
7 serve as a model for cooperation between government and property owners and their
8 representatives in efficient service and good planning without duplication in
9 expenditures or unnecessary taxation; and

10 Whereas, Bald Head Island with its variance in seasonal population has
11 benefited from the advantages of a municipal form of government, with the
12 modifications and limitations as specified herein, in order to achieve its goals as a
13 planned community; Now, therefore,

14 The General Assembly of North Carolina enacts:

15 **PART I. BALD HEAD ISLAND CHARTER**

16 Section 1. The Charter of the Village of Bald Head Island is revised and
17 consolidated to read as follows:

18 **"THE CHARTER OF THE VILLAGE OF BALD HEAD ISLAND.**

19 **"ARTICLE I. INCORPORATION, CORPORATE POWERS, AND BOUNDARIES.**

20 **"Section 1.1. Incorporation.** The Village of Bald Head Island, North Carolina, in
21 Brunswick County, and the inhabitants thereof shall continue to be a municipal body
22 politic and corporate, under the name of the 'Village of Bald Head Island',
23 hereinafter at times referred to as the 'Village'.

24 **"Section 1.2. Powers.** The Village shall have and may exercise all of the powers,
25 duties, rights, privileges, and immunities conferred upon the Village of Bald Head
26 Island specifically by this Charter or upon municipal corporations by general law.
27 The term 'general law' is employed herein as defined in G.S. 160A-1.

28 **"Section 1.3. Corporate Boundaries.** The corporate boundaries shall be those
29 existing at the time of ratification of this Charter, as set forth on the official map of
30 the Village and as they may be altered from time to time in accordance with law. An
31 official map of the Village, showing the current municipal boundaries, shall be
32 maintained permanently in the office of the Village Clerk and shall be available for
33 public inspection. Upon alteration of the corporate limits pursuant to law, the
34 appropriate changes to the official map shall be made and copies shall be filed in the
35 offices of the Secretary of State, the Brunswick County Register of Deeds, and the
36 appropriate board of elections.

37 **"ARTICLE II. GOVERNING BODY.**

38 **"Section 2.1. Village Governing Body; Composition.** The Mayor and the Village
39 Council shall be the governing body of the Village.

40 **"Section 2.2. Village Council; Composition; Terms of Office.** The Council shall be
41 composed of five members to be elected by all the qualified voters of the Village for
42 terms of four years, or until their successors are elected and qualified.

43 **"Section 2.3. Mayor; Term of Office; Duties.** The Mayor shall be elected by the
44 Council from among its membership, to serve for a term of two years. The Mayor

1 shall be the official head of the Village government and preside at meetings of the
2 Council, shall have the right to vote on all matters before the Council, but shall not
3 have the power to vote again in instances where there is an equal division on a
4 question, and shall exercise the powers and duties conferred by law or as directed by
5 the Council.

6 "Section 2.4. **Mayor Pro Tempore.** The Council shall elect one of its members as
7 Mayor Pro Tempore to perform the duties of the Mayor during the Mayor's absence
8 or disability, in accordance with general law.

9 "Section 2.5. **Meetings.** In accordance with general law, the Council shall
10 establish a suitable time and place for its regular meetings. Special and emergency
11 meetings may be held as provided by general law.

12 "Section 2.6. **Quorum; Voting Requirements.** Official actions of the Council and
13 all votes shall be taken in accordance with applicable provisions of general law,
14 particularly G.S. 160A-75. The quorum provisions of G.S. 160A-74 shall apply.

15 "Section 2.7. **Qualifications for Office; Compensation; Vacancies.** The
16 qualifications of the Mayor and Council members shall be in accordance with general
17 law. The Mayor and Council members shall receive no compensation for their
18 services but may be reimbursed for ordinary and necessary expenses. Vacancies shall
19 be filled as provided in G.S. 160A-63.

20 "ARTICLE III. ELECTIONS.

21 "Section 3.1. **Regular Municipal Elections.** Regular municipal elections shall be
22 held in each odd-numbered year in accordance with the uniform municipal election
23 laws of North Carolina. Elections shall be conducted on a nonpartisan basis and the
24 results determined using the nonpartisan plurality method as provided in G.S. 163-
25 292.

26 "Section 3.2. **Election of Council Members.** The Council members serving on the
27 date of ratification of this Charter shall serve until the expiration of their terms or
28 until their successors are elected and qualified. Except for the filling of vacancies as
29 provided for in G.S. 160A-63, two Council members shall be elected at the regular
30 municipal election in 1997 and every four years thereafter, and three Council
31 members shall be elected at the regular municipal election in 1999 and every four
32 years thereafter.

33 "Section 3.3. **Special Elections and Referenda.** Special elections and referenda
34 may be held only as provided by general law or applicable local acts of the General
35 Assembly.

36 "ARTICLE IV. ORGANIZATION AND ADMINISTRATION.

37 "Section 4.1. **Form of Government.** The Village shall operate under the council-
38 manager form of government, in accordance with G.S. 160A, Article 7, Part 2.

39 "Section 4.2. **Village Manager; Appointment; Powers and Duties.** The Council
40 shall appoint a Village Manager who shall be responsible for the administration of all
41 departments of the Village government. The Village Manager shall have all the
42 powers and duties conferred by general law, except as expressly limited by the
43 provisions of this Charter, and the additional powers and duties conferred by the
44 Council, so far as authorized by general law.

1 "Section 4.3. **Manager's Personnel Authority; Role of Elected Officials.** As chief
2 administrator, the Village Manager shall have the power to appoint, suspend, and
3 remove all officers, department heads, and employees in the administrative service of
4 the Village, with the exception of the Village Attorney, the Village Clerk, and any
5 other official whose appointment or removal is specifically vested in the Council by
6 this Charter or by general law. Neither the Council nor any of its members shall take
7 part in the appointment or removal of officers and employees in the administrative
8 service of the Village, except as provided by this Charter. Except for the purpose of
9 inquiry, or for consultation with the Village Attorney, the Council and its members
10 shall deal with the administrative service solely through the Village Manager, Acting
11 Manager, or Interim Manager, and neither the Council nor any of its members shall
12 give any specific orders to any subordinates of the Village Manager, Acting Manager,
13 or Interim Manager, either publicly or privately.

14 "Section 4.4. **Village Attorney.** The Village Council shall appoint a Village
15 Attorney licensed to practice law in North Carolina. It shall be the duty of the
16 Village Attorney to represent the Village, advise Village officials, and perform other
17 duties required by law or as the Council may direct.

18 "Section 4.5. **Village Clerk.** The Village Council shall appoint a Village Clerk to
19 keep a journal of the proceedings of the Council, to maintain official records and
20 documents, to give notice of meetings, and to perform such other duties required by
21 law or as the Council may direct.

22 "Section 4.6. **Tax Collector.** The Village shall have a Tax Collector to collect all
23 taxes owed to the Village, subject to general law, this Charter, and Village ordinances
24 and to perform those duties specified in G.S. 105-350 and such other duties as
25 prescribed by law or assigned by the Village Manager. Notwithstanding the
26 provisions of G.S. 105-349, the Village Manager is authorized to appoint and remove
27 the Tax Collector and any deputy tax collectors.

28 "Section 4.7. **Finance Director.** The Village Manager shall appoint a Finance
29 Officer to perform the duties designated in G.S. 159-25 and such other duties as may
30 be prescribed by law or as the Council may direct, or the Village Council may, at its
31 election, confer the duties of Finance Officer on the Village Manager as Budget
32 Officer. The Finance Officer may be entitled 'Accountant', 'Treasurer', 'Finance
33 Director', 'Finance Officer', or any other reasonably descriptive title.

34 "Section 4.8. **Other Administrative Officers and Employees.** The Council may
35 authorize other positions to be filled by appointment by the Village Manager and
36 may organize the Village government as deemed appropriate, subject to the
37 requirements of general law.

38 "ARTICLE V. FINANCE AND TAXATION.

39 "Section 5.1. **Room Occupancy and Tourism Development Tax.** The authority of
40 the Village to levy a room occupancy and tourism tax shall continue as authorized by
41 Chapter 664 of the 1991 Session Laws, and any subsequent acts.

42 "ARTICLE VI. CONTRACT POST OFFICE.

1 "Section 6.1. **Contract Post Office.** The authority of the Village to operate a
2 contract post office shall continue as authorized by Chapter 16 of the 1991 Session
3 Laws, as amended by Chapter 350 of the 1991 Session Laws, and any subsequent acts.

4 "ARTICLE VII. NO-WAKE SPEED ZONE.

5 "Section 7.1. **'No-Wake' Speed Zone.** The 'no-wake' speed zone established by
6 Chapter 688 of the 1987 Session Laws, and any subsequent acts, shall continue as
7 authorized.

8 "ARTICLE VIII. MISCELLANEOUS.

9 "Section 8.1. **Motorboat Operation.** The Village may regulate the speed and
10 operation of motorboats within the Village jurisdiction to preserve the tranquillity
11 and environment of the Village.

12 "Section 8.2. **Sand Dunes.** The Village may construct, reconstruct, plant, and
13 maintain sand dunes and regulate access to and across dunes to prevent or repair
14 damage to dunes so as to provide protection against erosion or overwash.

15 "Section 8.3. **Beach Regulation.** The Village may, by ordinance, establish
16 standards of dress, conduct, and decorum on the beaches of Bald Head Island and
17 may otherwise regulate the use of those beaches within the Village jurisdiction.

18 "ARTICLE IX. PHASED DEVELOPMENT PLAN.

19 "Section 9.1. **Phased Development Plan.** In accordance with an act to incorporate
20 the Village of Bald Head Island, Chapter 156 of the 1985 Session Laws, the Village
21 Council was required to adopt by ordinance plans of development consistent with the
22 historical land-use patterns and densities in existence on Bald Head Island at the time
23 of ratification of the act. The Village Council, after public hearing and upon
24 recommendation of its Planning Board, adopted a zoning ordinance for the
25 undeveloped portions of Bald Head Island consistent with those historical land-use
26 patterns and densities. Such zoning ordinance is based upon a 'Phased Development
27 Plan' (as that term is defined in G.S. 160A-385.1(b)(3)), which plan was prepared by
28 Bald Head Island Limited.

29 "Section 9.2. **Vested Rights.** The owners of the undeveloped portions of Bald
30 Head Island are declared hereby to have acquired vested rights in accordance with
31 G.S. 160A-385.1 as to the 'Phased Development Plan' entitled 'Revised June 29, 1995
32 STAGE 2 MASTER PLAN BALD HEAD ISLAND NORTH CAROLINA BALD
33 HEAD ISLAND PLANNING DEPARTMENT' and approved by the State Division
34 of Coastal Management on August 7, 1995. Notwithstanding the provisions of G.S.
35 160A-385.1(d), these vested rights shall be valid through December 31, 1999, and no
36 longer. Nothing in this section shall be construed to prohibit the further granting of
37 vested rights by the Village pursuant to the provisions of G.S. 160A-385.1.

38 "Section 9.3. **Alteration of Vested Rights.** As specifically authorized by G.S.
39 160A-385.1(e)(1)a., the vested rights herein granted may only be changed, prior to
40 December 31, 1999, as allowed by the exceptions set forth in G.S. 160A-385.1(e). In
41 addition, subject to the approval of the Village and within the limits established by
42 the Village zoning and other land-use ordinances, vested densities may be transferred
43 within the area depicted on the Stage 2 Master Plan referred to in Section 9.2 of this
44 Charter so long as the density of development within the total area is not increased.

1 "Section 9.4. **Land-Use Regulation.** Except as herein expressly provided, nothing
2 in this Charter shall be construed to prohibit the Village from amending its current
3 land-use regulatory ordinances, in whole or in part, or otherwise regulating the use of
4 land within the planning and zoning jurisdiction of the Village.

5 "ARTICLE X. MOTOR VEHICLE REGULATION.

6 "Section 10.1. **Motor Vehicle Regulation.** The Village may by ordinance exempt
7 from the provisions of Articles 3, 3A, 11, and 13 of Chapter 20 of the General
8 Statutes, in whole or in part, the registration, licensing, regulation, inspection, or
9 equipping of motor vehicles and may regulate the use, operation, possession, and
10 ownership of motor vehicles within the jurisdiction of the Village of Bald Head
11 Island. Additionally, notwithstanding the provisions of Chapter 20 of the General
12 Statutes or any other statute, and in addition to those powers now or hereafter
13 conferred by law, the Village shall have the authority to regulate motor vehicles and
14 other means of transportation within the jurisdiction of the Village, including the
15 following:

16 (1) Regulation of the use and operation of all vehicles, as defined in G.S. 20-
17 4.01(49).

18 (2) Regulation of all electrically powered vehicles or vehicles powered by fossil
19 fuel or internal combustion engines.

20 (3) Regulation of the size, weight, lighting, safety standards, and engine or motor
21 size or power characteristics of all vehicles or other means of transportation within
22 the jurisdiction of the Village.

23 "Section 10.2. **Street Regulation.** In order to establish and preserve the unique
24 character and aesthetics of Bald Head Island, the Village may adopt, by ordinance,
25 such standards for the establishment and maintenance of streets and roads within the
26 jurisdiction of the Village as it deems appropriate. The streets and roads within the
27 jurisdiction of the Village shall not be under the authority of the Department of
28 Transportation. The provisions of Articles 2 and 2A of Chapter 136 of the General
29 Statutes shall not apply within the jurisdiction of the Village. The Village shall be
30 exempt from the provisions of G.S. 136-66.2.

31 "ARTICLE XI. SEA TURTLE SANCTUARY.

32 "Section 11.1. **Sea Turtle Sanctuary.** The Village of Bald Head Island may create
33 and establish a sea turtle sanctuary within the areas of the Village limits above the
34 mean low watermark, to include the foreshore. Any ordinances adopted by the
35 Village to regulate activities within the sea turtle sanctuary that may or will disturb or
36 destroy a sea turtle, a sea turtle nest, or sea turtle eggs, must be consistent with the
37 ordinance powers found in G.S. 160A-174, G.S. 160A-308, and any other law. The
38 ordinances adopted by the Village may by cross-reference incorporate the criminal
39 statutes regarding the taking of sea turtles in G.S. 113-189 and G.S. 113-337. It shall
40 be unlawful for any person within the sea turtle sanctuary to disturb or destroy a sea
41 turtle, a sea turtle nest, or sea turtle eggs in violation of an ordinance adopted by the
42 Village of Bald Head Island."

43 Section 2. The purpose of Part I of this act is to revise the Charter of the
44 Village of Bald Head Island and to consolidate certain acts concerning the property,

1 affairs, and government of the Village. It is intended to continue without interruption
2 those provisions of prior acts which are expressly consolidated into Part I of this act,
3 so that all rights and liabilities which have accrued are preserved and may be
4 enforced.

5 Section 3. This act does not repeal or affect any acts concerning the
6 property, affairs, or government of public schools or any acts validating official
7 actions, proceedings, contracts, or obligations of any kind.

8 Section 4. The provisions of Chapter 156 of the 1985 Session Laws,
9 except for the provisions of Section 4-3(f), (g), and (h), having served the purposes
10 for which they were enacted or having been consolidated into Part I of this act, are
11 expressly repealed. The provisions of Section 4-3(f), (g), and (h) of Chapter 156 of
12 the 1985 Session Laws are expressly not repealed and shall continue as authorized.

13 Section 5. The Mayor and Council members serving on the date of
14 ratification of this act shall serve until the expiration of their terms or until their
15 successors are elected and qualified. Thereafter those offices shall be filled as
16 provided in Articles II and III of Section 1 of this Charter.

17 Section 6. Part I of this act does not affect any rights or interests which
18 arose under any provisions repealed by Part I of this act.

19 Section 7. All existing ordinances, resolutions, and other provisions of
20 the Village of Bald Head Island not inconsistent with the provisions of Part I of this
21 act shall continue in effect until repealed or amended.

22 Section 8. No action or proceeding pending on the effective date of this
23 act by or against the Village or any of its departments or agencies shall be abated or
24 otherwise affected by this act.

25 Section 9. Whenever a reference is made in Part I of this act to a
26 particular provision of the general statutes, and that provision is later amended,
27 superseded, or recodified, the reference shall be deemed amended to refer to the
28 amended general statute or to the general statute that most clearly corresponds to the
29 statutory provision that is superseded or recodified.

30 PART II. LELAND CORPORATE LIMITS

31 Section 10. The corporate limits of the Town of Leland are extended to
32 include the following described tract of land:

33
34 Being a tract of land located in Town Creek Township, Brunswick
35 County, North Carolina, and being more fully described as follows:

36
37 Beginning at a Right-of-Way Monument, in the northern Right-of-Way of
38 US 17, said monument being located on the south side of a gate leading into the
39 property, as shown on a map titled "THE GREGORY POOLE TRACT", prepared
40 by Stuart Gooden, R.L.S., and dated May 31, 1994; thence with said Right-of-Way
41 South 54 degrees 56 minutes 00 seconds West, a distance of 1111.44 feet; thence
42 leaving said Right-of-Way North 45 degrees 36 minutes 40 seconds West, a distance of
43 272.41 feet; thence North 45 degrees 36 minutes 08 seconds West, a distance of
44 2493.87 feet; thence North 45 degrees 35 minutes 59 seconds West, a distance of

1 1124.67 feet; thence North 48 degrees 44 minutes 35 seconds West, a distance of
2 1849.91 feet; thence South 78 degrees 10 minutes 46 seconds West, a distance of
3 793.76 feet; thence North 66 degrees 50 minutes 57 seconds West, a distance of
4 1282.45 feet to a point in SR 1438 (Lanvale Road); thence North 11 degrees 09
5 minutes 18 seconds West, a distance of 344.20 feet to a point in the centerline of
6 Lanvale Road thence with said centerline North 07 degrees 08 minutes 13 seconds
7 West, a distance of 690.45 feet; thence North 06 degrees 46 minutes 34 seconds West,
8 a distance of 441.28 feet; thence North 09 degrees 45 minutes 03 seconds West, a
9 distance of 128.86 feet; thence North 14 degrees 28 minutes 52 seconds West, a
10 distance of 124.97 feet; thence North 19 degrees 35 minutes 26 seconds West, a
11 distance of 150.19 feet; thence North 26 degrees 13 minutes 01 seconds West, a
12 distance of 150.04 feet; thence North 32 degrees 26 minutes 42 seconds West, a
13 distance of 178.45 feet; thence North 36 degrees 09 minutes 42 seconds West, a
14 distance of 237.57 feet; thence North 36 degrees 09 minutes 33 seconds West, a
15 distance of 187.40 feet; thence North 36 degrees 08 minutes 44 seconds West, a
16 distance of 246.56 feet; thence North 36 degrees 09 minutes 33 seconds West, a
17 distance of 198.67 feet; thence North 35 degrees 57 minutes 10 seconds West, a
18 distance of 188.63 feet; thence North 35 degrees 22 minutes 08 seconds West, a
19 distance of 52.73 feet; thence North 30 degrees 54 minutes 08 seconds West, a
20 distance of 193.58 feet; thence North 24 degrees 37 minutes 51 seconds West, a
21 distance of 239.60 feet; thence leaving said centerline and with Sturgeon Branch
22 North 72 degrees 40 minutes 07 seconds East, a distance of 30.21 feet; thence North
23 72 degrees 59 minutes 08 seconds East, a distance of 150.37 feet; thence North 15
24 degrees 10 minutes 23 seconds East, a distance of 242.76 feet; thence North 84
25 degrees 23 minutes 02 seconds East, a distance of 141.02 feet; thence North 55
26 degrees 24 minutes 41 seconds East, a distance of 313.03 feet; thence North 40
27 degrees 17 minutes 58 seconds East, a distance of 94.28 feet; thence North 03 degrees
28 42 minutes 18 seconds West, a distance of 48.90 feet; thence North 89 degrees 55
29 minutes 04 seconds East, a distance of 138.95 feet; thence North 63 degrees 52
30 minutes 03 seconds East, a distance of 108.98 feet; thence North 41 degrees 05
31 minutes 41 seconds East, a distance of 227.03 feet; thence North 36 degrees 48
32 minutes 37 seconds East, a distance of 204.72 feet; thence North 48 degrees 24
33 minutes 27 seconds East, a distance of 120.97 feet to a point in the run of Rice
34 Branch thence with said branch South 51 degrees 13 minutes 24 seconds East, a
35 distance of 35.93 feet; thence South 89 degrees 20 minutes 59 seconds East, a distance
36 of 106.00 feet; thence North 88 degrees 41 minutes 14 seconds East, a distance of
37 231.37 feet; thence South 63 degrees 01 minutes 01 seconds East, a distance of 72.07
38 feet; thence South 30 degrees 31 minutes 05 seconds East, a distance of 88.34 feet;
39 thence North 55 degrees 02 minutes 25 seconds East, a distance of 68.06 feet; thence
40 South 83 degrees 07 minutes 08 seconds East, a distance of 75.12 feet; thence South
41 53 degrees 08 minutes 14 seconds East, a distance of 49.51 feet; thence South 37
42 degrees 05 minutes 03 seconds East, a distance of 77.72 feet; thence North 46 degrees
43 14 minutes 12 seconds East, a distance of 56.82 feet; thence South 50 degrees 58
44 minutes 00 seconds East, a distance of 39.22 feet; thence South 06 degrees 18 minutes

1 38 seconds West, a distance of 73.24 feet; thence South 17 degrees 06 minutes 48
2 seconds East, a distance of 38.30 feet; thence South 63 degrees 48 minutes 32 seconds
3 East, a distance of 58.91 feet; thence North 45 degrees 05 minutes 05 seconds East, a
4 distance of 170.10 feet; thence South 25 degrees 36 minutes 41 seconds East, a
5 distance of 133.07 feet; thence South 08 degrees 55 minutes 12 seconds West, a
6 distance of 56.18 feet; thence North 73 degrees 37 minutes 44 seconds East, a distance
7 of 70.25 feet; thence South 09 degrees 39 minutes 11 seconds East, a distance of 54.37
8 feet; thence North 77 degrees 45 minutes 53 seconds East, a distance of 54.74 feet;
9 thence South 65 degrees 56 minutes 51 seconds East, a distance of 118.51 feet; thence
10 North 51 degrees 52 minutes 28 seconds East, a distance of 113.22 feet; thence South
11 85 degrees 54 minutes 21 seconds East, a distance of 72.82 feet; thence North 35
12 degrees 31 minutes 42 seconds East, a distance of 74.71 feet; thence South 80 degrees
13 09 minutes 57 seconds East, a distance of 94.27 feet; thence North 67 degrees 59
14 minutes 19 seconds East, a distance of 103.53 feet; thence South 22 degrees 55
15 minutes 29 seconds East, a distance of 82.62 feet; thence North 45 degrees 55 minutes
16 16 seconds East, a distance of 67.70 feet; thence South 37 degrees 17 minutes 37
17 seconds East, a distance of 68.76 feet; thence North 53 degrees 44 minutes 53 seconds
18 East, a distance of 58.17 feet; thence North 12 degrees 52 minutes 59 seconds West, a
19 distance of 38.98 feet; thence South 89 degrees 48 minutes 15 seconds East, a distance
20 of 58.32 feet; thence North 58 degrees 19 minutes 43 seconds East, a distance of 93.90
21 feet; thence South 63 degrees 38 minutes 13 seconds East, a distance of 47.06 feet;
22 thence South 37 degrees 24 minutes 09 seconds East, a distance of 54.13 feet; thence
23 North 43 degrees 32 minutes 32 seconds East, a distance of 90.22 feet; thence North
24 83 degrees 55 minutes 19 seconds East, a distance of 54.78 feet; thence South 82
25 degrees 53 minutes 15 seconds East, a distance of 66.22 feet; thence North 45 degrees
26 30 minutes 43 seconds East, a distance of 102.03 feet; thence North 73 degrees 09
27 minutes 53 seconds East, a distance of 138.11 feet; thence North 20 degrees 04
28 minutes 19 seconds West, a distance of 80.59 feet; thence North 36 degrees 34
29 minutes 12 seconds East, a distance of 51.79 feet; thence North 34 degrees 47 minutes
30 49 seconds East, a distance of 76.72 feet; thence North 08 degrees 06 minutes 25
31 seconds East, a distance of 122.32 feet; thence North 71 degrees 30 minutes 52
32 seconds East, a distance of 75.69 feet; thence North 20 degrees 40 minutes 01 seconds
33 West, a distance of 68.51 feet; thence North 61 degrees 42 minutes 35 seconds East, a
34 distance of 93.25 feet; thence leaving said branch South 20 degrees 33 minutes 06
35 seconds East, a distance of 291.98 feet; thence South 20 degrees 32 minutes 17
36 seconds East, a distance of 534.90 feet; thence North 41 degrees 38 minutes 26
37 seconds East, a distance of 242.33 feet; thence North 53 degrees 43 minutes 59
38 seconds East, a distance of 347.56 feet; thence North 51 degrees 33 minutes 50
39 seconds East, a distance of 241.30 feet; thence North 67 degrees 45 minutes 59
40 seconds East, a distance of 681.05 feet; thence North 70 degrees 01 minutes 48
41 seconds East, a distance of 563.93 feet; thence South 53 degrees 07 minutes 47
42 seconds East, a distance of 1460.15 feet; thence South 05 degrees 55 minutes 43
43 seconds East, a distance of 3955.76 feet; thence South 05 degrees 56 minutes 16
44 seconds East, a distance of 830.35 feet; thence South 05 degrees 55 minutes 43

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

3

HOUSE BILL 363
Committee Substitute Favorable 3/24/97
Third Edition Engrossed 4/2/97

Short Title: Child Support Options/Fees.

(Public)

Sponsors:

Referred to:

March 3, 1997

1 A BILL TO BE ENTITLED

2 AN ACT TO DIRECT THE DEPARTMENT OF HUMAN RESOURCES NOT TO
3 ELECT ANY CHILD SUPPORT DISTRIBUTION OPTION FOR WHICH
4 FEDERAL FUNDS ARE NOT PROVIDED AND TO INCREASE THE
5 APPLICATION FEE FOR NONPUBLIC ASSISTANCE CHILD SUPPORT
6 ENFORCEMENT SERVICES.

7 The General Assembly of North Carolina enacts:

8 Section 1. Effective 30 days after this act becomes law, the Department
9 of Human Resources shall not elect any child support distribution option for families
10 receiving cash assistance under the State Plan for the Temporary Assistance for
11 Needy Families (TANF) Block Grant Program for which the federal government does
12 not provide funding to the State to exercise the option.

13 Section 2. G.S. 110-130.1(a) reads as rewritten:

14 "(a) All child support collection and paternity determination services provided
15 under this Article to recipients of public assistance shall be made available to any
16 individual not receiving public assistance in accordance with federal law and as
17 contractually authorized by the nonrecipient, upon proper application and payment
18 of a nonrefundable application fee of ~~ten dollars (\$10.00)~~ twenty-five dollars
19 (\$25.00). The fee shall be reduced to ten dollars (\$10.00) if the individual applying
20 for the services is indigent. An indigent individual is an individual whose gross
21 income does not exceed one hundred percent (100%) of the federal poverty
22 guidelines issued each year in the Federal Register by the U.S. Department of Health

1 and Human Services. For the purposes of this subsection, the term 'gross income'
2 has the same meaning as defined in G.S. 105-134.1."

3 Section 3. Section 1 of this act is effective when it becomes law. Section
4 2 of this act becomes effective July 1, 1997.

EXPLANATION OF HOUSE BILL 363:
Child Support Options/Fees (3rd Edition)

TO: Senate Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: June 17, 1997
SPONSOR: Representative Gardner

House Bill 363 does two things:

1. It discontinues what is commonly known as the "\$50 disregard".
2. It increases the fee for child support collection assistance rendered to families who are not recipients of public assistance if the individual's gross income does not exceed 100% of the federal poverty guidelines issued each year in the Federal Register by the U.S. Department of Health and Human Services.

Currently, an individual receiving receiving cash assistance is allowed to keep the first \$50 of a child support payment regardless of the amount owed to offset the cost of the cash assistance. The balance, after the \$50 distribution to the individual, is used to offset the federal, state, and local cost of cash assistance. Effective October 1, 1996, the federal government repealed the federal law requiring a disregard or pass-through of the first \$50 of any child support payments each month for a family receiving cash assistance. States may continue to disregard support distributed to the family, but the federal government will not share in the cost of doing so. Section 1 of this bill discontinues any distribution option, including the \$50 disregard, for which the federal government does not share in the cost of funding. This section is effective when the act becomes law.

All of the child support collection and paternity determination services provided to recipients of public assistance are also available others. Currently, there is a nonrefundable fee of \$10 charged for the services. The federal government allows states to collect up to \$25 for the services. Section 2 of the bill increases the nonrefundable fee to \$25 for individuals whose gross income does not exceed 100% of the federal poverty guidelines issued each year in the Federal Register by the U.S. Department of Health and Human Services. This section becomes effective July 1, 1997.

**NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE**

BILL NUMBER: House Bill 363

SHORT TITLE: Child Support Options/Fees

SPONSOR(S): Representative Charlotte Gardner

FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 1997-98</u>	<u>FY 1998-99</u>	<u>FY 1999-00</u>	<u>FY 2000-01</u>	<u>FY 2001-02</u>
REVENUES					
(State)	\$27,346	\$35,003	\$44,804	\$57,349	\$73,406
(County)	42,998	48,158	53,937	60,409	67,658
Total	\$70,344	\$83,161	\$98,741	\$117,578	\$141,064
EXPENDITURES	(12,623,608)	(12,623,608)	(12,623,608)	(12,623,608)	(12,623,608)
POSITIONS:					
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Human Resources					
EFFECTIVE DATE: Section 1, 30 days after the bill is enacted. Section 2, July 1, 1997.					

BILL SUMMARY: This bill involves two child support program components which impact state and county governments. First, the bill mandates the termination of any child support payments for families receiving cash assistance under the Temporary Assistance for Needy Families (TANF) Block Grant Program for which the federal government does not provide funding to the State. The second component of the bill amends G.S. 110-130.1(a) to increase the nonrefundable child support collection and paternity determination application fee from the current amount of \$10 per application to \$25, the maximum allowable under federal law.

BACKGROUND: Prior to the passage of federal welfare reform, federal, state and local governments participated in "disregard" and "excess" payments. A disregard payment is a payment in which an individual receiving cash assistance is allowed to keep the first \$50 of a child support payment regardless of the amount owed to offset the cost of the cash assistance. The balance, after

the \$50 distribution to the individual, is used to offset the federal, state and local cost of cash assistance. An "excess" payment is the amount paid in child support (paid by the non-custodial parent) that exceeds the current month's public assistance benefits paid to the custodial parent. These payments were made to the recipient regardless of the amount due to federal, state and local governments for past due cash assistance repayments (also known as arrearages).

The passage of federal welfare reform (Personal Responsibility and Work Opportunity Reconciliation Act - P.L. 104-193), eliminated federal participation in "disregard" and "excess" payments and made state and local participation optional. Termination of federal participation in these payments became effective October 1, 1996 and North Carolina counties ended their financial participation December 31, 1996. Thus since January 1, 1997, the State has been incurring the full cost of both the disregard and excess payments.

ASSUMPTIONS AND METHODOLOGY:

Section 1. The first part of the bill addresses the termination of child support payments known as "disregard" and "excess" payments. The following assumptions were used:

- (1) the law becomes effective July 1, 1997;
- (2) anticipated savings are based upon actual payments made through calendar year 1996 {FY 95/96 actual payments = \$12.6 Million}; and
- (3) federal financial participation remains at 63.29% over next five fiscal years.

Termination of the state's participation would result in an estimated savings of \$810,597 for April 1997 and \$810,597 for May 1997.

Section 2. The second section of the bill proposes an increase in child support collection and paternity determination application fees from the current fee of \$10 per application to the maximum allowable under federal law, \$25. The following assumptions were used:

- (1) the rate of growth in new applications will continue at 28% over the next five years - in State operated Child Support Enforcement (CSE) Offices {FY 96/97 new applications = 3,273 x 28%};
- (2) the rate of growth in new applications will continue at 12% in county operated CSE offices {FY 96/97 new applications = 6,721 x 12%} over the next five years;
- (3) the federal financial participation rate (the rate at which the federal government reimburses states) will continue at 63.29% over the next five years;
- (4) the maximum allowable application fee will remain at \$25 per application; and
- (5) current state and federal laws governing CSE do not change.

TECHNICAL CONSIDERATIONS: None
FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Karen Hammonds-Blanks
APPROVED BY: Tom CovingtonTomC
DATE: April 1, 1997

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 475*

Short Title: WomenWork Fund.

(Public)

Sponsors: Senators Perdue; Conder, Jordan, Kerr, Martin of Guilford, Odom, Rand, Shaw of Cumberland, Warren, and Winner.

Referred to: Finance.

March 25, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH THE NORTH CAROLINA WOMENWORK FUND
3 FOR DISPLACED HOMEMAKERS TO BE ADMINISTERED BY THE NORTH
4 CAROLINA COUNCIL FOR WOMEN, AND TO ESTABLISH AN
5 ADDITIONAL CIVIL ACTION FEE TO BE COLLECTED BY THE COURT IN
6 DIVORCE ACTIONS.

7 The General Assembly of North Carolina enacts:

8 Section 1. Part 10B of Article 9 of Chapter 143B of the General Statutes
9 is amended by adding the following new section to read:

10 "**§ 143B-394.10. North Carolina WomenWork Fund for Displaced Homemakers.**

11 (a) There is established in the Department of Administration the North Carolina
12 WomenWork Fund for Displaced Homemakers. The Fund shall be administered by
13 the Council in accordance with Article 1 of Chapter 143 of the General Statutes and
14 shall be used to make grants to programs for displaced homemakers. The Council
15 shall make quarterly grants to each eligible program. Grants shall be awarded
16 according to criteria established by the Council. No more than twenty percent (20%)
17 of these funds shall be used for administrative costs by the Council. In order to be
18 eligible to receive grant funds under this section, a displaced homemaker program
19 shall fulfill all of the criteria established by the Council.

20 (b) The Department, upon recommendations by the Council, shall adopt rules to
21 implement the North Carolina WomenWork Fund for Displaced Homemakers."

22 Section 2. G.S. 7A-305 is amended by adding the following new
23 subsection to read:

1 "(a2) In every final action for divorce filed in the district court, a cost of twenty
2 dollars (\$20.00) shall be assessed against the person filing the divorce action. Costs
3 collected by the clerk pursuant to this subsection shall be remitted to the State
4 Treasurer for deposit to the North Carolina WomenWork Fund for Displaced
5 Homemakers established under G.S. 143B-394.10. Costs assessed under this
6 subsection shall be in addition to any other costs assessed under this section."

7 Section 3. This act becomes effective July 1, 1997, and applies to final
8 actions for divorce filed on and after that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____

DATE _____

S. B. No. 475

Amendment No. _____

(to be filled in by
Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) _____
Sen.) _____

1 moves to amend the bill on page 1, line s 16

2 () WHICH CHANGES THE TITLE

3 by deleting "twenty percent (20%)" and substituting
4 "ten percent (10%)" ;

6 and on page 1, line 19, by adding a
7 sentence at the end of the line to read:

9 "The Council shall report annually to the
10 Joint Legislative Committee on Governmental
11 Operations on the revenues credited to the
12 Fund, the programs receiving grants from
13 the Fund and the success of those programs,
14 and the costs associated with administering
15 the Fund." ;

16 and on page 2, lines ~~6-7~~, by inserting a new section

17 between these lines to amend G.S. 7A-305(c) by

18 deleting "the facilities fee and General Court of Justice fee" ;

19 substituting "the facilities fee, General Court of Justice fee,
and the divorce fee ~~levied~~ imposed under subsection (a2) of this section." ;

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

D

SENATE BILL 475*
Proposed Committee Substitute S475-PCS2775

Short Title: WomenWork Fund.

(Public)

Sponsors:

Referred to:

March 25, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH THE NORTH CAROLINA WOMENWORK FUND
3 FOR DISPLACED HOMEMAKERS TO BE ADMINISTERED BY THE NORTH
4 CAROLINA COUNCIL FOR WOMEN, AND TO ESTABLISH AN
5 ADDITIONAL CIVIL ACTION FEE TO BE COLLECTED BY THE COURT IN
6 DIVORCE ACTIONS.

7 The General Assembly of North Carolina enacts:

8 Section 1. Part 10B of Article 9 of Chapter 143B of the General Statutes
9 is amended by adding the following new section to read:

10 "**§ 143B-394.10. North Carolina WomenWork Fund for Displaced Homemakers.**

11 (a) There is established in the Department of Administration the North Carolina
12 WomenWork Fund for Displaced Homemakers. The Fund shall be administered by
13 the Council in accordance with Article 1 of Chapter 143 of the General Statutes and
14 shall be used to make grants to programs for displaced homemakers. The Council
15 shall make quarterly grants to each eligible program. Grants shall be awarded
16 according to criteria established by the Council. No more than ten percent (10%) of
17 these funds shall be used for administrative costs by the Council. In order to be
18 eligible to receive grant funds under this section, a displaced homemaker program
19 shall fulfill all of the criteria established by the Council. The Council shall report
20 annually to the Joint Legislative Commission on Governmental Operations on the
21 revenues credited to the Fund, the programs receiving grants from the Fund, the
22 success of those programs, and the costs associated with administering the Fund.

1 (b) The Department, upon recommendations by the Council, shall adopt rules to
2 implement the North Carolina WomenWork Fund for Displaced Homemakers."

3 Section 2. G.S. 7A-305 is amended by adding the following new
4 subsection to read:

5 "(a2) In every final action for divorce filed in the district court, a cost of twenty
6 dollars (\$20.00) shall be assessed against the person filing the divorce action. Costs
7 collected by the clerk pursuant to this subsection shall be remitted to the State
8 Treasurer for deposit to the North Carolina WomenWork Fund for Displaced
9 Homemakers established under G.S. 143B-394.10. Costs assessed under this
10 subsection shall be in addition to any other costs assessed under this section."

11 Section 3. G.S. 7A-305(c) reads as rewritten:

12 "(c) The clerk of superior court, at the time of the filing of the papers initiating
13 the action or the appeal, shall collect as advance court costs, the ~~facilities fee and~~
14 ~~General Court of Justice fee,~~ facilities fee, General Court of Justice fee, and the
15 divorce fee imposed under subsection (a2) of this section, except in suits by an
16 indigent. The clerk shall also collect the fee for discovery procedures under Rule
17 27(a) and (b) at the time of the filing of the verified petition."

18 Section 4. This act becomes effective July 1, 1997, and applies to final
19 actions for divorce filed on and after that date.

EXPLANATION OF SENATE BILL 475:
WomenWork Fund

TO: Senate Finance Committee
FROM: Martha Walston, Committee Counsel
DATE: June 16, 1997
SPONSOR: Senator Perdue

EXISTING LAW

Provides for the North Carolina Council For Women to establish or contract for the establishment of a pilot center for displaced homemakers. Currently there are 23 centers that provide job counseling programs, job training and placement programs, health education and counseling services, financial management services, and educational services for displaced homemakers.

"Displaced Homemaker" is defined as an individual who:

- a. Has worked in his or her own household for at least five years and during which period has provided unpaid household services; and
- b. Is unable to secure gainful employment due to the lack of required training or experience; or is unemployed, or underemployed; and
- c. Has been dependent on the income of another household member but is no longer adequately supported by that income, or is receiving support from a spouse but is within two years of losing such support, or has been supported by public assistance as the parent of minor children but is no longer eligible, or is within two years of losing such eligibility.

SENATE BILL 475

Section 1 of the Bill would establish the North Carolina WomenWork Fund for Displaced Homemakers within the Department of Administration. The Fund would be administered by the Council for Women and used to make quarterly grants to eligible programs for displaced homemakers. An award of these grants would be based upon criteria established by the Council. All of these criteria must be met before a displaced homemaker program would be eligible for grant funds. No more than 20% of the funds may be used by the Council for administrative costs. The Council may recommend rules to implement the Fund, and the Department of Administration would then adopt these rules. The WomenWork Fund would provide additional funding for displaced homemaker programs.

Section 2 of the Bill adds a new subsection to G.S. 7A-305 **Costs in civil actions**. In addition to the current district court costs in civil actions of \$50.00 (\$10.00 facilities fee and \$40.00 General Court of Justice fee), a cost of \$20.00

would be assessed against the person filing a final action for divorce in district court. This cost will be collected by the clerk of court and remitted to the State Treasurer for deposit to the WomenWork Fund.

Section 3 of the Bill sets the effective date at July 1, 1997, and applies to final actions for divorce filed on and after this date.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: Senate Bill 475

SHORT TITLE: WomenWork Fund

SPONSOR(S): Senator Perdue

FISCAL IMPACT ON REVENUES

	<u>FY 1997-98</u>	<u>FY 1998-99</u>	<u>FY 1999-00</u>	<u>FY 2000-01</u>	<u>FY 2001-02</u>
Estimated Revenues Collected by AOC for WomenWork Fund	\$740,000	\$740,000	\$740,000	\$740,000	\$740,000
Administration Funds Expended by Dept. of Administration	\$117,000	\$117,000	\$117,000	\$117,000	\$117,000
<u>Net Revenues for WomenWork Fund</u>	\$623,000	\$623,000	\$623,000	\$623,000	\$623,000

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Judicial Branch; Department of Administration

EFFECTIVE DATE: July 1, 1997 and applies to final actions on and after that date.

BILL SUMMARY: TO ESTABLISH THE NORTH CAROLINA WOMENWORK FUND FOR DISPLACED HOMEMAKERS TO BE ADMINISTERED BY THE NORTH CAROLINA COUNCIL FOR WOMEN, AND TO ESTABLISH AN ADDITIONAL CIVIL ACTION FEE TO BE COLLECTED BY THE COURT IN DIVORCE ACTIONS.

ASSUMPTIONS AND METHODOLOGY:

Judicial Department

According to data from the State Center for Health Statistics, there were 36,943 divorces and annulments in 1995. The Center estimates there will be approximately 37,000 divorces in FY 1997-98. The Judicial Department anticipates the extra \$20 fee would be collected up front when the divorce action is filed. Thus, if the fee were collected in all of these cases, an additional \$740,000 would be generated annually for transfer to the WomenWork fund.

The Department estimates it would take about ten hours of programming to update the accounting system in order to collect the \$20 fee. This programming could be handled by a programmer within the Department's Information Services Division.

Department of Administration

The Department of Administration believes it would need roughly \$86,000 to administer the expanded Displaced Homemaker program. Administrative costs would include costs of promoting the program through newsletters and other mailings, costs of increased travel to monitor local programs, and wages for temporary office support staff to help administer the program. However, the Department has the authority to spend considerably more than the \$86,000 it estimates it needs. The bill allows up to 20% of the fees collected to be spent on administration. Based on the fee estimates discussed above, these administrative costs could amount to as much as \$148,000. Because the Department has the authority to spend money above and beyond what it estimates it needs, we believe that the Department may spend more than \$86,000. Under these assumptions, administrative costs would range somewhere between the \$86,000 the Department states that it needs and the \$148,000 the bill allows it to spend. We base our estimates for administrative expense on the midpoint of this range, \$117,000.

FISCAL RESEARCH DIVISION

733-4910

PREPARED BY: Charles Perusse, Evan Rodewald

APPROVED BY: Tom L. CovingtonTomC

DATE: April 21, 1997

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 337

Short Title: Randolph Occupancy Tax.

(Local)

Sponsors: Representative Culp.

Referred to: Local and Regional Government II, if favorable, Finance.

February 26, 1997

1

A BILL TO BE ENTITLED

2 AN ACT TO AUTHORIZE RANDOLPH COUNTY TO LEVY A ROOM
3 OCCUPANCY AND TOURISM DEVELOPMENT TAX.

4 The General Assembly of North Carolina enacts:

5 Section 1. Occupancy tax. (a) **Authorization and scope.** The Randolph
6 County Board of Commissioners may by resolution, after not less than 10 days' public
7 notice and after a public hearing held pursuant thereto, levy a room occupancy tax of
8 up to five percent (5%) of the gross receipts derived from the rental of any room,
9 lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar
10 place within the county that is subject to sales tax imposed by the State under G.S.
11 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does
12 not apply to accommodations furnished to nonprofit charitable, educational, or
13 religious organizations for use in furthering their nonprofit purpose.

14 (b) **Collection.** Every operator of a business subject to the tax levied
15 under this section shall, on and after the effective date of the levy of the tax, collect
16 the tax. This tax shall be collected as part of the charge for furnishing a taxable
17 accommodation. The tax shall be stated and charged separately from the sales
18 records and shall be paid by the purchaser to the operator of the business as trustee
19 for and on account of the county. The tax shall be added to the sales price and shall
20 be passed on to the purchaser instead of being borne by the operator of the business.
21 The county shall design, print, and furnish to all appropriate businesses and persons
22 in the county the necessary forms for filing returns and instructions to ensure the full
23 collection of the tax. An operator of a business who collects the occupancy tax
24 levied under this section may deduct from the amount remitted to the county a

1 discount equal to the discount the State allows the operator for State sales and use
2 tax.

3 (c) **Administration.** The county shall administer a tax levied under this
4 section. A tax levied under this section is due and payable to the county finance
5 officer in monthly installments on or before the 15th day of the month following the
6 month in which the tax accrues. Every person, firm, corporation, or association liable
7 for the tax shall, on or before the 15th day of each month, prepare and render a
8 return on a form prescribed by the county. The return shall state the total gross
9 receipts derived in the preceding month from rentals upon which the tax is levied.

10 A return filed with the county finance officer under this section is not a
11 public record and may not be disclosed except in accordance with G.S. 153A-148.1
12 or G.S. 160A-208.1.

13 (d) **Penalties.** A person, firm, corporation, or association who fails or
14 refuses to file the return or pay the tax required by this section is subject to the civil
15 and criminal penalties set by G.S. 105-236 for failure to pay or file a return for State
16 sales and use taxes. The Randolph County Board of Commissioners has the same
17 authority to waive the penalties for a room occupancy tax that the Secretary of
18 Revenue has to waive the penalties for State sales and use taxes.

19 (e) **Distribution and use of tax revenue.** Randolph County shall, on a
20 quarterly basis, remit the net proceeds of the occupancy tax to the Randolph Tourism
21 Development Authority. The Authority may use these funds and any other revenue
22 it receives only to develop or promote travel and tourism and for tourism-related
23 expenditures in Randolph County. The Authority shall use at least two-thirds of the
24 funds remitted to it under this subsection to promote travel and tourism in Randolph
25 County and shall use the remainder for tourism-related expenditures.

26 The following definitions apply in this subsection:

27 (1) Net proceeds. -- Gross proceeds less the cost to the county of
28 administering and collecting the tax, as determined by the finance
29 officer, not to exceed three percent (3%) of the gross proceeds.

30 (2) Promote travel and tourism. -- To advertise or market an area or
31 activity, publish and distribute pamphlets and other materials,
32 conduct market research, or engage in similar promotional
33 activities that attract tourists or business travelers to the area; the
34 term includes administrative expenses incurred in engaging in the
35 listed activities.

36 (3) Tourism-related expenditures. -- Expenditures that are designed to
37 increase the use of lodging facilities in the county or to attract
38 tourists or business travelers to the county. The term includes
39 tourism-related capital expenditures and other expenditures that, in
40 the judgment of the Authority, will facilitate and promote tourism.
41 Examples of tourism-related expenditures include expenditures to
42 create, advertise, promote, and support cultural programs, events,
43 festivals, public park and recreation areas, historic preservation and

1 museums, beautification projects, parking facilities, and other
2 public amenities and services.

3 (f) **Effective date of levy.** A tax levied under this section shall become
4 effective on the date specified in the resolution levying the tax. That date must be
5 the first day of a calendar month, however, and may not be earlier than the first day
6 of the second month after the date the resolution is adopted.

7 (g) **Repeal.** A tax levied under this section may be repealed or reduced
8 by a resolution adopted by the Randolph County Board of Commissioners. Repeal
9 or reduction of a tax levied under this section shall become effective on the first day
10 of a month and may not become effective until the end of the fiscal year in which the
11 repeal resolution was adopted. Repeal or reduction of a tax levied under this section
12 does not affect a liability for a tax that was attached before the effective date of the
13 repeal, nor does it affect a right to a refund of a tax that accrued before the effective
14 date of the repeal.

15 Section 2. Tourism Development Authority. (a) **Appointment and**
16 **membership.** When the board of commissioners adopts a resolution levying a room
17 occupancy tax under this act, it shall also adopt a resolution creating a county
18 Tourism Development Authority, which shall be a public authority under the Local
19 Government Budget and Fiscal Control Act. The Authority shall be composed of
20 nine members to be appointed by the board of commissioners as follows:

21 (1) Seat 1 shall represent the hotel and motel industry, seat 4 shall
22 represent the North Carolina Zoological Park, seat 7 is
23 unrestricted, and seat 9 shall represent the county.

24 (2) Seats 2, 3, 5, and 6 shall be appointed upon the recommendation
25 of the Archdale/Trinity Chamber of Commerce, the
26 Asheboro/Randolph Chamber of Commerce, the Liberty Chamber
27 of Commerce, and the Randleman Chamber of Commerce,
28 respectively.

29 (3) Seat 8 shall represent the hotel and motel industry and shall be
30 appointed upon the recommendation of the Asheboro/Randolph
31 Chamber of Commerce.

32 In appointing and recommending members, each entity shall strive to
33 select individuals who either have expertise in promoting and developing travel and
34 tourism or are affiliated with organizations that collect the tax. The board of
35 commissioners may reject the recommendation of a chamber of commerce and
36 require the chamber to submit additional names within 30 days after the rejection. If
37 the chamber does not submit additional names within this period, the board of
38 commissioners may appoint someone to the seat based upon its own
39 recommendation.

40 All members of the Authority serve at the pleasure of the board of
41 commissioners and may be removed by the board at any time. The board of
42 commissioners shall designate one member of the Authority as chair and another as
43 cochair. Members shall serve without compensation.

1 Except for initial terms, the term of office shall be for three years. No
2 member may serve more than two consecutive three-year terms. The initial terms for
3 seats 1, 2, and 3 shall be one year. The initial terms for seats 4, 5, and 6 shall be two
4 years. The initial terms for seats 7, 8, and 9 shall be three years.

5 The Authority shall meet at the call of the chair and shall adopt bylaws
6 and rules of procedure to govern its meetings. The Finance Officer for Randolph
7 County shall be the ex officio finance officer of the Authority.

8 (b) **Duties.** The Authority shall expend the net proceeds of the tax
9 levied under this act for the purposes provided in Section 1 of this act.

10 (c) **Powers.** In addition to other powers conferred by law, the Authority
11 may contract with any person, firm, corporation, or agency to assist it in carrying out
12 its duties. All contracts the Authority enters into with nonprofit organizations shall
13 require an annual financial audit of any funds expended and a performance audit of
14 contractual obligations. The Authority may accept contributions from any source to
15 be used for the purposes provided in Section 1 of this act.

16 (d) **Reports.** The Authority shall report quarterly and at the close of the
17 fiscal year to the board of commissioners on its receipts and expenditures for the
18 preceding quarter and for the year in such detail as the board may require.

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

- 1 (1) Net proceeds. -- Gross proceeds less the cost to the county of
2 administering and collecting the tax, as determined by the finance
3 officer, not to exceed three percent (3%) of the gross proceeds.
- 4 (2) Promote travel and tourism. -- To advertise or market an area or
5 activity, publish and distribute pamphlets and other materials,
6 conduct market research, or engage in similar promotional
7 activities that attract tourists or business travelers to the area; the
8 term includes administrative expenses incurred in engaging in the
9 listed activities.
- 10 (3) Tourism-related expenditures. -- Expenditures that are designed to
11 increase the use of lodging facilities in the county or to attract
12 tourists or business travelers to the county. The term includes
13 tourism-related capital expenditures and other expenditures that, in
14 the judgment of the Authority, will facilitate and promote tourism.
15 Examples of tourism-related expenditures include expenditures to
16 create, advertise, promote, and support cultural programs, events,
17 festivals, public park and recreation areas, historic preservation and
18 museums, beautification projects, parking facilities, and other
19 public amenities and services.

20 Section 2. Section 3(b) of S.L. 1997-102 reads as rewritten:

21 "(b) This section applies only to Madison ~~County~~ and Randolph Counties."

22 Section 3. Tourism Development Authority. (a) **Appointment and**
23 **membership.** When the board of commissioners adopts a resolution levying a room
24 occupancy tax under this act, it shall also adopt a resolution creating a county
25 Tourism Development Authority, which shall be a public authority under the Local
26 Government Budget and Fiscal Control Act. The Authority shall be composed of
27 nine members to be appointed by the board of commissioners as follows:

- 28 (1) Seat 1 shall represent the hotel and motel industry, seat 4 shall
29 represent the North Carolina Zoological Park, seat 7 is
30 unrestricted, and seat 9 shall represent the county.
- 31 (2) Seats 2, 3, 5, and 6 shall be appointed upon the recommendation
32 of the Archdale/Trinity Chamber of Commerce, the
33 Asheboro/Randolph Chamber of Commerce, the Liberty Chamber
34 of Commerce, and the Randleman Chamber of Commerce,
35 respectively.
- 36 (3) Seat 8 shall represent the hotel and motel industry and shall be
37 appointed upon the recommendation of the Asheboro/Randolph
38 Chamber of Commerce.

39 In appointing and recommending members, each entity shall strive to
40 select individuals who either have expertise in promoting and developing travel and
41 tourism or are affiliated with organizations that collect the tax. The board of
42 commissioners may reject the recommendation of a chamber of commerce and
43 require the chamber to submit additional names within 30 days after the rejection. If
44 the chamber does not submit additional names within this period, the board of

1 commissioners may appoint someone to the seat based upon its own
2 recommendation.

3 All members of the Authority serve at the pleasure of the board of
4 commissioners and may be removed by the board at any time. The board of
5 commissioners shall designate one member of the Authority as chair and another as
6 cochair. Members shall serve without compensation.

7 Except for initial terms, the term of office shall be for three years. No
8 member may serve more than two consecutive three-year terms. The initial terms for
9 seats 1, 2, and 3 shall be one year. The initial terms for seats 4, 5, and 6 shall be two
10 years. The initial terms for seats 7, 8, and 9 shall be three years.

11 The Authority shall meet at the call of the chair and shall adopt bylaws
12 and rules of procedure to govern its meetings. The Finance Officer for Randolph
13 County shall be the ex officio finance officer of the Authority.

14 (b) **Duties.** The Authority shall expend the net proceeds of the tax
15 levied under this act for the purposes provided in Section 1 of this act.

16 (c) **Powers.** In addition to other powers conferred by law, the Authority
17 may contract with any person, firm, corporation, or agency to assist it in carrying out
18 its duties. All contracts the Authority enters into with nonprofit organizations shall
19 require an annual financial audit of any funds expended and a performance audit of
20 contractual obligations. The Authority may accept contributions from any source to
21 be used for the purposes provided in Section 1 of this act.

22 (d) **Reports.** The Authority shall report quarterly and at the close of the
23 fiscal year to the board of commissioners on its receipts and expenditures for the
24 preceding quarter and for the year in such detail as the board may require.

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

**NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE**

BILL NUMBER: House Bill 337
SHORT TITLE: Randolph Occupancy Tax
SPONSOR(S): Representative Culp

	FISCAL IMPACT				
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 1997-98</u>	<u>FY 1998-99</u>	<u>FY 1999-00</u>	<u>FY 2000-01</u>	<u>FY 2001-02</u>
REVENUES County @ 3%					\$100,000 to \$120,000 annually
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:					Randolph County General Fund
EFFECTIVE DATE:					When it becomes law

BILL SUMMARY:

The Board of County Commissioners in Randolph County is authorized to levy a room occupancy tax of up to 5% of gross receipts from rental charges for hotel, motel, tourist camp, and similar accommodations (other than those furnished to nonprofit charitable, educational, or religious organizations for use in furthering their nonprofit purpose). Includes provisions relating to administration and collection of tax and penalties for failure to pay tax or file return. Requires that Randolph Tourism Development Authority use at least two-thirds of the tax proceeds to promote travel and tourism and use the remainder of tax proceeds for tourism-related expenditures. Levy may not be effective earlier than the first day of the second month after adoption by the board of commissioners. Requires board, if it adopts levy, to create Tourism Development Authority as a public authority under the Local Government Budget and Fiscal Control Act. Includes provisions regarding composition, powers, and duties of the Authority. Requires Authority to report quarterly to the board of commissioners on receipts and expenditures.

Summary: Institute of Government

ASSUMPTIONS AND METHODOLOGY:

The assistant finance officer for Randolph County reports the expected revenue from the levy of a 3% tax is \$100,000 to \$120,000 annually.

FISCAL RESEARCH DIVISION

733-4910

PREPARED BY: Warren Plonk

APPROVED BY:

DATE: June 6, 1997

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 748

Short Title: Matthews/Charlotte Boundary.

(Local)

Sponsors: Representatives Gulley; Earle and C. Wilson.

Referred to: Local and Regional Government II, if favorable, Finance.

April 2, 1997

1 A BILL TO BE ENTITLED

2 AN ACT TO REMOVE CERTAIN DESCRIBED PROPERTY FROM THE
3 CORPORATE LIMITS OF THE TOWN OF MATTHEWS AND TO ADD THE
4 PROPERTY TO THE CORPORATE LIMITS OF THE CITY OF CHARLOTTE.

5 The General Assembly of North Carolina enacts:

6 Section 1. The following described property is removed from the
7 corporate limits of the Town of Matthews and is added to the corporate limits of the
8 City of Charlotte:

9 The Waters property, Mecklenburg County tax parcels 227-362-97 and
10 227-362-98, and the Maynard property, Mecklenburg County tax parcel 227-141-08.

11 Section 2. This act shall have no effect upon the validity of any liens of
12 the Town of Matthews for ad valorem taxes or special assessments outstanding before
13 the effective date of this act. Such liens may be collected or foreclosed upon after
14 the effective date of this act as though the property was still within the corporate
15 limits of the Town of Matthews.

16 Section 3. This act becomes effective June 30, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

3

HOUSE BILL 989*
Committee Substitute Favorable 4/23/97
Committee Substitute #2 Favorable 5/12/97

Short Title: School Administrator's Exam Fee.

(Public)

Sponsors:

Referred to:

April 17, 1997

- 1 A BILL TO BE ENTITLED
2 AN ACT TO REMOVE THE FEE FOR THE SCHOOL ADMINISTRATORS'
3 EXAM.
4 The General Assembly of North Carolina enacts:
5 Section 1. G.S. 115C-290.5(a) reads as rewritten:
6 "(a) The Standards Board shall administer this Article. In fulfilling this duty, the
7 Standards Board shall:
8 (1) In accordance with subsection (c) of this section, develop and
9 implement a North Carolina Public School Administrator Exam,
10 based on the professional standards established by the Standards
11 Board.
12 (2) Establish and collect an application fee not to exceed fifty dollars
13 ~~(\$50.00). (\$50.00), and an exam fee not to exceed one hundred~~
14 ~~fifty dollars (\$150.00).~~ Fees collected under this Article shall be
15 credited to the General Fund as nontax revenue.
16 (3) Review the educational achievements of an applicant to take the
17 exam to determine whether the achievements meet the
18 requirements set by G.S. 115C-290.7.
19 (4) Notify the State Board of Education of the names and addresses of
20 the persons who passed the exam and are thereby recommended to
21 be certified as public school administrators by the State Board of
22 Education.

- 1 (5) Maintain accounts and records in accordance with the Executive
2 Budget Act, Article 1 of Chapter 143 of the General Statutes.
3 (6) Adopt rules in accordance with Chapter 150B of the General
4 Statutes to implement this Article.
5 (7) Submit an annual report by December 1 of each year to the Joint
6 Legislative Education Oversight Committee of its activities during
7 the preceding year, together with any recommendations and
8 findings regarding improvement of the profession of public school
9 administration."
10 Section 2. This act becomes effective July 1, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

3

HOUSE BILL 989*
Committee Substitute Favorable 4/23/97
Committee Substitute #2 Favorable 5/12/97

Short Title: School Administrator's Exam Fee.

(Public)

Sponsors:

Referred to:

April 17, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO REMOVE THE FEE FOR THE SCHOOL ADMINISTRATORS'
3 EXAM.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 115C-290.5(a) reads as rewritten:

6 "(a) The Standards Board shall administer this Article. In fulfilling this duty, the
7 Standards Board shall:

- 8 (1) In accordance with subsection (c) of this section, develop and
9 implement a North Carolina Public School Administrator Exam,
10 based on the professional standards established by the Standards
11 Board.
- 12 (2) Establish and collect an application fee not to exceed fifty dollars
13 ~~(\$50.00). (\$50.00), and an exam fee not to exceed one hundred~~
14 ~~fifty dollars (\$150.00). Fees collected under this Article shall be~~
15 credited to the General Fund as nontax revenue.
- 16 (3) Review the educational achievements of an applicant to take the
17 exam to determine whether the achievements meet the
18 requirements set by G.S. 115C-290.7.
- 19 (4) Notify the State Board of Education of the names and addresses of
20 the persons who passed the exam and are thereby recommended to
21 be certified as public school administrators by the State Board of
22 Education.

- 1 (5) Maintain accounts and records in accordance with the Executive
2 Budget Act, Article 1 of Chapter 143 of the General Statutes.
3 (6) Adopt rules in accordance with Chapter 150B of the General
4 Statutes to implement this Article.
5 (7) Submit an annual report by December 1 of each year to the Joint
6 Legislative Education Oversight Committee of its activities during
7 the preceding year, together with any recommendations and
8 findings regarding improvement of the profession of public school
9 administration."
10 Section 2. This act becomes effective July 1, 1997.



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 989

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

H989-ARH-003

Date _____, 1997

Comm. Sub. []
Amends Title []
Third Edition

Senator _____

1 moves to amend the bill on page 2, line 10, by rewriting the line to
2 read:

3 "Section 2. G.S. 115C-290.7(a) reads as rewritten:

4 '(a) The Standards Board shall recommend for certification by the
5 State Board an individual who submits a complete application to the
6 Standards Board and satisfies all of the following requirements:

7 (1) Pays the application fee established by the Standards
8 Board.

9 ~~(2) Pays the exam fee established by the Standards Board.~~

10 (3) Has a bachelors' degree from an accredited college or
11 accredited university and (i) has a graduate degree
12 from a public school administration program that meets
13 the public school administrator program approval
14 standards set by the State Board of Education, or (ii)
15 has a masters degree from an accredited college or
16 accredited university and has completed by December
17 31, 1999, a public school administration program that
18 meets the public school administration approval
19 standards set by the State Board of Education.

20 (4) Passes the exam. exam adopted by the State Board of
Education.



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 989

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

H989-ARH-003

1 Section 3. Section 2 of this act is effective January 1,
2 1998, and the remainder of this act is effective July 1, 1997."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

HOUSE BILL 989*
Committee Substitute Favorable 4/23/97
Committee Substitute #2 Favorable 5/12/97
Proposed Senate Committee Substitute H989-PCS1405

Short Title: School Administrator's Exam Fee.

(Public)

Sponsors:

Referred to:

April 17, 1997

- 1 A BILL TO BE ENTITLED
2 AN ACT TO REMOVE THE FEE FOR THE SCHOOL ADMINISTRATORS'
3 EXAM.
4 The General Assembly of North Carolina enacts:
5 Section 1. G.S. 115C-290.5(a) reads as rewritten:
6 "(a) The Standards Board shall administer this Article. In fulfilling this duty, the
7 Standards Board shall:
8 (1) In accordance with subsection (c) of this section, develop and
9 implement a North Carolina Public School Administrator Exam,
10 based on the professional standards established by the Standards
11 Board.
12 (2) Establish and collect an application fee not to exceed fifty dollars
13 ~~(\$50.00). (\$50.00), and an exam fee not to exceed one hundred~~
14 ~~fifty dollars (\$150.00).~~ Fees collected under this Article shall be
15 credited to the General Fund as nontax revenue.
16 (3) Review the educational achievements of an applicant to take the
17 exam to determine whether the achievements meet the
18 requirements set by G.S. 115C-290.7.
19 (4) Notify the State Board of Education of the names and addresses of
20 the persons who passed the exam and are thereby recommended to

1 be certified as public school administrators by the State Board of
2 Education.

3 (5) Maintain accounts and records in accordance with the Executive
4 Budget Act, Article 1 of Chapter 143 of the General Statutes.

5 (6) Adopt rules in accordance with Chapter 150B of the General
6 Statutes to implement this Article.

7 (7) Submit an annual report by December 1 of each year to the Joint
8 Legislative Education Oversight Committee of its activities during
9 the preceding year, together with any recommendations and
10 findings regarding improvement of the profession of public school
11 administration."

12 Section 2. G.S. 115C-290.7(a) reads as rewritten:

13 "(a) The Standards Board shall recommend for certification by the State Board an
14 individual who submits a complete application to the Standards Board and satisfies
15 all of the following requirements:

16 (1) Pays the application fee established by the Standards Board.

17 ~~(2) Pays the exam fee established by the Standards Board.~~

18 (3) Has a bachelors degree from an accredited college or accredited
19 university and (i) has a graduate degree from a public school
20 administration program that meets the public school administrator
21 program approval standards set by the State Board of Education,
22 or (ii) has a masters degree from an accredited college or
23 accredited university and has completed by December 31, 1999, a
24 public school administration program that meets the public school
25 administration approval standards set by the State Board of
26 Education.

27 (4) ~~Passes the exam.~~ exam adopted by the State Board."

28 Section 3. Section 2 of this act is effective January 1, 1998, and the
29 remainder of this act is effective July 1, 1997.

**EXPLANATION OF HOUSE BILL 989:
Sch. Administrators Exam Fee - 3rd Edition**

TO: Senate Finance Committee
FROM: Robin S. Johnson, Staff Attorney
DATE: June 16, 1997
SPONSOR: Representative Rogers

House Bill 989 amends G.S. 115C-290.5(a) to remove the authority of the North Carolina Standards Board for Public School Administration (Board) to collect a maximum fee of \$150 for the school administrators' exam.

In 1993, the General Assembly created the Board and directed it to develop and recommend to the State Board of Education an exam for school administrators. School administrators include public school superintendents, deputy superintendents, associate superintendents, assistant superintendents, principals, and assistant principals. Beginning January 1, 1998, applicants who seek certification as school administrators will be required to take and pass this exam. (Currently certified school administrators are not required to take this exam.)

The State Board, which is directed to adopt an exam for this purpose by December 31, 1997, has chosen Education Testing Service (ETS) to administer this exam. Under current law the Board may collect an exam fee that cannot exceed \$150. The Board does not plan to collect the exam fee; rather, the applicants will submit the fees directly to ETS.

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

June 17, 1997

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Melanie Wade	NC Council for Women - DOA
Helen Norrell	Tri-County Women's Resource Ctr. Mt. Airy NC (Surry County)
Raei Monaghan	NC Council for Women - DOA
Joyce Allen	DOA - NC Council for Women
Shonda Little	DHR - DSS - CSE
James Ransome	DSS
Marsha Glass	DOA
Paul Zepin	OSBM
B. Sumner	NC Equity
Regenia Walden	N.C. Cooperative Extension Service Halifax County Halifax, NC
Marian Adams	US/AC Council on the Status of Women
Mrs Cook Steele Dina Stevens Janis Ramo	Ywca of Wilmington, N.C. Standards Bd for Public School Administration NCA DHA

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

June 17, 1997

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

<i>Ann Belam</i>	<i>SPE</i>
<i>Chris Scott</i>	<i>NZ AFL-CIO</i>
<i>Julie Beavers</i>	<i>Womble Carlyle Sandridge + Rice, PLLC</i>
<i>John Smith</i>	<i>WCSR</i>
<i>Meredith Pano</i>	<i>WCSR</i>
<i>Timothy J. Smith</i>	<i>WCSR</i>
<i>Ann R. Duncan</i>	<i>WCSR</i>
<i>Susan McBee</i>	<i>WCSR</i>
<i>Catherine Davis</i>	<i>Electricities of N.C. Inc.</i>
<i>Sharon E. Winnie</i>	<i>EGH&S</i>
<i>Jim Latham</i>	<i>N.A.F.I.</i>

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

June 17, 1997

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

NAME	FIRM OR AGENCY AND ADDRESS
Andy Romanet	N.C.L.M.

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

FINANCE COMMITTEE REPORT

John H. Kerr, III, Co-Chair
David W. Hoyle, Co-Chair

Thursday, June 19, 1997

SENATOR JOHN KERR,

submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B. 475 Women Work Fund.
 Draft Number: PCS2775
 Sequential Referral: None
 Recommended Referral: None
 Long Title Amended: No

**UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL**

H.B.(CS #2)989 School Administrator's Exam Fee.
 Draft Number: PCS1405
 Sequential Referral: None
 Recommended Referral: None
 Long Title Amended: No

TOTAL REPORTED: 2

Committee Clerk Comment: SB 475; HB 989

SENATE FINANCE COMMITTEE

WEDNESDAY, JUNE 18, 1997

12:00 NOON - ROOM 544

The Senate Finance Committee met. There were 20 members of the Committee present. Senator David W. Hoyer, Co-Chairman, called the meeting to order and introduced the Pages, they are Dan Reeves from Raleigh, N. C., sponsored by Senator Reeves, Ginny Weatherington from Greenville, N. C., sponsored by Senator Warren, Lauren Danelly from Raleigh, N. C., sponsored by Senator Miller and Mary Mac Winters from Washington, N. C., sponsored by Senator Warren.

H. B. 810 - Nash Room Tax/Rocky Mount Annex

Senator Cooper explained the bill. Senator Phillips moved for a "favorable" report, motion passed.

H. B. 460 - Abolish Aquariums Commission/AB

Representative Culpepper came to explain the bill. Senator Kerr sent forth an amendment to this bill and made a motion for adoption, motion passed. Mr. Rhett White, Division Director of the N. C. Aquariums, spoke on the need for the bill. Senator Phillips moved for a "favorable" report as amended and roll the amendment into a committee substitute bill, motion passed.

H. B. 136 - Late Video Return/Sales Tax

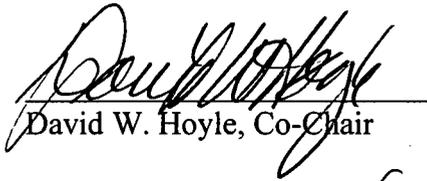
Representative Weatherly came to explain the committee substitute to this bill. Senator Kerr moved for adoption of the committee substitute, motion passed. Senator Winner moved to amend the bill, motion passed. Senator Cochrane moved for a "favorable" report, motion passed with notation that the amendment be rolled into the bill for a Senate committee substitute to the bill.

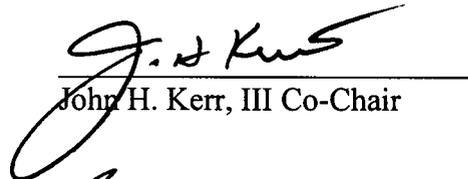
H. B. 400 - Bank Assessments/AB

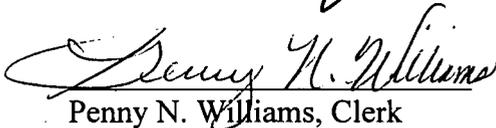
Senator Hoyle called on Mrs. Cindy Avrette, Staff Counsel, to explain the bill. Mr. McNeil Chestnut of the Attorney General's Office spoke on the bill. Mr. Warren Plonk of Fiscal Staff explained the Fiscal Note on the Bill. Mr. Otis Meacham, Deputy Commissioner of Banks, spoke on the bill. Senator Hoyle submitted and made a motion for a technical amendment to the bill, motion passed. Senator Lee made a motion for a "favorable, as amended" with notation that the amendment be rolled into a committee substitute, motion passed.

NOTE: HB 754 on the Agenda was not taken up due to committee running out of time.

Meeting was adjourned.


David W. Hoyle, Co-Chair


John H. Kerr, III Co-Chair


Penny N. Williams, Clerk


Evelyn S. Hartsell, Clerk

NOTE:

Agenda is Attachment # 1

Visitor's Registration is Attachment # 2

Committee Report -dated June 19, 1997- is Attachment # 3

AGENDA

SENATE FINANCE COMMITTEE MEETING

WEDNESDAY JUNE 18, 1997

12:00 NOON - ROOM 544

· HB 136 - LATE VIDEO RETURN/SALES TAX - REP. WEATHERLY ✓

· HB 400 - BANK ASSESSMENTS/AB. - REP. TALLENT

· HB 460 - ABOLISH AQUARIUMS COMMISSION/AB -
REP. CULPEPPER

HB 754 - ILLICIT LIQUOR TAX - REP. DICKSON

· HB 810 - Wash Room Tax / Rocky Mount Annex - *Rep. Tolson*
Stubb

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

2

HOUSE BILL 810
Committee Substitute Favorable 4/21/97

Short Title: Nash Room Tax.

(Local)

Sponsors:

Referred to:

April 7, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE NASH COUNTY TO LEVY AN ADDITIONAL
3 ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.
4 The General Assembly of North Carolina enacts:
5 Section 1. Nash Occupancy Tax. Section 1 of Chapter 32 of the 1987
6 Session Laws, as amended by Chapter 545 of the 1993 Session Laws, reads as
7 rewritten:
8 "Section 1. Occupancy tax. (a) Authorization and scope. The Nash County
9 Board of Commissioners may ~~by resolution, after not less than ten (10) days' public~~
10 ~~notice and after a public hearing held pursuant thereto,~~ levy a room occupancy tax of
11 three percent (3%) of the gross receipts derived from the rental of any room, lodging,
12 or similar accommodation furnished by a hotel, motel, inn, or similar place within the
13 county that is subject to sales tax imposed by the State under G.S. ~~105-164.4(3).~~
14 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does
15 not apply to accommodations furnished by nonprofit charitable, educational, or
16 religious organizations.
17 (a1) Authorization of Additional Tax. In addition to the tax authorized by
18 subsection (a) of this section, the Nash County Board of Commissioners may levy an
19 additional room occupancy tax of up to three percent (3%) of the gross receipts
20 derived from the rental of accommodations taxable under subsection (a). The levy,
21 collection, administration, and repeal of the tax authorized by this subsection shall be
22 in accordance with the provisions of this section. Nash County may not levy a tax

1 under this subsection unless it also levies the tax authorized under subsection (a) of
2 this section.

3 (b) Administration. A tax levied under this section shall be levied, administered,
4 collected, and repealed as provided in G.S. 153A-155. The penalties provided in
5 G.S. 153A-155 apply to a tax levied under this section.

6 ~~Collection. Every operator of a business subject to the tax levied under this act shall,~~
7 ~~on and after the effective date of the levy of the tax, collect the tax. This tax shall be~~
8 ~~collected as part of the charge for furnishing a taxable accommodation. The tax shall~~
9 ~~be stated and charged separately from the sales records, and shall be paid by the~~
10 ~~purchaser to the operator of the business as trustee for and on account of the county.~~
11 ~~The tax shall be added to the sales price and shall be passed on to the purchaser~~
12 ~~instead of being borne by the operator of the business. The county shall design,~~
13 ~~print, and furnish to all appropriate businesses and persons in the county the~~
14 ~~necessary forms for filing returns and instructions to ensure the full collection of the~~
15 ~~tax. An operator of a business who collects the occupancy tax levied under this act~~
16 ~~may deduct from the amount remitted to the county a discount equal to the discount~~
17 ~~the State allows the operator for collecting State sales and use taxes.~~

18 ~~(c) Administration. The county shall administer a tax levied under this act. A tax~~
19 ~~levied under this act is due and payable to the county finance officer in monthly~~
20 ~~installments on or before the 15th day of the month following the month in which the~~
21 ~~tax accrues. Every person, firm, corporation, or association liable for the tax shall, on~~
22 ~~or before the 15th day of each month, prepare and render a return on a form~~
23 ~~prescribed by the county. The return shall state the total gross receipts derived in the~~
24 ~~preceding month from rentals upon which the tax is levied.~~

25 ~~A return filed with the county finance officer under this act is not a public record~~
26 ~~as defined by G.S. 132-1 and may not be disclosed except as required by law.~~

27 ~~(d) Penalties. A person, firm, corporation, or association who fails or refuses to~~
28 ~~file the return required by this act is subject to the civil and criminal penalties set by~~
29 ~~G.S. 105-236 for failure to pay or file a return for State sales and use taxes. The~~
30 ~~Board of Commissioners has the same authority to waive the penalties for a room~~
31 ~~occupancy tax that the Secretary of Revenue has to waive the penalties for State sales~~
32 ~~and use taxes.~~

33 (e) Distribution and use of tax revenue. Nash County shall, on a quarterly basis,
34 remit the net proceeds of the occupancy tax to the Nash Tourism Development
35 Authority. The Authority shall spend at least two-thirds of the funds remitted to it
36 under this subsection only to promote travel and tourism in Nash County, and shall
37 spend the remainder on tourism-related expenditures. The following definitions
38 apply in this subsection:

39 (1) Net proceeds. -- Gross proceeds less the cost to the county of
40 administering and collecting the tax, as determined by the finance
41 officer, not to exceed seven percent (7%) of the amount collected.

42 (2) Promote travel and tourism. -- To advertise or market an area or
43 activity, publish and distribute pamphlets and other materials,
44 conduct market research, or engage in similar promotional

1 activities that attract tourists or business travelers to the area; the
2 term includes administrative expenses incurred in engaging in the
3 listed activities.

- 4 (3) Tourism-related expenditures. -- Expenditures that are designed to
5 increase the use of lodging facilities in a county or to attract
6 tourists or business travelers to the county and expenditures
7 incurred by the county in collecting the tax. The term includes
8 expenditures to construct, maintain, operate, or market a
9 convention center and other expenditures that, in the judgment of
10 the Authority, will facilitate and support tourism.

11 ~~(f) Effective date of levy. A tax levied under this act shall become effective on~~
12 ~~the date specified in the resolution levying the tax. That date must be the first day of~~
13 ~~a calendar month, however, and may not be earlier than the first day of the second~~
14 ~~month after the date the resolution is adopted.~~

15 ~~(g) Repeal. A tax levied under this act may be repealed by a resolution adopted~~
16 ~~by the Nash County Board of Commissioners. Repeal of a tax levied under this act~~
17 ~~does not affect a liability for a tax that was attached before the effective date of the~~
18 ~~repeal, nor does it affect a right to a refund of a tax that accrued before the effective~~
19 ~~date of the repeal."~~

20 Section 2. County administrative provisions. (a) Article 7 of Chapter
21 153A of the General Statutes is amended by adding a new section to read:

22 "§ 153A-155. Uniform provisions for room occupancy taxes.

23 (a) Scope. -- This section applies only to counties the General Assembly has
24 authorized to levy room occupancy taxes.

25 (b) Levy. -- A room occupancy tax may be levied only by resolution, after not less
26 than 10 days' public notice and after a public hearing held pursuant thereto. A room
27 occupancy tax shall become effective on the date specified in the resolution levying
28 the tax. That date must be the first day of a calendar month, however, and may not
29 be earlier than the first day of the second month after the date the resolution is
30 adopted.

31 (c) Collection. -- Every operator of a business subject to a room occupancy tax
32 shall, on and after the effective date of the levy of the tax, collect the tax. The tax
33 shall be collected as part of the charge for furnishing a taxable accommodation. The
34 tax shall be stated and charged separately from the sales records, and shall be paid by
35 the purchaser to the operator of the business as trustee for and on account of the
36 taxing county. The tax shall be added to the sales price and shall be passed on to the
37 purchaser instead of being borne by the operator of the business. The taxing county
38 shall design, print, and furnish to all appropriate businesses and persons in the county
39 the necessary forms for filing returns and instructions to ensure the full collection of
40 the tax. An operator of a business who collects a room occupancy tax may deduct
41 from the amount remitted to the taxing county a discount equal to the discount the
42 State allows the operator for State sales and use tax.

43 (d) Administration. -- The taxing county shall administer a room occupancy tax it
44 levies. A room occupancy tax is due and payable to the county finance officer in

1 monthly installments on or before the 15th day of the month following the month in
2 which the tax accrues. Every person, firm, corporation, or association liable for the
3 tax shall, on or before the 15th day of each month, prepare and render a return on a
4 form prescribed by the taxing county. The return shall state the total gross receipts
5 derived in the preceding month from rentals upon which the tax is levied. A room
6 occupancy tax return filed with the county finance officer is not a public record and
7 may not be disclosed except in accordance with G.S. 153A-148.1 or G.S. 160A-208.1.

8 (e) Penalties. -- A person, firm, corporation, or association who fails or refuses to
9 file a room occupancy tax return or pay a room occupancy tax as required by law is
10 subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file
11 a return for State sales and use taxes. The governing board of the taxing county has
12 the same authority to waive the penalties for a room occupancy tax that the Secretary
13 of Revenue has to waive the penalties for State sales and use taxes.

14 (f) Repeal or reduction. -- A room occupancy tax levied by a county may be
15 repealed or reduced by a resolution adopted by the governing body of the county.
16 Repeal or reduction of a room occupancy tax shall become effective on the first day
17 of a month and may not become effective until the end of the fiscal year in which the
18 resolution was adopted. Repeal or reduction of a room occupancy tax does not affect
19 a liability for a tax that was attached before the effective date of the repeal or
20 reduction, nor does it affect a right to a refund of a tax that accrued before the
21 effective date of the repeal or reduction."

22 (b) This section applies only to Nash County.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

3

HOUSE BILL 810
Committee Substitute Favorable 4/21/97
Senate Judiciary Committee Substitute Adopted 6/18/97

Short Title: Nash Room Tax/Rocky Mount Annex.

(Local)

Sponsors:

Referred to: Finance.

April 7, 1997

1 A BILL TO BE ENTITLED

2 AN ACT TO AUTHORIZE NASH COUNTY TO LEVY AN ADDITIONAL
3 ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX AND TO
4 ANNEX THE GOLD ROCK I-95 INTERCHANGE AREA INTO THE CITY OF
5 ROCKY MOUNT.

6 The General Assembly of North Carolina enacts:

7 Section 1. Nash Occupancy Tax. Section 1 of Chapter 32 of the 1987
8 Session Laws, as amended by Chapter 545 of the 1993 Session Laws, reads as
9 rewritten:

10 "Section 1. Occupancy tax. (a) Authorization and scope. The Nash County
11 Board of Commissioners may ~~by resolution, after not less than ten (10) days' public~~
12 ~~notice and after a public hearing held pursuant thereto,~~ levy a room occupancy tax of
13 three percent (3%) of the gross receipts derived from the rental of any room, lodging,
14 or similar accommodation furnished by a hotel, motel, inn, or similar place within the
15 county that is subject to sales tax imposed by the State under G.S. ~~105-164.4(3).~~
16 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does
17 not apply to accommodations furnished by nonprofit charitable, educational, or
18 religious organizations.

19 (a1) Authorization of Additional Tax. In addition to the tax authorized by
20 subsection (a) of this section, the Nash County Board of Commissioners may levy an
21 additional room occupancy tax of up to three percent (3%) of the gross receipts
22 derived from the rental of accommodations taxable under subsection (a). The levy,

1 collection, administration, and repeal of the tax authorized by this subsection shall be
2 in accordance with the provisions of this section. Nash County may not levy a tax
3 under this subsection unless it also levies the tax authorized under subsection (a) of
4 this section.

5 (b) Administration. A tax levied under this section shall be levied, administered,
6 collected, and repealed as provided in G.S. 153A-155. The penalties provided in
7 G.S. 153A-155 apply to a tax levied under this section.

8 ~~(b) Collection. Every operator of a business subject to the tax levied under this~~
9 ~~act shall, on and after the effective date of the levy of the tax, collect the tax. This~~
10 ~~tax shall be collected as part of the charge for furnishing a taxable accommodation.~~
11 ~~The tax shall be stated and charged separately from the sales records, and shall be~~
12 ~~paid by the purchaser to the operator of the business as trustee for and on account of~~
13 ~~the county. The tax shall be added to the sales price and shall be passed on to the~~
14 ~~purchaser instead of being borne by the operator of the business. The county shall~~
15 ~~design, print, and furnish to all appropriate businesses and persons in the county the~~
16 ~~necessary forms for filing returns and instructions to ensure the full collection of the~~
17 ~~tax. An operator of a business who collects the occupancy tax levied under this act~~
18 ~~may deduct from the amount remitted to the county a discount equal to the discount~~
19 ~~the State allows the operator for collecting State sales and use taxes.~~

20 ~~(e) Administration. The county shall administer a tax levied under this act. A tax~~
21 ~~levied under this act is due and payable to the county finance officer in monthly~~
22 ~~installments on or before the 15th day of the month following the month in which the~~
23 ~~tax accrues. Every person, firm, corporation, or association liable for the tax shall, on~~
24 ~~or before the 15th day of each month, prepare and render a return on a form~~
25 ~~prescribed by the county. The return shall state the total gross receipts derived in the~~
26 ~~preceding month from rentals upon which the tax is levied.~~

27 ~~A return filed with the county finance officer under this act is not a public record~~
28 ~~as defined by G.S. 132-1 and may not be disclosed except as required by law.~~

29 ~~(d) Penalties. A person, firm, corporation, or association who fails or refuses to~~
30 ~~file the return required by this act is subject to the civil and criminal penalties set by~~
31 ~~G.S. 105-236 for failure to pay or file a return for State sales and use taxes. The~~
32 ~~Board of Commissioners has the same authority to waive the penalties for a room~~
33 ~~occupancy tax that the Secretary of Revenue has to waive the penalties for State sales~~
34 ~~and use taxes.~~

35 (e) Distribution and use of tax revenue. Nash County shall, on a quarterly basis,
36 remit the net proceeds of the occupancy tax taxes to the Nash Tourism Development
37 Authority. Authority, itemized by tax. The Of the net proceeds of the tax levied
38 under subsection (a) of this section, the Authority shall spend at least two-thirds of
39 the funds remitted to it under this subsection only to promote travel and tourism in
40 Nash County, and shall spend the remainder on tourism-related expenditures. The
41 Authority shall spend the net proceeds of the tax levied under subsection (a1) of this
42 section only to construct, maintain, operate, or market a convention center. The
43 following definitions apply in this subsection:

- 1 (1) Net proceeds. -- Gross proceeds less the cost to the county of
2 administering and collecting the tax, as determined by the finance
3 officer, not to exceed seven percent (7%) of the amount collected.
- 4 (2) Promote travel and tourism. -- To advertise or market an area or
5 activity, publish and distribute pamphlets and other materials,
6 conduct market research, or engage in similar promotional
7 activities that attract tourists or business travelers to the area; the
8 term includes administrative expenses incurred in engaging in the
9 listed activities.
- 10 (3) Tourism-related expenditures. -- Expenditures that are designed to
11 increase the use of lodging facilities in a county or to attract
12 tourists or business travelers to the county and expenditures
13 incurred by the county in collecting the tax. The term includes
14 expenditures to construct, maintain, operate, or market a
15 convention center and other expenditures that, in the judgment of
16 the Authority, will facilitate and support tourism.

17 ~~(f) Effective date of levy. A tax levied under this act shall become effective on~~
18 ~~the date specified in the resolution levying the tax. That date must be the first day of~~
19 ~~a calendar month, however, and may not be earlier than the first day of the second~~
20 ~~month after the date the resolution is adopted.~~

21 ~~(g) Repeal. A tax levied under this act may be repealed by a resolution adopted~~
22 ~~by the Nash County Board of Commissioners. Repeal of a tax levied under this act~~
23 ~~does not affect a liability for a tax that was attached before the effective date of the~~
24 ~~repeal, nor does it affect a right to a refund of a tax that accrued before the effective~~
25 ~~date of the repeal."~~

26 Section 2. County administrative provisions. Section 3(b) of S.L. 1997-
27 102 reads as rewritten:

28 "(b) This section applies only to ~~Madison County.~~ Madison and Nash Counties."

29 Section 3. Gold Rock Annexation. (a) The corporate limits of the City
30 of Rocky Mount are extended to include the Gold Rock I-95 interchange area as
31 described below:

32 Beginning at N.C.G.S. Monument "AVENT" having coordinates N = 842,408.476 feet
33 and E = 2,351,974.00 feet North American Datum of 1983; thence N 69° 27'05"W a
34 horizontal ground distance of 1833.62 feet to a point on the southern right-of-way of
35 S.R. 1522 (N.C. 4, I-95 BUS. LOOP) and the northeastern corner of Nash County
36 ABC Board, THE POINT OF BEGINNING; thence along the property of Nash
37 County ABC Board S 25°01'16" W 175.00 feet to a point on the northern property
38 line of McLane Company, Inc.; thence along said property line the following six
39 courses and distances: N 65°00'53"W 80.17 feet to a point; thence S 24° 59'07"W
40 278.16 feet to a point; thence N 65°00'53"W 250.00 feet to a point; thence N
41 65°43'09"W 666.62 feet to a point; thence S 24°14'24"W 363.08 feet to a point;
42 thence N 71°49'49"W 400.34 feet to a point on the eastern right-of-way of Goldrock
43 Road (N.C. HWY 48); thence N 71°49'49"W 48.53 feet to a point; thence N
44 56°42'05"W 132.54 feet to a point where the western right-of-way of Goldrock Road

1 intersects the southern right-of-way of S.R. 1527; thence along the southern right-of-
2 way of S.R. 1527, the following three courses and distances: N 73°04'07"W 576.50
3 feet to a point; thence N 14°15'53"E 20.00 feet to a point; thence N 80°06'07"W
4 371.90 feet to a point on the eastern right-of-way of Interstate 95, thence along the
5 eastern right-of-way of Interstate 95 the following four courses and distances: N
6 38°18'51"E 127.97 feet to a point; thence N 42°46'54"E 370.70 feet to a point; thence
7 N 53°36'38"E 97.40 feet to a point; thence N 56°05'42"E 528.44 feet to a point on
8 the southern right-of-way of S.R. 1522; thence across S.R. 1522 N 56°09'54"E 321.63
9 feet to a point on the northern right-of-way of S.R. 1522; thence along a curve
10 concave to the right having a radius of 876.93 feet and a chord bearing and distance
11 of N 32°33'20"W 164.83 feet to a point; thence along a curve concave to the right
12 having a radius of 638.20 feet and a chord bearing and distance of N 14°20'06"W
13 220.95 feet to a point; thence N 09°26'54"E 198.70 feet to a point, thence N
14 15°28'54"E 179.36 feet to a point; thence N 26°31'54"E 233.15 feet to a point in the
15 southwestern corner of the property now or formerly owned by Harry A. Whitaker,
16 Jr.; thence along the southern line of Harry A. Whitaker, S 54°03'06"E 853.10 feet to
17 a point on the western right-of-way of Goldrock Road; thence S 57°08'52"E 59.31
18 feet to a point on the eastern right-of-way of Goldrock Road; thence along the
19 property now or formerly owned by M.C. Braswell Heirs, Deed Book 220 Page 86, S
20 54°06'53"E 472.16 feet to a point; thence S 24°59'07"W 704.34 feet to a point on the
21 northern right-of-way of S.R. 1522; thence along S.R. 1522, S 65°00'53"E 60.00 feet
22 to a point; thence along the property of Hotel Ventures of Goldrock Inc., Deed Book
23 1331 Page 700, the following three courses and distances: N 24°59'07"E 445.00 feet to
24 a point; thence S 65°00'53"E 337.00 feet to a point; thence S 24°59'07"W 445.00 feet
25 to a point on the northern right-of-way of S.R. 1522; thence along S.R. 1522, S
26 65°00'53"E 472.38 feet to a point; thence S 25°01'16"W 171.00 feet to the Point of
27 Beginning containing 71.70 acres and being in South Whitakers Township, Nash
28 County, North Carolina and as shown on map by Joyner, Keeny & Associates entitled
29 "Areas to be annexed to City of Rocky Mount" dated April 9, 1997.

30 (b) The corporate limits of the area annexed by subsection (a) of this
31 section shall be considered satellite corporate limits within the meaning of Part 4 of
32 Article 4A of Chapter 160A of the General Statutes. The corporate limits of the area
33 annexed by subsection (a) of this section are not external boundaries for the purposes
34 of Part 2 or 3 of Article 4A of Chapter 160A of the General Statutes until they are
35 contiguous to the municipality.

36 (c) Real and personal property in the territory annexed pursuant to this
37 section is subject to municipal taxes as provided in G.S. 160A-58.10.

38 (d) This section becomes effective only if the City Council of the City of
39 Rocky Mount adopts an ordinance including the area described in subsection (a) of
40 this section in the corporate limits of the City of Rocky Mount. The ordinance is
41 effective at the date specified therein, but not later than July 1, 1998.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

HOUSE BILL 810
Committee Substitute Favorable 4/21/97
Proposed Senate Committee Substitute H810-PCS8254

Short Title: Nash Room Tax/Rocky Mount Annex.

(Local)

Sponsors:

Referred to:

April 7, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE NASH COUNTY TO LEVY AN ADDITIONAL
3 ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX AND TO
4 ANNEX THE GOLD ROCK I-95 INTERCHANGE AREA INTO THE CITY OF
5 ROCKY MOUNT.
6 The General Assembly of North Carolina enacts:
7 Section 1. Nash Occupancy Tax. Section 1 of Chapter 32 of the 1987
8 Session Laws, as amended by Chapter 545 of the 1993 Session Laws, reads as
9 rewritten:
10 "Section 1. Occupancy tax. (a) Authorization and scope. The Nash County
11 Board of Commissioners may ~~by resolution, after not less than ten (10) days' public~~
12 ~~notice and after a public hearing held pursuant thereto,~~ levy a room occupancy tax of
13 three percent (3%) of the gross receipts derived from the rental of any room, lodging,
14 or similar accommodation furnished by a hotel, motel, inn, or similar place within the
15 county that is subject to sales tax imposed by the State under G.S. ~~105-164.4(3).~~
16 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does
17 not apply to accommodations furnished by nonprofit charitable, educational, or
18 religious organizations.
19 (a1) Authorization of Additional Tax. In addition to the tax authorized by
20 subsection (a) of this section, the Nash County Board of Commissioners may levy an
21 additional room occupancy tax of up to three percent (3%) of the gross receipts
22 derived from the rental of accommodations taxable under subsection (a). The levy,

1 collection, administration, and repeal of the tax authorized by this subsection shall be
2 in accordance with the provisions of this section. Nash County may not levy a tax
3 under this subsection unless it also levies the tax authorized under subsection (a) of
4 this section.

5 (b) Administration. A tax levied under this section shall be levied, administered,
6 collected, and repealed as provided in G.S. 153A-155. The penalties provided in
7 G.S. 153A-155 apply to a tax levied under this section.

8 ~~(b) Collection. Every operator of a business subject to the tax levied under this~~
9 ~~act shall, on and after the effective date of the levy of the tax, collect the tax. This~~
10 ~~tax shall be collected as part of the charge for furnishing a taxable accommodation.~~
11 ~~The tax shall be stated and charged separately from the sales records, and shall be~~
12 ~~paid by the purchaser to the operator of the business as trustee for and on account of~~
13 ~~the county. The tax shall be added to the sales price and shall be passed on to the~~
14 ~~purchaser instead of being borne by the operator of the business. The county shall~~
15 ~~design, print, and furnish to all appropriate businesses and persons in the county the~~
16 ~~necessary forms for filing returns and instructions to ensure the full collection of the~~
17 ~~tax. An operator of a business who collects the occupancy tax levied under this act~~
18 ~~may deduct from the amount remitted to the county a discount equal to the discount~~
19 ~~the State allows the operator for collecting State sales and use taxes.~~

20 ~~(c) Administration. The county shall administer a tax levied under this act. A tax~~
21 ~~levied under this act is due and payable to the county finance officer in monthly~~
22 ~~installments on or before the 15th day of the month following the month in which the~~
23 ~~tax accrues. Every person, firm, corporation, or association liable for the tax shall, on~~
24 ~~or before the 15th day of each month, prepare and render a return on a form~~
25 ~~prescribed by the county. The return shall state the total gross receipts derived in the~~
26 ~~preceding month from rentals upon which the tax is levied.~~

27 ~~A return filed with the county finance officer under this act is not a public record~~
28 ~~as defined by G.S. 132-1 and may not be disclosed except as required by law.~~

29 ~~(d) Penalties. A person, firm, corporation, or association who fails or refuses to~~
30 ~~file the return required by this act is subject to the civil and criminal penalties set by~~
31 ~~G.S. 105-236 for failure to pay or file a return for State sales and use taxes. The~~
32 ~~Board of Commissioners has the same authority to waive the penalties for a room~~
33 ~~occupancy tax that the Secretary of Revenue has to waive the penalties for State sales~~
34 ~~and use taxes.~~

35 (e) Distribution and use of tax revenue. Nash County shall, on a quarterly basis,
36 remit the net proceeds of the occupancy tax taxes to the Nash Tourism Development
37 Authority. Authority, itemized by tax. The Of the net proceeds of the tax levied
38 under subsection (a) of this section, the Authority shall spend at least two-thirds of
39 the funds remitted to it under this subsection only to promote travel and tourism in
40 Nash County, and shall spend the remainder on tourism-related expenditures. The
41 Authority shall spend the net proceeds of the tax levied under subsection (a1) of this
42 section only to construct, maintain, operate, or market a convention center. The
43 following definitions apply in this subsection:

- 1 (1) Net proceeds. -- Gross proceeds less the cost to the county of
2 administering and collecting the tax, as determined by the finance
3 officer, not to exceed seven percent (7%) of the amount collected.
4 (2) Promote travel and tourism. -- To advertise or market an area or
5 activity, publish and distribute pamphlets and other materials,
6 conduct market research, or engage in similar promotional
7 activities that attract tourists or business travelers to the area; the
8 term includes administrative expenses incurred in engaging in the
9 listed activities.
10 (3) Tourism-related expenditures. -- Expenditures that are designed to
11 increase the use of lodging facilities in a county or to attract
12 tourists or business travelers to the county and expenditures
13 incurred by the county in collecting the tax. The term includes
14 expenditures to construct, maintain, operate, or market a
15 convention center and other expenditures that, in the judgment of
16 the Authority, will facilitate and support tourism.

17 ~~(f) Effective date of levy. A tax levied under this act shall become effective on~~
18 ~~the date specified in the resolution levying the tax. That date must be the first day of~~
19 ~~a calendar month, however, and may not be earlier than the first day of the second~~
20 ~~month after the date the resolution is adopted.~~

21 ~~(g) Repeal. A tax levied under this act may be repealed by a resolution adopted~~
22 ~~by the Nash County Board of Commissioners. Repeal of a tax levied under this act~~
23 ~~does not affect a liability for a tax that was attached before the effective date of the~~
24 ~~repeal, nor does it affect a right to a refund of a tax that accrued before the effective~~
25 ~~date of the repeal."~~

26 Section 2. County administrative provisions. Section 3(b) of S.L. 1997-
27 102 reads as rewritten:

28 "(b) This section applies only to ~~Madison County.~~ Madison and Nash Counties."

29 Section 3. Gold Rock Annexation. (a) The corporate limits of the City
30 of Rocky Mount are extended to include the Gold Rock I-95 interchange area as
31 described below:

32 Beginning at N.C.G.S. Monument "AVENT" having coordinates N=842,408.476 feet
33 and E=2,351,974.00 feet North American Datum of 1983; thence N 69° 27'05"W a
34 horizontal ground distance of 1833.62 feet to a point on the southern right-of-way of
35 S.R. 1522 (N.C. 4, I-95 BUS. LOOP) and the northeastern corner of Nash County
36 ABC Board, THE POINT OF BEGINNING; thence along the property of Nash
37 County ABC Board S 25°01'16" W 175.00 feet to a point on the northern property
38 line of McLane Company, Inc.; thence along said property line the following six
39 courses and distances: N 65°00'53"W 80.17 feet to a point; thence S 24° 59'07"W
40 278.16 feet to a point; thence N 65°00'53"W 250.00 feet to a point; thence N
41 65°43'09"W 666.62 feet to a point; thence S 24°14'24"W 363.08 feet to a point;
42 thence N 71°49'49"W 400.34 feet to a point on the eastern right-of-way of Goldrock
43 Road (N.C. HWY 48); thence N 71°49'49"W 48.53 feet to a point; thence N
44 56°42'05"W 132.54 feet to a point where the western right-of-way of Goldrock Road

1 intersects the southern right-of-way of S.R. 1527; thence along the southern right-of-
2 way of S.R. 1527, the following three courses and distances: N 73°04'07"W 576.50
3 feet to a point; thence N 14°15'53"E 20.00 feet to a point; thence N 80°06'07"W
4 371.90 feet to a point on the eastern right-of-way of Interstate 95, thence along the
5 eastern right-of-way of Interstate 95 the following four courses and distances: N
6 38°18'51"E 127.97 feet to a point; thence N 42°46'54"E 370.70 feet to a point; thence
7 N 53°36'38"E 97.40 feet to a point; thence N 56°05'42"E 528.44 feet to a point on
8 the southern right-of-way of S.R. 1522; thence across S.R. 1522 N 56°09'54"E 321.63
9 feet to a point on the northern right-of-way of S.R. 1522; thence along a curve
10 concave to the right having a radius of 876.93 feet and a chord bearing and distance
11 of N 32°33'20"W 164.83 feet to a point; thence along a curve concave to the right
12 having a radius of 638.20 feet and a chord bearing and distance of N 14°20'06"W
13 220.95 feet to a point; thence N 09°26'54"E 198.70 feet to a point, thence N
14 15°28'54"E 179.36 feet to a point; thence N 26°31'54"E 233.15 feet to a point in the
15 southwestern corner of the property now or formerly owned by Harry A. Whitaker,
16 Jr.; thence along the southern line of Harry A. Whitaker, S 54°03'06"E 853.10 feet to
17 a point on the western right-of-way of Goldrock Road; thence S 57°08'52"E 59.31
18 feet to a point on the eastern right-of-way of Goldrock Road; thence along the
19 property now or formerly owned by M.C. Braswell Heirs, Deed Book 220 Page 86, S
20 54°06'53"E 472.16 feet to a point; thence S 24°59'07"W 704.34 feet to a point on the
21 northern right-of-way of S.R. 1522; thence along S.R. 1522, S 65°00'53"E 60.00 feet
22 to a point; thence along the property of Hotel Ventures of Goldrock Inc., Deed Book
23 1331 Page 700, the following three courses and distances: N 24°59'07"E 445.00 feet to
24 a point; thence S 65°00'53"E 337.00 feet to a point; thence S 24°59'07"W 445.00 feet
25 to a point on the northern right-of-way of S.R. 1522; thence along S.R. 1522, S
26 65°00'53"E 472.38 feet to a point; thence S 25°01'16"W 171.00 feet to the Point of
27 Beginning containing 71.70 acres and being in South Whitakers Township, Nash
28 County, North Carolina and as shown on map by Joyner, Keeny & Associates entitled
29 "Areas to be annexed to City of Rocky Mount" dated April 9, 1997.

30 (b) The corporate limits of the area annexed by subsection (a) of this
31 section shall be considered satellite corporate limits within the meaning of Part 4 of
32 Article 4A of Chapter 160A of the General Statutes. The corporate limits of the area
33 annexed by subsection (a) of this section are not external boundaries for the purposes
34 of Part 2 or 3 of Article 4A of Chapter 160A of the General Statutes until they are
35 contiguous to the municipality.

36 (c) Real and personal property in the territory annexed pursuant to this
37 section is subject to municipal taxes as provided in G.S. 160A-58.10.

38 (d) This section becomes effective only if the City Council of the City of
39 Rocky Mount adopts an ordinance including the area described in subsection (a) of
40 this section in the corporate limits of the City of Rocky Mount. The ordinance is
41 effective at the date specified therein, but not later than July 1, 1998.

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

1 (a) The ~~Office~~ Division of North Carolina Aquariums shall be organized as
2 prescribed by the Secretary ~~of the Department~~ of Environment, Health, and Natural
3 Resources and shall exercise the following powers and duties:

4 (1) Repealed by Session Laws 1991, c. 320, s. 3.

5 (1a) ~~To establish~~ Establish and maintain the North Carolina ~~Aquariums;~~
6 Aquariums.

7 (1b) ~~To administer~~ Administer the operations of the North Carolina
8 Aquariums, such administrative duties to include, but not be
9 limited to the following:

10 a. Adopt goals and objectives for the Aquariums and review
11 and revise these goals and objectives ~~periodically;~~
12 periodically.

13 b. Review and approve requests for use of the Aquarium
14 facilities and advise the Secretary ~~of the Department~~ of
15 Environment, Health, and Natural Resources on the most
16 appropriate use consistent with the goals and objectives of
17 the ~~Aquariums;~~ Aquariums.

18 c. Continually review and evaluate the types of projects and
19 programs being carried out in the Aquarium facilities and
20 determine if the operation of the facilities is in compliance
21 with the established goals and ~~objectives;~~ objectives.

22 d. Recommend to the Secretary ~~of the Department~~ of
23 Environment, Health, and Natural Resources any policies
24 and procedures needed to assure effective staff performance
25 and proper liaison among Aquarium facilities in carrying
26 out the overall purposes of the Aquarium ~~programs;~~
27 programs.

28 e. Review Aquarium budget submissions to the Secretary ~~of~~
29 ~~the Department~~ of Environment, Health, and Natural
30 ~~Resources;~~ Resources.

31 f. Recruit and recommend to the Secretary ~~of the Department~~
32 of Environment, Health, and Natural Resources candidates
33 for the positions of directors of the ~~North Carolina~~
34 ~~Aquariums;~~ and Aquariums.

35 g. Create local advisory committees in accordance with the
36 provisions of G.S. 143B-289.22.

37 (2), (3) Repealed by Session Laws 1993, c. 321, s. 28(e).

38 (4) to (6) Repealed by Session Laws 1991, c. 320, s. 3.

39 (7) Assume any other powers and duties assigned to it by the
40 Secretary.

41 (b) The Secretary may adopt any rules and procedures necessary to implement
42 this section."

43 Section 4. G.S. 143B-289.22 reads as rewritten:

44 "§ 143B-289.22. Local advisory committees; duties; membership.

1 Local advisory committees created pursuant to G.S. 143B-289.20(a)(1b) shall assist
2 each North Carolina Aquarium in its efforts to establish projects and programs and to
3 assure adequate citizen-consumer input into those efforts. Members of these
4 committees shall be appointed by the Secretary of the Department of Environment,
5 Health, and Natural Resources for three-year terms from nominations made by the
6 Director of the Office of Marine Affairs. Each committee shall select one of its
7 members to serve as chairperson. Members of the committees shall serve without
8 compensation for services or expenses."

9 Section 5. Part 5B of Article 7 of Chapter 143B of the General Statutes
10 is amended by adding a new section to read:

11 "§ 143B-289.23. North Carolina Aquariums; fees; fund.

12 (a) Fees. -- The Secretary of Environment, Health, and Natural Resources may
13 adopt a schedule of uniform entrance fees for the North Carolina Aquariums.

14 (b) Fund. -- The North Carolina Aquariums Fund is hereby created as a special
15 and nonreverting fund. The North Carolina Aquariums Fund shall be used only for
16 repair, maintenance, and educational exhibit construction at existing aquariums and
17 to match private funds that are raised for these purposes.

18 (c) Disposition of Fees. -- All entrance fee receipts shall be credited to the North
19 Carolina Aquariums Fund. The Secretary of Environment, Health, and Natural
20 Resources may expend monies from the North Carolina Aquariums Fund only upon
21 the authorization of the General Assembly."

22 Section 6. G.S. 143B-279.3(b)(23) is repealed.

23 Section 7. G.S. 120-123(59) is repealed.

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

**NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE**

BILL NUMBER: House Bill 460
SHORT TITLE: Abolish Aquariums Commission
SPONSOR(S): House Proposed Committee Substitute

FISCAL IMPACT

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

FY 1997-98 FY 1998-99 FY 1999-00 FY 2000-01 FY 2001-02

REVENUES See section on assumption and methodology.

EXPENDITURES No additional expenses

POSITIONS: No new positions

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Environment, Health, and Natural Resources

EFFECTIVE DATE: When it becomes law

BILL SUMMARY:

This act transfers all rights and responsibilities of the Aquariums Commission to the Secretary of Environment, Health, and Natural Resources.

The proposed act abolishes the Aquariums Commission established under G. S. 143B-344.16 and transfers the authority to dispense of fees credited to the North Carolina Special Aquariums Fund, established under G.S. 143B-344.17(f), to the Secretary of Environment, Health, and Natural Resources upon authorization of the General Assembly. The right to establish a schedule of fees, for the N. C. Aquariums, granted to the Commission under Chapter 143B is also transferred to the Secretary under this act. There are no changes to the current admission fees or to the restrictions on the uses of the revenue from admission charges.

ASSUMPTIONS AND METHODOLOGY:

No additional fiscal impacts are expected as a result, of the passage, of this act.

FISCAL RESEARCH DIVISION

PREPARED BY: Warren Plonk & Jennifer Herrera

APPROVED BY:

EXPLANATION OF HOUSE BILL 460:
Abolish Aquariums Commission (4th Edition)

TO: Senate Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: June 18, 1997
SPONSOR: Representative Culpepper
Agency Bill

House Bill 460 abolishes the North Carolina Aquariums Commission, which was established in 1992. The sole purpose of the Commission was to recommend a schedule of uniform fees for the three State supported aquariums at Fort Fisher, Pine Knoll Shores, and Roanoke Island. The Commission recommended a fee schedule in 1993. The current admission fees were implemented in May of 1994 and are as follows:

Adult	\$3
Sr. Citizens and Active Military	\$2
Ages 6-17	\$1
Under 6	Free
Members	Free
North Carolina School Groups	Free
AZA Reciporcals	Free
Handicapped Groups	Free

Discounts of 15% are provided for groups of 10 or more and for block ticket sales.

The bill moves the fee setting authority to the Secretary of Environment, Health, and Natural Resources. The fees would continue to be credited to a special, nonreverting fund known as "The North Carolina Special Aquariums Fund". The purpose of the Fund remains unchanged. The money in it may be used only for repair, maintenance, and education exhibit construction at existing aquariums and for matching private funds that are raised for one of those three purposes. The money may be expended only upon the authorization of the General Assembly.

The Department does not anticipate increasing the fees until major expansion of the facilities and exhibits are completed. Expansion plans are being completed and the construction will begin after the General Assembly appropriates expansion funds. Any fee increases would be preceded by a study of fees charged at comparable facilities. The Department would also seek input

from the three local communities, the Aquarium Advisory Committees, and the North Carolina Aquarium Society Board of Directors.

The bill repeals cross references in the statutes to the North Carolina Aquariums Commission and makes technical changes to the statutes. The bill also deletes language in the statutes to the Office of Marine Affairs because it no longer exists. The duties of that Office that concern the Aquariums now reside in the Division of North Carolina Aquariums.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 460

DATE _____

S. B. No. _____

Amendment No. _____

(to be filled in by
Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)

) _____

Sen.)

1 moves to amend the bill on page 3, line 15

2 () WHICH CHANGES THE TITLE

3 by deleting the word "only" ;

4 _____

5 and on page 3, line 16, by deleting

6 "and educational exhibit construction" and

7 substituting "educational exhibit construction,

8 and operational expenses!"

9 _____

10 _____

11 _____

12 _____

13 _____

14 _____

15 _____

16 _____

17 _____

18 _____

19 _____

SIGNED J Ken

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

4

HOUSE BILL 136
Committee Substitute Favorable 2/26/97
Committee Substitute #2 Favorable 3/11/97
Fourth Edition Engrossed 3/17/97

Short Title: Late Video Return/Sales Tax.

(Public)

Sponsors:

Referred to:

February 13, 1997

A BILL TO BE ENTITLED

1 AN ACT TO PROVIDE THAT CERTAIN LATE CHARGES FOR THE LATE
2 RETURN OF RENTED PROPERTY ARE SUBJECT TO SALES TAX AND TO
3 PROVIDE FOR TREBLE DAMAGES IN A CIVIL ACTION TO ENFORCE
4 PAYMENT OF CERTAIN LATE CHARGES FOR THE LATE RETURN OF A
5 RENTED VIDEOCASSETTE TAPE.
6

7 The General Assembly of North Carolina enacts:

8 Section 1. G.S. 105-164.3(16) is amended by adding a new sub-
9 subdivision to read:

10 "(16) g. The term 'sales price' includes a late charge for the late
11 return of leased or rented personal property, except that the
12 term does not include the excess of the late charge for the
13 late period over the rental charge for an equivalent period if
14 the following conditions are met:

- 15 1. The late charge is imposed only if the lessee violates
16 the terms of the lease or rental agreement by failing
17 to return the property on time.
18 2. The late charge is charged and accounted for
19 separately from the charge for leasing or renting the
20 property."

1 Section 2. Article 13 of Chapter 66 of the General Statutes is amended
2 by adding a new section to read:

3 "§ 66-67.4. Remedies for failure to pay extra-day charges for late return of video.

4 (a) The following definitions apply in this section:

5 (1) Extra-day charge. -- A charge for the late return of a rented
6 videocassette at a rate that does not exceed the daily rental charge
7 rate or the regular per-day rental charge rate.

8 (2) Member of record. -- A person in whose name a video rental store
9 membership is held and on whose membership a videocassette is
10 rented.

11 (3) Videocassette. -- The term includes video cartridges.

12 (4) Video rental store. -- An entity that rents videocassette tapes for
13 noncommercial use.

14 (b) A member of record who fails to pay the extra-day charges assessed for the
15 late return of a videocassette within 30 days after written demand for payment of
16 such charges is liable to the video rental store for a minimum amount of fifty dollars
17 (\$50.00) or three times the amount of the extra-day charges, whichever is greater,
18 subject to a maximum amount of one hundred dollars (\$100.00) per tape.

19 (c) The written demand shall be mailed by certified mail to the member of
20 record's last known address.

21 (d) The damages provided for in this section do not apply unless, at the time of
22 the rental of the videocassette tape, the video rental store conspicuously displayed in
23 the vicinity of the checkout counter a sign that displays the following warnings in
24 block letters not less than one inch in height:

25 'STATE LAW PROVIDES THAT FAILURE TO PAY THE LATE
26 RETURN, EXTRA-DAY CHARGES DUE ON ANY RENTED
27 VIDEOCASSETTE TAPE MAY RESULT IN DAMAGES OF TRIPLE
28 THE AMOUNT OF THE LATE CHARGES, WITH A MINIMUM OF
29 \$50.00 AND A MAXIMUM OF \$100.00 PER TAPE. (G.S. 66-67.4).'

30 (e) Any recovery of these damages must be recovered by a civil action.

31 (f) Nothing contained in this section shall prohibit recovery upon any other theory
32 of law."

33 Section 3. This act becomes effective October 1, 1997, and applies to
34 rentals occurring on or after that date.

**NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE**

BILL NUMBER: HB 136 (Second Edition)
SHORT TITLE: Late Video Return/Sales Tax
SPONSOR(S): Representative John Weatherly

FISCAL IMPACT					
Yes ()	No ()	No Estimate Available (x)			
<u>FY 1997-98</u>	<u>FY 1998-99</u>	<u>FY 1999-00</u>	<u>FY 2000-01</u>	<u>FY 2001-02</u>	
REVENUES See Assumptions and Methodology					
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: The sales tax is collected by the Department of Revenue. The enactment of the legislation will not have a significant impact on the tax collection efforts of the Department.					
EFFECTIVE DATE: Applies to rentals occurring on or after October 1, 1997.					

BILL SUMMARY: (1) Amends definition of "sales price" under sales tax law to make it clear that the tax applies to "late charges" for the late return of leased or rented personal property to the extent that the extra charge does not exceed the rental charge for an equivalent period. (2) Provides that damages equal to the greater of three times the extra day charges, or \$50.00 shall be levied in a civil action to enforce payment of extra day charges assessed for the late return of a video cassette or video cartridge within 30 days after written demand for its return. The damages do not apply unless at the time of the rental the video rental establishment conspicuously displays a warning about the treble damages.

ASSUMPTIONS AND METHODOLOGY: The enactment of the bill will cause an indirect revenue gain in state and local sales tax revenue resulting from the impact of the treble damages penalty. A spokesman for the video rental industry felt that the gain would be less than \$500,000 per year, but admitted that it is impossible to come up with a reliable estimate. The language clarifying the sale tax base definition will have a minor impact due to the fact that most late charges are in the form of extra day rentals. This analysis is based also on discussions with the Department of Revenue.

FISCAL RESEARCH DIVISION: 733-4910

PREPARED BY: Dave Crotts

APPROVED BY: Tom Covington

DATE: February 19, 1997

EXPLANATION OF HOUSE BILL 136
Proposed Senate Finance Committee Substitute
Late Video Return/Sales Tax

TO: Senate Finance Committee
FROM: Committee Staff
DATE: May 21, 1997
SPONSOR: Representative Weatherly

House Bill 136 makes two separate changes to the law concerning rented property:

- It clarifies that certain charges for the late return of rented personal property are subject to the sales tax.
- It provides that a person can be assessed treble damages for failure to pay certain late charges for the late return of a rented videocassette tape.

Both changes become effective October 1, 1997, and apply to rentals occurring on or after that date.

The first part of the bill specifies that a late charge imposed for the late return of leased or rented personal property is subject to sales tax. However, if the amount of the late charge exceeds the amount of the rental charge for the same period, the excess of the late charge over the rental charge is not included in the sales price if it (1) is imposed only if the lessee violates the terms of the agreement by failing to return the property on time; and (2) is charged and accounted for separately. At the present time, the application of sales tax to late charges varies depending upon the vendor's interpretation of the law. This bill will clarify the law and thus bring consistency to the application of sales tax to late charges for the late return of rental property.

The second part of the bill creates a new statutory remedy available to video rental stores when a person fails to remit the late charges owed for the late return of a videocassette tape. This remedy applies only to late charges that do not exceed the daily rental charge. If a person fails to pay the late charges owed within 30 days after receiving a written demand for their payment, then the person would be liable for a minimum of \$50.00 or three times the amount of late charges, whichever is greater, up to a maximum of \$100 per tape. Sales tax is not applicable to these damages. Under the statute, a written demand for the payment of the late charges must be mailed by certified mail, return receipt requested, to the person's last known address. Also, the damages do not apply unless the store displays an 8x11 inch warning with boldface type at least 48 points in size stating the amount of damages available. The damages can be collected only by civil action and, if the person tenders the full amount of the extra day charges before the retailer files the action, then the damages do not apply.



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 136

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

H136-ALCF-19

Date _____, 1997

Comm. Sub. [YES]
Amends Title []

Senator Winner

1 moves to amend the bill on page 2, line 17,
2 by deleting the phrase "fifty dollars (\$50.00)" and substituting
3 "thirty dollars (\$30.00)";
4
5 and on page 2, line 33,
6 by deleting the phrase "\$50.00" and substituting the phrase
7 "\$30.00".

SIGNED *Aslie Chin*
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 400

Short Title: Bank Assessments/AB.

(Public)

Sponsors: Representatives Tallent and Ramsey.

Referred to: Commerce, if favorable, Finance.

March 5, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO REWRITE THE AUTHORITY OF THE STATE BANKING
3 COMMISSION TO ASSESS BANKS AND CONSUMER FINANCE LICENSEES
4 FOR THE MAINTENANCE AND OPERATION OF THE OFFICE OF THE
5 COMMISSIONER OF BANKS.

6 The General Assembly of North Carolina enacts:

7 Section 1. G.S. 53-122 reads as rewritten:

8 "**§ 53-122. Fees for ~~examinations and other services~~ and assessments.**

9 (a) For the purpose of ~~paying the salaries and necessary traveling expenses~~
10 ~~operating and maintaining the office~~ of the Commissioner of Banks, ~~State bank~~
11 ~~examiners, assistant State bank examiners, clerks, stenographers and other employees~~
12 ~~of the Commissioner of Banks~~, banks and consumer finance licensees doing business
13 under the authority of Chapter 53 of the General Statutes shall pay the following fees
14 and assessments shall be paid into the office of the Commissioner of ~~Banks~~: Banks
15 within 10 days after the assessment:

16 (1) ~~Each bank and each branch and each limited service facility of any~~
17 ~~bank which under the laws of the State of North Carolina is~~
18 ~~subject to supervision and examination by the Commissioner of~~
19 ~~Banks and is authorized to do business or is in process of voluntary~~
20 ~~liquidation, shall, within 10 days after the assessment has been~~
21 ~~made, pay into the office of the Commissioner of Banks according~~
22 ~~to its total resources as shown by its report of condition made to~~
23 ~~the Commissioner of Banks at the close of business December 31,~~
24 ~~1978, and on the thirty first day of December, or the date most~~

1 ~~nearly approximating same of each year thereafter on which a~~
2 ~~report of condition is made to the Commissioner of Banks not in~~
3 ~~excess of the following fees for its annual examination: eighty five~~
4 ~~dollars (\$85.00) for the first one hundred thousand dollars~~
5 ~~(\$100,000) of assets or less, twelve dollars (\$12.00) for each one~~
6 ~~hundred thousand dollars (\$100,000) or fraction in excess thereof,~~
7 ~~and three dollars and fifty cents (\$3.50) for each one hundred~~
8 ~~thousand dollars (\$100,000) or fraction thereof of trust assets,~~
9 ~~which said trust assets shall not include real estate carried as such;~~
10 ~~provided, however, with respect to loan agencies or brokers subject~~
11 ~~to the provisions of Article 15 of Chapter 53 of the General~~
12 ~~Statutes, the fee shall be one hundred seventy dollars (\$170.00) for~~
13 ~~the first one hundred thousand dollars (\$100,000) of assets or less,~~
14 ~~and twelve dollars (\$12.00) for each one hundred thousand dollars~~
15 ~~(\$100,000) or fraction in excess thereof.~~

16 (2) ~~All examinations made other than those provided for in~~
17 ~~subdivision (1) hereof shall be deemed special examinations and~~
18 ~~for such special examination the bank shall pay into the office of~~
19 ~~the Commissioner of Banks the following fees for each special~~
20 ~~examination: eighty five dollars (\$85.00) for the first one hundred~~
21 ~~thousand dollars (\$100,000) of assets or less, twelve dollars (\$12.00)~~
22 ~~for each one hundred thousand dollars (\$100,000) or fraction in~~
23 ~~excess thereof, and three dollars and fifty cents (\$3.50) for each~~
24 ~~one hundred thousand dollars (\$100,000) or fraction thereof of~~
25 ~~trust assets, which said trust assets shall not include real estate~~
26 ~~carried as such; provided, however, with respect to loan agencies~~
27 ~~or brokers subject to the provisions of Article 15 of Chapter 53 of~~
28 ~~the General Statutes, the fee shall be one hundred seventy dollars~~
29 ~~(\$170.00) for the first one hundred thousand dollars (\$100,000) of~~
30 ~~assets or less, and twelve dollars (\$12.00) for each one hundred~~
31 ~~thousand dollars (\$100,000) or fraction in excess thereof. The fees~~
32 ~~paid for special examination shall be based on the assets of the~~
33 ~~bank examined as of the date of such examination.~~

34 (1) Banks. -- Each bank shall pay a cumulative assessment based on
35 its total assets, as shown on its report of condition made to the
36 Commissioner of Banks as of December 31 each year or the date
37 most nearly approximating the same, not to exceed the amount
38 determined by applying the following schedule: (i) on the first
39 fifty million dollars (\$50,000,000) of assets, or fraction thereof, six
40 thousand dollars (\$6,000); (ii) on assets over fifty million dollars
41 (\$50,000,000), but not more than two hundred fifty million dollars
42 (\$250,000,000), twelve dollars (\$12.00) per one hundred thousand
43 dollars (\$100,000), or fraction thereof; (iii) on assets over two
44 hundred fifty million dollars (\$250,000,000), but not more than five

1 hundred million dollars (\$500,000,000), nine dollars (\$9.00) per
2 one hundred thousand dollars (\$100,000), or fraction thereof; (iv)
3 on assets over five hundred million dollars (\$500,000,000), but not
4 more than one billion dollars (\$1,000,000,000), seven dollars
5 (\$7.00) per one hundred thousand dollars (\$100,000), or fraction
6 thereof; (v) on assets over one billion dollars (\$1,000,000,000), but
7 not more than ten billion dollars (\$10,000,000,000), five dollars
8 (\$5.00) per one hundred thousand dollars (\$100,000), or fraction
9 thereof; and (vi) on assets over ten billion dollars
10 (\$10,000,000,000), three dollars (\$3.00) per one hundred thousand
11 dollars (\$100,000), or fraction thereof. Additionally, each bank
12 shall pay an assessment on trust assets held by it in the amount of
13 one dollar (\$1.00) per one hundred thousand dollars (\$100,000) of
14 the assets, or fraction thereof; except that banks are not required to
15 pay assessments on real estate held as trust assets.

16 (2) Consumer Finance Licensees. -- Each consumer finance licensee
17 shall pay an assessment not to exceed eighteen dollars (\$18.00) per
18 one hundred thousand dollars (\$100,000) of assets, or fraction
19 thereof, plus a fee of three hundred dollars (\$300.00) per office;
20 provided, however, a consumer finance licensee shall pay a
21 minimum annual assessment of not less than five hundred dollars
22 (\$500.00). The assessment shall be determined on a consumer
23 finance licensee's total assets as shown on its report of condition
24 made to the Commissioner of Banks as of December 31 each year,
25 or the date most nearly approximating the same.

26 (3) Special Assessment. -- If the Commissioner of Banks determines
27 that the financial condition or manner of operation of a bank or
28 consumer finance licensee warrants further examination or an
29 increased level of supervision, or in the event of a merger or
30 conversion of a savings institution organized under State or federal
31 law into a bank, or conversion of a federally chartered bank into a
32 State bank, the institutions may be subject to assessment not to
33 exceed the amount determined in accordance with the schedule set
34 forth in subdivision (1) of subsection (a) of this section for banks
35 or subdivision (2) for consumer finance licensees.

36 ~~(3)~~ (b) The ~~Commissioner of Banks~~ State Banking Commission may by rule set
37 the amount to be collected for processing any application or ~~petition~~ proceeding
38 required by law to be filed with the Commissioner and for obtaining copies of any
39 ~~publication or~~ public record of the Banking Commission.

40 ~~(4)~~ (c) In all ~~civil and~~ criminal cases tried in any of the courts of this State
41 wherein any of the employees of the Commissioner of Banks are used as witnesses, a
42 fee of ~~ten dollars (\$10.00)~~ per ~~day~~ day, to be determined by the presiding judge, and
43 actual expenses incurred shall be allowed such witnesses and the same shall be paid
44 to the Commissioner of Banks by the clerk of the court of the county in which the

1 case is tried and thereafter charged in bill of costs as are other costs incurred in the
2 trial, and in all civil actions tried in any of the courts of this State, wherein any of the
3 employees of the Commissioner of Banks are required as witnesses, the party
4 requiring such employee as witness shall deposit with the Commissioner of Banks
5 when the subpoena is served a sufficient sum to cover the witness fee of ten dollars
6 (\$10.00) per day and expenses, and such sums as may thus be advanced shall
7 thereafter be charged in the bill of costs as other costs are charged. All sums paid
8 under this subdivision shall be paid to the Commissioner of Banks as are fees for
9 examination and used in like manner. matter.

10 ~~(5)~~ (d) The total ~~compensation and necessary traveling~~ expenses of the employees
11 office of the Commissioner of Banks shall not in any one year exceed the total fees
12 collected under the provisions of this section, provided ~~such~~ the expenses ~~and~~
13 ~~compensation~~ may exceed the total fees collected in any year when surplus funds are
14 available.

15 ~~(6)~~ (e) In the first half of each calendar year, the State Banking Commission shall
16 review the estimated cost of maintaining the office of the Commissioner of Banks for
17 the next fiscal year. If the estimated fees and assessments provided for under
18 ~~subdivisions (1) and (2) this section~~ shall exceed the estimated cost of maintaining the
19 office of the Commissioner of Banks for the next fiscal year, then the State Banking
20 Commission may reduce by uniform percentage the fees provided for in ~~subdivisions~~
21 ~~(1) and (2) of this section but not in a percentage greater than fifty percent (50%) nor~~
22 ~~to an amount which will reduce the amount of the fees to be collected below the~~
23 ~~estimated cost of maintaining the office of the Commissioner of Banks for the next~~
24 ~~fiscal year. this section.~~ If the estimated fees and assessments provided for under
25 ~~subdivisions (1) and (2) this section~~ shall be less than the estimated cost of
26 maintaining the office of the Commissioner of Banks for the next fiscal year, then the
27 State Banking Commission may increase by uniform percentage the fees provided for
28 in ~~subdivisions (1) and (2) of this section~~ to an amount which will increase the
29 amount of the fees and assessments to be collected to an amount at least equal to the
30 estimated cost of maintaining the office of the Commissioner of Banks for the next
31 fiscal year. ~~Such fees shall be reduced whenever a surplus exists which exceeds the~~
32 ~~estimated cost of operating the office of the Commissioner of Banks for one year,~~
33 ~~even if such reduction shall result in the collection of a smaller sum than the~~
34 ~~estimated cost of maintaining the office of the Commissioner of Banks for that year.~~
35 In no event shall any surplus at the end of any fiscal year resulting from the
36 collection of fees and assessments pursuant to this section revert to the general fund.

37 (f) The Commissioner of Banks may collect the assessments provided for in
38 subsection (a) of this section annually or in periodic installments as approved by the
39 State Banking Commission."

40 Section 2. G.S. 53-184(b) reads as rewritten:

41 "(b) Each licensee shall file annually with the Commissioner of Banks on or
42 before the thirty-first day of March for the 12 months' period ending the preceding
43 December 31, reports on forms prescribed by the Commissioner. ~~Such reports~~
44 Reports shall disclose in detail and under appropriate headings the ~~resources,~~ assets

1 and liabilities of ~~such licensee at the beginning and at the end of the period, the~~
2 licensee, the income, expense, gain, loss, ~~and a reconciliation of surplus or net worth~~
3 ~~with the balance sheets, the ratios of the profits to the assets reported, the monthly~~
4 ~~average number and amount of loans outstanding and a classification of loans made,~~
5 ~~by size and by security,~~ and ~~such~~ any other information as the Commissioner may
6 require. ~~Such reports~~ Reports shall be verified by the oath or affirmation of the
7 owner, manager, president, vice-president, cashier, secretary or treasurer of ~~such~~ the
8 licensee."

9 Section 3. G.S. 53-184(d) is repealed.

10 Section 4. This act becomes effective January 1, 1998, and applies to
11 assessments due for years beginning with 1998.

EXPLANATION OF HOUSE BILL 400:
Bank Assessments

TO: Senate Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: June 18, 1997
SPONSOR: Representatives Tallent and Ramsey
Agency Bill

House Bill 400 more evenly distributes the cost of operating the Office of the Commissioner of Banks among the state-chartered banks and non-bank operations supervised by the agency. In response to a state audit of the Office of the Commissioner of Banks, the Banking Commission conducted a study and found that the current assessment schedule causes a disproportionate burden on large banks while the assessment on other banks does not cover the direct cost of their examinations. It also found that the bank assessments are currently supplementing the cost of regulating the non-bank operations in the agency. Under the bill, the total assessments proposed will be less than those currently authorized under the statute. Under the assessments proposed by the bill, most state-chartered banks will see a decrease in their assessments, and the consumer finance licensees will see an increase in their assessments.

The Office of the Commissioner of Banks is receipt-supported. Although the Office is subject to the appropriation process, it does not derive its financial support from the General Fund. The statute sets the fees and assessments payable by the banks and consumer finance licensees regulated by the Office. The amount of fees and assessments collected should not exceed the costs of operating and maintaining the Office of the Commissioner of Banks. The Banking Commission has the authority to increase or decrease the fees and assessments by a uniform percentage to ensure that they equal, to as close a degree as possible, the actual expenses of the Office. The assessment schedule has not been changed since 1979.

**NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE**

BILL NUMBER: House Bill 400
SHORT TITLE: Bank Assessments/AB
SPONSOR(S): Representatives Tallent, et al.

FISCAL IMPACT

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

FY 1997-98 FY 1998-99 FY 1999-00 FY 2000-01 FY 2001-02

REVENUES

Assessments Bank Inst.	Current revenue \$3,071,000 million annually
Assessment Finance Co.	Current revenue \$494,000 annually

**PRINCIPAL DEPARTMENT(S) & State Banking Commission
PROGRAM(S) AFFECTED:**

EFFECTIVE DATE: Assessments due on or after January 1, 1998

BILL SUMMARY:

The proposed act amends G.S. 53-122 by replacing the existing assessment schedule with a new assessment schedule and authorizing a new reporting procedure.

Examiners of the State Banking Commission examine bank and consumer finance company records to verify all reports made to the Commissioner of Banks. The current examination assessment schedule on banks is \$85.00 for the first \$100,000 in assets and \$12.00 per \$100,000 in assets over \$100,000. The current examination assessment schedule on consumer finance companies is \$170.00 for the first \$100,000 in assets and \$12.00 per \$100,000 in assets over \$100,000.

The new schedule proposed in this act is as follows:

Bank Assessment Schedule	Consumer Finance Assessment Schedule
First \$50 million of Assets \$6,000	\$18 per \$100,000 of assets
\$50 million to \$250 million \$12 per \$100,000	Plus \$300 per office
\$250 million to \$500 million \$9 per \$100,000	Minimum annual assessment \$494,000
\$500 million to \$1 billion \$7 per \$100,000	
\$1 billion to \$10 billion \$5 per \$100,000	
Assets over \$10 billion \$3 per \$100,000	

Under the current law, institutions are required to pay the assessment in full to the Commissioner of banks within ten days after an assessment has been made. This act authorizes the Commissioner of Banks, acting at the direction of the State Banking Commission, to collect the assessment either annually or in periodic installments.

The requirement, under G.S. 53-184(d), that affiliated lenders file composite annual reports in addition to separate reports is repealed.

ASSUMPTIONS AND METHODOLOGY:

Under G.S. 53-122, the State Banking Commission is required to set the assessment fees to cover the operations expense of maintaining the office. In addition, the Commission collects business license fees, registration fees, and other fines, penalties, and assessments to cover the cost of operating the Commission. The Commission is entirely receipt supported; no General Fund moneys are appropriated to cover the activities and operations of the Commission.

In the first half of the year the Commission reviews the estimated cost of operating the office. If the fees used in generating the revenue for the Commission exceeds the estimated cost, the Commission is authorized to reduce all of the examination fees by a uniform amount so to meet the estimate. In the past, the Commission has had to adjust these fees to prevent ending a year in surplus. According to representatives of the State Banking Commission the new fee schedule, outlined in this act, will prevent the need to readjust fees.

Information provided by the State Banking Commission and the revenue collected is expected to cover the cost of operating the office for fiscal year 1997-98.

FISCAL RESEARCH DIVISION

733-4910

PREPARED BY: Warren Plonk & Jennifer Herrera

APPROVED BY:

DATE: May 14, 1997



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill ~~751~~ 400

400
~~H751~~-ALCF-20

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



Date 6-18, 1997

Comm. Sub.
Amends Title

1 moves to amend the bill on page 4, lines 20 and 27,
2 by adding the phrase "and assessments" after the word "fees" each
3 time it appears.

SIGNED [Signature]
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

6/18/97
Date

Name of Committee

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Kim Smith	NCLM
R ROGERS	EANR
Rhett White	NC Aquariums
Daniel Ruffin	" "
Sarah Fieler	DEHNR
Audrey & Chris	NCCP J
LARRY STEGAN	NC Funeral Dir. Assoc.
Ann Freeman	Carolina Permanent Med. Co., Durham
Jan Overhart	DOJ
Jane Smith	CCOB
McNeil Chittant	AG's office

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

6/18/97
Date

Name of Committee

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

<i>John M. Porechan</i>	<i>Deputy Commissioner of Banks</i>
<i>Rich Adellb</i>	<i>N.C.D.O. Revenue</i>
<i>Tom Moran</i>	<i>Sprint</i>
<i>Ann Franklin</i>	<i>Bumc. Co.</i>
<i>Tom Dorell</i>	<i>McAfee</i>
<i>John McCall</i>	<i>Manly Robert + Starnes PA</i>
<i>Chris Volcani</i>	<i>Mc. Beef + Wings</i>
<i>John McCall</i>	<i>DCR</i>
<i>LEIBATON ROPEZ</i>	<i>EDAPA</i>
<i>Natalie Staskis</i>	
<i>Lynn Fick Cooper</i>	

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT

Senator David Hoyle, Co-Chair

Senator John Kerr, Co-Chair

Thursday, June 19, 1997

SENATOR HOYLE,

submits the following with recommendations as to passage:

FAVORABLE

H.B.(SCS)810 Nash Room Tax/Rocky Mount Annex
 Sequential Referral: None
 Recommended Referral: None

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO SENATE C.S. BILL

H.B. 400 Bank Assessments/AB
 Draft Number: PCS1407
 Sequential Referral: None
 Recommended Referral: None
 Long Title Amended: No

**UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL**

H.B.(CS #2)136 Late Video Return/Sales Tax
 Draft Number: PCS7332
 Sequential Referral: None
 Recommended Referral: None
 Long Title Amended: No

**UNFAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 1,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 2**

H.B.(SCS)460 Abolish Aquariums Commission/AB
 Draft Number: PCSA395
 Sequential Referral: None
 Recommended Referral: None
 Long Title Amended: No

TOTAL REPORTED: 4

Committee Clerk Comment: HB 136, 400,460,810 in 6-18-97 Committee

SENATE FINANCE COMMITTEE

WEDNESDAY, JUNE 25, 1997

8:30 A.M. - ROOM 544 LOB

The Senate Finance Committee met on June 25, 1997, with Senator Kerr presiding. There were 20 members present.

H. B. 549 - Asheville/Biltmore Boundary

Representative Ives was not present and Senator Ledbetter explained the bill. Senator Dannelly moved for a "favorable" report and the motion carried. Copy of bill included in the minutes.

S.B. 483 - Physician Service See

Senator Lucas was recognized as the bill sponsor, and upon motion by Senator Conder a proposed subcommittee substitute was adopted for discussion. Senator Lucas explained her bill. Also speaking in support of this bill were Fred Allen, North Carolina Aggregates Association and Susan Randolph, DEHNR, and with the Occupational Environment Epi. On motion by Senator Dannelly, the committee gave the committee substitute for S.B. 483 a "favorable" report. Copy of bill, committee substitute and fiscal note included in the minutes.

H.B. 754 - Illicit Liquor Tax

Representative Dickson was not present for the committee meeting and Ms. Cindy Avrette explained the bill. Speaking in support of the bill was Richard Riddle with the Department of Revenue. After discussion, Senator Hoyle moved for a "favorable" report and the motion carried. Copy of bill and fiscal note included in the minutes.

H.B. 311 - Escheat Sunset Removed

Representative Cansler was not present and Senator Conder was recognized to explain this bill. This bill had previously been before the committee and after discussion, Senator Conder moved for a "favorable" report and the motion carried. Copy of bill, explanation and fiscal note included in the minutes.

H. B. 847 - Water Auth. Powers

Representative Culp was recognized to explain this bill and a proposed committee substitute was adopted by the committee on motion. Martha Walston, Staff Attorney, as recognized for a further explanation of the bill. Senator Gulley made a motion that this bill be referred to a subcommittee for further study and the motion carried. Subcommittee will be appointed. Copy of bill and fiscal note included in the minutes.

H.B. 867 - Matthews Annexation/Zoning

This bill had previously been before the committee and on motion by Senator Winner the bill was given a "favorable" report and the motion carried. Copy of bill included in the minutes.

H.B. 832 - Newland/Spruce Pine Tax Payment

Representative Thompson was recognized to explain this bill and Senator Foxx sent forth an amendment. On motion by Senator Foxx, the amendment was adopted and on motion by Senator Ballantine the bill, as amended, was given a "favorable" report by the committee. Copy of bill and amendment included in the minutes.

H.B. 789 - Town of Oakboro

Senator Larry Shaw was recognized to explain this bill since Representative Barbee could not be present. On motion by Senator Blust the bill was given a "favorable" report by the committee. Copy of bill included in the minutes.

Senator Kerr announced the following to serve as a subcommittee on H.B. 847:

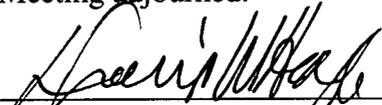
Senator Lee, Chairman
Senator Gulley
Senator Phillips
Senator Bob Shaw
Senator Blust

Minutes - Senate Finance Committee
June 25, 1997
Page 3

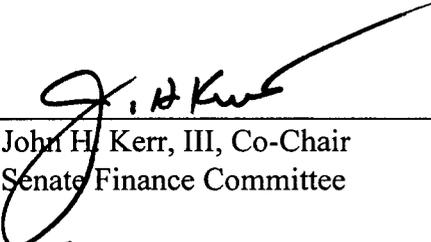
H.B. 655 - Madison Annexation

H. B. 655 was explained by Senator Foxx and on motion by Senator Ballantine, the bill was given a "favorable" report by the committee. Copy of bill included in the minutes.

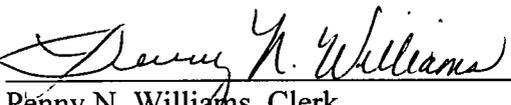
Meeting adjourned.



David W. Hoyle, Co-Chair
Senate Finance Committee



John H. Kerr, III, Co-Chair
Senate Finance Committee



Penny N. Williams, Clerk



Evelyn S. Hartsell, Clerk

NOTE:

Agenda is Attachment # 1
Visitors' Sign Up Sheet is Attachment # 2
Committee Report is Attachment # 3

**SENATE FINANCE COMMITTEE
JUNE 25, 1997
ROOM 544**

S.B. 483 - Physician Service Fee - Sen. Lucas

H.B. 311 - Escheat Sunset Removed - Rep. Cansler

H.B. 549 - Asheville/Biltmore Boundary - Rep. Ives

H.B. 754 - Illicit Liquor Tax - Rep. Dickson

H.B. 789 - Town of Oakboro - Rep. Barbee

H.B. 832 - Newland/Spruce Pine Tax Payment - Rep. Thompson

H.B. 847 - Water Auth. Powers - Rep. Culp

H.B. 867 - Matthews Annexation/Zoning - Rep. Gulley

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 549

Short Title: Asheville/Biltmore Boundary.

(Local)

Sponsors: Representatives Ives; and Cansler.

Referred to: Local and Regional Government II, if favorable, Finance.

March 19, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO EXCHANGE TRACTS OF LAND BETWEEN THE CORPORATE
3 LIMITS OF THE CITY OF ASHEVILLE AND THE TOWN OF BILTMORE
4 FOREST.

5 The General Assembly of North Carolina enacts:

6 Section 1. All of the area included in the following property description
7 is hereby removed from the corporate limits of the Town of Biltmore Forest and
8 added to the corporate limits of the City of Asheville:

9 That certain tract of land located in Biltmore Forest Township, Buncombe County,
10 North Carolina, and more particularly described as follows:

11
12 BEGINNING at an iron pipe set in the Southern margin of the right-of-way of I-40,
13 said iron pipe being located North 77 degrees 31 minutes 5 seconds East 349.07 feet
14 from a right-of-way monument with Grid Coordinates of N=676831.46, E=945825.03
15 (N.A.D. 1927); thence from said established BEGINNING point along the new
16 municipal line between the City of Asheville and the Town of Biltmore Forest, the
17 following eighteen calls: South 25 degrees 32 minutes 3 seconds East 17 feet to an
18 iron pipe set; South 28 degrees 7 minutes 1 second East 65.72 feet to an iron pipe set;
19 South 28 degrees 27 minutes 55 seconds East 89.48 feet to an iron pipe set; South 21
20 degrees 54 minutes 35 seconds East 43.19 feet to an iron pipe set; South 18 degrees
21 56 minutes 21 seconds East 43.05 feet to an iron pipe set; South 21 degrees 33
22 minutes 58 seconds East 97.71 feet to an iron pipe set; South 25 degrees 19 minutes
23 59 seconds East 90.57 feet to an iron pipe set; South 23 degrees 41 minutes 33
24 seconds East 60.32 feet to an iron pipe set; South 27 degrees 46 minutes 19 seconds

1 East 54.22 feet to an iron pipe set; South 29 degrees 52 minutes 23 seconds East 82.15
2 feet to an iron pipe set; South 42 degrees 6 minutes 19 seconds East 40.47 feet to an
3 iron pipe set; South 42 degrees 37 minutes 5 seconds East 88.97 feet to an iron pipe
4 set; South 37 degrees 3 minutes 52 seconds East 36.70 feet to an iron pipe set; South
5 36 degrees 8 minutes 48 seconds East 48.80 feet to an iron pipe set; South 28 degrees
6 12 minutes 2 seconds East 32.52 feet to an iron pipe set; South 20 degrees 56 minutes
7 24 seconds East 46.30 feet to an iron pipe set; South 31 degrees 28 minutes 47
8 seconds East 26.44 feet to an iron pipe set; and on a curve to the right in a
9 Southeasterly direction with a radius of 651.99 feet, a chord of South 51 degrees 22
10 minutes 50 seconds East 279.94 feet and an arc distance of 282.13 feet to an iron pipe
11 set; thence along the former municipal line between the City of Asheville and the
12 Town of Biltmore Forest, North 5 degrees 0 minutes 48 seconds East 834.86 feet to an
13 existing iron pin in the Southern margin of the right-of-way of I-40; thence along the
14 Southern margin of the right-of-way of I-40 (marked by a right-of-way fence), the
15 following five calls: North 45 degrees 19 minutes 19 seconds West 16.05 feet to a
16 right-of-way monument; North 56 degrees 36 minutes 52 seconds West 394.89 feet to
17 a right-of-way monument; south 89 degrees 10 minutes 19 seconds West 181.75 feet to
18 a right-of-way monument; South 79 degrees 25 minutes 40 seconds West 185.49 feet
19 to a right-of-way monument; and South 77 degrees 31 minutes 5 seconds West 47.71
20 feet to the point of BEGINNING, containing 10.1638 acres, more or less, and being
21 Tract A on a survey by John B. Young, R.L.S., entitled "Property Exchange Map for
22 the Town of Biltmore Forest and the City of Asheville", dated March 4, 1997, and
23 designated as Job File Number 90086-D-591, reference to said survey being made in
24 aid of description.

25 Section 2. Section 1 of this act shall have no effect upon the validity of
26 any liens of the Town of Biltmore Forest for ad valorem taxes on special assessments
27 that have attached prior to the effective date of this act. Such liens may be collected
28 or foreclosed upon after the effective date of this act as though the property were still
29 within the corporate limits of the Town of Biltmore Forest.

30 Section 3. The City of Asheville shall initiate proceedings within 60 days
31 from the date of this act to zone the tract described in Section 1 of this act to an
32 appropriate classification within the City of Asheville's zoning ordinance.

33 Section 4. All of the area included in the following property description
34 is hereby removed from the corporate limits of the City of Asheville and added to the
35 corporate limits of the Town of Biltmore Forest:

36 That certain tract or parcel of land located in Asheville Township, Buncombe
37 County, North Carolina, and more particularly described as follows:

38
39 BEGINNING at a point with Grid Coordinates of N=674912.28, E=947286.02
40 (N.A.D. 1927) and marking the Northernmost corner of Lot O as shown on plat
41 recorded in Plat Book 2, at Page 39, of the Buncombe County, NC Register's Office,
42 said point also marking the terminus of the second call known as Boundary Station 1
43 recorded in Deed Book 244, at Page 56, of the Buncombe County, NC Register's
44 Office; then from said established BEGINNING point and moving along the former

1 municipal boundary line of Biltmore Forest and the City of Asheville, the following
2 two calls: North 37 degrees 31 minutes 0 seconds West 777.23 feet to an existing
3 concrete marker (City Limit Marker) described in Deed recorded in Deed Book
4 1642, at Page 252 and also being the terminus of the 16th call of Deed Book 79, at
5 Page 1, both of the Buncombe County, NC Register's Office; and North 5 degrees 0
6 minutes 48 seconds East 208.16 feet to an iron pipe set; thence along the new
7 municipal line between the Town of Biltmore Forest and the City of Asheville, the
8 following ten calls: South 31 degrees 15 minutes 56 seconds East 253.98 feet to an
9 iron pipe set; South 86 degrees 17 minutes 19 seconds East 238.87 feet to a point;
10 South 3 degrees 42 minutes 41 seconds West 205.98 feet to a point; South 17 degrees
11 9 minutes 14 seconds East 84.38 feet to a point; South 36 degrees 34 minutes 52
12 seconds East 37.12 feet to a point; South 37 degrees 32 minutes 25 seconds East
13 136.55 feet to a point; South 15 degrees 11 minutes 6 seconds East 34.36 feet to a
14 point; South 18 degrees 10 minutes 16 seconds East 44.02 feet to a point; South 23
15 degrees 57 minutes 48 seconds East 97.46 feet to a point; and South 31 degrees 26
16 minutes 2 seconds East 2.10 feet to a point; thence South 89 degrees 17 minutes 6
17 seconds West 95.34 feet to the point of BEGINNING, containing 3.1201 acres, more
18 or less, and being a consolidated description of Tract D and Tract E as shown on a
19 survey by John B. Young, R.L.S., entitled "Property Exchange Map for the Town of
20 Biltmore Forest and the City of Asheville", dated March 4, 1997, and designated as
21 Job File Number 90086-D-591, reference to said survey being made in aid of
22 description.

23 Section 5. Section 4 of this act shall have no effect upon the validity of
24 any liens of the City of Asheville for ad valorem taxes which have attached prior to
25 the effective date of this act. Such liens may be collected or foreclosed upon after
26 the effective date of this act as though the property were still in the corporate limits
27 of the City of Asheville.

28 Section 6. The Town of Biltmore Forest shall initiate proceedings within
29 60 days from the effective date of this act to zone the tract described in Section 4 of
30 this act to an appropriate classification within the Town of Biltmore Forest's zoning
31 ordinance.

32 Section 7. If any provision of this act or the application thereof to any
33 person or circumstances is held invalid by a court of competent jurisdiction, such
34 invalidity shall not affect other provisions or applications of this act which can be
35 given effect without the invalid provision or application, and to this end the
36 provisions of this act are declared to be severable.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 483*

Short Title: Phys. Svces. Fee/AB.

(Public)

Sponsors: Senators Lucas; Dannelly, Hartsell, Jordan, Kinnaird, McDaniel, Odom, and Shaw of Cumberland.

Referred to: Children & Human Resources.

March 25, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO INCREASE THE AMOUNT PAID TO PHYSICIANS TO READ X-
3 RAY FILMS FOR THE DUSTY TRADES PROGRAM.
4 The General Assembly of North Carolina enacts:
5 Section 1. G.S. 97-72 reads as rewritten:
6 "§ 97-72. Appointment of advisory medical committee; terms of office; duties and
7 functions; salaries and expenses.
8 (a) There shall be an advisory medical committee consisting of three members,
9 who shall be licensed physicians in good professional standing and peculiarly
10 qualified in the diagnosis or treatment of occupational diseases. They shall be
11 appointed by the Industrial Commission with the approval of the Governor, and one
12 of them shall be designated as chairman of the committee by the Industrial
13 Commission. The members of committee shall be appointed to serve terms as
14 follows: one for a term of two years, one for a term of four years, and one for a term
15 of six years. Upon the expiration of each term as above mentioned the Industrial
16 Commission shall appoint a successor for a term of six years, years, ~~except that the~~
17 ~~terms of the members first appointed shall expire June 30, 1936.~~ The function of the
18 committee shall be to conduct examinations and make reports as required by G.S. 97-
19 61.1 through 97-61.6 and 97-68 through 97-71, and to assist in any postmortem
20 examinations provided for in G.S. 97-67 when so directed by the Industrial
21 Commission. Members of the committee shall devote to the duties of the office so
22 much of their time as may be required in the conducting of examinations with
23 reasonable promptness, and they shall attend hearings as scheduled by the Industrial

1 Commission when their attendance is desired for the purpose of examining and
2 cross-examining them respecting any report or reports made by them.

3 (b) The members of the advisory medical committee shall be paid one hundred
4 dollars (\$100.00) per month plus not more than ~~ten dollars (\$10.00)~~ forty dollars
5 (\$40.00) per film examined. The fee per film shall be established by the Secretary of
6 Environment, Health, and Natural Resources.

7 (c) Notwithstanding any other provision of this Article, the Industrial Commission,
8 in its discretion, may designate a qualified physician who is not a member of the
9 advisory medical committee to perform an examination of an employee who has filed
10 a claim for benefits for asbestosis or silicosis. This physician shall file his reports in
11 the same manner a member of the advisory medical committee files reports; and
12 these reports shall be deemed reports of the advisory medical committee."

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

1 Commission when their attendance is desired for the purpose of examining and
2 cross-examining them respecting any report or reports made by them.

3 (b) The members of the advisory medical committee shall be paid one hundred
4 dollars (\$100.00) per month plus not more than ~~ten dollars (\$10.00)~~ forty dollars
5 (\$40.00) per film examined. The fee per film shall be established by the Secretary of
6 Environment, Health, and Natural ~~Resourees~~ Resources, as guided by the current
7 Medicaid/Medicare reimbursement schedules for North Carolina.

8 (c) Notwithstanding any other provision of this Article, the Industrial Commission,
9 in its discretion, may designate a qualified physician who is not a member of the
10 advisory medical committee to perform an examination of an employee who has filed
11 a claim for benefits for asbestosis or silicosis. This physician shall file his reports in
12 the same manner a member of the advisory medical committee files reports; and
13 these reports shall be deemed reports of the advisory medical committee."

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

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 483 (Proposed Senate Finance Committee Sub)

SHORT TITLE: Physician Services Fees/ AB

SPONSOR(S): Senators Lucas, et al

FISCAL IMPACT

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

FY 1997-98 FY 1998-99 FY 1999-00 FY 2000-01 FY 2001-02

REVENUES

DEHNR Receipt (Paid by Employers)	\$105,000	\$105,000	\$105,000	\$105,000	\$105,000
--------------------------------------	-----------	-----------	-----------	-----------	-----------

EXPENDITURES

DEHNR (Pass-through to physicians)	\$105,000	\$105,000	\$105,000	\$105,000	\$105,000
--	-----------	-----------	-----------	-----------	-----------

PRINCIPAL DEPARTMENT(S) &

PROGRAM(S) AFFECTED: Department of Environment, Health and Natural Resources(DEHNR) - N C Dusty Trades Program; N C Industrial Commission

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

BILL SUMMARY: The bill increases the maximum amount paid physicians to read x-rays for the Dusty Trades Program from \$10 per film to \$40 per film. When establishing a new rate, DEHNR will be "guided" by the Medicaid/Medicare reimbursement schedule for medical procedures and functions.

BACKGROUND: The North Carolina Dusty Trades program is an industrial hygiene program required by the North Carolina Workers' Compensation Act that is designed to ensure early detection of silicosis and asbestosis lung diseases. The act is enforced by the N C Industrial Commission and administered by the Department of Environment, Health and Natural Resources (DEHNR). The N C Industrial Commission appoints three physicians to an advisory medical

committee to conduct examinations and make reports as directed by the Commission. Each member of the committee receives \$100 per month and up to \$10 for each x-ray film examined. The \$10 x-ray reading fee is charged to employers of workers in dusty trades such as aggregate mining. The collection of the fee from employers and the payment of the reading fee to physicians is handled by DEHNR. DEHNR does not retain any of the proceeds from the reading fee for its administrative expense. The fee was last changed in 1991 from \$3 to \$10.

ASSUMPTIONS AND METHODOLOGY: The physician who has served as the principal x-ray reader for the Dusty Trades Program since the late 1930's has accepted a \$5 per x-ray film fee for his service. However, the standard industry rate for reading x-ray films ranges from \$31 to \$40 per film. There are only 14 physicians in the state qualified to read x-rays dealing with occupational lung diseases. DEHNR believes when the current physician retires, that no doctor will accept the task for less than \$20 per film. DEHNR expects to negotiate a x-ray reading fee between \$20 and \$30 per film. If DEHNR were to follow the Medicaid/Medicare reimbursement schedule as advised by the bill, it would pay \$7.90 per x-ray read.

The advisory medical committee reviews 3,000 x-rays each year. At \$5 per film, industry pays \$15,000 per year for this service. If DEHNR paid the committee the full \$40 per film, \$30 above the statutory rate and \$35 above the current rate, then industry would pay an additional \$105,000. This fiscal note assumes the rate will be set at the maximum \$40 to illustrate the full potential impact of the bill.

FISCAL RESEARCH DIVISION

733-4910

PREPARED BY: Richard Bostic

APPROVED BY: Tom Covington

DATE: June 24, 1997

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 754

Short Title: Illicit Liquor Tax.

(Public)

Sponsors: Representative Dickson.

Referred to: Finance.

April 2, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO LEVY AN EXCISE TAX ON ILLICIT SPIRITUOUS LIQUOR, AN
3 EXCISE TAX ON MASH, AND AN EXCISE TAX ON ILLICIT MIXED
4 BEVERAGES.

5 The General Assembly of North Carolina enacts:

6 Section 1. Article 2D of Chapter 105 of the General Statutes reads as
7 rewritten:

8 "ARTICLE 2D.

9 "Schedule B-D. ~~Controlled Substance Tax.~~ Unauthorized Substances Taxes.

10 "§ 105-113.105. Purpose.

11 The purpose of this Article is to levy an excise tax to generate revenue for State
12 and local law enforcement agencies and for the General Fund. Nothing in this Article
13 may in any manner provide immunity from criminal prosecution for a person who
14 possesses an illegal substance.

15 "§ 105-113.106. Definitions.

16 The following definitions apply in this Article:

17 (1) Controlled Substance. -- Defined in G.S. 90-87.

18 (2) Repealed by Session Laws 1995, c. 340, s. 1.

19 (3) Dealer. -- Any of the following:

20 a. A person who actually or constructively possesses more than
21 42.5 grams of marijuana, seven or more grams of any other
22 controlled substance that is sold by weight, or 10 or more
23 dosage units of any other controlled substance that is not
24 sold by weight.

- 1 **b.** A person who in violation of Chapter 18B of the General
2 Statutes possesses illicit spirituous liquor for sale.
3 **c.** A person who in violation of Chapter 18B of the General
4 Statutes possesses mash.
5 **d.** A person who in violation of Chapter 18B of the General
6 Statutes possesses an illicit mixed beverage for sale.

7 (4) Repealed by Session Laws 1995, c. 340, s. 1.

8 (4a) ~~Reserved.~~ Illicit mixed beverage. -- A mixed beverage, as defined
9 in G.S. 18B-101, composed in whole or in part from spirituous
10 liquor on which the charge imposed by G.S. 18B-804(b)(8) has not
11 been paid, but not including a premixed cocktail served from a
12 closed package containing only one serving.

13 (4b) ~~Reserved.~~ Illicit spirituous liquor. -- Spirituous liquor, as defined in
14 G.S. 105-113.68, not authorized by the North Carolina Alcoholic
15 Beverage Control Commission. Some examples of illicit spirituous
16 liquor are the products known as 'bootleg liquor', 'moonshine',
17 'non-tax-paid liquor', and 'white liquor'.

18 (4c) Low-street-value drug. -- Any of the following controlled
19 substances:

20 a. An anabolic steroid as defined in G.S. 90-91(k).

21 b. A depressant described in G.S. 90-89(d), 90-90(d), 90-91(b),
22 or 90-92(a).

23 c. A hallucinogenic substance described in G.S. 90-89(c) or
24 G.S. 90-90(e).

25 d. A stimulant described in G.S. 90-89(e), 90-90(c), 90-91(j),
26 90-92(d), or 90-93(a)3.

27 e. A controlled substance described in G.S. 90-91(c), (d), or
28 (e), 90-92(c), (e), or (f), or 90-93(a)1.

29 (5) Repealed by Session Laws 1995, c. 340, s. 1.

30 (6) Marijuana. -- All parts of the plant of the genus Cannabis, whether
31 growing or not; the seeds of this plant; the resin extracted from any
32 part of this plant; and every compound, salt, derivative, mixture, or
33 preparation of this plant, its seeds, or its resin.

34 (6a) Mash. -- The fermentable starchy mixture from which spirituous
35 liquor can be distilled.

36 (7) Person. -- Defined in G.S. 105-228.90.

37 (8) Secretary. -- Defined in G.S. 105-228.90.

38 (9) Unauthorized substance. -- A controlled substance, an illicit mixed
39 beverage, illicit spirituous liquor, or mash.

40 "§ 105-113.107. Excise tax on ~~controlled~~ unauthorized substances.

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

43 (1) At the rate of forty cents (40¢) for each gram, or fraction thereof,
44 of harvested marijuana stems and stalks that have been separated

- 1 from and are not mixed with any other parts of the marijuana
2 plant.
- 3 (1a) At the rate of three dollars and fifty cents (\$3.50) for each gram, or
4 fraction thereof, of marijuana, other than separated stems and
5 stalks taxed under subdivision (1) of this section.
- 6 (2) At the rate of two hundred dollars (\$200.00) for each gram, or
7 fraction thereof, of any other controlled substance that is sold by
8 weight.
- 9 (2a) At the rate of fifty dollars (\$50.00) for each 10 dosage units, or
10 fraction thereof, of any low-street-value drug that is not sold by
11 weight.
- 12 (3) At the rate of four hundred dollars (\$400.00) for each 10 dosage
13 units, or fraction thereof, of any other controlled substance that is
14 not sold by weight.

15 A quantity of marijuana or other controlled substance is measured by the weight of
16 the substance whether pure or impure or dilute, or by dosage units when the
17 substance is not sold by weight, in the dealer's possession. A quantity of a controlled
18 substance is dilute if it consists of a detectable quantity of pure controlled substance
19 and any excipients or fillers.

20 (b) Illicit Spirituous Liquor. -- An excise tax is levied on illicit spirituous liquor
21 possessed by a dealer at the following rates:

- 22 (1) At the rate of thirty-one dollars and seventy cents (\$31.70) for each
23 gallon, or fraction thereof, of illicit spirituous liquor sold by the
24 drink.
- 25 (2) At the rate of twelve dollars and eighty cents (\$12.80) for each
26 gallon, or fraction thereof, of illicit spirituous liquor not sold by the
27 drink.

28 (c) Mash. -- An excise tax is levied on mash possessed by a dealer at the rate of
29 one dollar and twenty-eight cents (\$1.28) for each gallon or fraction thereof.

30 (d) Illicit Mixed Beverages. -- A tax is levied on illicit mixed beverages sold by a
31 dealer at the rate of twenty dollars (\$20.00) on each four liters and a proportional
32 sum on lesser quantities.

33 **"§ 105-113.107A. Exemptions.**

34 (a) Authorized Possession. -- The tax levied in this Article does not apply to a
35 ~~controlled~~ substance in the possession of a dealer who is authorized by law to possess
36 the substance. This exemption applies only during the time the dealer's possession of
37 the substance is authorized by law.

38 (b) Certain Marijuana Parts. -- The tax levied in this Article does not apply to the
39 following marijuana:

- 40 (1) Harvested mature marijuana stalks when separated from and not
41 mixed with any other parts of the marijuana plant.
- 42 (2) Fiber or any other product of marijuana stalks described in
43 subdivision (1) of this subsection, except resin extracted from the
44 stalks.

1 (3) Marijuana seeds that have been sterilized and are incapable of
2 germination.

3 (4) Roots of the marijuana plant.

4 **"§ 105-113.108. Reports; revenue stamps.**

5 The Secretary shall issue stamps to affix to ~~controlled~~ unauthorized substances to
6 indicate payment of the tax required by this Article. Dealers shall report the taxes
7 payable under this Article at the time and on the form prescribed by the Secretary.
8 Dealers are not required to give their name, address, social security number, or other
9 identifying information on the form. Upon payment of the tax, the Secretary shall
10 issue stamps in an amount equal to the amount of the tax paid. Taxes may be paid
11 and stamps may be issued either by mail or in person.

12 **"§ 105-113.109. When tax payable.**

13 The tax imposed by this Article is payable by any dealer who actually or
14 constructively possesses ~~a controlled~~ an unauthorized substance in this State upon
15 which the tax has not been paid, as evidenced by a stamp. The tax is payable within
16 48 hours after the dealer acquires actual or constructive possession of a non-tax-paid
17 ~~controlled~~ unauthorized substance, exclusive of Saturdays, Sundays, and legal
18 holidays of this State, in which case the tax is payable on the next working day. Upon
19 payment of the tax, the dealer shall permanently affix the appropriate stamps to the
20 ~~controlled~~ unauthorized substance. Once the tax due on ~~a controlled~~ an unauthorized
21 substance has been paid, no additional tax is due under this Article even though the
22 ~~controlled~~ unauthorized substance may be handled by other dealers.

23 **"§ 105-113.110A. Interest and penalty.**

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

28 **"§ 105-113.111. Assessments.**

29 Notwithstanding any other provision of law, an assessment against a dealer who
30 possesses ~~a controlled~~ an unauthorized substance to which a stamp has not been
31 affixed as required by this Article shall be made as provided in this section. The
32 Secretary shall assess a tax, applicable penalties, and interest based on personal
33 knowledge or information available to the Secretary. The Secretary shall notify the
34 dealer in writing of the amount of the tax, penalty, and interest due, and demand its
35 immediate payment. The notice and demand shall be either mailed to the dealer at
36 the dealer's last known address or served on the dealer in person. If the dealer does
37 not pay the tax, penalty, and interest immediately upon receipt of the notice and
38 demand, the Secretary shall collect the tax, penalty, and interest pursuant to the
39 procedure set forth in G.S. 105-241.1(g) for jeopardy assessments or the procedure set
40 forth in G.S. 105-242, including causing execution to be issued immediately against
41 the personal property of the dealer, unless the dealer files with the Secretary a bond
42 in the amount of the asserted liability for the tax, penalty, and interest. The Secretary
43 shall use all means available to collect the tax, penalty, and interest from any

1 property in which the dealer has a legal, equitable, or beneficial interest. The dealer
2 may seek review of the assessment as provided in Article 9 of this Chapter.

3 **"§ 105-113.112. Confidentiality of information.**

4 Notwithstanding any other provision of law, information obtained pursuant to this
5 Article is confidential and may not be disclosed or, unless independently obtained,
6 used in a criminal prosecution other than a prosecution for a violation of this Article.
7 Stamps issued pursuant to this Article may not be used in a criminal prosecution
8 other than a prosecution for a violation of this Article. A person who discloses
9 information obtained pursuant to this Article is guilty of a Class 1 misdemeanor.
10 This section does not prohibit the Secretary from publishing statistics that do not
11 disclose the identity of dealers or the contents of particular returns or reports.

12 **"§ 105-113.113. Use of tax proceeds.**

13 (a) Special Account. -- The Secretary shall credit the proceeds of the tax levied by
14 this Article to a special nonreverting account, to be called the State ~~Controlled~~
15 Unauthorized Substances Tax Account, until the tax proceeds are unencumbered.
16 The Secretary shall remit the unencumbered tax proceeds as provided in this section
17 on a quarterly or more frequent basis. Tax proceeds are unencumbered when either
18 of the following occurs:

- 19 (1) The tax has been fully paid and the taxpayer has no current right
20 under G.S. 105-267 to seek a refund.
21 (2) The taxpayer has been notified of the final assessment of the tax
22 under G.S. 105-241.1 and has neither fully paid nor timely
23 contested the tax under G.S. 105-241.1 through G.S. 105-241.4 or
24 G.S. 105-267.

25 (b) Distribution. -- The Secretary shall remit seventy-five percent (75%) of the
26 part of the unencumbered tax proceeds that was collected by assessment to the State
27 or local law enforcement agency that conducted the investigation of a dealer that led
28 to the assessment. If more than one State or local law enforcement agency conducted
29 the investigation, the Secretary shall determine the equitable share for each agency
30 based on the contribution each agency made to the investigation. The Secretary shall
31 credit the remaining unencumbered tax proceeds to the General Fund.

32 (c) Refunds. -- The refund of a tax that has already been distributed shall be
33 drawn initially from the State ~~Controlled~~ Unauthorized Substances Tax Account. The
34 amount of refunded taxes that had been distributed to a law enforcement agency
35 under this section and any interest shall be subtracted from succeeding distributions
36 from the Account to that law enforcement agency. The amount of refunded taxes that
37 had been credited to the General Fund under this section and any interest shall be
38 subtracted from succeeding credits to the General Fund from the Account."

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

ASSUMPTIONS AND METHODOLOGY:

The tax rate on a gallon of illegally distilled liquor is based on the fractional portion of the charges authorized under G.S. 18B-804 on a U.S. gallon of liquor. The tax rate on illegally mixed beverages is the fractional portion of the mixed beverage surcharge, authorized under G. S. 18B-804(8), on a U.S. gallon of liquor. The per gallon tax rate on mash is based on the assumption that 100 gallons of mash will produce 10 gallons of liquor. This ratio is used by the Alcohol Law Enforcement Division to measure the capacity of a confiscated distillery.

The Department of Crime Control and Public Safety provided the amounts of illegally distilled liquor, mash, and liquor sold by the drink illegally that was confiscated in fiscal year 1995-96. The tax loss is calculated by applying the appropriate tax rate set-out in the bill to the gallons of illegal substance.

The amount of liquor confiscated from places selling liquor by the drink illegally was 9,115 gallons and the loss in mixed beverage tax revenue is \$172,182. The loss in tax revenue from the 7,116 gallons of illegally distilled liquor confiscated is \$91,085. Alcohol and law enforcement officers confiscated 57,760 gallons of mash and the revenue loss associated with this amount is \$73,933. The total loss in excise tax revenue for fiscal year 1996-97 was \$337,200.

Confiscation's of illegal liquor substances increased 108% in fiscal year 1995-96 over the year before and the Department reports an expected increase in this fiscal year over fiscal year 1995-96. They could not elaborate on a percentage increase because most of their investigations are continuing and they will not know the gallon amounts of substance confiscated until actions have been taken.

FISCAL RESEARCH DIVISION

733-4910

PREPARED BY: Warren Plonk

APPROVED BY: Tom Covington

DATE: April 30, 1997



1 Section 3. This act is effective when it becomes law. All property or
2 funds held as forfeited reservation deposits prior to the effective date of this act
3 pursuant to G.S. 116B-23 shall not escheat.

EXPLANATION OF HOUSE BILL 311:
Escheat Sunset Removed (2nd Edition)

TO: House Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: June 25, 1997
SPONSOR: Representative Cansler

House Bill 311 makes permanent the statute that excludes forfeited reservation deposits as a type of intangible property that may escheat to the State. Under current law, the exclusion will expire on June 30, 1997. The proposed committee substitute rewrites the statute to clarify what types of deposits do not escheat to the State.

Under the Escheat and Unclaimed Property Program, unclaimed or forgotten money or property belonging to North Carolina citizens for a specific period of time, usually five years or more, are reported and remitted to the State Treasurer. This property is placed in the Escheat Fund. The interest earnings of the Fund are remitted to the North Carolina State Education Assistance Authority to provide low interest student loans to North Carolina residents attending a public university pursuant to Article IX, Section 10 of the North Carolina Constitution. The State Treasurer's office makes a diligent effort to reunite the unclaimed property with its rightful owner.

North Carolina law recognizes over 100 different categories of unclaimed property, including savings and checkings accounts, utility deposits, uncashed checks, and safe deposit box contents. Prior to the 1996 law change, the audit policy of the Program was to consider nonrefundable room reservation deposits subject to escheat only if the deposits were refunded to some parties and not to others. The Program recognized that exceptions may be made to a policy not to refund a deposit when the customer could not fulfill the commitment due to illness, inclement weather, transportation, or other related problems. The change in the escheat law for forfeited room deposits occurred after an unclaimed property audit on a resort hotel revealed that the hotel had a policy of waiving nonrefundable room reservation deposits approximately 50% of the time. Under the audit policy, the remaining 50% should escheat to the State.

There have been no major changes made to the Escheat and Unclaimed Property Program since 1981 when legislation was enacted to give the Program greater authority in regard to enforcement of the escheat laws. In 1995, the National Conference of Commissioners on Uniform State Laws passed the Uniform Unclaimed Property Act. The 1996 legislation that enacted G.S. 116B-23 also included a study of the Program: its policies towards escheats and the effects of its policies on the economy and citizens of the State. This study was never undertaken.

ASSUMPTIONS AND METHODOLOGY:

The Department of State Treasurer reports that there will be a minimal loss to the Escheat Fund and to the North Carolina Education Assistance Authority. [Interest earnings on the principal in the Escheat Fund are used to provide low interest student loans to North Carolina residents attending public universities.] The actions of the 1996 General Assembly prohibited Escheat Fund audits from identifying forfeited room deposits prior to July 1, 1996. The violation of forfeited room deposits subject to escheat is normally discovered through audit procedures. The department does not have sufficient audit records, recording forfeited room and reservation deposits, to prepare an estimate on future losses.

The only information available, as to a fiscal impact, is a record of audits conducted by the Escheat Program in 1996. At least three audits were performed that year on separate resort hotels and one of the resorts was identified as having violated its nonrefundable deposit policy. The balance in room deposits held by the resort was \$1.1 million. The Escheat Program did not collect the \$1.1 million because of the 1996 actions of the General Assembly.

If North Carolina fails to collect unclaimed or forfeited room and reservation deposits from a business association that is located in this State but incorporated in another state then the property is subject to escheat in the state of incorporation.
Texas v. New Jersey (§ 2.05[4][a][I],infra.)

FISCAL RESEARCH DIVISION

733-4910

PREPARED BY: Warren Plonk

APPROVED BY:

DATE: March 25, 1997

1 suspension, interruption, interference, reduction or curtailment of
2 the output of any such facility or the treated water contracted for,
3 and such obligations may be made subject to no reduction,
4 whether by offset or otherwise, and not conditioned upon the
5 performance or nonperformance of the authority or any
6 participating political subdivision under any agreement. Such
7 payment obligations are in consideration of any output or capacity
8 that may at any time be available from facilities of the authority.
9 The participating political subdivisions may agree to make such
10 payments from limited or specified sources. To the extent such
11 payments relate to debt service of the authority and related
12 amounts, they may not be made from any moneys derived from
13 exercise by the participating political subdivisions of their taxing
14 power, and such payment obligations shall not constitute a pledge
15 of such taxing power. The participating political subdivisions may
16 agree (i) not to pledge or encumber any source of payment and (ii)
17 to operate (including fixing rates and charges) in a manner that
18 enables them to make such payments from such sources. The
19 participating political subdivisions may also secure such payment
20 obligations with a pledge of or lien upon any such sources of
21 payment. Notwithstanding the provisions of G.S. 162A-9 or any
22 other law to the contrary, an authority entering into any such
23 agreement need not fix rates, fees and other charges for its services
24 except as provided herein, and such rates, fees and charges need
25 not be uniform through the authority's service areas.
26 Notwithstanding the provisions of G.S. 160A-322 or any other law
27 to the contrary, agreements described herein may have a term not
28 exceeding 50 years. Notwithstanding any law to the contrary, the
29 execution and effectiveness of any agreement authorized hereby
30 shall not be subject to any authorizations or approvals by any
31 entity except the parties thereto. Each authority and its
32 participating political subdivisions shall have the power to do all
33 acts and things necessary or convenient to carry out the powers
34 granted by this subdivision. This subdivision applies only to
35 authorities created under G.S. 162A-3.1 at least half the
36 participating political subdivisions of which have populations of at
37 least 65,000 according to the most recent decennial federal census."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

HOUSE BILL 847
Committee Substitute Favorable 5/12/97
PROPOSED SENATE COMMITTEE SUBSTITUTE
H847-CSR-1

Short Title: Addit. Powers/Certain Water Auth.

(Public)

Sponsors:

Referred to:

April 7, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE CERTAIN WATER AND SEWER AUTHORITIES TO ENTER
3 INTO CERTAIN AGREEMENTS AND TO AUTHORIZE A WATER AND SEWER
4 AUTHORITY HOLDING A CERTIFICATE UNDER G.S. 162A-7 TO EXERCISE
5 THE POWER OF EMINENT DOMAIN FOR SPECIFIED PURPOSES.
6 The General Assembly of North Carolina enacts:
7 Section 1. G.S. 162A-6 reads as rewritten:
8 "§ 162A-6. Powers of authority generally.
9 (a) Each authority created hereunder shall be deemed to be a
10 public instrumentality exercising public and essential
11 governmental functions to provide for the public health and
12 welfare, and each such authority is, ~~subject to the provisions~~
13 ~~of G.S. 162A-7, hereby is~~ authorized and empowered:
14 (1) To adopt bylaws for the regulation of its affairs
15 and the conduct of its business;
16 (2) To adopt an official seal and alter the same at
17 pleasure;
18 (3) To maintain an office at such place or places as it
19 may designate;
20 (4) To sue and be sued in its own name, plead and be
21 impleaded;

- 1 (5) To acquire, lease as lessee or lessor, construct,
2 reconstruct, improve, extend, enlarge, equip,
3 repair, maintain and operate any water system or
4 part thereof or any sewer system or part thereof or
5 any combination thereof within or without the
6 participating political subdivisions or any
7 thereof;
- 8 (6) To issue revenue bonds of the authority as
9 hereinafter provided to pay the cost of such
10 acquisition, construction, reconstruction,
11 improvement, extension, enlargement or equipment;
- 12 (7) To issue revenue refunding bonds of the authority
13 as hereinafter provided;
- 14 (8) To combine any water system and any sewer system as
15 a single system for the purpose of operation and
16 financing;
- 17 (9) To fix and revise from time to time and to collect
18 rates, fees and other charges for the use of or for
19 the services and facilities furnished by any system
20 operated by the authority;
- 21 (10) To acquire in the name of the authority by gift,
22 grant, purchase, devise, exchange, lease,
23 acceptance of offers of dedication by plat, or any
24 other lawful method, to the same extent and in the
25 same manner as provided for cities and towns under
26 the provisions of G.S. 160A-240.1 and G.S. 160A-
27 374, or the exercise of the right of eminent domain
28 in accordance with the General Statutes of North
29 Carolina which may be applicable to the exercise of
30 such powers by municipalities or counties, any
31 lands or rights in land or water rights in
32 connection therewith, and to acquire such personal
33 property, as it may deem necessary in connection
34 with the acquisition, construction, reconstruction,
35 improvement, extension, enlargement or operation of
36 any water system or sewer system, and to hold and
37 dispose of all real and personal property under its
38 control; provided, that the taking of water from
39 any stream or reservoir by any authority created
40 under the provisions of this Article shall not vest
41 in the taker any rights by prescription; provided,
42 further, that nothing in this section shall affect
43 rights by prescription, if any, now held by any
44 municipality and which may be later transferred to

- 1 any authority of which such municipality may become
2 a member;
- 3 (11) To make and enter into all contracts and agreements
4 necessary or incidental to the performance of its
5 duties and the execution of its powers under this
6 Article, including a trust agreement or trust
7 agreements securing any revenue bonds issued
8 hereunder, and to employ such consulting and other
9 engineers, superintendents, managers, construction
10 and financial experts, accountants and attorneys,
11 and such employees and agents as may, in the
12 judgment of the authority be deemed necessary, and
13 to fix their compensation; provided, however, that
14 all such expenses shall be payable solely from
15 funds made available under the provisions of this
16 Article;
- 17 (12) To enter into contracts with the government of the
18 United States or any agency or instrumentality
19 thereof, or with any political subdivision, private
20 corporation, copartnership, association or
21 individual providing for the acquisition,
22 construction, reconstruction, improvement,
23 extension, enlargement, operation or maintenance of
24 any water system or sewer system or providing for
25 or relating to the treatment and disposal of sewage
26 or providing for or relating to any water system or
27 the purchase or sale of water;
- 28 (13) To receive and accept from any federal, State or
29 other public agency and any private agency, person
30 or other entity, donations, loans, grants, aid or
31 contributions of any money, property, labor or
32 other things of value for any sewer system or water
33 system, and to agree to apply and use the same in
34 accordance with the terms and conditions under
35 which the same are provided;
- 36 (14) To enter into contract with any political
37 subdivision by which the authority shall assume the
38 payment of the principal of and interest on
39 indebtedness of such subdivision; and
- 40 (14a) To make special assessments against benefited
41 property within the area served or to be
42 served by the authority for the purpose of
43 constructing, reconstructing, extending, or
44 otherwise improving water systems or sanitary

1 collection, treatment, and sewage disposal
2 systems, in the same manner that a county may
3 make special assessments under authority of
4 Chapter 153A, Article 9, except that the
5 language appearing in G.S. 153A-185 reading as
6 follows: "A county may not assess property
7 within a city pursuant to subdivision (1) or
8 (2) of this section unless the governing board
9 of the city has by resolution approved the
10 project," shall not apply to assessments
11 levied by Water and Sewer Authorities
12 established pursuant to Chapter 162A, Article
13 1, of the General Statutes. For the purposes
14 of this paragraph, references in Chapter 153A,
15 Article 9, to the "county," the "board of
16 county commissioners," "the board" or a
17 specific county official or employee are
18 deemed to refer, respectively, to the
19 authority and to the official or employee of
20 the authority who performs most nearly the
21 same duties performed by the specified county
22 official or employee.

23 Assessment rolls after being confirmed shall be
24 filed for registration in the office of the
25 Register of Deeds of the county in which the
26 property being assessed is located, and the term
27 "county tax collector" wherever used in G.S. 153A-
28 195 and G.S. 153A-196, shall mean the Executive
29 Director or other administrative officer designated
30 by the authority to perform the functions described
31 in said sections of the statute.

32 (14b) To provide for the defense of civil and
33 criminal actions and payment of civil
34 judgments against employees and officers or
35 former employees and officers and members or
36 former members of the governing body as
37 authorized by G.S. 160A-167, as amended.

38 (14c) To adopt ordinances to regulate and control
39 the discharge of sewage or stormwater into any
40 sewerage system owned or operated by the
41 authority and to adopt ordinances to regulate
42 and control structural and natural stormwater
43 and drainage systems of all types. Prior to
44 the adoption of any such ordinance or any

1 amendment to any such ordinance, the authority
2 shall first pass a declaration of intent to
3 adopt such ordinance or amendment. The
4 declaration of intent shall describe the
5 ordinance which it is proposed that the
6 authority adopt. The declaration of intent
7 shall be submitted to each governing body for
8 review and comment. The authority shall
9 consider any comment or suggestions offered by
10 any governing body with respect to the
11 proposed ordinance or amendment. Thereafter,
12 the authority shall be authorized to adopt
13 such ordinance or amendment to it at any time
14 after 60 days following the submission of the
15 declaration of intent to each governing body.
16 (14d) To require the owners of developed property on
17 which there are situated one or more
18 residential dwelling units or commercial
19 establishments located within the jurisdiction
20 of the authority and within a reasonable
21 distance of any waterline or sewer collection
22 line owned, leased as lessee, or operated by
23 the authority to connect the property with the
24 waterline, sewer connection line, or both and
25 fix charges for the connections. The power
26 granted by this subdivision may be exercised
27 by an authority only to the extent that the
28 service, whether water, sewer, or a
29 combination thereof, to be provided by the
30 authority is not then being provided to the
31 improved property by any other political
32 subdivision or by a public utility regulated
33 by the North Carolina Utilities Commission
34 pursuant to Chapter 62 of the General
35 Statutes. In the case of improved property
36 that would qualify for the issuance of a
37 building permit for the construction of one or
38 more residential dwelling units or commercial
39 establishments and where the authority has
40 installed water or sewer lines or a
41 combination thereof directly available to the
42 property, the authority may require payment of
43 a periodic availability charge, not to exceed
44 the minimum periodic service charge for

1 properties that are connected. This
2 subdivision applies only to a water and sewer
3 authority whose membership includes part or
4 all of a county that has a population of at
5 least 40,000 according to the most recent
6 annual population estimates certified by the
7 State Planning Officer.

8 (15) To do all acts and things necessary or convenient
9 to carry out the powers granted by this Article.

10 (16) To purchase real or personal property as provided
11 by G.S. 160A-20, in addition to any other method
12 allowed under this Article.

13 (b) In addition to the powers given under subsection (a) of
14 this section, an authority created under G.S. 162A-3.1 and its
15 participating political subdivisions may enter into agreements
16 obligating these subdivisions to make payments to the authority
17 for treated water delivered or made available or expected to be
18 delivered or made available by the authority, regardless of
19 whether treated water is actually delivered or made available.
20 Such payments may be designed to cover the authority's operating
21 costs (including debt service and related amounts) by allocating
22 those costs among the participating political subdivisions and by
23 requiring these subdivisions to pay additional amounts to make up
24 for the nonpayment of defaulting subdivisions. The participating
25 political subdivisions may agree to budget for and appropriate
26 such payments. Such payment obligations may be made absolute,
27 unconditional and irrevocable and required to be performed
28 strictly in accordance with the terms of such agreements and
29 without abatement or reduction under all circumstances
30 whatsoever, including whether or not any facility of the
31 authority is completed, operable or operating and notwithstanding
32 the suspension, interruption, interference, reduction or
33 curtailment of the output of any such facility or the treated
34 water contracted for, and such obligations may be made subject to
35 no reduction, whether by offset or otherwise, and not conditioned
36 upon the performance or nonperformance of the authority or any
37 participating political subdivision under any agreement. Such
38 payment obligations are in consideration of any output or
39 capacity that may at any time be available from facilities of the
40 authority. The participating political subdivisions may agree to
41 make such payments from limited or specified sources. To the
42 extent such payments relate to debt service of the authority and
43 related amounts, they may not be made from any moneys derived
44 from exercise by the participating political subdivisions of

1 their taxing power, and such payment obligations shall not
2 constitute a pledge of such taxing power. The participating
3 political subdivisions may agree (i) not to pledge or encumber
4 any source of payment and (ii) to operate (including fixing rates
5 and charges) in a manner that enables them to make such payments
6 from such sources. The participating political subdivisions may
7 also secure such payment obligations with a pledge of or lien
8 upon any such sources of payment. Notwithstanding the provisions
9 of G.S. 162A-9 or any other law to the contrary, an authority
10 entering into any such agreement need not fix rates, fees and
11 other charges for its services except as provided herein, and
12 such rates, fees and charges need not be uniform through the
13 authority's service areas. Notwithstanding the provisions of
14 G.S. 160A-322 or any other law to the contrary, agreements
15 described herein may have a term not exceeding 50 years.
16 Notwithstanding any law to the contrary, the execution and
17 effectiveness of any agreement authorized hereby shall not be
18 subject to any authorizations or approvals by any entity except
19 the parties thereto. Each authority and its participating
20 political subdivisions shall have the power to do all acts and
21 things necessary or convenient to carry out the powers granted by
22 this subdivision. This subsection applies only to authorities
23 created under G.S. 162A-3.1, at least half the participating
24 political subdivisions of which have populations of at least
25 65,000 according to the most recent decennial federal census.

26 (c) In addition to the powers given under subsections (a) and
27 (b) of this section, an authority that holds a certificate issued
28 by the Environmental Management Commission under G.S. 162A-7
29 (repealed) may acquire property by the power of eminent domain or
30 by gift, purchase, grant, exchange, lease, or any other lawful
31 method for one or more of the following purposes:

- 32 1. To relocate a road or to construct a road
33 necessitated by construction of water supply
34 project.
- 35 2. To establish, extend, enlarge, or improve storm
36 sewer and drainage systems and works, or sewer and
37 septic tank lines and systems.
- 38 3. To establish drainage programs and programs to
39 prevent obstructions to the natural flow of
40 streams, creeks and natural water channels or
41 improving drainage facilities. The authority
42 contained in this subdivision is in addition to any
43 authority contained in Chapter 156.
- 44 4. To acquire property for wetlands mitigation."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 832

Short Title: Newland/Spruce Pine Tax Payment.

(Local)

Sponsors: Representatives Thompson; and Buchanan.

Referred to: Local and Regional Government II, if favorable, Finance.

April 7, 1997

- 1 A BILL TO BE ENTITLED
2 AN ACT TO REQUIRE PAYMENT OF DELINQUENT TAXES FOR THE TOWN
3 OF NEWLAND IN AVERY COUNTY AND THE TOWN OF SPRUCE PINE IN
4 MITCHELL COUNTY BEFORE RECORDING DEEDS CONVEYING
5 PROPERTY SUBJECT TO THE DELINQUENT TAXES.
6 The General Assembly of North Carolina enacts:
7 Section 1. Section 1 of Chapter 305 of the 1963 Session Laws is rewritten
8 to read:
9 "Section 1. The Register of Deeds of Avery County shall not receive for
10 recordation any deed unless the following conditions are met:
11 (1) The deed is accompanied by a certificate from the Avery County
12 Tax Collector to the effect that all delinquent county taxes and all
13 delinquent taxes for municipalities for which the county collects
14 taxes have been paid with respect to the property described in the
15 deed.
16 (2) If the property described in the deed is located in whole or in part
17 in the Town of Newland, the deed is accompanied by a certificate
18 from the tax collector for the town to the effect that all delinquent
19 municipal taxes have been paid with respect to the property."
20 Section 2. The Register of Deeds of Mitchell County shall not receive for
21 recordation any deed unless the following conditions are met:
22 (1) The deed is accompanied by a certificate from the Mitchell County
23 Tax Collector to the effect that all delinquent county taxes and all
24 delinquent taxes for municipalities for which the county collects

1 taxes have been paid with respect to the property described in the
2 deed.

3 (2) If the property described in the deed is located in whole or in part
4 in the Town of Spruce Pine, the deed is accompanied by a
5 certificate from the tax collector for the town to the effect that all
6 delinquent municipal taxes have been paid with respect to the
7 property.

8 Section 3. This act becomes effective August 1, 1997, and applies to
9 deeds recorded on or after that date.



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 832

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

H832-ARB-1

Date _____, 1997

Comm. Sub. []
Amends Title [YES]

Senator Foxx

- 1 moves to amend the bill on page 1, lines 2 through 5, by rewriting
2 the lines to read:
3 "AN ACT TO REQUIRE PAYMENT OF DELINQUENT TAXES FOR THE TOWNS OF
4 NEWLAND AND SPRUCE PINE AND FOR THE COUNTIES OF MITCHELL AND STOKES
5 BEFORE RECORDING DEEDS CONVEYING PROPERTY SUBJECT TO THE DELINQUENT
6 TAXES.";
7
8 and on page 2, lines 7 and 8, by inserting a new section between
9 those lines to read:
10 "Section 3. Section 1 of Chapter 657 of the 1993 Session
11 Laws reads as rewritten:
12 'Section 1. The ~~Register~~ Registers of Deeds of Ashe County and
13 Stokes Counties shall not receive for recordation any deed unless
14 the deed is accompanied by a certificate from the ~~Ashe~~ County Tax
15 Collector to the effect that all delinquent taxes upon the property
16 described in the deed offered for recordation have been paid.'";
17
18 and on page 2, line 8, by deleting "Section 3." and substituting
19 "Section 4."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

1 of-way line of Alonzo Road; thence, southwesterly, 700 feet, along the north right-of-
2 way of Alonzo Road to a corner with Lot 4, Whitley Estate (within Parcel 3643, Map
3 6503); thence, northerly, 1000 feet, to the northwest corner of Lot 4; thence, westerly
4 along the north lot line of Lot 5, Whitley Estate, and across St. Martin Road (First
5 Street), 450 feet, to a point in the north right-of-way of St. Martin Road at the most
6 southerly corner of Parcel 5215 (Map 6504.04); thence, northeasterly 930 feet along
7 St. Martin Road to the eastern corner of Parcel 0817 (Map 6504.04); thence,
8 northwesterly 770 feet along the eastern property lines of Parcels 0817, 8990, 5994,
9 and the west property line of Parcel 8633 (Map 6504.04) to the southwest corner of
10 Parcel 8633; thence northerly 1195 feet along the west property line of Parcel 8633 to
11 the easternmost corner of Parcel 9086 (Map 6504.04); thence, 880 feet along the
12 eastern property line of Parcels 9086, 7379, 7761, and 7867 (Map 6504.04) to
13 northeastern corner of Parcel 7867; thence, westerly 370 feet to the west right-of-way
14 of East Eighth Street (SR 1976); thence, southwesterly 3020 feet along East Eighth
15 Street to the easternmost corner of Parcel 9226 (Map 6504.03); thence, northwesterly,
16 400 feet, along the property line of Parcel 5054 (Map 6504.03) to a corner with a new
17 Parcel F09-4-3H (Map 6504.03); thence, meandering northeasterly and northwesterly,
18 300 feet, along the property line of Parcel F09-4-3H to a point in the south right-of-
19 way line of E. Tenth Street; thence, northeasterly, 1530 feet, along the south right-of-
20 way of E. Tenth Street to intersection with the southernmost corner of Parcel 993
21 (Map 6504); thence northwesterly along the East Tenth Street right-of-way line, 1020
22 feet, to the most easterly corner of Parcel 0520 (Map 6504.03); thence, meandering
23 northwesterly, 1335 feet, along the northern property lines of Parcels 0520 and 7624
24 (Map 6504.03), across Pecan Drive, and along the north property lines of Parcels 4752
25 and 1797 (Map 6504.03) to the most northerly corner of Parcel 1797; thence,
26 southwesterly, 1570 feet, along the southeast property lines of Parcels 9161 and 0356
27 (Map 6504) to the most southerly corner of Parcel 0356; thence, northwesterly 1035
28 feet along the southwest property lines of Parcels 0356, 5588, and 7871 (Map 6504) to
29 a corner of Parcel 7871 which is also the most northerly corner of Parcel 3450 (Map
30 6504); thence, northerly 150 feet to the most easterly corner of Parcel 1795 (Map
31 6504); thence, meandering northerly 545 feet along the eastern property lines of
32 Parcels 1795, 1858, and 1949 (Map 6504) to the most northerly corner of Parcel 1949;
33 thence, northwesterly 1471 feet along the northeast property lines of Parcels 0382 and
34 9496 (Map 6504) and Parcels 9079, 9223, 8371, 6472, 6594, and 5676 (Map 5594) to
35 the most northerly corner of Parcel 5676; thence, northeasterly 210 feet to a point in
36 the southeastern property line of Parcel 7254 (Map 5594); thence, northwesterly 990
37 feet along the southwestern property line of Parcel 7254, across Parcel 2486 (Map
38 5594) to a point in the southeast right-of-way line of Big Lick Road (SR 1115).

39
40 Thence southwesterly 1450 feet along Big Lick Road to the northernmost corner of
41 Parcel 0001 (Map 594); thence, southeasterly 970 feet along the east and north
42 property lines of Parcels 0001 and 7264 (Map 5594) to the west right-of-way of Swift
43 Road (SR 1110); thence, southerly 2400 feet along Swift Road to a point across from
44 Lynn Road; thence northwesterly 395 feet to a point; thence, northerly 330 feet to a

1 point; thence, westerly 1586 feet to the westernmost corner of Parcel 5660 (Map
2 5594); thence southerly and westerly 1453 feet along the west property lines of Parcels
3 4776 and 0340 (Map 5594) to the southwest corner of Parcel 0340; thence,
4 southeasterly 1778 feet to the southeastern corner of Parcel 0340; thence, northerly
5 1418 feet along the east property lines of Parcels 0340 and 4776 to a point; thence,
6 northeasterly 774 feet to a point; thence, 920 feet easterly and along the north
7 property line of Parcel 1959 (Map 5594) to the northeast corner of Parcel 1959 in the
8 west right-of-way of Swift Road; thence southerly 200 feet along Swift Road to a
9 point; thence, easterly 2270 feet across Swift Road and along the north property lines
10 of Parcels 8542, 3462, 5359, and 2415 (Map 5594) to the northeast corner of Parcel
11 2415; thence, meandering 1955 feet along the southwestern property lines of Parcel
12 8907 (Map 5594) and Parcels 3743, 9938 and 3774 (Map 6504) to the southernmost
13 corner of Parcel 3774; thence, 500 feet, southeasterly along the eastern property lines
14 of Parcels 3640, 4229, and 4177 (Map 6504) to the intersection of W. Eleventh Street
15 and Hurley Road (SR 1112); thence, 760 feet, continuing diagonally across the
16 intersection of W. Eleventh and Hurley Road and along the eastern property lines of
17 Parcel 5749 (Map 6503.01) and Parcel 3808 (Map 5593) to the centerline of the
18 Norfolk & Southern Railroad; thence, 1600 feet, southeasterly, along the Railroad to
19 a point; thence, 1470 feet, southwesterly along the northwestern property line of
20 Parcel 7249 (Map 6503.01) to the most westerly corner of Parcel 7249; thence,
21 easterly, 550 feet, to a point at the northwest corner of Parcel 3991 (Map 6503.01);
22 thence, southerly, 190 feet, to the southwest corner of Parcel 3991 in the north right-
23 of-way of Hamilton Road; thence, easterly, 40 feet, along the north right-of-way of
24 Hamilton Road to a point.

25

26 Thence, southerly, 830 feet, across Hamilton Road and along the western property
27 lines of Parcels 4475 and 4965 (Map 6503) to the westernmost corner of Parcel 4965;
28 thence, southeastern, 920 feet, along the southwest property line of Parcel 4965, the
29 northeast property line of Parcel 5584 (Map 6503.01), across NC 205, and along the
30 northeast property line of Parcel 7324 (Map 6503.01) to the easternmost corner of
31 Parcel 7324; thence, northeasterly, 1940 feet, along the southeastern and eastern
32 property lines of Parcels 8456, 9597, 1789, and 3057 (Map 6503.01) and the east right-
33 of-way of NC 205 to the south right-of-way of Coble Mill Road (SR 1152); thence,
34 easterly, 1965 feet, along the Coble Mill Road south right-of-way to intersection with
35 the west right-of-way line of Rocky River Road; thence, southerly 2620 feet, along the
36 west right-of-way of Rocky River Road to a point approximately 250 feet south of
37 James Road; thence, easterly 1975 feet, across Rocky River Road in a line with and
38 following the southern property lines of Parcels 5656, 0712, 4832, 6877, 8961, 9953,
39 0914, and 1080 (Map 6503), to the west right-of-way line of NC 742; thence,
40 southeasterly 75 feet to the POINT OF BEGINNING."

41

Section 2. This act becomes effective June 30, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1997

FAV.
w

H

2

HOUSE BILL 655
Committee Substitute Favorable 4/24/97

Short Title: Madison Annexation.

(Local)

Sponsors:

Referred to:

March 27, 1997

1 A BILL TO BE ENTITLED
2 AN ACT CONCERNING THE ANNEXATION OF NONCONTIGUOUS AREAS
3 BY THE TOWN OF MADISON.

4 The General Assembly of North Carolina enacts:

5 Section 1. Effective as of midnight June 30, 1997, the noncontiguous area
6 described herein which lies within the extraterritorial jurisdiction of the Town of
7 Madison and is delineated on the Official Zoning Map of the Town of Madison is
8 annexed to the Town of Madison:

9 BEGINNING AT A POINT being the intersection of the centerlines of State
10 Highway 704 and Grogan Lake Road (SR 1178), thence east southeast approximately
11 1540 feet along the centerline of State Highway 704 to a point being the intersection
12 of the centerline of State Highway 704 and Island Drive (SR 1169), thence south
13 approximately 2420 feet to a point on the centerline of Island Drive parallel to the
14 northernmost point of parcel 7916.16-74-6129, thence west southwest approximately
15 1910 feet along the northern boundary of said parcel to a point being the northwest
16 boundary corner of said parcel, thence north approximately 1020 feet along the
17 eastern and southeastern property boundaries of parcels 7906-65-3798 and 7906-76-
18 7040, thence east approximately 565 feet to a point in the centerline of Grogan Lake
19 Road (SR 1178), thence north approximately 320 feet to a point on the centerline of
20 Grogan Lake Road (SR 1178) parallel to the southwest property boundary corner of
21 parcel 7906-86-2975, thence east approximately 212 feet to a point being the southeast
22 property corner of said parcel, thence north approximately 546 feet along the eastern
23 property boundary lines of parcels 7906-86-2975, 7906-87-2073 and 7918-84-2298 to a

1 point being the northeast property boundary corner of parcel 7918-84-2298, thence
2 west approximately 215 feet along the northern boundary of said parcel to the
3 centerline of Grogan Lake Road (SR 1178), thence north approximately 200 feet
4 along the centerline of Grogan Lake Road (SR 1178) to a point parallel to the
5 southwest property boundary corner of parcel 7906.08-87-3727, thence east
6 approximately 215 feet along the southern boundary of said parcel to a point being
7 the southeast property boundary corner of said parcel, thence north approximately
8 400 feet along the eastern boundaries of parcels 7906.08-87-3727 and 7906.08-87-3937
9 to a point being the northeast property boundary corner of parcel 7906-87-3937,
10 thence west approximately 215 feet to a point in the centerline of Grogan Lake Road
11 (SR 1178) parallel to the northwest property boundary corner of said parcel, thence
12 north approximately 476 feet along the centerline of Grogan Lake Road (SR 1178) to
13 a point parallel to the southwest boundary corner of parcel 7915.05-28-3666, thence
14 east approximately 211 feet to a point being the southeast boundary corner of said
15 parcel, thence north approximately 221 feet to a point being the northeast boundary
16 corner of said parcel, thence west approximately 208 feet to the centerline of Grogan
17 Lake Road (SR 1178) to a point parallel to the northwest boundary corner of said
18 parcel, thence north approximately 534 feet along the centerline of Grogan Lake
19 Road (SR 1178) to the BEGINNING.

20 Section 2. G.S. 160A-58.1(b)(2) does not apply to the area set out in
21 Section 1 of this act.

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

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

June 25, 1997

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Mac Bentley	N.C. Aggregates Assoc
Fred Allen	NC Aggregates Assn.
Susan Rosdolpn	DEHNR, Occupa Env. Epi
Rich Riddle	M.C. P.O. Kwaan
Tom M. Loevel	NCAAC
Patrice Rader	NCAAC
Ron Aycock	NCAAC
Kim Smith	NCLM
RANDY KNIGHT	NC Alcohol LAW Enforcement
Ana Case	DEHNR
Anthony L Jenkins	Interim

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

June 25, 1997

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

NAME	FIRM OR AGENCY AND ADDRESS
<i>George Long</i>	<i>NC DOR</i>
<i>Wanda Winn</i>	<i>EAH&S</i>
<i>AB Smiley</i>	<i>BFT</i>
<i>Eddie Caldwell</i>	<i>NCHMA</i>
<i>David Feneel</i>	<i>Hofa, McManus, Ledwell, McElroy & Lutter AA</i>
<i>Mary Hancock</i>	<i>Travel & Tourism Coalition</i>
<i>Ruth Sappie</i>	<i>NC DOT</i>
<i>Jim Riteley</i>	<i>TTA</i>

FAVORABLE, AS AMENDED

H.B. 832 Newland/Spruce Pine Tax Payment.
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B. 483 Phys. Svces. Fee/AB.
Draft Number: PCS7820
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 8

Committee Clerk Comment: S 483 H 311 549 655 754 789 832 867

SENATE FINANCE COMMITTEE

TUESDAY, JULY 1, 1997

8:30 A.M. - ROOM 643 LOB

The Senate Finance Committee met. There were 20 members of the Committee present. Senator John H. Kerr, III, Co-Chairman, called the meeting to order and stated that Zachary Avrette, son of Cindy Avrette, Staff Counsel, was visit with us today. Senator Kerr introduced the Pages, they are Molly Jacobs from Gastonia, N. C., sponsored by Senator Hoyle, Daniel Jacobs, from Gastonia, N. C., sponsored by Senator Hoyle and Elizabeth Holz from Cape Carteret, N. C., sponsored by Senator Perdue.

H. B. 1057 Exempt Audiovisual Masters

Representative Grady came to explain the bill. Mrs. Cindy Avrette, Staff Counsel, explained the changes to the Bill in the proposed committee substitute. Senator Foxx made a motion for adoption of proposed committee substitute and a "favorable" report, motion passed with the Committee recommending that the bill be sent to Senate Appropriations.

H. B. 832 - Newland/Spruce Pine Tax Payment

Representative Thompson explained the bill. Mrs. Avrette, Staff Counsel, explained what the proposed committee substitute bill does. Senator Dannelly moved for a "favorable report on proposed committee substitute, motion passed. Senator Foxx made a motion for a "favorable" report, motion passed.

H. B. 681 - Roxboro Charter

Representative Wilkins explained the bill. Senator Wellons moved for a "favorable" report, motion carried.

H. B. 71 - Halifax-Roanoke Rapids Airport

Representative Crawford came to explain the bill. Senator Cochrane moved for a "favorable" report, motion carried.

H. B. 63 - River Bend Zoning/Annexation

Senator Perdue explained the bill. Senator Dannelly moved for a "favorable" report, motion carried.

H. B. 1061 - Disabled Sportsman Licenses

Representative McCombs explained the bill. Senator Hoyle sent forward an amendment to the bill and made a motion that same be adopted, motion passed. Senator Bob Shaw moved for a "favorable" report as amended and that bill be rolled into a committee substitute, motion passed. NOTE: Bill not reported out of Committee until July 2, 1997.

S. B. 360 - Boat Number Fees

Senator Albertson explained the bill. Mr. Richard Hamilton, Assistant Director of the Wildlife Resources Commission, spoke on the bill. Senator Ballantine made a motion for a "favorable" report, motion passed.

S. B. 534 - Pleasant Garden Incorporation

Senator Robert Shaw came to explain the bill. Senator Dannelly moved for a "favorable" report, motion passed.

H. B. 299 - Vietnam Veterans Plates

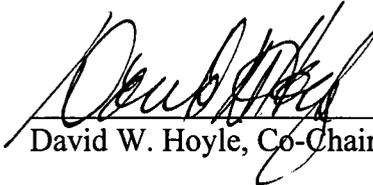
Representative Sexton came to explain the bill. Mrs. Avrette explained what the bill and proposed committee substitute bill does. After a time of questions and discussion, Representative Sexton asked that the \$10.00 fee be added to the bill. Senator Kerr stated that we would hold the bill until everyone is satisfied. Senator Hoyle stated that we should get the \$10.00 fee so we do not change the current policy. Senator Hoyle sent forward a committee substitute bill with a \$40.00 fee and he moved that we give the proposed committee substitute bill a "favorable" report, motion passed. NOTE: Bill was not reported out of Committee until 7-2-97.

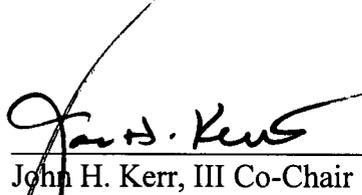
SENATE FINANCE COMMITTEE

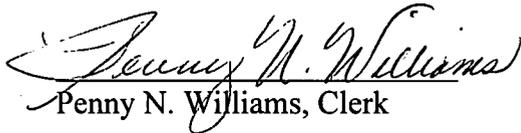
Tuesday, July 1, 1997

Page -3-

Meeting adjourned.


David W. Hoyle, Co-Chair


John H. Kerr, III Co-Chair


Penny N. Williams, Clerk


Evelyn S. Hartsell, Clerk

NOTE:

Agenda is Attachment # 1

Visitor's Registration is Attachment # 2

Committee Report for 7-1-97 is Attachment # 3

Committee Report for 7-2-97 is Attachment # 4

AGENDA

FOR

SENATE FINANCE MEETING

TUESDAY, JULY 1, 1997

ROOM 643 AT 8:30 A.M.

- **SB 360 - BOAT NUMBER FEES - SEN. ALBERTSON**
- **HB 71 - HALIFAX-ROANOKE RAPIDS AIRPORT - REP. CRAWFORD**
- **HB 299 - VIETNAM VETERANS PLATES - REP. SEXTON**
- **HB 681 - ROXBORO CHARTER - REP. WILKINS**
- **HB 832 - NEWLAND/SPRUCE PINE TAX PAYMENT - REP. THOMPSON**
- **HB 1057 - EXEMPT AUDIOVISUAL MASTERS - REP. GRADY**
- **HB 1061 - DISABLED SPORTSMAN LICENSES - REP. MCCOMBS**
- **HB 63 - RIVER BEND ZONING/ANNEXATION - REP. NICHOLS**
- **SB 534 - PLEASANT GARDEN INCORPORATION - SEN. SHAW, GUILFORD**

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 1057*

Short Title: Exempt Audiovisual Masters.

(Public)

Sponsors: Representatives Grady; McComas and Preston.

Referred to: Commerce, if favorable, Finance.

April 21, 1997

1 A BILL TO BE ENTITLED

2 AN ACT TO EXEMPT FROM SALES TAX AUDIOVISUAL MASTER TAPES
3 USED IN THE MOTION PICTURE, TELEVISION, AND AUDIO
4 PRODUCTION INDUSTRIES.

5 The General Assembly of North Carolina enacts:

6 Section 1. G.S. 105-164.13 is amended by adding a new subdivision to
7 read:

8 "(22a) Sales of audiovisual masters made or used by a production
9 company in making visual and audio images for first generation
10 reproduction. For the purpose of this subdivision, an 'audiovisual
11 master' is an audio or video film, tape, or disk or another audio or
12 video storage device from which all other copies are made. For
13 the purpose of this subdivision, a production company is a person
14 engaged in the business of making motion picture, television, or
15 radio images for theatrical, commercial, advertising, or educational
16 purposes."

17 Section 2. This act becomes effective July 1, 1997, and applies to sales
18 made on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

HOUSE BILL 1057*
Proposed Senate Committee Substitute H1057-PCSXA400

Short Title: Exempt Audiovisual Masters.

(Public)

Sponsors:

Referred to:

April 21, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO EXEMPT FROM SALES TAX AUDIOVISUAL MASTER TAPES
3 USED IN THE MOTION PICTURE, TELEVISION, AND AUDIO
4 PRODUCTION INDUSTRIES.
5 The General Assembly of North Carolina enacts:
6 Section 1. G.S. 105-164.13 is amended by adding a new subdivision to
7 read:
8 "(22a) Sales of audiovisual masters made or used by a production
9 company in making visual and audio images for first generation
10 reproduction. For the purpose of this subdivision, an 'audiovisual
11 master' is an audio or video film, tape, or disk or another audio or
12 video storage device from which all other copies are made. For
13 the purpose of this subdivision, a production company is a person
14 engaged in the business of making motion picture, television, or
15 radio images for theatrical, commercial, advertising, or educational
16 purposes."
17 Section 2. This act becomes effective October 1, 1997, and applies to
18 sales made on or after that date.

EXPLANATION OF HOUSE BILL 1057:
Exempt Audiovisual Masters

TO: Senate Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: June 27, 1997
SPONSOR: Representative Grady

House Bill 1057 is identical to Senate Bill 123, introduced by Senator Ballantine. The Senate Finance Committee gave Senate Bill 123 a favorable report on April 1, 1997. The bill was re-referred to the Appropriations Committee.

The bill creates a new State and local sales and use tax exemption. The new exemption is for audiovisual masters. An audiovisual master is the film, tape, or other storage device that is made or used by a production company to make more copies of the film or tape. The bill becomes effective July 1, 1997.

The tax at issue in this bill involves post-production work on a film, video, or commercial. Assume, for example, that a politician contracts with an advertising agency to have a political commercial made. The agency then films or contracts with others to film the politician in action. When the filming is completed, the agency contracts with a company to edit the film and put it in a finished form with sound and any narration. When the finished product (the audiovisual master) is delivered by the agency to the politician, a sales tax applies to the sale of that finished product. The tax is computed on the value of all the services that went into the finished product, such as acting fees or other charges.

According to the North Carolina Film Office, most post-production work on films is done in California or New York but the post-production work on commercials and videos is done in many other places. South Carolina and Virginia do not tax audiovisual masters, so a lot of post-production work on commercials and videos is done in those states.

Technical Consideration:

The bill has a July 1, 1997, effective date. The effective date should be changed to October 1, 1997. That date will correspond with the Department's mailings of the new sales and use tax reports.

**NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL ESTIMATE**

BILL NUMBER: House Bill 1057
SHORT TITLE: Exempt Audiovisual Masters
SPONSOR(S): Rep. Grady

FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 1997-98</u>	<u>FY 1998-99</u>	<u>FY 1999-00</u>	<u>FY 2000-01</u>	<u>FY 2001-02</u>
REVENUES					
State (General Fund)	-\$1.40	-\$1.59	-\$1.68	-\$1.78	-\$1.88
Local	-.70	-.80	-.84	-.89	-.94
EXPENDITURES The enactment of the bill will have no impact on the budget requirements of the Department of Revenue.					
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue					
EFFECTIVE DATE: Sales occurring on or after July 1, 1997					

BILL SUMMARY: Exempts from state and local sales tax master tapes utilized by the motion picture, television, and audio production industries in making visual and aural first-generation images for reproduction.

ASSUMPTIONS AND METHODOLOGY: The estimate was developed through discussions with the Department of Revenue, the State Film Office, and a major company involved in post-production activities. The estimate is based on \$37.5 million of taxable post-production activity in the State and 6% annual growth (based on state economic forecast). The exemption would not apply to the production of duplicate tapes.

FISCAL RESEARCH DIVISION (733-4910)
PREPARED BY: David Crofts
DATE: May 21, 1997

1 taxes have been paid with respect to the property described in the
2 deed.

3 (2) If the property described in the deed is located in whole or in part
4 in the Town of Spruce Pine, the deed is accompanied by a
5 certificate from the tax collector for the town to the effect that all
6 delinquent municipal taxes have been paid with respect to the
7 property.

8 Section 3. This act becomes effective August 1, 1997, and applies to
9 deeds recorded on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

HOUSE BILL 832
Proposed Senate Committee Substitute H832-PCSX7340

Short Title: Collect Delinquent Property Tax.

(Local)

Sponsors:

Referred to:

April 7, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO REQUIRE PAYMENT OF DELINQUENT TAXES FOR THE
3 TOWNS OF NEWLAND AND SPRUCE PINE AND FOR THE COUNTIES OF
4 ALLEGHANY AND STOKES BEFORE RECORDING DEEDS CONVEYING
5 PROPERTY SUBJECT TO THE DELINQUENT TAXES AND TO VALIDATE
6 BUDGET PROCEDURES OF THE TOWN OF NORWOOD IN STANLY
7 COUNTY.

8 The General Assembly of North Carolina enacts:

9 Section 1. Section 1 of Chapter 305 of the 1963 Session Laws is rewritten
10 to read:

11 "Section 1. The Register of Deeds of Avery County shall not receive for
12 recordation any deed unless the following conditions are met:

13 (1) The deed is accompanied by a certificate from the Avery County
14 Tax Collector to the effect that all delinquent county taxes and all
15 delinquent taxes for municipalities for which the county collects
16 taxes have been paid with respect to the property described in the
17 deed.

18 (2) If the property described in the deed is located in whole or in part
19 in the Town of Newland, the deed is accompanied by a certificate
20 from the tax collector for the town to the effect that all delinquent
21 municipal taxes have been paid with respect to the property."

22 Section 2. Section 1 of Chapter 537 of the 1987 Session Laws is rewritten
23 to read:

1 "Section 1. The Register of Deeds of Mitchell County shall not receive for
2 recordation any deed unless the following conditions are met:

3 (1) The deed is accompanied by a certificate from the Mitchell County
4 Tax Collector to the effect that all delinquent county taxes and all
5 delinquent taxes for municipalities for which the county collects
6 taxes have been paid with respect to the property described in the
7 deed.

8 (2) If the property described in the deed is located in whole or in part
9 in the Town of Spruce Pine, the deed is accompanied by a
10 certificate from the tax collector for the town to the effect that all
11 delinquent municipal taxes have been paid with respect to the
12 property."

13 Section 3. Section 1 of Chapter 657 of the 1993 Session Laws reads as
14 rewritten:

15 "Section 1. The ~~Register~~ Registers of Deeds of ~~Ashe County~~ Alleghany, Ashe, and
16 Stokes Counties shall not receive for recordation any deed unless the deed is
17 accompanied by a certificate from the ~~Ashe~~ County Tax Collector to the effect that
18 all delinquent taxes upon the property described in the deed offered for recordation
19 have been paid."

20 Section 4. For the 1986-87 through 1996-97 fiscal years, the Town of
21 Norwood, through the budgetary procedures it adopted and followed, is deemed to
22 have adopted a budget ordinance and to have complied with all the requirements of
23 the Local Government Budget and Fiscal Control Act, Article 3 of Chapter 159 of
24 the General Statutes. Taxes levied and collected by the Town of Norwood for those
25 fiscal years are in all respects validated and confirmed. Appropriations and
26 expenditures by the Town of Norwood for those fiscal years are in all respects
27 validated and confirmed.

28 Section 5. Sections 1, 2, and 3 of this act become effective August 1,
29 1997, and apply to deeds recorded on or after that date. The remainder of this act is
30 effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

3

HOUSE BILL 681

Committee Substitute Favorable 4/23/97

Senate State Government, Local Government and Personnel Committee Substitute
Adopted 5/21/97

Short Title: Roxboro Charter.

(Local)

Sponsors:

Referred to: Finance.

March 31, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO REVISE AND CONSOLIDATE THE CHARTER OF THE CITY OF
3 ROXBORO.
4 The General Assembly of North Carolina enacts:
5 Section 1. The Charter of the City of Roxboro is revised and
6 consolidated to read as follows:
7 "THE CHARTER OF THE CITY OF ROXBORO.
8 "ARTICLE I. INCORPORATION, CORPORATE POWERS, AND BOUNDARIES.
9 "Section 1.1. **Incorporation.** The City of Roxboro, North Carolina, in Person
10 County and the inhabitants thereof shall continue to be a municipal body politic and
11 corporate, under the name of the 'City of Roxboro', hereinafter at times referred to
12 as the 'City'.
13 "Section 1.2. **Powers.** The City shall have and may exercise all of the powers,
14 duties, rights, privileges, and immunities conferred upon the City of Roxboro
15 specifically by this Charter or upon municipal corporations by general law. The term
16 'general law' is employed herein as defined in G.S. 160A-1.
17 "Section 1.3. **Corporate Boundaries.** The corporate boundaries shall be those
18 existing at the time of ratification of this Charter, as set forth on the official map of
19 the City and as they may be altered from time to time in accordance with law. An
20 official map of the City, showing the current municipal boundaries, shall be
21 maintained permanently in the office of the City Clerk and shall be available for

1 public inspection. Upon alteration of the corporate limits pursuant to law, the
2 appropriate changes to the official map shall be made, and copies shall be filed in the
3 office of the Secretary of State, the Person County Register of Deeds, and the
4 appropriate board of elections.

5 "ARTICLE II. GOVERNING BODY.

6 "Section 2.1. **City Governing Body; Composition.** The City Council, hereinafter
7 referred to as the 'Council', and the Mayor shall be the governing body of the City.

8 "Section 2.2. **City Council; Composition; Terms of Office.** The Council shall be
9 composed of five members to be elected by all the qualified voters of the City voting
10 at large for terms of two years, or until their successors are elected and qualified.

11 "Section 2.3. **Mayor; Term of Office; Duties.** The Mayor shall be elected by all
12 the qualified voters of the City for a term of two years or until a successor is elected
13 and qualified. The Mayor shall be the official head of the city government and shall
14 preside at meetings of the Council, shall have the right to vote only when there is an
15 equal division on any question or matter before the Council, and shall exercise the
16 powers and duties conferred by law or as directed by the Council.

17 "Section 2.4. **Mayor Pro Tempore.** The Council shall elect one of its members as
18 Mayor Pro Tempore to perform the duties of the Mayor during the Mayor's absence
19 or disability, in accordance with general law. The Mayor Pro Tempore shall serve in
20 such capacity at the pleasure of the Council.

21 "Section 2.5. **Meetings; Quorum.** In accordance with general law, the Council
22 shall establish a suitable time and place for its regular meeting. Special and
23 emergency meetings may be held as provided by general law. The quorum provisions
24 of G.S. 160A-74 shall apply.

25 "Section 2.6. **Meetings; Voting.** An affirmative vote equal to a majority of the
26 members of the Council not excused from voting on the issue (i.e., assuming no
27 member is excused, three Council members) shall be required to adopt an ordinance,
28 take any action having the effect of an ordinance, or make, ratify, or authorize any
29 contract on behalf of the City. In addition, no ordinance nor any action having the
30 effect of any ordinance may be finally adopted on the date on which it is introduced
31 except by an affirmative vote equal to or greater than two-thirds of the actual
32 membership of the Council (excluding vacant seats), unless the Council has first held
33 a public hearing on the ordinance. Therefore, assuming no vacant seats, unless the
34 Council first holds a public hearing on an ordinance, that ordinance may not be
35 adopted on the date it is introduced except by an affirmative vote of four Council
36 members. For purposes of this section, an ordinance shall be deemed to have been
37 introduced on the date the subject matter is first voted on by the Council. This
38 section does not modify G.S. 159-17.

39 "Section 2.7. **Qualification for Office; Compensation; Vacancies.** The
40 qualifications and compensation of the Mayor and Council members shall be in
41 accordance with general law. Vacancies shall be filled as provided in G.S. 160A-63.

42 "ARTICLE III. ELECTIONS.

43 "Section 3.1. **Regular Municipal Elections.** Regular municipal elections shall be
44 held in each odd-numbered year in accordance with the uniform municipal election

1 laws of North Carolina. Elections shall be conducted on a nonpartisan basis and the
2 results determined using the nonpartisan election and runoff election method as
3 provided in G.S. 163-279(a)(4) and G.S. 163-293.

4 "Section 3.2. **Election of Mayor.** A Mayor shall be elected in each regular
5 municipal election.

6 "Section 3.3. **Election of Council Members.** Five Council members shall be
7 elected in each regular municipal election.

8 "Section 3.4. **Special Elections and Referenda.** Special elections and referenda
9 may be held only as provided by general law or applicable local acts of the General
10 Assembly.

11 "ARTICLE IV. ORGANIZATION AND ADMINISTRATION.

12 "Section 4.1. **Form of Government.** The City shall operate under the council-
13 manager form of government in accordance with Part 2 of Article 7 of Chapter 160A
14 of the General Statutes.

15 "Section 4.2. **City Manager; Appointment; Powers and Duties.** The Council shall
16 appoint a City Manager who shall be responsible for the administration of all
17 departments of the City government. The City Manager shall have all the powers
18 and duties conferred by general law, except as expressly limited by the provisions of
19 this Charter, and the additional powers and duties conferred by the Council, so far as
20 authorized by general law. The Council may require the City Manager to reside
21 within the City during the City Manager's tenure of office. In case of the absence or
22 disability of the City Manager, the Council may designate a qualified administrative
23 officer of the City to perform the duties of the City Manager during such absence or
24 disability.

25 "Section 4.3. **City Clerk.** The Council shall appoint a City Clerk to keep a
26 journal of the proceedings of the Council, to maintain official records and documents,
27 to give notice of meetings, and to perform such other duties required by law or as the
28 Council may direct. The City Clerk shall be subject to the supervisory authority of
29 the City Manager.

30 "Section 4.4. **Finance Director.** The City Manager shall appoint a Finance
31 Director to perform the duties designated in G.S. 159-25 and such other duties as
32 may be prescribed by law or assigned by the Manager.

33 "Section 4.5. **Tax Collector.** The Council shall appoint a Tax Collector pursuant
34 to G.S. 105-349 to collect all taxes owed to the City, subject to general law, this
35 Charter, and City ordinances.

36 "Section 4.6. **City Attorney.** The Council shall appoint a City Attorney licensed
37 to practice law in North Carolina. It shall be the duty of the City Attorney to
38 represent the City, advise City officials, and perform other duties required by law or
39 as the Council may direct. The Council may appoint one or more Assistant City
40 Attorneys to assist the City Attorney and to serve in the City Attorney's absence or
41 incapacity and who shall have the same qualifications and duties as the City
42 Attorney.

43 "Section 4.7. **Other Administrative Officers and Employees.** The Council may
44 authorize other positions to be filled by appointment by the City Manager and may

1 organize the City government as deemed appropriate, subject to the requirements of
2 general law.

3 "ARTICLE V. STREETS.

4 "Section 5.1. **Assessments for Street Improvements; Petition Unnecessary.** In
5 addition to any authority granted by general law, the Council may, without the
6 necessity of a petition, order street improvements according to standards and
7 specifications of the City, and assess the total costs or a portion thereof against
8 abutting property, exclusive of the costs incurred at street intersections, according to
9 one or more of the assessment bases set forth in Article 10 of Chapter 160A of the
10 General Statutes, upon the following findings of fact:

- 11 (1) The street improvement project does not exceed 1,200 linear feet;
12 and
- 13 (2) a. The street or part thereof is unsafe for vehicular traffic or
14 creates a safety or health hazard, and it is in the public
15 interest to make such improvement; or
- 16 b. It is in the public interest to connect two streets or portions
17 of a street already improved; or
- 18 c. It is in the public interest to widen a street, or part thereof,
19 which is already improved. Assessments for widening any
20 street or portion of a street without a petition shall be
21 limited to the cost of widening and otherwise improving
22 such street in accordance with street classification and
23 improvement standards established by the City's
24 thoroughfare or major street plan for the particular street or
25 part thereof.

26 "Section 5.2. **Street Improvement Defined.** For the purposes of this Article, the
27 term 'street improvement' shall include grading, regrading, surfacing, resurfacing,
28 widening, paving, repaving, and the construction or reconstruction of curbs, gutters,
29 and street drainage facilities.

30 "Section 5.3. **Procedure; Effect of Assessment.** In ordering street improvements
31 without a petition and assessing the costs thereof under authority of this Article, the
32 Council shall comply with the procedures provided by Article 10 of Chapter 160A of
33 the General Statutes, except those provisions relating to petitions of property owners
34 and the sufficiency thereof. The effect of levying assessments under authority of this
35 Article shall be the same as if the assessments were levied under authority of Article
36 10 of Chapter 160A of the General Statutes.

37 "Section 5.4. **Property Owner's Responsibility.** The Council shall have authority
38 to require every property owner in the City to cut and remove limbs, branches, and
39 parts of trees or shrubbery extending upon or overhanging the streets.

40 "Section 5.5. **City Cutting and Removal; Costs Become Lien.** The Council may, by
41 ordinance, establish a procedure whereby City forces may cut and remove limbs,
42 branches, and parts of trees or shrubbery extending upon or overhanging the streets
43 after failure of the abutting property owner after 10 days' notice to do so. In such
44 event, the cost of such cutting and removal shall become a lien upon the abutting

1 property equal to the lien for ad valorem taxes and may thereafter be collected either
2 by suit in the name of the City or by foreclosure of the lien in the same manner and
3 subject to the same rules, regulations, costs, and penalties as provided by law for the
4 foreclosure of the lien on real estate for ad valorem taxes.

5 "ARTICLE VI. SIDEWALKS.

6 "Section 6.1. **Assessments for Sidewalk Improvements; Petition Unnecessary.** In
7 addition to any authority granted by general law, the Council may, without the
8 necessity of a petition, order sidewalk improvements or repairs according to standards
9 and specifications of the City, and assess the total costs or a portion thereof against
10 abutting property, according to one or more of the assessment bases set forth in
11 Article 10 of Chapter 160A of the General Statutes. Regardless of the assessment
12 basis or bases employed, the Council may order the costs of sidewalk improvements
13 made only on one side of a street to be assessed against property abutting both sides
14 of the street. In ordering sidewalk improvements or repairs without a petition and
15 assessing the costs thereof under authority of this Article, the Council shall comply
16 with the procedures provided by Article 10 of Chapter 160A of the General Statutes,
17 except those provisions relating to petitions of property owners and the sufficiency
18 thereof. The effect of levying assessments under authority of this Article shall be the
19 same as if the assessments were levied under authority of Article 10 of Chapter 160A
20 of the General Statutes.

21 "Section 6.2. **Property Owner's Responsibility.** The Council shall have the
22 authority to require every property owner in the City to keep clean and free of
23 debris, trash, and other obstacles or impediments the sidewalks abutting the owner's
24 property and to require every property owner in the City to cut and remove limbs,
25 branches, and parts of trees or shrubbery extending upon or overhanging the
26 sidewalks abutting the owner's property.

27 "Section 6.3. **City Cleaning or Repair; Costs Become Lien.** The Council may, by
28 ordinance, establish a procedure whereby City forces may clean any sidewalk, remove
29 therefrom any debris or trash, or cut and remove limbs, branches, and parts of trees
30 or shrubbery extending upon or overhanging any sidewalk after failure of the abutting
31 property owner after 10 days' notice to do so. In such event, the cost of the repair,
32 cleaning, cutting, or removal shall become a lien upon the abutting property equal to
33 the lien for ad valorem taxes and may thereafter be collected either by suit in the
34 name of the City or by foreclosure of the lien in the same manner and subject to the
35 same rules, regulations, costs, and penalties as provided by law for the foreclosure of
36 the lien on real estate for ad valorem taxes.

37 "ARTICLE VII. WATER AND SEWER.

38 "Section 7.1. **Construction Outside Corporate Limits.** In addition to any authority
39 granted by general law, the City is authorized to construct or reconstruct water and
40 sewer lines and facilities outside the corporate limits of the City as the Council may
41 deem appropriate, to furnish water and sewer services to industries outside the city
42 limits, and to make such charges for the services as the Council may deem
43 reasonable.

1 "Section 7.2. **Acquisition of Existing Facilities.** In addition to any authority
2 granted by general law, the City is authorized to acquire, by purchase, gift, or
3 exchange existing water and sewer lines and facilities located outside of the corporate
4 limits of the City.

5 "ARTICLE VIII. TAXATION.

6 "Section 8.1. **Motor Vehicles Tax.** The City may levy a license or privilege tax
7 upon motor vehicles resident therein in an amount up to ten dollars (\$10.00) per
8 year, or the amount prescribed by G.S. 20-97, whichever is greater.

9 "ARTICLE IX. CITY LAKE REGULATION.

10 "Section 9.1. **Regulation of City Lakes.** In addition to any authority granted by
11 general law, the City is authorized, by ordinance, to regulate, restrict, or prohibit the
12 use of any lakes owned by the City, to prescribe rules under which fishing, boating,
13 and other uses may be permitted thereon, to fix charges for such uses, and to
14 otherwise provide for their operation in accordance herewith. The provisions of any
15 ordinance adopted under authority of this section shall not conflict with applicable
16 State laws, rules, or regulations.

17 "ARTICLE X. CLAIMS AGAINST THE CITY.

18 "Section 10.1. **Settlement of Claims by City Manager.** The Council may authorize
19 the City Manager to settle claims against the City for: (i) personal injuries or damages
20 to property when the amount involved does not exceed the sum of five thousand
21 dollars (\$5,000) and does not exceed the actual loss sustained; and (ii) the taking of
22 small portions of private property which are needed for the rounding of corners at
23 intersections of streets when the amount involved in any such settlement does not
24 exceed five thousand dollars (\$5,000) and does not exceed the actual loss sustained.
25 Settlement of a claim by the City Manager pursuant to this section shall constitute a
26 complete release of the City from any and all damages sustained by the person
27 involved in such settlement in any manner arising out of the incident, occasion, or
28 taking complained of. All settlements and all releases shall be approved by the City
29 Attorney.

30 "ARTICLE XI. PROPERTY DISPOSITION.

31 "Section 11.1. **Disposal of Surplus Personal Property.** The City may dispose of
32 surplus personal property valued at less than two thousand dollars (\$2,000) for any
33 one item or group of items using the procedures authorized in G.S. 160A-266(c)."

34 Section 2. The purpose of this act is to revise the Charter of the City of
35 Roxboro and to consolidate certain acts concerning the property, affairs, and
36 government of the City. It is intended to continue without interruption those
37 provisions of prior acts which are expressly consolidated into this act, so that all
38 rights and liabilities which have accrued are preserved and may be enforced.

39 Section 3. This act does not repeal or affect any acts concerning the
40 property, affairs, or government of public schools or any acts validating official
41 actions, proceedings, contracts, or obligations of any kind.

42 Section 4. The following acts, having served the purposes for which they
43 were enacted or having been consolidated into this act, are expressly repealed:

44 Chapter 253, Private Laws of 1854-55

- 1 Chapter 268, Private Laws of 1854-55
2 Chapter 109, Private Laws of 1879
3 Chapter 92, Private Laws of 1881
4 Chapter 168, Private Laws of 1887
5 Chapter 71, Private Laws of 1899
6 Chapter 134, Private Laws of 1901
7 Chapter 303, Private Laws of 1903
8 Chapter 762, Public Laws of 1905
9 Chapter 142, Private Laws of 1907
10 Chapter 909, Public Laws of 1907
11 Chapter 244, Private Laws of 1913
12 Chapter 137, Private Laws of 1915
13 Chapter 125, Private Laws, Extra Session of 1921
14 Chapter 175, Private Laws of 1925
15 Chapter 84, Private Laws of 1927
16 Chapter 211, Public-Local Laws of 1941
17 Chapter 288, Session Laws of 1943, except for Section 3
18 Chapter 12, Session Laws of 1953
19 Chapter 502, Session Laws of 1955
20 Chapter 510, Session Laws of 1955
21 Chapter 42, Session Laws of 1957
22 Chapter 425, Session Laws of 1961
23 Chapter 619, Session Laws of 1963
24 Chapter 643, Session Laws of 1965, except for Section 5
25 Chapter 978, Session Laws of 1965.
26 Section 5. The Mayor and Council members serving on the date of
27 ratification of this act shall serve until the expiration of their terms or until their
28 successors are elected and qualified.
29 Section 6. This act does not affect any rights or interests which arose
30 under any provisions repealed by this act.
31 Section 7. All existing ordinances, resolutions, and other provisions of
32 the City of Roxboro not inconsistent with the provisions of this act shall continue in
33 effect until repealed or amended.
34 Section 8. No action or proceeding pending on the effective date of this
35 act by or against the City or any of its departments or agencies shall be abated or
36 otherwise affected by this act.
37 Section 9. Whenever a reference is made in this act to a particular
38 provision of the General Statutes, and such provision is later amended, superseded,
39 or recodified, the reference shall be deemed amended to refer to the amended
40 General Statute, or to the General Statute which most clearly corresponds to the
41 statutory provision which is superseded or recodified.
42 Section 10. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 71

Short Title: Halifax-Roanoke Rapids Airport.

(Local)

Sponsors: Representatives Crawford; Wilkins and Hardaway.

Referred to: Local and Regional Government I, if favorable, Finance.

February 6, 1997

A BILL TO BE ENTITLED

1
2 AN ACT TO ENABLE THE COUNTY OF HALIFAX AND THE CITY OF
3 ROANOKE RAPIDS TO ESTABLISH AN AIRPORT AUTHORITY FOR THE
4 MAINTENANCE OF AIRPORT FACILITIES IN THE COUNTY.

5 The General Assembly of North Carolina enacts:

6 Section 1. There is hereby created the "Halifax-Roanoke Rapids Airport
7 Authority" (for brevity hereinafter referred to as the "Airport Authority"), which
8 shall be a body both corporate and politic, having the powers and jurisdiction
9 hereinafter enumerated and such other and additional powers as shall be conferred
10 upon it by general law and future acts of the General Assembly.

11 Section 2. The Airport Authority shall consist of seven members, three
12 of whom shall be appointed to staggered three-year terms by the Roanoke Rapids
13 City Council and three of whom shall be appointed to staggered three-year terms by
14 the Halifax County Board of Commissioners and one of whom shall be appointed by
15 the other six members of the Airport Authority. The members appointed by the
16 Roanoke Rapids City Council shall be qualified voters of the City of Roanoke
17 Rapids, and the members appointed by the Halifax County Board of Commissioners
18 and the Airport Authority shall be qualified voters of the County of Halifax. Each
19 member shall take and subscribe before the Clerk of Superior Court of Halifax
20 County an oath of office and file the same with the Halifax County Board of
21 Commissioners and the Roanoke Rapids City Council. Membership on the Halifax
22 County Board of Commissioners or the Roanoke Rapids City Council and the
23 Airport Authority shall not constitute double office holding within the meaning of
24 Article VI, Section 9 of the Constitution of North Carolina.

1 Section 3. The Airport Authority may adopt suitable bylaws for its
2 management. The members of the Airport Authority shall receive compensation, per
3 diem, or otherwise as the Roanoke Rapids City Council or the Halifax County Board
4 of Commissioners from time to time determines and be paid their actual traveling
5 expenses incurred in transacting the business and at the instance of the Airport
6 Authority. Members of the Airport Authority shall not be personally liable for their
7 acts as members of the Airport Authority, except for acts resulting from misfeasance
8 or malfeasance.

9 Section 4. (a) The Airport Authority shall constitute a body, both
10 corporate and politic, and shall have the following powers and authority:

- 11 (1) To purchase, acquire, establish, construct, own, control, lease,
12 equip, improve, maintain, operate, and regulate airports and
13 landing fields for the use of airplanes and other aircraft within the
14 limits of the County and for this purpose to purchase, improve,
15 own, hold, lease, or operate real or personal property. The
16 Airport Authority may exercise these powers alone or in
17 conjunction with the City of Roanoke Rapids or the County of
18 Halifax.
- 19 (2) To sue and be sued in the name of the Airport Authority, to make
20 contracts and hold any personal property necessary for the exercise
21 of the powers of the Airport Authority, and acquire by purchase,
22 lease, or otherwise any existing lease, leasehold right, or other
23 interest in any existing airport located in the County.
- 24 (3) To charge and collect reasonable and adequate fees and rents for
25 the use of airport property or for services rendered in the
26 operation of the airport.
- 27 (4) To make all reasonable rules and regulations it deems necessary
28 for the proper maintenance, use, operation, and control of the
29 airport and provide penalties for the violation of these rules and
30 regulations; provided, the rules and regulations and schedules of
31 fees not be in conflict with the laws of North Carolina, and the
32 regulations of the Federal Aviation Administration. The Airport
33 Authority may administer and enforce any airport zoning
34 regulations adopted by the City of Roanoke Rapids or the County
35 of Halifax.
- 36 (5) To issue bonds pursuant to Article 5 of Chapter 159 of the General
37 Statutes.
- 38 (6) To sell, lease, or otherwise dispose of any property, real or
39 personal, belonging to the Airport Authority, according to the
40 procedures described in Article 12 of Chapter 160A of the General
41 Statutes, but no sale of real property shall be made without the
42 approval of the Halifax County Board of Commissioners and the
43 Roanoke Rapids City Council.

- 1 (7) To purchase any insurance that the Federal Aviation
2 Administration or the Airport Authority shall deem necessary.
3 The Airport Authority shall be responsible for any and all
4 insurance claims or liabilities.
- 5 (8) To deposit or invest and reinvest any of its funds as provided by
6 the Local Government Finance Act, as it may be amended from
7 time to time, for the deposit or investment of unit funds.
- 8 (9) To purchase any of its outstanding bonds or notes.
- 9 (10) To operate, own, lease, control, regulate, or grant to others, for a
10 period not to exceed 25 years, the right to operate on any airport
11 premises restaurants, snack bars, vending machines, food and
12 beverage dispensing outlets, rental car services, catering services,
13 novelty shops, insurance sales, advertising media, merchandising
14 outlets, motels, hotels, barber shops, automobile parking and
15 storage facilities, automobile service establishments, and all other
16 types of facilities as may be directly or indirectly related to the
17 maintenance and furnishing to the general public of a complete air
18 terminal installation.
- 19 (11) To contract with persons, firms, or corporations for terms not to
20 exceed 25 years, for the operation of airline-scheduled passenger
21 and freight flights, nonscheduled flights, and any other airplane
22 activities not inconsistent with the grant agreements under which
23 the airport property is held.
- 24 (12) To erect and construct buildings, hangars, shops, and other
25 improvements and facilities, not inconsistent with or in violation of
26 the agreements applicable to and the grants under which the real
27 property of the airport is held; to lease these improvements and
28 facilities for a term or terms not to exceed 25 years; to borrow
29 money for use in making and paying for these improvements and
30 facilities, secured by and on the credit only of the lease agreements
31 in respect to these improvements and facilities, and to pledge and
32 assign the leases and lease agreements as security for the
33 authorized loans.
- 34 (13) Subject to the limitations set out in this act, to have all the same
35 power and authority granted to cities and counties pursuant to
36 Chapter 63 of the General Statutes, Aeronautics.
- 37 (14) To have a corporate seal, which may be altered at will.
- 38 (b) The Airport Authority shall possess the same exemptions in respect
39 to payment of taxes and license fees and be eligible for sales and use tax refunds to
40 the same extent as provided for municipal corporations by the laws of the State of
41 North Carolina.
- 42 Section 5. The Airport Authority may acquire from the City and the
43 County, by agreement with the City and County, and the City and County may grant
44 and convey, either by gift or for such consideration as the City and County may deem

1 wise, any real or personal property which it now owns or may hereafter acquire,
2 including nontax monies, and which may be necessary for the construction, operation,
3 and maintenance of any airport located in the County.

4 Section 6. Any lands acquired, owned, controlled, or occupied by the
5 Airport Authority shall be, and are declared to be acquired, owned, controlled, and
6 occupied for a public purpose.

7 Section 7. Private property needed by the Airport Authority for any
8 airport, landing field, or as facilities of an airport or landing field may be acquired by
9 gift or devise, or may be acquired by private purchase or by the exercise of eminent
10 domain pursuant to Chapter 40A of the General Statutes.

11 Section 8. The Airport Authority shall make an annual report to the
12 Halifax County Board of Commissioners and the Roanoke Rapids City Council
13 setting forth in detail the operations and transactions conducted by it pursuant to this
14 act. The Airport Authority shall not have the power to pledge the credit of Halifax
15 County or the City of Roanoke Rapids, or any subdivision thereof, or to impose any
16 obligation on Halifax County or the City of Roanoke Rapids, or any of their
17 subdivisions, except when that power is expressly granted by statute.

18 Section 9. Subject to the limitations as set out in this act, all rights and
19 powers given and granted to counties or municipalities by general law, which may
20 now be in effect or enacted in the future relating to the development, regulation, and
21 control of municipal airports and the regulation of aircraft are vested in the Airport
22 Authority. The Halifax County Board of Commissioners or the Roanoke Rapids City
23 Council may delegate their powers under these acts to the Airport Authority, and the
24 Airport Authority shall have concurrent rights with Halifax County and the City of
25 Roanoke Rapids to control, regulate, and provide for the development of aviation in
26 Halifax County.

27 Section 10. The Airport Authority may contract with and accept grants
28 from the Federal Aviation Administration, the State of North Carolina, or any of the
29 agencies or representatives of either of said governmental bodies relating to the
30 purchase of land and air easements and to the grading, constructing, equipping,
31 improving, maintaining, or operating of an airport or its facilities or both.

32 Section 11. The Airport Authority may employ any agents, engineers,
33 attorneys, and other persons whose services may be deemed by the Airport Authority
34 to be necessary and useful in carrying out the provisions of Sections 1 through 10 of
35 this act.

36 Section 12. The Halifax County Board of Commissioners or the Roanoke
37 Rapids City Council may appropriate funds derived from any source including ad
38 valorem taxes to carry out the provisions of this act in any proportion or upon any
39 basis as may be determined by the Halifax County Board of Commissioners or the
40 Roanoke Rapids City Council.

41 Section 13. The Airport Authority may expend the funds that are
42 appropriated by the County and City for joint airport purposes and may pledge the
43 credit of the Airport Authority to the extent of the appropriated funds.

1 Section 14. The Airport Authority shall elect from among its members a
2 chair and other officers at its initial meeting and then annually thereafter. A majority
3 of the Airport Authority shall control its decisions. Each member of the Airport
4 Authority, including the chair, shall have one vote. The Airport Authority shall meet
5 at the places and times designated by the chair.

6 Section 15. The powers granted to the Airport Authority shall not be
7 effective until the members of the Airport Authority have been appointed by the
8 Halifax County Board of Commissioners and the Roanoke Rapids City Council, and
9 nothing in this act shall require the Board of Commissioners or City Council to make
10 the initial appointments. It is the intent of this act to enable but not to require the
11 formation of the Halifax-Roanoke Rapids Airport Authority.

12 Section 16. If any one or more sections, clauses, sentences, or parts of
13 this act shall be adjudged invalid, such judgment shall not affect, impair, or invalidate
14 the remaining provisions thereof, but shall be confined in its operation to the specific
15 provisions held invalid, and the inapplicability or invalidity of any section, clause,
16 sentence, or part of this act in one or more instances or circumstances shall not be
17 taken to affect or prejudice in any way its applicability or validity in any other
18 instance.

19 Section 17. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

3

HOUSE BILL 63
Committee Substitute Favorable 2/18/97
Committee Substitute #2 Favorable 3/19/97

Short Title: River Bend Zoning/Annexation.

(Local)

Sponsors:

Referred to:

February 6, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO RESTORE EXTRATERRITORIAL PLANNING POWERS OF THE
3 TOWN OF RIVER BEND BUT PROHIBIT IT FROM MAKING
4 INVOLUNTARY ANNEXATIONS.

5 The General Assembly of North Carolina enacts:

6 Section 1. Section VI of the Charter of the Town of River Bend, being
7 that Charter approved by the Municipal Board of Control and filed with the
8 Secretary of State on January 14, 1981, as added by Chapter 26 of the Session Laws
9 of 1987, reads as rewritten:

10 "~~Section VI. The Town may not exercise any extraterritorial jurisdiction or~~
11 ~~extraterritorial powers under Article 19 of Chapter 160A of the General Statutes. (a)~~
12 The city must hold a referendum on whether to annex an area into the city if the city
13 council receives a petition opposing the annexation signed by twenty-five percent
14 (25%) of the registered voters who own real property in the area proposed to be
15 annexed. The petition must be received by the city council no later than the
16 adjournment of the public hearing required to be held under G.S. 160A-37. If the
17 city council receives such a petition, then the annexation ordinance shall become
18 effective only if approved by the voters of the area proposed to be annexed.

19 (b) If a referendum is required under subsection (a) of this section, the city
20 council shall order the board of elections which conducts elections for that city to call
21 an election to determine whether or not the proposed territory shall be annexed to

1 the city or town. Within 90 days after receiving such order from the governing body,
2 the county board of elections shall proceed to hold an election on the question.

3 Such election shall be called by a resolution or resolutions of said county board of
4 elections which shall:

5 (1) Describe the territory proposed to be annexed to the said city or
6 town as set out in the order of the said local governing body;

7 (2) Provide that the matter of annexation of such territory shall be
8 submitted to the vote of the qualified voters of the territory
9 proposed to be annexed; and

10 (3) Provide for registration of voters in the territory proposed to be
11 annexed for said election in accordance with G.S. 163-288.2.

12 Said resolution shall be published in one or more newspapers of the said county
13 once a week for 30 days prior to the closing of the registration books. All costs of
14 holding such election shall be paid by the city or town. Except as herein provided,
15 the election shall be held under the same statutes, rules, and regulations as are
16 applicable to elections in the municipality whose corporate limits are being enlarged.

17 At such election the question on the ballot shall be:

18 ' FOR AGAINST
19 Annexation.'

20 If at the election a majority of the votes cast from the area proposed for annexation
21 shall be 'For Annexation', the annexation ordinance shall become effective as
22 provided by this Part.

23 (c) The Town of River Bend has jurisdiction under Article 19 of Chapter 160A of
24 the General Statutes over the following described territory:

25 TRACT ONE

26 Lying and being situated in Number Eight Township, Craven County, North Carolina
27 and described as follows:

28 BEGINNING at a point on the southern right-of-way line of U.S. Highway 17, said
29 point being the northwest corner of plan of Piner Estates recorded in Plat Cabinet D,
30 Slide 666, Craven County Registry; thence from said point of beginning along and
31 with westernmost line of said Piner Estates S27 degrees 29'38"W 528.53 feet to the
32 northwesternmost corner of lot No. 1, Craven Woods Subdivision recorded in Plat
33 Cabinet C, Slide 41, Craven County Registry; thence along and with line between
34 aforesaid Piner Estates and Craven Woods Subdivisions N53 degrees 05'15"E
35 1186.76' to a point; thence continuing with said line N69 degrees 00' E 1106.85 feet
36 to a point, the southeasternmost corner of Lot 1, Piner Estates; thence, S29 degrees
37 34'19"E to the centerline of secondary road No. 1307, (this point being designated by
38 the letter 'C' on that certain map or plat entitled Trent Estates recorded in Map
39 Book 10, Page 72, Craven County Registry); thence continuing S29 degrees 34'19"E
40 30.0 feet to a point on the southern right-of-way line of secondary road No. 1307;
41 thence with said southern right-of-way line of secondary road No. 1307 in a
42 westwardly direction to a point on said southern right-of-way line where 'Harris'
43 easternmost line extended southwardly would intersect said right-of-way line; thence,
44 N00 degrees 12'17"W 199.96 feet to a point; thence with said Harris easternmost line

1 N84 degrees 45'48"W 95.12 feet to a point; thence N3 degrees 11'55"E 147.81' to a
2 point on the southern right-of-way line of U.S. Highway No. 17; thence, with said
3 southern right-of-way line of U.S. Highway No. 17, S67 degrees 00'W 493 feet to a
4 point at the intersection of said southern right-of-way line of U.S. Highway 17 and
5 Canoe Branch; thence in a northerly direction with said Canoe Branch to its
6 intersection with the centerline of Seaboard Coastline Railway, now abandoned;
7 thence with said centerline of Seaboard Coastline Railway in an easterly direction to
8 a point where the western line of Hidden Oaks Subdivision, recorded in Plat Cabinet
9 D, Slide 455, Craven County Registry, extended would intersect said centerline;
10 thence S25 degrees 51'58"E 62.5 feet to the northwestern corner of said Hidden Oaks
11 Subdivision; thence with said northernmost line of Hidden Oaks Subdivision N69
12 degrees 43'03"E 3, 111.74 feet to the northeast corner of said Hidden Oaks
13 Subdivision S22 degrees 23'E 731.08 feet to a point on the northern right-of-way line
14 of U.S. Highway No. 17; thence continuing S22 degrees 23'E 150.0 feet to a point on
15 the southern right-of-way line of U.S. Highway No. 17; thence with said southern
16 right-of-way line of U.S. Highway No. 17, S67 degrees 48'50"W 727.98 feet to the
17 northeastern corner of aforesaid Piner Estates; thence continuing with said southern
18 right-of-way line S67 degrees 48'50"W 2,271.20 feet to the Point of Beginning.

19 TRACT TWO

20 Lying and being situated in Number Eight Township, Craven County, North Carolina
21 and described as follows:

22 BEGINNING at the southeasternmost corner of Lot No. 18, Plan of Springdale
23 Subdivision recorded in Plat Cabinet D, Slide 623, Craven County Registry; said
24 corner being on the northern right-of-way line of U.S. Highway No. 17; thence along
25 and with the easternmost line of aforesaid Springdale Subdivision N22 degrees
26 22'03"W 277.0 feet to a point; thence S62 degrees 05'E to the northwestern corner of
27 Lot 79, Plan of Deerfield Subdivision, Phase 3, recorded in Plat Cabinet E, Slide 333,
28 Craven County Registry; thence with northernmost line of aforesaid Deerfield
29 Subdivision, Phase 3, N66 degrees 50'56"E 473.81 feet to a point; thence N50 degrees
30 07'40"E 281.86 feet to a point on the western right-of-way line of Forest Oaks Drive;
31 thence with western right-of-way line of Forest Oaks Drive S42 degrees 22'20"E
32 200.19 feet to the northern right-of-way line of Rocky Run Road; thence with said
33 right-of-way of Rocky Run Road S03 degrees 28'20"E 97.78 feet to a point on the
34 northern right-of-way line of U.S. Highway No. 17; thence S66 degrees 50'56"W
35 along and with said northern right-of-way line of U.S. Highway No. 17 to the Point of
36 Beginning."

37 Section 2. This act becomes effective 30 days after it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

2

HOUSE BILL 1061
Committee Substitute Favorable 5/29/97

Short Title: Disabled Sportsman Licenses.

(Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

1
2 AN ACT TO ESTABLISH LIFETIME SPORTSMAN LICENSES FOR CERTAIN
3 DISABLED RESIDENTS AND DISABLED VETERANS AND TO PROHIBIT
4 THE UNLAWFUL USE OF FACILITIES PROVIDED FOR DISABLED
5 SPORTSMEN.

6 The General Assembly of North Carolina enacts:

7 Section 1. G.S. 113-270.1D(b) reads as rewritten:

8 "(b) Lifetime Sportsman Licenses. Lifetime sportsman licenses are valid for the
9 lifetime of the holders and entitle the holders to take all wild animals and wild birds
10 by all lawful methods in all open seasons, including the use of game lands, and to fish
11 with hook and line for all fish in all inland and joint fishing waters, including public
12 mountain trout waters. Lifetime sportsman licenses issued by the Wildlife Resources
13 Commission are:

- 14 (1) Infant Lifetime Sportsman License -- \$200.00. This license shall be
15 issued only to an individual under one year of age.
16 (2) Youth Lifetime Sportsman License -- \$350.00. This license shall
17 be issued only to an individual under 12 years of age.
18 (3) Adult Resident Lifetime Sportsman License -- \$500.00. This
19 license shall be issued only to an individual resident of the State.
20 (4) Nonresident Lifetime Sportsman License -- \$1,000. this license
21 shall be issued only to an individual nonresident of the State.

1 (5) Age 70 Resident Lifetime Sportsman License -- \$10.00. This
2 license shall be issued only to an individual resident of the State
3 who is at least 70 years of age.

4 (6) Disabled Resident Sportsman License -- \$100.00. This license shall
5 be issued only to (i) an individual resident of the State who is a
6 fifty percent (50%) or more disabled veteran as determined by the
7 United States Department of Veterans Affairs, remaining valid for
8 the lifetime of the individual so long as the individual remains fifty
9 percent (50%) or more disabled; or (ii) an individual resident of
10 the State who is totally disabled, remaining valid for the lifetime of
11 the individual so long as the individual remains totally disabled.
12 For purposes of this section, 'totally disabled' means physically
13 incapable of being gainfully employed."

14 Section 2. G.S. 113-270.1C(b)(2) and G.S. 113-270.1C(b) (3) are repealed.

15 Section 3. G.S. 113-270.1C(b) is amended by adding a new subdivision to

16 read:

17 "(4) Lifetime Combination Hunting and Fishing License for Disabled
18 Residents -- \$10.00. This license shall be issued only to (i) an
19 individual resident of the State who is a fifty percent (50%) or
20 more disabled veteran as determined by the United States
21 Department of Veterans Affairs, remaining valid for the lifetime of
22 the individual so long as the individual remains fifty percent (50%)
23 or more disabled; or (ii) an individual resident of the State who is
24 totally disabled, remaining valid for the lifetime of the individual
25 so long as the individual remains totally disabled. For purposes of
26 this section, 'totally disabled' means physically incapable of being
27 gainfully employed."

28 Section 4. G.S. 143-250.1(c) is amended by adding a new subsection to

29 read:

30 "(5a) The proceeds from the sale of lifetime combination hunting and
31 fishing licenses for disabled residents pursuant to G.S. 113-
32 270.1C(b)(4);"

33 Section 5. Article 22 of Chapter 113 of the General Statutes is amended
34 by adding a new section to read:

35 "**§ 113-297. Unlawful use of facilities provided for disabled sportsman.**

36 Any person who knowingly uses facilities or participates in activities provided by
37 the Wildlife Resources Commission for disabled sportsmen, when that person does
38 not meet the qualifications for use of those facilities or participation in those
39 activities, is guilty of a Class 3 misdemeanor."

40 Section 6. Section 5 of this act becomes effective December 1, 1997. The
41 remainder of this act becomes effective July 1, 1997. All lifetime combination
42 hunting and fishing licenses issued under G.S. 113-270.1C(b)(2) and G.S. 113-
43 270.1C(b)(3) prior to that date shall remain valid for the uses for which they were
44 issued.

EXPLANATION OF HOUSE BILL 1061:
Disabled Sportsman Licenses – 2nd Edition

TO: Senate Finance Committee
FROM: Robin S. Johnson, Staff Attorney
DATE: June 30, 1997
SPONSOR: Representative McCombs

House Bill 1061 adds the following two lifetime sportsman licenses to those that are currently issued by the Wildlife Resources Commission:

1. A lifetime resident sportsman license for any resident of the State who is a 50% or more disabled veteran, as determined by the United States Department of Veterans Affairs, for a \$100 fee.
2. A lifetime resident sportsman license for any totally disabled State resident who is physically incapable of being gainfully employed, for a \$100 fee.

Lifetime sportsman licenses entitle the holders to capture, kill, pursue, hunt, fish, or otherwise take into possession any wild animal, bird other than waterfowl, or fish in all open seasons, on game lands, and in public mountain trout waters. As used for these licenses, a State resident is an individual who has resided in the State for the preceding six months or who has been domiciled here for the preceding 60 days. Currently, disabled residents can obtain an "adult resident lifetime sportsman license", for a \$500 fee. Revenue from lifetime sportsman licenses are deposited into the Wildlife Endowment Fund.

House Bill 1061 also combines and increases the fee for new lifetime combination hunting and fishing licenses for 50% or more disabled resident veterans as determined by the United States Department of Veterans Affairs and for totally disabled residents from \$7.50 to \$10, with the proceeds going to the Wildlife Endowment Fund. These licenses entitle the holders to hunt and fish in all open seasons, except on game lands or in public mountain trout waters.

The principal and income of the Wildlife Endowment Fund, also known as the "Eddie Bridges Fund", are used for the purpose of supporting wildlife conservation programs of the State. The Fund is subject to the oversight of the State Auditor.

Section 5 of the bill makes knowing, improper use of facilities and activities provided by the Wildlife Resources Commission for disabled sportsmen a Class 3 misdemeanor (1-10 days community penalty, fine of up to \$200, if no prior record). The Wildlife Resources Commission administers a Disabled Sportsman Program that consists of special hunting and fishing activities adapted to the needs of permanently disabled individuals. Each disabled individual may be accompanied by a non-disabled companion. The activities include special seasons, the use of vehicles in areas normally closed to vehicles, and exceptions to the manner for taking wildlife.

Section 5 takes effect December 1, 1997, and the rest of the bill is effective July 1, 1997.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 1061 (First Edition)

SHORT TITLE: Disabled Sportsman Licenses

SPONSOR(S): Rep. McCombs

FISCAL IMPACT

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

FY 1997-98 FY 1998-99 FY 1999-00 FY 2000-01 FY 2001-02

REVENUES

Wildlife Endowment Fund

Disabled Sportsman Licenses NA NA NA NA NA

Disabled Hunting & Fishing Lic. \$18,500 \$18,500 \$18,500 \$18,500 \$18,500

Wildlife Resources Fund (\$13,875) (\$13,875) (\$13,875) (\$13,875) (\$13,875)

PRINCIPAL DEPARTMENT(S) &

PROGRAM(S) AFFECTED: Wildlife Resources Commission

EFFECTIVE DATE: Section 5 of the bill becomes effective December 1, 1997. The remainder of the act is effective July 1, 1997.

BILL SUMMARY: This act creates a new Disabled Resident Sportsman License that entitles the license holder to lifetime hunting and fishing privileges including big game, game lands, waterfowl, and mountain trout. The new license sells for \$100 and the revenue earned from the license will be deposited into the Wildlife Endowment Fund. The act converts the Disabled Veteran Lifetime Combination Hunting and Fishing License and the Totally Disabled Resident Lifetime Combination Hunting and Fishing License into a Lifetime Combination Hunting and Fishing License for Disabled Residents. The fee for this license is increased from the current \$7.50 to \$10 and deposits the funds into the Wildlife Endowment Fund. The eligibility criteria for the new license is the same as the old licenses. The bill also adds a Class 3 misdemeanor to the statutes for persons who unlawfully use facilities provided to disabled sportsman by the Wildlife Resources Commission.

ASSUMPTIONS AND METHODOLOGY:

The Wildlife Resources Commission reported that 1,850 disabled person lifetime hunting and fishing licenses were sold at a price of \$7.50 in FY 1995-96. This included 195 Disabled Veterans and 1,655 Disabled Residents licenses. Beginning in FY 1997-98, disabled veterans and residents will pay \$10 for the same lifetime hunting and fishing license. The only differences are the 1) price, 2) the name - Lifetime Combination Hunting and Fishing License for Disabled Residents, and 3) the fund - revenues will be deposited into the Wildlife Endowment Fund. Assuming the same number of lifetime license applicants each year, the price increase will raise \$4,625 more revenue annually. Since the license proceeds are being transferred from the Wildlife Resources Fund to the Wildlife Endowment Fund, there will be loss of revenue in the agency's operating fund.

The bill also creates a new Disabled Resident Sportsman License for \$100. This license has the same eligibility criteria as the disabled hunting and fishing license, but offers access to waterfowl, trout, big game, and game lands. The agency believes that one half of the new disabled applicants applying for hunting and fishing licenses will opt for the new sportsman license. The agency also believes that one fourth of the current holders of disabled lifetime hunting and fishing licenses will also buy the new sportsman license. After discussions with state officials at Division of Vocational Rehabilitation Services, the Governor's Advocacy Council for Persons with Disabilities, and the Division of Veteran Affairs, this memo assumes that the agency's assumptions are unfounded. Those persons knowledgeable about the disabled population believe most would choose the inexpensive license to hunt and fish over the more expensive sportsman license. The offer of big game, trout and waterfowl in the sportsman license is not attractive to a group limited by health and mobility concerns. This memo assumes that the disabled will buy the \$10 hunting and fishing license and not the \$100 sportsman license. For the few that may buy the sportsman license, no revenue is projected.

As for the misdemeanor in the bill, the Administrative Office of the Courts (AOC) does not anticipate that it would have a substantial impact on the Judicial Department as there would not be any significant changes in how cases are processed or disposed. The AOC believes that the very few additional cases which may result from this bill could be absorbed within existing resources. Likewise, the bill would not have a significant fiscal impact on the Department of Correction.

FISCAL RESEARCH DIVISION

733-4910

PREPARED BY: Richard Bostic

APPROVED BY: Tom CovingtonTomC

DATE: April 28, 1997



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1061

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

H1061-ARH-001

Page 1 of 1

Date 07-1, 1997

Comm. Sub. []
Amends Title []
Second Edition

Senator Hyle

1 moves to amend the bill on page 2, line 41,
2 by deleting "July 1, 1997" and by substituting "October 1, 1997".
3

SIGNED Hyle
Amendment Sponsor

SIGNED Ken
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

HOUSE BILL 1061
Committee Substitute Favorable 5/29/97
Proposed Senate Committee Substitute H1061-PCS1421

Short Title: Disabled Sportsman Licenses.

(Public)

Sponsors:

Referred to:

April 21, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH LIFETIME SPORTSMAN LICENSES FOR CERTAIN
3 DISABLED RESIDENTS AND DISABLED VETERANS AND TO PROHIBIT
4 THE UNLAWFUL USE OF FACILITIES PROVIDED FOR DISABLED
5 SPORTSMEN.

6 The General Assembly of North Carolina enacts:

7 Section 1. G.S. 113-270.1D(b) reads as rewritten:

8 "(b) Lifetime Sportsman Licenses. Lifetime sportsman licenses are valid for the
9 lifetime of the holders and entitle the holders to take all wild animals and wild birds
10 by all lawful methods in all open seasons, including the use of game lands, and to fish
11 with hook and line for all fish in all inland and joint fishing waters, including public
12 mountain trout waters. Lifetime sportsman licenses issued by the Wildlife Resources
13 Commission are:

- 14 (1) Infant Lifetime Sportsman License -- \$200.00. This license shall be
15 issued only to an individual under one year of age.
16 (2) Youth Lifetime Sportsman License -- \$350.00. This license shall
17 be issued only to an individual under 12 years of age.
18 (3) Adult Resident Lifetime Sportsman License -- \$500.00. This
19 license shall be issued only to an individual resident of the State.
20 (4) Nonresident Lifetime Sportsman License -- \$1,000. this license
21 shall be issued only to an individual nonresident of the State.

1 (5) Age 70 Resident Lifetime Sportsman License -- \$10.00. This
2 license shall be issued only to an individual resident of the State
3 who is at least 70 years of age.

4 (6) Disabled Resident Sportsman License -- \$100.00. This license shall
5 be issued only to (i) an individual resident of the State who is a
6 fifty percent (50%) or more disabled veteran as determined by the
7 United States Department of Veterans Affairs, remaining valid for
8 the lifetime of the individual so long as the individual remains fifty
9 percent (50%) or more disabled; or (ii) an individual resident of
10 the State who is totally disabled, remaining valid for the lifetime of
11 the individual so long as the individual remains totally disabled.
12 For purposes of this section, 'totally disabled' means physically
13 incapable of being gainfully employed."

14 Section 2. G.S. 113-270.1C(b)(2) and G.S. 113-270.1C(b) (3) are repealed.

15 Section 3. G.S. 113-270.1C(b) is amended by adding a new subdivision to

16 read:

17 "(4) Lifetime Combination Hunting and Fishing License for Disabled
18 Residents -- \$10.00. This license shall be issued only to (i) an
19 individual resident of the State who is a fifty percent (50%) or
20 more disabled veteran as determined by the United States
21 Department of Veterans Affairs, remaining valid for the lifetime of
22 the individual so long as the individual remains fifty percent (50%)
23 or more disabled; or (ii) an individual resident of the State who is
24 totally disabled, remaining valid for the lifetime of the individual
25 so long as the individual remains totally disabled. For purposes of
26 this section, 'totally disabled' means physically incapable of being
27 gainfully employed."

28 Section 4. G.S. 143-250.1(c) is amended by adding a new subdivision to

29 read:

30 "(5a) The proceeds from the sale of lifetime combination hunting and
31 fishing licenses for disabled residents pursuant to G.S. 113-
32 270.1C(b)(4);"

33 Section 5. Article 22 of Chapter 113 of the General Statutes is amended
34 by adding a new section to read:

35 "**§ 113-297. Unlawful use of facilities provided for disabled sportsman.**

36 Any person who knowingly uses facilities or participates in activities provided by
37 the Wildlife Resources Commission for disabled sportsmen, when that person does
38 not meet the qualifications for use of those facilities or participation in those
39 activities, is guilty of a Class 3 misdemeanor."

40 Section 6. Section 5 of this act becomes effective December 1, 1997. The
41 remainder of this act becomes effective October 1, 1997. All lifetime combination
42 hunting and fishing licenses issued under G.S. 113-270.1C(b)(2) and G.S. 113-
43 270.1C(b)(3) prior to that date shall remain valid for the uses for which they were
44 issued.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

2

SENATE BILL 360
Judiciary Committee Substitute Adopted 6/12/97

Short Title: Boat Number Fees.

(Public)

Sponsors:

Referred to: Finance.

March 11, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO INCREASE THE FEE PAID TO AGENTS OF THE WILDLIFE
3 RESOURCES COMMISSION TO AWARD CERTIFICATES OF BOAT
4 NUMBER OR OTHER VESSEL TRANSACTION AND TO AMEND THE
5 DUTIES OF THE WILDLIFE RESOURCES COMMISSION WITH REGARD
6 TO THE APPOINTMENT OF AGENTS FOR THE ISSUANCE OF BOAT
7 NUMBERS, TO RAISE THE REPORTING REQUIREMENT FOR BOATING
8 ACCIDENTS TO DAMAGES IN EXCESS OF FIVE HUNDRED DOLLARS,
9 AND TO REPEAL THE LAW REQUIRING PERMITS FROM THE WILDLIFE
10 RESOURCES COMMISSION TO HOLD REGATTAS AND OTHER EVENTS.
11 The General Assembly of North Carolina enacts:
12 Section 1. G.S. 75A-5(e) reads as rewritten:
13 "(e) The Wildlife Resources Commission may ~~award~~ issue any ~~certificate of~~
14 ~~number vessel transaction pursuant to the provisions of Article 1 or 4 of this Chapter~~
15 ~~directly or may authorize any person qualified as prescribed in subsection (1) of this~~
16 ~~section to act as agent for the awarding thereof.~~ issuance of vessel transactions subject
17 to the requirements set forth in this Chapter. ~~In the event that a person accepts such~~
18 ~~authorization, he may be assigned a block of numbers and certificates therefor which~~
19 ~~upon award;~~ Upon acceptance of this authorization, an agent's actions in issuing any
20 vessel transaction pursuant to this Chapter in conformity with this Chapter and with
21 ~~any rules and regulations of the Commission;~~ shall be valid as if awarded issued
22 directly by the Commission. As compensation for his services any such agent shall be
23 ~~allowed to retain for his own use fifty cents (50¢).~~ services rendered to the

1 Commission and to the general public, the agent shall receive the following specified
2 commission from the statutory fee for each listed transaction:

- 3 (1) Renewal of vessel registration - \$1.25.
4 (2) Transfer of ownership and registration of a vessel - \$3.00.
5 (3) Issuance of new certificate of vessel number and registration -
6 \$3.00.
7 (4) Issuance of duplicate vessel registration - \$0.50.
8 (5) Issuance, transfer, duplication, or lien recordation of vessel title -
9 \$3.00.

10 It is a Class 1 misdemeanor for any such agent to charge or accept any additional fee,
11 remuneration, or other thing of value for such services."

12 Section 2. G.S. 75A-5(1) reads as rewritten:

13 "(1) When certificates of number are to be issued by agents as provided by
14 subsection (e) of this section, the Wildlife Resources Commission is ~~authorized by~~
15 ~~regulation to establish the qualifications of such agents, including, but not limited to,~~
16 ~~their financial responsibility, the locations and types of business operated by them~~
17 ~~and their facilities for safekeeping of unused certificates of number, validation decals,~~
18 ~~and the monetary proceeds of certificates which have been issued; to prescribe the~~
19 ~~duties of such agents, including, but not limited to, the methods of issuing certificates~~
20 ~~of number and validation decals, the evidence of ownership of vessels to be~~
21 ~~numbered by applicants for number, the times and methods of making periodic and~~
22 ~~final reports of certificates and decals issued and remaining unissued and remittances~~
23 ~~of public moneys and unissued certificates and decals; to establish methods and~~
24 ~~procedures of ensuring accountability of such agents for the proceeds of certificates~~
25 ~~and decals issued and for certificates and decals remaining unissued; to require~~
26 ~~individual or blanket bonds of such agents in amounts sufficient to protect the State~~
27 ~~against loss of public moneys and unissued certificates and decals, the premiums for~~
28 ~~such bonds to be paid by the agents; to permit such agents to issue both original~~
29 ~~certificates of number and validation decals and renewals thereof or to limit such~~
30 ~~agents, or any of them, to the issuance of the originals only; to authorize some or all~~
31 ~~of such agents to issue temporary certificates of number for use during a limited time~~
32 ~~pending delivery of regular certificates of number and validation decals; to establish~~
33 ~~methods and procedures, including submission of the amounts and kinds of evidence~~
34 ~~which the Commission may deem sufficient, whereby any such agent may be relieved~~
35 ~~of accountability for the value of unissued certificates and validation decals, or of the~~
36 ~~monetary proceeds of those which have been issued, which have been lost or~~
37 ~~destroyed as the result of any occurrence which is beyond the control of such agent;~~
38 ~~and to prescribe such other reasonable requirements and conditions as the~~
39 ~~Commission may, in its discretion, deem necessary or desirable to expedite and~~
40 ~~control the issuance of certificates of number by such agents.~~ may establish
41 administrative guidelines that prescribe:

- 42 (1) The qualifications of agents;
43 (2) The duties of agents;

- 1 (3) Methods and procedures to ensure accountability and security for
2 proceeds and unissued certificates of number;
3 (4) Requirements for security bonds in amounts sufficient to protect
4 the State against loss of public funds or documents;
5 (5) Methods and procedures, including submission of the kinds and
6 amounts of evidence deemed sufficient to relieve an agent of
7 responsibility for losses due to occurrences beyond the agent's
8 control; and
9 (6) Any other reasonable requirement or condition deemed necessary
10 and desirable to expedite and control the issuance of certificates of
11 boat number by agents.

12 In accordance with ~~such regulations,~~ administrative guidelines developed pursuant
13 to this section, the executive director ~~is authorized to prepare and distribute all forms~~
14 ~~necessary or convenient for application for and the appointment and bonding of such~~
15 ~~agents and for receipts, reports and remittances by such agents; to select and appoint~~
16 ~~such agents in areas most convenient to the boating public and to limit the number of~~
17 ~~such agents in any locality; to require prompt and accurate reporting and remission of~~
18 ~~public moneys and unissued certificates and decals by such agents, and to require~~
19 ~~periodic or special audits of their accounts; to revoke or terminate any such agency~~
20 ~~for failure to make timely reports and remittances or to comply with any~~
21 ~~administrative directive or regulation of the Commission, or when he has reason to~~
22 ~~believe that State money or property is in jeopardy; and to require immediate~~
23 ~~surrender of all agency accounts, forms, certificates, decals and State moneys in the~~
24 ~~event of such revocation or termination of any such agency. may:~~

- 25 (1) Select and appoint agents in the areas most convenient to the
26 boating public and limit the number of agents in any one area if
27 necessary for efficiency of operation;
28 (2) Require prompt and accurate reporting and remittance of public
29 funds or documents by agents;
30 (3) Conduct periodic and special audits of accounts;
31 (4) Terminate the authorization of any agent found to be in
32 noncompliance with administrative guidelines or directives of the
33 Commission or when State funds or property are reasonably
34 believed to be in jeopardy; and
35 (5) Demand the immediate surrender of all accounts, forms,
36 certificates, decals, records, and State funds in the event of the
37 termination of an agency.

38 A person who is denied the authority to act as an agent for the issuance of
39 certificates of number and validation decals or whose authority to do so is revoked
40 may not commence a contested case under G.S. 150B-23. ~~Any violation of the~~
41 ~~regulations authorized by this subsection shall be a Class 1 misdemeanor.~~ If any
42 check or draft of any agent for the issuance of certificates of boat number shall be
43 returned by the banking facility upon which the same is drawn for lack of funds, such
44 agent shall be liable to the Wildlife Resources Commission for a penalty of five

1 percent (5%) of the amount of such check or draft, but in no event shall such penalty
2 be less than five dollars (\$5.00) or more than two hundred dollars (\$200.00). Agents
3 shall be assessed a penalty of twenty-five percent (25%) of their issuing fee on all
4 remittances to the Commission after the fifteenth day of the month immediately
5 following the month of sale."

6 Section 3. G.S. 75A-11(b) reads as rewritten:

7 "(b) In the case of collision, accident, or other casualty involving a vessel, the
8 operator thereof, if the collision, accident, or other casualty results in death or injury
9 to a person or damage to property in excess of ~~one~~ five hundred dollars (~~\$100.00~~),
10 (\$500.00), shall, within 10 days, file with the Wildlife Resources Commission a full
11 description of the collision, accident, or other casualty, including such information as
12 said agency may, by regulation, require. Such report shall not be admissible as
13 evidence."

14 Section 4. G.S. 75A-14 is repealed.

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

SENATE BILL 360

	<u>Current Fee</u>	<u>Current Agent Fee</u>	<u>Proposed Agent Fee</u>
Renewal of Vessel Registration			
1 Year	\$8.00	None	\$1.25
3 Years	\$20.00	\$0.50	\$1.25
Transfer of Ownership & Registration of Vessel			
1 Year	\$8.00	None	\$3.00
3 Years	\$20.00	None	\$3.00
Issuance of New Certificate of Vessel Number & Registration			
1 Year	\$8.00	None	--
3 Years	\$20.00	\$0.50	\$3.00
Issuance of Duplicate Vessel Registration	\$2.00	None	\$0.50
Issuance of Title	\$20.00	None	\$3.00
Transfer of Title	\$20.00	None	\$3.00
Duplicate Title	\$10.00	None	\$3.00
Lien Recordation	\$10.00	None	\$3.00

Note: None indicates no current agent fee allowed.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

1

S

SENATE BILL 534

Short Title: Pleasant Garden Incorporated.

(Local)

Sponsors: Senator Shaw of Guilford.

Referred to: Rules and Operations of the Senate.

March 27, 1997

A BILL TO BE ENTITLED

1 AN ACT TO INCORPORATE THE TOWN OF PLEASANT GARDEN.

2 The General Assembly of North Carolina enacts:

3 Section 1. A Charter of the Town of Pleasant Garden is enacted as
4 follows:

5 "THE CHARTER OF THE TOWN OF PLEASANT GARDEN.

6 "CHAPTER I.

7 "INCORPORATION AND CORPORATE POWERS.

8 "Section 1-1. **Incorporation and Corporate Powers.** The inhabitants of the Town
9 of Pleasant Garden are a body corporate and politic under the name 'Town of
10 Pleasant Garden'. Under that name they have all the powers, duties, rights,
11 privileges, and immunities conferred and imposed on cities by the general law of
12 North Carolina.

13 "CHAPTER II.

14 "CORPORATE BOUNDARIES.

15 "Sec. 2-1. **Town Boundaries.** Until modified in accordance with the law, the
16 boundaries of the Town of Pleasant Garden are as follows:
17 BEGINNING at a point in the southern right-of-way line of Ritters Lake Road (S.R.
18 3325) at its intersection with the western line of Fentress Township with Sumner
19 Township, and running; thence, along the southern right-of-way line of said Ritters:
20 Lake Road, eastwardly approximately 8440 feet to a point;
21 thence, along the western line of tax parcel ACL-3-152-540-9, southeastwardly
22 approximately 500 feet to a point;
23

1 thence, along the western line of tax parcels ACL-3-152-540-46 and 47, southwardly
2 approximately 1750 feet to a point;
3 thence, along the southern line of tax parcels ACL-3-152-540-47, 8, and 7,
4 northeastwardly approximately 2140 feet to a point;
5 thence, along the eastern line of tax parcel ACL-3-152-540-7, northeastwardly
6 approximately 150 feet to a point;
7 thence, along the southern line of tax parcels ACL-3-152-540-41, 42, and 43,
8 eastwardly approximately 2275 feet to a point;
9 thence, along the western right-of-way line of Alliance Church Road (N.C. Highway
10 22), northwardly approximately 500 feet to a point;
11 thence, crossing said Alliance Church Road, northeastwardly approximately 200 feet
12 to a point in the northern right-of-way line of a proposed new road connecting
13 Alliance Church Road with U. S. Highway 421;
14 thence, along the northern right-of-way line of said connector road, northeastwardly
15 approximately 1350 feet to a point;
16 thence, along the southwestern right-of-way line of U. S. Highway 421,
17 southeastwardly approximately 14,400 feet to a point in the centerline of Hagan-Stone
18 Park Road (S.R. 3411);
19 thence, along the centerline of Hagan-Stone Park Road (S.R. 3411), southwardly
20 approximately 2,500 feet to a point;
21 thence, along the southern line of tax parcel ACL-9-579-411-39, westwardly
22 approximately 350 feet to a point;
23 thence, along a line of the Pleasant Garden Fire District and across tax parcel ACL-
24 9-579-411-19, southwardly approximately 175 feet to a point in the northern line of
25 tax parcel ACL-9-579-411-43;
26 thence, along the northern line of said tax parcel ACL-9-579-411-43, eastwardly
27 approximately 300 feet to a point in the centerline of Hagan-Stone Park Road (S.R.
28 3411);
29 thence, along the centerline of said Hagan-Stone Park Road (S.R. 3411),
30 southwestwardly and westwardly approximately 3,600 feet to a point;
31 thence, along the eastern line of tax parcel ACL-9-579-422-32, southwardly
32 approximately 1,750 feet to a point;
33 thence, along the southern line of said tax parcel ACL-9-579-422-32, westwardly
34 approximately 1,900 feet to a point;
35 thence, along a western line of said tax parcel ACL-9-579-422-32, northwardly
36 approximately 230 feet to a point;
37 thence, along a northern line of said tax parcel ACL-9-579-422-32 with Hagan-Stone
38 Park, eastwardly approximately 600 feet to a point;
39 thence, along a western line of said tax parcel ACL-9-579-422-32 with Hagan-Stone
40 Park, northwardly approximately 1,200 feet to a point in the centerline of Hagan-
41 Stone Park Road (S.R. 3411);
42 thence, along the centerline of said Hagan-Stone Park Road (S.R. 3411)
43 northeastwardly approximately 800 feet to a point;

1 thence, along the western line of tax parcels ACL-9-579-422-35 and 23, with Hagan-
2 Stone Park, northwardly approximately 1,530 feet to a point in the southern line of
3 tax parcel ACL-9-579-422-12;
4 thence, along the southern line of said tax parcel ACL-9-579-422-12 with Hagan-
5 Stone Park, westwardly approximately 480 feet to a point;
6 thence, along the western line of said tax parcel ACL-9-579-422-12 with Hagan-Stone
7 Park, northwardly approximately 1,350 feet to a point in the centerline of Tabernacle
8 Church Road (S.R. 3412);
9 thence, along the centerline of said Tabernacle Church Road (S.R. 3412) westwardly
10 approximately 150 feet to a point;
11 thence, along the eastern line of tax parcel ACL-9-579-422-11 with Hagan-Stone Park
12 southwardly approximately 1,300 feet to a point;
13 thence, along the southern line of tax parcels ACL-9-579-422-11 and 7 and ACL-9-
14 579-477-11, 15, 33, 35, and 26, with Hagan-Stone Park, westwardly approximately
15 2,100 feet to a point;
16 thence, along the eastern line of tax parcel ACL-9-579-477-25 with Hagan-Stone Park
17 southwardly approximately 280 feet to a point;
18 thence, along the southern line of tax parcels ACL-9-579-477-25, 24, and 41 with
19 Hagan-Stone Park southwestwardly approximately 1,370 feet to a point;
20 thence, along the western line of tax parcel ACL-9-579-477-41 with Hagan-Stone
21 Park, northeastwardly approximately a 700 feet to a point, the southeast corner of tax
22 parcel ACL-9-579-477-40;
23 thence, along the southern line of tax parcels ACL-9-579-477-40 and 43 with Hagan-
24 Stone Park, westwardly approximately 1,350 feet to a point;
25 thence, along the eastern line of tax parcels ACL-9-579-477-43, ACL-3-156-482-2 and
26 5, ACL-3-156-487-1 and 6 and ACL-9-579-478-8, southwardly approximately 3,800
27 feet to a point in the centerline of Hagan-Stone Park Road (S.R. 3411);
28 thence, along the centerline of said Hagan-Stone Park Road (S.R. 3411) eastwardly
29 approximately 2,800 feet to a point;
30 thence, along the eastern line of tax parcel ACL-9-579-478-3 with Hagan-Stone Park,
31 southwardly approximately 125 feet to a point;
32 thence, along the northern line of tax parcel ACL-9-579-478-3 with Hagan-Stone
33 Park, eastwardly approximately 1,200 feet to a point;
34 thence, along the eastern side of tax parcel ACL-9-579-478-3 the following 5 courses:
35 (1) Southwardly approximately 500 feet to a point
36 (2) Eastwardly approximately 100 feet to a point
37 (3) Southwardly approximately 975 feet to a point
38 (4) Westwardly approximately 190 feet to a point
39 (5) Southwardly approximately 1,300 feet to a point in the centerline of Fieldview
40 Road (S.R. 3407);
41 thence, along the centerline of said Fieldview Road (S.R. 3407) southeastwardly and
42 eastwardly approximately 1,700 feet to a point;
43 thence, along the eastern line of tax parcel ACL-9-577-420-19, southwardly
44 approximately 620 feet to a point;

1 thence, along the southern line of tax parcel ACL-9-577-420-19, westwardly
2 approximately 300 feet to a point;
3 thence, along the eastern line of tax parcel ACL-9-577-420-21, southwardly
4 approximately 400 feet to a point;
5 thence, along the southern line of tax parcels ACL-9-577--420-21, 22, and 23, north
6 westwardly approximately 800 feet to a point;
7 thence, along the southern line of tax parcels ACL-9-577-420-9 and 26,
8 southwestwardly approximately 1450 feet to a point in the eastern line of tax parcel
9 ACL-9-579-479N-4; thence, along the eastern side of tax parcel ACL-9-579-479N-4,
10 the following 3 courses:
11 (1) Southwardly approximately 200 feet to a point
12 (2) Eastwardly approximately 50 feet to a point
13 (3) Southwardly approximately 1,350 feet to a point, the southeast corner of said tax
14 parcel ACL-9-579-479N-4;
15 thence, along the southern line of tax parcel ACL-9-579-479N-4, westwardly
16 approximately 1,800 feet to a point;
17 thence, along the southern line of tax parcel ACL-3-158-479S-15, southwestwardly
18 approximately 280 feet to a point;
19 thence, along the eastern line of tax parcel ACL-3-158-479S-4, southwardly
20 approximately 200 feet to a point;
21 thence, along the southern line of said tax parcel ACL-3-158-479S-4, southwestwardly
22 approximately 380 feet to a point in the centerline of N.C. Highway 22;
23 thence, along the centerline of said N.C. Highway 22, southeastwardly approximately
24 600 feet to a point;
25 thence, along the southern line of tax parcels ACL-3-158-479S-3, 13, 12, and 17,
26 ACL-3-158-485-11, ACL-3-158-486S-15, 13, and 12, southwestwardly approximately
27 3,000 feet to a point, the northeastern corner of tax parcel ACL-3-158-485-6;
28 thence, along the eastern line of said tax parcel ACL-3-158-485-6, southwardly
29 approximately 1,900 feet to a point;
30 thence, along the southern line of tax parcels ACL-3-158-485-6 and 9, westwardly
31 approximately 1,430 feet to a point in the centerline of Kearney Road (S.R. 3404);
32 thence, along the centerline of said Kearney Road (S.R. 3404), northwardly
33 approximately 300 feet to a point;
34 thence, along the southern line of tax parcels ACL-3-158-485-6 and ACL-3-158-546-2,
35 westwardly approximately 2,200 feet to a point;
36 thence, along a western line of tax parcel ACL-3-158-546-2, northwardly
37 approximately 960 feet to a point;
38 thence, along the southern line of tax parcel ACL-3-158-546-2, westwardly
39 approximately 1,300 feet to a point;
40 thence, along the eastern line of tax parcels ACL-3-158-546-12, 13, 14, 21, 15, 16, 17,
41 18, 19, and 20, southwardly approximately 1,600 feet to a point;
42 thence, along the southern line of tax parcel ACL-3-158-546-20, westwardly
43 approximately 300 feet to a point in the centerline of Hunt Road (S.R. 3402);

1 thence, along the centerline of said Hunt Road (S.R. 3402), southward approximately
2 650 feet to a point;
3 thence, along the southern line of tax parcel ACL-3-158-546-3, westwardly
4 approximately 1,000 feet to a point;
5 thence, along the southern line of tax parcel ACL-3-158-546-7, North westwardly
6 approximately 630 feet to a point;
7 thence, along the western line of tax parcels ACL-3-158-546-7, and 30,
8 northeastwardly approximately 1,020 feet to a point;
9 thence, along the southern line of tax parcel ACL-91-6784-551-25 and the southern
10 line of Pleasant Grove Subdivision which is designated at B-Sub of block 551, tax
11 map ACL-91-6784, westwardly approximately 650 feet to a point, the northeast
12 corner of tax parcel ACL-91-6784-551-12;
13 thence, along the eastern line of said tax parcel ACL-91-6784-551-12, southwardly
14 approximately 500 feet to a point;
15 thence, along the southern line of said tax parcel ACL-91-6784-551-12, westwardly
16 approximately 520 feet to a point, the northeast corner of Center Subdivision;
17 thence, along eastern lines of said Center Subdivision, which is designated as A-Sub
18 of block 551, tax map ACL-91-6784, the following 5 courses;
19 (1) Southwestwardly approximately 500 feet to a point;
20 (2) Southeastwardly approximately 200 feet to a point;
21 (3) Southwestwardly approximately 600 feet to a point;
22 (4) North westwardly approximately 200 feet to a point;
23 (5) Southwestwardly approximately 300 feet to a point;
24 thence, along the southern line of said Center Subdivision, westwardly approximately
25 460 feet to a point in the centerline of Branson Mill Road (S.R. 3437);
26 thence, along the centerline of said Branson Mill Road (S.R. 3437), northeastwardly
27 approximately 100 feet to a point;
28 thence, along the southern line of tax parcel ACL-91-6784-550N-22, westwardly
29 approximately, 550 feet to a point in the eastern line of tax parcel ACL-91-6784-
30 550N-1;
31 thence, along the eastern line of said tax parcel ACL-91-6784-550N-1, southwardly
32 approximately 75 feet to a point;
33 thence, along the southern line of tax parcels ACL-91-6794-550N-1 and 15,
34 westwardly approximately 350 feet to a point;
35 thence, along the eastern line of tax parcel ACL-91-6784-550N-14, southwardly
36 approximately 700 feet to a point;
37 thence, along the southern line of said tax parcel ACL-91-6784-550N-14, westwardly
38 approximately 950 feet to a point;
39 thence, along the western line of tax parcels ACL-91-6784-550N-14, 11, and 21 and
40 ACL-91-6784-551-2 and crossing Hodgin Valley Road (S.R. 3440), northwardly
41 approximately 2,000 feet to a point;
42 thence, along the northern line of tax parcels ACL-91-6784-551-2, 17, 5, and 14 and
43 the northern line of Center Subdivision, which is designated as A-Sub of block 551,

1 ACL-91-6784, westwardly approximately 2,170 feet to a point in the centerline of
2 Branson Mill Road (S.R. 3437);
3 thence, along the centerline of said Branson Mill Road (S.R. 3437), northeastwardly
4 approximately 1,100 feet to a point;
5 thence, along the southern line of tax parcel ACL-91-6784-551-18, northwestwardly
6 approximately 400 feet to a point;
7 thence, along the western line of tax parcels ACL-91-6784-551-18 and 8,
8 northwestwardly approximately 1,300 feet to a point;
9 thence, along the southern line of tax parcels ACL-91-6784-551-8, 24, and 22,
10 westward approximately 950 feet to a point;
11 thence, along the western line of tax parcels ACL-91-6784-551-22 and 23,
12 northwestwardly approximately 1,050 feet to a point;
13 thence, along the northern line of tax parcel ACL-91-6784-551-23, northeastwardly
14 approximately 350 feet to a point, the southwest corner of tax parcel ACL-91-6784-
15 552S-6;
16 thence, along the western line of said tax parcel ACL-91-6784-552S-6, northwardly
17 approximately 750 feet to a point;
18 thence, along the southern line of tax parcels ACL-91-6784-552S-6 and 5,
19 southwestwardly approximately 1,800 feet to a point in the eastern line of tax parcel
20 ACL-91-6784-611S-3;
21 thence, along the southeastern line of said tax parcel ACL-91-6784-611S-3 as it
22 meanders southwestwardly approximately 840 feet to a point;
23 thence, along the southern line of said tax parcel ACL-91-6784-611S-3,
24 southwestwardly approximately 620 feet to a point;
25 thence, along the southwestern line of said tax parcel ACL-91-6784-611S-3, as it
26 meanders northwestwardly approximately 875 feet to a point in the centerline of
27 Robolo Road (S.R. 3439);
28 thence, along the centerline of said Robolo Road (S.R. 3439) southwestwardly;
29 approximately 900 feet to its intersection with the western line of Davis Mill Road;
30 thence, along the western line of Davis Mill Road, northwardly approximately
31 7820 feet to a point in the northern line of tax parcel ACL-9-635-609-19;
32 thence, along the northern line of tax parcel ACL-9-635-609-19, southeastwardly
33 approximately 470 feet to a point in the westernline of Davis Mill Road (S.R. 3433);
34 thence, along the westernline of said Davis Mill Road (S.R. 3433), northeastwardly
35 approximately 3,050 feet to a point;
36 thence, along the southern line of Nocho Park Subdivision which is designated as B-
37 Sub of block 609, ACL-9-635, westwardly approximately 1,350 feet to a point;
38 thence, along the western line of said Nocho Park Subdivision, northwardly
39 approximately 1,350 feet to a point in the centerline of Sheraton Park (S.R. 3426);
40 thence, along the centerline of said Sheraton Park Road (S.R. 3426) westwardly
41 approximately 1440 feet to its intersection with the western line of Fentress Township
42 with Sumner Township;
43 thence, along the western line of Fentress Township with Sumner Township,
44 northwardly approximately 8180 feet to the point of BEGINNING.

1 "Sec. 2-2. **Annexation of Property.** (a) The right to annex properties into the
2 boundaries of the Town of Pleasant Garden in accordance with Article 4A of
3 Chapter 160A of the General Statutes shall only apply to properties located south of
4 the Town's corporate limits and confined within the following boundaries: bounded
5 on the east by U.S. 421, running southwardly to Company Mill Road; thence along
6 Company Mill Road to Monnett Road; thence along Monnett Road to N.C. 22;
7 thence along N.C. 22 to the Guilford County line; and bounded on the west by the
8 Fentress Township line beginning at Ritters Lake Road and running southwardly to
9 the west right-of-way line of Davis Mill Road; thence Davis Mill Road to the Guilford
10 County line.

11 Annexation of property into the boundaries of the Town of Pleasant Garden shall
12 come at the request of the owners of real property according to G.S. 160A-31 or G.S.
13 160A-58.1. No property shall be annexed by the Town of Pleasant Garden
14 involuntarily under Part 2 or 3 of Article 4A of Chapter 160A of the General
15 Statutes.

16 (b) In the event the boundaries are to be modified, changed, altered, reduced or
17 extended through future action of the General Assembly by request of the Town
18 Council, the Town Clerk or other person designated by the Town Council shall
19 notify the Mayor and City Council of the City of Greensboro, in writing, prior to the
20 convening of the next ensuing session of the General Assembly in which a change in
21 the boundaries is to be considered and shall first seek the support of the City of
22 Greensboro.

23 (c) G.S. 160A-58.1(b)(2) shall not apply to the City of Greensboro as it relates to
24 the Town of Pleasant Garden.

25 "CHAPTER III.

26 "GOVERNING BODY.

27 "Sec. 3-1. **Structure of the Governing Body; Number of Members.** The governing
28 body of the Town of Pleasant Garden is the Town Council which has five members.

29 "Sec. 3-2. **Manner of Electing Council.** The qualified voters of the entire Town
30 nominate and elect the council.

31 "Sec. 3-3. **Term of Office of Council Members.** Members of the Council are
32 elected to four-year terms. In 1999, five members shall be elected to the Council.
33 The three members receiving the highest number of votes shall serve four-year terms.
34 The two receiving the next highest number of votes shall serve two-year terms. In
35 2001, and quadrennially thereafter, two members shall be elected to the Council. In
36 2003, and quadrennially thereafter, three members shall be elected to the Council.

37 "Sec. 3-4. **Mayor; Term of Office.** The Mayor shall be selected by the Council
38 from among its membership to serve at its pleasure.

39 "CHAPTER IV.

40 "ELECTIONS.

41 "Sec. 4-1. **Method.** Council members shall be elected on a nonpartisan primary
42 basis and the results determined in accordance with G.S. 163-294.

43 "Sec. 4-2. **Results.** Election results shall be determined by the Guilford County
44 Board of Elections according to Chapter 163 of the General Statutes.

"CHAPTER V.

"ADMINISTRATION.

1
2
3 "Sec. 5-1. **Mayor-Council Plan.** The Town of Pleasant Garden shall operate under
4 the Mayor-Council Plan as provided in Part 3 of Article 7 of Chapter 160A of the
5 General Statutes.

6 "Sec. 5-2. **Interim Council.** Notwithstanding Section 3-1 of this Charter, from the
7 effective date of this Charter until the organizational meeting of the Town Council
8 after the 1999 municipal election, the members of the Council shall be: Larry Still,
9 Mary Ann McNabb, Bill Wright, Jim Ayres, Betsy Lowder, Amy Parsons, Terry Lee,
10 Ken Lentz, Gene Kimel, Scott Nowlan, and Cynthia Spencer.

11 "Sec. 5-3. **Taxation and Funds.** (a) The Town of Pleasant Garden is eligible to
12 receive distributions of State funds during the fiscal year 1997-98.

13 (b) Notwithstanding G.S. 160A-209(d), except with the approval of the qualified
14 voters of the Town in a referendum under G.S. 160A-209, the Town may not levy ad
15 valorem taxes in excess of twenty cents (20¢) on the one hundred dollar (\$100.00)
16 valuation. This subsection does not limit taxation to pay the debt service on general
17 obligation indebtedness incurred by the Town in accordance with law."

18 Section 2. (a) From and after the effective date of this act, the citizens
19 and property in the Town of Pleasant Garden shall be subject to municipal taxes
20 levied for the year beginning July 1, 1997, and for that purpose the Town shall obtain
21 from Guilford County a record of property in the area herein incorporated which
22 was listed for taxes as of January 1, 1997; and the businesses in the Town shall be
23 liable for privilege license tax from the effective date of the privilege license tax
24 ordinance.

25 (b) If the effective date of this act is before July 1, 1997, the Town may
26 adopt a budget ordinance for fiscal year 1996-97 without following the timetable in
27 the Local Government Budget and Fiscal Control Act, but shall follow the sequence
28 of actions in the spirit of the act insofar as is practical. The Town may adopt a
29 budget ordinance for fiscal year 1997-98 without following the timetable in the Local
30 Government Budget and Fiscal Control Act, but shall follow the sequence of actions
31 in the spirit of the act insofar as is practical. For fiscal year 1997-98, ad valorem
32 taxes may be paid at par or face amount within 90 days of adoption of the budget
33 ordinance, and thereafter in accordance with the schedule in G.S. 105-360 as if the
34 taxes had been due and payable on September 1, 1997.

35 Section 3. (a) The Guilford County Board of Elections shall conduct an
36 election on a date set by the Guilford County Board of Elections for the purpose of
37 submission to the qualified voters of the area described in Section 2.1 of the Charter
38 of the Town of Pleasant Garden, the question of whether or not such area shall be
39 incorporated as the Town of Pleasant Garden. The date of the election shall be not
40 more than 90 days after the date of approval of this act under section 5 of the Voting
41 Rights Act of 1965. Registration for the election shall be conducted in accordance
42 with G.S. 163-288.2.

43 (b) In the election, the question on the ballot shall be:

44 "[] FOR [] AGAINST

Incorporation of the Town of Pleasant Garden".

1
2 Section 4. In the election, if a majority of the votes are cast "FOR
3 incorporation of the Town of Pleasant Garden", Sections 1 and 2 of this act become
4 effective on the date of the certification of the results of the election. Otherwise,
5 Sections 1 and 2 of this act have no force and effect.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

3

HOUSE BILL 299
Committee Substitute Favorable 4/2/97
Committee Substitute #2 Favorable 4/21/97

Short Title: Vietnam Veterans Plates.

(Public)

Sponsors:

Referred to:

February 24, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO
3 DEVELOP SPECIAL MOTOR VEHICLE REGISTRATION PLATES FOR
4 VIETNAM VETERANS AND TO PROVIDE THAT THE TEN-DOLLAR
5 ADDITIONAL FEE CHARGED FOR THE PLATE WILL BE USED TO
6 SUPPORT THE NORTH CAROLINA VETERANS HOME.

7 The General Assembly of North Carolina enacts:

8 Section 1. G.S. 20-79.4(b) is amended by adding a new subdivision to
9 read:

10 "(28a) Vietnam Veteran. -- Issuable to a veteran of the armed forces of
11 the United States who served in Vietnam. The Division may not
12 issue the plate authorized by this subdivision unless it receives at
13 least 300 applications for the plate."

14 Section 2. G.S. 20-79.7(b) reads as rewritten:

15 "(b) Distribution of Fees. -- The Special Registration Plate Account and the
16 Collegiate and Cultural Attraction Plate Account are established within the Highway
17 Fund. The Division must credit the additional fee imposed for the special
18 registration plates listed in subsection (a) among the Special Registration Plate
19 Account (SRPA), the Collegiate and Cultural Attraction Plate Account (CCAPA),
20 ~~and~~ the Natural Heritage Trust Fund (NHTF), which is established under G.S. 113-
21 77.7, and the North Carolina Veterans Home Trust Fund (VHTF), which is
22 established under G.S. 165-48, as follows:

	<u>SRPA</u>	<u>CCAPA</u>	<u>NHTE</u>	<u>VHTE</u>
1 <u>Special Plate</u>				
2 Historical Attraction	\$10	\$20	0	
3 In-State Collegiate				
4 Insignia	\$10	\$15	0	
5 Out-of-state				
6 Collegiate Insignia	\$10	0	\$15	
7 Personalized	\$10	0	\$10	
8 Special Olympics	\$10	\$15	0	
9 Olympic Games	\$10	\$15	0	
10 State Attraction	\$10	\$20	0	
11 <u>Vietnam Veteran</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>\$10</u>
12 Wildlife Resources	\$10	\$10	0	
13 All other Special Plates	\$10	0	0 0	<u>0</u> "

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

HOUSE BILL 299
Committee Substitute Favorable 4/2/97
Committee Substitute #2 Favorable 4/21/97
PROPOSED SENATE COMMITTEE SUBSTITUTE
H299-CSRB-6/27

Short Title: Vietnam Veterans Plates.

(Public)

Sponsors:

Referred to:

February 24, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO DEVELOP
3 SPECIAL MOTOR VEHICLE REGISTRATION PLATES FOR VIETNAM VETERANS.
4 The General Assembly of North Carolina enacts:
5 Section 1. G.S. 20-79.4(b) is amended by adding a new
6 subdivision to read:
7 "(28a) Vietnam Veteran. -- Issuable to a veteran of
8 the armed forces of the United States who
9 served in Vietnam. The Division may not issue
10 the plate authorized by this subdivision
11 unless it receives at least 300 applications
12 for the plate."
13 Section 2. This act is effective when it becomes law.

EXPLANATION OF HOUSE BILL 299:
Vietnam Veterans Plates (PCS)

TO: Senate Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: June 27, 1997
SPONSOR: Representative Sexton

House Bill 299 would authorize the Division of Motor Vehicles to develop a special registration plate issuable to a veteran of the armed forces of the United States who served in Vietnam. The Division would have to receive at least 300 applications of the plate before it could be issued .

Under the original bill, the \$10 additional fee charged for this special plate would be credited to the North Carolina Veterans Home Trust Fund. This would be the only special license plate for which the \$10 additional fee would be diverted from the Special Registration Plate Fund. The **proposed committee substitute** conforms the fee schedule for this special license plate with the current fee schedule for all other special license plates by crediting the additional \$10.00 fee to the Special Registration Plate Account. After deducting the cost of the plates from this account, the money is distributed quarterly as follows:

<u>Percentage</u>	<u>Purpose</u>
33%	Department of Commerce for advertising travel and tourism and industrial development
50%	Department of Transportation for beautification of highways
17%	Department of Human Resources to promote Travel accessibility for disabled persons

In 1991, the General Assembly created a study committee to address the many varied statutes concerning special license plates. At that time, there were six different categories of special license plates with four different fee dispositions, and a complicated web of various fee accounts. Based upon an audit performed by the State Auditor's office, the Committee recommended, and the General Assembly enacted, a uniform fee schedule that consolidated the special license plates into one statute and provided that the \$10 additional fee from all special registration plates be credited to the special registration plate account. Since 1991, the General Assembly has enacted at least 14 new special registration plates. In all instances, the first \$10 of any additional fee has been credited to the Special Registration Plate Account.

There are some special license plates that earn money for a particular cause. In those instances, the additional fee a person must pay to obtain the special registration plate is greater than \$10. The amount of the additional fee that exceeds \$10 is credited to an account to be distributed quarterly to the appropriate entity. The additional fees for plates that raise money for a particular cause range from \$20 to \$30.

The original bill would have attributed the initial \$10 additional fee to the North Carolina Veterans Home Trust Fund. The General Assembly created the North Carolina Veterans Home Trust Fund in 1995 when it funded the first State run veterans home. The home is expected to be completed during the 1997-98 fiscal year. The Governor's continuation budget requested a \$300,000 appropriation for the 1997-98 fiscal year and a \$200,000 appropriation for the 1998-99 fiscal year for operating expenses of the home. The Trust Fund is an interest-bearing, nonreverting fund. The balance in the Fund at this time is approximately \$15,361.

The Fund consists of appropriations, grants, and fees charged the residents who are admitted to a State veterans home. The money in the Fund may be used by the Division of Veterans Affairs to build or remodel buildings to be used as homes for aged and infirm veterans living in North Carolina and to pay the expenses of the homes. It is hoped that the homes will be self-funding through fees charged their residents and federal aid and assistance.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

HOUSE BILL 299
Committee Substitute Favorable 4/2/97
Committee Substitute #2 Favorable 4/21/97
Proposed Senate Committee Substitute H299-PCSX1420

Short Title: Vietnam Veterans Plates.

(Public)

Sponsors:

Referred to:

February 24, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO
3 DEVELOP SPECIAL MOTOR VEHICLE REGISTRATION PLATES FOR
4 VIETNAM VETERANS AND TO PROVIDE ADDITIONAL REVENUE FOR
5 THE SUPPORT OF THE NORTH CAROLINA VETERANS HOME.

6 The General Assembly of North Carolina enacts:

7 Section 1. G.S. 20-79.4(b) is amended by adding a new subdivision to
8 read:

9 "(28a) Vietnam Veteran. -- Issuable to a veteran of the armed forces of
10 the United States who served in Vietnam. The Division may not
11 issue the plate authorized by this subdivision unless it receives at
12 least 300 applications for the plate."

13 Section 2. G.S. 20-79.7(a) reads as rewritten:

14 "(a) Fees. -- Upon request, the Division shall provide and issue free of charge one
15 registration plate to a recipient of the Congressional Medal of Honor, a 100%
16 disabled veteran, and an ex-prisoner of war. All other special registration plates are
17 subject to the regular motor vehicle registration fee in G.S. 20-87 or G.S. 20-88 plus
18 an additional fee in the following amount:

19 <u>Special Plate</u>	<u>Additional Fee Amount</u>
20 Historical Attraction	\$30.00
21 State Attraction	\$30.00

1	Collegiate Insignia	\$25.00
2	Olympic Games	\$25.00
3	Special Olympics	\$25.00
4	<u>Vietnam Veteran</u>	<u>\$20.00</u>
5	Wildlife Resources	\$20.00
6	Personalized	\$20.00
7	Active Member of the National Guard	None
8	All Other Special Plates	\$10.00."

9 Section 3. G.S. 20-79.7(b) reads as rewritten:

10 "(b) Distribution of Fees. -- The Special Registration Plate Account and the
 11 Collegiate and Cultural Attraction Plate Account are established within the Highway
 12 Fund. The Division must credit the additional fee imposed for the special
 13 registration plates listed in subsection (a) among the Special Registration Plate
 14 Account (SRPA), the Collegiate and Cultural Attraction Plate Account (CCAPA),
 15 ~~and~~ the Natural Heritage Trust Fund (NHTF), which is established under G.S. 113-
 16 77.7, and the North Carolina Veterans Home Trust Fund (VHTF), which is
 17 established under G.S. 165-48, as follows:

18	<u>Special Plate</u>	<u>SRPA</u>	<u>CCAPA</u>	<u>NHTF</u>	<u>VHTF</u>
19	Historical Attraction	\$10	\$20	0	<u>0</u>
20	In-State Collegiate				
21	Insignia	\$10	\$15	0	<u>0</u>
22	Out-of-state				
23	Collegiate Insignia	\$10	0	\$15	<u>0</u>
24	Personalized	\$10	0	\$10	<u>0</u>
25	Special Olympics	\$10	\$15	0	<u>0</u>
26	Olympic Games	\$10	\$15	0	<u>0</u>
27	State Attraction	\$10	\$20	0	<u>0</u>
28	<u>Vietnam Veteran</u>	<u>\$10</u>	<u>0</u>	<u>0</u>	<u>\$10</u>
29	Wildlife Resources	\$10	\$10	0	<u>0</u>
30	All other Special Plates	\$10	0	0 <u>0</u>	<u>0."</u>

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

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

July 1, 1997

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Richard Hamilton	Wildlife
Ralph Clark	City of Roxboro
Jan Palmer	NCPA / NCCPT
Tommy Harrison	Enterprise
Michael Rea	
Dyn Glawacki	
Mac Rowley	NC: Aggregates
Chad Collins	REVENUE
Carrie Hartley	Office of Gov
Can Over	BPMHL
Mark M... ..	Payroll + Fund

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

July 1, 1997

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

NAME	FIRM OR AGENCY AND ADDRESS
Roger Bone	Bone & Assoc -
Joe O'Leary	Sierra Club - CCNC
Rob Schofield	NCJLDC
Soren Schmidt	NCJLDC
CSA	NC AFL-CIO
Jo Still mo	Medical Mutual Group (Dr. of the Day)
Jeff Nye	North Carolina Railroad Co.

July 1, 1997

H.B. 1057

Exempt Audiovisual Masters

Draft Number:	PCSXA400
Sequential Referral:	None
Recommended Referral:	Appropriations
Long Title Amended:	No

TOTAL REPORTED: 7

Committee Clerk Comment: None

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

FINANCE COMMITTEE REPORT

Senator David Hoyle, Co-Chair
Senator John Kerr, Co-Chair

Wednesday, July 02, 1997

SENATOR HOYLE,

submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO SENATE C.S. BILL

H.B.(CS#2) 299	Vietnam Veterans Plates	
	Draft Number:	PCSX1420
	Sequential Referral:	None
	Recommended Referral:	None
	Long Title Amended:	Yes

H.B.(CS)1061	Disabled Sportsman Licenses	
	Draft Number:	PCS1421
	Sequential Referral:	None
	Recommended Referral:	None
	Long Title Amended:	No

TOTAL REPORTED: 2

Committee Clerk Comment: Bills taken up at 7-1-97 Sen. Finance Meeting

SENATE FINANCE COMMITTEE

WEDNESDAY, JULY 2, 1997

ON THE FLOOR DURING 11 O'CLOCK SESSION

The Senate Finance Committee met on the floor during the 11 o'clock session with Senator Kerr presiding. All committee members present for session were at the meeting.

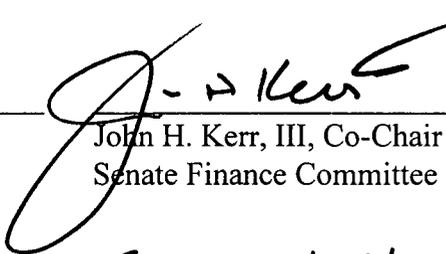
H.B. 101 - Extend Tri-County Administration

Senator Kerr called the meeting to order and explained proposed committee substitute for H.B. 101. Senator Lee moved to adopt the PCS and the motion carried. On motion by Senator Perdue, the committee substitute was given a "favorable" report by the committee. Copy of bill, committee substitute and explanation included in the minutes.

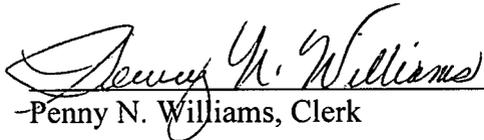
Meeting adjourned.



David W. Hoyle, Co-Chair
Senate Finance Committee



John H. Kerr, III, Co-Chair
Senate Finance Committee



Penny N. Williams, Clerk



Evelyn S. Hartsell, Clerk

NOTE:

Committee Report is Attachment # 1

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 101

Short Title: Stokes School Acquisition.

(Local)

Sponsors: Representative Baker.

Referred to: Local & Regional Government II, if favorable, Finance.

February 11, 1997

A BILL TO BE ENTITLED

1 AN ACT TO ALLOW STOKES COUNTY TO ACQUIRE PROPERTY FOR USE
2 BY ITS COUNTY BOARD OF EDUCATION.

3 The General Assembly of North Carolina enacts:

4 Section 1. G.S. 153A-158.1 reads as rewritten:

5 "**§ 153A-158.1. Acquisition and improvement of school property in certain counties.**

6 (a) Acquisition by County. -- A county may acquire, by any lawful method, any
7 interest in real or personal property for use by a school administrative unit within the
8 county. In exercising the power of eminent domain a county shall use the procedures
9 of Chapter 40A. The county shall use its authority under this subsection to acquire
10 property for use by a school administrative unit within the county only upon the
11 request of the board of education of that school administrative unit and after a public
12 hearing.

13 (b) Construction or Improvement by County. -- A county may construct, equip,
14 expand, improve, renovate, or otherwise make available property for use by a school
15 administrative unit within the county. The local board of education shall be involved
16 in the design, construction, equipping, expansion, improvement, or renovation of the
17 property to the same extent as if the local board owned the property.

18 (c) Lease or Sale by Board of Education. -- Notwithstanding the provisions of G.S.
19 115C-518 and G.S. 160A-274, a local board of education may, in connection with
20 additions, improvements, renovations, or repairs to all or part of any of its property,
21 lease or sell the property to the board of commissioners of the county in which the
22 property is located for any price negotiated between the two boards.
23

1 (d) Board of Education May Contract for Construction. -- Notwithstanding the
2 provisions of G.S. 115C-40 and G.S. 115C-521, a local board of education may enter
3 into contracts for the erection or repair of school buildings upon sites owned in fee
4 simple by one or more counties in which the local school administrative unit is
5 located.

6 (e) Scope. -- This section applies to Alleghany, Ashe, Avery, Bladen, Brunswick,
7 Cabarrus, Carteret, Cherokee, Chowan, Columbus, Currituck, Dare, Duplin,
8 Edgecombe, Forsyth, Franklin, Graham, Greene, Guilford, Halifax, Harnett,
9 Haywood, Hyde, Iredell, Jackson, Johnston, Jones, Lee, Macon, Madison, Martin,
10 Moore, Nash, New Hanover, Orange, Pasquotank, Pender, Person, Pitt, Randolph,
11 Richmond, Rockingham, Rowan, Sampson, Scotland, Stanly, Stokes, Surry, Union,
12 Vance, Wake, Wilson, and Watauga Counties."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

HOUSE BILL 101
Proposed Senate Committee Substitute H101-PCS1422

Short Title: Extend Tri-County Admin.

(Public)

Sponsors:

Referred to:

February 11, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO EXTEND THE TIME FOR THE DEPARTMENT OF HUMAN
3 RESOURCES TO ADMINISTER THE SERVICES OF THE TRI-COUNTY
4 AREA AUTHORITY.
5 The General Assembly of North Carolina enacts:
6 Section 1. Notwithstanding S.L. 1997-7, the Department of Human
7 Resources may continue to administer the services of the Tri-County Area Authority
8 in accordance with G.S. 122C-125.1 on behalf and at the request of the board of
9 county commissioners of one or more of the counties that constitute the Tri-County
10 Area Authority. The extension granted under this section shall be for a period not to
11 exceed three calendar months commencing July 1, 1997, and shall be for the sole
12 purpose of allowing one or more of the counties that constitute the Tri-County Area
13 Authority to assess the feasibility of combining with another existing area authority.
14 Section 2. This act becomes effective July 1, 1997.

SUMMARY
PROPOSED COMMITTEE SUBSTITUTE FOR H101

BACKGROUND

House Bill 77 directed the Secretary of Human Resources to dissolve certain area mental health authorities (Tri-County) by June 30, 1997. After HB 77 was ratified the Department requested that a special provision be included in the budget bill authorizing the Department to continue to administer the services of the Tri-County Area Authority for three months beginning on July 1, 1997. A special provision was included in both the Senate and the House budget bills. However, since the budget bill has not yet been enacted, the Department does not have the authority to continue the administration of Tri County Services as of July 1, 1997.

PROPOSED COMMITTEE SUBSTITUTE

The Proposed Senate Committee Substitute for H101 uses the language from the special provision in the Senate budget bill to extend DHR's authority to administer Tri-County services for a period not to exceed three months from July 1, 1997. The extension is granted for the purpose of allowing one or more of the counties that constituted Tri-County Area Authority to assess the feasibility of combining with another existing area authority. The administration must be exercised in accordance with G.S. 122C-125.1 (section that governs takeover of an area mental health authority by DHR) and at the request of the board of county commissioners of one or more of the affected Tri-County counties.

[Note: H101 is a local bill introduced by Rep. Baker. It pertains to Stokes county school acquisition and is no longer needed by Rep. Baker.]

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

FINANCE COMMITTEE REPORT

John H. Kerr, III, Co-Chair

David W. Hoyle, Co-Chair

Wednesday, July 02, 1997

SENATOR JOHN KERR,

submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO SENATE C.S. BILL

H.B.	101	Stokes School Acquisition.	
		Draft Number:	PCS1422
		Sequential Referral:	None
		Recommended Referral:	None
		Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comment: HB 101

SENATE FINANCE COMMITTEE

TUESDAY, JULY 8, 1997

8:30 A.M. - ROOM 544 LOB

The Senate Finance Committee met on July 8, 1997, with Senator Kerr presiding. There were 21 members present.

H.B. 993 - Regional Transportation Authorities

Representative Gray was recognized to explain H.B. 993. After discussion, Senator Ballantine moved for a "favorable" report and the motion carried. Copy of bill, explanation and fiscal note included in the minutes.

H.B. 305 - Peanut Assessment Cap

Representative Brown was recognized to explain this bill. Senator Hoyle moved for the adoption of proposed committee substitute and the motion carried. Senator Albertson explained the changes in the PCS. Glenn Jernigan, representing the peanut growers in North Carolina, spoke in support of the bill. Senator Wellons moved for a "favorable" report for the committee substitute and the motion carried. Copy of bill and committee substitute included in the minutes.

H.B. 1044 - County Tax Information Recipient

Representative Rogers was recognized to explain this bill and Senator Hoyle moved for the adoption of a proposed committee substitute. Motion carried. Cindy Avrette, Staff Attorney, explained the changes in the PCS. On motion by Senator Cochrane, the committee substitute was given a "favorable" report by the committee. Copy of bill, committee substitute and explanation included in the minutes.

H.B. 337 - Randolph Occupancy Tax

This bill had previously been discussed in Senate Finance and the new proposed committee substitute adds an additional county to the bill. On motion by Senator Dannelly, the PCS was adopted and on further motion by Senator Dannelly, the committee substitute was given a "favorable" report. Copies of committee substitutes included in the minutes.

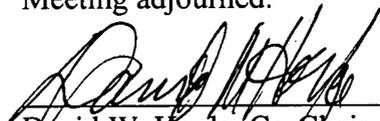
H.B. 457 - Amend Forest Development Act

Representative Weatherly was recognized to explain this bill. On motion by Senator Albertson, a proposed committee substitute was adopted. At the conclusion of Representative Weatherly's explanation, Cindy Avrette, Staff Attorney, gave a further explanation of the changes in this bill. There was a general discussion on this bill with questions from the committee members being answered by the bill sponsor and staff. Bob Slocum, North Carolina Forestry Association, was introduced and spoke in favor of this bill. Michael Thompson, Section Chief with Forest Management, was recognized to answer questions from the committee members. After a very lengthy discussion on this bill, Senator Kerr announced that due to the many questions and concerns of the committee that this bill would not be voted on today but would be further discussed at a later date. Copy of bill, committee substitute, explanation and fiscal note included in the minutes.

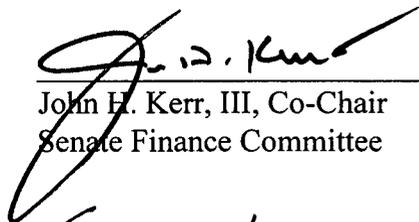
H.B. 340 - Kannapolis Property Acquisitions

Senator Hartsell explained this bill for Representative Moore. Senator Cochrane moved for a "favorable" report and the motion carried. Copy of bill included in the minutes.

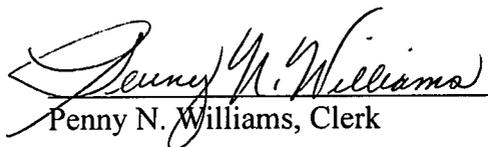
Meeting adjourned.



David W. Hoyle, Co-Chair
Senate Finance Committee



John H. Kerr, III, Co-Chair
Senate Finance Committee



Penny N. Williams, Clerk



Evelyn S. Hartsell, Clerk

NOTE:

Agenda is Attachment # 1
Visitors' Sign Up Sheet is Attachment # 2
Committee Report is Attachment # 3

H.B. 136 and H.B. 843 were not heard at this committee meeting.

SENATE FINANCE COMMITTEE

JULY 8, 1997

8:30 A.M. - Room 643

H.B. 136 - Late Video Return/Sales Tax - Rep. Weatherly

H.B. 305 - Peanut Assessment Cap - Rep. Morgan

H.B. 337 - Randolph Occupancy Tax - Rep. Culp

H.B. 340 - Kannapolis Property Acquisitions - Rep. Moore

H.B. 457 - Amend Forest Development Act - Rep. Weatherly

H.B. 843 - Cedar Rock Incorporated - Rep. Starnes

H.B. 993 - Regional Transportation Authorities - Rep. Gray

H.B. 1044 - County Tax Information Recipient - Rep. Rogers

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

3

HOUSE BILL 993
Committee Substitute Favorable 6/4/97
Committee Substitute #2 Favorable 6/12/97

Short Title: Regional Transportation Authorities.

(Public)

Sponsors:

Referred to:

April 17, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW CREATION OF ADDITIONAL REGIONAL
3 TRANSPORTATION AUTHORITIES.

4 The General Assembly of North Carolina enacts:

5 Section 1. Chapter 160A of the General Statutes is amended by adding a
6 new Article to read:

7 "ARTICLE 27.

8 "Regional Transportation Authority.

9 "§ 160A-630. Title.

10 This Article shall be known and may be cited as the 'Regional Transportation
11 Authority Act.'

12 "§ 160A-631. Definitions.

13 As used in this Article, unless the context otherwise requires:

14 (1) 'Authority' means a Regional Transportation Authority as defined
15 by subdivision (6) of this section.

16 (2) 'Board of Trustees' means the governing board of the Authority, in
17 which the general legislative powers of the Authority are vested.

18 (3) 'Population' means the number of persons residing in respective
19 areas as defined and enumerated in the most recent decennial
20 federal census.

21 (4) 'Public transportation' means transportation of passengers whether
22 or not for hire by any means of conveyance, including, but not

limited to, a street or elevated railway or guideway, subway, motor vehicle or motor bus, carpool or vanpool, either publicly or privately owned and operated, holding itself out to the general public for the transportation of persons within or working within the territorial jurisdiction of the Authority, excluding charter, tour, or sight-seeing service.

(5) 'Public transportation system' means, without limitation, a combination of real and personal property, structures, improvements, buildings, equipment, vehicle parking, or other facilities, railroads and railroad rights-of-way whether held in fee simple by quitclaim or easement, and rights-of-way, or any combination thereof, used or useful for the purposes of public transportation. 'Public transportation system' however, does not include streets, roads, or highways except those for ingress and egress to vehicle parking.

(6) 'Regional Transportation Authority,' means a body corporate and politic organized in accordance with the provisions of this Article for the purposes, with the powers and subject to the restrictions hereinafter set forth.

(7) 'Unit of local government' means any county, city, town or municipality of this State, and any other political subdivision, public corporation, Authority, or district in this State, which is or may be authorized by law to acquire, establish, construct, enlarge, improve, maintain, own, and operate public transportation systems.

(8) 'Unit of local government's chief administrative official' means the county manager, city manager, town manager, or other person, by whatever title he shall be known, in whom the responsibility for the unit of local government's administrative duties is vested.

"§ 160A-632. Definition of territorial jurisdiction of Authority.

An authority may be created for the area of any Metropolitan Planning Organization of the State that, at the time of creation of the authority, meets the following criteria, such area being the initial territorial jurisdiction of the Authority:

(1) The area consists of all or part of five counties, all five counties of which form a contiguous territory;

(2) At least two of those counties are contiguous to each other and each have a population of 250,000 or over; and

(3) The other three counties each have a population of 100,000 or over.

"§ 160A-633. Creation of Authority.

(a) The city councils of the four largest cities within an area for which an authority may be created as defined in G.S. 160A-632 may by resolution signify their determination to organize an authority under the provisions of this Article. Each of such resolutions shall be adopted after a public hearing thereon, notice of which hearing shall be given by publication at least once, not less than 10 days prior to the

1 date fixed for such hearing, in a newspaper having a general circulation in the
2 county. Such notice shall contain a brief statement of the substance of the proposed
3 resolution, shall set forth the proposed articles of incorporation of the Authority and
4 shall state the time and place of the public hearing to be held thereof. No city shall
5 be required to make any other publication of such resolution under the provisions of
6 any other law.

7 (b) Each such resolution shall include articles of incorporation which shall set
8 forth:

- 9 (1) The name of the authority;
10 (2) A statement that such authority is organized under this Article;
11 and
12 (3) The names of the four organizing cities.

13 (c) A certified copy of each of such resolutions signifying the determination to
14 organize an authority under the provisions of this Article shall be filed with the
15 Secretary of State, together with proof of publication of the notice of hearing on each
16 of such resolutions. If the Secretary of State finds that the resolutions, including the
17 articles of incorporation, conform to the provisions of this Article and that the notices
18 of hearing were properly published, he shall file such resolutions and proofs of
19 publication in his office and shall issue a certificate of incorporation under the seal of
20 the State and shall record the same in an appropriate book of record in his office.
21 The issuance of such certificate of incorporation by the Secretary of State shall
22 constitute the Authority, a public body and body politic and corporate of the State of
23 North Carolina. Said certificate of incorporation shall be conclusive evidence of the
24 fact that such authority has been duly created and established under the provisions of
25 this Article.

26 (d) When the Authority has been duly organized and its officers elected as herein
27 provided, the secretary of the Authority shall certify to the Secretary of State the
28 names and addresses of such officers as well as the address of the principal office of
29 the Authority.

30 (e) The Authority may become a Designated Recipient pursuant to the Urban
31 Mass Transportation Act of 1964, as amended.

32 **"§ 160A-634. Territorial jurisdiction and service area of the Authority.**

33 (a) The territorial jurisdiction and service area of the Authority shall be as
34 determined by the Board of Trustees consistent with its purpose, but shall initially
35 consist of those areas included within the Metropolitan Planning Organization
36 boundaries. With the consent by resolution of the affected board of county
37 commissioners, the jurisdiction and area may be expanded to include contiguous
38 areas, but the total jurisdiction and service area shall not exceed part or all of 12
39 counties.

40 (b) Except as provided by this Article, the jurisdiction of the Authority may
41 include all local public passenger transportation operating within the territorial
42 jurisdiction of the Authority, but the Authority may not take over the operation of
43 any existing public transportation without the consent of the owner.

1 (c) The Authority shall not have jurisdiction over public transportation subject to
2 the jurisdiction of and regulated by the United States Department of Transportation,
3 nor shall it have jurisdiction over intrastate public transportation classified as
4 common carriers of passengers by the North Carolina Utilities Commission.

5 **"§ 160A-635. Membership; officers; compensation.**

6 (a) The governing body of an authority is the Board of Trustees. The Board of
7 Trustees shall consist of:

8 (1) The mayor of the four cities within the service area that have the
9 largest population, or a member of the city council designated by
10 the city council to serve in the absence of the mayor.

11 (2) Two members of the Board of Transportation appointed by the
12 Secretary of Transportation, to serve as ex officio nonvoting
13 members.

14 (3) The chair of each Metropolitan Planning Organization in the
15 territorial jurisdiction.

16 (4) The chair of the board of commissioners of any county within the
17 territorial jurisdiction or a member of the board of commissioners
18 designated by the board to serve in the absence of the chair, but
19 only if the Board of Trustees by resolution has expanded the Board
20 of Trustees to include the chair of the board of commissioners of
21 that county and the board of commissioners of that county has
22 consented by resolution.

23 (b) The members appointed by the Secretary of Transportation shall serve at the
24 pleasure of the Secretary.

25 (c) Service on the Board of Trustees may be in addition to any other office which
26 a person is entitled to hold. Each voting member of the Board of Trustees may hold
27 elective public office as defined by G.S. 128-1.1(d).

28 (d) Members of the Board of Trustees shall reside within the territorial
29 jurisdiction of the Authority as defined by G.S. 160A-634.

30 (e) The Board of Trustees shall annually elect from its membership a Chairperson,
31 and a Vice-Chairperson, and shall annually elect a Secretary, and a Treasurer.

32 (f) Members of the Board of Trustees shall receive the sum of fifty dollars (\$50.00)
33 as compensation for attendance at each duly conducted meeting of the Authority.

34 **"§ 160A-636. Voting.**

35 A majority of the members of the Board of Trustees shall constitute a quorum for
36 the transaction of business. Except as provided by G.S. 160A-635(a)(2), each
37 member shall have one vote.

38 **"§ 160A-637. Advisory committees.**

39 The Board of Trustees may provide for the selection of such advisory committees
40 as it may find appropriate, which may or may not include members of the Board of
41 Trustees.

42 **"§ 160A-638. Purpose of the Authority.**

43 The purpose of the authority is to enhance the quality of life in its territorial
44 jurisdiction by promoting the development of sound transportation systems which

1 provide transportation choices, enhance mobility, accessibility, and safety, encourage
2 economic development and sound growth patterns, and protect the man-made and
3 natural environments of the region.

4 **"§ 160A-639. General powers of the Authority.**

5 The general powers of the Authority shall include any or all of the following:

- 6 (1) To sue and be sued;
7 (2) To have a seal;
8 (3) To make rules and regulations, not inconsistent with this Chapter,
9 for its organization and internal management;
10 (4) To employ persons deemed necessary to carry out the functions
11 and duties assigned to them by the Authority and to fix their
12 compensation, within the limit of available funds;
13 (5) With the approval of the unit of local government's chief
14 administrative official, to use officers, employees, agents, and
15 facilities of the unit of local government for such purposes and
16 upon such terms as may be mutually agreeable;
17 (6) To retain and employ counsel, auditors, engineers, and private
18 consultants on an annual salary, contract basis, or otherwise for
19 rendering professional or technical services and advice;
20 (7) To acquire, lease as lessee with or without option to purchase,
21 hold, own, and use any franchise, property, real or personal,
22 tangible or intangible, or any interest therein, and to sell, lease as
23 lessor with or without option to purchase, transfer (or dispose
24 thereof) whenever the same is no longer required for purposes of
25 the Authority, or exchange same for other property or rights which
26 are useful for the Authority's purposes, including but not
27 necessarily limited to parking facilities;
28 (8) To acquire by gift, purchase, lease as lessee with or without option
29 to purchase or otherwise to construct, improve, maintain, repair,
30 operate, or administer any component parts of a public
31 transportation system or to contract for the maintenance, operation
32 or administration thereof, or to lease as lessor the same for
33 maintenance, operation, or administration by private parties,
34 including, but not necessarily limited to, parking facilities;
35 (9) To make or enter into contracts, agreements, deeds, leases with or
36 without option to purchase, conveyances or other instruments,
37 including contracts and agreements with the United States, the
38 State of North Carolina, and units of local government;
39 (10) To surrender to the State of North Carolina any property no
40 longer required by the Authority;
41 (11) To develop and make data, plans, information, surveys and studies
42 of public transportation facilities within the territorial jurisdiction
43 of the Authority and to prepare and make recommendations in
44 regard thereto;

- 1 (12) To enter in a reasonable manner lands, waters, or premises for the
2 purpose of making surveys, soundings, drillings, and examinations
3 whereby such entry shall not be deemed a trespass except that the
4 Authority shall be liable for any actual and consequential damages
5 resulting from such entries;
- 6 (13) To develop and carry out demonstration projects;
- 7 (14) To make, enter into, and perform contracts with private parties,
8 and public transportation companies with respect to the
9 management and operation of public passenger transportation;
- 10 (15) To make, enter into, and perform contracts with any public utility,
11 railroad or transportation company for the joint use of property or
12 rights, for the establishment of through routes, joint fares, or
13 transfer of passengers;
- 14 (16) To make, enter into, and perform agreements with governmental
15 entities for payments to the Authority for the transportation of
16 persons for whom the governmental entities desire transportation;
- 17 (17) With the consent of the unit of local government which would
18 otherwise have jurisdiction to exercise the powers enumerated in
19 this subdivision: to issue certificates of public convenience and
20 necessity; and to grant franchises and enter into franchise
21 agreements, and in all respects to regulate the operation of buses,
22 taxicabs, and other methods of public passenger transportation
23 which originate and terminate within the territorial jurisdiction of
24 the Authority as fully as the unit of local government is now or
25 hereafter empowered to do within the territorial jurisdiction of the
26 unit of local government;
- 27 (18) To operate public transportation systems and to enter into and
28 perform contracts to operate public transportation services and
29 facilities, and to own or lease property, facilities and equipment
30 necessary or convenient therefor, and to rent, lease or otherwise
31 sell the right to do so to any person, public or private; further, to
32 obtain grants, loans, and assistance from the United States, the
33 State of North Carolina, any public body, or any private source
34 whatsoever, but may not operate or contract for the operation of
35 public transportation systems outside the territorial jurisdiction of
36 the Authority except as provided by subdivision (20) of this
37 section;
- 38 (19) To enter into and perform contracts and agreements with other
39 public transportation authorities, regional public transportation
40 authorities, or units of local government pursuant to the provisions
41 of G.S. 160A-460 through G.S. 160A-464 (Part 1 of Article 20 of
42 Chapter 160A of the General Statutes); further to enter into
43 contracts and agreements with private transportation companies,
44 but this subdivision does not authorize the operation of, or

- 1 contracting for the operation of, service of a public transportation
2 system outside the service area of the Authority;
- 3 (20) To operate public transportation systems extending service into any
4 political subdivision of the State of North Carolina unless a
5 particular unit of local government operating its own public
6 transportation system or franchising the operation of a public
7 transportation system by majority vote of its governing board, shall
8 deny consent, but such service may not extend more than 10 miles
9 outside of the territorial jurisdiction of the authority, except that
10 vanpool and carpool service shall not be subject to that mileage
11 limitation;
- 12 (21) Except as restricted by covenants in bonds, notes, or equipment
13 trust certificates, to set in its sole discretion rates, fees, and charges
14 for use of its public transportation system;
- 15 (22) To do all things necessary or convenient to carry out its purpose
16 and to exercise the powers granted to the Authority;
- 17 (23) To facilitate the coordination of transportation plans in the service
18 area and the activities of the member Metropolitan Planning
19 Organizations;
- 20 (24) To maintain databases for the projection of future travel demands
21 in the region;
- 22 (25) To provide and operate regional ridesharing and vanpool
23 operations;
- 24 (26) To provide and operate regional transportation services for the
25 elderly and handicapped;
- 26 (27) To provide other transportation related services, including air
27 quality monitoring and analysis, as determined by the Board of
28 Trustees;
- 29 (28) To issue bonds or other obligations of the Authority as provided by
30 law and apply the proceeds thereof to the financing of any public
31 transportation system or any part thereof and to refund, whether or
32 not in advance of maturity or the earliest redemption date, any
33 such bonds or other obligations; and
- 34 (29) To contract for, or to provide and maintain, with respect to the
35 facilities and property owned, leased with or without option to
36 purchase, operated or under the control of the Authority, and
37 within the territory thereof, a security force to protect persons and
38 property, dispense unlawful or dangerous assemblages and
39 assemblages which obstruct full and free passage, control
40 pedestrian and vehicular traffic, and otherwise preserve and
41 protect the public peace, health, and safety; for these purposes a
42 member of such force shall be a peace officer and, as such, shall
43 have authority equivalent to the authority of a police officer of the

1 city or county in which said member of such force is discharging
2 such duties.

3 **"§ 160A-640. Authority of Utilities Commission not affected.**

4 (a) Except as otherwise provided in this Article, nothing in this Article shall be
5 construed to limit or otherwise affect the power or authority of the North Carolina
6 Utilities Commission or the right of appeal to the North Carolina Utilities
7 Commission as provided by law.

8 (b) The North Carolina Utilities Commission shall not have jurisdiction over rates,
9 fees, charges, routes, and schedules of an Authority for service within its territorial
10 jurisdiction.

11 **"§ 160A-641. Fiscal accountability.**

12 An Authority is a public authority subject to the provisions of Chapter 159 of the
13 General Statutes.

14 **"§ 160A-642. Funds.**

15 The establishment and operation of an Authority are governmental functions and
16 constitute a public purpose, and the State of North Carolina and any unit of local
17 government may appropriate funds to support the establishment and operation of the
18 Authority. The State of North Carolina and any unit of local government may also
19 dedicate, sell, convey, donate, or lease any of their interests in any property to the
20 Authority. An Authority may apply for grants from the State of North Carolina, or
21 from the United States or any department, agency, or instrumentality thereof. The
22 Department of Transportation may allocate to an Authority any funds appropriated
23 for transportation, or any funds whose use is not restricted by law.

24 **"§ 160A-643. Competition.**

25 No equipment of the Authority may be used for charter, tour, or sight-seeing
26 service.

27 **"§ 160A-644. Effect on existing franchises and operations.**

28 Creation of the Authority shall not have an effect on any existing franchises
29 granted by any unit of local government; such existing franchises shall continue in full
30 force and effect until legally terminated; further, all ordinances and resolutions of the
31 unit of local government regulating local public transportation systems, bus
32 operations, and taxicabs shall continue in full force and effect now and in the future,
33 unless superseded by regulations of the Authority; such superseding, if any, may
34 occur only on the basis of prior mutual agreement between the Authority and the
35 respective unit of local government.

36 **"§ 160A-645. Termination.**

37 The Board of Trustees may terminate the existence of the Authority at any time
38 when it has no outstanding indebtedness. In the event of such termination, all
39 property and assets of the Authority not otherwise encumbered shall automatically
40 become the property of the State of North Carolina, and the State of North Carolina
41 shall succeed to all rights, obligations, and liabilities of the Authority.

42 **"§ 160A-646. Controlling provisions.**

43 Insofar as the provisions of this Article are not consistent with the provisions of
44 any other law, public or private, the provisions of this Article shall be controlling.

1 **"§ 160A-647. Bonds and notes authorized.**

2 In addition to the powers granted by this Article, the Authority may issue bonds
3 and notes pursuant to the provisions of The State and Local Government Revenue
4 Bond Act, Article 5 of Chapter 159 of the General Statutes, for the purpose of
5 financing public transportation systems or any part thereof and to refund such bonds
6 and notes, whether or not in advance of their maturity or earliest redemption date.

7 **"§ 160A-648. Equipment trust certificates.**

8 In addition to the powers here and before granted, the Authority shall have
9 continuing power to purchase equipment, and in connection therewith execute
10 agreements, leases with or without option to purchase, or equipment trust certificates.
11 All money required to be paid by the Authority under the provisions of such
12 agreements, leases with or without option to purchase, and equipment trust
13 certificates shall be payable solely from the fares, fees, rentals, charges, revenues, and
14 earnings of the Authority, monies derived from the sale of any surplus property of the
15 Authority and gifts, grants, and contributions from any source whatever. Payment for
16 such equipment or rentals therefore, may be made in installments; the deferred
17 installments may be evidenced by equipment trust certificates payable solely from the
18 aforsaid revenues or receipts, and title to such equipment may or may not vest in the
19 Authority until the equipment trust certificates are paid.

20 **"§ 160A-649. Power of eminent domain.**

21 (a) The Authority shall have continuing power to acquire, by gift, grant, devise,
22 bequest, exchange, purchase, lease with or without option to purchase, or any other
23 lawful method, including, but not limited to, the power of eminent domain, the fee or
24 any lesser interest in real or personal property for use by the Authority.

25 (b) Exercise of the power of eminent domain by the Authority shall be in
26 accordance with Chapter 40A of the General Statutes.

27 **"§ 160A-650. Tax exemption.**

28 The property of the Authority, both real and personal, its acts, activities, and
29 income shall be exempt from any tax or tax obligation; in the event of any lease of
30 Authority property, or other arrangement which amounts to a leasehold interest, to a
31 private party, this exemption shall not apply to the value of such leasehold interest
32 nor shall it apply to the income of the lessee. Otherwise, however, for the purpose of
33 taxation, when property of the Authority is leased to private parties solely for the
34 purpose of the Authority, the acts and activities of the lessee shall be considered as
35 the acts and activities of the Authority and the exemption. The interest on bonds or
36 obligations issued by the Authority shall be exempt from State taxes.

37 **"§ 160A-651. Removal and relocation of utility structures.**

38 (a) The Authority shall have the power to require any public utility, railroad, or
39 other public service corporation owning or operating any installations, structures,
40 equipment, apparatus, appliances, or facilities in, upon, under, over, across or along
41 any ways on which the Authority has the right to own, construct, operate, or maintain
42 its public transportation system, to relocate such installation, structures, equipment,
43 apparatus, appliances, or facilities from their locations, or, in the sole discretion of
44 the affected public utility, railroad, or other public service corporation, to remove

1 such installations, structures, equipment, apparatus, appliances, or facilities from their
2 locations.

3 (b) If the owner or operator thereof fails or refuses to relocate them, the Authority
4 may proceed to do so.

5 (c) The Authority shall provide any necessary new locations and necessary real
6 estate interests for such relocation, and for that purpose the power of eminent
7 domain as provided in G.S. 160A-649 may be exercised provided the new locations
8 shall not be in, on or above, a public highway; the Authority may also acquire the
9 necessary new locations by purchase or otherwise.

10 (d) Any affected public utility, railroad, or other public service corporation shall
11 be compensated for any real estate interest taken in a manner consistent with G.S.
12 160A-649, subject to the right of the Authority to reduce the compensation due by
13 the value of any property exchanged under this section.

14 (e) The method and procedures of a particular adjustment to the facilities of a
15 public utility, railroad, or other public service corporation shall be covered by an
16 agreement between the Authority and the affected party or parties.

17 (f) The Authority shall reimburse the public utility, railroad, or other public
18 service corporation, for the cost of relocations or removals which shall be the entire
19 amount paid or incurred by the utility properly attributable thereto after deducting
20 the cost of any increase in the service capacity of the new installations, structures,
21 equipment, apparatus, appliances, or facilities and any salvage value derived from the
22 old installations, structures, equipment, apparatus or appliances."

23 Section 2. G.S. 105-164.14(c)(15) reads as rewritten:

24 "(15) A regional public transportation authority created pursuant to
25 Article 26 of Chapter 160A of the General ~~Statutes~~. Statutes, or a
26 regional transportation authority created pursuant to Article 27 of
27 Chapter 160A of the General Statutes."

28 Section 3. G.S. 159-81(1) reads as rewritten:

29 "(1) 'Municipality' means a county, city, town, incorporated village,
30 sanitary district, metropolitan sewerage district, metropolitan water
31 district, county water and sewer district, water and sewer authority,
32 hospital authority, hospital district, parking authority, special
33 airport district, regional public transportation authority, regional
34 transportation authority, regional sports authority, airport
35 authority, joint agency created pursuant to Part 1 of Article 20 of
36 Chapter 160A of the General Statutes, and joint agency authorized
37 by agreement between two cities to operate an airport pursuant to
38 G.S. 63-56, but not any other forms of local government."

39 Section 3.1. If Senate Bill 352 is enacted and provides that funds
40 appropriated to the Department of Transportation for the 1997-98 fiscal year shall be
41 used to fund a Major Investment Study (MIS) which shall include:

42 (1) A passenger rail proposal providing service between Asheville and
43 Raleigh through Winston-Salem generally following the I-40
44 corridor; and

1 (2) A passenger rail proposal providing for commuter rail services
2 between Winston-Salem, Greensboro, High Point, and outlying
3 communities,
4 then notwithstanding that act, the MIS shall be administered by the Regional
5 Transportation Authority created under this act which includes Guilford and Forsyth
6 Counties, in consultation with the Department of Transportation, the Forsyth County
7 Metropolitan Planning Organization (MPO), the Greensboro MPO, and the High
8 Point MPO.
9 Section 4. This act is effective when it becomes law.

EXPLANATION OF HOUSE BILL 993:
Regional Transportation Authorities (3rd Edition)

TO: Senate Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: June 30, 1997
SPONSOR: Representative Gray

House Bill 993 provides for the creation of a regional transportation authority in an area of a Metropolitan Planning Organization that meets all of the following criteria:

- The area consists of all or part of five counties, all counties of which form a contiguous territory.
- At least two of those counties are contiguous to each other and each have a population of 250,000 or more.
- The other three counties each have a population of 100,000 or more.

This description describes the Triad area consisting of Forsyth, Guilford, Randolph, Davidson, and Alamance Counties. The four major cities involved in the creation of the authority are Greensboro, High Point, Winston-Salem, and Burlington.

The purpose and powers of this regional transportation authority would be very similar to the purpose and powers of the regional public transportation authority the General Assembly created in 1989 for the Triangle area. Unlike the 1989 legislation, this bill does not give the authority created by this act any taxing power. The transportation authority created in 1989 for the Triangle area may levy an annual motor vehicle registration tax of \$5 on motor vehicles that have a property tax situs in Orange, Durham, or Wake Counties. The only other differences between the two are their territorial jurisdiction and the make-up of their board of trustees.

The Authority would be created to promote the development of sound transportation systems in the area served by the Authority. The Authority could be created upon the adoption of a resolution by the city councils of the four largest cities within the area that could be served by the authority. The governing body of the authority would be the Board of Trustees. The Board of Trustees would consist of the mayor of the four largest cities served by the authority and the chair of each Metropolitan Planning Organization in the territorial jurisdiction of the authority. If there is an agreement between the

Board of Trustees and the boards of county commissioners of the counties served by the authority, then the chair of the board of commissioners of any county within the territorial jurisdiction of the county may serve on the Board of Trustees. Two members of the Board of Transportation appointed by the Secretary of Transportation would also serve on the Board of Trustees as ex officio nonvoting members.

The powers of the Board of Trustees of the Authority would include:

- The authority to own, lease, and operate public transportation systems. However, the creation of the authority would not have an effect on any existing franchises granted by a unit of local government or upon any local government ordinances regulating local public transportation systems.
- The authority to set in its sole discretion rates, fees, and charges for use of its public transportation systems.
- The authority to issue bonds and notes pursuant to the provisions of The State and Local Government Revenue Bond Act.
- The authority to make installment purchases.
- The authority to exercise the power of eminent domain.
- The authority to require public utilities to relocate their structures and equipment if necessary.

An authority would be a public authority subject to the Local Government Finance Act and eligible for the appropriation of money from State and local governments. The property of the Authority would be exempt from property tax and it would be eligible for annual refunds of sales and use taxes paid. The Board of Trustees could terminate the existence of the Authority at any time when it has no outstanding indebtedness. In the event of termination, all property and assets of the Authority become the property of the State.

The House budget, contained in Senate Bill 352 (5th Edition), allocates \$750,000 from the funds appropriated to the Department of Transportation for a Major Investment Study. The study would include a passenger rail proposal providing service between Asheville and Raleigh through Winston-Salem and a passenger rail proposal providing for commuter rail services between Winston-Salem, Greensboro, High Point, and outlying communities. Section 3 of this bill provides that if the Study is funded by the General Assembly, the regional transportation authority created pursuant to this act will administer it, in consultation with the Department of Transportation and the Metropolitan Planning Organizations of Forsyth County, Greensboro, and High Point.

**NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE**

BILL NUMBER: House Bill 993
SHORT TITLE: Regional Transportation Authorities
SPONSOR(S): Committee Substitute

FISCAL IMPACT

Yes () No (X) No Estimate Available ()
FY 1997-98 FY 1998-99 FY 1999-00 FY 2000-01 FY 2001-02

REVENUES **This act does not affect State or local revenues**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: **Regional Transit authorities organized under Article 27.**

EFFECTIVE DATE: When it becomes law

BILL SUMMARY:

Adds a new Article 26 to General Statutes Chapter 160A to allow the creation of additional regional transportation authorities (GS 160A-600 through 160A-625 now allows creation of authorities within limited areas). Allows creation of regional transportation authority (RTA) for the area of any metropolitan planning organization of the state that, at the time of creation, consists of all or part of five contiguous counties if at least two of the counties each have a population of at least 250,000 and are contiguous *and* if the other three counties each have a population of at least 100,000. Authorizes the city councils of the four largest cities within the area to create an RTA according to the procedures in the act. Allows the new RTA, with the consent of the affected boards of county commissioners, to expand to include contiguous areas up to a total service area of twelve counties. Governing body of RTA will consist of the mayors of the four cities with the largest populations within the service area; two members of the State Board of Transportation appointed by the Secretary of Transportation (as ex officio, nonvoting members); the chair of each metropolitan planning organization in the service area; and the chair of any board of county commissioners within the service area. Sets forth powers of RTA, including the power to issue bonds and notes (pursuant to the Local Government Revenue Bond Act) for the purpose of financing public transportation systems; purchase and lease equipment; acquire property by eminent domain; and require public utilities, railroads, and other public service corporations to relocate utility structures. Allows state and local government units to appropriate funds to the RTA for its operations.

House committee substitute makes the following changes to 1st edition. Recodifies new article as General Statutes Chapter 160A, Article 27 (was, Art. 26). Provides that if S 352 is enacted with funds appropriated to Department of Transportation for 1997-98, then major investment study will be made to include a passenger rail proposal providing service between Asheville and Raleigh through Winston-Salem generally following the I-40 corridor, and a passenger rail proposal providing for commuter rail services between Winston-Salem, Greensboro, High Point, and outlying communities. MIS will be administered by regional transportation authority created under this act, which includes Guilford and Forsyth Counties, in consultation with Department of Transportation, Forsyth County Metropolitan Planning Organization (MPO), Greensboro MPO, and High Point MPO.

ASSUMPTIONS AND METHODOLOGY:

House Bill 1231 authorizes regional transit authorities (RTA), created pursuant to Article 27, to charge a \$5.00 registration fee on motor vehicles sited in the counties of the authority for property taxation. In addition, an RTA is authorized to levy a 5% gross receipts tax on the short term lease of motor vehicles leased in the region. The expected revenue from these two sources in fiscal year 1997-98 is \$3.3 million. The revenue is estimated to grow to \$7 million by fiscal year 2001-02. Municipal units of government located within the region are authorized to levy a \$5.00 license tax on motor vehicles. The revenue derived from this tax is expected to be \$1.6 million in fiscal year 1997-98 and grow to \$3.4 million by fiscal year 2001-02.

Bill Summary Source: Institute of Government

FISCAL RESEARCH DIVISION

733-4910

PREPARED BY: Warren Plonk

APPROVED BY:

DATE: June 30, 1997

1 computed by the North Carolina Milk Commission. Provided further, that the
2 assessment authorized by this Article and collected by the Commissioner of
3 Agriculture to be paid to the North Carolina Yam Commission, Inc., or other duly
4 certified agencies entitled thereto for research, marketing and promotional programs
5 related to yams or sweet potatoes may be levied at a rate not to exceed two percent
6 (2%) of the value of the year's production of that agricultural commodity grown by
7 any farmer, producer or grower included in the group to which the referendum is
8 submitted, and when authorized by two-thirds or more of the farmers, producers or
9 growers in the area in which the referendum is conducted, the rate of the assessment
10 may remain in effect for the length of time provided in the referendum. Provided
11 further, that the assessment authorized by this Article on peanuts may not exceed two
12 percent (2%) of the price paid to the producer."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

HOUSE BILL 305
Committee Substitute Favorable 4/29/97
Proposed Senate Committee Substitute H305-PCS6298

Short Title: Peanut Assessment Cap.

(Public)

Sponsors:

Referred to:

February 24, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO INCREASE THE LIMIT FOR AN ASSESSMENT WHEN THE
3 ASSESSMENT IS PAID BY PEANUT PRODUCERS FOR THE PROMOTION
4 OF PEANUTS AND AMENDING THE STRAWBERRY ASSESSMENT ACT
5 TO IMPROVE THE COLLECTION OF ASSESSMENTS.

6 The General Assembly of North Carolina enacts:

7 Section 1. G.S. 106-557 reads as rewritten:

8 "**§ 106-557. Notice of referendum; statement of amount, basis and purpose of**
9 **assessment; maximum assessment.**

10 With respect to any referendum conducted under the provisions of this Article, the
11 duly certified commission, council, board or other agency shall, before calling and
12 announcing such referendum, fix, determine and publicly announce at least 30 days
13 before the date determined upon for such referendum, the date, hours and polling
14 places for voting in such referendum, the amount and basis of the assessment
15 proposed to be collected, the means by which such assessment shall be collected if
16 authorized by the growers, and the general purposes to which said amount so
17 collected shall be applied; no annual assessment levied under the provisions of this
18 Article shall exceed one half of one percent (1/2 of 1%) of the value of the year's
19 production of such agricultural commodity grown by any farmer, producer or grower
20 included in the group to which such referendum is submitted. Provided, that the
21 assessment for the research and promotion programs of the American Dairy
22 Association of North Carolina may be fixed on the volume of milk sold not to exceed

1 one percent (1%) of the statewide blend price paid to all North Carolina producers
2 during the previous calendar year for three and one-half percent (3.5%) milk as
3 computed by the North Carolina Milk Commission. Provided further, that the
4 assessment authorized by this Article and collected by the Commissioner of
5 Agriculture to be paid to the North Carolina Yam Commission, Inc., or other duly
6 certified agencies entitled thereto for research, marketing and promotional programs
7 related to yams or sweet potatoes may be levied at a rate not to exceed two percent
8 (2%) of the value of the year's production of that agricultural commodity grown by
9 any farmer, producer or grower included in the group to which the referendum is
10 submitted, and when authorized by two-thirds or more of the farmers, producers or
11 growers in the area in which the referendum is conducted, the rate of the assessment
12 may remain in effect for the length of time provided in the referendum. Provided
13 further, that the assessment authorized by this Article on peanuts may not exceed two
14 percent (2%) of the price paid to the producer."

15 Section 2. G.S. 106-783 is amended by adding a new subsection (4) to
16 read:

17 "(4) 'Strawberry plant seller' means a person who sells strawberry
18 plants to growers for commercial production of strawberries."

19 Section 3. G.S. 106-785 reads as rewritten:

20 "**§ 106-785. Two-thirds vote required; collection of ~~assessment~~; assessment; penalties;**
21 **audits.**

22 (a) The assessment shall not be collected unless at least two-thirds of the votes
23 cast in the referendum are in favor of the assessment. If at least two-thirds of the
24 votes cast in the referendum are in favor of the assessment, then the Department shall
25 notify all strawberry plant ~~growers~~ sellers of the assessment. The assessment shall be
26 added by the strawberry plant growers sellers to the price of all strawberry plants sold
27 for commercial planting in North ~~Carolina~~ Carolina, ~~and shall be remitted to the~~
28 ~~Department no later than the 10th day following the end of each calendar quarter.~~
29 The Department shall provide forms to the strawberry plant growers sellers for
30 reporting the assessment. All strawberry plant sellers shall provide each purchaser of
31 strawberry plants for commercial production with an invoice that sets forth the
32 amount of the assessment on the purchase covered by the invoice. Persons who
33 purchase strawberry plants for commercial production on which the assessment has
34 not been collected by the seller shall report such purchases and pay the assessment to
35 the Department.

36 (b) ~~The Association may bring an action against any plant grower who fails to pay~~
37 ~~the assessment to collect unpaid assessments, and if successful shall also recover the~~
38 ~~cost of such action, including attorney's fees.~~ Each strawberry plant seller shall remit
39 to the Department no later than the tenth day following the end of each calendar
40 quarter the assessment on strawberry plants sold during that quarter. Any strawberry
41 plant seller who fails to remit the assessment for the previous year's sales by January
42 10 shall pay a penalty of five percent (5%) of the unpaid assessment plus a penalty of
43 one percent (1%) of the unpaid assessment for each month after January 10 that the
44 assessment remains unpaid.

1 (c) The Association may conduct inspections or audits of the books of any
2 strawberry plant seller. If the inspection or audit reveals that a strawberry plant seller
3 has willfully failed to remit assessments when due, the seller shall pay the Association
4 the reasonable costs of the inspection or audit.

5 (d) The Association may bring an action to collect unpaid assessments, penalties,
6 and reasonable costs of any inspection or audit as provided in subsection (c) of this
7 section, against any strawberry plant seller who fails to pay the assessment, penalties,
8 or costs. If successful, the Association shall also recover the cost of such action,
9 including attorneys' fees."

10 Section 4. Section 3 of this act becomes effective October 1, 1997, and
11 applies to assessments accruing on or after that date. The remainder of this act is
12 effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

HOUSE BILL 1044
Proposed Senate Committee Substitute H1044-PCS7341

Short Title: County Tax Information Recipient.

(Public)

Sponsors:

Referred to:

April 21, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE COUNTIES TO DESIGNATE AN OFFICIAL TO
3 RECEIVE SALES TAX REFUND INFORMATION.
4 The General Assembly of North Carolina enacts:
5 Section 1. G.S. 105-164.14(f) reads as rewritten:
6 "(f) (See editor's note) Information to Counties. -- Upon written request of a
7 county, the Secretary shall, within 30 days after the request, provide the ~~chair of the~~
8 ~~board of county commissioners~~ designated county official a list of each claimant that
9 has, within the past 12 months, received a refund under subsection (b) or (c) of this
10 section of at least one thousand dollars (\$1,000) of tax paid to the county. The list
11 shall include the name and address of each claimant and the amount of the refund it
12 has received from that county. Upon written request of a county, a claimant that has
13 received a refund under subsection (b) or (c) of this section shall provide the ~~chair of~~
14 ~~the board of county commissioners~~ designated county official a copy of the request
15 for the refund and any supporting documentation requested by the county to verify
16 the request. For the purpose of this subsection, the designated county official is the
17 chair of the board of county commissioners or a county official designated in a
18 resolution adopted by the board. Information provided to a county under this
19 subsection is not a public record and may not be disclosed except in accordance with
20 G.S. 153A-148.1. If a claimant determines that a refund it has received under
21 subsection (b) or (c) of this section is incorrect, it shall file an amended request for
22 the refund."
23 Section 2. G.S. 105-259(b)(6a) reads as rewritten:

1 "(6a) To furnish ~~the chair of a board of county commissioners~~ the
2 county official designated under G.S. 105-164.14(f) a list of
3 claimants that have received a refund of the county sales or use tax
4 to the extent authorized in G.S. 105-164.14(f)."
5 Section 3. This act is effective when it becomes law.

EXPLANATION OF HOUSE BILL 1044:
County Tax Information Recipient

TO: Senate Finance Subcommittee
FROM: Cindy Avrette, Committee Counsel
DATE: July 7, 1997
SPONSOR: Representative Rogers

In 1995, the General Assembly gave counties access to information regarding local sales tax refunds paid to nonprofit corporations and governmental entities. Under prior law, counties did not have access to this information because the local sales tax is collected by the State and the tax secrecy statute prevents the Department of Revenue from disclosing information about individual taxpayers. Without information about local sales tax refunds, counties were not able to audit claims for refunds against them. The counties had to rely on the Department of Revenue to audit the claims, but the Department does not have enough resources to provide the level of audit some counties wished to provide for themselves.

To obtain information concerning local sale tax refunds, a county must request the information in writing from the Secretary of Revenue. The Secretary has 30 days to provide the chair of the board of county commissioners with a list of each nonprofit corporation or governmental entity that received a refund of at least \$1,000 of that county's local taxes within the last 12 months. **House Bill 1044** allows the county board of commissioners to designate a county official to receive this information from the Department of Revenue. If the board has not adopted such a resolution, then the Department will continue to send the requested information to the chair of the board of county commissioners.

The county uses the list it receives from the Department to identify entities whose refund claims the county may wish to audit. Upon the written request of the county, an entity that has received a refund must provide the county with a copy of the request for refund, along with supporting documentation requested by the county to verify the request. If an entity determines that a refund it has received has been charged to the wrong county, it must file an amended return for the refund. The amended return will enable the Department to make the appropriate adjustments in the subsequent quarterly distribution of local sales tax revenue.

Under G.S. 105-164.14, nonprofit corporations and certain governmental entities may seek a refund of State and local sales taxes they pay on their purchases. To do so, these entities must file a written request for refund with the

Department of Revenue and name the counties where the purchases were made. The Secretary of Revenue deducts the claimed refunds of local sales taxes from tax revenue distributed to the counties. Errors in identifying the correct county in refund claims occur because the local sales tax applies to the county in which the retailer is located, not the county in which the purchaser is located. Some counties believe that entities located in one county who pay sales tax to another county are claiming the refund against the county in which they are located, rather than against the county in which they made the purchase.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

HOUSE BILL 337

Senate Finance Committee Substitute Adopted 6/18/97
Proposed Senate Committee Substitute H337-PCS2358

Short Title: Randolph Occupancy Tax.

(Local)

Sponsors:

Referred to:

February 26, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE RANDOLPH COUNTY TO LEVY A ROOM
3 OCCUPANCY AND TOURISM DEVELOPMENT TAX.

4 The General Assembly of North Carolina enacts:

5 Section 1. Occupancy tax. (a) **Authorization and scope.** The Randolph
6 County Board of Commissioners may by resolution levy a room occupancy tax of up
7 to five percent (5%) of the gross receipts derived from the rental of any room,
8 lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar
9 place within the county that is subject to sales tax imposed by the State under G.S.
10 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does
11 not apply to accommodations furnished to nonprofit charitable, educational, or
12 religious organizations for use in furthering their nonprofit purpose.

13 (b) **Administration.** A tax levied under this section shall be levied,
14 administered, collected, and repealed as provided in G.S. 153A-155. The penalties
15 provided in G.S. 153A-155 apply to a tax levied under this section.

16 (c) **Distribution and use of tax revenue.** Randolph County shall, on a
17 quarterly basis, remit the net proceeds of the occupancy tax to the Randolph Tourism
18 Development Authority. The Authority may use these funds and any other revenue
19 it receives only to develop or promote travel and tourism and for tourism-related
20 expenditures in Randolph County. The Authority shall use at least two-thirds of the
21 funds remitted to it under this subsection to promote travel and tourism in Randolph
22 County and shall use the remainder for tourism-related expenditures.

1 The following definitions apply in this subsection:

- 2 (1) Net proceeds. -- Gross proceeds less the cost to the county of
3 administering and collecting the tax, as determined by the finance
4 officer, not to exceed three percent (3%) of the gross proceeds.
- 5 (2) Promote travel and tourism. -- To advertise or market an area or
6 activity, publish and distribute pamphlets and other materials,
7 conduct market research, or engage in similar promotional
8 activities that attract tourists or business travelers to the area; the
9 term includes administrative expenses incurred in engaging in the
10 listed activities.
- 11 (3) Tourism-related expenditures. -- Expenditures that are designed to
12 increase the use of lodging facilities in the county or to attract
13 tourists or business travelers to the county. The term includes
14 tourism-related capital expenditures and other expenditures that, in
15 the judgment of the Authority, will facilitate and promote tourism.
16 Examples of tourism-related expenditures include expenditures to
17 create, advertise, promote, and support cultural programs, events,
18 festivals, public park and recreation areas, historic preservation and
19 museums, beautification projects, parking facilities, and other
20 public amenities and services.

21 Section 2. Section 3(b) of S.L. 1997-102, as amended by Section 2 of S.L.
22 1997-255, reads as rewritten:

23 "(b) This section applies only to ~~Madison and Nash~~ Madison, Nash, and Randolph
24 Counties."

25 Section 3. Tourism Development Authority. (a) **Appointment and**
26 **membership.** When the board of commissioners adopts a resolution levying a room
27 occupancy tax under this act, it shall also adopt a resolution creating a county
28 Tourism Development Authority, which shall be a public authority under the Local
29 Government Budget and Fiscal Control Act. The Authority shall be composed of
30 nine members to be appointed by the board of commissioners as follows:

- 31 (1) Seat 1 shall represent the hotel and motel industry, seat 4 shall
32 represent the North Carolina Zoological Park, seat 7 is
33 unrestricted, and seat 9 shall represent the county.
- 34 (2) Seats 2, 3, 5, and 6 shall be appointed upon the recommendation
35 of the Archdale/Trinity Chamber of Commerce, the
36 Asheboro/Randolph Chamber of Commerce, the Liberty Chamber
37 of Commerce, and the Randleman Chamber of Commerce,
38 respectively.
- 39 (3) Seat 8 shall represent the hotel and motel industry and shall be
40 appointed upon the recommendation of the Asheboro/Randolph
41 Chamber of Commerce.

42 In appointing and recommending members, each entity shall strive to
43 select individuals who either have expertise in promoting and developing travel and
44 tourism or are affiliated with organizations that collect the tax. The board of

1 commissioners may reject the recommendation of a chamber of commerce and
2 require the chamber to submit additional names within 30 days after the rejection. If
3 the chamber does not submit additional names within this period, the board of
4 commissioners may appoint someone to the seat based upon its own
5 recommendation.

6 All members of the Authority serve at the pleasure of the board of
7 commissioners and may be removed by the board at any time. The board of
8 commissioners shall designate one member of the Authority as chair and another as
9 cochair. Members shall serve without compensation.

10 Except for initial terms, the term of office shall be for three years. No
11 member may serve more than two consecutive three-year terms. The initial terms for
12 seats 1, 2, and 3 shall be one year. The initial terms for seats 4, 5, and 6 shall be two
13 years. The initial terms for seats 7, 8, and 9 shall be three years.

14 The Authority shall meet at the call of the chair and shall adopt bylaws
15 and rules of procedure to govern its meetings. The Finance Officer for Randolph
16 County shall be the ex officio finance officer of the Authority.

17 (b) **Duties.** The Authority shall expend the net proceeds of the tax
18 levied under this act for the purposes provided in Section 1 of this act.

19 (c) **Powers.** In addition to other powers conferred by law, the Authority
20 may contract with any person, firm, corporation, or agency to assist it in carrying out
21 its duties. All contracts the Authority enters into with nonprofit organizations shall
22 require an annual financial audit of any funds expended and a performance audit of
23 contractual obligations. The Authority may accept contributions from any source to
24 be used for the purposes provided in Section 1 of this act.

25 (d) **Reports.** The Authority shall report quarterly and at the close of the
26 fiscal year to the board of commissioners on its receipts and expenditures for the
27 preceding quarter and for the year in such detail as the board may require.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

2

HOUSE BILL 337
Senate Finance Committee Substitute Adopted 6/18/97

Short Title: Randolph Occupancy Tax.

(Local)

Sponsors:

Referred to:

February 26, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE RANDOLPH COUNTY TO LEVY A ROOM
3 OCCUPANCY AND TOURISM DEVELOPMENT TAX.

4 The General Assembly of North Carolina enacts:

5 Section 1. Occupancy tax. (a) **Authorization and scope.** The Randolph
6 County Board of Commissioners may by resolution levy a room occupancy tax of up
7 to five percent (5%) of the gross receipts derived from the rental of any room,
8 lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar
9 place within the county that is subject to sales tax imposed by the State under G.S.
10 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does
11 not apply to accommodations furnished to nonprofit charitable, educational, or
12 religious organizations for use in furthering their nonprofit purpose.

13 (b) **Administration.** A tax levied under this section shall be levied,
14 administered, collected, and repealed as provided in G.S. 153A-155. The penalties
15 provided in G.S. 153A-155 apply to a tax levied under this section.

16 (c) **Distribution and use of tax revenue.** Randolph County shall, on a
17 quarterly basis, remit the net proceeds of the occupancy tax to the Randolph Tourism
18 Development Authority. The Authority may use these funds and any other revenue
19 it receives only to develop or promote travel and tourism and for tourism-related
20 expenditures in Randolph County. The Authority shall use at least two-thirds of the
21 funds remitted to it under this subsection to promote travel and tourism in Randolph
22 County and shall use the remainder for tourism-related expenditures.

23 The following definitions apply in this subsection:

- 1 (1) Net proceeds. -- Gross proceeds less the cost to the county of
- 2 administering and collecting the tax, as determined by the finance
- 3 officer, not to exceed three percent (3%) of the gross proceeds.
- 4 (2) Promote travel and tourism. -- To advertise or market an area or
- 5 activity, publish and distribute pamphlets and other materials,
- 6 conduct market research, or engage in similar promotional
- 7 activities that attract tourists or business travelers to the area; the
- 8 term includes administrative expenses incurred in engaging in the
- 9 listed activities.
- 10 (3) Tourism-related expenditures. -- Expenditures that are designed to
- 11 increase the use of lodging facilities in the county or to attract
- 12 tourists or business travelers to the county. The term includes
- 13 tourism-related capital expenditures and other expenditures that, in
- 14 the judgment of the Authority, will facilitate and promote tourism.
- 15 Examples of tourism-related expenditures include expenditures to
- 16 create, advertise, promote, and support cultural programs, events,
- 17 festivals, public park and recreation areas, historic preservation and
- 18 museums, beautification projects, parking facilities, and other
- 19 public amenities and services.

20 Section 2. Section 3(b) of S.L. 1997-102 reads as rewritten:

21 "(b) This section applies only to Madison ~~County~~ and Randolph Counties."

22 Section 3. Tourism Development Authority. (a) **Appointment and**
23 **membership.** When the board of commissioners adopts a resolution levying a room
24 occupancy tax under this act, it shall also adopt a resolution creating a county
25 Tourism Development Authority, which shall be a public authority under the Local
26 Government Budget and Fiscal Control Act. The Authority shall be composed of
27 nine members to be appointed by the board of commissioners as follows:

- 28 (1) Seat 1 shall represent the hotel and motel industry, seat 4 shall
- 29 represent the North Carolina Zoological Park, seat 7 is
- 30 unrestricted, and seat 9 shall represent the county.
- 31 (2) Seats 2, 3, 5, and 6 shall be appointed upon the recommendation
- 32 of the Archdale/Trinity Chamber of Commerce, the
- 33 Asheboro/Randolph Chamber of Commerce, the Liberty Chamber
- 34 of Commerce, and the Randleman Chamber of Commerce,
- 35 respectively.
- 36 (3) Seat 8 shall represent the hotel and motel industry and shall be
- 37 appointed upon the recommendation of the Asheboro/Randolph
- 38 Chamber of Commerce.

39 In appointing and recommending members, each entity shall strive to
40 select individuals who either have expertise in promoting and developing travel and
41 tourism or are affiliated with organizations that collect the tax. The board of
42 commissioners may reject the recommendation of a chamber of commerce and
43 require the chamber to submit additional names within 30 days after the rejection. If
44 the chamber does not submit additional names within this period, the board of

1 commissioners may appoint someone to the seat based upon its own
2 recommendation.

3 All members of the Authority serve at the pleasure of the board of
4 commissioners and may be removed by the board at any time. The board of
5 commissioners shall designate one member of the Authority as chair and another as
6 cochair. Members shall serve without compensation.

7 Except for initial terms, the term of office shall be for three years. No
8 member may serve more than two consecutive three-year terms. The initial terms for
9 seats 1, 2, and 3 shall be one year. The initial terms for seats 4, 5, and 6 shall be two
10 years. The initial terms for seats 7, 8, and 9 shall be three years.

11 The Authority shall meet at the call of the chair and shall adopt bylaws
12 and rules of procedure to govern its meetings. The Finance Officer for Randolph
13 County shall be the ex officio finance officer of the Authority.

14 (b) **Duties.** The Authority shall expend the net proceeds of the tax
15 levied under this act for the purposes provided in Section 1 of this act.

16 (c) **Powers.** In addition to other powers conferred by law, the Authority
17 may contract with any person, firm, corporation, or agency to assist it in carrying out
18 its duties. All contracts the Authority enters into with nonprofit organizations shall
19 require an annual financial audit of any funds expended and a performance audit of
20 contractual obligations. The Authority may accept contributions from any source to
21 be used for the purposes provided in Section 1 of this act.

22 (d) **Reports.** The Authority shall report quarterly and at the close of the
23 fiscal year to the board of commissioners on its receipts and expenditures for the
24 preceding quarter and for the year in such detail as the board may require.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

2

HOUSE BILL 457
Committee Substitute Favorable 4/2/97

Short Title: Amend Forest Development Act/AB.

(Public)

Sponsors:

Referred to:

March 10, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW RECOVERY OF FUNDS PAID AS FOREST
3 DEVELOPMENT COST-SHARING PAYMENTS WHEN TREES ARE NOT
4 MAINTAINED AT LEAST TEN YEARS AND TO CONVERT THE FOREST
5 DEVELOPMENT FUND TO ONE THAT ACCRUES INTEREST.

6 The General Assembly of North Carolina enacts:

7 Section 1. G.S. 113A-178 reads as rewritten:

8 "§ 113A-178. Definitions.

9 As used in this Article:

- 10 (1) 'Approved forest management plan' ~~shall mean~~ means the forest
11 management plan submitted by the eligible landowner and
12 approved by the Secretary. Such plan shall include forest
13 management practices to insure both maximum forest productivity
14 and environmental protection of the lands to be treated under the
15 management plan.
- 16 (2) 'Approved practices' ~~shall mean~~ mean those silvicultural practices
17 approved by the Secretary for the purpose of commercially
18 growing timber through the establishment of forest stands, or of
19 insuring the proper regeneration of forest stands to commercial
20 production levels following the harvest of mature timber. Such
21 practices shall include those required to accomplish site
22 preparation, natural and artificial forestation, noncommercial
23 removal of residual stands for silvicultural purposes, and

1 cultivation of established young growth of desirable trees. In each
2 case, approved practices will be determined by the needs of the
3 individual forest stand. These practices shall include existing
4 practices and such practices as are developed in the future to
5 insure both maximum forest productivity and environmental
6 protection.

7 (3) 'Department' ~~shall mean~~ means the Department of Environment,
8 Health, and Natural Resources.

9 (4) 'Eligible landowner' ~~shall mean~~ means a private individual, group,
10 association or corporation owning land suitable for forestry
11 purposes. Where forest land is owned jointly by more than one
12 individual, group, association or corporation, as tenants in
13 common, tenants by the entirety, or otherwise, the joint owners
14 shall be considered, for the purpose of this Article, as one eligible
15 landowner and entitled to receive cost-sharing payments as
16 provided herein only once during each fiscal year.

17 (5) 'Eligible lands' ~~shall mean~~ land means land owned by an eligible
18 landowner.

19 (6) 'Forest development assessment' ~~shall mean~~ means an assessment
20 on primary forest products from timber severed in North Carolina
21 for the funding of the provisions of this Article, as authorized by
22 the General Assembly.

23 (7) 'Forest development ~~cost-sharing~~ cost-sharing payment' ~~shall mean~~
24 means financial assistance to partially cover the costs of
25 implementing approved practices in such amounts as the Secretary
26 shall determine, subject to the limitations of this Article.

27 (8) 'Forest development fund' ~~shall mean~~ means the special
28 nonlapsing fund established in the Department of Environment,
29 Health, and Natural Resources, designated as the Forest
30 Development Fund, created by G.S. 113A-183.

31 (9) 'Secretary' ~~shall mean~~ means the Secretary of Environment,
32 Health, and Natural Resources.

33 (10) 'Maintain' means to make every reasonable effort to protect the
34 reforested area from destructive fire and grazing, insects, disease,
35 noxious weeds, and being cleared or partially cleared of trees for
36 any purpose other than as provided in an approved forest
37 management plan."

38 Section 2. Article 11 of Chapter 113A of the General Statutes is
39 amended by adding a new section to read:

40 "§ 113A-180.1. Cost-share agreements.

41 (a) In order to receive forest development cost-share payments, an eligible
42 landowner shall enter into a written agreement with the Department describing the
43 eligible land, setting forth the approved practices implemented for the area and

1 covered by the approved forest management plan, and agreeing to maintain those
2 practices for a 10-year period.

3 (b) A landowner who fails to maintain the practice or practices for a 10-year
4 period in accordance with the agreement set forth in subsection (a) of this section
5 shall repay to the Fund all cost-sharing funds received for that area.

6 (c) If the landowner voluntarily relinquishes control or title to the land on which
7 the approved practices have been established, the landowner shall:

8 (1) Obtain a written statement from the new owner or transferee in
9 which the new owner or transferee agrees to maintain the
10 approved practices for the remainder of the 10-year period; or

11 (2) Repay to the Fund all cost-sharing funds received for
12 implementing the approved practices on the land.

13 If a written statement is obtained from the new owner or transferee, the original
14 landowner will no longer be responsible for maintaining the approved practices or
15 repaying the cost-sharing funds. The responsibility for maintaining those practices for
16 the remainder of the 10 years shall devolve to the new owner or transferee."

17 Section 3. G.S. 113A-183 reads as rewritten:

18 "**§ 113A-183. Forest Development Fund.**

19 (a) ~~There is hereby~~ The Forest Development Fund is created in the Department of
20 Environment, Health, and Natural Resources as a nonreverting fund to be designated
21 ~~the Forest Development Fund, fund,~~ for which fiscal management and responsibility
22 are ~~hereby~~ vested in the Secretary. The Fund is a special trust fund, and the State
23 Treasurer shall credit interest to the Fund.

24 (b) This ~~fund~~ Fund shall be the depository for all revenue derived from the forest
25 development assessment on primary forest product processors as authorized by the
26 General Assembly, ~~and~~ for any funds appropriated specifically for the forest
27 development program from the ~~general fund.~~ General Fund, for monetary
28 contribution and donations, and for accrued interest. ~~Those funds appropriated from~~
29 ~~the general fund remaining in the Forest Development Fund at the end of any fiscal~~
30 ~~year shall revert to the general fund, but revenues~~ Revenues derived from the forest
31 development assessment ~~shall not revert but~~ shall remain in the Forest Development
32 Fund until expended under the provisions of this Article.

33 (c) ~~In any fiscal year, expenditures from the Forest Development Fund shall be~~
34 ~~limited to four times the amount of the general fund appropriation for that year.~~

35 (d) In any fiscal year, no more than five percent (5%) of the available funds
36 generated by the Primary Forest Product Processor Assessment Act shall be used for
37 program support under the provisions of G.S. 113A-179(c).

38 (e) Funds used for the purchase of equipment under the provisions of G.S.
39 113A-179(d) shall be limited to appropriations from the ~~general fund~~ General Fund
40 to the Forest Development Fund designated specifically for equipment purchase."

41 Section 4. This act becomes effective June 30, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

HOUSE BILL 457
Committee Substitute Favorable 4/2/97
Proposed Senate Committee Substitute H457-PCS4131

Short Title: Amend Forest Development Act/AB.

(Public)

Sponsors:

Referred to:

March 10, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW RECOVERY OF FUNDS PAID AS FOREST
3 DEVELOPMENT COST-SHARING PAYMENTS WHEN TREES ARE NOT
4 MAINTAINED AT LEAST TEN YEARS AND TO CONVERT THE FOREST
5 DEVELOPMENT FUND TO ONE THAT ACCRUES INTEREST.
6 The General Assembly of North Carolina enacts:
7 Section 1. G.S. 113A-178 reads as rewritten:
8 "**§ 113A-178. Definitions.**
9 As used in this Article:
10 (1) 'Approved forest management plan' ~~shall mean~~ means the forest
11 management plan submitted by the eligible landowner and
12 approved by the Secretary. Such plan shall include forest
13 management practices to insure both maximum forest productivity
14 and environmental protection of the lands to be treated under the
15 management plan.
16 (2) 'Approved practices' ~~shall mean~~ mean those silvicultural practices
17 approved by the Secretary for the purpose of commercially
18 growing timber through the establishment of forest stands, or of
19 insuring the proper regeneration of forest stands to commercial
20 production levels following the harvest of mature timber. Such
21 practices shall include those required to accomplish site
22 preparation, natural and artificial forestation, noncommercial

1 removal of residual stands for silvicultural purposes, and
2 cultivation of established young growth of desirable trees. In each
3 case, approved practices will be determined by the needs of the
4 individual forest stand. These practices shall include existing
5 practices and such practices as are developed in the future to
6 insure both maximum forest productivity and environmental
7 protection.

8 (3) 'Department' ~~shall mean~~ means the Department of Environment,
9 Health, and Natural Resources.

10 (4) 'Eligible landowner' ~~shall mean~~ means a private individual, group,
11 association or corporation owning land suitable for forestry
12 purposes. Where forest land is owned jointly by more than one
13 individual, group, association or corporation, as tenants in
14 common, tenants by the entirety, or otherwise, the joint owners
15 shall be considered, for the purpose of this Article, as one eligible
16 landowner and entitled to receive cost-sharing payments as
17 provided herein only once during each fiscal year.

18 (5) 'Eligible ~~lands~~ ~~shall mean~~ land' means land owned by an eligible
19 landowner.

20 (6) 'Forest development assessment' ~~shall mean~~ means an assessment
21 on primary forest products from timber severed in North Carolina
22 for the funding of the provisions of this Article, as authorized by
23 the General Assembly.

24 (7) 'Forest development ~~cost-sharing~~ cost-sharing payment' ~~shall mean~~
25 means financial assistance to partially cover the costs of
26 implementing approved practices in such amounts as the Secretary
27 shall determine, subject to the limitations of this Article.

28 (8) 'Forest development fund' ~~shall mean~~ means the ~~special~~
29 ~~nonlapsing fund established in the Department of Environment,~~
30 ~~Health, and Natural Resources, designated as the Forest~~
31 ~~Development Fund, Fund~~ created by G.S. 113A-183.

32 (9) 'Secretary' ~~shall mean~~ means the Secretary of Environment,
33 Health, and Natural Resources.

34 (10) 'Maintain' means to make every reasonable effort to protect the
35 reforested area from destructive fire and grazing, insects, disease,
36 noxious weeds, and being cleared or partially cleared of trees for
37 any purpose other than as provided in an approved forest
38 management plan."

39 Section 2. Article 11 of Chapter 113A of the General Statutes is
40 amended by adding a new section to read:

41 "§ 113A-180.1. Cost-share agreements.

42 (a) In order to receive forest development cost-share payments, an eligible
43 landowner shall enter into a written agreement with the Department describing the
44 eligible land, setting forth the approved practices implemented for the area and

1 covered by the approved forest management plan, and agreeing to maintain those
2 practices for a 10-year period.

3 (b) A landowner who fails to maintain the practice or practices for a 10-year
4 period in accordance with the agreement set forth in subsection (a) of this section
5 shall repay to the Fund all cost-sharing funds received for that area.

6 (c) If the landowner voluntarily relinquishes control or title to the land on which
7 the approved practices have been established, the landowner shall:

8 (1) Obtain a written statement from the new owner or transferee in
9 which the new owner or transferee agrees to maintain the
10 approved practices for the remainder of the 10-year period; or

11 (2) Repay to the Fund all cost-sharing funds received for
12 implementing the approved practices on the land.

13 If a written statement is obtained from the new owner or transferee, the original
14 landowner will no longer be responsible for maintaining the approved practices or
15 repaying the cost-sharing funds. The responsibility for maintaining those practices for
16 the remainder of the 10 years shall devolve to the new owner or transferee."

17 Section 3. G.S. 113A-183 reads as rewritten:

18 "**§ 113A-183. Forest Development Fund.**

19 (a) ~~There is hereby~~ The Forest Development Fund is created in the Department of
20 Environment, Health, and Natural Resources as a fund to be designated the Forest
21 Development Fund, for which fiscal management and responsibility are hereby vested
22 in the Secretary. special fund. Revenue in the Fund does not revert at the end of a
23 fiscal year, and interest and other investment income earned by the Fund accrues to
24 it. The Fund is created to provide revenue to implement this Article. The Fund
25 consists of the following revenue:

26 (1) Assessments on primary forest products collected under Article 12
27 of Chapter 113A of the General Statutes.

28 (2) General Fund appropriations.

29 (3) Gifts and grants made to the Fund.

30 (b) ~~This fund shall be the depository for all revenue derived from the forest~~
31 ~~development assessment on primary forest product processors as authorized by the~~
32 ~~General Assembly, and for any funds appropriated specifically for the forest~~
33 ~~development program from the general fund. Those funds appropriated from the~~
34 ~~general fund remaining in the Forest Development Fund at the end of any fiscal year~~
35 ~~shall revert to the general fund, but revenues derived from the forest development~~
36 ~~assessment shall not revert but shall remain in the Forest Development Fund until~~
37 ~~expended under the provisions of this Article.~~

38 (c) ~~In any fiscal year, expenditures from the Forest Development Fund shall be~~
39 ~~limited to four times the amount of the general fund appropriation for that year.~~

40 (d) In any fiscal year, no more than five percent (5%) of the available funds
41 generated by the Primary Forest Product Processor Assessment Act shall may be used
42 for program support under the provisions of G.S. 113A-179(c).

1 (e) Funds used for the purchase of equipment under the provisions of G.S.
2 113A-179(d) shall be limited to appropriations from the ~~general fund~~ General Fund
3 to the Forest Development Fund designated specifically for equipment purchase."

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

EXPLANATION OF HOUSE BILL 457:
Amend Forest Development Act (PCS)

TO: Senate Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: July 7, 1997
SPONSOR: Representative Weatherly
Agency Bill

House Bill 457 amends the Forest Development Act in three ways:

- It requires a landowner to enter into a written agreement with the Department of Environment, Health, and Natural Resources before the landowner can receive any cost-sharing payments. The landowner must agree to implement approved forestry practices on land suitable for forestry purposes and must agree to maintain those practices for at least 10 years. Under the bill, if a landowner fails to maintain the practices for a 10-year period, the landowner must repay all cost-sharing funds received for that land. If the landowner voluntarily relinquishes control or title to the land on which the approved practices have been established, the landowner may do one of two things: (1) obtain an agreement from the new owner to maintain the approved practices for the remainder of the 10-year period; or (2) repay the cost-sharing payments.
- It makes the Forest Development Fund a non-reverting, interest-bearing account.
- It repeals the expenditure limit on the Fund. Under current law, expenditures from the Fund are limited to four times the amount of the General Fund appropriation that year. This bill repeals this limitation.

The proposed committee substitute clarifies what type of fund the Forest Development Fund is and it amends the effective date. Under the original bill, the act became effective June 30, 1997.

The legislature created the State's first cost-sharing program and the companion forest product assessment in 1977. The Forest Development Program was designed to encourage woodland owners to reforest their land after harvest and to put idle or underproductive land into trees. The program offers cost share assistance to private landowners as an incentive to put and keep forestland in a forest development plan. There is an assessment levied on primary forest products processed from North Carolina timber to provide the major source of funds for this program. The General Assembly also appropriates money for the program. The collection of the assessment is suspended in any fiscal year in

which the General Assembly fails to make General Fund appropriations to the Fund or in which there is carried forward from previous years a balance of unobligated funds in the Fund greater than twice the amount appropriated from the General Fund for that fiscal year.

An eligible landowner may receive forest development cost sharing payments for satisfactorily completing approved forestry practices. The amount of assistance cannot exceed the lesser of 60% of the landowner's actual per acre cost incurred in implementing the approved practices or 60% of the prevailing per acre cost as determined by the Secretary. In 1995, it was estimated that 561,000 acres had been planted through the program. Since the program began, instances of willful destruction and neglect of trees for which cost-sharing payments have been received are increasing. The investment sought to encourage is lost when the planted trees are not brought full cycle to commercial harvest. To address this problem, this bill requires recipients of the cost share funds to reimburse the program if trees are not maintained and protected for 10 years. The funds would be used to fund new projects.

There has not been an increase in the assessment rate since the establishment of the program 1977. The State has appropriated \$700,000 to the Fund each year since 1993. However, at the current rate, existing funds are not expect to last throughout the fiscal year. Under the current law, any State appropriations left in the fund at the end of the fiscal year revert to the General Fund and any interest accruing on the money in the Fund is credited to the General Fund. Under this bill, the Fund becomes an interest-bearing, non-reverting account to help maintain and increase the revenue available in the Fund.

**NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE**

BILL NUMBER: House Bill 457
SHORT TITLE: Amend Forest Development Act
SPONSOR(S): Representative Weatherly

	FISCAL IMPACT				
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 1997-98</u>	<u>FY 1998-99</u>	<u>FY 1999-00</u>	<u>FY 2000-01</u>	<u>FY 2001-02</u>
REVENUES	Between \$195,000 and \$260,000 in earned interest annually				
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:	Primary Forest Produce Assessment Act				
EFFECTIVE DATE:	When it becomes law				

BILL SUMMARY:

The proposed act amends General Statute 113A-178 to provide that landowners who do not maintain for ten years the areas and trees for which they have received cost-sharing funds must repay those funds to the Forest Development Fund. The word "maintain" is defined as making every reasonable effort to protect the reforested area from destructive fire and grazing, insects, disease, noxious weeds, and unauthorized clearing of trees. Also amends G.S. 113A-183 to provide that funds in the Forest Development Fund, including funds appropriated from the General Fund, do not revert and that interest on the funds shall be credited to the Forest Development Fund. Also eliminates provision restricting expenditures from Forest Development Fund to four times the amount of General Fund appropriations for that year.

The original bill, replaced by the House Committee Substitute, included a requirement that eligible landowners maintain approved practices for 10 years, and repay cost-sharing funds if they do not. Substitute replaces this requirement with provision for written agreement under which landowner agrees to maintain practices for 10 years and repay funds if they fail to do so. Provides for continuation of approved practices during 10-year period if original landowner relinquishes control or title to land.

Source: Institute of Government Bill Digest

ASSUMPTIONS AND METHODOLOGY:

The fund annually maintains a balance of \$3 to \$4 million in cost sharing assistance that is obligated for approved projects. (After a project is approved landowners are given one year to begin and one year to complete the project. There are also cases where extensions are granted. Once a project has been approved the amount is designated within the fund and is disbursed when the project is complete.) The current interest rate on short term investments, made by the State Treasurer, is 6.486%. The expected gain in earned interest, based on the stated balance, is between \$195,000 and \$260,00 annually.

Source: Division of forest Resources; Dept. of Environment, Health, and Natural Resources

FISCAL RESEARCH DIVISION: 733-4910

PREPARED BY: Warren Plonk

APPROVED BY:

DATE: July 7, 1997

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

2

HOUSE BILL 340
Committee Substitute Favorable 4/10/97

Short Title: Kannapolis Property Acquisitions.

(Local)

Sponsors:

Referred to:

February 26, 1997

- 1 A BILL TO BE ENTITLED
2 AN ACT PROVIDING THAT THE CITY OF KANNAPOLIS MAY CONDEMN
3 OR ACQUIRE PROPERTY IN ROWAN COUNTY WITHOUT THE CONSENT
4 OF THE ROWAN COUNTY BOARD OF COMMISSIONERS.
5 The General Assembly of North Carolina enacts:
6 Section 1. Notwithstanding the provisions of G.S. 153A-15, the City of
7 Kannapolis may condemn or acquire real property or an interest in real property
8 located in Rowan County without the consent or approval of the Rowan County
9 Board of Commissioners.
10 Section 2. This act is effective when it becomes law.

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

7-8-97

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

JACK MCCRE

MIDPA OF D I A E S

George P. Long

NCDDR

Joe Clingman

Sierra Club / CC NC

Mac Boxley

N.C. Aggregates Assoc.

Frank Jones

Agriculture Alliance of N.C.

R. ROGERS

DEHNR

Andy McCall

DEHNR

Sarah Guier

DEHNR

Don McLaughlin

NCRMA

FRAN RESTON

NCRMA

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

7-8-97

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Bryce Worth	Senator Reeves
Chris Fitzsimon	Common Sense Foundation
Greg Maddox	Atlanta
Shane Kincaid	EGH + S
Samuel Hughes	New Bern NC
Bob Stoen	NC Forestry Assoc.
Dianne Beasley	NC Forest Service
Michael Thompson	NC Forest Service
Ed Regan	N.C. Assoc. of Co. Comm.
Alice Garland	Electricities
Jeff Mann	North Carolina Railroad Company

SENATE FINANCE COMMITTEE

WEDNESDAY, JULY 9, 1997

8:30 A.M. - Room 544 LOB

The Senate Finance Committee met. There were 25 members of the Committee present. Senator David W. Hoyle, Co-Chairman, called the meeting to order.

H. B. 14 Tax on Custom Computer Software

Representative Cansler came to explain the bill. Senator Cochrane moved for a "favorable" report, motion passed.

H. B. 843 - Cedar Rock Incorporated

Representative Starnes came to explain the bill. Senator Kerr moved for adoption of committee substitute, motion passed. Senator Conder sent an amendment to the bill to name Senator Donald Kincaid who is to soon retire from the Senate as Interim Mayor of Cedar Rock until the election for Mayor was held in accordance with this Bill and made a motion for adoption, motion passed. Senator Blust moved for reconsideration of amendment, motion passed. Senator Blust then moved for defeat of amendment, motion passed. Senator McDaniel moved for a "favorable" report of committee substitute, motion passed.

H. B. 457 - Amend Forest Development Act

NOTE: This bill was considered earlier in the meeting and now is being brought back for reconsideration. Senator Kerr moved for adoption of committee substitute, motion passed. Senator Wellons moved for a "favorable" report, motion passed.

S. B. 1001 - Expand Amusement Tax Exemptions

Senator Kinnaird came to explain the bill. Senator Kerr moved for adoption of proposed committee substitute, motion passed. Senator Reeves moved for a "favorable" report, motion passed.

SENATE FINANCE COMMITTEE

Wednesday, July 9, 1997

Page -2-

H. B. 1157 - Various State Tax Law Changes

Representation Morris came to explain the bill. Senator Kerr moved for adoption of committee substitute, motion passed. Mrs. Sabra Faires with the Department of Revenue spoke on the bill. Senator Wellons moved for a "favorable" report, motion passed.

H. B. 35 - Conform Sales Tax Refund Period

Representative Capps came to explain the bill. Senator Kerr moved for adoption of a committee substitute to this bill, motion passed. Mrs. Sabra Faires with Department of Revenue spoke on the bill. Senator Foxx moved for a "favorable" report, motion passed.

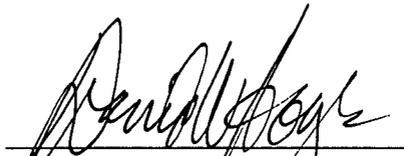
Senator Hoyle turned the Meeting over to Senator Kerr so that he might explain one of his bills.

S. B. 1073 - IRMC Restructuring-2

Senator Hoyle came to explain the bill and moved for adoption of a proposed committee substitute, motion passed. Mr. Bill Forbes, President of the Auctioneers Association spoke on the Bill. Senator Dannelly moved for a "favorable" report, motion passed.

Senator Kerr stated that we would take S. B. 874 - Resolution of Seed Claims and S. B. 36 - Uniform Tax on Piped Natural Gas both of which were on the Agenda up for consideration at a later meeting. On Senate Bill 36, Mrs. Sabra Faires with the Department of Revenue did speak on the Bill.

Meeting adjourned.


David W. Hoyle, Co-Chair


Penny N. Williams, Clerk


John H. Kerr, III Co-Chair


Evelyn S. Hartsell, Clerk

SENATE FINANCE COMMITTEE

Wednesday, July 9, 1997

Page -3-

NOTE:

Agenda is Attachment # 1

Visitor's Registration is Attachment # 2

Committee Report that is date 7-10-97 is Attachment # 3

AGENDA
FOR
SENATE FINANCE MEETING
WEDNESDAY, JULY 9, 1997
8:30 A.M., ROOM 544

SB 36 - Uniform Tax on Piped Natural Gas - Sen. Kerr

SB 874 - Resolution of Seed Claims - Sen. Kerr

.. SB 1001 - Expand Amusement Tax Exemptions - Sen. Kinnaird

.. HB 14 - Tax on Custom Computer Software - Rep. Cansler

.. HB 35 - Conform Sales Tax Refund Period - Rep. Capps

.. HB 457 - Amend Forest Development Act - Rep. Weatherly

.. HB 843 - Cedar Rock Incorporated - Rep. Starnes

.. HB 1157 - Various State Tax Law Changes - Rep. Morris

.. SB 1073 - IRMC Restructuring-2 - Sen. Hoyle

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

4

HOUSE BILL 14
Corrected Copy 2/11/97
Committee Substitute Favorable 6/25/97
Fourth Edition Engrossed 7/2/97

Short Title: Update Custom Computer Software.

(Public)

Sponsors:

Referred to:

February 3, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO MODIFY THE SALES TAX DEFINITION OF CUSTOM
3 COMPUTER SOFTWARE.
4 The General Assembly of North Carolina enacts:
5 Section 1. G.S. 105-164.3(20) reads as rewritten:
6 "(20) ~~'Tangible personal property' means and includes personal property~~
7 ~~which~~ Tangible personal property. -- Personal property that may
8 be seen, weighed, measured, felt felt, or touched or is in any other
9 manner perceptible to the senses. The term "~~tangible personal~~
10 ~~property~~" shall does not include stocks, bonds, notes, ~~insurance~~
11 ~~insurance~~, or other obligations or securities, nor ~~shall does~~ it
12 include water delivered by or through main lines or pipes either
13 for commercial or domestic use or consumption. The term includes
14 all "~~canned~~" or ~~prewritten computer programs, either in the form~~
15 ~~of written procedures or in the form of storage media on which or~~
16 ~~in which the program is recorded, held, or existing for general or~~
17 ~~repeated sale, lease, or license to use or consume. The term does~~
18 ~~not include the design, development, writing, translation,~~
19 ~~fabrication, lease, license to use or consume, or transfer for a~~
20 ~~consideration of title or possession of a custom computer program,~~
21 ~~other than a basic operational program, either in the form of~~

1 ~~written procedures or in the form of storage media on which or in~~
2 ~~which the program is recorded, or any required documentation or~~
3 ~~manuals designed to facilitate the use of the custom computer~~
4 ~~program. The term also does not include access to a computer~~
5 ~~program or a database when the user of the computer program or~~
6 ~~database receives a separately stated fee or other charge for the~~
7 ~~access.~~

8 ~~As used in this subdivision:~~

- 9 a. ~~"Basic operational program" or "control program" means a~~
10 ~~computer program that is fundamental and necessary to the~~
11 ~~functioning of a computer. A basic operational program is~~
12 ~~that part of an operating system, including supervisors,~~
13 ~~monitors, executives, and control or master programs, which~~
14 ~~consists of the control program elements of that system. A~~
15 ~~control or master program, as opposed to a processing~~
16 ~~program, controls the operation of a computer by managing~~
17 ~~the allocation of all system resources, including the central~~
18 ~~processing unit, main storage, input/output devices, and~~
19 ~~processing programs. A processing program is used to~~
20 ~~develop and implement the specific applications the~~
21 ~~computer is to perform.~~
- 22 b. ~~"Computer program" means the complete plan for the~~
23 ~~solution of a problem, such as the complete sequence of~~
24 ~~automatic data processing equipment instructions necessary~~
25 ~~to solve a problem, and includes both systems and~~
26 ~~application programs and subdivisions, such as assemblers,~~
27 ~~compilers, routines, generators, and utility programs.~~
- 28 e. ~~"Custom computer program" means a computer program~~
29 ~~prepared to the special order of the customer. Custom~~
30 ~~computer programs include one of the following elements:~~
- 31 1. ~~Preparation or selection of the programs for the~~
32 ~~customer's use requires an analysis of the customer's~~
33 ~~requirements by the vendor; or~~
 - 34 2. ~~The program requires adaptation by the vendor to be~~
35 ~~used in a particular make and model of computer~~
36 ~~utilizing a specified output device.~~
- 37 d. ~~"Storage media" means punched cards, tapes, disks,~~
38 ~~diskettes, or drums.~~

39 computer software delivered on a storage medium, such as a cd
40 rom, a disk, or a tape."

41 Section 2. G.S. 105-164.13 is amended by adding a new subdivision to

42 read:

43 "(43) Custom computer software. -- 'Custom computer software' is
44 software written in accordance with the specifications of a specific

1 customer. The term includes a user manual or other
2 documentation that accompanies the sale of the software. The
3 term does not include prewritten software that can be installed and
4 executed with no changes to the software's source code other than
5 changes made to configure hardware or software."

6 Section 3. This act becomes effective October 1, 1997, and applies to
7 sales made on or after that date.

EXPLANATION OF HOUSE BILL 14:
Update Custom Computer Software (4th Edition)

TO: Senate Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: July 7, 1997
SPONSOR: Representative Cansler
Recommendation of the Revenue Laws Study Committee

House Bill 14 modifies the sales tax definition of custom computer software to make a clear distinction between software that is subject to State and local sales and use taxes and software that is not subject to these taxes. The bill reflects an agreement between the sponsor, the Department of Revenue, and the North Carolina Electronic & Information Technologies Association on the definition of custom computer software. The bill becomes effective October 1, 1997.

Under current law, canned software is subject to sales and use taxes and custom software is not subject to these taxes. The North Carolina sales and use tax law excludes custom computer software from tax to implement the policy that computer services are not subject to sales and use taxes. The cost for custom computer programs is attributable to the programming services provided rather than the cost of producing a tangible form of the program on a cd rom or tape. The current definition of custom software is very broad, however, and can include off-the counter "shrink-wrap" programs and programs that have been modified only slightly by the vendor.

Under the current definition, custom computer software includes all software recommended to the purchaser by the seller after performing an analysis of the purchaser's needs. Thus, under this definition, a common product such as Microsoft's Word program becomes exempt from sales and use tax if the seller of the program analyzes the customer's needs and decides that Word is better for the customer than WordPerfect or another competing product. The bill deletes an analysis of a customer's needs as a determining factor in whether a program is custom (exempt) or canned (taxable).

The current definition of custom software also includes all programs adapted by the seller of the program to be used in a particular computer and its associated input/output devices such as printers. This type of adaptation can be slight, such as the completion of a "fill-in-the-blank" series in which the particular hardware to be used with the program is designated, or it can require extensive changes to the lines of code in the software. Under the current definition, any slight modification of a program makes the entire program exempt from State and local sales and use taxes. The bill changes current law by providing that prewritten software that can be installed and executed with no changes to the software's source code other than changes made to configure hardware or software.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 14 (House Finance Committee Sub.)

SHORT TITLE: Update Custom Computer Software

SPONSOR(S): Rep. Cansler

FISCAL IMPACT

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

FY 1997-98 FY 1998-99 FY 1999-00 FY 2000-01 FY 2001-02

REVENUES

General Fund	\$512,000	\$738,000	\$799,000	\$865,000	\$935,000
Local Govts.	\$256,000	\$369,000	\$400,000	\$432,000	\$468,000

PRINCIPAL DEPARTMENT(S) &

PROGRAM(S) AFFECTED: Department of Revenue; Local Governments

EFFECTIVE DATE: October 1, 1997

BILL SUMMARY: The act redefines custom computer software for sales tax purposes as software written according to the specifications of a specific customer. Custom software is not "prewritten software that can be installed and executed with no changes to the software's source code other than changes made to configure hardware or software or to select personal preferences".

ASSUMPTIONS AND METHODOLOGY: The Department of Revenue has no data on canned versus custom software, because it collects sales tax data by type of business and not by type of commodity. The Software Publishers Association reported retail software sales of \$10.6 billion in the US and Canada in 1996. If North Carolina's share of the software sales equals its population share of the US and Canada (2.5%), then North Carolina retail software sales in 1996 were \$265 million. The Software Publishers Association reported software sales for 1995 and 1996 grew 8.2% each year. This inflation rate is used in this fiscal note for the next five years.

The Tax Research Division in the Department of Revenue believes the state is losing sales tax on 3% to 8% of retail software sales because of the ambiguous custom software language now in the

statutes. In other words, by clarifying the definition of custom software in HB 14, the Department of Revenue projects the annual revenue gain to the state and local governments will equal the sales tax on 3% to 8% of software sales. To simplify the estimation of the revenue gain, this fiscal note uses 5.5% or the midpoint of the Department of Revenue's estimate.

(\$ Millions)

	<u>FY 95-96</u>	<u>FY 96-97</u>	<u>FY 97-98</u>	<u>FY 98-99</u>	<u>FY 99-00</u>	<u>FY 00-01</u>	<u>FY 01-02</u>
	265.00	286.73	310.24	335.68	363.21	392.99	425.22
5.5% of sales			17.06	18.46	19.98	21.61	23.39
4% State tax			0.683	0.738	0.799	0.865	0.935
2% Local tax			0.341	0.369	0.400	0.432	0.468

FY 1997-98 tax revenues will be 75% of the total shown due to an October 1 effective date.

FISCAL RESEARCH DIVISION

733-4910

PREPARED BY: Richard Bostic

APPROVED BY: Tom Covington

DATE: June 24, 1997

AS


How the States Tax Sales of Computers and Computer Software

¶ 60-160

Generally, computer hardware is taxable with certain exceptions for computers used in manufacturing, production, research, etc. Similar exceptions may exist for software that would otherwise be taxable.

The methods by which the states apply their sales and use taxes to sales of computer software vary greatly. Generally, most states impose their sales taxes on transfers of tangible personal property, but computer software is not easily classified as "tangible" or "intangible" because the value of the information contained on the software must be balanced against the value of the tangible tapes, discs, punchcards, etc., used to transfer the information. Many states, through case law, determine the classification of software by utilizing the "true object" test. If the "true object" of the transaction is to obtain tangible personal property, the software will be taxable; if the "true object" of the transaction is to obtain a service, the software will not be taxable.

Many states distinguish between "canned" or "prewritten" software, which can be purchased off the shelf and used in a customer's computer without any modification, and "custom" software, which is generally a program created to meet a specific customer's needs. In some states, a canned program modified to meet a particular customer's needs qualifies as a nontaxable custom program. Definitions of "custom" programs vary widely among the states.

For purposes of this chart, "T" stands for taxable and "E" stands for exempt, but the designations are of a general nature and exceptions unnoted in the chart may exist.

State	Canned Programs	Custom Programs	Modified Canned Programs	Computer Hardware
Alabama	E ²	E	E	T
Arizona	T	E	E	T
Arkansas	T	T	T	T
California	T	E	E ¹	T
Colorado	T	E	E	T
Connecticut	T	T	T	T
District of Columbia	T	T	T	T
Florida	T	E	E	T
Georgia	T	E	T	T
Hawaii	T	T	T	T
Idaho	T	E	E ¹	T
Illinois	T	E	E	T
Indiana	T	E	T	T
Iowa	T	E	E ¹	T
Kansas	T	E	E ¹	T
Kentucky	T	E	E	T
Louisiana	T	T	T	T
Maine	T	T	T	T

¹ If charges for modification are separately stated.

² "Firmware", i.e. special purchase memory units attached to a computer that becomes an integral part of the electronic circuitry (such as game cartridges) are taxable.

State	Canned Programs	Custom Programs	Modified Canned Programs	Computer Hardware
Maryland	T	E	E ³	T
Massachusetts	T	E	E ⁴	T
Michigan	T	E	E ¹	T
Minnesota	T	E	E ¹	T
Mississippi	T	T	T	T
Missouri	T	E	T	T
Nebraska	T	T	T	T
Nevada	T	E	E ¹	T
New Jersey	T	E	E	T
New Mexico	T	T	T	T
New York	T	E	E ¹	T
North Carolina	T	E	E	T
North Dakota	T	E	E ¹	T
Ohio	T	T	T	T
Oklahoma	T	E	T	T
Pennsylvania	T	T	T	T
Rhode Island	T	E	T	T
South Carolina	T	T	T	T
South Dakota	T	T	T	T
Tennessee	T	T	T	T
Texas	T	T	T	T
Utah	T	E	E ¹	T
Vermont	T	E	E	T
Virginia	T	E	E ¹	T
Washington	T	E	T	T
West Virginia	T	T	T	T
Wisconsin	T	E	E	T
Wyoming	T	E	T	T

[The next page is 8401.]

³ If software incorporates significant creative input and the service predominates over the sale of the software.

⁴ If charges for modification are separately stated or, if not separately stated, the sales price of the canned software is an inconsequential element of the cost of the transaction.

¹ If charges for modification are separately stated.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

2

HOUSE BILL 843
Committee Substitute Favorable 4/16/97

Short Title: Cedar Rock Incorporation.

(Local)

Sponsors:

Referred to:

April 7, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO INCORPORATE THE TOWN OF CEDAR ROCK SUBJECT TO A
3 REFERENDUM.

4 The General Assembly of North Carolina enacts:

5 Section 1. A Charter for the Town of Cedar Rock is enacted to read:

6 "CHARTER OF THE TOWN OF CEDAR ROCK.

7 "CHAPTER I.

8 "INCORPORATION AND CORPORATE POWERS.

9 "Section 1.1. **Incorporation and Corporate Powers.** The inhabitants of the Town of
10 Cedar Rock are a body corporate and politic under the name 'Town of Cedar Rock'.
11 Under that name they shall have all the powers, duties, rights, privileges, and
12 immunities conferred and imposed on cities by the general law of North Carolina.

13 "Section 1.2. **Map.** An official map of the Town, showing the current boundaries,
14 is maintained permanently in the office of the Town Clerk and is available for public
15 inspection. A true copy of the official map shall be filed in the office of the Caldwell
16 County Register of Deeds.

17 "CHAPTER II.

18 "TOWN BOUNDARIES.

19 "Section 2.1. **Town Boundaries.** Until modified in accordance with the law, the
20 boundaries of the Town of Cedar Rock are as follows:

21 BEGINNING on an existing 3/4 inch iron pipe, said BEGINNING POINT being
22 located South 37 degrees 40 minutes 46 seconds West 4,373.01 feet from the N.C.G.S.
23 Control Monument 'Blue Creek', and said BEGINNING POINT having the North

1 Carolina Grid Coordinates of North 810,320.99 feet, East 1,273,413.09 feet; thence
2 from the POINT OF BEGINNING and with the outside boundary of 'Cedar Rock
3 Estates' for the following calls: North 70 degrees 50 minutes 38 seconds East 238.03
4 feet to an existing 5/8 inch iron pipe; South 18 degrees 14 minutes 17 seconds East
5 156.97 feet to an existing 4 inch iron pipe in concrete; North 88 degrees 41 minutes
6 16 seconds East 623.03 feet to an existing 1 inch iron pipe; South 87 degrees 29
7 minutes 50 seconds East 627.56 feet to an existing 1/2 inch iron pipe; South 03
8 degrees 43 minutes 52 seconds West 1,826.93 feet to the center of a 14 inch hickory
9 tree; North 54 degrees 38 minutes 11 seconds East 522.13 feet to an existing 1/2 inch
10 iron pipe; South 51 degrees 00 minutes 49 seconds East 106.79 feet to an existing 1/2
11 inch iron pipe; South 50 degrees 30 minutes 06 seconds East 231.20 feet to an existing
12 1/2 inch iron pipe; South 31 degrees 16 minutes 23 seconds East 68.60 feet to an
13 existing 1/2 inch iron pipe; South 00 degrees 15 minutes 16 seconds West 138.85 feet
14 to an existing 1/2 inch iron pipe; South 09 degrees 24 minutes 41 seconds East 107.32
15 feet to an existing 1/2 inch iron pipe; South 43 degrees 30 minutes 17 seconds West
16 69.03 feet; South 02 degrees 15 minutes 30 seconds East 40.92 feet to an existing 1/2
17 inch iron pipe; South 02 degrees 40 minutes 26 seconds West 30.00 feet; South 87
18 degrees 23 minutes 34 seconds East 66.97 feet to a point of curve, with a curve
19 concave to the southwest having a radius of 150.00 feet, an arc of 37.68 feet, and a
20 chord of South 80 degrees 11 minutes 47 seconds East 37.58 feet to a point of
21 tangency; South 73 degrees 00 minutes 00 seconds East 176.96 feet to a point of
22 curve, with a curve concave to the northwest having a radius of 150.00, an arc of
23 92.48 feet , and a chord of North 89 degrees 20 minutes 14 seconds East 91.02 feet;
24 North 71 degrees 40 minutes 28 seconds East 218.47 feet; South 09 degrees 06
25 minutes 50 seconds East 92.61 feet to a point of curve, with a curve concave to the
26 southwest having a radius of 70.00 feet, an arc of 102.26 feet, and a chord of North 61
27 degrees 10 minutes 06 seconds West 93.41 feet to a point of tangency; South 77
28 degrees 00 minutes 00 seconds West 135.17 feet; South 61 degrees 32 minutes 06
29 seconds West 210.35 feet to a new 1/2 iron rod in the center of a branch; thence with
30 the branch for the following calls: North 63 degrees 01 minutes 53 seconds West 19.38
31 feet; North 84 degrees 52 minutes 56 seconds West 37.74 feet; South 53 degrees 44
32 minutes 43 seconds West 13.37 feet; South 81 degrees 12 minutes 54 seconds West
33 31.74 feet; South 51 degrees 07 minutes 19 seconds West 33.65 feet; South 63 degrees
34 58 minutes 59 seconds West 43.73 feet; North 88 degrees 07 minutes 22 seconds West
35 42.99 feet; South 44 degrees 55 minutes 55 seconds West 17.93 feet; South 69 degrees
36 07 minutes 25 seconds West 68.67 feet; North 86 degrees 52 minutes 52 seconds West
37 19.07 feet; South 60 degrees 37 minutes 00 seconds West 52.83 feet; South 37 degrees
38 58 minutes 33 seconds West 67.68 feet to a new 1/2 inch iron rod; North 71 degrees
39 54 minutes 38 seconds West 47.90 feet; North 87 degrees 51 minutes 11 seconds West
40 40.94 feet; South 65 degrees 28 minutes 08 seconds West 88.14 feet; North 76 degrees
41 32 minutes 31 seconds West 24.52 feet; South 25 degrees 04 minutes 23 seconds West
42 55.61 feet; South 38 degrees 00 minutes 34 seconds West 33.32 feet; South 52 degrees
43 06 minutes 23 seconds West 81.97 feet; South 50 degrees 29 minutes 02 seconds West
44 51.95 feet to a new 1/2 inch iron pipe in the branch; South 55 degrees 08 minutes 07

1 seconds East 61.08 feet; South 34 degrees 28 minutes 26 seconds East 86.12 feet;
2 South 35 degrees 27 minutes 16 seconds East 77.74 feet; South 32 degrees 46 minutes
3 52 seconds East 67.55 feet; South 23 degrees 50 minutes 35 seconds East 63.51 feet;
4 South 11 degrees 50 minutes 57 seconds East 67.12 feet; South 06 degrees 16 minutes
5 22 seconds East 68.09 feet; South 07 degrees 07 minutes 21 seconds West 107.78 feet
6 to the forks of the branch; thence continuing with a branch South 12 degrees 51
7 minutes 27 seconds East 48.43 feet to a new 1/2 inch iron rod; thence leaving the
8 branch South 51 degrees 07 minutes 11 seconds East 271.59 feet to a new 1/2 inch
9 iron rod; thence South 04 degrees 44 minutes 20 seconds West 200.00 feet to a new
10 1/2 inch iron rod; thence North 90 degrees 00 minutes 00 seconds East 198.45 feet to
11 a new 1/2 inch iron rod at a point of curve; thence with a curve concave to the
12 northeast having a radius of 50.00 feet, an arc of 117.81 feet, and a chord of South 86
13 degrees 20 minutes 25 seconds East 92.39 feet to a new 1/2 inch iron rod at a point of
14 compound curve; thence with a curve concave to the northwest having a radius of
15 277.50 feet, an arc of 212.40 feet, and a chord of South 03 degrees 05 minutes 05
16 seconds West 207.25 feet to a new 1/2 inch iron rod at a point of tangency; thence
17 South 25 degrees 01 minutes 11 seconds West 91.90 feet to a new 1/2 inch iron rod at
18 a point of curve; thence with a curve concave to the southeast having a radius of
19 127.50 feet, an arc of 37.92 feet and a chord of South 18 degrees 25 minutes 19
20 seconds West 37.38 feet to a point of tangency; thence South 09 degrees 54 minutes
21 09 seconds West 95.67 feet to a point of curve; thence with a curve concave to the
22 southeast having a radius of 188.59 feet, an arc of 39.36 feet, and a chord of South 69
23 degrees 30 minutes 08 seconds West 39.29 feet to a point of compound curve; thence
24 with a curve concave to the southeast having a radius of 356.12 feet, an arc of 253.57
25 feet, and a chord of South 28 degrees 45 minutes 22 seconds West 248.25 feet to a
26 point of tangency; thence South 08 degrees 21 minutes 27 seconds West 153.29 feet to
27 a point of curve; thence with a curve concave to the northwest having a radius of
28 155.00 feet, an arc of 135.15 feet, and a chord of South 33 degrees 20 minutes 15
29 seconds West 130.91 feet; thence North 85 degrees 46 minutes 03 seconds West 928.26
30 feet to an existing 1/2 inch iron pipe; thence North 85 degrees 46 minutes 03 seconds
31 West 300.00 feet to a new 1/2 inch iron rod; thence South 09 degrees 26 minutes 57
32 seconds West 1,072.65 feet to a new 1/2 inch iron rod; thence North 84 degrees 52
33 minutes 23 seconds West 706.50 feet to a new 3/4 inch iron point on top of a ridge;
34 thence South 68 degrees 43 minutes 00 seconds West 648.42 feet to a new 3/4 inch
35 iron pipe at a branch; thence South 30 degrees 04 minutes 47 seconds West 990.00
36 feet to a P.K. Nail set in an X marked on a large rock; thence South 38 degrees 45
37 minutes 00 seconds West 577.50 feet; thence South 07 degrees 45 minutes 00 seconds
38 West 1,320.00 feet; thence North 22 degrees 00 minutes 00 seconds West 1,815.00 feet;
39 thence North 32 degrees 30 minutes 00 seconds West 369.60 feet; thence North 58
40 degrees 45 minutes 00 seconds West 297.00 feet; thence North 20 degrees 30 minutes
41 00 seconds West 1,690.90 feet; thence North 17 degrees 00 minutes 00 seconds West
42 957.00 feet; thence North 05 degrees 00 minutes 00 seconds West 115.40 feet; thence
43 North 75 degrees 32 minutes 00 seconds West 51.81 feet; thence North 00 degrees 51
44 minutes 00 seconds West 313.40 feet; thence North 68 degrees 10 minutes 00 seconds

1 East 53.55 feet; thence North 00 degrees 30 minutes 00 seconds East 272.50 feet;
2 thence North 24 degrees 00 minutes 00 seconds East 396.00 feet; thence North 29
3 degrees 30 minutes 00 seconds East 396.00 feet; thence North 40 degrees 00 minutes
4 00 seconds East 165.00 feet; thence North 38 degrees 23 minutes 00 seconds West
5 770.00 feet to a point in the center of N.C. Highway #18; thence with the center of
6 the highway for the following calls: North 74 degrees 34 minutes 00 seconds East
7 1,143.56 feet; North 72 degrees 46 minutes 00 seconds East 280.00 feet; North 71
8 degrees 19 minutes 00 seconds East 400.00 feet; North 71 degrees 37 minutes 00
9 seconds East 600.00 feet; North 71 degrees 15 minutes 00 seconds East 700.00 feet;
10 North 60 degrees 25 minutes 00 seconds East 130.00 feet; North 47 degrees 00
11 minutes 00 seconds East 130.00 feet; North 51 degrees 00 minutes 00 seconds East
12 130.00 feet; North 61 degrees 00 minutes 00 seconds East 130.00 feet; North 67
13 degrees 30 minutes 00 seconds East 130.00 feet; North 74 degrees 20 minutes 00
14 seconds East 180.00 feet to a point in the center of the road; thence leaving the road
15 South 42 degrees 30 minutes 00 seconds East 120.00 feet to a point in the center of
16 Lower Creek; thence with the center of Lower Creek for four calls: North 63 degrees
17 32 minutes 00 seconds East 136.00 feet; North 73 degrees 39 minutes 00 seconds East
18 140.00 feet; North 56 degrees 15 minutes 00 seconds East 73.00 feet; North 88 degrees
19 19 minutes 00 seconds East 137.00 feet; thence North 11 degrees 05 minutes 00
20 seconds East, leaving the creek 145.93 feet; thence South 18 degrees 30 minutes 00
21 seconds East 254.28 feet; thence South 18 degrees 43 minutes 00 seconds West 395.30
22 feet; thence South 69 degrees 08 minutes 52 seconds West 66.71 feet; thence South 61
23 degrees 28 minutes 34 seconds East 305.43 feet to an existing 3/4 inch iron pipe;
24 thence North 70 degrees 40 minutes 49 seconds East 70.00 feet to the POINT OF
25 BEGINNING containing 731.94 acres plus or minus.

26 "CHAPTER III.

27 "GOVERNING BODY.

28 "Section 3.1. **Structure of Governing Body; Numbers of Members.** The Council
29 shall be composed of five members to be elected by all the qualified voters of the
30 Town for terms of four years, or until their successors are elected and qualified.

31 "Section 3.2. **Mayor-Council Plan.** The Town of Cedar Rock shall operate under
32 the Mayor-Council plan as provided in Part 3 of Article 7 of Chapter 160A of the
33 General Statutes.

34 "Section 3.3. **Mayor; Term of Office; Duties.** The Mayor shall be elected by the
35 Council from among its membership to serve for a term of four years. The Mayor
36 shall be the official head of the Town government and shall preside at meetings of
37 the Council and shall have the right to vote on all matters before the Council.

38 "Section 3.4. **Meetings.** In accordance with general law, the Council shall
39 establish a suitable time and place for its regular meetings. Special and emergency
40 meetings may be held as provided by general law.

41 "Section 3.5. **Quorum; Voting Requirements.** Official actions of the Council and
42 all votes shall be taken in accordance with applicable provisions of general law,
43 particularly G.S. 160A-75. The quorum provisions of G.S. 160A-74 shall apply.

44 "CHAPTER IV.

1 "ELECTIONS.

2 "Section 4.1. **Regular Municipal Elections.** Regular municipal elections shall be
3 held in each odd-numbered year in accordance with the uniform municipal election
4 laws of North Carolina. Elections shall be conducted on a nonpartisan basis and the
5 results determined using the nonpartisan plurality method as provided in G.S. 163-
6 292.

7 "Section 4.2. **Election of Council Members.** Elections shall be conducted by the
8 Caldwell County Board of Elections, unless otherwise provided in accordance with
9 G.S. 163-285. In 1997, the three persons who receive the highest number of votes
10 shall serve four-year terms, and the two persons receiving the next highest number of
11 votes shall serve two-year terms. The terms will continue to be staggered, with
12 ensuing council members being elected for four-year terms.

13 "Section 4.3. **Special Elections and Referenda.** Special elections and referenda
14 may be held only as provided by general law or applicable local acts of the General
15 Assembly.

16 "Section 4.4. **Special Filing Period.** The Caldwell County Board of Elections shall
17 establish a special candidate filing period for the 1997 municipal elections."

18 Section 2. The provisions of G.S. 160A-63 shall not apply to the Town of
19 Cedar Rock until after the first election of the Town Council.

20 Section 3. From and after the effective date of this act, the citizens and
21 property in the Town of Cedar Rock shall be subject to municipal taxes levied for the
22 year beginning July 1, 1997, and for that purpose the Town shall obtain from
23 Caldwell County a record of property in the area herein incorporated that was listed
24 for taxes as of January 1, 1997, and the businesses in the Town shall be liable for
25 privilege license tax from the effective date of the privilege license tax ordinance.
26 The Town may adopt a budget ordinance for fiscal year 1997-98 without following
27 the timetable in the Local Government Budget and Fiscal Control Act.

28 Section 4. The Caldwell County Board of Elections shall conduct an
29 election on a date set by the Board, to be not less than 60 nor more than 120 days
30 after this act becomes law, for the purpose of submission to the qualified voters of the
31 area described in Section 2.1 of the Charter of the Town of Cedar Rock the question
32 of whether or not the area shall be incorporated as the Town of Cedar Rock.
33 Registration for the election shall be conducted in accordance with G.S. 163-288.2.

34 Section 5. In the election, the question on the ballot shall be:

35 "[] FOR [] AGAINST
36 Incorporation of the Town of Cedar Rock."

37 Section 6. In the election, if a majority of the votes are cast "For
38 incorporation of the Town of Cedar Rock", Sections 1 through 3 of this act shall
39 become effective on the date that the Caldwell County Board of Elections certifies
40 the results of the election. Otherwise, those sections shall have no force and effect.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

HOUSE BILL 843
Committee Substitute Favorable 4/16/97
Proposed Senate Committee Substitute H843-PCS6297

Short Title: Cedar Rock Incorporation.

(Local)

Sponsors:

Referred to:

April 7, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO INCORPORATE THE TOWN OF CEDAR ROCK SUBJECT TO A
3 REFERENDUM.
4 The General Assembly of North Carolina enacts:
5 Section 1. A Charter for the Town of Cedar Rock is enacted to read:
6 "CHARTER OF THE TOWN OF CEDAR ROCK.
7 "CHAPTER I.
8 "INCORPORATION AND CORPORATE POWERS.
9 "Section 1.1. **Incorporation and Corporate Powers.** The inhabitants of the Town of
10 Cedar Rock are a body corporate and politic under the name 'Town of Cedar Rock'.
11 Under that name they shall have all the powers, duties, rights, privileges, and
12 immunities conferred and imposed on cities by the general law of North Carolina.
13 "Section 1.2. **Map.** An official map of the Town, showing the current boundaries,
14 is maintained permanently in the office of the Town Clerk and is available for public
15 inspection. A true copy of the official map shall be filed in the office of the Caldwell
16 County Register of Deeds.
17 "CHAPTER II.
18 "TOWN BOUNDARIES.
19 "Section 2.1. **Town Boundaries.** Until modified in accordance with the law, the
20 boundaries of the Town of Cedar Rock are as follows:
21 BEGINNING on an existing 3/4 inch iron pipe, said BEGINNING POINT being
22 located South 37 degrees 40 minutes 46 seconds West 4,373.01 feet from the N.C.G.S.

1 Control Monument 'Blue Creek', and said BEGINNING POINT having the North
2 Carolina Grid Coordinates of North 810,320.99 feet, East 1,273,413.09 feet; thence
3 from the POINT OF BEGINNING and with the outside boundary of 'Cedar Rock
4 Estates' for the following calls: North 70 degrees 50 minutes 38 seconds East 238.03
5 feet to an existing 5/8 inch iron pipe; South 18 degrees 14 minutes 17 seconds East
6 156.97 feet to an existing 4 inch iron pipe in concrete; North 88 degrees 41 minutes
7 16 seconds East 623.03 feet to an existing 1 inch iron pipe; South 87 degrees 29
8 minutes 50 seconds East 627.56 feet to an existing 1/2 inch iron pipe; South 03
9 degrees 43 minutes 52 seconds West 1,826.93 feet to the center of a 14 inch hickory
10 tree; North 54 degrees 38 minutes 11 seconds East 522.13 feet to an existing 1/2 inch
11 iron pipe; South 51 degrees 00 minutes 49 seconds East 106.79 feet to an existing 1/2
12 inch iron pipe; South 50 degrees 30 minutes 06 seconds East 231.20 feet to an existing
13 1/2 inch iron pipe; South 31 degrees 16 minutes 23 seconds East 68.60 feet to an
14 existing 1/2 inch iron pipe; South 00 degrees 15 minutes 16 seconds West 138.85 feet
15 to an existing 1/2 inch iron pipe; South 09 degrees 24 minutes 41 seconds East 107.32
16 feet to an existing 1/2 inch iron pipe; South 43 degrees 30 minutes 17 seconds West
17 69.03 feet; South 02 degrees 15 minutes 30 seconds East 40.92 feet to an existing 1/2
18 inch iron pipe; South 02 degrees 40 minutes 26 seconds West 30.00 feet; South 87
19 degrees 23 minutes 34 seconds East 66.97 feet to a point of curve, with a curve
20 concave to the southwest having a radius of 150.00 feet, an arc of 37.68 feet, and a
21 chord of South 80 degrees 11 minutes 47 seconds East 37.58 feet to a point of
22 tangency; South 73 degrees 00 minutes 00 seconds East 176.96 feet to a point of
23 curve, with a curve concave to the northwest having a radius of 150.00, an arc of
24 92.48 feet , and a chord of North 89 degrees 20 minutes 14 seconds East 91.02 feet;
25 North 71 degrees 40 minutes 28 seconds East 218.47 feet; South 09 degrees 06
26 minutes 50 seconds East 92.61 feet to a point of curve, with a curve concave to the
27 southwest having a radius of 70.00 feet, an arc of 102.26 feet, and a chord of North 61
28 degrees 10 minutes 06 seconds West 93.41 feet to a point of tangency; South 77
29 degrees 00 minutes 00 seconds West 135.17 feet; South 61 degrees 32 minutes 06
30 seconds West 210.35 feet to a new 1/2 iron rod in the center of a branch; thence with
31 the branch for the following calls: North 63 degrees 01 minutes 53 seconds West 19.38
32 feet; North 84 degrees 52 minutes 56 seconds West 37.74 feet; South 53 degrees 44
33 minutes 43 seconds West 13.37 feet; South 81 degrees 12 minutes 54 seconds West
34 31.74 feet; South 51 degrees 07 minutes 19 seconds West 33.65 feet; South 63 degrees
35 58 minutes 59 seconds West 43.73 feet; North 88 degrees 07 minutes 22 seconds West
36 42.99 feet; South 44 degrees 55 minutes 55 seconds West 17.93 feet; South 69 degrees
37 07 minutes 25 seconds West 68.67 feet; North 86 degrees 52 minutes 52 seconds West
38 19.07 feet; South 60 degrees 37 minutes 00 seconds West 52.83 feet; South 37 degrees
39 58 minutes 33 seconds West 67.68 feet to a new 1/2 inch iron rod; North 71 degrees
40 54 minutes 38 seconds West 47.90 feet; North 87 degrees 51 minutes 11 seconds West
41 40.94 feet; South 65 degrees 28 minutes 08 seconds West 88.14 feet; North 76 degrees
42 32 minutes 31 seconds West 24.52 feet; South 25 degrees 04 minutes 23 seconds West
43 55.61 feet; South 38 degrees 00 minutes 34 seconds West 33.32 feet; South 52 degrees
44 06 minutes 23 seconds West 81.97 feet; South 50 degrees 29 minutes 02 seconds West

1 51.95 feet to a new 1/2 inch iron pipe in the branch; South 55 degrees 08 minutes 07
2 seconds East 61.08 feet; South 34 degrees 28 minutes 26 seconds East 86.12 feet;
3 South 35 degrees 27 minutes 16 seconds East 77.74 feet; South 32 degrees 46 minutes
4 52 seconds East 67.55 feet; South 23 degrees 50 minutes 35 seconds East 63.51 feet;
5 South 11 degrees 50 minutes 57 seconds East 67.12 feet; South 06 degrees 16 minutes
6 22 seconds East 68.09 feet; South 07 degrees 07 minutes 21 seconds West 107.78 feet
7 to the forks of the branch; thence continuing with a branch South 12 degrees 51
8 minutes 27 seconds East 48.43 feet to a new 1/2 inch iron rod; thence leaving the
9 branch South 51 degrees 07 minutes 11 seconds East 271.59 feet to a new 1/2 inch
10 iron rod; thence South 04 degrees 44 minutes 20 seconds West 200.00 feet to a new
11 1/2 inch iron rod; thence North 90 degrees 00 minutes 00 seconds East 198.45 feet to
12 a new 1/2 inch iron rod at a point of curve; thence with a curve concave to the
13 northeast having a radius of 50.00 feet, an arc of 117.81 feet, and a chord of South 86
14 degrees 20 minutes 25 seconds East 92.39 feet to a new 1/2 inch iron rod at a point of
15 compound curve; thence with a curve concave to the northwest having a radius of
16 277.50 feet, an arc of 212.40 feet, and a chord of South 03 degrees 05 minutes 05
17 seconds West 207.25 feet to a new 1/2 inch iron rod at a point of tangency; thence
18 South 25 degrees 01 minutes 11 seconds West 91.90 feet to a new 1/2 inch iron rod at
19 a point of curve; thence with a curve concave to the southeast having a radius of
20 127.50 feet, an arc of 37.92 feet and a chord of South 18 degrees 25 minutes 19
21 seconds West 37.38 feet to a point of tangency; thence South 09 degrees 54 minutes
22 09 seconds West 95.67 feet to a point of curve; thence with a curve concave to the
23 southeast having a radius of 188.59 feet, an arc of 39.36 feet, and a chord of South 69
24 degrees 30 minutes 08 seconds West 39.29 feet to a point of compound curve; thence
25 with a curve concave to the southeast having a radius of 356.12 feet, an arc of 253.57
26 feet, and a chord of South 28 degrees 45 minutes 22 seconds West 248.25 feet to a
27 point of tangency; thence South 08 degrees 21 minutes 27 seconds West 153.29 feet to
28 a point of curve; thence with a curve concave to the northwest having a radius of
29 155.00 feet, an arc of 135.15 feet, and a chord of South 33 degrees 20 minutes 15
30 seconds West 130.91 feet; thence North 85 degrees 46 minutes 03 seconds West 928.26
31 feet to an existing 1/2 inch iron pipe; thence North 85 degrees 46 minutes 03 seconds
32 West 300.00 feet to a new 1/2 inch iron rod; thence South 09 degrees 26 minutes 57
33 seconds West 1,072.65 feet to a new 1/2 inch iron rod; thence North 84 degrees 52
34 minutes 23 seconds West 706.50 feet to a new 3/4 inch iron point on top of a ridge;
35 thence South 68 degrees 43 minutes 00 seconds West 648.42 feet to a new 3/4 inch
36 iron pipe at a branch; thence South 30 degrees 04 minutes 47 seconds West 990.00
37 feet to a P.K. Nail set in an X marked on a large rock; thence South 38 degrees 45
38 minutes 00 seconds West 577.50 feet; thence South 07 degrees 45 minutes 00 seconds
39 West 1,320.00 feet; thence North 22 degrees 00 minutes 00 seconds West 1,815.00 feet;
40 thence North 32 degrees 30 minutes 00 seconds West 369.60 feet; thence North 58
41 degrees 45 minutes 00 seconds West 297.00 feet; thence North 20 degrees 30 minutes
42 00 seconds West 1,690.90 feet; thence North 17 degrees 00 minutes 00 seconds West
43 957.00 feet; thence North 05 degrees 00 minutes 00 seconds West 115.40 feet; thence
44 North 75 degrees 32 minutes 00 seconds West 51.81 feet; thence North 00 degrees 51

1 minutes 00 seconds West 313.40 feet; thence North 68 degrees 10 minutes 00 seconds
2 East 53.55 feet; thence North 00 degrees 30 minutes 00 seconds East 272.50 feet;
3 thence North 24 degrees 00 minutes 00 seconds East 396.00 feet; thence North 29
4 degrees 30 minutes 00 seconds East 396.00 feet; thence North 40 degrees 00 minutes
5 00 seconds East 165.00 feet; thence North 38 degrees 23 minutes 00 seconds West
6 770.00 feet to a point in the center of N.C. Highway #18; thence with the center of
7 the highway for the following calls: North 74 degrees 34 minutes 00 seconds East
8 1,143.56 feet; North 72 degrees 46 minutes 00 seconds East 280.00 feet; North 71
9 degrees 19 minutes 00 seconds East 400.00 feet; North 71 degrees 37 minutes 00
10 seconds East 600.00 feet; North 71 degrees 15 minutes 00 seconds East 700.00 feet;
11 North 60 degrees 25 minutes 00 seconds East 130.00 feet; North 47 degrees 00
12 minutes 00 seconds East 130.00 feet; North 51 degrees 00 minutes 00 seconds East
13 130.00 feet; North 61 degrees 00 minutes 00 seconds East 130.00 feet; North 67
14 degrees 30 minutes 00 seconds East 130.00 feet; North 74 degrees 20 minutes 00
15 seconds East 180.00 feet to a point in the center of the road; thence leaving the road
16 South 42 degrees 30 minutes 00 seconds East 120.00 feet to a point in the center of
17 Lower Creek; thence with the center of Lower Creek for four calls: North 63 degrees
18 32 minutes 00 seconds East 136.00 feet; North 73 degrees 39 minutes 00 seconds East
19 140.00 feet; North 56 degrees 15 minutes 00 seconds East 73.00 feet; North 88 degrees
20 19 minutes 00 seconds East 137.00 feet; thence North 11 degrees 05 minutes 00
21 seconds East, leaving the creek 145.93 feet; thence South 18 degrees 30 minutes 00
22 seconds East 254.28 feet; thence South 18 degrees 43 minutes 00 seconds West 395.30
23 feet; thence South 69 degrees 08 minutes 52 seconds West 66.71 feet; thence South 61
24 degrees 28 minutes 34 seconds East 305.43 feet to an existing 3/4 inch iron pipe;
25 thence North 70 degrees 40 minutes 49 seconds East 70.00 feet to the POINT OF
26 BEGINNING containing 731.94 acres plus or minus.

27 "CHAPTER III.

28 "GOVERNING BODY.

29 "Section 3.1. **Structure of Governing Body; Numbers of Members.** The Council
30 shall be composed of five members to be elected by all the qualified voters of the
31 Town for terms of four years, or until their successors are elected and qualified.

32 "Section 3.2. **Mayor-Council Plan.** The Town of Cedar Rock shall operate under
33 the Mayor-Council plan as provided in Part 3 of Article 7 of Chapter 160A of the
34 General Statutes.

35 "Section 3.3. **Mayor; Term of Office; Duties.** The Mayor shall be elected by all the
36 qualified voters of the Town for a term of four years. The Mayor shall be the official
37 head of the Town government and shall preside at meetings of the Council and shall
38 have the right to vote on all matters before the Council.

39 "Section 3.4. **Meetings.** In accordance with general law, the Council shall
40 establish a suitable time and place for its regular meetings. Special and emergency
41 meetings may be held as provided by general law.

42 "Section 3.5. **Quorum; Voting Requirements.** Official actions of the Council and
43 all votes shall be taken in accordance with applicable provisions of general law,
44 particularly G.S. 160A-75. The quorum provisions of G.S. 160A-74 shall apply.

1 "CHAPTER IV.

2 "ELECTIONS.

3 "Section 4.1. **Regular Municipal Elections.** Regular municipal elections shall be
4 held in each odd-numbered year in accordance with the uniform municipal election
5 laws of North Carolina. Elections shall be conducted on a nonpartisan basis and the
6 results determined using the nonpartisan plurality method as provided in G.S. 163-
7 292.

8 "Section 4.2. **Election of Council Members.** Elections shall be conducted by the
9 Caldwell County Board of Elections, unless otherwise provided in accordance with
10 G.S. 163-285. In 1997, the three persons who receive the highest number of votes
11 shall serve four-year terms, and the two persons receiving the next highest number of
12 votes shall serve two-year terms. The terms will continue to be staggered, with
13 ensuing council members being elected for four-year terms.

14 "Section 4.3. **Special Elections and Referenda.** Special elections and referenda
15 may be held only as provided by general law or applicable local acts of the General
16 Assembly.

17 "Section 4.4. **Special Filing Period.** The Caldwell County Board of Elections shall
18 establish a special candidate filing period for the 1997 municipal elections."

19 Section 2. The provisions of G.S. 160A-63 shall not apply to the Town of
20 Cedar Rock until after the first election of the Town Council.

21 Section 3. From and after the effective date of this act, the citizens and
22 property in the Town of Cedar Rock shall be subject to municipal taxes levied for the
23 year beginning July 1, 1997, and for that purpose the Town shall obtain from
24 Caldwell County a record of property in the area herein incorporated that was listed
25 for taxes as of January 1, 1997, and the businesses in the Town shall be liable for
26 privilege license tax from the effective date of the privilege license tax ordinance.
27 The Town may adopt a budget ordinance for fiscal year 1997-98 without following
28 the timetable in the Local Government Budget and Fiscal Control Act.

29 Section 4. The Caldwell County Board of Elections shall conduct an
30 election on a date set by the Board, to be not less than 60 nor more than 120 days
31 after this act becomes law, for the purpose of submission to the qualified voters of the
32 area described in Section 2.1 of the Charter of the Town of Cedar Rock the question
33 of whether or not the area shall be incorporated as the Town of Cedar Rock.
34 Registration for the election shall be conducted in accordance with G.S. 163-288.2.

35 Section 5. In the election, the question on the ballot shall be:

36 "[] FOR [] AGAINST

37 Incorporation of the Town of Cedar Rock."

38 Section 6. In the election, if a majority of the votes are cast "For
39 incorporation of the Town of Cedar Rock", Sections 1 through 3 of this act shall
40 become effective on the date that the Caldwell County Board of Elections certifies
41 the results of the election. Otherwise, those sections shall have no force and effect.

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

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. PCS6297

H. B. No. 843

DATE _____

S. B. No. _____

Amendment No. _____

(to be filled in by
Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)

Corder

Sen.)

1 moves to amend the bill on page 5, line ~~4742~~ 28+29

2 () WHICH CHANGES THE TITLE

3 by inserting between the lines a new section to read:

4 _____
5 " Section 3.1. The interim mayor for the Town of
6 Cedar Rock will be Donald Kincaid until the election
7 for mayor is held in accordance with this act. "

8 _____
9 _____
10 _____
11 _____
12 _____
13 _____
14 _____
15 _____
16 _____
17 _____
18 _____
19 _____

SIGNED Corder

ADOPTED _____ FAILED _____ TABLED _____

1 cultivation of established young growth of desirable trees. In each
 2 case, approved practices will be determined by the needs of the
 3 individual forest stand. These practices shall include existing
 4 practices and such practices as are developed in the future to
 5 insure both maximum forest productivity and environmental
 6 protection.

7 (3) 'Department' ~~shall mean~~ means the Department of Environment,
 8 Health, and Natural Resources.

9 (4) 'Eligible landowner' ~~shall mean~~ means a private individual, group,
 10 association or corporation owning land suitable for forestry
 11 purposes. Where forest land is owned jointly by more than one
 12 individual, group, association or corporation, as tenants in
 13 common, tenants by the entirety, or otherwise, the joint owners
 14 shall be considered, for the purpose of this Article, as one eligible
 15 landowner and entitled to receive cost-sharing payments as
 16 provided herein only once during each fiscal year.

17 (5) 'Eligible ~~lands~~ ~~shall mean~~ land' means land owned by an eligible
 18 landowner.

19 (6) 'Forest development assessment' ~~shall mean~~ means an assessment
 20 on primary forest products from timber severed in North Carolina
 21 for the funding of the provisions of this Article, as authorized by
 22 the General Assembly.

23 (7) 'Forest development ~~cost-sharing~~ cost-sharing payment' ~~shall mean~~
 24 means financial assistance to partially cover the costs of
 25 implementing approved practices in such amounts as the Secretary
 26 shall determine, subject to the limitations of this Article.

27 (8) 'Forest development fund' ~~shall mean~~ means the special
 28 nonlapsing fund established in the Department of Environment,
 29 Health, and Natural Resources, designated as the Forest
 30 Development Fund, created by G.S. 113A-183.

31 (9) 'Secretary' ~~shall mean~~ means the Secretary of Environment,
 32 Health, and Natural Resources.

33 (10) 'Maintain' means to make every reasonable effort to protect the
 34 reforested area from destructive fire and grazing, insects, disease,
 35 noxious weeds, and being cleared or partially cleared of trees for
 36 any purpose other than as provided in an approved forest
 37 management plan."

38 Section 2. Article 11 of Chapter 113A of the General Statutes is
 39 amended by adding a new section to read:

40 "**§ 113A-180.1. Cost-share agreements.**

41 (a) In order to receive forest development cost-share payments, an eligible
 42 landowner shall enter into a written agreement with the Department describing the
 43 eligible land, setting forth the approved practices implemented for the area and

1 covered by the approved forest management plan, and agreeing to maintain those
2 practices for a 10-year period.

3 (b) A landowner who fails to maintain the practice or practices for a 10-year
4 period in accordance with the agreement set forth in subsection (a) of this section
5 shall repay to the Fund all cost-sharing funds received for that area.

6 (c) If the landowner voluntarily relinquishes control or title to the land on which
7 the approved practices have been established, the landowner shall:

8 (1) Obtain a written statement from the new owner or transferee in
9 which the new owner or transferee agrees to maintain the
10 approved practices for the remainder of the 10-year period; or

11 (2) Repay to the Fund all cost-sharing funds received for
12 implementing the approved practices on the land.

13 If a written statement is obtained from the new owner or transferee, the original
14 landowner will no longer be responsible for maintaining the approved practices or
15 repaying the cost-sharing funds. The responsibility for maintaining those practices for
16 the remainder of the 10 years shall devolve to the new owner or transferee."

17 Section 3. G.S. 113A-183 reads as rewritten:

18 "**§ 113A-183. Forest Development Fund.**

19 (a) ~~There is hereby~~ The Forest Development Fund is created in the Department of
20 Environment, Health, and Natural Resources as a nonreverting fund to be designated
21 ~~the Forest Development Fund, fund,~~ for which fiscal management and responsibility
22 are ~~hereby~~ vested in the Secretary. The Fund is a special trust fund, and the State
23 Treasurer shall credit interest to the Fund.

24 (b) This ~~fund~~ Fund shall be the depository for all revenue derived from the forest
25 development assessment on primary forest product processors as authorized by the
26 General Assembly, ~~and~~ for any funds appropriated specifically for the forest
27 development program from the ~~general fund.~~ General Fund, for monetary
28 contribution and donations, and for accrued interest. ~~Those funds appropriated from~~
29 ~~the general fund remaining in the Forest Development Fund at the end of any fiscal~~
30 ~~year shall revert to the general fund, but revenues~~ Revenues derived from the forest
31 development assessment ~~shall not revert but~~ shall remain in the Forest Development
32 Fund until expended under the provisions of this Article.

33 (c) ~~In any fiscal year, expenditures from the Forest Development Fund shall be~~
34 ~~limited to four times the amount of the general fund appropriation for that year.~~

35 (d) In any fiscal year, no more than five percent (5%) of the available funds
36 generated by the Primary Forest Product Processor Assessment Act shall be used for
37 program support under the provisions of G.S. 113A-179(c).

38 (e) Funds used for the purchase of equipment under the provisions of G.S.
39 113A-179(d) shall be limited to appropriations from the ~~general fund~~ General Fund
40 to the Forest Development Fund designated specifically for equipment purchase."

41 Section 4. This act becomes effective June 30, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

HOUSE BILL 457
Committee Substitute Favorable 4/2/97
Proposed Senate Committee Substitute H457-PCSA405

Short Title: Amend Forest Development Act/AB.

(Public)

Sponsors:

Referred to:

March 10, 1997

- 1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW RECOVERY OF FUNDS PAID AS FOREST
3 DEVELOPMENT COST-SHARING PAYMENTS WHEN TREES ARE NOT
4 MAINTAINED AT LEAST TEN YEARS AND TO CONVERT THE FOREST
5 DEVELOPMENT FUND TO ONE THAT ACCRUES INTEREST.
6 The General Assembly of North Carolina enacts:
7 Section 1. G.S. 113A-178 reads as rewritten:
8 "§ 113A-178. Definitions.
9 As used in this Article:
10 (1) 'Approved forest management plan' ~~shall mean~~ means the forest
11 management plan submitted by the eligible landowner and
12 approved by the Secretary. Such plan shall include forest
13 management practices to insure both maximum forest productivity
14 and environmental protection of the lands to be treated under the
15 management plan.
16 (2) 'Approved practices' ~~shall mean~~ mean those silvicultural practices
17 approved by the Secretary for the purpose of commercially
18 growing timber through the establishment of forest stands, or of
19 insuring the proper regeneration of forest stands to commercial
20 production levels following the harvest of mature timber. Such
21 practices shall include those required to accomplish site
22 preparation, natural and artificial forestation, noncommercial

1 removal of residual stands for silvicultural purposes, and
2 cultivation of established young growth of desirable trees. In each
3 case, approved practices will be determined by the needs of the
4 individual forest stand. These practices shall include existing
5 practices and such practices as are developed in the future to
6 insure both maximum forest productivity and environmental
7 protection.

8 (3) 'Department' ~~shall mean~~ means the Department of Environment,
9 Health, and Natural Resources.

10 (4) 'Eligible landowner' ~~shall mean~~ means a private individual, group,
11 association or corporation owning land suitable for forestry
12 purposes. Where forest land is owned jointly by more than one
13 individual, group, association or corporation, as tenants in
14 common, tenants by the entirety, or otherwise, the joint owners
15 shall be considered, for the purpose of this Article, as one eligible
16 landowner and entitled to receive cost-sharing payments as
17 provided herein only once during each fiscal year.

18 (5) 'Eligible ~~lands~~' ~~shall mean~~ land means land owned by an eligible
19 landowner.

20 (6) 'Forest development assessment' ~~shall mean~~ means an assessment
21 on primary forest products from timber severed in North Carolina
22 for the funding of the provisions of this Article, as authorized by
23 the General Assembly.

24 (7) 'Forest development ~~cost-sharing~~ cost-sharing payment' ~~shall mean~~
25 means financial assistance to partially cover the costs of
26 implementing approved practices in such amounts as the Secretary
27 shall determine, subject to the limitations of this Article.

28 (8) 'Forest development fund' ~~shall mean~~ means the ~~special~~
29 ~~nonlapsing fund established in the Department of Environment,~~
30 ~~Health, and Natural Resources, designated as the Forest~~
31 ~~Development Fund,~~ Fund created by G.S. 113A-183.

32 (9) 'Secretary' ~~shall mean~~ means the Secretary of Environment,
33 Health, and Natural Resources.

34 (10) 'Maintain' means to retain the reforested area as forestland for a
35 10-year period and to comply with the provisions in the approved
36 forest management plan."

37 Section 2. Article 11 of Chapter 113A of the General Statutes is
38 amended by adding a new section to read:

39 "§ 113A-180.1. Cost-share agreements.

40 (a) In order to receive forest development cost-share payments, an eligible
41 landowner shall enter into a written agreement with the Department describing the
42 eligible land, setting forth the approved practices implemented for the area and
43 covered by the approved forest management plan, and agreeing to maintain those
44 practices for a 10-year period.

1 (b) A landowner who fails to maintain the practice or practices for a 10-year
2 period in accordance with the agreement set forth in subsection (a) of this section
3 shall repay to the Fund all cost-sharing funds received for that area.

4 (c) If the landowner voluntarily relinquishes control or title to the land on which
5 the approved practices have been established, the landowner shall:

6 (1) Obtain a written statement, or a form approved by the
7 Department, from the new owner or transferee in which the new
8 owner or transferee agrees to maintain the approved practices for
9 the remainder of the 10-year period; or

10 (2) Repay to the Fund all cost-sharing funds received for
11 implementing the approved practices on the land.

12 If a written statement is obtained from the new owner or transferee, the original
13 landowner will no longer be responsible for maintaining the approved practices or
14 repaying the cost-sharing funds. The responsibility for maintaining those practices for
15 the remainder of the 10 years shall devolve to the new owner or transferee."

16 Section 3. G.S. 113A-183 reads as rewritten:

17 "**§ 113A-183. Forest Development Fund.**

18 (a) ~~There is hereby~~ The Forest Development Fund is created in the Department of
19 Environment, Health, and Natural Resources as a fund to be designated the Forest
20 Development Fund, for which fiscal management and responsibility are hereby vested
21 in the Secretary: special fund. Revenue in the Fund does not revert at the end of a
22 fiscal year, and interest and other investment income earned by the Fund accrues to
23 it. The Fund is created to provide revenue to implement this Article. The Fund
24 consists of the following revenue:

25 (1) Assessments on primary forest products collected under Article 12
26 of Chapter 113A of the General Statutes.

27 (2) General Fund appropriations.

28 (3) Gifts and grants made to the Fund.

29 (b) ~~This fund shall be the depository for all revenue derived from the forest~~
30 ~~development assessment on primary forest product processors as authorized by the~~
31 ~~General Assembly, and for any funds appropriated specifically for the forest~~
32 ~~development program from the general fund. Those funds appropriated from the~~
33 ~~general fund remaining in the Forest Development Fund at the end of any fiscal year~~
34 ~~shall revert to the general fund, but revenues derived from the forest development~~
35 ~~assessment shall not revert but shall remain in the Forest Development Fund until~~
36 ~~expended under the provisions of this Article.~~

37 (c) ~~In any fiscal year, expenditures from the Forest Development Fund shall be~~
38 ~~limited to four times the amount of the general fund appropriation for that year.~~

39 (d) In any fiscal year, no more than five percent (5%) of the available funds
40 generated by the Primary Forest Product Processor Assessment Act shall may be used
41 for program support under the provisions of G.S. 113A-179(c).

42 (e) Funds used for the purchase of equipment under the provisions of G.S.
43 113A-179(d) shall be limited to appropriations from the ~~general fund~~ General Fund
44 to the Forest Development Fund designated specifically for equipment purchase."

1

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

FISCAL RESEARCH DIVISION: 733-4910

PREPARED BY: Warren Plonk

APPROVED BY:

DATE: July 7, 1997

EXPLANATION OF HOUSE BILL 457:
Amend Forest Development Act (PCS)

TO: Senate Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: July 7, 1997
SPONSOR: Representative Weatherly
Agency Bill

House Bill 457 amends the Forest Development Act in three ways:

- It requires a landowner to enter into a written agreement with the Department of Environment, Health, and Natural Resources before the landowner can receive any cost-sharing payments. The landowner must agree to implement approved forestry practices on land suitable for forestry purposes and must agree to maintain those practices for at least 10 years. Under the bill, if a landowner fails to maintain the practices for a 10-year period, the landowner must repay all cost-sharing funds received for that land. If the landowner voluntarily relinquishes control or title to the land on which the approved practices have been established, the landowner may do one of two things: (1) obtain an agreement from the new owner to maintain the approved practices for the remainder of the 10-year period; or (2) repay the cost-sharing payments.
- It makes the Forest Development Fund a non-reverting, interest-bearing account.
- It repeals the expenditure limit on the Fund. Under current law, expenditures from the Fund are limited to four times the amount of the General Fund appropriation that year. This bill repeals this limitation.

The proposed committee substitute clarifies what type of fund the Forest Development Fund is and it amends the effective date. Under the original bill, the act became effective June 30, 1997.

The legislature created the State's first cost-sharing program and the companion forest product assessment in 1977. The Forest Development Program was designed to encourage woodland owners to reforest their land after harvest and to put idle or underproductive land into trees. The program offers cost share assistance to private landowners as an incentive to put and keep forestland in a forest development plan. There is an assessment levied on primary forest products processed from North Carolina timber to provide the major source of funds for this program. The General Assembly also appropriates money for the program. The collection of the assessment is suspended in any fiscal year in

which the General Assembly fails to make General Fund appropriations to the Fund or in which there is carried forward from previous years a balance of unobligated funds in the Fund greater than twice the amount appropriated from the General Fund for that fiscal year.

An eligible landowner may receive forest development cost sharing payments for satisfactorily completing approved forestry practices. The amount of assistance cannot exceed the lesser of 60% of the landowner's actual per acre cost incurred in implementing the approved practices or 60% of the prevailing per acre cost as determined by the Secretary. In 1995, it was estimated that 561,000 acres had been planted through the program. Since the program began, instances of willful destruction and neglect of trees for which cost-sharing payments have been received are increasing. The investment sought to encourage is lost when the planted trees are not brought full cycle to commercial harvest. To address this problem, this bill requires recipients of the cost share funds to reimburse the program if trees are not maintained and protected for 10 years. The funds would be used to fund new projects.

There has not been an increase in the assessment rate since the establishment of the program 1977. The State has appropriated \$700,000 to the Fund each year since 1993. However, at the current rate, existing funds are not expect to last throughout the fiscal year. Under the current law, any State appropriations left in the fund at the end of the fiscal year revert to the General Fund and any interest accruing on the money in the Fund is credited to the General Fund. Under this bill, the Fund becomes an interest-bearing, non-reverting account to help maintain and increase the revenue available in the Fund.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 1001

Short Title: Expand Amusement Tax Exemption.

(Public)

Sponsors: Senators Kinnaird; Allran, Horton, and Weinstein.

Referred to: Finance.

April 21, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO EXPAND THE AMUSEMENTS TAX EXEMPTION FOR
3 NONPROFIT PERFORMING ARTS CORPORATIONS.
4 The General Assembly of North Carolina enacts:
5 Section 1. G.S. 105-37.1(a) reads as rewritten:
6 "(a) Every ~~person, firm, or corporation~~ person engaged in the business of giving,
7 offering or managing any form of entertainment or amusement not otherwise taxed or
8 specifically exempted in this Article, for which an admission is charged, shall pay an
9 annual license tax of fifty dollars (\$50.00) for each room, hall, tent or other place
10 where ~~such~~ the admission charges are made.
11 In addition to the license tax levied above, ~~such person, firm, or corporation~~ the
12 taxpayer shall pay an additional tax upon the gross receipts of ~~such~~ the business at
13 the rate of three percent (3%). Reports shall be made to the Secretary ~~of Revenue,~~
14 ~~in such form as he may prescribe,~~ within the first 10 days of each month covering all
15 ~~such taxable~~ gross receipts for the previous month, and the ~~additional tax herein~~
16 ~~levied~~ gross receipts tax shall be paid monthly at the time ~~such~~ the reports are made.
17 The annual license tax ~~herein levied~~ shall be treated as an advance payment of the
18 ~~tax upon gross receipts herein levied, and the annual license tax~~ gross receipts tax
19 and shall be applied as a credit upon or advance payment of the gross receipts tax.
20 Every ~~person, firm, or corporation~~ person giving, offering, or managing any dance
21 or athletic contest of any kind, except high school and elementary school athletic
22 contests, for which an admission fee in excess of fifty cents (50¢) is charged, shall pay
23 an annual license tax of fifty dollars (\$50.00) for each location where ~~such~~ the
24 charges are made, and, in addition, a tax upon the gross receipts derived from

1 admission charges at the rate of three percent (3%). The additional tax upon gross
2 receipts shall be levied and collected in accordance with ~~such regulations as may be~~
3 ~~made by the Secretary of Revenue.~~ rules adopted by the Secretary. No tax shall be
4 levied on admission fees for high school and elementary school contests.

5 Dances and other amusements actually promoted and managed by civic
6 organizations and private and public secondary ~~schools,~~ schools shall not be subject
7 to the license tax imposed by this section and the first one thousand dollars (\$1,000)
8 of gross receipts derived from ~~such~~ these events shall be exempt from the gross
9 receipts tax ~~herein levied~~ when the entire proceeds of ~~such~~ the dances or other
10 amusements are used exclusively for the school or civic and charitable purposes of
11 ~~such~~ the organizations and not to defray the expenses of the organization conducting
12 ~~such~~ the dance or amusement. The mere sponsorship of dance or other amusement
13 by such a school, civic, or fraternal organization ~~shall not be deemed to exempt such~~
14 does not exempt the dance or other amusement as provided in this paragraph, but the
15 exemption shall apply only when the dance or amusement is actually managed and
16 conducted by the school, civic, or fraternal organization and the proceeds are used as
17 ~~herein before required.~~ required by this paragraph.

18 Dances and other amusements promoted and managed by a qualifying corporation
19 that operates a center for the performing and visual arts are exempt from the license
20 tax and the gross receipts tax imposed under this ~~section if the dance or other~~
21 ~~amusement is held at the center.~~ section. 'Qualifying corporation' means a
22 corporation that is exempt from income tax under G.S. 105-130.11(a)(3). 'Center for
23 the performing and visual arts' means a facility, having a fixed location, that provides
24 space for dramatic performances, studios, classrooms and similar accommodations to
25 organized arts groups and individual artists. This exemption shall not apply to athletic
26 events.

27 The license and gross receipts taxes imposed by this section do not apply to a
28 ~~person, firm, or corporation~~ person that is exempt from income tax under Article 4 of
29 this Chapter and is engaged in the business of operating a teen center. A 'teen center'
30 is a fixed facility whose primary purpose is to provide recreational activities, dramatic
31 performances, dances, and other amusements exclusively for teenagers."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

D

SENATE BILL 1001
Proposed Committee Substitute S1001-PCS1852

Short Title: Expand Amusement Tax Exemption.

(Public)

Sponsors:

Referred to:

April 21, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE AN AMUSEMENTS TAX EXEMPTION FOR CERTAIN
3 NONPROFIT ARTS ORGANIZATIONS.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 105-37.1(a) reads as rewritten:

6 "(a) Every ~~person, firm, or corporation~~ person engaged in the business of giving,
7 offering or managing any form of entertainment or amusement not otherwise taxed or
8 specifically exempted in this Article, for which an admission is charged, shall pay an
9 annual license tax of fifty dollars (\$50.00) for each room, hall, tent or other place
10 where ~~such~~ the admission charges are made.

11 In addition to the license tax levied above, ~~such person, firm, or corporation~~ the
12 taxpayer shall pay an additional tax upon the gross receipts of ~~such~~ the business at
13 the rate of three percent (3%). Reports shall be made to the Secretary of Revenue,
14 ~~in such form as he may prescribe~~, within the first 10 days of each month covering all
15 ~~such~~ taxable gross receipts for the previous month, and the ~~additional tax herein~~
16 ~~levied~~ gross receipts tax shall be paid monthly at the time ~~such~~ the reports are made.
17 The annual license tax ~~herein levied~~ shall be treated as an advance payment of the
18 ~~tax upon gross receipts herein levied, and the annual license tax~~ gross receipts tax
19 and shall be applied as a credit upon or advance payment of the gross receipts tax.

20 Every ~~person, firm, or corporation~~ person giving, offering, or managing any dance
21 or athletic contest of any kind, except high school and elementary school athletic
22 contests, for which an admission fee in excess of fifty cents (50¢) is charged, shall pay
23 an annual license tax of fifty dollars (\$50.00) for each location where ~~such~~ the

1 charges are made, and, in addition, a tax upon the gross receipts derived from
2 admission charges at the rate of three percent (3%). The additional tax upon gross
3 receipts shall be levied and collected in accordance with ~~such regulations as may be~~
4 ~~made by the Secretary of Revenue.~~ rules adopted by the Secretary. No tax shall be
5 levied on admission fees for high school and elementary school contests.

6 Dances and other amusements actually promoted and managed by civic
7 organizations and private and public secondary ~~schools,~~ schools shall not be subject
8 to the license tax imposed by this section and the first one thousand dollars (\$1,000)
9 of gross receipts derived from ~~such~~ these events shall be exempt from the gross
10 receipts tax ~~herein levied~~ when the entire proceeds of ~~such~~ the dances or other
11 amusements are used exclusively for the school or civic and charitable purposes of
12 ~~such~~ the organizations and not to defray the expenses of the organization conducting
13 ~~such~~ the dance or amusement. The mere sponsorship of dance or other amusement
14 by such a school, civic, or fraternal organization ~~shall not be deemed to exempt such~~
15 does not exempt the dance or other amusement as provided in this paragraph, but the
16 exemption shall apply only when the dance or amusement is actually managed and
17 conducted by the school, civic, or fraternal organization and the proceeds are used as
18 ~~herein before required.~~ required by this paragraph.

19 Dances and other amusements promoted and managed by a qualifying corporation
20 that operates a center for the performing and visual arts are exempt from the license
21 tax and the gross receipts tax imposed under this section if the dance or other
22 amusement is held at the center. 'Qualifying corporation' means a corporation that
23 is exempt from income tax under G.S. 105-130.11(a)(3). 'Center for the performing
24 and visual arts' means a facility, having a fixed location, that provides space for
25 dramatic performances, studios, classrooms and similar accommodations to organized
26 arts groups and individual artists. This exemption shall not apply to athletic events.

27 The license and gross receipts taxes imposed by this section do not apply to a
28 ~~person, firm, or corporation~~ person that is exempt from income tax under Article 4 of
29 this Chapter and is engaged in the business of operating a teen center. A 'teen
30 center' is a fixed facility whose primary purpose is to provide recreational activities,
31 dramatic performances, dances, and other amusements exclusively for teenagers.

32 The license and gross receipts taxes imposed by this section do not apply to arts
33 festivals held by a nonprofit arts organization that meets the following conditions:

- 34 (1) It holds no more than two arts festivals during a calendar year.
35 (2) Each of its arts festivals lasts no more than seven days.
36 (3) Its arts festivals are held outdoors on public property and involve a
37 variety of exhibitions, entertainments, and activities."

38 Section 2. This act becomes effective August 1, 1997.

EXPLANATION OF SENATE BILL 1001 (PCS):
Expand Amusement Tax Exemption

TO: Senate Finance Committee
FROM: Martha H. Harris, Staff Attorney
DATE: July 7, 1997
SPONSOR: Senator Kinnaird

This bill creates a new exemption from the privilege license tax on various forms of amusements and entertainments. The bill would exempt a nonprofit arts organization's arts festivals if the organization holds no more than two festivals a year and the festivals last no more than seven days each, are held outdoors on public property, and involve a variety of exhibitions and activities. The bill would become effective August 1, 1997.

The State levies a 3% gross receipts tax on anyone engaged in the business of offering amusements, athletic events, dances, and entertainments for which an admission is charged. Under current law, exemptions from the tax are narrowly drawn:

- Elementary and secondary athletic contests
- The first \$1,000 of receipts from fund-raising dances actually managed by the civic group or school raising funds
- Fund-raising entertainments produced exclusively by volunteer local talent
- Entertainments (but not athletic events) offered at and by a nonprofit arts center
- Nonprofit teen centers

Like the 6% retail sales and use tax, the 3% gross receipts tax on amusements applies equally to nonprofit and for profit organizations selling admissions to the public, with a few exceptions. This tax system prevents nonprofit organizations from obtaining a competitive advantage over for profit organizations offering similar amusements.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 1157

Short Title: Various State Tax Law Changes.

(Public)

Sponsors: Representatives Morris; Cansler and Nichols.

Referred to: Finance.

April 24, 1997

A BILL TO BE ENTITLED

1 AN ACT TO EXTEND THE STATUTES OF LIMITATIONS FOR TAX
2 REFUNDS, TO CLARIFY THE CORPORATE INCOME TAX ON CERTAIN
3 TAX-EXEMPT OBLIGATIONS, AND TO DELETE THE CAP ON
4 CORPORATE INCOME TAX DEDUCTIONS OF DIVIDENDS RECEIVED
5 FROM REGULATED INVESTMENT COMPANIES.
6

7 The General Assembly of North Carolina enacts:

8 Section 1. G.S. 105-267 reads as rewritten:

9 "**§ 105-267. Taxes to be paid; suits for recovery of taxes.**

10 No court of this State shall entertain a suit of any kind brought for the purpose of
11 preventing the collection of any tax ~~imposed in this Subchapter. to which this Article~~
12 applies. Whenever a person has a valid defense to the enforcement of the collection
13 of a tax, the person shall pay the tax to the proper officer, and that payment shall be
14 without prejudice to any defense of rights the person may have regarding the tax. At
15 any time within the applicable protest period, the taxpayer may demand a refund of
16 the tax paid in writing from the Secretary and if the tax is not refunded within 90
17 days thereafter, may sue the Secretary in the courts of the State for the amount
18 demanded. The protest period for a tax levied in Article 2A, 2B, 2C, or 2D of this
19 Chapter is 30 days after payment. The protest period for all other taxes is ~~one year~~
20 after payment. the period set by the statute of limitations in G.S. 105-266(c).

21 The suit may be brought in the Superior Court of Wake County, or in the
22 Superior Court of the county in which the taxpayer resides at any time within three
23 years after the expiration of the 90-day period allowed for making the refund. If upon
24 the trial it is determined that all or part of the tax was levied or assessed for an illegal

1 or unauthorized purpose, or was for any reason invalid or excessive, judgment shall
2 be rendered therefor, with interest, and the judgment shall be collected as in other
3 cases. The amount of taxes for which judgment is rendered in such an action shall be
4 refunded by the State. G.S. 105-241.2 provides an alternate procedure for a taxpayer
5 to contest a tax and is not in conflict with or superseded by this section."

6 Section 2. G.S. 105-266(c) reads as rewritten:

7 "(c) Statute of Limitations. -- The period in which a refund must be demanded or
8 discovered under this section is determined as follows:

9 (1) General Rule. -- No overpayment shall be refunded, whether upon
10 discovery or receipt of written demand, if the discovery is not
11 made or the demand is not received within three years after the
12 date set by the statute for the filing of the return or within ~~six~~
13 months two years after the payment of the tax alleged to be an
14 overpayment, whichever is later.

15 (2) Worthless Debts or Securities. -- Section 6511(d)(1) of the Code
16 applies to an overpayment of the tax levied in Division II or III of
17 Article 4 of this Chapter to the extent the overpayment is
18 attributable to either of the following:

19 a. The deductibility by the taxpayer under section 166 of the
20 Code of a debt that becomes worthless, or under section
21 165(g) of the Code of a loss from a security that becomes
22 worthless.

23 b. The effect of the deductibility of a debt or loss described in
24 subpart a. of this subdivision on the application of a
25 carryover to the taxpayer.

26 (3) Capital Loss and Net Operating Loss Carrybacks. -- Section
27 6511(d)(2) of the Code applies to an overpayment of the tax levied
28 in Division II or III of Article 4 of this Chapter to the extent the
29 overpayment is attributable to a capital loss carryback under
30 section 1212(c) of the Code or to a net operating loss carryback
31 under section 172 of the Code.

32 (4) Federal Determination. -- When a taxpayer files with the Secretary
33 a return that reflects a federal determination and the return is filed
34 within the required time, the period in which a refund must be
35 demanded or discovered is one year after the return reflecting the
36 federal determination is filed or three years after the original
37 return was filed or due to be filed, whichever is later."

38 Section 3. G.S. 105-130.5(b) is amended by adding a new subdivision to

39 read:

40 "(1a) Interest upon the obligations of any of the following, net of related
41 expenses, to the extent included in federal taxable income:

42 a. This State, a political subdivision of this State, or a
43 commission, an authority, or another agency of this State or
44 of a political subdivision of this State.

1 b. A nonprofit educational institution organized or chartered
2 under the laws of this State."

3 Section 4. G.S. 105-130.7 reads as rewritten:

4 "**§ 105-130.7. Deductible portion of dividends.**

5 (a) Regulated Investment Companies. -- A corporation may deduct the
6 proportionate part of dividends received by it from a regulated investment company
7 or a real estate investment trust, as defined in G.S. 105-130.12, as represents and
8 corresponds to income received by the regulated investment company or real estate
9 investment trust that would not be taxed by this State if received directly by the
10 corporation.

11 (b) Subsidiary Dividends. -- A corporation that, at the close of its taxable year, has
12 its commercial domicile within North Carolina may deduct all dividends received
13 from corporations in which it owns more than fifty percent (50%) of the outstanding
14 voting stock.

15 ~~Dividends from stock issued by a corporation are deductible to the extent provided~~
16 ~~in this section.~~

17 ~~(1), (2). Repealed by Session Laws 1996, Second Extra Session, c. 14, s.~~
18 ~~3.~~

19 ~~(3) A corporation may deduct such proportionate part of dividends~~
20 ~~received by it from a regulated investment company or a real~~
21 ~~estate investment trust, as defined in G.S. 105-130.12, as represents~~
22 ~~and corresponds to income received by such regulated investment~~
23 ~~company or real estate investment trust which would not be taxed~~
24 ~~by this State if received directly by the corporation.~~

25 ~~(3a) Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 3.~~

26 ~~(4) A corporation that, at the close of its taxable year, has its~~
27 ~~commercial domicile within North Carolina shall be allowed to~~
28 ~~deduct all dividends received from corporations in which it owns~~
29 ~~more than fifty percent (50%) of the outstanding voting stock.~~

30 ~~(5) Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 3.~~

31 ~~(6) In no case shall the total amount of dividends that are allowed as a~~
32 ~~deduction to a corporation under subdivision (3) of this section~~
33 ~~exceed fifteen thousand dollars (\$15,000) for the taxable year."~~

34 Section 5. Sections 1 and 2 of this act become effective November 1,
35 1997, and apply to taxes paid on or after that date. The remainder of this act is
36 effective for taxable years beginning on or after January 1, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

HOUSE BILL 1157
Proposed Senate Committee Substitute H1157-PCS7342

Short Title: Various Corporate Tax Law Changes.

(Public)

Sponsors:

Referred to:

April 24, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO CLARIFY THE CORPORATE INCOME TAX ON CERTAIN TAX-
3 EXEMPT OBLIGATIONS AND TO DELETE THE CAP ON CORPORATE
4 INCOME TAX DEDUCTIONS OF DIVIDENDS RECEIVED FROM
5 REGULATED INVESTMENT COMPANIES.

6 The General Assembly of North Carolina enacts:

7 Section 1. G.S. 105-130.5(b) is amended by adding a new subdivision to
8 read:

9 "(1a) Interest upon the obligations of any of the following, net of related
10 expenses, to the extent included in federal taxable income:

11 a. This State, a political subdivision of this State, or a
12 commission, an authority, or another agency of this State or
13 of a political subdivision of this State.

14 b. A nonprofit educational institution organized or chartered
15 under the laws of this State."

16 Section 2. G.S. 105-130.7 reads as rewritten:

17 **"§ 105-130.7. Deductible portion of dividends.**

18 (a) Regulated Investment Companies. -- A corporation may deduct the
19 proportionate part of dividends received by it from a regulated investment company
20 or a real estate investment trust, as defined in G.S. 105-130.12, as represents and
21 corresponds to income received by the regulated investment company or real estate
22 investment trust that would not be taxed by this State if received directly by the
23 corporation.

1 (b) Subsidiary Dividends. -- A corporation that, at the close of its taxable year, has
2 its commercial domicile within North Carolina may deduct all dividends received
3 from corporations in which it owns more than fifty percent (50%) of the outstanding
4 voting stock.

5 ~~Dividends from stock issued by a corporation are deductible to the extent provided~~
6 ~~in this section.~~

7 ~~(1); (2). Repealed by Session Laws 1996, Second Extra Session, c. 14, s.~~
8 ~~3.~~

9 ~~(3) A corporation may deduct such proportionate part of dividends~~
10 ~~received by it from a regulated investment company or a real~~
11 ~~estate investment trust, as defined in G.S. 105-130.12, as represents~~
12 ~~and corresponds to income received by such regulated investment~~
13 ~~company or real estate investment trust which would not be taxed~~
14 ~~by this State if received directly by the corporation.~~

15 ~~(3a) Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 3.~~

16 ~~(4) A corporation that, at the close of its taxable year, has its~~
17 ~~commercial domicile within North Carolina shall be allowed to~~
18 ~~deduct all dividends received from corporations in which it owns~~
19 ~~more than fifty percent (50%) of the outstanding voting stock.~~

20 ~~(5) Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 3.~~

21 ~~(6) In no case shall the total amount of dividends that are allowed as a~~
22 ~~deduction to a corporation under subdivision (3) of this section~~
23 ~~exceed fifteen thousand dollars (\$15,000) for the taxable year."~~

24 Section 3. This act is effective for taxable years beginning on or after
25 January 1, 1997.

EXPLANATION OF HOUSE BILL 1157 (PCS):
Various Corporate Tax Law Changes

TO: Senate Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: July 7, 1997
SPONSOR: Representative Morris

House Bill 1157 is a recommendation of the North Carolina Bar Association. It makes the following changes to the corporate income tax laws effective for taxable years beginning on or after January 1, 1997:

1. It extends the income tax exclusion allowed individuals for interest on State or local obligations and obligations of nonprofit educational institutions organized or chartered in the State to corporations.
2. It conforms statutory law to the current practice of the Department of Revenue with regard to the taxability of dividend income received by corporations from regulated investment companies and real estate investment trusts.

The bond law exempts interest on State and local government obligations and on obligations of nonprofit educational institutions organized or chartered in the State from State income tax. The tax statutes provide for the deduction in the individual income tax statutes as well. However, there is not a similar provision in the corporate income tax statutes. Section 1 of the bill makes a conforming change in the corporate income tax statutes that specifically exempts interest on State and local government obligations and on obligations of nonprofit educational institutions organized or chartered in the State from State income tax.

Section 2 of the bill conforms the language of the statute to the current practice of the Department of Revenue with regard to the taxability of income received by a corporation from regulated investment companies and real estate investment trusts. Corporations and individuals may invest income in a regulated investment company, commonly known as mutual funds, and in a real estate investment trust. Under the Code, dividends paid by a regulated investment company or a real estate investment trust to its shareholders are treated as pass-through income, meaning that the character of the income remains the same after that income is passed to its shareholders. For example, interest on a State municipal bond is exempt if paid directly to a person. Under the Code, this income does not lose its tax exempt status because the person

receives it as a dividend from a regulated investment company or a real estate investment trust rather than directly from the tax-exempt source.

State corporate income tax law likewise provides that a corporation may deduct from State taxable income that portion of the dividends it receives from a regulated investment company or a real estate investment trust that it could deduct if it received the dividends directly, rather than through the regulated investment company or the real estate investment trust. The statute, however, appears to limit the amount a corporate investor may deduct under this pass-through treatment to \$15,000. The Department of Revenue does not currently treat the cap as applicable to these types of pass-through income from federal, State, and local obligations. Arguably, this practice conflicts with the \$15,000 statutory limitation. This section repeals the \$15,000 cap.

The proposed committee substitute removes two provisions that would have extended the statute of limitations for requesting or making a tax refund.

**NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL ESTIMATE**

BILL NUMBER: HOUSE BILL 1157
SHORT TITLE: VARIOUS STATE TAX LAW CHANGES
SPONSOR(S): REP. MORRIS

FISCAL IMPACT

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

PRINCIPAL DEPARTMENT AFFECTED: The tax changes are administered by the Department of Revenue. The changes are not expected to change the Department's costs.

BILL SUMMARY: (1) Conforms state law on the timing of lawsuits and refunds to the federal law. Under the current law an overpayment of tax must be discovered or demanded within 3 years after the date set by statute for filing the returns or within 6 months after the tax is paid, whichever is later. The effect of the bill is to change the "within 6 months" language to "two years". This change become effective November 1, 1997 and apply to taxes paid on or after that date (2) Extends the income tax exclusion allowed individuals for interest on state or local obligations and obligations of nonprofit educational institutions organized or chartered in the State to corporations. In most cases such interest is not included in federal taxable income. The effect of the bill is to exempt the interest of those obligations whose interest income is included in federal taxable income, net of related expenses. This change is effective for tax years beginning on or after January 1, 1997. (3) Conforms statutory law to the current practice of the Department of Revenue with regard to the taxability of income on regulated investment companies and real estate investment trusts. The current statutes limit the income deduction of corporations from these investment vehicles to \$15,000. The Department of Revenue does not currently treat the cap as applicable to these types of pass-through income from federal, state, and local obligations since the federal treatment of these vehicles exempts pass-through income to investors that would have been exempt if the income flowed directly to the investor. The change is effective for tax years beginning on or after January 1, 1997.

ASSUMPTIONS AND METHODOLOGY: The Department of Revenue is unable to identify an example whereby the enactment of the bill would cause a General Fund revenue loss. The extension of time for filing a tax protest has an unknown impact because at this time neither the Attorney General's Office or legislative staff are aware of any laws not under litigation that might be held unconstitutional. Also, many taxpayers are filing a protest when they pay their tax so the lengthening of the period would have no impact.

FISCAL RESEARCH DIVISION (733-4910)

PREPARED BY: Dave Crotts

DATE: May 13, 1997

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 35

Short Title: Conform Sales Tax Refund Period.

(Public)

Sponsors: Representatives Capps, Blue, Cansler, Church, Neely, Shubert; and Aldridge.

Referred to: Finance.

February 4, 1997

A BILL TO BE ENTITLED

1
2 AN ACT TO EXTEND THE TIME ALLOWED GOVERNMENT ENTITIES AND
3 NONPROFIT ENTITIES FOR CLAIMING SALES TAX REFUNDS.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 105-164.14(d) reads as rewritten:

6 "(d) Penalties for Late Applications. -- Refunds made pursuant to applications
7 filed after the dates specified in subsections (b) and (c) above are subject to the
8 following penalties for late filing: applications filed within 30 days after the due date,
9 twenty-five percent (25%); applications filed after 30 days but within ~~six months~~ three
10 years after the due date, fifty percent (50%). Refunds applied for more than ~~six~~
11 ~~months~~ three years after the due date are barred."

12 Section 2. This act is effective when it becomes law and applies to sales
13 taxes paid on or after January 1, 1994.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

HOUSE BILL 35
Proposed Senate Committee Substitute H35-PCSX8258

Short Title: Conform Sales & Fuel Tax Refund Period.

(Public)

Sponsors:

Referred to:

February 4, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO EXTEND THE TIME ALLOWED FOR CLAIMING SALES TAX
3 REFUNDS, MOTOR FUEL TAX REFUNDS, AND ALTERNATIVE FUEL TAX
4 REFUNDS, AND TO PROVIDE THAT A MOTOR FUEL TAX REFUND IS
5 NET OF THE SALES TAX DUE ON THE FUEL.
6 The General Assembly of North Carolina enacts:
7 Section 1. G.S. 105-164.14(d) reads as rewritten:
8 "(d) Penalties for Late Applications. -- Refunds made pursuant to applications
9 filed after the dates specified in subsections (b) and (c) above are subject to the
10 following penalties for late filing: applications filed within 30 days after the due date,
11 twenty-five percent (25%); applications filed after 30 days but within ~~six months~~ three
12 years after the due date, fifty percent (50%). Refunds applied for more than ~~six~~
13 months three years after the due date are barred."
14 Section 2. G.S. 105-449.109 reads as rewritten:
15 "§ 105-449.109. Reduction or denial of late a: ~~annual or quarterly~~ refund application.
16 An application filed with the Secretary within ~~six months~~ three years of the date
17 the application is due must be accepted but is subject to a penalty of twenty-five
18 percent (25%) of the amount of the refund otherwise due if the application is filed
19 within 30 days after the date the application is due, and is subject to a penalty of fifty
20 percent (50%) of the amount of the refund otherwise due if the application is filed
21 more than 30 days but within ~~six months~~ three years after the date the application is
22 due. The Secretary shall not accept an application filed more than ~~six months~~ three
23 years after the date the application is due."

1 Section 3. G.S. 105-164.13(11) reads as rewritten:

2 "~~(11) Motor fuel subject to tax under Article 36C of this Chapter and~~
3 ~~alternative fuel subject to tax under Article 36D of this Chapter,~~
4 ~~regardless of whether those Articles exempt the fuel from tax or~~
5 ~~allow a refund of tax paid on the fuel. Any of the following fuel:~~

6 a. Motor fuel, as defined in G.S. 105-449.60, except
7 motor fuel for which a refund of the per gallon excise
8 tax is allowed under G.S. 105-449.105(c) or (d) or
9 under G.S. 105-449.107.

10 b. Alternative fuel taxed under Article 36D of this
11 Chapter, unless a refund of that tax is allowed under
12 G.S. 105-449.107."

13 Section 4. G.S. 105-449.107, as amended by Section 14 of Chapter 33 of
14 the 1997 Session Laws, reads as rewritten:

15 "**§ 105-449.107. Annual refunds for off-highway use and use by certain vehicles with**
16 **power attachments.**

17 (a) Off-Highway. -- A person who purchases and uses motor fuel for a purpose
18 other than to operate a licensed highway vehicle may receive an annual refund for
19 the excise tax the person paid on fuel used during the preceding calendar year ~~at a~~
20 ~~rate equal to year.~~ The amount of refund allowed is the amount of the flat cents-per-
21 gallon rate in effect during the year for which the refund is claimed plus the average
22 of the two variable cents-per-gallon rates in effect during that year, less one cent (1¢)
23 per gallon. ~~the amount of sales and use tax due on the fuel under this Chapter.~~ An
24 application for a refund allowed under this section must be made in accordance with
25 this Part.

26 (b) Certain Vehicles. -- A person who purchases and uses motor fuel in one of the
27 vehicles listed below may receive an annual refund for the amount of fuel consumed
28 by any of the following vehicles:

- 29 (1) A concrete mixing vehicle.
30 (2) A solid waste compacting vehicle.
31 (3) A bulk feed vehicle that delivers feed to poultry or livestock and
32 uses a power takeoff to unload the feed.
33 (4) A vehicle that delivers lime or fertilizer in bulk to farms and uses a
34 power takeoff to unload the lime or fertilizer.
35 (5) A tank wagon that delivers alternative fuel, as defined in G.S. 105-
36 449.130, or motor fuel or another type of liquid fuel into storage
37 tanks and uses a power takeoff to make the delivery.

38 ~~The refund rate shall be computed by subtracting one cent (1¢) from the combined~~
39 ~~amount of amount of refund allowed is thirty-three and one-third percent (33 1/3%)~~
40 percent of the following: the sum of the flat cents-per-gallon rate in effect during the
41 year for which the refund is claimed and the average of the two variable cents-per-
42 gallon rates in effect during that year, and multiplying the difference by thirty-three
43 and one-third percent (33 1/3%). ~~less the amount of sales and use tax due on the fuel~~
44 under this Chapter. An application for a refund allowed under this section shall

1 must be made in accordance with this Part. This refund is allowed for the amount of
2 fuel consumed by the vehicle in its mixing, compacting, or unloading operations, as
3 distinguished from propelling the vehicle, which amount is considered to be one-third
4 of the amount of fuel consumed by the vehicle.

5 (c) Sales Tax Amount. -- Article 5 of this Chapter determines the amount of sales
6 and use tax to be deducted under this section from a motor fuel excise tax refund.
7 The sales price and the cost price of motor fuel to be used in determining the amount
8 to deduct is the average of the wholesale prices used under G.S. 105-449.80 to
9 determine the excise tax rates in effect for the two six-month periods of the year for
10 which the refund is claimed."

11 Section 5. Section 1 of this act and this section are effective when they
12 become law. Sections 2 through 4 of this act become effective January 1, 1998, and
13 apply to motor fuel and alternative fuel taxes paid on or after that date.

EXPLANATION OF HOUSE BILL 35:
Proposed Committee Substitute
Conform Sales Tax Refund Period

TO: Senate Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: July 8, 1997
SPONSOR: Representative Capps
Recommendation of the Revenue Laws Study Committee

House Bill 35 would extend from six months to three years the period during which a governmental entity or nonprofit entity may claim a sales tax refund. The Department of Revenue suggested to the Revenue Laws Study Committee that the statute of limitations be extended from six months to three years, bringing it in line with the general rules of G.S. 105-266 and G.S. 105-266.1, which apply to refunds of overpayments of tax. Since the Committee made its report, the Department has suggested a couple of other similar changes to the motor fuel tax refund statutes. The proposed committee substitute, based upon the Department's suggestions, makes the following changes to the bill:

- Makes a conforming change to the motor fuel and alternative fuel refund statutes to give a taxpayer three years instead of six months to file for a refund.
- Changes the sales tax exemption for motor fuel to exclude from the sales tax exemption those motor fuels that have been granted a refund of motor fuel tax paid.
- Makes a corresponding change to the motor fuel refund statutes to deduct from the refund given the amount of sales tax that is due on the fuel.
- Changes the effective date of the sales tax refund change from January 1, 1994, to ratification. Makes the motor fuel tax changes effective January 1, 1998.

Under G.S. 105-164.14, nonprofit entities, certain hospitals, and certain governmental entities may seek a refund of State and local sales taxes they pay on their purchases. To do so, these entities must file a written request for refund with the Department of Revenue and name the counties where the purchases were made. Governmental entities must apply for the refund after the end of each fiscal year; other entities must apply for the refund semiannually. The application must be filed within six months. If the application is late, there is a penalty equal to a percentage of the refund claimed. If the application is more than six months late, it is barred. The Secretary of Revenue has the authority to

waive penalties for good cause, but once a refund is barred, the Secretary may not revive it. Section 1 of the bill extends the statute of limitations for refunds from six months to three years, bringing it in line with the general rules of G.S. 105-266 and G.S. 105-266.1, which apply to refunds of overpayments of tax. Section 2 of the bill makes a similar change for motor fuel tax refunds.

Under current law, motor fuel is exempt from sales tax, regardless of whether or not any motor fuel tax is payable. Section 3 provides that motor fuel for which a refund of the motor fuel tax is allowed because the motor fuel is accidentally mixed with some other type of fuel or the motor fuel is used in a boat is subject to sales tax. Section 4 provides that the applicable sales tax due on motor fuel used for an off-highway use is to be subtracted from any refund a taxpayer receives of motor fuel tax paid on that fuel. The section also clarifies that the price of motor fuel subject to sales tax is the average of the wholesale prices used to determine the excise tax rates in effect for the two six-month periods of the year for which the refund is claimed.

LEGISLATIVE FISCAL NOTE

BILL NUMBER: House Bill 35 (First Edition)
SHORT TITLE: Conform Sales and Use Refund Period
SPONSOR(S): Representative Capps, et al.

	FISCAL IMPACT				
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 1997-98</u>	<u>FY 1998-99</u>	<u>FY 1999-00</u>	<u>FY 2000-01</u>	<u>FY 2001-02</u>
REVENUES					
General Fund		Gain \$597,525 in a fiscal year			
Highway Fund		Loss less than \$200,000 in a fiscal year			
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:	Department of Revenue Sales and Use Tax Division Department of Revenue Motor Fuels Tax Division				
EFFECTIVE DATE:	Taxes paid on or after January 1, 1994.				

BILL SUMMARY: The proposed act extends the time nonprofit organizations and government entities have to file for sales and use tax refunds from six months to three years. In addition, conforming changes are made to the motor fuel and alternative fuel refund statutes. This act conforms to the same period allowed taxpayers for refunds of overpayment of taxes.

The bill does not affect the penalty. If an applicant files within thirty days after the due date the penalty is still 25% of the refund. If an applicant files after thirty days but within three years, instead of six months, the penalty is still 50% of the refund. Refunds are barred if applied for three years after the due date instead of six months.

Each year bills are introduced in the General Assembly for refunds of nonprofit entities and State agencies whose refunds have been barred because their applications were filed six months after the due date. The Department of Revenue informed the Revenue Laws Study Commission that by increasing the filing deadline to three years most of the refund legislation could be eliminated.

ASSUMPTIONS AND METHODOLOGY : In fiscal year 1995-96, the total of all penalties did not exceed \$250,000. In fiscal year 1995-96 18,732 nonprofit entities filed for a refund under G.S. 105-164.14(b) the total amount refunded equaled \$153.9 million. Over the same period 740 government entities filed for a refund under G.S. 105-164.14(c) the total amount refunded equaled \$56.4 million.

The revenue from the one cent under G.S. 105-449.107 was used to retire road bonds that have been paid off. As of January 1, 1996, 19 million gallons were subject to the 1 cent holdback from the off-highway use tax. If a taxpayer receives a refund on the taxes paid on motor fuels the sales and use tax will apply. The gain in a single fiscal year is expected to be \$797,525. The net of the loss from the Sales and use tax refund and the gain from the motor fuels sales and use tax is \$597,525 in general Fund revenues.

FISCAL RESEARCH DIVISION

733-4910

PREPARED BY: H Warren Plonk

APPROVED BY: Tom L. Covington

DATE: February 27, 1997



North Carolina Department of Revenue

James B. Hunt, Jr.
Governor

July 10, 1997

Muriel K. Offerman
Secretary

MEMORANDUM

TO: Representative Lyons Gray, Representative Constance Wilson, Representative Robert Brawley,
and Representative Walter Dickson, Co-Chairmen
House Finance Committee

Senator John H. Kerr III and Senator David Hoyle, Co-Chairmen
Senate Finance Committee

FROM: Muriel K. Offerman
Secretary of Revenue

RE: HOUSE BILL 35 -- A BILL TO BE ENTITLED AN ACT TO EXTEND THE TIME ALLOWED
FOR CLAIMING SALES TAX REFUNDS, MOTOR FUELS REFUNDS, AND
ALTERNATIVE FUEL TAX REFUNDS, AND TO PROVIDE THAT A MOTOR FUEL TAX
REFUND IS NET OF THE SALES TAX DUE ON THE FUEL.

This bill amends G.S. 105-164.14(d) and G.S. 105-449.109 to provide for a statute of limitations of three years for filing sales tax, motor fuels tax and alternative fuels tax refunds. It further provides for the reduction of the motor fuels or alternative fuels refunds by the sales tax that would be due under G.S. 105-449.107.

Section 1: Amends G.S. 105-164.14(d) to allow for sales tax refunds to be filed up to three years after the due date of the return. Currently, the law allows the taxpayer up to six (6) months to file for the refund.

Section 2: Amends G.S. 105-449.109 to allow for motor fuels tax and alternative fuels tax refunds to be filed up to three years after the due date of the return. Currently, the law allows the taxpayer up to six (6) months to file for the refund.

Section 3: Rewrites G.S. 105-164.13(11) to exclude motor fuels and alternative fuels, which have been issued a refund under G.S. 105-449.105(c) and (d) or 105-449.107, from the exemption of sales tax. Currently, if motor fuels tax or alternative fuels tax was charged and then refunded to the user due to a non-highway use, the sales and use tax could not be applied to the untaxed fuel. This exemption was also extended to the fuel that was statutorily exempt from the fuel tax.

Section 4: Amends G.S. 105-449.107 to reduce the motor fuel refund, allowed under this section, by the amount of sales tax due on that fuel. The amount of sales tax due would be computed by using the average wholesale prices used to determine the excise tax rates for that period.

Section 5: Provides for Section 1 to become effective immediately upon ratification. Section 2 through Section 4 become effective January 1, 1998 and apply to motor fuel or alternative fuel taxes paid on or after that date.



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 1073

Short Title: IRMC Restructuring.

(Public)

Sponsors: Senator Hoyle.

Referred to: Rules and Operations of the Senate.

April 21, 1997

1

A BILL TO BE ENTITLED

2 AN ACT RELATING TO THE INFORMATION RESOURCE MANAGEMENT
3 COMMISSION.

4 The General Assembly of North Carolina enacts:

5 Section 1. This act relates to the Information Resource Management
6 Commission.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

D

SENATE BILL 1073
Proposed Committee Substitute S1073-PCS1859

Passed

Short Title: Auctioneer Amendments.

(Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

1 AN ACT RELATING TO AUCTIONEERS.

2 The General Assembly of North Carolina enacts:

3 Section 1. Chapter 114 of the General Statutes is amended by adding a
4 new section to read:

5 **"§ 114-19.6. Criminal record checks of auctioneer applicant.**

6 The Department of Justice may provide to the North Carolina Auctioneers
7 Commission the criminal history from the State and National Repositories of
8 Criminal Histories. The Commission shall provide to the Department of Justice,
9 along with the request, the fingerprints of the applicant to be checked, any additional
10 information required by the Department of Justice, and a form consenting to the
11 check of the criminal record and to the use of fingerprints and other identifying
12 information required by the State or National Repositories signed by the applicant to
13 be checked. The fingerprints of the applicant shall be forwarded to the State Bureau
14 of Investigation for a search of the State's criminal history record file, and the State
15 Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of
16 Investigation for a national criminal history record check. The Commission shall
17 keep all information pursuant to this section privileged. The Department of Justice
18 shall charge a reasonable fee only for conducting the checks of the national criminal
19 history records authorized by this section."

20 Section 2. G.S. 85B-4(b) reads as rewritten:

21 "(b) No person shall be licensed as an apprentice auctioneer, auctioneer, or
22 receive an auction firm license if the person:
23

- 1 (1) Is under 18 years of age;
- 2 (2) Repealed by Session Laws 1983, c. 751, s. 6.
- 3 (3) Has within the preceding five years pleaded guilty to, entered a
4 plea of *nolo contendere* or been convicted of any felony, or
5 committed or been convicted of any act involving fraud or moral
6 turpitude;
- 7 (4) Has had an auctioneer or apprentice auctioneer or auction firm
8 license revoked; ~~or~~
- 9 (5) Has, within the preceding five years, committed any act which
10 constitutes grounds for license suspension or revocation under this
11 Chapter or a Commission ~~rule~~; rule; or
- 12 (6) Is not a high school graduate or passed the General Educational
13 Development Test indicating high school equivalency."

14 Section 3. G.S. 85B-4(d) reads as rewritten:

15 "(d) No person shall be licensed as an auctioneer unless the person has held an
16 apprentice auctioneer license and served as an apprentice auctioneer for the two
17 preceding years, accumulated sufficient knowledge and experience in such areas of
18 the auctioneer profession as the Commission may deem appropriate, and has taken
19 an examination approved by the Commission and performed on it to the satisfaction
20 of the Commission. The examination shall test the applicant's understanding of the
21 law relating to auctioneers and auctions, ethical practices for auctioneers, the
22 mathematics applicable to the auctioneer business, and such other matters relating to
23 auctions as the Commission considers appropriate. The examination shall be given at
24 least twice each year in Raleigh, and at other times and places the Commission
25 designates, but no person shall be allowed to take the examination within six months
26 after having failed it a second time.

27 ~~Any person who has been in the auctioneer business in this State for at least two~~
28 ~~years prior to the effective date of this act [July 1, 1973], and who makes proper~~
29 ~~application to the Commission within one year after July 1, 1973, may be licensed as~~
30 ~~an auctioneer without holding an apprentice license and serving as an apprentice of~~
31 ~~two years, and without taking the examination required by this subsection. Any~~
32 person who has successfully completed the equivalent of at least 80 hours of
33 classroom instruction in a course in auctioneering at an institution approved by the
34 Commission Commission, having instructors meeting the minimum qualifications
35 established by the Commission, may be licensed as an auctioneer without holding an
36 apprentice license and serving as an apprentice for two years, but must take the
37 examination required by this subsection and perform on it to the satisfaction of the
38 Commission.

39 Each applicant for an auctioneer license shall submit a written application in a
40 form approved by the Commission. If the applicant has been previously licensed as
41 an apprentice auctioneer, the application shall contain an evaluation by the
42 applicant's supervisor of the applicant's performance as an apprentice auctioneer and
43 the applicant's performance in specific areas as required by the Commission. If the
44 applicant is exempted from apprenticeship after completion of the equivalent of at

1 least 80 hours of classroom instruction in auctioneering, the application shall contain
2 a transcript of the applicant's course work in auctioneering. Each application shall be
3 accompanied by statements of at least two residents of the community in which the
4 applicant resides attesting to the applicant's good moral character. The Commission
5 may require verification of any information included in an application for an
6 auctioneer license and may request other information or verification of information
7 provided to determine whether the applicant possesses the good moral character or
8 other qualifications for licensure."

9 Section 4. G.S. 85B-4 is amended by adding a new subsection to read:
10 "(f1) The Commission may require licensees seeking renewal of a license under
11 this Chapter to complete Commission approved continuing education of not more
12 than six hours per year per licensee as a condition precedent to renewal. The
13 Commission may impose different continuing education requirements, or none, upon
14 the different classifications of licensees under this Chapter. The Commission shall be
15 authorized to waive the continuing education requirement in cases of hardship,
16 disability, or illness or under such other circumstances as the Commission deems
17 appropriate. This subsection shall apply to each renewal cycle which begins after the
18 1998-99 renewal."

19 Section 5. G.S. 85B-4.1 reads as rewritten:
20 **"§ 85B-4.1. Auctioneer Recovery Fund.**

21 "(a) In addition to license fees, upon application for a license or renewal of a
22 license, the Commission may charge the applicant or licensee up to fifty dollars
23 (\$50.00) per year to be included in the Fund.

24 (b) The Commission shall maintain at least ~~one~~ two hundred thousand dollars
25 ~~(\$100,000)~~ (\$200,000) in the Fund for use as provided in this Chapter. The Fund may
26 be invested by the State Treasurer in interest bearing accounts, and any interest
27 accrued shall be added to the Fund. Sufficient liquidity shall be maintained to insure
28 that funds will be available to satisfy claims processed through the Board. The Fund
29 may be disbursed by a warrant drawn against the State Treasurer or by other method
30 at the discretion of the State Treasurer.

31 (c) The Commission, in its discretion, may use contents of the Fund in excess of
32 ~~one~~ two hundred thousand dollars ~~(\$100,000)~~ (\$200,000) for the following purposes:

- 33 (1) To promote education and research in the auctioneer profession, in
34 order to benefit persons licensed under this Chapter and to
35 improve the efficiency of the profession;
- 36 (2) To underwrite educational seminars, training centers, and other
37 forms of educational projects for the use and benefit of licensees;
- 38 (3) To sponsor, contract for, or underwrite education and research
39 projects in order to advance the auctioneer profession in North
40 Carolina; and
- 41 (4) To cooperate with associations of auctioneers, or other groups, in
42 order to promote the enlightenment and advancement of the
43 auctioneer profession in North Carolina."

44 Section 6. G.S. 85B-6(a) reads as rewritten:

1 (a) The Commission shall collect and remit to the State Treasurer fees in an
 2 amount not to exceed the following:

<u>Item</u>	<u>Maximum Fee</u>
3	
4 Apprentice Auctioneers:	
5 Application for license	\$50.00 <u>\$125.00</u>
6 Issuance or renewal of license	50.00 <u>125.00</u>
7 Auctioneers:	
8 Application for license	50.00 <u>125.00</u>
9 Examination	25.00 <u>75.00</u>
10 Issuance or renewal of license	100.00 <u>250.00</u>
11 Auction Firms:	
12 Application for license	50.00 <u>125.00</u>
13 Examination	25.00 <u>75.00</u>
14 Issuance or renewal of license	100.00 <u>250.00</u>
15 Reinstatement of License	25.00 <u>75.00</u>

16 An application fee for a license and an examination fee are nonrefundable. The
 17 amount payable by a nonresident under G.S. 85B-5 to obtain a nonresident reciprocal
 18 auctioneer license is the greater of the amount set in the above table for an
 19 examination for and the issuance of an auctioneer's license and the amount the
 20 nonresident's state would charge a resident auctioneer of this State to obtain a
 21 comparable license from that state.

22 A reinstatement fee is payable when a person applies for renewal of a license after
 23 the license has lapsed for failure to renew it before it expired. The reinstatement of a
 24 lapsed license is not retroactive in effect and does not limit the authority of the courts
 25 or of the Commission to take disciplinary action against a person who engages in the
 26 auctioneer profession with a lapsed license."

27 Section 7. G.S. 85B-9(a) reads as rewritten:

28 "(a) Any person, corporation or association of persons violating the provisions of
 29 G.S. 85B-4(a) shall be guilty of a Class 1 misdemeanor. The Attorney General of
 30 North Carolina or his representative, shall have concurrent jurisdiction with the
 31 district attorneys of this State to prosecute violations of this Chapter."

32 Section 8. This act is effective when it becomes law, except that G.S.
 33 85B-4(b)(6) as enacted by this act does not apply to any person holding a license
 34 under Chapter 85B of the General Statutes on that date.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 1166 (First Edition)

SHORT TITLE: Auctioneer Education Requirements

SPONSOR(S): Rep. Black

FISCAL IMPACT

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

FY 1997-98 FY 1998-99 FY 1999-00 FY 2000-01 FY 2001-02

REVENUES/EXPENDITURES

Special Revenue Fund

see **ASSUMPTIONS AND METHODOLOGY**

Auctioneer Recovery Fund

see **ASSUMPTIONS AND METHODOLOGY**

*Note: **No General Fund Impact**

PRINCIPAL DEPARTMENT(S) &

PROGRAM(S) AFFECTED:

North Carolina Auctioneer Licensing Board,
North Carolina Auctioneers Commission

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

BILL SUMMARY: The act makes several changes in Chapter 85B of the General Statutes concerning auctioneers. Section 1 of the bill requires auctioneer licensees to have a high school diploma or its equivalent. This section also requires licensees to complete 6 hours of continuing education courses each year for license renewal. Section two requires a minimum balance of \$200,000 in the Auctioneer Recovery Fund. Section three increases the maximum fee that the Board can charge for licenses and exams. Section 4 authorizes the Attorney General to prosecute anyone acting as an auctioneer without a license.

ASSUMPTIONS AND METHODOLOGY:

Continuing Education

Section 1 of the bill allows the N. C. Auctioneers Commission to impose a continuing education requirement of up to 6 hours of courses on auctioneers seeking to renew their licenses. Although these courses are offered free to auctioneers twice a year at conventions of the Auctioneers Association of North Carolina, the Executive Director of the Board feels the requirement could discourage part-time auctioneers from renewing their license and thus reduce revenue for the Board's Special Revenue Fund. An unofficial estimate by the Board's Executive Director

projects the loss could be one fourth of current licensees. Since the language in HB 1166 is permissive, this fiscal note assumes the Board will not implement the continuing ed requirements within the next five years and thus no change in revenues.

Auctioneer Recovery Fund

Section 2 of the bill increases the minimum balance in the Auctioneer Recovery Fund that is used to compensate persons who have suffered monetary losses from the fraudulent acts of auctioneers. The bill increases the minimum from \$100,000 to \$200,000. In effect, this change puts into the statutes a practice that the Board has deemed prudent and sound fiscal policy for several years. In 1995, the fund balance in the Auctioneer Recovery Fund was \$220,837. In 1996, the balance dipped to \$188,977 primarily due to \$30,521 in claims paid that year. With Fund interest and a \$50 fee paid by new applicants, the Fund should return to \$200,000 in 1997. If needed, the Board has the authority to assess all auctioneers a fee to insure the Fund has a sufficient balance.

Fees

Section 3 increases the maximum fee the Board can charge for licenses and exams for deposit into the Board's Special Revenue Fund for its operating budget. The Board has not increased the statutory maximum license fee since 1973, but did add exam and application fees in 1993. As shown in the chart below, the Board currently does not use the maximum fees allowed by statute. However, with expenditures exceeding revenues for the last two years, the Board has submitted a fee increase to the Rules Review Commission that would become effective September 1, 1998. The Board's Executive Director feels this fee increase will provide sufficient revenue for Board operations for the next five years. The chart below shows the impact if the Board chose to raise all fees to the maximum when given the authority under HB 1166.

	<u>FY 1996-97</u>	<u>Current Fee</u>	<u>Current Revenue</u>	<u>Pending Fee Increase</u>	<u>Pending Revenue</u>	<u>HB 1166 Maximum Fee</u>	<u>HB 1166 Maximum Revenue</u>
<u>Apprentice Auctioneers</u>							
Application for License	15	\$25	\$375	\$50	\$750	\$125	\$1,875
Issuance or Renewal of License	50	\$25	\$1,250	\$50	\$2,500	\$125	\$6,250
<u>Auctioneers</u>							
Application for License	130	\$25	\$3,250	\$50	\$6,500	\$125	\$16,250
Examination	145	\$25	\$3,625	\$25	\$3,625	\$75	\$10,875
Issuance or Renewal of License	2,525	\$75	\$189,375	\$100	\$252,500	\$250	\$631,250
<u>Auction Firms</u>							
Application for License	30	\$25	\$750	\$50	\$1,500	\$125	\$3,750
Examination	10	\$25	\$250	\$25	\$250	\$75	\$750
Issuance or Renewal of License	375	\$75	\$28,125	\$100	\$37,500	\$250	\$93,750
<u>Reinstatement of License</u>	250	\$25	\$6,250	\$25	\$6,250	\$75	\$18,750
Total			\$233,250		\$311,375		\$783,500

FISCAL RESEARCH DIVISION
PREPARED BY: Richard Bostic

APPROVED BY: Tom Covington 
DATE: June 18, 1997

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

July 9, 1997

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Alex Byrd	Manning, Fulba & Skinner, PA Raleigh
Bill Scobbin	NCBA
Cam Coner	BPMHL
Zoh Alling	ZDA PA
RW Kayla	Kayla Law Firm
Stuart Dixon	NCNB
Joe Pennachia	Piedmont Natural Gas Co.
Zee Lamb	Lt. Gov. Office
Paul Zippin	OSBM
Alvin Parlant	Electricities
RS	nc 7/9

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

July 9, 1997

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

<i>LEIGHTON ROPER</i>	<i>ZDA, PA</i>
<i>Roberto Alomar</i>	<i>DC.</i>
<i>David McLeod</i>	<i>NCDA</i>
<i>V. McBride</i>	<i>NOA</i>
<i>Bob Stoum</i>	<i>DC Forestry Assoc.</i>
<i>Dakry Boerner</i>	<i>Antsplosure</i>
<i>Patricia Yancy</i>	<i>Antsplosure / SCSL</i>
<i>Alex Lipin</i>	<i>Mech Co. DSS</i>
<i>Doug Lassiter</i>	<i>NC Septic Tank Assoc</i>
<i>Jay Williams</i>	<i>Commerce / Energy</i>
<i>Deborah Lamm</i>	<i>Commerce / Energy</i>

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

July 9, 1997
Date

Name of Committee

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Sabra Faires	Department of Revenue
--------------	-----------------------

Jim Hoard	NC Utilities Commission - Public Staff
-----------	--

A W Turner Jr	NC Utilities Commn. Public Staff
---------------	----------------------------------

GENE CURTIS	"
-------------	---

Jack Hays	DOR
-----------	-----

Minor Mendenhall	Payroll Service
------------------	-----------------

Stollene	NC Med Soc.
----------	-------------

CHARLES FRANKS	Woods, Francis, PLLC
----------------	----------------------

Guy Radford	DOR
-------------	-----

Georget. Long	DOR
---------------	-----

Beth Daint	"
------------	---

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

July 9, 1997
Date

Name of Committee

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

NAME	FIRM OR AGENCY AND ADDRESS
Jay Hise	DOR
Christine Davies	
Kate McGuire	NC Center for Nonprofits
Sam Kirby	NCUC
Gray Styer	Kilpatrick Stockton LLP
Julia Lewis	Pub Center for Alcohol Studies
Jerry Roberts	C.U.C.A.

**UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL**

H.B.(CS #1)457 Amend Forest Development Act/AB.
Draft Number: PCSA405
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

H.B.(CS #1)843 Cedar Rock Incorporation
Draft Number: PCS6297
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 7

Committee Clerk Comment: Bills taken up in 7-9-97 Committee meeting

SENATE FINANCE COMMITTEE

WEDNESDAY, JULY 16, 1997

8:30 A.M. - ROOM 544 LOB

The Senate Finance Committee met on July 16, 1997, with Senator Kerr presiding. There were 26 committee members present.

H.B. 750 - Charter of Forest Hills

Representative Beall was recognized to explain this bill. Senator Weinstein offered an amendment which was adopted by the committee. On motion by Senator Bob Shaw, the bill, as amended, was given a "favorable" report. The bill will be rolled into a committee substitute. Copy of bill, amendment and committee substitute included in the minutes.

H.B. 653 - Wentworth Charter Amendments

Representative Sexton was recognized to explain this bill. Senator Foxx moved for a "favorable" report and the motion carried. Copy of bill included in the minutes.

S.B. 696 - 3rd Senate District Local Act

Senator Perdue was called on to explain S.B. 696. On motion by Senator Hoyle, a proposed committee substitute was adopted. Senator Hoyle moved for the adoption of a technical amendment and the motion carried. Since Senator Perdue was not present, Senator Kerr displaced this bill temporarily.

H.B. 463 - Farm Products Weight Exemption

Representative Owens was recognized to explain this bill. Senator Weinstein moved for a "favorable" report and the motion carried. Copy of bill, explanation and fiscal note included in the minutes.

H.B. 524 - UNC Alcohol Studies Fund

Representative Morris was recognized to explain this bill. Senator Bob Shaw moved for a "favorable" report and the motion carried. Dr. Crews, Director of the Bowles Center for Alcohol Studies in Chapel Hill, was recognized for brief remarks in support of this bill. Copy of bill, explanation, fiscal note and other information included in the minutes.

H.B. 408 - Plumbing/Heating Contractors/AB

Representative Ives was recognized to explain this bill. Senator Kerr introduced Nick Fountain, Attorney for the Board, who gave a further explanation of the bill. After a brief discussion of the bill, Senator Rand moved for a "favorable" report and the motion carried. Copy of bill, explanation and fiscal note included in the minutes.

H.B. 1158 - Reduce Property Tax for Antique Planes

Representative Bob Hunter was recognized to explain H.B. 1158. At the conclusion of his explanation, Senator Conder moved for a "favorable" report and the motion carried. Copy of bill, explanation and fiscal note included in the minutes.

Senator Kerr asked for vote on **S.B. 696 -3rd Senate District Local Act** and on motion by Senator Phillips, the committee substitute, as amended, was given a "favorable" report. Copy of bill, and committee substitute included in the minutes. (Copy of technical amendment not available.)

H.B. 1108 - Brew on Premises Permits

Representative McMahan was recognized to explain this bill. Senator Rand moved that a proposed committee substitute be adopted and the motion carried. Senator Dannelly moved for a "favorable" report for the committee substitute and the motion carried. Copy of bill, committee substitute, explanation and fiscal note included in the minutes.

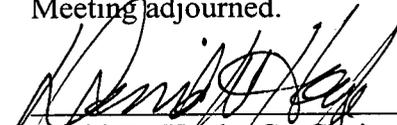
S.B. 886 - Trucking Adjustment Act of 1997

Senator Jordan was recognized to explain this bill. On motion by Senator Conder, proposed committee substitute was adopted. Virgil McBride, representing the North Carolina Trucking Association, spoke in favor of this bill. Also, two former Motor Vehicle Commissioners, Mr. Bill Peters and Representative Hiatt, were recognized as supporters of this bill. At the conclusion of the explanation, there was a lengthy discussion on this bill with questions from the committee members to bill sponsor and supporters of the bill. Carol Howard, DMV, Director of Vehicle Registration, was recognized for remarks concerning this bill. Also Major Arrowood, Assistant Director with DMV Enforcement, was recognized and explained that there was some concern in his department with this bill. Since there were so many unresolved issues concerning this bill, it was held over and not voted on today. Copy of bill, committee substitute and fiscal note included in the minutes.

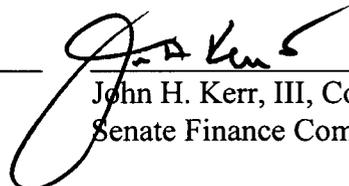
H.B. 1121 - Brownfield Property Reuse Act

Representative McComas was recognized to explain this bill. At the conclusion of his explanation, there were several questions from the committee members which were answered by the bill sponsor and by George Givens, Staff Attorney. Since there were several unanswered questions concerning this bill, Senator Kerr announced that the bill would not be voted on today but would be taken up again at a later date. Copy of bill, explanation and fiscal note included in the minutes.

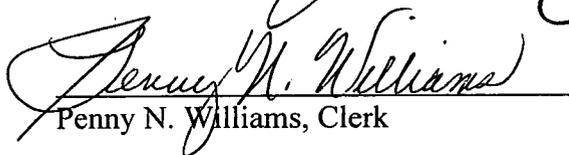
Meeting adjourned.



David W. Hoyle, Co-Chair
Senate Finance Committee



John H. Kerr, III, Co-Chair
Senate Finance Committee



Penny N. Williams, Clerk



Evelyn S. Hartsell, Clerk

NOTE:

- Agenda is Attachment # 1
- Visitors' Sign Up Sheet is Attachment # 2
- Committee Report is Attachment # 3

H.B. 96 and H.B. 251 were not heard in the committee meeting.

AGENDA
SENATE FINANCE COMMITTEE MEETING

July 16, 1997 - 8:30 A.M.

Room
544

- H.B. 96 - Intangibles Tax Remedy - Rep. Dickson
- H.B. 251 - Well Contractors - Rep. Culp
- H.B. 408 - Plumbing/Heating Contractors - Rep. Ives
- H.B. 463 - Farm Products Weight Exemption - Rep. Owens
- H.B. 524 - UNC Alcohol Studies Fund - Rep. Morris
- H.B. 653 - Wentworth Charter Amendments - Rep. Sexton
- H.B. 750 - Charter of Forest Hills - Rep. Beall
- H.B. 1108 - Brew on Premises Permitted - Rep. McMahan
- H.B. 1121 - Brownfield Property Reuse Act - Rep. McComas
- H.B. 1158 - Reduce Property Tax/Antique Planes - Rep. R. Hunter
- S.B. 696 - 3rd Senate District Local Act - Sen. Perdue
- S.B. 886 - Trucking Adjustment Act of 1997 - Sen. Jordan

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 750*

Short Title: Charter of Forest Hills.

(Local)

Sponsors: Representatives Beall and Ramsey.

Referred to: Local and Regional Government II, if favorable, Finance.

April 2, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO INCORPORATE THE VILLAGE OF FOREST HILLS, SUBJECT
3 TO A REFERENDUM.
4 The General Assembly of North Carolina enacts:
5 Section 1. A Charter for the Village of Forest Hills is enacted to read:
6 "CHARTER OF THE VILLAGE OF FOREST HILLS.
7 "CHAPTER I.
8 "INCORPORATION AND CORPORATE POWERS.
9 "Section 1.1. **Incorporation and Corporate Powers.** The inhabitants of the Village
10 of Forest Hills are a body corporate and politic under the name 'Village of Forest
11 Hills'. Under that name they have all the powers, duties, rights, privileges, and
12 immunities conferred and imposed on cities by the general law of North Carolina.
13 "CHAPTER II.
14 "CORPORATE BOUNDARIES.
15 "Section 2.1. **Village Boundaries.** Until modified in accordance with law, the
16 boundaries of the Village of Forest Hills are as follows:
17 BEGINNING at the point of intersection of the projection of a Northwest direction of
18 a line extending along the Northeastern boundary of Lot 1. of the Forest Hills
19 Subdivision shown on Jackson County NC tax map 7559(17) with a Northeast
20 projection of a line extending along the North side of State Road 1330 (Dillard Farm
21 Road),
22 -Thence Southeast to the easternmost corner of Lot 2, Forest Hills Subdivision,

1 -Thence turning and running in a south and southeasterly direction to the
2 southeasternmost corner of Lot 14, Forest Hills Subdivision identified as tax parcel
3 7559-20-2275,
4 -Thence turning and running in a west and southwest direction with the southeast
5 boundaries of Lots 9, 10, 11, 12, 13, and 14 of the Forest Hills Subdivision identified
6 as Jackson County tax parcels 7559-10-6040, 7559-10-7085, 7559-10-9110, 7559-20-
7 0134, 7559-20-1148 and 7559-20-2275 to the Southwesternmost corner of Lot 9, Forest
8 Hills Subdivision, identified as Jackson County tax parcel 7559-10-6040,
9 -Thence turning and running generally south with the east boundary of Lots 11, 12,
10 13, 14, 15, and 16 of the Forest Hills Subdivision identified on Jackson County tax
11 map 7558(05) as parcels 7558-19-5980, 7558-19-5559, 7558-19-5421, 7558-19-5248,
12 7558-19-5143, and 7558-18-5946 to the southernmost corner of Lot 16, Forest Hills
13 Subdivision identified on Jackson County tax map 7558(05) as parcel 7558-18-5946,
14 -Thence turning and running west and southwest with the southeast boundaries of
15 Lots 16, 18, 20, and 23 of the Forest Hills Subdivision identified on the Jackson
16 County tax map 7558(05) as parcels 7558-18-5946, 7558-18-4910, 7558-18-2970, and
17 7558-18-1836 to the Southwesternmost corner of Lot 23 of the Forest Hills
18 Subdivision identified on the Jackson County tax map 7558(05) as parcel 7558-18-
19 1836.
20 -Thence turning and running southeast with the Northeast boundary of Lot 26 and 27
21 of the Forest Hills Subdivision identified on Jackson County tax map 7558(05) as
22 parcel 7558-08-9784 and with the Northeast boundary of Lot 20 and Lot 22 of the
23 Oak Forest Subdivision identified on Jackson County tax map 7558(01) as parcels
24 7558-18-1641 and 7558-18-1443 to the southeasternmost corner of Lot 22 of the Oak
25 Forest Subdivision identified on Jackson County tax map 7558(01) as parcel 7558-18-
26 1443,
27 -Thence turning and running generally southwest with the southeast boundaries of
28 Lot 22 to the Southwesternmost corner of Lot 22 of the Oak Forest Subdivision
29 identified on Jackson County tax map 7558(01) as parcel 7558-18-1443,
30 -Thence turning and running southeast with the northeast boundary of Lot 15 Oak
31 Forest Subdivision to the easternmost corner of Lot 15, Oak Forest Subdivision
32 identified on Jackson County tax map 7558(01) as parcel 7558-18-1221,
33 -Thence turning and running generally south along the eastern boundary of Lot 15,
34 Oak Forest Subdivision identified on Jackson County tax map 7558(01) as parcel
35 7558-18-1221,
36 -Thence turning and running generally west with the south boundary of Lot 15, Oak
37 Forest Subdivision as identified on Jackson County tax map as parcel 7558-18-1221,
38 -Thence turning and running generally southwest to the southernmost corner of Lot
39 14, Oak Forest Subdivision identified on Jackson County tax map 7558(01) as parcel
40 7558-08-9276,
41 -Thence turning and running generally northwest to the northwesternmost corner of
42 Lot 14, Oak Forest Subdivision identified on Jackson County tax map 7558(01) as
43 parcel 7558-08-9276,

1 -Thence turning and running generally southwest with the southeast boundaries of
2 Lots 31, and 32, Forest Hills Subdivision and Lot 20 Forest Hills Estates Subdivision
3 as identified on Jackson County tax map 7558(05) as parcels 7558-08-7222, 7558-08-
4 5173, and 7558-07-2944 to the southeasternmost corner of Lot 20, Forest Hills Estates
5 Subdivision as identified on Jackson County tax map 7558(05) as parcel 7558-07-
6 2944,
7 -Thence turning and running generally west with the southern boundary of Lot 20,
8 Forest Hills Estates Subdivision identified on Jackson County tax map 7558(05) and
9 with the southern boundaries of Lots 16, 11, and 9, Forest Hills Estates Subdivision as
10 identified on Jackson County tax map 7548(02) as parcels 7548-97-4329, 7548-87-
11 8394, and 7548-87-0413 to the southwesternmost corner of Lot 9, Forest Hills
12 Subdivision as identified on Jackson County tax map 7548(02) as parcel 7548-87-
13 0413,
14 -Thence turning and running generally north with the west boundaries of Lots 9, 7, 5,
15 and 4 of the Forest Hills Estates Subdivision identified on Jackson County tax map
16 7548(02) as parcels 7548-87-0413, 7548-77-9820, 7548-78-8182, and 7548-78-9470 to
17 the northwesternmost corner of Lot 4, Forest Hills Estates Subdivision identified on
18 Jackson County tax map as parcel 7548-78-9470,
19 -Thence turning and running generally west with the southern boundaries of the
20 parcels identified on Jackson County tax map 7548(02) as parcel numbers 7548-78-
21 6523, 7548-78-5506, 7548-78-3569 to the southeasternmost corner of parcel 7548-78-
22 3569 on Jackson County tax map 7548(02),
23 -Thence turning and running south and southwest with the east and southeast
24 boundaries of parcel number 7548-78-2539 and 7548-68-9458 on Jackson County tax
25 map 7548(02) to the southernmost corner of parcel 7548-68-9458 on Jackson County
26 tax map 7548(02),
27 -Thence turning and running generally west with the southern boundaries of parcels
28 7548-68-9458 and 7548-68-5586 on Jackson County tax map 7548(02) to the
29 southwesternmost corner of parcel 7548-68-5586 on Jackson County tax map
30 7548(02),
31 -Thence turning and running generally south with the eastern boundary of Lot 41
32 Dillard Subdivision identified on Jackson County tax map 7548(02) as parcel number
33 7548-68-2313 to the southernmost corner of Lot 41 Dillard Subdivision identified on
34 Jackson County tax map 7548(02) as parcel 7548-68-2313,
35 -Thence turning and running generally west with the southern boundaries of Lot 44,
36 45, 46, and 48 Dillard Subdivision as identified on Jackson County tax map 7548(02)
37 as parcels 7548-58-8172, 7548-58-5171, 7548-58-3123, and 7548-58-0251 to the
38 southwesternmost corner of Lot 48 Dillard Subdivision identified on Jackson County
39 tax map as parcel 7548-58-0251,
40 -Thence turning and running generally north with the western boundaries of Lot 48
41 Forest Hills, and Lot 57 Dillard Subdivision identified on Jackson County tax map
42 7548(02) as parcel 7548-58-0251, 7548-58-1742, and 7548-59-1077 to the
43 northwesternmost corner of Lot 57 Dillard Subdivision identified on Jackson County
44 tax map 7548(02) as parcel 7548-59-1077,

1 -Thence turning and running generally northeast with the northern boundaries of
2 Lots 57, 58, 60, 62, Dillard Subdivision Lot 344 and 342 Forest Hills Subdivision and
3 Lot 64 Dillard Subdivision identified on Jackson County tax map as parcels 7548-59-
4 1077, 7548-59-6138, 7548-69-9241, 7548-69-2219, 7548-69-6483 and 7548-69-6892 to
5 the northeasternmost corner of Lot 64, Dillard Subdivision identified on Jackson
6 County tax map 7548(02) as parcel 7548-69-6892,
7 -Thence turning and running north with the western boundaries of Lot 67 Dillard
8 Subdivision identified on Jackson County tax map 7548(02) as parcel 7548-79-1217 to
9 the northwesternmost corner of Lot 67 Dillard Subdivision identified on Jackson
10 County tax map 7548(02) as parcel 7548-79-1217,
11 -Thence turning and running generally northeast with the northern boundary of Lot
12 67 Dillard subdivision identified on Jackson County tax map 7548(02) as parcel 7548-
13 79-1217 to the northeasternmost corner of Lot 67 Dillard identified on Jackson
14 County tax map 7548(02) as parcel 7548-79-1217,
15 -Thence turning and running generally southeast with the eastern boundary of Lot 67
16 Dillard Subdivision identified on Jackson County tax map 7548(02) as parcel 7548-
17 79-1217,
18 -Thence turning and running generally northeast along the northern boundary of Lot
19 70 Dillard Subdivision identified on Jackson County tax map 7548(02) as parcel
20 7548-79-7849 to the northeasternmost corner of Lot 70 Dillard Subdivision identified
21 on Jackson County tax map 7548(02) as parcel 7548-79-7849,
22 -Thence turning and running generally southeast with the eastern boundary of Lot 70
23 Dillard Subdivision identified on Jackson County tax map 7548(02) as parcel 7548-
24 79-7849,
25 -Thence turning and running generally northeast with the boundaries of Lots 316,
26 306, 304, and 302 Forest Hills Subdivision identified on Jackson County tax map
27 7548(02) as parcels 7548-89-2866 and two unnumbered parcels,
28 -Thence turning and running generally north with the western boundary of Lot 79
29 Dillard Subdivision identified on Jackson County tax map 7549(02) as parcel 7549-
30 80-7281 to the northeasternmost corner of Lot 79 Dillard Subdivision identified on
31 Jackson County tax map 7549(02) as parcel 7549-80-7281,
32 -Thence turning and running generally southeast with the eastern boundary of Lot 79
33 Dillard Subdivision identified on Jackson County tax map 7549(02) as parcel 7549-
34 80-7281 to the northeasternmost corner of Lot 79 Dillard Subdivision identified on
35 Jackson County tax map 7549(02) as parcel 7549-80-7281,
36 -Thence turning and running generally northeast for approximately 400 feet with the
37 northern boundary of an unidentified parcel shown on Jackson County tax map
38 7548(02) to the northwesternmost corner of Lot 84 Dillard Subdivision identified on
39 Jackson County tax map 7548(02) as parcel 7548-99-4947,
40 -Thence turning and running generally southeast with the northeast boundary of Lot
41 84, Dillard Subdivision identified on Jackson County tax map 7548(02) as parcel
42 7548-99-4947 to the northeasternmost corner of Lot 84, Dillard Subdivision identified
43 on Jackson County tax map 7548(02) as parcel 7548-99-4947,

1 -Thence turning and running generally northeast with the northwest boundary of
2 parcel 7548-99-8653 on Jackson County tax map 7548(02) to the northernmost corner
3 of parcel 7548-99-8653 identified on Jackson County tax map 7548(02),
4 -Thence turning and running generally southeast with the northeast boundary of
5 parcel 7548-99-8653 identified on Jackson County tax map 7548(02) to the
6 intersection of the northern edge of State Road 1330, Dillard Farm Road, as shown
7 on Jackson County tax map 7548(02),
8 -Thence turning and running generally east with the north side of State Road 1330,
9 Dillard Farm Road, for approximately 210 ft to the southwesternmost corner of
10 parcel 7558-09-3995 identified on Jackson County tax map 7558(05),
11 -Thence turning and running north with the western boundary of parcel 7558-09-3995
12 as identified on Jackson County tax map 7558(02) to the northwesternmost corner of
13 parcel 7558-09-3995 as identified on Jackson County tax map 7558(02),
14 -Thence turning and running northeast with the northern boundaries of parcels 7558-
15 09-3995 and 7558-09-7459 identified on Jackson County tax map 7558(05) to the
16 northeasternmost corner of parcel 7558-09-7459 identified on Jackson County tax
17 map 7558(05),
18 -Thence turning and running generally southeast with the northeast boundary of
19 parcel 7558-09-7459 identified on Jackson County tax map 7558(05) to the
20 southeasternmost corner of parcel 7558-09-7459 identified on Jackson County tax
21 map 7558(05),
22 -Thence turning and running generally north and northwest with the western
23 boundary of parcel 7559-10-1074 identified on Jackson County tax map 7559(17) to
24 the northwesternmost corner of parcel 7559-10-1074 identified on Jackson County tax
25 map 7559(17),
26 -Thence turning and running generally northeast with the northwest boundary of
27 parcel 7559-10-1074 identified on Jackson County tax map 7559(17) to the
28 northeasternmost corner of parcel 7559-10-1074 identified on Jackson County tax
29 map 7559(17),
30 -Thence turning and running generally southeast with the northeast boundary of
31 parcel 7559-10-1074 identified on Jackson County tax map 7559(17) to the
32 intersection with the north side of State Road 1330, Dillard Farm Road,
33 -Thence turning and running generally northeast for approximately 1050 feet with the
34 north side of State Road 1330, Dillard Farm Road, identified on Jackson County tax
35 map 7559(17) to the point of BEGINNING. All references to 'tax maps' refer to
36 Jackson County Tax Maps as of March 3, 1997.

37 "CHAPTER III.

38 "GOVERNING BODY.

39 "Section 3.1. **Structure of Governing Body; Number of Members.** The governing
40 body of the Village of Forest Hills is the Village Council, which has four members
41 and the Mayor.

42 "Section 3.2. **Manner of Electing Village Council.** The qualified voters of the
43 entire Village of Forest Hills shall elect the members of the Village Council.

1 "Section 3.3. **Term of Office for Village Council Members.** Members of the
2 Village Council are elected to four-year terms, except for the initial election in 1997.
3 In 1997, two members of the Village Council shall be elected to four-year terms, and
4 two members of the Village Council shall be elected to two-year terms. Thereafter,
5 each member of the Village Council shall be elected for four-year terms.

6 "Section 3.4. **Selection of Mayor; Term of Office.** The Mayor is elected to a two-
7 year term. The qualified voters of the entire Village of Forest Hills shall elect a
8 Mayor. A Mayor shall be elected in 1997 and biennially thereafter for a two-year
9 term.

10 "CHAPTER IV.

11 "ELECTIONS.

12 "Section 4.1. **Conduct of Village Elections.** Village officers shall be elected on a
13 nonpartisan basis, and the results determined by the plurality method.

14 "CHAPTER V.

15 "ADMINISTRATION.

16 "Section 5.1. **Mayor-Council Plan.** The Village of Forest Hills operates under the
17 Mayor-Council Plan as provided by Part 3 of Article 7 of Chapter 160B of the
18 General Statutes. The Mayor shall vote only in those cases necessary to break a tie.

19 "Section 5.2. **Interim Mayor and Village Council.** Until members of the Village
20 Council are elected in 1997 in accordance with the Village Charter and the law of
21 North Carolina, Irene M. Hooper shall serve as interim Mayor; and Jean Adams,
22 Lawrence G. Kolenbrander, James W. Pearce, and Harold J. Williford shall serve as
23 interim members of the Village Council, with all powers and authority as if they had
24 been duly elected."

25 Section 2. On or before September 1, 1997, the Jackson County Board of
26 Elections shall conduct a special election for the purpose of submission to the
27 qualified voters of the area described in Section 2.1 of the Charter of the Village of
28 Forest Hills, the question of whether or not such area shall be incorporated as the
29 Village of Forest Hills.

30 Section 3. In the election, the question on the ballot shall be:

31 "[]FOR []AGAINST
32 Incorporation of the Village of Forest Hills".

33 Section 4. In the election, if a majority of the votes are cast "For the
34 incorporation of the Village of Forest Hills", this Charter becomes effective on the
35 date that the Jackson County Board of Elections certifies the results of the election.
36 Otherwise, Sections 1 through 3 of this act shall have no force and effect.

37 Section 5. If a majority of the voters approve an incorporation of the
38 Village of Forest Hills, the election of the Village Council and Mayor shall take place
39 at an election held on the general election on the Tuesday after the first Monday in
40 November 1997.

41 Section 6. This act is effective when it becomes law.



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 750

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

H750-ARB-7/16

Date _____, 1997

Comm. Sub. []
Amends Title []

Senator _____

1 moves to amend the bill on page 6, line 25, by deleting "September
2 1, 1997," and substituting "November 4, 1997,";
3
4 and on page 6, lines 39 and 40, by rewriting the lines to read:
5 "at an election held on a date set by the Jackson County Board of
6 Elections, but no later than July 1, 1998.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

HOUSE BILL 750*
Proposed Senate Committee Substitute H750-PCS4138

Short Title: Charter of Forest Hills.

(Local)

Sponsors:

Referred to:

April 2, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO INCORPORATE THE VILLAGE OF FOREST HILLS, SUBJECT
3 TO A REFERENDUM.

4 The General Assembly of North Carolina enacts:

5 Section 1. A Charter for the Village of Forest Hills is enacted to read:

6 "CHARTER OF THE VILLAGE OF FOREST HILLS.

7 "CHAPTER I.

8 "INCORPORATION AND CORPORATE POWERS.

9 "Section 1.1. **Incorporation and Corporate Powers.** The inhabitants of the Village
10 of Forest Hills are a body corporate and politic under the name 'Village of Forest
11 Hills'. Under that name they have all the powers, duties, rights, privileges, and
12 immunities conferred and imposed on cities by the general law of North Carolina.

13 "CHAPTER II.

14 "CORPORATE BOUNDARIES.

15 "Section 2.1. **Village Boundaries.** Until modified in accordance with law, the
16 boundaries of the Village of Forest Hills are as follows:

17 BEGINNING at the point of intersection of the projection of a Northwest direction of
18 a line extending along the Northeastern boundary of Lot 1. of the Forest Hills
19 Subdivision shown on Jackson County NC tax map 7559(17) with a Northeast
20 projection of a line extending along the North side of State Road 1330 (Dillard Farm
21 Road),

22 -Thence Southeast to the easternmost corner of Lot 2, Forest Hills Subdivision,

1 -Thence turning and running in a south and southeasterly direction to the
2 southeasternmost corner of Lot 14, Forest Hills Subdivision identified as tax parcel
3 7559-20-2275,
4 -Thence turning and running in a west and southwest direction with the southeast
5 boundaries of Lots 9, 10, 11, 12, 13, and 14 of the Forest Hills Subdivision identified
6 as Jackson County tax parcels 7559-10-6040, 7559-10-7085, 7559-10-9110, 7559-20-
7 0134, 7559-20-1148 and 7559-20-2275 to the Southwesternmost corner of Lot 9, Forest
8 Hills Subdivision, identified as Jackson County tax parcel 7559-10-6040,
9 -Thence turning and running generally south with the east boundary of Lots 11, 12,
10 13, 14, 15, and 16 of the Forest Hills Subdivision identified on Jackson County tax
11 map 7558(05) as parcels 7558-19-5980, 7558-19-5559, 7558-19-5421, 7558-19-5248,
12 7558-19-5143, and 7558-18-5946 to the southernmost corner of Lot 16, Forest Hills
13 Subdivision identified on Jackson County tax map 7558(05) as parcel 7558-18-5946,
14 -Thence turning and running west and southwest with the southeast boundaries of
15 Lots 16, 18, 20, and 23 of the Forest Hills Subdivision identified on the Jackson
16 County tax map 7558(05) as parcels 7558-18-5946, 7558-18-4910, 7558-18-2970, and
17 7558-18-1836 to the Southwesternmost corner of Lot 23 of the Forest Hills
18 Subdivision identified on the Jackson County tax map 7558(05) as parcel 7558-18-
19 1836.
20 -Thence turning and running southeast with the Northeast boundary of Lot 26 and 27
21 of the Forest Hills Subdivision identified on Jackson County tax map 7558(05) as
22 parcel 7558-08-9784 and with the Northeast boundary of Lot 20 and Lot 22 of the
23 Oak Forest Subdivision identified on Jackson County tax map 7558(01) as parcels
24 7558-18-1641 and 7558-18-1443 to the southeasternmost corner of Lot 22 of the Oak
25 Forest Subdivision identified on Jackson County tax map 7558(01) as parcel 7558-18-
26 1443,
27 -Thence turning and running generally southwest with the southeast boundaries of
28 Lot 22 to the Southwesternmost corner of Lot 22 of the Oak Forest Subdivision
29 identified on Jackson County tax map 7558(01) as parcel 7558-18-1443,
30 -Thence turning and running southeast with the northeast boundary of Lot 15 Oak
31 Forest Subdivision to the easternmost corner of Lot 15, Oak Forest Subdivision
32 identified on Jackson County tax map 7558(01) as parcel 7558-18-1221,
33 -Thence turning and running generally south along the eastern boundary of Lot 15,
34 Oak Forest Subdivision identified on Jackson County tax map 7558(01) as parcel
35 7558-18-1221,
36 -Thence turning and running generally west with the south boundary of Lot 15, Oak
37 Forest Subdivision as identified on Jackson County tax map as parcel 7558-18-1221,
38 -Thence turning and running generally southwest to the southernmost corner of Lot
39 14, Oak Forest Subdivision identified on Jackson County tax map 7558(01) as parcel
40 7558-08-9276,
41 -Thence turning and running generally northwest to the northwesternmost corner of
42 Lot 14, Oak Forest Subdivision identified on Jackson County tax map 7558(01) as
43 parcel 7558-08-9276,

1 -Thence turning and running generally southwest with the southeast boundaries of
2 Lots 31, and 32, Forest Hills Subdivision and Lot 20 Forest Hills Estates Subdivision
3 as identified on Jackson County tax map 7558(05) as parcels 7558-08-7222, 7558-08-
4 5173, and 7558-07-2944 to the southeasternmost corner of Lot 20, Forest Hills Estates
5 Subdivision as identified on Jackson County tax map 7558(05) as parcel 7558-07-
6 2944,
7 -Thence turning and running generally west with the southern boundary of Lot 20,
8 Forest Hills Estates Subdivision identified on Jackson County tax map 7558(05) and
9 with the southern boundaries of Lots 16, 11, and 9, Forest Hills Estates Subdivision as
10 identified on Jackson County tax map 7548(02) as parcels 7548-97-4329, 7548-87-
11 8394, and 7548-87-0413 to the southwesternmost corner of Lot 9, Forest Hills
12 Subdivision as identified on Jackson County tax map 7548(02) as parcel 7548-87-
13 0413,
14 -Thence turning and running generally north with the west boundaries of Lots 9, 7, 5,
15 and 4 of the Forest Hills Estates Subdivision identified on Jackson County tax map
16 7548(02) as parcels 7548-87-0413, 7548-77-9820, 7548-78-8182, and 7548-78-9470 to
17 the northwesternmost corner of Lot 4, Forest Hills Estates Subdivision identified on
18 Jackson County tax map as parcel 7548-78-9470,
19 -Thence turning and running generally west with the southern boundaries of the
20 parcels identified on Jackson County tax map 7548(02) as parcel numbers 7548-78-
21 6523, 7548-78-5506, 7548-78-3569 to the southeasternmost corner of parcel 7548-78-
22 3569 on Jackson County tax map 7548(02),
23 -Thence turning and running south and southwest with the east and southeast
24 boundaries of parcel number 7548-78-2539 and 7548-68-9458 on Jackson County tax
25 map 7548(02) to the southernmost corner of parcel 7548-68-9458 on Jackson County
26 tax map 7548(02),
27 -Thence turning and running generally west with the southern boundaries of parcels
28 7548-68-9458 and 7548-68-5586 on Jackson County tax map 7548(02) to the
29 southwesternmost corner of parcel 7548-68-5586 on Jackson County tax map
30 7548(02),
31 -Thence turning and running generally south with the eastern boundary of Lot 41
32 Dillard Subdivision identified on Jackson County tax map 7548(02) as parcel number
33 7548-68-2313 to the southernmost corner of Lot 41 Dillard Subdivision identified on
34 Jackson County tax map 7548(02) as parcel 7548-68-2313,
35 -Thence turning and running generally west with the southern boundaries of Lot 44,
36 45, 46, and 48 Dillard Subdivision as identified on Jackson County tax map 7548(02)
37 as parcels 7548-58-8172, 7548-58-5171, 7548-58-3123, and 7548-58-0251 to the
38 southwesternmost corner of Lot 48 Dillard Subdivision identified on Jackson County
39 tax map as parcel 7548-58-0251,
40 -Thence turning and running generally north with the western boundaries of Lot 48
41 Forest Hills, and Lot 57 Dillard Subdivision identified on Jackson County tax map
42 7548(02) as parcel 7548-58-0251, 7548-58-1742, and 7548-59-1077 to the
43 northwesternmost corner of Lot 57 Dillard Subdivision identified on Jackson County
44 tax map 7548(02) as parcel 7548-59-1077,

1 -Thence turning and running generally northeast with the northern boundaries of
2 Lots 57, 58, 60, 62, Dillard Subdivision Lot 344 and 342 Forest Hills Subdivision and
3 Lot 64 Dillard Subdivision identified on Jackson County tax map as parcels 7548-59-
4 1077, 7548-59-6138, 7548-69-9241, 7548-69-2219, 7548-69-6483 and 7548-69-6892 to
5 the northeasternmost corner of Lot 64, Dillard Subdivision identified on Jackson
6 County tax map 7548(02) as parcel 7548-69-6892,
7 -Thence turning and running north with the western boundaries of Lot 67 Dillard
8 Subdivision identified on Jackson County tax map 7548(02) as parcel 7548-79-1217 to
9 the northwesternmost corner of Lot 67 Dillard Subdivision identified on Jackson
10 County tax map 7548(02) as parcel 7548-79-1217,
11 -Thence turning and running generally northeast with the northern boundary of Lot
12 67 Dillard subdivision identified on Jackson County tax map 7548(02) as parcel 7548-
13 79-1217 to the northeasternmost corner of Lot 67 Dillard identified on Jackson
14 County tax map 7548(02) as parcel 7548-79-1217,
15 -Thence turning and running generally southeast with the eastern boundary of Lot 67
16 Dillard Subdivision identified on Jackson County tax map 7548(02) as parcel 7548-
17 79-1217,
18 -Thence turning and running generally northeast along the northern boundary of Lot
19 70 Dillard Subdivision identified on Jackson County tax map 7548(02) as parcel
20 7548-79-7849 to the northeasternmost corner of Lot 70 Dillard Subdivision identified
21 on Jackson County tax map 7548(02) as parcel 7548-79-7849,
22 -Thence turning and running generally southeast with the eastern boundary of Lot 70
23 Dillard Subdivision identified on Jackson County tax map 7548(02) as parcel 7548-
24 79-7849,
25 -Thence turning and running generally northeast with the boundaries of Lots 316,
26 306, 304, and 302 Forest Hills Subdivision identified on Jackson County tax map
27 7548(02) as parcels 7548-89-2866 and two unnumbered parcels,
28 -Thence turning and running generally north with the western boundary of Lot 79
29 Dillard Subdivision identified on Jackson County tax map 7549(02) as parcel 7549-
30 80-7281 to the northeasternmost corner of Lot 79 Dillard Subdivision identified on
31 Jackson County tax map 7549(02) as parcel 7549-80-7281,
32 -Thence turning and running generally southeast with the eastern boundary of Lot 79
33 Dillard Subdivision identified on Jackson County tax map 7549(02) as parcel 7549-
34 80-7281 to the northeasternmost corner of Lot 79 Dillard Subdivision identified on
35 Jackson County tax map 7549(02) as parcel 7549-80-7281,
36 -Thence turning and running generally northeast for approximately 400 feet with the
37 northern boundary of an unidentified parcel shown on Jackson County tax map
38 7548(02) to the northwesternmost corner of Lot 84 Dillard Subdivision identified on
39 Jackson County tax map 7548(02) as parcel 7548-99-4947,
40 -Thence turning and running generally southeast with the northeast boundary of Lot
41 84, Dillard Subdivision identified on Jackson County tax map 7548(02) as parcel
42 7548-99-4947 to the northeasternmost corner of Lot 84, Dillard Subdivision identified
43 on Jackson County tax map 7548(02) as parcel 7548-99-4947,

1 -Thence turning and running generally northeast with the northwest boundary of
2 parcel 7548-99-8653 on Jackson County tax map 7548(02) to the northernmost corner
3 of parcel 7548-99-8653 identified on Jackson County tax map 7548(02),
4 -Thence turning and running generally southeast with the northeast boundary of
5 parcel 7548-99-8653 identified on Jackson County tax map 7548(02) to the
6 intersection of the northern edge of State Road 1330, Dillard Farm Road, as shown
7 on Jackson County tax map 7548(02),
8 -Thence turning and running generally east with the north side of State Road 1330,
9 Dillard Farm Road, for approximately 210 ft to the southwesternmost corner of
10 parcel 7558-09-3995 identified on Jackson County tax map 7558(05),
11 -Thence turning and running north with the western boundary of parcel 7558-09-3995
12 as identified on Jackson County tax map 7558(02) to the northwesternmost corner of
13 parcel 7558-09-3995 as identified on Jackson County tax map 7558(02),
14 -Thence turning and running northeast with the northern boundaries of parcels 7558-
15 09-3995 and 7558-09-7459 identified on Jackson County tax map 7558(05) to the
16 northeasternmost corner of parcel 7558-09-7459 identified on Jackson County tax
17 map 7558(05),
18 -Thence turning and running generally southeast with the northeast boundary of
19 parcel 7558-09-7459 identified on Jackson County tax map 7558(05) to the
20 southeasternmost corner of parcel 7558-09-7459 identified on Jackson County tax
21 map 7558(05),
22 -Thence turning and running generally north and northwest with the western
23 boundary of parcel 7559-10-1074 identified on Jackson County tax map 7559(17) to
24 the northwesternmost corner of parcel 7559-10-1074 identified on Jackson County tax
25 map 7559(17),
26 -Thence turning and running generally northeast with the northwest boundary of
27 parcel 7559-10-1074 identified on Jackson County tax map 7559(17) to the
28 northeasternmost corner of parcel 7559-10-1074 identified on Jackson County tax
29 map 7559(17),
30 -Thence turning and running generally southeast with the northeast boundary of
31 parcel 7559-10-1074 identified on Jackson County tax map 7559(17) to the
32 intersection with the north side of State Road 1330, Dillard Farm Road,
33 -Thence turning and running generally northeast for approximately 1050 feet with the
34 north side of State Road 1330, Dillard Farm Road, identified on Jackson County tax
35 map 7559(17) to the point of BEGINNING. All references to 'tax maps' refer to
36 Jackson County Tax Maps as of March 3, 1997.

37 "CHAPTER III.

38 "GOVERNING BODY.

39 "Section 3.1. **Structure of Governing Body; Number of Members.** The governing
40 body of the Village of Forest Hills is the Village Council, which has four members
41 and the Mayor.

42 "Section 3.2. **Manner of Electing Village Council.** The qualified voters of the
43 entire Village of Forest Hills shall elect the members of the Village Council.

1 "Section 3.3. **Term of Office for Village Council Members.** Members of the
2 Village Council are elected to four-year terms, except for the initial election in 1997
3 or 1998. In 1997 or 1998, two members of the Village Council shall be elected to
4 four-year terms, and two members of the Village Council shall be elected to two-year
5 terms. Thereafter, each member of the Village Council shall be elected for four-year
6 terms.

7 "Section 3.4. **Selection of Mayor; Term of Office.** The Mayor is elected to a two-
8 year term. The qualified voters of the entire Village of Forest Hills shall elect a
9 Mayor. A Mayor shall be elected in 1997 or 1998 and biennially thereafter for a two-
10 year term.

11 "CHAPTER IV.

12 "ELECTIONS.

13 "Section 4.1. **Conduct of Village Elections.** Village officers shall be elected on a
14 nonpartisan basis, and the results determined by the plurality method.

15 "CHAPTER V.

16 "ADMINISTRATION.

17 "Section 5.1. **Mayor-Council Plan.** The Village of Forest Hills operates under the
18 Mayor-Council Plan as provided by Part 3 of Article 7 of Chapter 160B of the
19 General Statutes. The Mayor shall vote only in those cases necessary to break a tie.

20 "Section 5.2. **Interim Mayor and Village Council.** Until members of the Village
21 Council are elected in 1997 in accordance with the Village Charter and the law of
22 North Carolina, Irene M. Hooper shall serve as interim Mayor; and Jean Adams,
23 Lawrence G. Kolenbrander, James W. Pearce, and Harold J. Williford shall serve as
24 interim members of the Village Council, with all powers and authority as if they had
25 been duly elected."

26 Section 2. On or before November 4, 1997, the Jackson County Board of
27 Elections shall conduct a special election for the purpose of submission to the
28 qualified voters of the area described in Section 2.1 of the Charter of the Village of
29 Forest Hills, the question of whether or not such area shall be incorporated as the
30 Village of Forest Hills.

31 Section 3. In the election, the question on the ballot shall be:

32 "[]FOR []AGAINST

33 Incorporation of the Village of Forest Hills".

34 Section 4. In the election, if a majority of the votes are cast "For the
35 incorporation of the Village of Forest Hills", this Charter becomes effective on the
36 date that the Jackson County Board of Elections certifies the results of the election.
37 Otherwise, Sections 1 through 3 of this act shall have no force and effect.

38 Section 5. If a majority of the voters approve an incorporation of the
39 Village of Forest Hills, the election of the Village Council and Mayor shall take place
40 at an election held on a date set by the Jackson County Board of Elections, but no
41 later than July 1, 1998. Initial terms shall expire at the time provided by general law
42 as if the election had taken place at the general election on the Tuesday after the first
43 Monday in November 1997.

44 Section 6. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

2

HOUSE BILL 653*
Committee Substitute Favorable 5/12/97

Short Title: Wentworth Charter Amendments.

(Local)

Sponsors:

Referred to:

March 27, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE CHARTER OF THE TOWN OF WENTWORTH,
3 SUBJECT TO A REFERENDUM.
4 The General Assembly of North Carolina enacts:
5 Section 1. Chapter 76 of the Private Laws of 1798 is amended by adding
6 a new section to read:
7 "VII. The Charter of the Town of Wentworth is revised and consolidated to read:
8 "CHARTER OF THE TOWN OF WENTWORTH.
9 "CHAPTER I.
10 "INCORPORATION AND CORPORATE POWERS.
11 "Sec. 1.1. The inhabitants of the Town of Wentworth are a body corporate and
12 politic under the name 'Town of Wentworth'. Under that name they have all the
13 powers, duties, rights, privileges, and immunities conferred and imposed upon cities
14 by the general law of North Carolina.
15 "CHAPTER II.
16 "CORPORATE BOUNDARIES.
17 "Sec. 2.1. Until changed in accordance with law, the boundaries of the Town of
18 Wentworth are as follows:
19 Beginning at a point four hundred feet northwest of the northern right-of-way of
20 Sandy Cross Road; said point being four hundred feet southwest of and perpendicular
21 to the southern right-of-way of Vernon Road; thence from said point in a generally
22 northeasterly direction and being four hundred feet parallel to the northern right-of-
23 way of the Sandy Cross Road to a point in the centerline of NC Highways 65 and 87;

1 said point being four hundred feet perpendicular to and westerly from the northern
2 right-of-way of Sandy Cross Road Extended to the centerline of NC Highways 65 and
3 87; thence from said point, westerly with the centerline of NC Highways 65 and 87
4 about fifty feet to a point; thence from said point in a northeasterly direction about
5 four hundred fifty feet to a point; said point being four hundred feet perpendicular to
6 and northeasterly from the northern right-of-way of NC Highways 65 and 87 and four
7 hundred feet perpendicular to and northwesterly from the northern right-of-way of
8 Wentworth Street; thence from said point four hundred feet parallel to the northern
9 right-of-way of Wentworth Street and running in a generally northeasterly direction
10 to a point; said point being about two hundred feet east of Setliff Road and four
11 hundred feet north of Wentworth Street; thence in a northerly direction about two
12 thousand one hundred feet to the northeast corner of lot seven of the Setliff Glenn
13 Subdivision (MB 28-275); said point located about eight hundred fifty feet to the east
14 of the cul-de-sac at the end of Setliff Road; thence northeasterly about two thousand
15 thirty feet to a point at the corner of the University Estates Subdivision; thence
16 easterly about two thousand feet along the southeasterly boundary line of the
17 University Estates Subdivision to a point near Cedar Lane which intersects the
18 boundary of the existing Wentworth Fire District boundary line; thence northerly
19 along the Wentworth Fire District line about five thousand five hundred feet to a
20 point; said point being about four hundred feet south of the intersection of NC 1992
21 and Berrymore Road; thence from said point north about eight hundred sixty feet to
22 a point; said point being four hundred feet north of and perpendicular to the
23 northern right-of-way of Berrymore Road; thence from said point in a generally
24 westerly direction and being four hundred feet parallel to the northern right-of-way
25 of Berrymore Road to a point four hundred feet east of the eastern right-of-way of
26 Ashley Loop Road; said point being four hundred feet east of and perpendicular to
27 the eastern right-of-way of Ashley Loop Road; thence from said point in a generally
28 northerly direction and being four hundred feet parallel to the eastern right-of-way of
29 Ashley Loop Road to a point; said point being about four hundred thirty feet east of
30 the intersection of Ashley Loop Road and Richardson Road; thence from said point
31 in a westerly direction about eight hundred sixty feet to a point four hundred feet
32 west of the the western right-of-way of Ashley Loop Road; said point being four
33 hundred feet west of and perpendicular to the western right-of-way of Ashley Loop
34 Road; thence *from* said point in a generally southerly direction and being four
35 hundred feet west of and parallel to the western right-of-way of Ashley Loop Road to
36 a point four hundred feet east of its intersection with the eastern right-of-way of NC
37 Highway 87; said point being four hundred feet east of and perpendicular to the
38 eastern right-of-way of NC Highway 87; thence from said point in a generally
39 northerly direction and being four hundred feet east of and parallel to the eastern
40 right-of-way of NC Highway 87 to a point in the center of Roach Creek; said point
41 being four hundred feet east of and perpendicular to the eastern right-of-way of NC
42 Highway 87; thence from said point in a generally westerly direction following the
43 centerline of Roach Creek about eight hundred sixty feet to a point in Roach Creek;
44 said point being four hundred feet west of and perpendicular to the western right-of-

1 way of NC Highway 87; thence from said point in a generally southerly direction and
2 being four hundred feet west of and parallel to the western right-of-way of NC
3 Highway 87 to a point four hundred feet north of its intersection with the northern
4 right-of-way of Dillard Road; said point being four hundred feet north of and
5 perpendicular to the northern right-of-way of Dillard Road; thence from said point in
6 a generally westerly direction and being four hundred feet north of and parallel to
7 the northern right-of-way of Dillard Road to a point four hundred feet north of the
8 end of the northern right-of-way of Dillard Road; said point being four hundred feet
9 north of and perpendicular to the northern right-of-way of Dillard Road; thence from
10 said point south about five hundred sixty feet to a point one hundred feet south of
11 the end of the southern right-of-way of Dillard Road; said point being one hundred
12 feet south of and perpendicular to the end of the right-of-way of Dillard Road; thence
13 from said point in a generally easterly direction and being one hundred feet south of
14 and parallel to the southern right-of-way of Dillard Road to a point four hundred feet
15 west of the western right-of-way of NC Highway 87; said point being one hundred
16 feet south of and perpendicular to the southern right-of-way of Dillard Road; thence
17 from said point in a generally southerly direction and being four hundred feet west of
18 and parallel to the western right-of-way of NC Highway 87 to a point four hundred
19 feet north of its intersection with the northern right-of-way of Pannel Road; said point
20 being four hundred feet north of and perpendicular to the northern right-of-way of
21 Pannel Road; thence from said point in a generally westerly direction and being four
22 hundred feet north of and parallel to the northern right-of-way of Pannel Road to a
23 point in the center of Rock House Creek; said point being four hundred feet north of
24 and perpendicular to the northern right-of-way of Pannel Road; thence from said
25 point in a generally southerly direction with the center of Rock House Creek to a
26 point four hundred feet south of its intersection with the southern right-of-way of NC
27 Highway 65; said point being four hundred feet south of and perpendicular to the
28 southern right-of-way of NC Highway 65; thence from said point in a generally
29 easterly direction and being four hundred feet south of and parallel to the southern
30 right-of-way of NC Highway 65 to a point on the northwest right-of-way of the
31 Transcontinental gas pipeline; said point being four hundred feet southwest of and
32 perpendicular to the southwest right-of-way of NC Highway 65; thence from said
33 point in a generally southwesterly direction and following the northwest right-of-way
34 of the Transcontinental gas pipeline to a point four hundred feet northeast of its
35 intersection with the northeast right-of-way of Gunntown Road; said point being four
36 hundred feet northeast of and perpendicular to the northeast right-of-way of
37 Gunntown Road; thence from said point in a generally northwesterly direction and
38 being four hundred feet northeast of and parallel to the northeasterly right-of-way of
39 Gunntown Road to a point four hundred feet northeast of the end of the right-of-way
40 for Gunntown Road; said point being four hundred feet northeast of and
41 perpendicular to the northeast right-of-way of Gunntown Road; thence from said
42 point southwest about eight hundred sixty feet to a point four hundred feet southwest
43 of the end of the southwest right-of-way of Gunntown Road; said point being four
44 hundred feet southwest of and perpendicular to the end of the southwest right-of-way

1 of Gunntown Road; thence from said point in a generally southeasterly direction and
2 being four hundred feet southwest of and parallel to the southwest right-of-way of
3 Gunntown Road to a point four hundred feet northwest of the northern right-of-way
4 of Carter Road; said point being four hundred feet west of and perpendicular to
5 Gunntown Road; thence from said point in a westerly direction and being four
6 hundred feet north of and parallel to the northern right-of-way of Carter Road to a
7 point four hundred feet north of the end of the northern right-of-way of Carter Road;
8 said point being four hundred feet north of and perpendicular to the northern right-
9 of-way of Carter Road; thence from said point southwest about eight hundred sixty
10 feet to a point four hundred feet south of the end of the southern right-of-way of
11 Carter Road; said point being four hundred feet southwest of and perpendicular to
12 the end of the southern right-of-way of Carter Road; thence from said point in a
13 generally easterly direction and being four hundred feet south of and parallel to the
14 southern right-of-way of Carter Road to a point four hundred feet west of the western
15 right-of-way of Spring Road; said point being four hundred feet south of and
16 perpendicular to the southern right-of-way of Carter Road; thence from said point in
17 a generally easterly direction being four hundred feet south of and parallel to the
18 southern right-of-way of Spring Road to a point four hundred feet west of the western
19 right-of-way of County Home Road; said point being four hundred feet south of and
20 perpendicular to the southern right-of-way of Spring Road; thence from said point in
21 a generally southwesterly direction and being four hundred feet northwest of and
22 parallel to the northwestern right-of-way of County Home Road to a point four
23 hundred feet northwest of its intersection of the northern right-of-way of Sims Road;
24 said point being four hundred feet north of and perpendicular to the northern right-
25 of-way of Sims Road; thence from said point in a generally westerly direction and
26 being four hundred feet north of and parallel to the northern right-of-way of Sims
27 Road to a point four hundred feet north of the end of the northern right-of-way of
28 Sims Road; said point being four hundred feet north of and perpendicular to the
29 northern right-of-way of Sims Road; thence from said point south about eight
30 hundred sixty feet to a point four hundred feet south of the southern right-of-way for
31 Sims Road; said point being four hundred feet south of and perpendicular to the
32 southern right-of-way of Sims Road; thence from said point in a generally easterly
33 direction and being four hundred feet south of and parallel to the southern right-of-
34 way of Sims Road to a point four hundred feet northwest of the northwest right-of-
35 way of County Home Road; said point being four hundred feet southwest of and
36 perpendicular to the southern right-of-way of Sims Road; thence from said point in a
37 generally southwesterly direction and being four hundred feet northwest of and
38 parallel to the northwest right-of-way of County Home Road to a point four hundred
39 feet northwest of the northern right-of-way of Sunset View Road; said point being
40 four hundred feet northwest of and perpendicular to the northern right-of-way of
41 Sunset View Road; thence from said point in a generally westerly direction and being
42 four hundred feet north of and parallel to the northern right-of-way of Sunset View
43 Road to a point four hundred feet north of the end of the northern right-of-way of
44 Sunset View Road; said point being four hundred feet north of and perpendicular to

1 the northern right-of-way of Sunset View Road; thence from said point about eight
2 hundred sixty feet south to a point four hundred feet south of the southern right-of-
3 way of Sunset View Road; said point being four hundred feet south of and
4 perpendicular to the southern right-of-way of Sunset View Road; thence from said
5 point in a generally easterly direction and being four hundred feet south of and
6 parallel to the southern right-of-way for Sunset View Road to a point four hundred
7 feet west of its intersection with the western right-of-way of County Home Road; said
8 point being four hundred feet south of and perpendicular to the southern right-of-way
9 of Sunset View Road; thence from said point in a generally southerly direction and
10 being four hundred feet west of and parallel to the western right-of-way of County
11 Home Road to a point four hundred feet north of its intersection with the northern
12 right-of-way of Vernon Road; said point being four hundred feet west of and
13 perpendicular to the western right-of-way of County Home Road; thence from said
14 point about eight hundred sixty feet south to a point four hundred feet south of the
15 southern right-of-way of Vernon Road; said point being four hundred feet south of
16 and perpendicular to the southern right-of-way of Vernon Road; thence from said
17 point in a generally easterly direction and being four hundred feet south of and
18 parallel to the southern right-of-way of Vernon Road to the point of beginning.

19 "Sec. 2.2. (a) An annexation ordinance adopted by the Town of Wentworth under
20 G.S. 160A-49(e) or G.S. 160A-37(e) shall become effective only if approved by the
21 voters of the area to be annexed in a referendum conducted under subsection (b) of
22 this section.

23 (b) The town council shall order the Rockingham County Board of Elections to
24 call an election to determine whether or not the proposed territory shall be annexed
25 to the town. Within 90 days after receiving such order from the town council, the
26 county board of elections shall proceed to hold an election on the question.

27 Such election shall be called by a resolution or resolutions of said county board of
28 elections which shall:

- 29 (1) Describe the territory proposed to be annexed to the said city or
30 town as set out in the order of the said local governing body;
31 (2) Provide that the matter of annexation of such territory shall be
32 submitted to the vote of the qualified voters of the territory
33 proposed to be annexed; and
34 (3) Provide for registration of voters in the territory proposed to be
35 annexed for said election in accordance with G.S. 163-288.2.

36 Said resolution shall be published in one or more newspapers of the said county
37 once a week for 30 days prior to the closing of the registration books. All costs of
38 holding such election shall be paid by the town. Except as herein provided, the
39 election shall be held under the same statutes, rules, and regulations as are applicable
40 to elections in the town.

41 At such election the question on the ballot shall be:

42 "[] FOR [] AGAINST
43 Annexation."

1 If at the election a majority of the votes cast from the area proposed for annexation
2 shall be 'For Annexation', the annexation ordinance shall become effective as
3 provided by Article 4A of Chapter 160A of the General Statutes, but not prior to the
4 date of certification of the results of the election.

5 "Sec. 2.3. The Town of Wentworth may not annex any territory east of the
6 following line:

7 Beginning at a point in the centerline of the Iron Works Road; said point being
8 westerly and 400 feet perpendicular to the western right-of-way of Woolen Store
9 Road Extended to the centerline of the Iron Works Road; thence from said point
10 northerly about 430 feet to a point; said point being 400 feet perpendicular to and
11 northerly from the northern right-of-way of the Iron Works Road; thence from said
12 point in a generally northeasterly direction and being 400 feet parallel to the northern
13 right-of-way of the Iron Works Road and Sandy Cross Road to a point in the
14 centerline of NC Hwy. 65 and 87; said point being 400 feet perpendicular to and
15 westerly from the northern right-of-way of Sandy Cross Road Extended to the
16 centerline of NC Hwy. 65 and 87; thence from said point, westerly with the centerline
17 of NC Hwy. 65 and 87 about 50 feet to a point; thence from said point in a
18 northeasterly direction about 450 feet to a point; said point being 400 feet
19 perpendicular to and northeasterly from the northern right-of-way of NC Hwy. 65
20 and 87 and 400 feet perpendicular to and northwesterly from the northern right-of-
21 way of Wentworth Street; thence from said point 400 feet parallel to the northern
22 right-of-way of Wentworth Street and running in a generally northeasterly direction
23 to a point; said point being about 200 feet east of Setliff Road and 400 feet north of
24 Wentworth Street; thence in a northerly direction about 2100 feet to the northeast
25 corner of lot 7 of the Setliff Glenn Subdivision (MB 28-275); said point located about
26 850 feet east of the cul-de-sac at the end of Setliff Road; thence northeasterly about
27 2030 feet to a point at the corner of the University Estates Subdivision; thence
28 easterly about 2000 feet along the southeasterly boundary line of the University
29 Estates Subdivision to a point near Cedar Lane which intersects the boundary of the
30 existing Wentworth Fire District boundary line; thence northerly along the
31 Wentworth Fire District line about 5500 feet to a point; said point being about 400
32 feet south of the intersection of NC 1992 and Berrymore Road; thence parallel to and
33 400 feet from and on the southeast side of Berrymore Road to a point; said point
34 being on NC 14 about 400 feet southeast of the intersection of Berrymore Road and
35 NC 14.

36 "CHAPTER III.

37 "GOVERNING BODY.

38 "Sec. 3.1. The governing body of the Town of Wentworth is the Town Council,
39 which has five members.

40 "Sec. 3.2. The qualified voters of the entire Town elect the members of the Town
41 Council.

42 "Sec. 3.3. From the effective date of this Charter until the organizational meeting
43 of the Town Council after the 1999 municipal election, the members of the Town

1 Council shall be Cassandra Broadnax, Evelyn Conner, George Murphy, Larry Terrell,
2 and Dennis Paschal.

3 "Sec. 3.4. At the regular town election in 1999, five Town Council members shall
4 be elected. The persons receiving the three highest numbers of votes shall be elected
5 for four-year terms, and the two persons receiving the next highest numbers of votes
6 shall be elected for two-year terms. In 2001 and quadrennially thereafter, two Town
7 Council members shall be elected for four-year terms. In 2003 and quadrennially
8 thereafter, three Town Council members shall be elected for four-year terms.

9 "Sec. 3.5. At the organizational meeting of the initial Town Council and at the
10 organizational meeting after each election, the council shall elect one of its members
11 to serve at its pleasure as Mayor.

12 "CHAPTER IV.

13 "ELECTIONS.

14 "Sec. 4.1. The Town Council shall be elected on the nonpartisan basis and the
15 results determined by plurality in accordance with G.S. 163-292.

16 "Sec. 4.2. Elections shall be conducted in accordance with Chapter 163 of the
17 General Statutes.

18 "CHAPTER V.

19 "ADMINISTRATION.

20 "Sec. 5.1. The Town of Wentworth shall operate under the mayor-council plan as
21 provided in Part 3 of Article 7 of Chapter 160A of the General Statutes."

22 Section 2. From and after the effective date of the revival of the Charter,
23 the citizens and property in the Town of Wentworth shall be subject to municipal
24 taxes levied for the year beginning July 1, 1998, and for that purpose the Town shall
25 obtain from Rockingham County a record of property in the area herein incorporated
26 which was listed for taxes as of January 1, 1998, and the businesses in the Town shall
27 be liable for privilege license tax from the effective date of the privilege license tax
28 ordinance. The Town may adopt a budget ordinance for fiscal year 1998-99 without
29 following the timetable in the Local Government Budget and Fiscal Control Act, but
30 shall follow the sequence of actions in the spirit of the act insofar as is practical. For
31 fiscal year 1998-99, ad valorem taxes may be paid at par or face amount within 90
32 days of adoption of the budget ordinance, and thereafter in accordance with the
33 schedule in G.S. 105-360 as if the taxes had been due and payable on September 1,
34 1998.

35 Section 3. (a) The Rockingham County Board of Elections shall conduct
36 an election on November 4, 1997, for the purpose of submission to the qualified
37 voters of the area described in Section 2.1 of the Charter of Wentworth, the question
38 of whether or not the Charter of the Town of Wentworth should be revived and new
39 boundaries established. Registration for the election shall be conducted in
40 accordance with G.S. 163-288.2.

41 (b) In the election, the question on the ballot shall be:

42 "[] FOR [] AGAINST
43

1 Amendment of the Charter of the Town of Wentworth and establishment
2 of new boundaries for the town."

3 Section 4. In such election, if a majority of the votes cast shall be cast
4 "FOR Amendment of the Charter of the Town of Wentworth and establishment of
5 new boundaries for the town", then Sections 1 and 2 of this act become effective July
6 1, 1998. Otherwise, those sections have no effect.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 696

Short Title: 3rd Senate District Local Act.

(Local)

Sponsors: Senator Perdue.

Referred to: Rules and Operations of the Senate.

April 7, 1997

- 1 A BILL TO BE ENTITLED
2 AN ACT RELATING TO THE 3RD DISTRICT OF THE SENATE.
3 The General Assembly of North Carolina enacts:
4 Section 1. This act relates to the 3rd Senate District only.
5 Section 2. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

D

SENATE BILL 696
Proposed Committee Substitute S696-PCSA767

Short Title: Grantsboro Incorporated.

(Local)

Sponsors:

Referred to:

April 7, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO INCORPORATE THE TOWN OF GRANTSBORO.

3 The General Assembly of North Carolina enacts:

4 Section 1. A Charter of the Town of Grantsboro is enacted as follows:

5 "THE CHARTER OF THE TOWN OF GRANTSBORO.

6 "CHAPTER I.

7 "INCORPORATION AND CORPORATE POWERS.

8 "Section 1-1. **Incorporation.** The inhabitants of the Town of Grantsboro are a
9 body corporate and politic under the name 'Town of Grantsboro'. Under that name
10 they have all the powers, duties, rights, privileges, and immunities conferred and
11 imposed on cities by the general law of North Carolina.

12 "CHAPTER II.

13 "CORPORATE BOUNDARIES.

14 "Section 2-1. **Town Boundaries.** Until modified in accordance with the law, the
15 boundaries of the Town of Grantsboro are as follows:

16 Beginning at the intersection of the centerline of the right-of-way of NC 55 and the
17 western boundary of the corporate limits of the City of Alliance, and running thence
18 in a southerly direction, contiguous with the corporate limits of Alliance, to a point
19 on the South Prong of Bay River, south of Bay River Road (NCSR 1347);

20 Thence in a southwest direction along the South Prong of Bay River to the western
21 boundary of Tax Parcel 14, Property of Jeffrey and Billy H. Holton as recorded on
22 Tax Map F05 in DB 304, page 202;

1 Thence north along the western boundary of Tax Parcel 14 for 300 feet, more or less,
2 to the northeast corner of Tax Parcel 34, Property of Rhoda Scott Dixon on Tax Map
3 F051 in DB 170, page 181;
4 Thence westwardly along the northern boundary of Tax Parcel 34 to a point 1,000
5 feet east of the centerline of NC 306;
6 Thence in a southerly direction along a line parallel to and 1,000 feet east of the
7 centerline of NC 306 to the southern boundary of Tax Parcel 52, Property of Geneva
8 Parsons' Heirs on Tax Map F052, in DB 99, page 264;
9 Thence west along the southern boundary of Tax Parcel 52 to the centerline of NC
10 306;
11 Thence south 150 feet, more or less, along the centerline of NC 306 to the
12 intersection of the centerlines of NC 306 and Scott's Store Road (NCSR 1108);
13 Thence west along the centerline of Scott's Store Road to Deep Run Branch;
14 Thence along the center of Deep Run Branch 1,250 feet, more or less, in a
15 northwesterly direction to the northwest corner of Tax Parcel 19, Property of M.T.
16 Whitford on Tax Map E05 in DB 124, page 271;
17 Thence in an easterly direction along the northern boundary of Tax Parcels 19, 15,
18 14, all on Tax Map E05, and Tax Parcels 33 and 37, both on Tax Map F052, to a
19 point 1,000 feet west of NC 306;
20 Thence north along a line parallel to and 1,000 feet west of NC 306 to the southern
21 edge of the Tideland EMC right-of-way which follows the old Bay River Road
22 roadbed west of NC 306 to Keys Town Road (NCSR 1106);
23 Thence along the southern boundary of the Tideland EMC right-of-way to Keys
24 Town Road;
25 Thence, 1,200 feet south, more or less, to a forest access road and the northwest
26 corner of Tax Parcel 92, Property of Nora M. Lawson and Angelo B. Murrell on Tax
27 Map E05 in DB 215, page 149;
28 Thence eastwardly along the northern boundary of Tax Parcels 92 and 93, both on
29 Tax Map E05, to the northeast corner of 93;
30 Thence south along the eastern boundary of Tax Parcels 93, 89, 78, and 74, all on
31 Tax Map E05, to the southeast corner of 74;
32 Thence westwardly along the southern boundary of Tax Parcels 74, 72 and 102, all on
33 Tax Map E05, to Goose Creek;
34 Thence north along the center of Goose Creek to the centerline of NC 55;
35 Thence eastwardly 2,100 feet, more or less, along the centerline of NC 55 to the
36 intersection of Tax Parcel 12, Property of Booker T. and Loretta Jones on Tax Map
37 E05, DB 235, page 774 and the right-of-way of NC 55;
38 Thence in a northeast direction along the common boundary of Tax Parcels 12 and
39 14, both on Tax Map E04, and 65 on Tax Map E05 to Tax Parcel 13 on Tax Map
40 E04;
41 Thence in a northwesterly and northeasterly direction around the perimeter of Tax
42 Parcel 13 to a point on the southern boundary of Tax Parcel 31, Property of
43 Weyerhaeuser Co. on Tax Map E04, DB 110, page 550;

1 Thence around the perimeter of Tax Parcel 31 in an easterly and northerly direction
2 to Tax Parcel 3, Property of PCS Phosphate on Tax Map E03 in DB 305, page 831 at
3 a point 950 feet west, more or less, from NC 306;
4 Thence across Tax Parcel 3 in a northerly direction to the southeast corner of Tax
5 Parcel 33, Morris Logging Co. on Tax Map F041;
6 Thence along the common boundary of Tax Parcels 33 and 3 in a westwardly
7 direction to the southwest corner of 33;
8 Thence along the eastern boundary of Tax Parcel 3 in a northerly direction to the
9 northwest corner of Tax Parcel 42, Property of Bay Creek Trucking Inc. on Tax Map
10 E031 in DB 275, page 795;
11 Thence east, 1000 feet, more or less, along the northern boundary of Tax Parcel 42 to
12 the centerline of NC 306;
13 Thence southwardly 700 feet, more or less, along the centerline of NC 306 to a point
14 which is the northern boundary of Tax Parcel 43 on Tax Map E031 extending to said
15 road right-of-way;
16 Thence east along the northern boundary of Tax Parcels 43, 46, 47, 48, 48-1, all on
17 Tax Map E031, to the northeast corner of 48-1;
18 Thence south along the eastern boundary of Tax Parcels 48-1, 49, 54, 57, 58, 61 and
19 62, all on Tax Map E031, to the southeast corner of 62;
20 Thence westwardly along the southern boundary of Tax Parcel 62 to the northeastern
21 corner of Tax Parcel 68 on Tax Map E031;
22 Thence south along the eastern boundary of Tax Parcels 68, 77, 79, and 86, all on
23 Tax Map E031, to the centerline of Paul's Farm Road (NCSR 1243);
24 Thence east along the centerline of NCSR 1243 to the eastern boundary of CP&L
25 Transmission Lines right-of-way;
26 Thence south, southeast and east along the eastern and northern boundary of the
27 CP&L Transmission Lines right-of-way to the corporate limits of the City of Alliance;
28 Thence south along the western boundary of the corporate limits of the City of
29 Alliance to the centerline of NC 55 and the starting point.
30 All descriptions are based on maps in the Pamlico County Tax Office as of March 6,
31 1997.

32 In the event that any of the territory described above is, on the date this Charter
33 becomes effective, within the corporate limits of another town, or is subject to an
34 annexation ordinance of another town that has been adopted but is not yet effective,
35 this Charter removes that territory from the corporate limits of that other town.

36 "CHAPTER III.

37 "GOVERNING BODY.

38 "Section 3-1. **Structure of the Governing Body; Number of Members.** The
39 governing body of the Town of Grantsboro is the Town Council which has five
40 members.

41 "Section 3-2. **Manner of Electing Council.** The qualified voters of the entire town
42 nominate and elect the Council.

43 "Section 3-3. **Term of Office of Council Members.** Members of the Council are
44 elected to two-year terms in 1997 and biennially thereafter.

1 "Section 3-4. **Mayor; Term of Office.** The Mayor shall be elected by the qualified
2 voters of the Town in 1997 and biennially thereafter for a two-year term.

3 "CHAPTER IV.

4 "ELECTIONS.

5 "Section 4-1. **Elections.** Council members shall be elected on a plurality basis and
6 the results determined in accordance with G.S. 163-292.

7 "Section 4-2. **Results.** Election results shall be determined by the Pamlico County
8 Board of Elections according to Chapter 163 of the General Statutes.

9 "CHAPTER V.

10 "ADMINISTRATION.

11 "Section 5-1. **Mayor-Council Plan.** The Town of Grantsboro shall operate under
12 the Mayor-Council Plan as provided in Part 3 of Article 7 of Chapter 160A of the
13 General Statutes.

14 "Section 5-2. **Taxation and Funds.** The Town of Grantsboro is eligible to receive
15 distributions of State funds during the fiscal year 1997-98."

16 Section 2. (a) From and after the effective date of this act, the citizens
17 and property in the Town of Grantsboro shall be subject to municipal taxes levied
18 for the year beginning July 1, 1997, and for that purpose the Town shall obtain from
19 Pamlico County a record of property in the area herein incorporated which was listed
20 for taxes as of January 1, 1997; and the businesses in the Town shall be liable for
21 privilege license tax from the effective date of the privilege license tax ordinance.

22 (b) If the effective date of this act is before July 1, 1997, the Town may
23 adopt a budget ordinance for fiscal year 1996-97 without following the timetable in
24 the Local Government Budget and Fiscal Control Act but shall follow the sequence
25 of actions in the spirit of the act insofar as is practical. The Town may adopt a
26 budget ordinance for fiscal year 1997-98 without following the timetable in the Local
27 Government Budget and Fiscal Control Act but shall follow the sequence of actions
28 in the spirit of the act insofar as is practical. For fiscal year 1997-98, ad valorem
29 taxes may be paid at par or face amount within 90 days of adoption of the budget
30 ordinance and thereafter in accordance with the schedule in G.S. 105-360 as if the
31 taxes had been due and payable on September 1, 1997.

32 Section 3. Notwithstanding Sections 3-3 and 3-4 of the Charter of the
33 Town of Grantsboro as set out in Section 1 of this act, the Pamlico County Board of
34 Elections shall conduct the 1997 general election for Town Council and Mayor of
35 Grantsboro at the same time as the incorporation referendum provided for by Section
36 4 of this act. In the election, if a majority of the votes are cast "FOR incorporation of
37 the Town of Grantsboro", the persons elected shall serve terms ending at the
38 organizational meeting after the 1999 municipal election. The Pamlico County Board
39 of Elections shall adopt a special filing period for the election. As absentee balloting
40 is allowed by law for the incorporation referendum under G.S. 163-302, it shall also
41 be allowed for election of officers at that election. In the election, if a majority of the
42 votes are not cast "FOR incorporation of the Town of Grantsboro", then the election
43 of Town Council and Mayor is void.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

2

HOUSE BILL 463
Committee Substitute Favorable 4/2/97

Short Title: Farm Products Weight Exemption.

(Public)

Sponsors:

Referred to:

March 10, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO INCREASE THE PERMISSIBLE WEIGHT OF AGRICULTURAL
3 CROPS THAT MAY BE TRANSPORTED ON THE HIGHWAYS FROM THE
4 FIELD TO LOCAL MARKETS.

5 The General Assembly of North Carolina enacts:

6 Section 1. G.S. 20-118(c)(12) reads as rewritten:

7 "(12) Subsections (b) and (e) of this section do not apply to a vehicle
8 that ~~meets one of the following descriptions; (i) is hauling~~
9 agricultural crops from the farm where they were grown to first
10 market, (ii) is within 35 miles of that farm, (iii) does not operate
11 on an interstate highway or posted bridge while hauling the crops,
12 ~~and does not exceed its registered weight; and meets one of the~~
13 following descriptions:

- 14 a. Is a five-axle combination with a gross weight of no more
15 than ~~88,000~~ 90,000 pounds, a single-axle weight of no more
16 than 22,000 pounds, a tandem-axle weight of no more than
17 42,000 pounds, and a length of at least 51 feet between the
18 first and last axles of the combination.
- 19 b. Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s.
20 13.
- 21 c. Is a four-axle combination with a gross weight that does not
22 exceed the limit set in subdivision (b)(3) of this section, a

1 single-axle weight of no more than 22,000 pounds, and a
2 tandem-axle weight of no more than 42,000 pounds."
3 Section 2. This act is effective when it becomes law.

EXPLANATION OF HOUSE BILL 463 (CS):
Farm Products Weight Exemption

TO: House Senate Committee
FROM: Martha Walston, Committee Counsel
DATE: July 14, 1997
SPONSOR: Representative Owens

House Bill 463 amends the motor vehicles statute regarding weight of vehicles operating on the highways of the State by increasing the permissible weight of a vehicle transporting agricultural crops from the farm where they were grown to first market. The current law permits a vehicle with a five-axle combination with a gross weight of no more than 88,000 pounds. House Bill 463 increases the gross weight to no more than 90,000 pounds. "Gross weight" is defined as the weight of any single axle, tandem axle, or axle group of a vehicle or combination of vehicles plus the weight of any load thereon. The current law requires that market be within 35 miles of where the crops are grown and that the vehicle not be operated on an interstate highway while hauling the crops. House Bill 463 also prohibits the operation of the vehicle on a posted bridge while hauling crops.

The bill is effective when it becomes law.

FISCAL ANALYSIS MEMORANDUM

DATE: July 15, 1997

TO: Senate Finance Committee

FROM: Karl Knapp
Fiscal Research Division

RE: Fiscal Impact of HB 463

FISCAL IMPACT

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

FY 1997-98 FY 1998-99 FY 1999-00 FY 2000-01 FY 2001-02

REVENUES

Overweight Penalties

Estimate of Revenue Loss Not Available

EXPENDITURES

Highway Maintenance

Estimate of Cost Increase Not Available

PRINCIPAL DEPARTMENT(S) &

PROGRAM(S) AFFECTED: Division of Highways
Division of Motor Vehicles

EFFECTIVE DATE: Upon becoming law.

BILL SUMMARY: The proposed act increases from 88,000 to 90,000 the permissible weight of vehicles that are exempt from vehicle weight laws while transporting agriculture crops from the field first to market on non-interstate highways. The proposed act also prohibits these vehicles from traveling on a posted bridge.

ASSUMPTIONS AND METHODOLOGY: The Department of Transportation indicates that increasing the weight of vehicles using State highways speeds up the rate at which those highways are damaged. Increased damage results in a greater maintenance requirement, but the Department of Transportation is unable to quantify the level of such an increase. An increase in the maximum weight would also reduce the number of overweight penalties issued to vehicles transporting crops. The Division of Motor Vehicles overweight penalties records are not kept at a sufficient level of detail to determine how many penalties are issued to vehicles in the 88,000 to 90,000 pound range.

TECHNICAL CONSIDERATIONS: None

1 Fund of the State. The Office of State Budget and Management shall certify to the
2 Department of Transportation and the General Assembly when the cumulative total
3 amount of fees deposited in the General Fund under this subsection exceeds ~~five~~ ten
4 million dollars (~~\$5,000,000~~), (\$10,000,000), and shall annually report to the General
5 Assembly the amount of fees deposited in the General Fund under this subsection.

6 It is the intent of the General Assembly to annually appropriate the funds
7 deposited in the General Fund under this subsection to the Board of Governors of
8 The University of North Carolina to be used for the Center for Alcohol Studies
9 Endowment at The University of North Carolina at Chapel Hill, but not to exceed
10 this cumulative total of ~~five~~ ten million dollars (~~\$5,000,000~~), (\$10,000,000)."

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

EXPLANATION OF HOUSE BILL 524:
UNC Alcohol Ed. Endowment Fund (2nd Edition)

TO: Senate Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: July 14, 1997
SPONSOR: Representative Morris

House Bill 524 increases the cap on the amount of drivers license restoration fees that are credited to the Center for Alcohol Studies Endowment Fund from \$5 million to \$10 million. The interest earned by the Endowment Fund is used to support the Skipper Bowles Center for Alcohol Studies. The money the Center receives from the Endowment Fund makes up less than 11% of its annual budget. The Center's mission is to conduct, coordinate, and promote basic and clinical research on the causes, prevention, and treatment of alcoholism and alcohol abuse.

In 1989, the General Assembly increased the amount of the motor vehicle restoration fee for revocations for offenses involving impaired driving from \$25 to \$50. The first \$25 of this fee, as well as all other revocation fees, is credited to the Highway Fund. The \$25 increase in the fee is credited to the General Fund and appropriated to the Center for Alcohol Studies Endowment Fund. The \$25 from the restoration fee for restorations for offenses involving impaired driving has generated approximately \$3.4 million. Under current law, the restoration fee will revert back to \$25 when the amount of money generated from the fee increase equals \$5 million.

When the General Assembly increased the fee, it stated its intent to annually appropriate the revenue generated by the increased fee to the Endowment Fund, but not to exceed a cumulative total of \$5 million. However, the General Assembly has chosen to appropriate more money to the Endowment Fund over the years than the fee has generated. Including the amount appropriated in this year's proposed budget, the General Assembly has appropriated \$5 million for the Center for Alcohol Studies Endowment since 1991-92.

Under the statement of intent in G.S. 20-7, the General Assembly has appropriated all it has intended to appropriate for this purpose. However, the \$50 fee will continue to be collected until the amount collected under the \$25 increase equals \$5 million. That will probably not occur until 1999-2000. This bill resolves this conflict by providing that the fee will remain at \$50 until the amount collected from the \$25 increase equals or exceeds \$10 million.

**NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE**

BILL NUMBER: House Bill 524
SHORT TITLE: UNC Alcohol Education Endowment Fund
SPONSOR(S): Proposed Committee Substitute

	FISCAL IMPACT				
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 1997-98</u>	<u>FY 1998-99</u>	<u>FY 1999-00</u>	<u>FY 2000-01</u>	<u>FY 2001-02</u>
REVENUES	See section on assumption and methodology				
EXPENDITURES	No effect on the continuation budget				
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:	UNC Center for Alcohol Studies Endowment				
EFFECTIVE DATE:	When it becomes law				

BILL SUMMARY:

The proposed act increases the cap on the amount of drivers license restoration fees that are deposited into the fund for the Center for Alcohol Studies Endowment at the University of North Carolina at Chapel Hill. The act also provides that the money deposited in the General Fund for this purpose shall not be appropriated to the Center until the amount deposited in the General Fund, from the restoration fee, equals or exceeds the cumulative amount appropriated to the Center as of July 1, 1998. The cap is increased from \$5 million to \$10 million.

ASSUMPTIONS AND METHODOLOGY:

In 1989, the General Assembly increased the restoration fee on drivers' whose license had been revoked from \$25.00 to \$50.00. The increase was devoted to the UNC Center for Alcohol Studies until the cumulative total reached \$5 million; at which time the restoration fee would revert to \$25.00. Since 1989 the devoted revenue, from the restoration fee, has been deposited into the General Fund and an amount appropriated annually to the Endowment. As shown in the table below, the fund has received \$5 million in General Fund appropriations while collections from the fee have totaled \$3.37 million.

(For summary of receipts see Table I.)

TABLE I

Fiscal Year	Funding History	DWI Restoration Fee
1990-91	\$0	\$288,862
1991-92	\$1,615,000	\$459,543
1992-93	\$850,000	\$493,713
1993-94	\$700,000	\$537,866
1994-95	\$700,000	\$551,153
1995-96	\$500,000	\$580,722
1996-97	\$500,000	\$461,545 **
1997-98 *	\$135,000	
1998-99 *		
Totals	\$5,000,000	\$3,373,404

* Contained in SB 352 Senate and House versions a/o 6/4/97

** Receipts through 4/30/97

FISCAL RESEARCH DIVISION

733-4910

PREPARED BY: Warren Plonk

APPROVED BY:

DATE: July 11, 1997

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 524*

Committee Substitute Favorable 6/23/97

Short Title: UNC Alcohol Ed. Endowment Fund. (Public)

Sponsors:

Referred to:

March 17, 1997

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE CAP ON THE AMOUNT OF DRIVERS LICENSE RESTORATION FEES THAT ARE DEPOSITED IN A FUND FOR ALCOHOL STUDIES ENDOWMENT AT THE UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL.

Additional Information Available on: Bill Status

Section 1. G.S. 20-7(i1) reads as rewritten:

"(i1) Restoration Fee. -- Any person whose drivers license has been revoked pursuant to the provisions of this Chapter, other than G.S. 20-17(2), shall pay a restoration fee of twenty-five dollars (\$25.00). A person whose drivers license has been revoked under G.S. 20-17(2) shall pay a restoration fee of fifty dollars (\$50.00) until the end of the fiscal year in which the cumulative total amount of fees deposited under this subsection in the General Fund exceeds ~~five~~ ten million dollars ~~(\$5,000,000)~~ (\$10,000,000), and shall pay a restoration fee of twenty-five dollars (\$25.00) thereafter. The fee shall be paid to the Division prior to the issuance to such person of a new drivers license or the restoration of the drivers license. The restoration fee shall be paid to the Division in addition to any and all fees which may be provided by law. This restoration fee shall not be required from any licensee whose license was revoked or voluntarily surrendered for medical or health reasons whether or not a medical evaluation was conducted pursuant to this Chapter. The twenty-five dollar (\$25.00) fee, and the first twenty-five dollars (\$25.00) of the fifty-dollar (\$50.00) fee, shall be deposited in the Highway Fund. The remaining twenty-five dollars (\$25.00) of the fifty-dollar (\$50.00) fee shall be deposited in the General Fund of the State. The Office of State Budget and Management shall certify to the Department of Transportation and the General Assembly when the cumulative total amount of fees deposited in the General Fund under this subsection exceeds ~~five~~ ten million dollars ~~(\$5,000,000)~~ (\$10,000,000), and shall annually report to the General Assembly the amount of fees deposited in the General Fund under this subsection.

It is the intent of the General Assembly to annually appropriate the funds deposited in the General Fund under this subsection to the Board of Governors of The University of North Carolina to be used for the Center for Alcohol Studies Endowment at The University of North Carolina at Chapel Hill, but not to exceed this cumulative total of ~~five~~ ten million dollars ~~(\$5,000,000)~~ (\$10,000,000). "

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

In North Carolina each year problems associated with alcohol and drug abuse cost more than \$5.5 billion. Your support of HB 524 will guarantee that "abuser fees" paid by convicted drunk drivers will continue to be invested in critical research on alcoholism and drug addiction through the Skipper Bowles Center for Alcohol Studies.

In fact there is legislation already in place which has set up an endowment fund through the \$25 portion of the license restoration fee paid by driver's convicted of driving while impaired. The moneys collected are placed in the General Fund and appropriated to the endowment fund.

The Center for Alcohol Studies only receives the interest earned by the endowment fund. This makes up less than 11% of the Center's total annual budget, most of which comes from Federal grants. HB 524 extends the total amount of funds for the endowment from \$5 million to \$10 million because of the growing cost of medical research. The only way the fund can grow is by "abusers" paying to have their licenses renewed. *Let the people with the problem help solve one of North Carolina's most costly problems.*

The Skipper Bowles Center for Alcohol Studies' mission is to conduct, coordinate and promote basic and clinical research on the causes, prevention and treatment of alcoholism and alcohol abuse. For more than 26 years the Center for Alcohol Studies has been a leader in the search for the causes and prevention of alcoholism and has worked to improve intervention and treatment for alcohol abuse and alcoholism, including

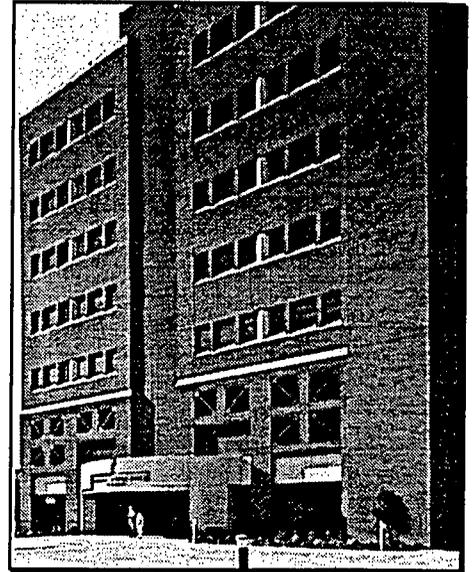
The discovery that alcohol has unique actions on different brain regions which most likely underlie the development of alcoholism. ***This is an important and promising area of research in which the Center for Alcohol Studies is an active participant.***

The development of a simple and highly effective diagnostic tool, known as the CAGE, to identify alcoholism without putting people on the defensive or prompting denial. For more than 20 years the CAGE has been taught to medical students, physicians and other health care professionals. It has been utilized in many health care settings around the world. ***The Center for Alcohol Studies continues to train health care professionals to diagnose alcoholism and to detect alcohol abuse.***

Contributions in the discovery of medications which can reduce relapse rates by turning off the brain's reward center to reduce craving. More than a decade after the Center's first studies in this area ReVia (naltrexone) was given FDA approval -- the first drug approved for the treatment of alcoholism since Antabuse. ***The Center for Alcohol Studies is dedicated to improving treatment outcomes for persons with alcoholism.***

For more information contact: Skipper Bowles Center for Alcohol Studies, (919) 966-5678
CB# 7178, Chapel Hill, North Carolina 27599-7178, <http://www.med.unc.edu/alcohol/>

When your constituents ask you what you have done to help solve the alcohol and drug problem, you can tell them you voted to support the Center for Alcohol Studies which is working to continue to find more effective treatments, and even possibly, a cure. And a cure for alcohol addiction will likely lead to a cure for all drug addictions.



1 heating systems or equipment or which, by its installation, may
2 alter or affect the fuel supply to plumbing or heating systems or
3 equipment within the meaning of G.S. 87-21(a).

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

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

39 (4) Conditions of examination set by the Board shall be uniformly
40 applied to each applicant within each license classification. It is the
41 purpose and intent of this section that the Board shall provide an
42 examination for plumbing, heating group number one, or heating
43 group number two, or heating group number three, or each
44 restricted classification, and may provide an examination for fire

1 sprinkler contracting or may accept a current certification of the
2 National Institute for Certification in Engineering Technologies for
3 Fire Protection Engineering Technician, Level III, subfield of
4 Automatic Sprinkler System Layout.

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

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

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

33 "**§ 87-22. License fee based on population; expiration and renewal; penalty.**

34 All persons, firms, or corporations engaged in the business of either plumbing or
35 heating contracting, or both, in cities or towns of 10,000 inhabitants or more shall pay
36 an annual license fee not exceeding seventy-five dollars (\$75.00), and in cities or
37 towns of less than 10,000 inhabitants an annual license fee not exceeding fifty dollars
38 (\$50.00). The annual fee for a piping or restricted classification license shall not
39 exceed that for a plumbing or heating license. All persons, firms, or corporations
40 engaged in the business of fire sprinkler contracting shall pay an initial application
41 fee not to exceed seventy-five dollars (\$75.00) and an annual license fee not to
42 exceed three hundred dollars (\$300.00). In the event the Board refuses to license an
43 applicant, the license fee deposited shall be returned by the Board to the applicant.
44 All licenses shall expire on the last day of December in each year following their

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

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

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

33 Section 4. This act becomes effective October 1, 1997.

EXPLANATION OF HOUSE BILL 408 (CS):
Plumbing/Heating Contractors (Agency Bill)

TO: Senate Finance Committee
FROM: Martha Walston, Committee Counsel
DATE: July 14, 1997
SPONSOR: Representative Ives

House Bill 408 would require the State Board of Examiners of Plumbing, Heating, and Fire Sprinkler contractors to issue, effective April 15, 1998, a new fuel piping license to persons who do not have a current plumbing or heating license, but who desire to engage in the contracting or installing of fuel piping extending from an approved fuel source at or near the premises and which piping is used to supply fuel to plumbing or heating systems or equipment. Under current law, the Board has two classes of licenses:

- Class I covering all plumbing, heating, and fire sprinkler systems for all structures.
- Class II covering plumbing and heating systems in single-family detached residential dwellings.

The Bill would also allow the Board to establish additional restricted classifications to provide for licensure to engage in the following: (1) a specific phase of heating, plumbing, or fire sprinkling contracting, (2) a specific phase of heating, plumbing, or fire sprinkling contracting that is an incidental part of their primary business, which is a lawful business other than heating, plumbing, or fire sprinkling contracting, or (3) contracting and installing fuel piping from an approved fuel source on the premises to a point inside the residence.

The annual fee for the new fuel piping license or restricted classification license will not exceed the cost for a plumbing or heating license. The current cost for a plumbing or heating license may not exceed \$75.00 in cities or towns of 10,000 inhabitants or more, and may not exceed \$50.00 in cities or towns of less than 10,000 inhabitants.

Counsel to the Board of Examiners of Plumbing, Heating, and Fire Sprinkler Contractors has stated that a license as a plumbing or heating contractor is required for the gas piping which carries natural gas or propane from a connection point outside the building to the furnace, water heater or other plumbing or heating equipment which uses gas fuel. The Board has determined that a number of dealers in propane or natural gas fuel have been doing this piping work illegally. The bill would allow a propane dealer or natural gas installer to obtain a limited license for the purpose of installing the gas piping.

The act becomes effective October 1, 1997.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 408 (First Edition)

SHORT TITLE: Plumbing/Heating Contractors/AB

SPONSOR(S): Rep. Ives

FISCAL IMPACT

	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 1997-98</u>	<u>FY 1998-99</u>	<u>FY 1999-00</u>	<u>FY 2000-01</u>	<u>FY 2001-02</u>
REVENUES					
Special Revenue Fund	\$35,880	\$35,880	\$35,880	\$35,880	\$35,880
EXPENDITURES					
Special Revenue Fund	NA	NA	NA	NA	NA

PRINCIPAL DEPARTMENT(S) &

PROGRAM(S) AFFECTED: State Board of Examiners of Plumbing, Heating , and Fire Sprinkler Contractors

EFFECTIVE DATE: The act is effective when it becomes law. The fuel piping and restricted licenses are effective April 15, 1998.

BILL SUMMARY: The bill creates a new fuel piping license for persons who contract or install piping from an approved fuel source, such as natural gas or propane, to plumbing or heating systems or equipment. The bill also allows more restrictive licenses for persons engaged in specific phases of heating, plumbing or fire sprinkling contracting. The fee for these new licenses may not exceed the cost of a plumbing or heating license.

ASSUMPTIONS AND METHODOLOGY: The Executive Secretary of the State Board of Examiners of Plumbing, Heating , and Fire Sprinkler Contractors, Mr. Tom Phillips, believes those most likely to apply for this new fuel piping license will be members of the North Carolina Propane Gas Association. (Mr. Phillips believes most workers in natural gas companies currently buy a plumbers license.) This fiscal note assumes that each of the 500 plus retail propane outlets in the state will buy a fuel piping license to cover their employees. The annual

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

2

HOUSE BILL 1158
Committee Substitute Favorable 5/14/97

Short Title: Reduce Property Tax for Antique Planes.

(Public)

Sponsors:

Referred to:

April 24, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE THAT ANTIQUE AIRPLANES SHALL BE VALUED AT
3 NO MORE THAN FIVE THOUSAND DOLLARS FOR PROPERTY TAX
4 PURPOSES.

5 The General Assembly of North Carolina enacts:

6 Section 1. Article 12 of Chapter 105 of the General Statutes is amended
7 by adding a new section to read:

8 "§ 105-277.12. Antique airplanes.

9 (a) For the purpose of this section, the term 'antique airplane' means an airplane
10 that meets all of the following conditions:

11 (1) It is registered with the Federal Aviation Administration and is a
12 model year 1954 or older.

13 (2) It is maintained primarily for use in exhibitions, club activities, air
14 shows, and other public interest functions.

15 (3) It is used only occasionally for other purposes.

16 (4) It is used by the owner for a purpose other than the production of
17 income.

18 (b) Antique airplanes are designated a special class of property under Article V,
19 Sec. 2(2) of the North Carolina Constitution and shall be assessed for taxation in
20 accordance with this section. An antique airplane shall be assessed at the lower of its
21 true value or five thousand dollars (\$5,000)."

22 Section 2. This act is effective for taxes imposed for taxable years
23 beginning on or after July 1, 1998.

EXPLANATION OF HOUSE BILL 1158:
Reduce Property Tax for Antique Planes (2nd Edition)

TO: Senate Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: July 14, 1997
SPONSOR: Representative R. Hunter

House Bill 1158 will grant similar property tax relief to owners of antique airplanes that the 1995 General Assembly gave to owners of antique automobiles. Under the bill, antique airplanes owned by collectors will be assessed at the lower of their true value or \$5,000, effective for taxable years beginning on or after July 1, 1998.

An airplane qualifies for this exemption if it meets all of the following conditions:

1. It is registered with the Federal Aviation Administration.
2. It is a model year 1954 or older.
3. It is maintained primarily for use in exhibitions, club activities, air shows, and other public interest functions.
4. It is used only occasionally for other purposes.
5. It is used by the owner for a purpose other than the production of income.

Non-business property has been exempt from property taxes since 1987. Non-business property means personal property that is used by the owner of the property for a purpose other than the production of income and that is not used in connection with a business. The term includes collectibles such as antiques, coins, and paintings. However, the term does not include aircraft.

**NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE**

BILL NUMBER: House Bill 1158
SHORT TITLE: Reduce Property Tax for Antique Airplanes
SPONSOR(S): Representatives Hunter and Yongue

	FISCAL IMPACT				
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 1997-98</u>	<u>FY 1998-99</u>	<u>FY 1999-00</u>	<u>FY 2000-01</u>	<u>FY 2001-02</u>
REVENUES					
Local	Annual loss (\$80,000) to (\$61,800)				
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:	Local units of government that levy a property tax				
EFFECTIVE DATE:	Taxable years beginning on or after July 1, 1998				

BILL SUMMARY: The proposed act defines antique aircraft as a special class of property for property taxation and establishes a maximum property value on aircraft that meet the definition. The maximum assessed value that can be placed on this type of property for property taxation is \$5,000.

ASSUMPTIONS AND METHODOLOGY: In North Carolina there are approximately 600 aircraft that meet the definition of antique aircraft outlined in the bill. The estimated value of this property is \$12.8 million dollars. Using an average tax rate of 64 cent per \$100.00 in value, the property tax due in fiscal year 1997-98 is approximately \$81,000. If the maximum value that can be placed on these 600 aircraft is \$5,000, then the tax due for fiscal year 1997-98 is \$19,200. The difference is \$61,800.

The estimate is given in a range because some of the aircraft registered in the State could be valued greater than, as well as less than the actual listing on the property tax rolls. The values, used in determining the aircraft registered in the State, are derived from aviation trade publications used nationwide to value aircraft property where ever located.

Data Source:

Air-Pack is an aviation publication company in Edmond Oklahoma that records historic aircraft registered throughout the country.

FISCAL RESEARCH DIVISION

PREPARED BY: Warren Plonk

APPROVED BY:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

3

HOUSE BILL 1108
Committee Substitute Favorable 5/22/97
Committee Substitute #2 Favorable 6/12/97

Short Title: Brew on Premises Permits.

(Public)

Sponsors:

Referred to:

April 21, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW THE ALCOHOLIC BEVERAGE CONTROL
3 COMMISSION TO ISSUE PERMITS FOR "BREW ON PREMISES"
4 BUSINESSES.

5 The General Assembly of North Carolina enacts:

6 Section 1. G.S. 18B-307 reads as rewritten:

7 "§ 18B-307. Manufacturing offenses.

8 (a) Offenses. -- It shall be unlawful for any person, except as authorized by this
9 Chapter, to:

- 10 (1) Sell or possess equipment or ingredients intended for use in the
11 manufacture of any alcoholic ~~beverage; beverage, except~~
12 equipment and ingredients provided under a Brew on Premises
13 permit; or
14 (2) Knowingly allow real or personal property owned or possessed by
15 him to be used by another person for the manufacture of any
16 alcoholic ~~beverage; beverage, except pursuant to a Brew on~~
17 Premises permit.

18 (b) Unlawful Manufacturing. -- Except as provided in G.S. 18B-306, it shall be
19 unlawful for any person to manufacture any alcoholic ~~beverage beverage, except at~~
20 an establishment with a Brew on Premises permit, without first obtaining the
21 applicable ABC permit and revenue licenses.

1 (c) Second Offense of Manufacturing. -- A second offense of unlawful
2 manufacturing of alcoholic beverage shall be a Class I felony."

3 Section 2. G.S. 18B-902(d) reads as rewritten:

4 "(d) Fees. -- An application for an ABC permit shall be accompanied by payment
5 of the following application fee:

- 6 (1) On-premises malt beverage permit -- \$200.00.
- 7 (2) Off-premises malt beverage permit -- \$200.00.
- 8 (3) On-premises unfortified wine permit -- \$200.00.
- 9 (4) Off-premises unfortified wine permit -- \$200.00.
- 10 (5) On-premises fortified wine permit -- \$200.00.
- 11 (6) Off-premises fortified wine permit -- \$200.00.
- 12 (7) Brown-bagging permit -- \$200.00, unless the application is for a
13 restaurant seating less than 50, in which case the fee shall be
14 \$100.00.
- 15 (8) Special occasion permit -- \$200.00.
- 16 (9) Limited special occasion permit -- \$25.00.
- 17 (10) Mixed beverages permit -- \$750.00.
- 18 (11) Culinary permit -- \$100.00.
- 19 (12) Unfortified winery permit -- \$150.00.
- 20 (13) Fortified winery permit -- \$150.00.
- 21 (14) Limited winery permit -- \$150.00.
- 22 (15) Brewery permit -- \$150.00.
- 23 (16) Distillery permit -- \$150.00.
- 24 (17) Fuel alcohol permit -- \$50.00.
- 25 (18) Wine importer permit -- \$150.00.
- 26 (19) Wine wholesaler permit -- \$150.00.
- 27 (20) Malt beverage importer permit -- \$150.00.
- 28 (21) Malt beverage wholesaler permit -- \$150.00.
- 29 (22) Bottler permit -- \$150.00.
- 30 (23) Salesman permit -- \$25.00.
- 31 (24) Vendor representative permit -- \$25.00.
- 32 (25) Nonresident malt beverage vendor permit -- \$50.00.
- 33 (26) Nonresident wine vendor permit -- \$50.00.
- 34 (27) Any special one-time permit under G.S. 18B-1002 -- \$25.00.
- 35 (28) Winery special event permit -- \$100.00.
- 36 (29) Mixed beverages catering permit -- \$100.00.
- 37 (30) Guest room cabinet permit -- \$750.00.
- 38 (31) Liquor importer/bottler permit -- \$250.00.
- 39 (32) Brew on Premises permit -- \$200.00."

40 Section 3. G.S. 18B-1001 is amended by adding a new subdivision to

41 read:

42 "(14) Brew on Premises Permit. -- A permit may be issued to a business
43 located in a jurisdiction where the sale of malt beverages is
44 allowed and not located in a municipality in a dry county that has

1 a population of either 49,587 or 27,859 according to the 1990
2 United States Census, where individual customers who are 21 years
3 old or older may purchase ingredients and rent the equipment,
4 time, and space to brew malt beverages for personal use in
5 amounts set forth in 27 C.F.R. § 25.205. A malt beverage
6 produced under this subdivision may not contain more than six
7 percent (6%) alcohol by volume.

8 The customer shall:

- 9 a. Select a recipe and kettle;
10 b. Weigh out the proper ingredients and add them to the
11 kettle;
12 c. Transfer the wort to the fermenter;
13 d. Add the yeast;
14 e. Place the ingredients in a fermentation room; and
15 f. Filter, carbonate, and bottle the malt beverage.

16 The permittee may:

- 17 a. Assist the customer in all steps except adding the yeast; and
18 b. Transfer the ingredients from the fermentation room to the
19 cold room."

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

1 (c) Second Offense of Manufacturing. -- A second offense of unlawful
2 manufacturing of alcoholic beverage shall be a Class I felony."

3 Section 2. G.S. 18B-902(d) reads as rewritten:

4 "(d) Fees. -- An application for an ABC permit shall be accompanied by payment
5 of the following application fee:

- 6 (1) On-premises malt beverage permit -- \$200.00.
- 7 (2) Off-premises malt beverage permit -- \$200.00.
- 8 (3) On-premises unfortified wine permit -- \$200.00.
- 9 (4) Off-premises unfortified wine permit -- \$200.00.
- 10 (5) On-premises fortified wine permit -- \$200.00.
- 11 (6) Off-premises fortified wine permit -- \$200.00.
- 12 (7) Brown-bagging permit -- \$200.00, unless the application is for a
13 restaurant seating less than 50, in which case the fee shall be
14 \$100.00.
- 15 (8) Special occasion permit -- \$200.00.
- 16 (9) Limited special occasion permit -- \$25.00.
- 17 (10) Mixed beverages permit -- \$750.00.
- 18 (11) Culinary permit -- \$100.00.
- 19 (12) Unfortified winery permit -- \$150.00.
- 20 (13) Fortified winery permit -- \$150.00.
- 21 (14) Limited winery permit -- \$150.00.
- 22 (15) Brewery permit -- \$150.00.
- 23 (16) Distillery permit -- \$150.00.
- 24 (17) Fuel alcohol permit -- \$50.00.
- 25 (18) Wine importer permit -- \$150.00.
- 26 (19) Wine wholesaler permit -- \$150.00.
- 27 (20) Malt beverage importer permit -- \$150.00.
- 28 (21) Malt beverage wholesaler permit -- \$150.00.
- 29 (22) Bottler permit -- \$150.00.
- 30 (23) Salesman permit -- \$25.00.
- 31 (24) Vendor representative permit -- \$25.00.
- 32 (25) Nonresident malt beverage vendor permit -- \$50.00.
- 33 (26) Nonresident wine vendor permit -- \$50.00.
- 34 (27) Any special one-time permit under G.S. 18B-1002 -- \$25.00.
- 35 (28) Winery special event permit -- \$100.00.
- 36 (29) Mixed beverages catering permit -- \$100.00.
- 37 (30) Guest room cabinet permit -- \$750.00.
- 38 (31) Liquor importer/bottler permit -- \$250.00.
- 39 (32) Brew on premises permit -- \$200.00.

40 Section 3. G.S. 18B-1001 is amended by adding a new subdivision to
41 read:

- 42 "(14) Brew on Premises Permit. -- A permit may be issued to a business,
43 located in a jurisdiction where the sale of malt beverages is
44 allowed, where individual customers who are 21 years old or older

1 may purchase ingredients and rent the equipment, time, and space
2 to brew malt beverages for personal use in amounts set forth in 27
3 C.F.R. § 25.205. The customer must do all of the following:
4 a. Select a recipe and kettle.
5 b. Weigh out the proper ingredients and add them to the
6 kettle.
7 c. Transfer the wort to the fermenter.
8 d. Add the yeast.
9 e. Place the ingredients in a fermentation room.
10 f. Filter, carbonate, and bottle the malt beverage.
11 A permittee may transfer the ingredients from the fermentation
12 room to the cold room and may assist the customer in all the steps
13 involved in brewing a malt beverage except adding the yeast. A
14 malt beverage produced under this subdivision may not contain
15 more than six percent (6%) alcohol by volume."

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

EXPLANATION OF HOUSE BILL 1108:
Brew on Premises Permits (PCS)

TO: Senate Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: July 14, 1997
SPONSOR: Representative McMahan

House Bill 1108 authorizing the Alcoholic Beverage Commission to issue "Brew on Premises" permits to a business located in a jurisdiction where the sale of malt beverages is allowed. The permit will allow businesses to sell ingredients and rent equipment, time, and space to individual adult customers to brew malt beverages for personal use. Without this change, a person may not possess and rent the equipment needed to manufacture alcoholic beverages. Under current law, a person may only possess the equipment if the person uses the equipment for personal use or is permitted as a manufacturer. The "Brew on Premises" permit fee is \$200. The permit must be renewed annually. The renewal fee is 25% of the original application fee or \$50. The bill is effective when it becomes law.

The proposed committee substitute removes the exceptions to the statewide applicability of the bill because they are unconstitutional. The North Carolina constitution prohibits local acts that regulate trade. The bill, in its 3rd Edition, is uniformly applicable in all jurisdictions that permit the sale of malt beverages except Columbus and Davie Counties. The exception for these two counties is a local restraint on trade that does not appear to have any rational basis.

Federal law permits adults to produce up to 100 gallons of wine and beer a year for personal use, or up to 200 gallons a year if there are two or more adults in the household, without paying the federal excise tax on alcoholic beverages. (27 C.F.R. § 25.205) North Carolina also permits individuals to produce wine and beer for personal use without obtaining a permit. The bill puts a provision in State law restricting the amount of beer a person may produce for personal use to the same amount allowed under federal law.

Since the business is not permitted to be a manufacturer of beer, the bill seeks to ensure that the customer is the person actually producing the beer by setting forth what the customer must do. The customer must select the recipe, add the yeast, filter and bottle the beer, and add any ingredients used to produce the beer. Although the permittee may offer advise and help, the permittee is specifically prohibited from adding the yeast.

**NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE**

BILL NUMBER: House Bill 1108
SHORT TITLE: Brew on Premises Permit
SPONSOR(S): Representative McMahan, et al.

FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 1997-98</u>	<u>FY 1998-99</u>	<u>FY 1999-00</u>	<u>FY 2000-01</u>	<u>FY 2001-02</u>
REVENUES	\$200.00	\$2000.00	\$2000.00	\$2000.00	\$2000.00
General Fund					
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: N. C. ABC Commission					
EFFECTIVE DATE: When it become law					

BILL SUMMARY: H 1108. BREW ON PREMISES PERMITS. Amends G.S. 18B-1001 to provide that in counties with a population of at least 500,000, the ABC Commission may issue a brew on premises permit for operation of a business where retail clients purchase ingredients and rent equipment to brew malt beverages for their personal use. The \$200 fee is a onetime permit.

Source: Institute of Government

ASSUMPTIONS AND METHODOLOGY: There are two counties in the State that have populations greater than 500,000; Wake and Mecklenburg. The estimate assumes a maximum of 10 establishments annually could apply for the permit. At present there is one known establishment that plans to offer the services allowed under the permit authorized in this act.

Source: ABC Commission

FISCAL RESEARCH DIVISION

733-4910

PREPARED BY: Warren Plonk

APPROVED BY:

DATE: June 2, 1997

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

2

SENATE BILL 886*
Transportation Committee Substitute Adopted 7/14/97

Short Title: Trucking Adjustment Act of 1997.

(Public)

Sponsors:

Referred to: Finance.

April 16, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO ADJUST CERTAIN STATUTES AFFECTING THE TRUCKING
3 INDUSTRY TO ENCOURAGE THE GROWTH OF THAT INDUSTRY
4 THROUGH INCREASED TRUCK REGISTRATIONS IN THIS STATE; TO
5 PROVIDE CONSUMER PROTECTION PROVISIONS; AND TO PROVIDE
6 FOR A STUDY OF CERTAIN TRUCKING RELATED PROVISIONS BY THE
7 LEGISLATIVE RESEARCH COMMISSION.

8 The General Assembly of North Carolina enacts:

9 Section 1. G.S. 20-88 is amended by adding a new subsection to read:

10 "(1) The Division shall issue permanent truck and truck-tractor plates and shall
11 include the word 'permanent' on the plate."

12 Section 2. G.S. 20-118(c)(5) reads as rewritten:

13 "(5) The light-traffic road limitations provided for pursuant to
14 subdivision (b)(4) of this section do not apply to a vehicle while
15 that vehicle is transporting only the following from its point of
16 origin on a light-traffic road to the nearest highway that is not a
17 light-traffic road:

18 a. Processed or unprocessed seafood from boats or any other
19 point of origin to a processing plant or a point of further
20 distribution.

21 b. Meats or agricultural crop products originating from a farm
22 to first market.

- 1 c. ~~Unprocessed forest~~ Forest products originating from a farm
- 2 or from woodlands to first market.
- 3 d. Livestock or poultry from their point of origin to first
- 4 market.
- 5 e. Livestock by-products or poultry by-products from their
- 6 point of origin to a rendering plant.
- 7 f. Recyclable material from its point of origin to a scrap-
- 8 processing facility for processing. As used in this subpart,
- 9 the terms 'recyclable' and 'processing' have the same
- 10 meaning as in G.S. 130A-290(a).
- 11 g. Garbage collected by the vehicle from residences or garbage
- 12 dumpsters if the vehicle is fully enclosed and is designed
- 13 specifically for collecting, compacting, and hauling garbage
- 14 from residences or from garbage dumpsters. As used in this
- 15 subpart, the term 'garbage' does not include hazardous
- 16 waste as defined in G.S. 130A-290(a), spent nuclear fuel
- 17 regulated under G.S. 20-167.1, low-level radioactive waste as
- 18 defined in G.S. 104E-5, or radioactive material as defined in
- 19 G.S. 104E-5."

20 Section 3. G.S. 20-116(d) reads as rewritten:

21 "(d) A single vehicle having two or more axles shall not exceed ~~35 feet in length~~
22 the following lengths of extreme overall dimensions inclusive of front and rear
23 ~~bumpers. bumpers:~~

<u>Axles</u>	<u>Length</u>
2	<u>35 feet</u>
3	<u>40 feet</u>
<u>4 or more</u>	<u>45 feet</u>

28 Provided, however, a bus or motor home with two axles shall not exceed 40 feet in
29 length overall of dimensions inclusive of front and rear bumpers. ~~A single vehicle~~
30 ~~having three axles shall not exceed 40 feet in length overall of dimensions inclusive of~~
31 ~~front and rear bumpers.~~ Provided, further, trucks transporting unprocessed cotton
32 from farm to gin shall not exceed 48 feet in length overall of dimensions inclusive of
33 front and rear bumpers. A truck-tractor and semitrailer shall be regarded as two
34 vehicles for the purpose of determining lawful length and license taxes."

35 Section 4. G.S. 20-382.2 reads as rewritten:

36 "**§ 20-382.2. Penalty for failure to comply with registration or insurance verification**
37 **requirements.**

38 (a) Acts. -- A motor carrier who does any of the following is subject to a civil
39 penalty of ~~seventy five dollars (\$75.00);~~ one thousand dollars (\$1,000);

- 40 (1) Operates a for-hire motor vehicle in this State without registering
- 41 its operations, as required by this Part.
- 42 (2) Operates a for-hire motor vehicle in interstate commerce in this
- 43 State that does not carry a copy of either an insurance registration
- 44 receipt issued to the motor carrier or a cab card with an

1 identification stamp issued for the vehicle, as required by G.S. 20-
2 382.

3 (3) Operates a for-hire motor vehicle in intrastate commerce in this
4 State for which it has not verified it has insurance, as required by
5 G.S. 20-382.1.

6 (b) Payment. -- When the Division finds that a for-hire motor vehicle is operated
7 in this State in violation of the registration and insurance verification requirements of
8 this Part, the motor vehicle may not be driven for a purpose other than to park the
9 motor vehicle until the penalty imposed under this section is paid unless the officer
10 that imposes the penalty determines that operation of the motor vehicle will not
11 jeopardize collection of the penalty. A motor carrier that denies liability for a penalty
12 imposed under this section may pay the penalty under protest and apply to the
13 Division for a hearing.

14 (c) Hearing. -- Upon receiving a request for a hearing, the Commissioner ~~must~~
15 shall schedule a hearing within 30 days after receipt of the request. If after the
16 hearing the Commissioner determines that the motor carrier was not liable for the
17 penalty, the amount collected ~~must~~ shall be refunded. If after the hearing the
18 Commissioner determines that the motor carrier was liable for the penalty, the motor
19 carrier may bring an action in the Superior Court of Wake County against the
20 Division for refund of the penalty. A court of this State may not issue a restraining
21 order or an injunction to restrain or enjoin the collection of the penalty or to permit
22 the operation of the vehicle without payment of the penalty.

23 (d) Proceeds. -- A penalty imposed under this section is payable to the Division.
24 Penalties collected under this section shall be credited to the Highway Fund as
25 nontax revenue."

26 Section 5. The Division of Motor Vehicles shall study the feasibility of
27 establishing a staggered registration system for commercial motor vehicles under the
28 International Registration Plan (IRP). The registration plan shall be coordinated with
29 other states which currently stagger IRP registrations to eliminate, insofar as possible,
30 multiple application dates for the same carrier. The registration plan shall provide
31 for a smooth transition to the staggered system providing for credits and partial fees,
32 as needed. The Division shall report the results of this study along with any
33 legislation to implement the staggered registration system to the Joint Legislative
34 Transportation Oversight Committee and the Fiscal Research Division by April 1,
35 1998.

36 Section 6. The Legislative Research Commission may study the following
37 issues encouraging the growth of the trucking industry in North Carolina through
38 increased truck registrations:

39 (1) The feasibility of removing the highway use tax on vehicles with a
40 gross weight rating of more than 26,000 pounds;

41 (2) The replacement of the revenue from the removal of the highway
42 use tax studied in subdivision (1) of this section by an increase in
43 registration fees for the same vehicles by ten cents (10¢) per one
44 hundred pounds of registered weight; and

1 (3) Eliminate the stacking of overweight penalties by restricting the
2 penalties so that they do not exceed the highest axle-group weight
3 that exceeds the allowable limits rather than assessing separate
4 penalties for each axle-group and stacking those penalties for the
5 same weight violations.

6 The Legislative Research Commission may make an interim report of the
7 study authorized by this section to the 1998 Session of the General Assembly and
8 may make a final report to the 1999 Session of the General Assembly.

9 Section 7. Sections 5, 6, and 7 of this act are effective when this act
10 becomes law. Sections 1 through 4 of this act become effective October 1, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

D

SENATE BILL 886*
Transportation Committee Substitute Adopted 7/14/97
Proposed Committee Substitute S886-PCS2788

Short Title: Trucking Adjustment Act of 1997.

(Public)

Sponsors:

Referred to:

April 16, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO ADJUST CERTAIN STATUTES AFFECTING THE TRUCKING
3 INDUSTRY TO ENCOURAGE THE GROWTH OF THAT INDUSTRY
4 THROUGH INCREASED TRUCK REGISTRATIONS IN THIS STATE; TO
5 PROVIDE CONSUMER PROTECTION PROVISIONS; AND TO PROVIDE
6 FOR A STUDY OF CERTAIN TRUCKING RELATED PROVISIONS BY THE
7 JOINT LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE.

8 The General Assembly of North Carolina enacts:

9 Section 1. G.S. 20-88 is amended by adding a new subsection to read:

10 "(1) The Division shall issue permanent truck and truck-tractor plates to Class A
11 and Class B Motor Vehicles and shall include the word 'permanent' on the plate.
12 The permanent registration plates issued pursuant to this section shall be subject to
13 annual registration fees set in this section. The Division shall issue the necessary
14 rules providing for the recall, transfer, exchange, or cancellation of permanent plates
15 issued pursuant to this section."

16 Section 2. G.S. 20-118(c)(5) reads as rewritten:

17 "(5) The light-traffic road limitations provided for pursuant to
18 subdivision (b)(4) of this section do not apply to a vehicle while
19 that vehicle is transporting only the following from its point of
20 origin on a light-traffic road to the nearest highway that is not a
21 light-traffic road:

- 1 a. Processed or unprocessed seafood from boats or any other
2 point of origin to a processing plant or a point of further
3 distribution.
4 b. Meats or agricultural crop products originating from a farm
5 to first market.
6 c. ~~Unprocessed forest~~ Forest products originating from a farm
7 or from woodlands to first market.
8 d. Livestock or poultry from their point of origin to first
9 market.
10 e. Livestock by-products or poultry by-products from their
11 point of origin to a rendering plant.
12 f. Recyclable material from its point of origin to a scrap-
13 processing facility for processing. As used in this subpart,
14 the terms 'recyclable' and 'processing' have the same
15 meaning as in G.S. 130A-290(a).
16 g. Garbage collected by the vehicle from residences or garbage
17 dumpsters if the vehicle is fully enclosed and is designed
18 specifically for collecting, compacting, and hauling garbage
19 from residences or from garbage dumpsters. As used in this
20 subpart, the term 'garbage' does not include hazardous
21 waste as defined in G.S. 130A-290(a), spent nuclear fuel
22 regulated under G.S. 20-167.1, low-level radioactive waste as
23 defined in G.S. 104E-5, or radioactive material as defined in
24 G.S. 104E-5."

25 Section 3. G.S. 20-382.2 reads as rewritten:

26 "**§ 20-382.2. Penalty for failure to comply with registration or insurance verification**
27 **requirements.**

28 (a) Acts. -- A motor carrier who does any of the following is subject to a civil
29 penalty of ~~seventy-five dollars (\$75.00)~~ one thousand dollars (\$1,000):

- 30 (1) Operates a for-hire motor vehicle in this State without registering
31 its operations, as required by this Part.
32 (2) Operates a for-hire motor vehicle in interstate commerce in this
33 State that does not carry a copy of either an insurance registration
34 receipt issued to the motor carrier or a cab card with an
35 identification stamp issued for the vehicle, as required by G.S. 20-
36 382.
37 (3) Operates a for-hire motor vehicle in intrastate commerce in this
38 State for which it has not verified it has insurance, as required by
39 G.S. 20-382.1.

40 (b) Payment. -- When the Division finds that a for-hire motor vehicle is operated
41 in this State in violation of the registration and insurance verification requirements of
42 this Part, the motor vehicle may not be driven for a purpose other than to park the
43 motor vehicle until the penalty imposed under this section is paid unless the officer
44 that imposes the penalty determines that operation of the motor vehicle will not

1 jeopardize collection of the penalty. A motor carrier that denies liability for a penalty
2 imposed under this section may pay the penalty under protest and apply to the
3 Division for a hearing.

4 (c) Hearing. -- Upon receiving a request for a hearing, the Commissioner ~~must~~
5 shall schedule a hearing within 30 days after receipt of the request. If after the
6 hearing the Commissioner determines that the motor carrier was not liable for the
7 penalty, the amount collected ~~must~~ shall be refunded. If after the hearing the
8 Commissioner determines that the motor carrier was liable for the penalty, the motor
9 carrier may bring an action in the Superior Court of Wake County against the
10 Division for refund of the penalty. A court of this State may not issue a restraining
11 order or an injunction to restrain or enjoin the collection of the penalty or to permit
12 the operation of the vehicle without payment of the penalty.

13 (d) Proceeds. -- A penalty imposed under this section is payable to the Division.
14 Penalties collected under this section shall be credited to the Highway Fund as
15 nontax revenue."

16 Section 4. The Division of Motor Vehicles shall study the feasibility of
17 establishing a staggered registration system for commercial motor vehicles under the
18 International Registration Plan (IRP). The registration plan shall be coordinated with
19 other states which currently stagger IRP registrations to eliminate, insofar as possible,
20 multiple application dates for the same carrier. The registration plan shall provide
21 for a smooth transition to the staggered system providing for credits and partial fees,
22 as needed. The Division shall report the results of this study along with any
23 legislation to implement the staggered registration system to the Joint Legislative
24 Transportation Oversight Committee and the Fiscal Research Division by April 1,
25 1998.

26 Section 5. The Joint Legislative Transportation Oversight Committee
27 and the Revenue Laws Study Committee shall study the following issues encouraging
28 the growth of the trucking industry in North Carolina through increased truck
29 registrations:

- 30 (1) The feasibility of removing the highway use tax on vehicles with a
31 gross weight rating of more than 26,000 pounds;
- 32 (2) The replacement of the revenue from the removal of the highway
33 use tax studied in subdivision (1) of this section by an increase in
34 registration fees for the same vehicles by ten cents (10¢) per 100
35 pounds of registered weight; and
- 36 (3) Eliminate the stacking of overweight penalties by restricting the
37 penalties so that they do not exceed the highest axle-group weight
38 that exceeds the allowable limits rather than assessing separate
39 penalties for each axle-group and stacking those penalties for the
40 same weight violations.

41 The Joint Legislative Transportation Oversight Committee may make an
42 interim report of the study authorized by this section to the 1998 Session of the
43 General Assembly and shall make a final report to the 1999 Session of the General
44 Assembly.

1 Section 6. Sections 4 and 5 of this act are effective when this act becomes
2 law. Sections 2 and 3 of this act become effective October 1, 1997. Section 1 of this
3 act becomes effective January 1, 1999.

FISCAL ANALYSIS MEMORANDUM

DATE: July 2, 1997

TO: Senate Finance Committee

FROM: Karl Knapp
Fiscal Research Division

RE: Proposed Committee Substitute for SB 886 (PCS-2788)

FISCAL IMPACT

	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 1997-98</u>	<u>FY 1998-99</u>	<u>FY 1999-00</u>	<u>FY 2000-01</u>	<u>FY 2001-02</u>
HIGHWAY FUND					
Revenues					
Civil Penalties	\$100,825	\$100,825	\$100,825	\$100,825	\$100,825
Expenditures					
Division of Motor Vehicles					
Permanent Truck Plates	\$0	\$41,668	-\$42,174	-\$42,174	-\$42,174
Division of Highways					
Highway Maintenance		No Estimate of Cost Increase Available			

POSITIONS: None

PRINCIPAL DEPARTMENT(S) &

PROGRAM(S) AFFECTED: Division of Highways
Division of Motor Vehicles

EFFECTIVE DATE: January 1, 1999 for permanent plate provisions. October 1, 1997 for the permanent plate, light traffic road, vehicle length, and civil penalty provisions. Upon becoming law for all other provisions.

BILL SUMMARY: The proposed act makes the following changes to current law:

- 1) Requires DMV to issue permanent truck and truck-tractor plates, rather than annual plates.
- 2) Exempts from light traffic road restrictions all vehicles carrying forest products from farm or forest to first market (was only unprocessed forest products).
- 3) Increases the civil penalty for failure to comply with registration or insurance verification requirements from \$75 to \$1,000.

In addition, the proposed act requires DMV to study the feasibility of implementing staggered registration for International Registration Plan vehicles, and allows the Legislative Research Commission to study the following issues:

- 1) The feasibility of exempting vehicles with a gross weight of 26,000 or more from the Highway Use Tax.
- 2) The feasibility of replacing this lost Highway Use Tax revenue through increased registration fees.
- 3) The elimination of penalties for truck axle-group overweight violations other than the penalty computed on the highest axle-group weight that exceeds the allowable limit.

ASSUMPTIONS AND METHODOLOGY:

Civil Penalties: During FY95-96, a total of 109 citations were issued for motor carrier insurance verification violations at various penalty levels. At \$75 each, penalties totaling \$8,175 would have been assessed. At \$1,000 per citation, penalties would have been \$109,000, for an increase of \$100,825. This figure is not expected to change significantly in the future.

Permanent Plates: Permanent plates would not be issued until 1999. The cost of each current annual plate is \$1.32. The cost of each permanent plate is \$1.65.

Current Law:	126,268 annual plates at \$1.32 = \$166,674
Proposed FY98-99	126,268 permanent plates at \$1.65 = \$208,342
Proposed FY99-02	75,000 (inventory) @ \$1.65 = \$124,500

Highway Maintenance: The Division of Highways indicates that the proposed act's provisions related to light traffic road restrictions will increase the weight of vehicles on certain State highways, and that this increased weight will cause increased wear of those highways, requiring additional maintenance expenditures. The Division of Highways can not quantify the amount of additional maintenance expenditures that would be required by the provisions of the proposed act.

TECHNICAL CONSIDERATIONS: None.

1 risk of liability for problems they did not create, so long as the
2 property can be and is made safe for appropriate future use.

- 3 (5) Public and local government involvement in commenting on the
4 safe reuse of brownfields will improve the quality and acceptability
5 of their redevelopment.

6 Section 2. Article 9 of Chapter 130A of the General Statutes is amended
7 by adding a new Part to read:

8 "Part 5. Brownfields Property Reuse Act.

9 "§ 130A-310.30. Short title.

10 This Part may be cited as the Brownfields Property Reuse Act of 1997.

11 "§ 130A-310.31. Definitions.

12 (a) Unless a different meaning is required by the context or unless a different
13 meaning is set out in subsection (b) of this section, the definitions in G.S. 130A-2 and
14 G.S. 130A-310 apply throughout this Part.

15 (b) Unless a different meaning is required by the context:

- 16 (1) 'Affiliate' has the same meaning as in 17 Code of Federal
17 Regulations § 240.12b-2 (1 April 1996 Edition).
- 18 (2) 'Brownfields agreement' means an agreement between the
19 Department and a prospective developer that meets the
20 requirements of G.S. 130A-310.32.
- 21 (3) 'Brownfields property' or 'brownfields site' means abandoned,
22 idled, or underused property at which expansion or redevelopment
23 is hindered by actual environmental contamination or the
24 possibility of environmental contamination and that is or may be
25 subject to remediation under any State remedial program other
26 than Part 2A of Article 21 of Chapter 143 of the General Statutes
27 or that is or may be subject to remediation under the
28 Comprehensive Environmental Response, Compensation and
29 Liability Act of 1980, as amended (42 U.S.C. § 9601 et seq.).
- 30 (4) 'Contaminant' means a regulated substance released into the
31 environment.
- 32 (5) 'Current standards' when used in connection with 'cleanup',
33 'remediated', or 'remediation' means that cleanup or remediation
34 activities at the site comply with generally applicable standards,
35 guidance, or established methods governing contaminants at the
36 site that are adopted or published by the Commission, the
37 Environmental Management Commission, or the Department.
- 38 (6) 'Environmental contamination' means contaminants at the
39 property requiring remediation and that are to be remediated
40 under the brownfields agreement including, at a minimum,
41 hazardous waste, as defined in G.S. 130A-290; a hazardous
42 substance, as defined in G.S. 130A-310; a hazardous substance, as
43 defined in G.S. 143-215.77; or oil, as defined in G.S. 143-215.77.
- 44 (7) 'Local government' means a town, city, or county.

- 1 (8) 'Parent' has the same meaning as in 17 Code of Federal
2 Regulations § 240.12b-2 (1 April 1996 Edition).
- 3 (9) 'Potentially responsible party' means a person who is or may be
4 liable for remediation under a remedial program.
- 5 (10) 'Prospective developer' means any person who desires to either
6 buy or sell a brownfields property for the purpose of developing or
7 redeveloping that brownfields property and who did not cause or
8 contribute to the contamination at the brownfields property.
- 9 (11) 'Regulated substance' means a hazardous waste, as defined in G.S.
10 130A-290; a hazardous substance, as defined in G.S. 143-215.77A;
11 oil, as defined in G.S. 143-215.77; or other substance regulated
12 under any remedial program other than Part 2A of Article 21A of
13 Chapter 143 of the General Statutes.
- 14 (12) 'Remedial program' means a program implemented by the
15 Department for the remediation of any contaminant, including the
16 Inactive Hazardous Sites Response Act of 1987 under Part 3 of this
17 Article, the Superfund Program under Part 4 of this Article, and
18 the Oil Pollution and Hazardous Substances Control Act of 1978
19 under Part 2 of Article 21A of Chapter 143 of the General
20 Statutes.
- 21 (13) 'Remediation' means action to clean up, mitigate, correct, abate,
22 minimize, eliminate, control, or prevent the spreading, migration,
23 leaking, leaching, volatilization, spilling, transport, or further
24 release of a contaminant into the environment in order to protect
25 public health or the environment.
- 26 (14) 'Subsidiary' has the same meaning as in 17 Code of Federal
27 Regulations § 240.12b-2 (1 April 1996 Edition).

28 **"§ 130A-310.32. Brownfields agreement.**

29 (a) The Department may, in its discretion, enter into a brownfields agreement
30 with a prospective developer who satisfies the requirements of this section. A
31 prospective developer shall provide the Department with any information necessary
32 to demonstrate that:

- 33 (1) The prospective developer, and any parent, subsidiary, or other
34 affiliate of the prospective developer has substantially complied
35 with:
- 36 a. The terms of any brownfields agreement or similar
37 agreement to which the prospective developer or any parent,
38 subsidiary, or other affiliate of the prospective developer has
39 been a party.
- 40 b. The requirements applicable to any remediation in which
41 the applicant has previously engaged.
- 42 c. Federal and state laws, regulations, and rules for the
43 protection of the environment.

1 (2) As a result of the implementation of the brownfields agreement,
2 the brownfields property will be suitable for the uses specified in
3 the agreement while fully protecting public health and the
4 environment instead of being remediated to current standards.

5 (3) There is a public benefit commensurate with the liability
6 protection provided under this Part.

7 (4) The prospective developer has or can obtain the financial,
8 managerial, and technical means to fully implement the
9 brownfields agreement and assure the safe use of the brownfields
10 property.

11 (5) The prospective developer has complied with or will comply with
12 all applicable procedural requirements.

13 (b) In negotiating a brownfields agreement, parties may rely on land-use
14 restrictions that will be included in a Notice of Brownfields Property required under
15 G.S. 130A-310.35. A brownfields agreement may provide for remediation standards
16 that are based on those land-use restrictions.

17 (c) A brownfields agreement shall contain a description of the brownfields
18 property that would be sufficient as a description of the property in an instrument of
19 conveyance and, as applicable, a statement of:

20 (1) Any remediation to be conducted on the property, including:

21 a. A description of specific areas where remediation is to be
22 conducted.

23 b. The remediation method or methods to be employed.

24 c. The resources that the prospective developer will make
25 available.

26 d. A schedule of remediation activities.

27 e. Applicable remediation standards.

28 f. A schedule and the method or methods for evaluating the
29 remediation.

30 (2) Any land-use restrictions that will apply to the brownfields
31 property.

32 (3) The desired results of any remediation or land-use restrictions with
33 respect to the brownfields property.

34 (4) The guidelines, including parameters, principles, and policies
35 within which the desired results are to be accomplished.

36 (5) The consequences of achieving or not achieving the desired results.

37 (d) Any failure of the prospective developer or the prospective developer's agents
38 and employees to comply with the brownfields agreement constitutes a violation of
39 this Part by the prospective developer.

40 "§ 130A-310.33. Liability protection.

41 (a) A prospective developer who enters into a brownfields agreement with the
42 Department and who is complying with the brownfields agreement shall not be held
43 liable for remediation of areas of contaminants identified in the brownfields
44 agreement except as specified in the brownfields agreement, so long as the activities

1 conducted on the brownfields property by or under the control or direction of the
2 prospective developer do not increase the risk of harm to public health or the
3 environment and the prospective developer is not required to undertake additional
4 remediation to current standards pursuant to subsection (c) of this section. The
5 liability protection provided under this Part applies to all of the following persons to
6 the same extent as to a prospective developer, so long as these persons are not
7 otherwise potentially responsible parties or parents, subsidiaries, or affiliates of
8 potentially responsible parties and the person is not required to undertake additional
9 remediation to current standards pursuant to subsection (c) of this section:

- 10 (1) Any person under the direction or control of the prospective
11 developer who directs or contracts for remediation or
12 redevelopment of the brownfields property.
- 13 (2) Any future owner of the brownfields property.
- 14 (3) A person who develops or occupies the brownfields property.
- 15 (4) A successor or assign of any person to whom the liability
16 protection provided under this Part applies.
- 17 (5) Any lender or fiduciary that provides financing for remediation or
18 redevelopment of the brownfields property.

19 (b) A person who conducts an environmental assessment or transaction screen on
20 a brownfields property and who is not otherwise a potentially responsible party is not
21 a potentially responsible party as a result of conducting the environmental assessment
22 or transaction screen unless that person increases the risk of harm to public health or
23 the environment by failing to exercise due diligence and reasonable care in
24 performing the environmental assessment or transaction screen.

25 (c) If a land-use restriction set out in the Notice of Brownfields Property required
26 under G.S. 130A-310.35 is violated, the owner of the brownfields property at the time
27 the land-use restriction is violated, the owner's successors and assigns, and the
28 owner's agents who direct or contract for alteration of the brownfields property in
29 violation of a land-use restriction shall be liable for remediation to current standards.
30 A prospective developer who completes the remediation or redevelopment required
31 under a brownfields agreement or other person who receives liability protection
32 under this Part shall not be required to undertake additional remediation at the
33 brownfields property unless any of the following apply:

- 34 (1) The prospective developer knowingly or recklessly provides false
35 information that forms a basis for the brownfields agreement or
36 that is offered to demonstrate compliance with the brownfields
37 agreement or fails to disclose relevant information about
38 contamination at the brownfields property.
- 39 (2) New information indicates the existence of previously unreported
40 contaminants or an area of previously unreported contamination
41 on or associated with the brownfields property that has not been
42 remediated to current standards, unless the brownfields agreement
43 is amended to include any previously unreported contaminants and
44 any additional areas of contamination. If the brownfields

1 agreement sets maximum concentrations for contaminants, and
2 new information indicates the existence of previously unreported
3 areas of these contaminants, further remediation shall be required
4 only if the areas of previously unreported contaminants raise the
5 risk of the contamination to public health or the environment to a
6 level less protective of public health and the environment than that
7 required by the brownfields agreement.

8 (3) The level of risk to public health or the environment from
9 contaminants is unacceptable at or in the vicinity of the
10 brownfields property due to changes in exposure conditions,
11 including (i) a change in land use that increases the probability of
12 exposure to contaminants or in the vicinity of the brownfields
13 property or (ii) the failure of remediation to mitigate risks to the
14 extent required to make the brownfields property fully protective
15 of public health and the environment as planned in the
16 brownfields agreement.

17 (4) The Department obtains new information about a contaminant
18 associated with the brownfields property or exposures at or around
19 the brownfields property that raises the risk to public health or the
20 environment associated with the brownfields property beyond an
21 acceptable range and in a manner or to a degree not anticipated in
22 the brownfields agreement. Any person whose use, including any
23 change in use, of the brownfields property causes an unacceptable
24 risk to public health or the environment may be required by the
25 Department to undertake additional remediation measures under
26 the provisions of this Part.

27 (5) A prospective developer fails to file a timely and proper Notice of
28 Brownfields Development under this Part.

29 **§ 130A-310.34. Public notice and community involvement.**

30 (a) A prospective developer who desires to enter into a brownfields agreement
31 shall notify the public and the community in which the brownfields property is
32 located of planned remediation and redevelopment activities. The prospective
33 developer shall submit a Notice of Intent to Redevelop a Brownfields Property and a
34 summary of the Notice of Intent to the Department. The Notice of Intent shall
35 provide, to the extent known, a legal description of the location of the brownfields
36 property, a map showing the location of the brownfields property, a description of the
37 contaminants involved and their concentrations in the media of the brownfields
38 property, a description of the intended future use of the brownfields property, any
39 proposed investigation and remediation, and a proposed Notice of Brownfields
40 Property prepared in accordance with G.S. 130A-310.35. Both the Notice of Intent
41 and the summary of the Notice of Intent shall state the time period and means for
42 submitting written comment and for requesting a public meeting on the proposed
43 brownfields agreement. The summary of the Notice of Intent shall include a
44 statement as to the public availability of the full Notice of Intent. After approval of

1 the Notice of Intent and summary of the Notice of Intent by the Department, the
2 prospective developer shall provide a copy of the Notice of Intent to all local
3 governments having jurisdiction over the brownfields property. The prospective
4 developer shall publish the summary of the Notice of Intent in a newspaper of
5 general circulation serving the area in which the brownfields property is located and
6 shall file a copy of the summary of the Notice of Intent with the Codifier of Rules,
7 who shall publish the summary of the Notice of Intent in the North Carolina Register.
8 The prospective developer shall also conspicuously post a copy of the summary of the
9 Notice of Intent at the brownfields site.

10 (b) Publication of the approved summary of the Notice of Intent in the North
11 Carolina Register and publication in a newspaper of general circulation shall begin a
12 public comment period of at least 60 days from the later date of publication. During
13 the public comment period, members of the public, residents of the community in
14 which the brownfields property is located, and local governments having jurisdiction
15 over the brownfields property may submit comment on the proposed brownfields
16 agreement, including methods and degree of remediation, future land uses, and
17 impact on local employment.

18 (c) Any person who desires a public meeting on a proposed brownfields
19 agreement shall submit a written request for a public meeting to the Department
20 within 30 days after the public comment period begins. The Department shall
21 consider all requests for a public meeting and shall hold a public meeting if the
22 Department determines that there is significant public interest in the proposed
23 brownfields agreement. If the Department decides to hold a public meeting, the
24 Department shall, at least 30 days prior to the public meeting, mail written notice of
25 the public meeting to all persons who requested the public meeting and to any other
26 person who had previously requested notice. The Department shall also direct the
27 prospective developer to publish, at least 30 days prior to the date of the public
28 meeting, a notice of the public meeting at least one time in a newspaper having
29 general circulation in such county where the brownfields property is located. In any
30 county in which there is more than one newspaper having general circulation, the
31 Department shall direct the prospective developer to publish a copy of the notice in
32 as many newspapers having general circulation in the county as the Department in its
33 discretion determines to be necessary to assure that the notice is generally available
34 throughout the county. The Department shall prescribe the form and content of the
35 notice to be published. The Department shall prescribe the procedures to be
36 followed in the public meeting. The Department shall take detailed minutes of the
37 meeting. The minutes shall include any written comments, exhibits, or documents
38 presented at the meeting.

39 (d) Prior to entering into a brownfields agreement, the Department shall take into
40 account the comment received during the comment period and at the public meeting
41 if the Department holds a public meeting. The Department shall incorporate into the
42 brownfields agreement provisions that reflect comment received during the comment
43 period and at the public meeting to the extent practical. The Department shall give

1 particular consideration to written comment that is supported by valid scientific and
2 technical information and analysis.

3 **"§ 130A-310.35. Notice of Brownfields Property; land-use restrictions in deed.**

4 (a) In order to reduce or eliminate the danger to public health or the environment
5 posed by a brownfields property being addressed under this Part, a prospective
6 developer who desires to enter into a brownfields agreement with the Department
7 shall submit to the Department a proposed Notice of Brownfields Property. A Notice
8 of Brownfields Property shall be entitled 'Notice of Brownfields Property', shall
9 include a survey plat of areas designated by the Department that has been prepared
10 and certified by a professional land surveyor and that meets the requirements of G.S.
11 47-30, shall include a legal description of the brownfields property that would be
12 sufficient as a description of the property in an instrument of conveyance, and shall
13 identify all of the following:

- 14 (1) The location and dimensions of the areas of potential
15 environmental concern with respect to permanently surveyed
16 benchmarks.
- 17 (2) The type, location, and quantity of regulated substances and
18 contaminants known to exist on the brownfields property.
- 19 (3) Any restrictions on the current or future use of the brownfields
20 property or, with the owner's permission, other property that are
21 necessary or useful to maintain the level of protection appropriate
22 for the designated current or future use of the brownfields property
23 and that are designated in the brownfields agreement. These
24 land-use restrictions may apply to activities on, over, or under the
25 land, including, but not limited to, use of groundwater, building,
26 filling, grading, excavating, and mining. Where a brownfields
27 property encompasses more than one parcel or tract of land, a
28 composite map or plat showing all parcels or tracts may be
29 recorded.

30 (b) After the Department approves and certifies the Notice of Brownfields
31 Property under subsection (a) of this section, a prospective developer who enters into
32 a brownfields agreement with the Department shall file a certified copy of the Notice
33 of Brownfields Property in the register of deeds' office in the county or counties in
34 which the land is located. The prospective developer shall file the Notice of
35 Brownfields Property within 15 days of the prospective developer's receipt of the
36 Department's approval of the notice or the prospective developer's entry into the
37 brownfields agreement, whichever is later.

38 (c) The register of deeds shall record the certified copy of the notice and index it
39 in the grantor index under the names of the owners of the land, and, if different, also
40 under the name of the prospective developer conducting the redevelopment of the
41 brownfields property.

42 (d) When a brownfields property is sold, leased, conveyed, or transferred, the
43 deed or other instrument of transfer shall contain in the description section, in no
44 smaller type than that used in the body of the deed or instrument, a statement that

1 the brownfields property has been classified and, if appropriate, cleaned up as a
2 brownfields property under this Part.

3 (e) A Notice of Brownfields Property filed pursuant to this section may, at the
4 request of the owner of the land, be cancelled by the Secretary after the hazards have
5 been eliminated. If requested in writing by the owner of the land and if the Secretary
6 concurs with the request, the Secretary shall send to the register of deeds of each
7 county where the notice is recorded a statement that the hazards have been
8 eliminated and request that the notice be cancelled of record. The Secretary's
9 statement shall contain the names of the owners of the land as shown in the notice
10 and reference the plat book and page where the notice is recorded. The register of
11 deeds shall record the Secretary's statement in the deed books and index it on the
12 grantor index in the names of the owners of the land as shown in the Notice of
13 Brownfields Property and on the grantee index in the name 'Secretary of
14 Environment, Health, and Natural Resources'. The register of deeds shall make a
15 marginal entry on the Notice of Brownfields Property showing the date of
16 cancellation and the book and page where the Secretary's statement is recorded, and
17 the register of deeds shall sign the entry. If a marginal entry is impracticable because
18 of the method used to record maps and plats, the register of deeds shall not be
19 required to make a marginal entry.

20 (f) Any land-use restriction filed pursuant to this section shall be enforced by any
21 owner of the land. Any land-use restriction may also be enforced by the Department
22 through the remedies provided in Part 2 of Article 1 of this Chapter or by means of a
23 civil action. The Department may enforce any land-use restriction without first
24 having exhausted any available administrative remedies. A land-use restriction may
25 also be enforced by any unit of local government having jurisdiction over any part of
26 the brownfields property by means of a civil action without the unit of local
27 government having first exhausted any available administrative remedy. A land-use
28 restriction may also be enforced by any person eligible for liability protection under
29 this Part who will lose liability protection if the land-use restriction is violated. A
30 land-use restriction shall not be declared unenforceable due to lack of privity of
31 estate or contract, due to lack of benefit to particular land, or due to lack of any
32 property interest in particular land. Any person who owns or leases a property
33 subject to a land-use restriction under this section shall abide by the land-use
34 restriction.

35 (g) This section shall apply in lieu of the provisions of G.S. 130A-310.8 for
36 brownfields properties remediated under this Part.

37 **"§ 130A-310.36. Appeals.**

38 A decision by the Department as to whether or not to enter into a brownfields
39 agreement including the terms of any brownfields agreement is reviewable under
40 Article 3 of Chapter 150B of the General Statutes.

41 **"§ 130A-310.37. Construction of Part.**

42 (a) This Part is not intended and shall not be construed to:

43 (1) Affect the ability of local governments to regulate land use under
44 Article 19 of Chapter 160A of the General Statutes and Article 18

1 of Chapter 153A of the General Statutes. The use of the identified
2 brownfields property and any land-use restrictions in the
3 brownfields agreement shall be consistent with local land-use
4 controls adopted under those statutes.

5 (2) Amend, modify, repeal, or otherwise alter any provision of any
6 remedial program or other provision of this Chapter, Chapter 143
7 of the General Statutes, or any other provision of law relating to
8 civil and criminal penalties or enforcement actions and remedies
9 available to the Department, except as may be provided in a
10 brownfields agreement.

11 (3) Prevent or impede the immediate response of the Department or
12 responsible party to an emergency that involves an imminent or
13 actual release of a regulated substance that threatens public health
14 or the environment.

15 (4) Relieve a person receiving liability protection under this Part from
16 any liability for contamination later caused by that person on a
17 brownfields property.

18 (5) Affect the right of any person to seek any relief available against
19 any party to the brownfields agreement who may have liability
20 with respect to the brownfields property, except that this Part does
21 limit the relief available against any party to a brownfields
22 agreement with respect to remediation of the brownfields property
23 to the remediation required under the brownfields agreement.

24 (6) Affect the right of any person who may have liability with respect
25 to the brownfields property to seek contribution from any other
26 person who may have liability with respect to the brownfields
27 property and who neither received nor has liability protection
28 under this Part.

29 (7) Prevent the State from enforcing specific numerical remediation
30 standards, monitoring, or compliance requirements specifically
31 required to be enforced by the federal government as a condition
32 to receive program authorization, delegation, primacy, or federal
33 funds.

34 (8) Create a defense against the imposition of criminal and civil fines
35 or penalties or administrative penalties otherwise authorized by
36 law and imposed as the result of the illegal disposal of waste or for
37 the pollution of the land, air, or waters of this State on a
38 brownfields property.

39 (9) Relieve a person of any liability for failure to exercise due
40 diligence and reasonable care in performing an environmental
41 assessment or transaction screen.

42 (b) Notwithstanding the provisions of the Tort Claims Act, G.S. 143-291 through
43 G.S. 143-300.1 or any other provision of law waiving the sovereign immunity of the
44 State of North Carolina, the State, its agencies, officers, employees, and agents shall

1 be absolutely immune from any liability in any proceeding for any injury or claim
2 arising from negotiating, entering, monitoring, or enforcing a brownfields agreement
3 or a Notice of Brownfields Property under this Part or any other action implementing
4 this Part.

5 "§ 130A-310.38. Brownfields Property Reuse Act Implementation Account.

6 The Brownfields Property Reuse Act Implementation Account is created as a
7 nonreverting interest-bearing account in the Office of the State Treasurer. The
8 Account shall consist of fees collected under G.S. 130A-310.39, moneys appropriated
9 to it by the General Assembly, moneys received from the federal government, moneys
10 contributed by private organizations, and moneys received from any other source.
11 Funds in the Account shall be used by the Department to defray a portion of the
12 costs of implementing this Part.

13 "§ 130A-310.39. Fees.

14 (a) The Department shall collect the following fees:

15 (1) A prospective developer who submits a proposed brownfields
16 agreement for review by the Department shall pay a fee of one
17 thousand dollars (\$1,000).

18 (2) A prospective developer who submits a final report certifying
19 completion of remediation under a brownfields agreement shall
20 pay a fee of five hundred dollars (\$500.00).

21 (b) Fees imposed under this section shall be credited to the Brownfields Property
22 Reuse Act Implementation Account.

23 "§ 130A-310.40. Legislative reports.

24 The Department shall prepare and submit to the Environmental Review
25 Commission, concurrently with the report on the Inactive Hazardous Sites Response
26 Act of 1987 required under G.S. 130A-310.10, an evaluation of the effectiveness of
27 this Part in facilitating the remediation and reuse of existing industrial and
28 commercial properties. This evaluation shall include any recommendations for
29 additional incentives or changes, if needed, to improve the effectiveness of this Part
30 in addressing such properties. This evaluation shall also include a report on receipts
31 by and expenditures from the Brownfields Property Reuse Act Implementation
32 Account."

33 Section 3. G.S. 130A-26.1(g) is amended by adding three new
34 subdivisions to read:

35 "(5) Provides false information or fails to provide information relevant
36 to a decision by the Department as to whether or not to enter into
37 a brownfields agreement under Part 5 of Article 9 of this Chapter.

38 (6) Provides false information or fails to provide information required
39 by a brownfields agreement under Part 5 of Article 9 of this
40 Chapter.

41 (7) Provides false information relevant to a decision by the
42 Department pursuant to:

43 a. G.S. 130A-308(b).

44 b. G.S. 130A-310.7(c).

- 1 c. G.S. 143-215.3(f).
2 d. G.S. 143-215.84(e)."

3 Section 4. G.S. 130A-308 reads as rewritten:

4 "**§ 130A-308. Continuing releases at permitted ~~facilities:~~ facilities; notification of**
5 **completed corrective action.**

6 (a) Standards adopted under G.S. 130A-294(c) ~~shall require, and a permit issued~~
7 ~~after November 8, 1984, and a permit issued under G.S. 130A-294(c) shall require~~
8 corrective action for all releases of hazardous waste or constituents from any solid
9 waste management unit at a treatment, storage, or disposal facility seeking a permit
10 under G.S. 130A-294(c), regardless of the time at which waste was placed in such
11 unit. Permits issued under G.S. 130A-294(c) which implement Section 3005 of RCRA
12 (42 U.S.C. § 6925) shall contain schedules of compliance for such corrective action
13 (where such corrective action cannot be completed prior to issuance of the permit)
14 and assurances of financial responsibility for completing such corrective action.
15 Notwithstanding any other provision of this section, this section shall apply only to
16 units, facilities, and permits that are covered by Section 3004(u) of RCRA (42 U.S.C.
17 § 6924(u)). Notwithstanding the foregoing, corrective action authorized elsewhere in
18 this Chapter shall not be limited by this section.

19 (b) The definitions set out in G.S. 130A-310.31(b) apply to this subsection. Any
20 person may submit a written request to the Department for a determination that a
21 corrective action for a release of a hazardous waste or constituents from a solid waste
22 management unit that is a treatment, storage, or disposal facility permitted under G.S.
23 130A-294(c) has been completed to current standards. A request for a determination
24 that a corrective action at a facility has been completed to current standards shall be
25 accompanied by the fee required by G.S. 130A-310.39(a)(2). If the Department
26 determines that the corrective action at a facility has been completed to current
27 standards, the Department shall issue a written notification that no further corrective
28 action will be required at the facility. The notification shall state that no further
29 corrective action will be required at the facility unless the Department later
30 determines, based on new information or information not previously provided to the
31 Department, that the corrective action at the facility has not been completed to
32 current standards or that the Department was provided with false or incomplete
33 information. Under any of those circumstances, the Department may withdraw the
34 notification and require responsible parties to take corrective action at a facility to
35 bring the facility into compliance with current standards."

36 Section 5. G.S. 130A-310.7 reads as rewritten:

37 "**§ 130A-310.7. Action for reimbursement; liability of responsible ~~parties:~~ parties;**
38 **notification of completed remedial action.**

39 (a) Notwithstanding any other provision or rule of law, and subject only to the
40 defenses set forth in this subsection, any person who:

- 41 (1) Discharges or deposits; or
42 (2) Contracts or arranges for any discharge or deposit; or
43 (3) Accepts for discharge or deposit; or

1 (4) Transports or arranges for transport for the purpose of discharge or
2 deposit
3 any hazardous substance, the result of which discharge or deposit is the existence of
4 an inactive hazardous substance or waste disposal site, shall be considered a
5 responsible party. Neither an innocent landowner who is a bona fide purchaser of
6 the inactive hazardous substance or waste disposal site without knowledge or without
7 a reasonable basis for knowing that hazardous substance or waste disposal had
8 occurred nor a person whose interest or ownership in the inactive hazardous
9 substance or waste disposal site is based on or derived from a security interest in the
10 property shall be considered a responsible party. A responsible party shall be directly
11 liable to the State for any or all of the reasonably necessary expenses of developing
12 and implementing a remedial action program for such site. The Secretary shall bring
13 an action for reimbursement of the Inactive Hazardous Sites Cleanup Fund in the
14 name of the State in the superior court of the county in which the site is located to
15 recover such sum and the cost of bringing the action. The State must show that a
16 danger to the public health or the environment existed and that the State complied
17 with the provisions of this Part.

18 (b) There shall be no liability under this section for a person who can establish by
19 a preponderance of the evidence that the danger to the public health or the
20 environment caused by the site was caused solely by:

- 21 (1) An act of God; or
22 (2) An act of war; or
23 (3) An intentional act or omission of a third party (but this defense
24 shall not be available if the act or omission is that of an employee
25 or agent of the defendant, or if the act or omission occurs in
26 connection with a contractual relationship with the defendant); or
27 (4) Any combination of the above causes.

28 (c) The definitions set out in G.S. 130A-310.31(b) apply to this subsection. Any
29 person may submit a written request to the Department for a determination that a site
30 that is subject to this Part has been remediated to current standards as provided in
31 Part 5 of Article 9 of Chapter 130A of the General Statutes. A request for a
32 determination that a site has been remediated to current standards shall be
33 accompanied by the fee required by G.S. 130A-310.39(a)(2). If the Department
34 determines that the site has been remediated to current standards, the Department
35 shall issue a written notification that no further remediation will be required at the
36 site. The notification shall state that no further remediation will be required at the
37 site unless the Department later determines, based on new information or information
38 not previously provided to the Department, that the site has not been remediated to
39 current standards or that the Department was provided with false or incomplete
40 information. Under any of those circumstances, the Department may withdraw the
41 notification and require responsible parties to remediate the site to current
42 standards."

43 Section 6. G.S. 143-215.3 is amended by adding a new subsection to
44 read:

1 "(f) Notification of Completed Remedial Action. -- The definitions set out in G.S.
2 130A-310.31(b) apply to this subsection. Any person may submit a written request to
3 the Department for a determination that groundwater has been remediated to meet
4 the standards and classifications established under this Part. A request for a
5 determination that groundwater has been remediated to meet the standards and
6 classifications established under this Part shall be accompanied by the fee required by
7 G.S. 130A-310.39(a)(2). If the Department determines that groundwater has been
8 remediated to established standards and classifications, the Department shall issue a
9 written notification that no further remediation of the groundwater will be required.
10 The notification shall state that no further remediation of the groundwater will be
11 required unless the Department later determines, based on new information or
12 information not previously provided to the Department, that the groundwater has not
13 been remediated to established standards and classifications or that the Department
14 was provided with false or incomplete information. Under any of those
15 circumstances, the Department may withdraw the notification and require responsible
16 parties to remediate the groundwater to established standards and classifications."

17 Section 7. G.S. 143-215.84 is amended by adding a new subsection to
18 read:

19 "(e) Notification of Completed Removal of Prohibited Discharges. -- The
20 definitions set out in G.S. 130A-310.31(b) apply to this subsection. Any person may
21 submit a written request to the Department for a determination that a discharge of oil
22 or a hazardous substance in violation of this Article has been remediated to current
23 standards. A request for a determination that a discharge has been remediated to
24 current standards shall be accompanied by the fee required by G.S.
25 130A-310.39(a)(2). If the Department determines that the discharge has been
26 remediated to current standards, the Department shall issue a written notification that
27 no further remediation of the discharge will be required. The notification shall state
28 that no further remediation of the discharge will be required unless the Department
29 later determines, based on new information or information not previously provided to
30 the Department, that the discharge has not been remediated to current standards or
31 that the Department was provided with false or incomplete information. Under any
32 of those circumstances, the Department may withdraw the notification and require
33 responsible parties to remediate the discharge to current standards."

34 Section 8. This act shall not be construed to obligate the General
35 Assembly to make any appropriation to implement the provisions of this act. The
36 Department of Environment, Health, and Natural Resources shall implement the
37 provisions of this act from funds otherwise available or appropriated to the
38 Department.

39 Section 9. This act becomes effective 1 October 1997.



**North Carolina General Assembly
Legislative Services Office**

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

Ernie W. Robinson, Director
Administrative Division
Room 5, Legislative Building
16 W. Jones Street
Raleigh, NC 27603-5925
(919) 733-7500

Gerry F. Cohen, Director
Bill Drafting Division
Suite 401, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Donald W. Fulford, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

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

Memorandum

July 15, 1997

TO: Senate Committee on Finance

FROM: George Givens, Staff Attorney
Jeff Hudson, Staff Attorney

SUBJECT: House Bill 1121 (Brownfields Property Reuse Act)

Section 1 sets out the findings of the General Assembly relating to the reuse of "brownfields property" (abandoned, idled, or underused property at which expansion or redevelopment is hindered by actual or possible environmental contamination and that is or may be subject to cleanup requirements under State or federal law).

Section 2 establishes the Brownfields Property Reuse Act.

§130A-310.30. Short Title.
Brownfields Property Reuse Act.

§130A-310.31. Definitions.
Definitions include:

"Brownfields agreement" means an agreement between the Department of Environment, Health, and Natural Resources (DEHNR) and a prospective developer that meets the requirements of G.S. 130A-310.32 (Brownfields agreements).

"Prospective developer" means any person who desires to either buy or sell a brownfields property for the purpose of developing or redeveloping that property and who did not cause or contribute to the contamination at the brownfields property.

"Remediation" means action to clean up, mitigate, correct, abate, minimize, eliminate, control, or prevent the spreading, migration, leaking, leaching, volatilization, spilling, transport, or further release of a contaminant into the environment in order to protect public health or the environment.

§130A-310.32. Brownfields agreements.

DEHNR may enter into a brownfields agreement (agreement) with a prospective developer (developer).

The developer must demonstrate: (1) the compliance history of itself and its parents, subsidiaries, and affiliates; (2) that the property is suitable for the proposed uses while protecting public health and the environment; (3) that the benefit to the public is commensurate with the liability protection afforded under this Part; (4) the financial, managerial, and technical means to implement the agreement and assure safe use of the property; (5) current and prospective compliance with procedural requirements.

The agreement must include: (1) a legal description of the property; (2) a description of any remediation to be conducted on the property; (3) any land use restrictions that will apply to the property; (4) the desired results of remediation; (5) the guidelines within which the desired results are to be accomplished; and (6) the consequences of achieving or not achieving those results. Failure to comply with an agreement will subject a developer to the enforcement provisions of this Part.

§130A-310.33. Liability protection.

A developer who enters into an agreement with DEHNR and is complying with the agreement will not be held liable for cleanup of areas of contaminants identified in the agreement, so long as the activities conducted on the property do not increase the risk of harm to public health or the environment and the developer is not required to undertake additional remediation pursuant to G.S. 130A-310.33(c) (*see paragraph below*). This liability protection is extended to parties who are not otherwise liable for remediation who are (1) agents of the developer involved in redevelopment or remediation; (2) future owners of the property; (3) persons who develop or occupy the property; (4) successors or assigns to any other person with liability protection; (5) parties providing financing for remediation or redevelopment of the property. Conducting an environmental assessment or transaction screen will not subject a person to liability unless the person increases the risk to public health or the environment by failing to exercise due diligence or reasonable care.

Pursuant to G.S. 130A-310.33(c), if a land-use restriction under the agreement is violated, the owner at the time of violation, the owners successors and assigns, and the owner's agents will be liable for remediation to current standards. A developer who completes the remediation required by an agreement will not be required to undertake additional remediation of the property unless any of the following apply: (1) the developer knowingly or recklessly gives false information in the formation of the agreement or in demonstration of compliance with the agreement; (2) new information indicates the existence of unreported contamination associated with the property; (3) the level of risk becomes unacceptable in the vicinity of the property due to changes in exposure conditions; (4) DEHNR obtains new information about a contamination or exposure that makes the risk unacceptable in a manner not anticipated in the agreement; (5) the owner fails to file a timely and proper Notice of Brownfields Development. In the case of new information indicating the existence of unreported contamination (2), further cleanup will only be required if the original agreement set target concentrations for contaminants and the levels of unreported contaminants exceed these target concentrations or the unreported contaminants raise the risk to public health or the environment.

§130A-310.34. Public notice and community involvement.

A developer desiring to enter into an agreement will notify the public and community in which the property is located of the planned remediation and redevelopment. The developer will also submit notice to DEHNR providing the location of the property, a map of this location, a description of contaminants and their concentrations; a description of intended future use, any

proposed investigation and cleanup measures, and a proposed Notice of Brownfields Property as required by G.S. 130A-310.35 (*see below*). Notice will also be given to local governments with jurisdiction over the property, a newspaper of general circulation serving the area in which the property is located, and the North Carolina Register. The developer will also conspicuously post a summary of the Notice on the property. The public and local governments will have 60 days within which to provide input into the cleanup and redevelopment plans. DEHNR will receive written request for a public meeting during a 30-day period and will hold a public meeting after giving 30 days notice if it determines that there is significant public interest. DEHNR will incorporate public comment into the agreement to the extent practicable and will give particular consideration to written comment that is supported by valid scientific information.

§130A-310.35. Notice of Brownfields Property; land use restrictions in deed.

A person who enters into an agreement with DEHNR will submit to DEHNR a proposed Notice of Brownfields Property that will include: (1) a survey plat prepared by a certified professional land surveyor of areas designated by DEHNR; (2) a legal description of the property; (3) the location and dimensions of areas of potential environmental concern; (4) the type, location, and quantity of contaminants on the property; and (5) any restrictions on current or future use of the property.

After DEHNR approves and certifies the Notice, the developer will file a certified copy of the Notice in the register of deeds' office in the county or counties in which the property is located. The register of deeds will record the Notice and index it in the grantor index under the names of the property owners and, if different, also under the name of the person conducting the redevelopment. When the property is transferred, the instrument of transfer will contain a statement that the property has been classified and, if appropriate, cleaned up as a brownfields property.

A property owner may request that a Notice be canceled by the Secretary of Environment, Health, and Natural Resources (Secretary) after the remediation of a property has eliminated the hazards. If the Secretary concurs with the written request, the Secretary will send to the register of deeds a statement that the hazards have been eliminated and will have the Notice canceled. The register of deeds will record the Secretary's statement and index it in the grantor index.

Restrictions on the current or future use of a property will be enforced by the owner of the property, and may be enforced by DEHNR, any unit of local government having jurisdiction over the property, or any person eligible for liability protection. A restriction will not be declared unenforceable due to: (1) lack of privity of estate or contract, (2) lack of benefit to particular land, or (3) lack of any property interest in particular land. Any person who owns or leases a property subject to a restriction will abide by the restriction.

Notice of brownfields properties will be filed in accordance with these provisions, rather than G.S. 130A-310.8 (Recordation of inactive hazardous substance or waste disposal sites).

§130A-310.36. Appeals.

A decision by DEHNR as to whether or not to enter into an agreement, including any terms of an agreement, is reviewable under the contested case provisions of the North Carolina Administrative Procedure Act.

§130A-310.37. Construction of Part.

This program is not intended to and will not be construed to: (1) affect the ability of local governments to regulate land development; (2) modify any remedial program or enforcement authority of DEHNR, except as provided in an agreement; (3) impede the immediate response of DEHNR or a responsible party to an imminent or actual release threatening public health or the

environment; (4) relieve a person from liability for contamination caused by that person on a brownfields property; (5) and (6) except for further remediation, affect the ability of any person to seek relief or contribution from any person who may have liability with respect to a property and who does not receive cleanup liability; (7) prevent the State from complying with federal laws and standards and receive federal funds; (8) create a defense for the illegal disposal of waste; (9) relieve a person of liability for failure to exercise reasonable care in the performance of an environmental assessment or transaction screen. No action or inaction of the State, its employees, Agencies, or agents related to brownfields agreements will subject the State to tort liability or waive sovereign immunity.

§130A-310.38. Brownfields Property Reuse Act Implementation Account.

The Brownfields Property Reuse Act Implementation Account (Account) is created as a nonreverting, interest-bearing account in the Office of the State Treasurer and consists of fees collected under this Part, moneys appropriated by the General Assembly, moneys received from the federal government, moneys contributed by private organizations, and moneys received from any other source. Funds in the Account will be used to defray a portion of the costs of implementing this Part.

§130A-310.39. Fees.

DEHNR will collect the following fees: (1) \$1,000.00 from a developer who submits a proposed agreement to DEHNR and (2) \$500.00 from a developer who submits a final report certifying completion of remediation under an agreement. These fees will be credited to the Account.

§130A-310.40. Legislative reports.

DEHNR will report to the Environmental Review Commission on the Brownfields program concurrently with every report on the Inactive Waste Sites program (made on February 15 of each year). The report will evaluate the effectiveness of the Brownfields program in facilitating the remediation and reuse of existing industrial and commercial properties, include any recommendations for additional incentives or changes to improve effectiveness, and include information on receipts by and expenditures from the Account.

Section 3 makes it a Class I felony, which may include a fine of up to \$100,000 per day of violation (not to exceed a cumulative total of \$500,000 for each 30 day period of continuing violation), to provide false or incomplete information relevant to an agreement or relevant to a determination that remediation has been completed.

Sections 4 through 7 authorize DEHNR to issue a written notification that no further remediation will be required where clean up has been completed to current standards at permitted hazardous waste treatment, storage, and disposal facilities; inactive hazardous sites; groundwater remediation sites; and oil or hazardous substance discharge remediation sites.

Section 8 provides that the General Assembly is not obligated to appropriate funds to implement this act.

Section 9 makes this act effective October 1, 1997.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: House Bill 1121
SHORT TITLE: Brownfields Property Reuse Act
SPONSOR(S): Committee Substitute

FISCAL IMPACT

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

FY 1997-98 FY 1998-99 FY 1999-00 FY 2000-01 FY 2001-02

REVENUES See assumptions and methodology

EXPENDITURES: Revenue from fees used to defray cost of program

POSITIONS: None

**PRINCIPAL DEPARTMENT(S) &
PROGRAM(S) AFFECTED:** Department of Environment Health and Natural Resources

EFFECTIVE DATE: Effective July 1, 1997.

BILL SUMMARY:

Adds new Part 5 (the Brownfields Property Reuse Act) to Article 9 of G.S. Chapter 130A, relating to brownfields property or sites (defined as abandoned, idled, or underused property at which expansion or redevelopment is hindered by actual or possible environmental contamination and that is or may be subject to state or federal remediation requirements). Provides for "brownfields agreements" between a prospective developer and the Department of Environment, Health, and Natural Resources, that (1) provide for cleanup, remediation, or other activities at brownfield property, (2) ensure the property is made and kept safe for its actual use, and (3) provide liability protection for persons consistent with the act. Developer that enters into and complies with such an agreement is not liable for remediation of areas of contaminants identified in the agreement except as specified in the agreement, as long as its activities conducted on the property do not increase the risk of harm to the public health or the environment. The protection also extends to persons under the developer's direction or control, any future owner, a person who develops or occupies the property, a successor or assign of any person with such protection, and any lender or fiduciary that provides financing for remediation or redevelopment of the property. Specifies that a person who conducts an environmental assessment or transaction screen on property is not a person responsible for remediation. Specifies exclusive circumstances under which a prospective developer who complete requirements of an agreement may be required to undertake additional remediation.

Requires developer who desires to enter into a brownfields agreement to notify the public and the community in which the property is located of the planned remediation and redevelopment activities and to submit a notice of intent to redevelop brownfields property to the DEHNR. Specifies required content of the notice. If the DEHNR approves the notice, the developer must provide a copy to all local governments having jurisdiction over the property and publish a summary of it in a newspaper serving the area. DEHNR must publish notice of the approval in the North Carolina Register. After both publications, a public comment period of at least 60 days must follow. Requires DEHNR, before entering into an agreement, to take into account community and local government views and comments. A decision by DEHNR not to enter a brownfields agreement is reviewable under the contested case provisions of the Administrative Procedure Act.

Requires the preparation, approval by the DEHNR, and filing with the register of deeds of a "Notice of Brownfields Property" by a purchaser of a brownfields property that is not otherwise noted in the chain of title as a property on which contaminants are located. Requires register of deeds to record such notice and index it in the grantor index under names of owners and name of person conducting redevelopment of the property. Requires that any instrument of transfer contain in the description section a statement that the property has been classified and, if appropriate, cleaned up, as a brownfields property. Sets out procedure whereby Secretary of Environment, Health, and Natural Resources may cancel a notice of brownfields property.

Provides that a person who knowingly provides false information about a property's eligibility or omits or falsifies required information is guilty of a class I felony, which may include a fine of \$50,000 per violation, each day a violation occurs being a separate violation.

Provides that use of brownfields property and any deed restrictions used as part of a redevelopment plan may not be inconsistent with local land development controls adopted under Article 19 of G.S. Chapter 160A or Article 18 of G.S. Chapter 153A. Specifies other laws and rights that the act is not intended to affect. Requires DEHNR, beginning Oct. 1, 1997, to conduct and submit to the Environmental Review Commission an evaluation of the effectiveness of the act concurrently with every report on the Inactive Waste Sites program.

Creates the Brownfields Study Commission, consisting of six members—three appointed by the Speaker and three by the President Pro Tempore — representing specified groups or communities. Directs Secretary of Environment, Health and Natural Resources to designate one employee of the department as an ex officio member. Requires the Commission to meet at least monthly and to report to the 1998 General Assembly and the Environmental Review Commission, no later than the first day the General Assembly convenes. Appropriates from General Fund to the General Assembly \$50,000 for 1997-98 for costs of the Commission's work.

Intro. by McComas.

Intro. 4/21/97. House committee substitute makes the following changes to 1st edition. The committee substitute makes numerous clarifying changes and the following substantive changes: (1) deletes provisions making certain acts and omissions related to brownfields agreements a class I felony; (2) deletes provisions establishing the Brownfields Study Commission; (3) deletes appropriation provisions; (4) creates Brownfields Property Reuse Act Implementation Account as nonreverting, interest-bearing account in Office of State Treasurer (account will consist of fees, appropriations, and other revenues related to brownfields agreements and will be used to defray part of cost of implementing the act) and (5) makes act effective when it becomes law (was, July 1, 1997).

Summary Source: Institute of Government

ASSUMPTIONS AND METHODOLOGY:

The amount of revenue collected from the fees imposed in this act is not known. It is expected that some revenue will be generated from the \$1,000 proposal fee and the \$500 final report fee but the actual number of developers choosing to develop in a brownfield in a single year is not known.

The expense associated with the implementation and administration of this act is limited to the revenues generated from the proposal fee and final report fee.

FISCAL RESEARCH DIVISION

733-4910

PREPARED BY: Warren Plonk

APPROVED BY:

DATE: June 2, 1997

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

Wednesday, July 16, 1997

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Jim Brown	N.C. State Ports
Leslie Bewagna	NCCBI
EL Peters	NC Trucking Assn.
Mr. Holm	CCNC / Senior Club
Stacie Haskins	Charlotte Chamber
Helen Lipine	Meck. County
NEIGHBOR Paper	ZDA, PA
Amy Hunkun	Anton: Williams
Nathaniel Nord	CCNC
Garag Howard	DO7/DmV
Lucia Peel	NC Medical Society

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

Wednesday, July 16, 1997

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Paul Zupin	OSBM
Doug Bright	Wake County Environmental Health
Arthur Monberry	DEHNR-DWA-Groundwater
Dwight "Buster" Dellinger	North Carolina Groundwater Assoc.
Grover Nicholson	NC Superfund ETHNR
BRUCE NICHOLSON	
Roger Bone	Bone & Assoc / Propane Decks
Stuart Dixon	NCNE
Suzanne Wilms	Bone & Assoc
Rich Fountain	Young Moore & Henderson
Cam Couer	BPM HL

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

Wednesday, July 16, 1997

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

FULTON CRENS	WNC
SELY SOKS	WCSR
PAUL STOCK	NC BANKERS ASSN
ALAN DUNN	WCSR
IRA SCHWARTZ	Fed Reserve
DAVID LAZZO	BANKERS TRUST & ASSOC.
Richard Wilsnaw	DEHWR
Henry Jones	Attorney Raleigh
David Baker	DOR
Jerry Kobitz	C. U. C. A.
Danny Massey	DOR

**UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL**

H.B.(CS #2)1108 Brew on Premises Permit.
 Draft Number: PCSX2366
 Sequential Referral: None
 Recommended Referral: None
 Long Title Amended: No

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO SENATE C.S. BILL

H.B. 750 Charter of Forest Hills.
 Draft Number: PCS4138
 Sequential Referral: None
 Recommended Referral: None
 Long Title Amended: No

TOTAL REPORTED: 8

Committee Clerk Comment: H 408 463 524 653 1158 750 1108 and S 696

SENATE FINANCE COMMITTEE

THURSDAY, JULY 17, 1997

8:00 A.M. - ROOM 544 LOB

The Senate Finance Committee met. There were 25 members of the Committee present. Senator David W. Hoyle, Co-Chairman, called the meeting to order and introduced the Pages, they are Matthew Adams from Gastonia, N. C., sponsored by Senator Hoyle, Douglas Bryant from Washington, N. C., sponsored by Senator Warren, Holly Beam from Cherryville, N. C., sponsored by Senator Hoyle and Stevie Hoyle from Cherryville, N. C., sponsored by Senator Hoyle.

H. B. 1121 - Brownfield Property Reuse Act

Representative McComas came to explain the bill again (NOTE: Bill was taken up at 7-16-97 Meeting). Mr. Charles Case an Environmental Attorney spoke on the Bill. Senator Albertson made a motion to give the bill a "favorable" report, motion passed.

H. B. 847 - Addit. Powers/Certain Water Authority

Representative Culp came to talk again about this Bill. (NOTE: On 6-24-97 this Bill was put into a subcommittee made up of Senator Lee as Chairman and Senators Gulley, Bob Shaw, Phillips and Blust). Senator Lee moved for adoption of committee substitute, motion passed. Mr. Bob High from the State Treasurer's Office spoke on the Bill, also, Mr. John Kime, Executive Director of the Piedmont Water Authority spoke on the Bill. Senator Lee gave a report from the Subcommittee and stated that the concerns that had been expressed when this Bill was heard on June 24, 1997 have been answered and he made a motion to give this Bill a "favorable" report, motion passed.

H. B. 96 - Intangibles Tax Remedy

Senator Kerr explained the bill and the changes that have been made. Senator Conder made a motion for adoption of a committee substitute, motion passed. Mrs. Sabra Faires with the Department of Revenue spoke on the bill. In answer to a question from a member of the Committee, Mrs. Faires stated that she did not have with her the number of protests that have been filed by CPAs or the number of how many have filed under

SENATE FINANCE COMMITTEE

Thursday, July 17, 1997

Page -2-

protests. Senator Conder made a motion to give the proposed committee substitute a "favorable" report, motion passed.

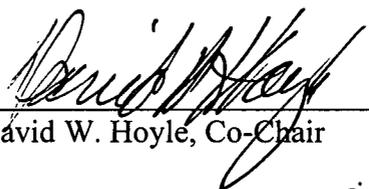
H. B. 722 - Beaufort County Local Act

Mrs. Cindy Avrette, Staff Counsel, explained this Bill. Senator Kerr made a motion to give this Bill a "favorable" report, motion passed.

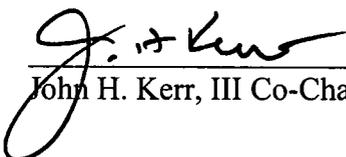
H. B. 251 - Well Contractors

Representative Culp explained this Bill. Mr. Dwight "Buster" Dellinger of the N. C. Groundwater Association spoke on this Bill. Senator Lee made a motion to give this Bill a "favorable" report, motion passed.

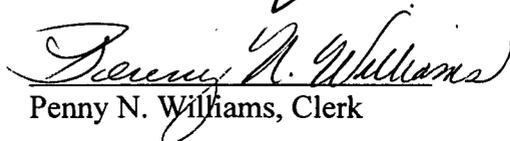
Meeting adjourned.



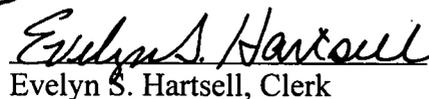
David W. Hoyle, Co-Chair



John H. Kerr, III Co-Chair



Penny N. Williams, Clerk



Evelyn S. Hartsell, Clerk

NOTE:

Agenda is Attachment # 1

Visitor's Registration is Attachment # 2

Committee Report is Attachment # 3

Committee Report for HB 847 dated 7-22-97 is Attachment # 4

AGENDA

SENATE FINANCE COMMITTEE

THURSDAY, JULY 17, 1997

8:00 A.M., ROOM 544

- .. H.B. 96 - Intangibles Tax Remedy - Rep. Dickson
- .. H.B. 251 - Well Contractors - Rep. Culp
- .. H.B. 722 - Beaufort County Local Act - Rep. Hardy
- ✓ H.B. 847 - Addit Powers/Certain Water Authority - Rep. Culp
- ✓ H.B. 1121- Brownfield Property Reuse Act - Rep. McComas

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

3

HOUSE BILL 1121
Committee Substitute Favorable 5/14/97
Committee Substitute #2 Favorable 6/11/97

Short Title: Brownfields Property Reuse Act.

(Public)

Sponsors:

Referred to:

April 21, 1997

- 1 A BILL TO BE ENTITLED
2 AN ACT TO PROMOTE THE SAFE REUSE OF PROPERTIES WHERE
3 ACTUAL CONTAMINATION, OR THE POSSIBILITY OF
4 CONTAMINATION, HAS IMPEDED REDEVELOPMENT.
5 The General Assembly of North Carolina enacts:
6 Section 1. Findings. -- The General Assembly makes the following
7 findings:
8 (1) There are abandoned, idle, and underused properties in North
9 Carolina, often referred to as "brownfields", that may have been or
10 were contaminated by past industrial and commercial activities, but
11 that are attractive locations for redevelopment.
12 (2) The reuse, development, redevelopment, transfer, financing, and
13 other use of brownfields is impaired by the potential liability
14 associated with the risk of contamination.
15 (3) The safe redevelopment of brownfields would benefit the citizens
16 of North Carolina in many ways, including improving the tax base
17 of local government and creating job opportunities for citizens in
18 the vicinity of brownfields.
19 (4) Potential purchasers and developers of brownfields and other
20 parties who have no connection with the contamination of the
21 property, including redevelopment lenders, should be encouraged
22 to provide capital and labor to improve brownfields without undue

1 risk of liability for problems they did not create, so long as the
2 property can be and is made safe for appropriate future use.

- 3 (5) Public and local government involvement in commenting on the
4 safe reuse of brownfields will improve the quality and acceptability
5 of their redevelopment.

6 Section 2. Article 9 of Chapter 130A of the General Statutes is amended
7 by adding a new Part to read:

8 "Part 5. Brownfields Property Reuse Act.

9 "§ 130A-310.30. Short title.

10 This Part may be cited as the Brownfields Property Reuse Act of 1997.

11 "§ 130A-310.31. Definitions.

12 (a) Unless a different meaning is required by the context or unless a different
13 meaning is set out in subsection (b) of this section, the definitions in G.S. 130A-2 and
14 G.S. 130A-310 apply throughout this Part.

15 (b) Unless a different meaning is required by the context:

- 16 (1) 'Affiliate' has the same meaning as in 17 Code of Federal
17 Regulations § 240.12b-2 (1 April 1996 Edition).
- 18 (2) 'Brownfields agreement' means an agreement between the
19 Department and a prospective developer that meets the
20 requirements of G.S. 130A-310.32.
- 21 (3) 'Brownfields property' or 'brownfields site' means abandoned,
22 idled, or underused property at which expansion or redevelopment
23 is hindered by actual environmental contamination or the
24 possibility of environmental contamination and that is or may be
25 subject to remediation under any State remedial program other
26 than Part 2A of Article 21 of Chapter 143 of the General Statutes
27 or that is or may be subject to remediation under the
28 Comprehensive Environmental Response, Compensation and
29 Liability Act of 1980, as amended (42 U.S.C. § 9601 et seq.).
- 30 (4) 'Contaminant' means a regulated substance released into the
31 environment.
- 32 (5) 'Current standards' when used in connection with 'cleanup',
33 'remediated', or 'remediation' means that cleanup or remediation
34 activities at the site comply with generally applicable standards,
35 guidance, or established methods governing contaminants at the
36 site that are adopted or published by the Commission, the
37 Environmental Management Commission, or the Department.
- 38 (6) 'Environmental contamination' means contaminants at the
39 property requiring remediation and that are to be remediated
40 under the brownfields agreement including, at a minimum,
41 hazardous waste, as defined in G.S. 130A-290; a hazardous
42 substance, as defined in G.S. 130A-310; a hazardous substance, as
43 defined in G.S. 143-215.77; or oil, as defined in G.S. 143-215.77.
- 44 (7) 'Local government' means a town, city, or county.

- 1 (8) 'Parent' has the same meaning as in 17 Code of Federal
2 Regulations § 240.12b-2 (1 April 1996 Edition).
- 3 (9) 'Potentially responsible party' means a person who is or may be
4 liable for remediation under a remedial program.
- 5 (10) 'Prospective developer' means any person who desires to either
6 buy or sell a brownfields property for the purpose of developing or
7 redeveloping that brownfields property and who did not cause or
8 contribute to the contamination at the brownfields property.
- 9 (11) 'Regulated substance' means a hazardous waste, as defined in G.S.
10 130A-290; a hazardous substance, as defined in G.S. 143-215.77A;
11 oil, as defined in G.S. 143-215.77; or other substance regulated
12 under any remedial program other than Part 2A of Article 21A of
13 Chapter 143 of the General Statutes.
- 14 (12) 'Remedial program' means a program implemented by the
15 Department for the remediation of any contaminant, including the
16 Inactive Hazardous Sites Response Act of 1987 under Part 3 of this
17 Article, the Superfund Program under Part 4 of this Article, and
18 the Oil Pollution and Hazardous Substances Control Act of 1978
19 under Part 2 of Article 21A of Chapter 143 of the General
20 Statutes.
- 21 (13) 'Remediation' means action to clean up, mitigate, correct, abate,
22 minimize, eliminate, control, or prevent the spreading, migration,
23 leaking, leaching, volatilization, spilling, transport, or further
24 release of a contaminant into the environment in order to protect
25 public health or the environment.
- 26 (14) 'Subsidiary' has the same meaning as in 17 Code of Federal
27 Regulations § 240.12b-2 (1 April 1996 Edition).

28 **"§ 130A-310.32. Brownfields agreement.**

29 (a) The Department may, in its discretion, enter into a brownfields agreement
30 with a prospective developer who satisfies the requirements of this section. A
31 prospective developer shall provide the Department with any information necessary
32 to demonstrate that:

- 33 (1) The prospective developer, and any parent, subsidiary, or other
34 affiliate of the prospective developer has substantially complied
35 with:
- 36 a. The terms of any brownfields agreement or similar
37 agreement to which the prospective developer or any parent,
38 subsidiary, or other affiliate of the prospective developer has
39 been a party.
- 40 b. The requirements applicable to any remediation in which
41 the applicant has previously engaged.
- 42 c. Federal and state laws, regulations, and rules for the
43 protection of the environment.

1 (2) As a result of the implementation of the brownfields agreement,
2 the brownfields property will be suitable for the uses specified in
3 the agreement while fully protecting public health and the
4 environment instead of being remediated to current standards.

5 (3) There is a public benefit commensurate with the liability
6 protection provided under this Part.

7 (4) The prospective developer has or can obtain the financial,
8 managerial, and technical means to fully implement the
9 brownfields agreement and assure the safe use of the brownfields
10 property.

11 (5) The prospective developer has complied with or will comply with
12 all applicable procedural requirements.

13 (b) In negotiating a brownfields agreement, parties may rely on land-use
14 restrictions that will be included in a Notice of Brownfields Property required under
15 G.S. 130A-310.35. A brownfields agreement may provide for remediation standards
16 that are based on those land-use restrictions.

17 (c) A brownfields agreement shall contain a description of the brownfields
18 property that would be sufficient as a description of the property in an instrument of
19 conveyance and, as applicable, a statement of:

20 (1) Any remediation to be conducted on the property, including:

21 a. A description of specific areas where remediation is to be
22 conducted.

23 b. The remediation method or methods to be employed.

24 c. The resources that the prospective developer will make
25 available.

26 d. A schedule of remediation activities.

27 e. Applicable remediation standards.

28 f. A schedule and the method or methods for evaluating the
29 remediation.

30 (2) Any land-use restrictions that will apply to the brownfields
31 property.

32 (3) The desired results of any remediation or land-use restrictions with
33 respect to the brownfields property.

34 (4) The guidelines, including parameters, principles, and policies
35 within which the desired results are to be accomplished.

36 (5) The consequences of achieving or not achieving the desired results.

37 (d) Any failure of the prospective developer or the prospective developer's agents
38 and employees to comply with the brownfields agreement constitutes a violation of
39 this Part by the prospective developer.

40 "§ 130A-310.33. Liability protection.

41 (a) A prospective developer who enters into a brownfields agreement with the
42 Department and who is complying with the brownfields agreement shall not be held
43 liable for remediation of areas of contaminants identified in the brownfields
44 agreement except as specified in the brownfields agreement, so long as the activities

1 conducted on the brownfields property by or under the control or direction of the
2 prospective developer do not increase the risk of harm to public health or the
3 environment and the prospective developer is not required to undertake additional
4 remediation to current standards pursuant to subsection (c) of this section. The
5 liability protection provided under this Part applies to all of the following persons to
6 the same extent as to a prospective developer, so long as these persons are not
7 otherwise potentially responsible parties or parents, subsidiaries, or affiliates of
8 potentially responsible parties and the person is not required to undertake additional
9 remediation to current standards pursuant to subsection (c) of this section:

- 10 (1) Any person under the direction or control of the prospective
11 developer who directs or contracts for remediation or
12 redevelopment of the brownfields property.
- 13 (2) Any future owner of the brownfields property.
- 14 (3) A person who develops or occupies the brownfields property.
- 15 (4) A successor or assign of any person to whom the liability
16 protection provided under this Part applies.
- 17 (5) Any lender or fiduciary that provides financing for remediation or
18 redevelopment of the brownfields property.

19 (b) A person who conducts an environmental assessment or transaction screen on
20 a brownfields property and who is not otherwise a potentially responsible party is not
21 a potentially responsible party as a result of conducting the environmental assessment
22 or transaction screen unless that person increases the risk of harm to public health or
23 the environment by failing to exercise due diligence and reasonable care in
24 performing the environmental assessment or transaction screen.

25 (c) If a land-use restriction set out in the Notice of Brownfields Property required
26 under G.S. 130A-310.35 is violated, the owner of the brownfields property at the time
27 the land-use restriction is violated, the owner's successors and assigns, and the
28 owner's agents who direct or contract for alteration of the brownfields property in
29 violation of a land-use restriction shall be liable for remediation to current standards.
30 A prospective developer who completes the remediation or redevelopment required
31 under a brownfields agreement or other person who receives liability protection
32 under this Part shall not be required to undertake additional remediation at the
33 brownfields property unless any of the following apply:

- 34 (1) The prospective developer knowingly or recklessly provides false
35 information that forms a basis for the brownfields agreement or
36 that is offered to demonstrate compliance with the brownfields
37 agreement or fails to disclose relevant information about
38 contamination at the brownfields property.
- 39 (2) New information indicates the existence of previously unreported
40 contaminants or an area of previously unreported contamination
41 on or associated with the brownfields property that has not been
42 remediated to current standards, unless the brownfields agreement
43 is amended to include any previously unreported contaminants and
44 any additional areas of contamination. If the brownfields

1 agreement sets maximum concentrations for contaminants, and
2 new information indicates the existence of previously unreported
3 areas of these contaminants, further remediation shall be required
4 only if the areas of previously unreported contaminants raise the
5 risk of the contamination to public health or the environment to a
6 level less protective of public health and the environment than that
7 required by the brownfields agreement.

8 (3) The level of risk to public health or the environment from
9 contaminants is unacceptable at or in the vicinity of the
10 brownfields property due to changes in exposure conditions,
11 including (i) a change in land use that increases the probability of
12 exposure to contaminants or in the vicinity of the brownfields
13 property or (ii) the failure of remediation to mitigate risks to the
14 extent required to make the brownfields property fully protective
15 of public health and the environment as planned in the
16 brownfields agreement.

17 (4) The Department obtains new information about a contaminant
18 associated with the brownfields property or exposures at or around
19 the brownfields property that raises the risk to public health or the
20 environment associated with the brownfields property beyond an
21 acceptable range and in a manner or to a degree not anticipated in
22 the brownfields agreement. Any person whose use, including any
23 change in use, of the brownfields property causes an unacceptable
24 risk to public health or the environment may be required by the
25 Department to undertake additional remediation measures under
26 the provisions of this Part.

27 (5) A prospective developer fails to file a timely and proper Notice of
28 Brownfields Development under this Part.

29 **"§ 130A-310.34. Public notice and community involvement.**

30 (a) A prospective developer who desires to enter into a brownfields agreement
31 shall notify the public and the community in which the brownfields property is
32 located of planned remediation and redevelopment activities. The prospective
33 developer shall submit a Notice of Intent to Redevelop a Brownfields Property and a
34 summary of the Notice of Intent to the Department. The Notice of Intent shall
35 provide, to the extent known, a legal description of the location of the brownfields
36 property, a map showing the location of the brownfields property, a description of the
37 contaminants involved and their concentrations in the media of the brownfields
38 property, a description of the intended future use of the brownfields property, any
39 proposed investigation and remediation, and a proposed Notice of Brownfields
40 Property prepared in accordance with G.S. 130A-310.35. Both the Notice of Intent
41 and the summary of the Notice of Intent shall state the time period and means for
42 submitting written comment and for requesting a public meeting on the proposed
43 brownfields agreement. The summary of the Notice of Intent shall include a
44 statement as to the public availability of the full Notice of Intent. After approval of

1 the Notice of Intent and summary of the Notice of Intent by the Department, the
2 prospective developer shall provide a copy of the Notice of Intent to all local
3 governments having jurisdiction over the brownfields property. The prospective
4 developer shall publish the summary of the Notice of Intent in a newspaper of
5 general circulation serving the area in which the brownfields property is located and
6 shall file a copy of the summary of the Notice of Intent with the Codifier of Rules,
7 who shall publish the summary of the Notice of Intent in the North Carolina Register.
8 The prospective developer shall also conspicuously post a copy of the summary of the
9 Notice of Intent at the brownfields site.

10 (b) Publication of the approved summary of the Notice of Intent in the North
11 Carolina Register and publication in a newspaper of general circulation shall begin a
12 public comment period of at least 60 days from the later date of publication. During
13 the public comment period, members of the public, residents of the community in
14 which the brownfields property is located, and local governments having jurisdiction
15 over the brownfields property may submit comment on the proposed brownfields
16 agreement, including methods and degree of remediation, future land uses, and
17 impact on local employment.

18 (c) Any person who desires a public meeting on a proposed brownfields
19 agreement shall submit a written request for a public meeting to the Department
20 within 30 days after the public comment period begins. The Department shall
21 consider all requests for a public meeting and shall hold a public meeting if the
22 Department determines that there is significant public interest in the proposed
23 brownfields agreement. If the Department decides to hold a public meeting, the
24 Department shall, at least 30 days prior to the public meeting, mail written notice of
25 the public meeting to all persons who requested the public meeting and to any other
26 person who had previously requested notice. The Department shall also direct the
27 prospective developer to publish, at least 30 days prior to the date of the public
28 meeting, a notice of the public meeting at least one time in a newspaper having
29 general circulation in such county where the brownfields property is located. In any
30 county in which there is more than one newspaper having general circulation, the
31 Department shall direct the prospective developer to publish a copy of the notice in
32 as many newspapers having general circulation in the county as the Department in its
33 discretion determines to be necessary to assure that the notice is generally available
34 throughout the county. The Department shall prescribe the form and content of the
35 notice to be published. The Department shall prescribe the procedures to be
36 followed in the public meeting. The Department shall take detailed minutes of the
37 meeting. The minutes shall include any written comments, exhibits, or documents
38 presented at the meeting.

39 (d) Prior to entering into a brownfields agreement, the Department shall take into
40 account the comment received during the comment period and at the public meeting
41 if the Department holds a public meeting. The Department shall incorporate into the
42 brownfields agreement provisions that reflect comment received during the comment
43 period and at the public meeting to the extent practical. The Department shall give

1 particular consideration to written comment that is supported by valid scientific and
2 technical information and analysis.

3 "§ 130A-310.35. Notice of Brownfields Property; land-use restrictions in deed.

4 (a) In order to reduce or eliminate the danger to public health or the environment
5 posed by a brownfields property being addressed under this Part, a prospective
6 developer who desires to enter into a brownfields agreement with the Department
7 shall submit to the Department a proposed Notice of Brownfields Property. A Notice
8 of Brownfields Property shall be entitled 'Notice of Brownfields Property', shall
9 include a survey plat of areas designated by the Department that has been prepared
10 and certified by a professional land surveyor and that meets the requirements of G.S.
11 47-30, shall include a legal description of the brownfields property that would be
12 sufficient as a description of the property in an instrument of conveyance, and shall
13 identify all of the following:

14 (1) The location and dimensions of the areas of potential
15 environmental concern with respect to permanently surveyed
16 benchmarks.

17 (2) The type, location, and quantity of regulated substances and
18 contaminants known to exist on the brownfields property.

19 (3) Any restrictions on the current or future use of the brownfields
20 property or, with the owner's permission, other property that are
21 necessary or useful to maintain the level of protection appropriate
22 for the designated current or future use of the brownfields property
23 and that are designated in the brownfields agreement. These
24 land-use restrictions may apply to activities on, over, or under the
25 land, including, but not limited to, use of groundwater, building,
26 filling, grading, excavating, and mining. Where a brownfields
27 property encompasses more than one parcel or tract of land, a
28 composite map or plat showing all parcels or tracts may be
29 recorded.

30 (b) After the Department approves and certifies the Notice of Brownfields
31 Property under subsection (a) of this section, a prospective developer who enters into
32 a brownfields agreement with the Department shall file a certified copy of the Notice
33 of Brownfields Property in the register of deeds' office in the county or counties in
34 which the land is located. The prospective developer shall file the Notice of
35 Brownfields Property within 15 days of the prospective developer's receipt of the
36 Department's approval of the notice or the prospective developer's entry into the
37 brownfields agreement, whichever is later.

38 (c) The register of deeds shall record the certified copy of the notice and index it
39 in the grantor index under the names of the owners of the land, and, if different, also
40 under the name of the prospective developer conducting the redevelopment of the
41 brownfields property.

42 (d) When a brownfields property is sold, leased, conveyed, or transferred, the
43 deed or other instrument of transfer shall contain in the description section, in no
44 smaller type than that used in the body of the deed or instrument, a statement that

1 the brownfields property has been classified and, if appropriate, cleaned up as a
2 brownfields property under this Part.

3 (e) A Notice of Brownfields Property filed pursuant to this section may, at the
4 request of the owner of the land, be cancelled by the Secretary after the hazards have
5 been eliminated. If requested in writing by the owner of the land and if the Secretary
6 concurs with the request, the Secretary shall send to the register of deeds of each
7 county where the notice is recorded a statement that the hazards have been
8 eliminated and request that the notice be cancelled of record. The Secretary's
9 statement shall contain the names of the owners of the land as shown in the notice
10 and reference the plat book and page where the notice is recorded. The register of
11 deeds shall record the Secretary's statement in the deed books and index it on the
12 grantor index in the names of the owners of the land as shown in the Notice of
13 Brownfields Property and on the grantee index in the name 'Secretary of
14 Environment, Health, and Natural Resources'. The register of deeds shall make a
15 marginal entry on the Notice of Brownfields Property showing the date of
16 cancellation and the book and page where the Secretary's statement is recorded, and
17 the register of deeds shall sign the entry. If a marginal entry is impracticable because
18 of the method used to record maps and plats, the register of deeds shall not be
19 required to make a marginal entry.

20 (f) Any land-use restriction filed pursuant to this section shall be enforced by any
21 owner of the land. Any land-use restriction may also be enforced by the Department
22 through the remedies provided in Part 2 of Article 1 of this Chapter or by means of a
23 civil action. The Department may enforce any land-use restriction without first
24 having exhausted any available administrative remedies. A land-use restriction may
25 also be enforced by any unit of local government having jurisdiction over any part of
26 the brownfields property by means of a civil action without the unit of local
27 government having first exhausted any available administrative remedy. A land-use
28 restriction may also be enforced by any person eligible for liability protection under
29 this Part who will lose liability protection if the land-use restriction is violated. A
30 land-use restriction shall not be declared unenforceable due to lack of privity of
31 estate or contract, due to lack of benefit to particular land, or due to lack of any
32 property interest in particular land. Any person who owns or leases a property
33 subject to a land-use restriction under this section shall abide by the land-use
34 restriction.

35 (g) This section shall apply in lieu of the provisions of G.S. 130A-310.8 for
36 brownfields properties remediated under this Part.

37 **"§ 130A-310.36. Appeals.**

38 A decision by the Department as to whether or not to enter into a brownfields
39 agreement including the terms of any brownfields agreement is reviewable under
40 Article 3 of Chapter 150B of the General Statutes.

41 **"§ 130A-310.37. Construction of Part.**

42 (a) This Part is not intended and shall not be construed to:

43 (1) **Affect the ability of local governments to regulate land use under**
44 **Article 19 of Chapter 160A of the General Statutes and Article 18**

1 of Chapter 153A of the General Statutes. The use of the identified
2 brownfields property and any land-use restrictions in the
3 brownfields agreement shall be consistent with local land-use
4 controls adopted under those statutes.

5 (2) Amend, modify, repeal, or otherwise alter any provision of any
6 remedial program or other provision of this Chapter, Chapter 143
7 of the General Statutes, or any other provision of law relating to
8 civil and criminal penalties or enforcement actions and remedies
9 available to the Department, except as may be provided in a
10 brownfields agreement.

11 (3) Prevent or impede the immediate response of the Department or
12 responsible party to an emergency that involves an imminent or
13 actual release of a regulated substance that threatens public health
14 or the environment.

15 (4) Relieve a person receiving liability protection under this Part from
16 any liability for contamination later caused by that person on a
17 brownfields property.

18 (5) Affect the right of any person to seek any relief available against
19 any party to the brownfields agreement who may have liability
20 with respect to the brownfields property, except that this Part does
21 limit the relief available against any party to a brownfields
22 agreement with respect to remediation of the brownfields property
23 to the remediation required under the brownfields agreement.

24 (6) Affect the right of any person who may have liability with respect
25 to the brownfields property to seek contribution from any other
26 person who may have liability with respect to the brownfields
27 property and who neither received nor has liability protection
28 under this Part.

29 (7) Prevent the State from enforcing specific numerical remediation
30 standards, monitoring, or compliance requirements specifically
31 required to be enforced by the federal government as a condition
32 to receive program authorization, delegation, primacy, or federal
33 funds.

34 (8) Create a defense against the imposition of criminal and civil fines
35 or penalties or administrative penalties otherwise authorized by
36 law and imposed as the result of the illegal disposal of waste or for
37 the pollution of the land, air, or waters of this State on a
38 brownfields property.

39 (9) Relieve a person of any liability for failure to exercise due
40 diligence and reasonable care in performing an environmental
41 assessment or transaction screen.

42 (b) Notwithstanding the provisions of the Tort Claims Act, G.S. 143-291 through
43 G.S. 143-300.1 or any other provision of law waiving the sovereign immunity of the
44 State of North Carolina, the State, its agencies, officers, employees, and agents shall

1 be absolutely immune from any liability in any proceeding for any injury or claim
2 arising from negotiating, entering, monitoring, or enforcing a brownfields agreement
3 or a Notice of Brownfields Property under this Part or any other action implementing
4 this Part.

5 "§ 130A-310.38. Brownfields Property Reuse Act Implementation Account.

6 The Brownfields Property Reuse Act Implementation Account is created as a
7 nonreverting interest-bearing account in the Office of the State Treasurer. The
8 Account shall consist of fees collected under G.S. 130A-310.39, moneys appropriated
9 to it by the General Assembly, moneys received from the federal government, moneys
10 contributed by private organizations, and moneys received from any other source.
11 Funds in the Account shall be used by the Department to defray a portion of the
12 costs of implementing this Part.

13 "§ 130A-310.39. Fees.

14 (a) The Department shall collect the following fees:

- 15 (1) A prospective developer who submits a proposed brownfields
16 agreement for review by the Department shall pay a fee of one
17 thousand dollars (\$1,000).
18 (2) A prospective developer who submits a final report certifying
19 completion of remediation under a brownfields agreement shall
20 pay a fee of five hundred dollars (\$500.00).

21 (b) Fees imposed under this section shall be credited to the Brownfields Property
22 Reuse Act Implementation Account.

23 "§ 130A-310.40. Legislative reports.

24 The Department shall prepare and submit to the Environmental Review
25 Commission, concurrently with the report on the Inactive Hazardous Sites Response
26 Act of 1987 required under G.S. 130A-310.10, an evaluation of the effectiveness of
27 this Part in facilitating the remediation and reuse of existing industrial and
28 commercial properties. This evaluation shall include any recommendations for
29 additional incentives or changes, if needed, to improve the effectiveness of this Part
30 in addressing such properties. This evaluation shall also include a report on receipts
31 by and expenditures from the Brownfields Property Reuse Act Implementation
32 Account."

33 Section 3. G.S. 130A-26.1(g) is amended by adding three new
34 subdivisions to read:

- 35 "(5) Provides false information or fails to provide information relevant
36 to a decision by the Department as to whether or not to enter into
37 a brownfields agreement under Part 5 of Article 9 of this Chapter.
38 (6) Provides false information or fails to provide information required
39 by a brownfields agreement under Part 5 of Article 9 of this
40 Chapter.
41 (7) Provides false information relevant to a decision by the
42 Department pursuant to:
43 a. G.S. 130A-308(b).
44 b. G.S. 130A-310.7(c).

1 c. G.S. 143-215.3(f).
2 d. G.S. 143-215.84(e)."

3 Section 4. G.S. 130A-308 reads as rewritten:

4 "**§ 130A-308. Continuing releases at permitted ~~facilities~~; facilities; notification of**
5 **completed corrective action.**

6 (a) Standards adopted under G.S. 130A-294(c) ~~shall require, and a permit issued~~
7 ~~after November 8, 1984, and a permit issued under G.S. 130A-294(c) shall require~~
8 corrective action for all releases of hazardous waste or constituents from any solid
9 waste management unit at a treatment, storage, or disposal facility seeking a permit
10 under G.S. 130A-294(c), regardless of the time at which waste was placed in such
11 unit. Permits issued under G.S. 130A-294(c) which implement Section 3005 of RCRA
12 (42 U.S.C. § 6925) shall contain schedules of compliance for such corrective action
13 (where such corrective action cannot be completed prior to issuance of the permit)
14 and assurances of financial responsibility for completing such corrective action.
15 Notwithstanding any other provision of this section, this section shall apply only to
16 units, facilities, and permits that are covered by Section 3004(u) of RCRA (42 U.S.C.
17 § 6924(u)). Notwithstanding the foregoing, corrective action authorized elsewhere in
18 this Chapter shall not be limited by this section.

19 (b) The definitions set out in G.S. 130A-310.31(b) apply to this subsection. Any
20 person may submit a written request to the Department for a determination that a
21 corrective action for a release of a hazardous waste or constituents from a solid waste
22 management unit that is a treatment, storage, or disposal facility permitted under G.S.
23 130A-294(c) has been completed to current standards. A request for a determination
24 that a corrective action at a facility has been completed to current standards shall be
25 accompanied by the fee required by G.S. 130A-310.39(a)(2). If the Department
26 determines that the corrective action at a facility has been completed to current
27 standards, the Department shall issue a written notification that no further corrective
28 action will be required at the facility. The notification shall state that no further
29 corrective action will be required at the facility unless the Department later
30 determines, based on new information or information not previously provided to the
31 Department, that the corrective action at the facility has not been completed to
32 current standards or that the Department was provided with false or incomplete
33 information. Under any of those circumstances, the Department may withdraw the
34 notification and require responsible parties to take corrective action at a facility to
35 bring the facility into compliance with current standards."

36 Section 5. G.S. 130A-310.7 reads as rewritten:

37 "**§ 130A-310.7. Action for reimbursement; ~~liability of responsible parties~~; parties;**
38 **notification of completed remedial action.**

39 (a) Notwithstanding any other provision or rule of law, and subject only to the
40 defenses set forth in this subsection, any person who:

- 41 (1) Discharges or deposits; or
42 (2) Contracts or arranges for any discharge or deposit; or
43 (3) Accepts for discharge or deposit; or

1 (4) Transports or arranges for transport for the purpose of discharge or
2 deposit
3 any hazardous substance, the result of which discharge or deposit is the existence of
4 an inactive hazardous substance or waste disposal site, shall be considered a
5 responsible party. Neither an innocent landowner who is a bona fide purchaser of
6 the inactive hazardous substance or waste disposal site without knowledge or without
7 a reasonable basis for knowing that hazardous substance or waste disposal had
8 occurred nor a person whose interest or ownership in the inactive hazardous
9 substance or waste disposal site is based on or derived from a security interest in the
10 property shall be considered a responsible party. A responsible party shall be directly
11 liable to the State for any or all of the reasonably necessary expenses of developing
12 and implementing a remedial action program for such site. The Secretary shall bring
13 an action for reimbursement of the Inactive Hazardous Sites Cleanup Fund in the
14 name of the State in the superior court of the county in which the site is located to
15 recover such sum and the cost of bringing the action. The State must show that a
16 danger to the public health or the environment existed and that the State complied
17 with the provisions of this Part.

18 (b) There shall be no liability under this section for a person who can establish by
19 a preponderance of the evidence that the danger to the public health or the
20 environment caused by the site was caused solely by:

- 21 (1) An act of God; or
22 (2) An act of war; or
23 (3) An intentional act or omission of a third party (but this defense
24 shall not be available if the act or omission is that of an employee
25 or agent of the defendant, or if the act or omission occurs in
26 connection with a contractual relationship with the defendant); or
27 (4) Any combination of the above causes.

28 (c) The definitions set out in G.S. 130A-310.31(b) apply to this subsection. Any
29 person may submit a written request to the Department for a determination that a site
30 that is subject to this Part has been remediated to current standards as provided in
31 Part 5 of Article 9 of Chapter 130A of the General Statutes. A request for a
32 determination that a site has been remediated to current standards shall be
33 accompanied by the fee required by G.S. 130A-310.39(a)(2). If the Department
34 determines that the site has been remediated to current standards, the Department
35 shall issue a written notification that no further remediation will be required at the
36 site. The notification shall state that no further remediation will be required at the
37 site unless the Department later determines, based on new information or information
38 not previously provided to the Department, that the site has not been remediated to
39 current standards or that the Department was provided with false or incomplete
40 information. Under any of those circumstances, the Department may withdraw the
41 notification and require responsible parties to remediate the site to current
42 standards."

43 Section 6. G.S. 143-215.3 is amended by adding a new subsection to
44 read:

1 "(f) Notification of Completed Remedial Action. -- The definitions set out in G.S.
2 130A-310.31(b) apply to this subsection. Any person may submit a written request to
3 the Department for a determination that groundwater has been remediated to meet
4 the standards and classifications established under this Part. A request for a
5 determination that groundwater has been remediated to meet the standards and
6 classifications established under this Part shall be accompanied by the fee required by
7 G.S. 130A-310.39(a)(2). If the Department determines that groundwater has been
8 remediated to established standards and classifications, the Department shall issue a
9 written notification that no further remediation of the groundwater will be required.
10 The notification shall state that no further remediation of the groundwater will be
11 required unless the Department later determines, based on new information or
12 information not previously provided to the Department, that the groundwater has not
13 been remediated to established standards and classifications or that the Department
14 was provided with false or incomplete information. Under any of those
15 circumstances, the Department may withdraw the notification and require responsible
16 parties to remediate the groundwater to established standards and classifications."

17 Section 7. G.S. 143-215.84 is amended by adding a new subsection to
18 read:

19 "(e) Notification of Completed Removal of Prohibited Discharges. -- The
20 definitions set out in G.S. 130A-310.31(b) apply to this subsection. Any person may
21 submit a written request to the Department for a determination that a discharge of oil
22 or a hazardous substance in violation of this Article has been remediated to current
23 standards. A request for a determination that a discharge has been remediated to
24 current standards shall be accompanied by the fee required by G.S.
25 130A-310.39(a)(2). If the Department determines that the discharge has been
26 remediated to current standards, the Department shall issue a written notification that
27 no further remediation of the discharge will be required. The notification shall state
28 that no further remediation of the discharge will be required unless the Department
29 later determines, based on new information or information not previously provided to
30 the Department, that the discharge has not been remediated to current standards or
31 that the Department was provided with false or incomplete information. Under any
32 of those circumstances, the Department may withdraw the notification and require
33 responsible parties to remediate the discharge to current standards."

34 Section 8. This act shall not be construed to obligate the General
35 Assembly to make any appropriation to implement the provisions of this act. The
36 Department of Environment, Health, and Natural Resources shall implement the
37 provisions of this act from funds otherwise available or appropriated to the
38 Department.

39 Section 9. This act becomes effective 1 October 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

2

HOUSE BILL 847
Committee Substitute Favorable 5/12/97

Short Title: Addit. Powers/Certain Water Auth.

(Public)

Sponsors:

Referred to:

April 7, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE CERTAIN WATER AND SEWER AUTHORITIES TO
3 ENTER INTO CERTAIN AGREEMENTS.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 162A-6 is amended by adding a new subdivision to read:
6 "(17) Each authority created under G.S. 162A-3.1 and its participating
7 political subdivisions may enter into agreements obligating these
8 subdivisions to make payments to the authority for treated water
9 delivered or made available or expected to be delivered or made
10 available by the authority, regardless of whether treated water is
11 actually delivered or made available. Such payments may be
12 designed to cover the authority's operating costs (including debt
13 service and related amounts) by allocating those costs among the
14 participating political subdivisions and by requiring these
15 subdivisions to pay additional amounts to make up for the
16 nonpayment of defaulting subdivisions. The participating political
17 subdivisions may agree to budget for and appropriate such
18 payments. Such payment obligations may be made absolute,
19 unconditional and irrevocable and required to be performed
20 strictly in accordance with the terms of such agreements and
21 without abatement or reduction under all circumstances
22 whatsoever, including whether or not any facility of the authority is
23 completed, operable or operating and notwithstanding the

1 suspension, interruption, interference, reduction or curtailment of
2 the output of any such facility or the treated water contracted for,
3 and such obligations may be made subject to no reduction,
4 whether by offset or otherwise, and not conditioned upon the
5 performance or nonperformance of the authority or any
6 participating political subdivision under any agreement. Such
7 payment obligations are in consideration of any output or capacity
8 that may at any time be available from facilities of the authority.
9 The participating political subdivisions may agree to make such
10 payments from limited or specified sources. To the extent such
11 payments relate to debt service of the authority and related
12 amounts, they may not be made from any moneys derived from
13 exercise by the participating political subdivisions of their taxing
14 power, and such payment obligations shall not constitute a pledge
15 of such taxing power. The participating political subdivisions may
16 agree (i) not to pledge or encumber any source of payment and (ii)
17 to operate (including fixing rates and charges) in a manner that
18 enables them to make such payments from such sources. The
19 participating political subdivisions may also secure such payment
20 obligations with a pledge of or lien upon any such sources of
21 payment. Notwithstanding the provisions of G.S. 162A-9 or any
22 other law to the contrary, an authority entering into any such
23 agreement need not fix rates, fees and other charges for its services
24 except as provided herein, and such rates, fees and charges need
25 not be uniform through the authority's service areas.
26 Notwithstanding the provisions of G.S. 160A-322 or any other law
27 to the contrary, agreements described herein may have a term not
28 exceeding 50 years. Notwithstanding any law to the contrary, the
29 execution and effectiveness of any agreement authorized hereby
30 shall not be subject to any authorizations or approvals by any
31 entity except the parties thereto. Each authority and its
32 participating political subdivisions shall have the power to do all
33 acts and things necessary or convenient to carry out the powers
34 granted by this subdivision. This subdivision applies only to
35 authorities created under G.S. 162A-3.1 at least half the
36 participating political subdivisions of which have populations of at
37 least 65,000 according to the most recent decennial federal census."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

HOUSE BILL 847
Committee Substitute Favorable 5/12/97
PROPOSED SENATE COMMITTEE SUBSTITUTE
H847-CSR-1

Short Title: Addit. Powers/Certain Water Auth.

(Public)

Sponsors:

Referred to:

April 7, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE CERTAIN WATER AND SEWER AUTHORITIES TO ENTER
3 INTO CERTAIN AGREEMENTS AND TO AUTHORIZE A WATER AND SEWER
4 AUTHORITY HOLDING A CERTIFICATE UNDER G.S. 162A-7 TO EXERCISE
5 THE POWER OF EMINENT DOMAIN FOR SPECIFIED PURPOSES.
6 The General Assembly of North Carolina enacts:
7 Section 1. G.S. 162A-6 reads as rewritten:
8 "§ 162A-6. Powers of authority generally.
9 (a) Each authority created hereunder shall be deemed to be a
10 public instrumentality exercising public and essential
11 governmental functions to provide for the public health and
12 welfare, and each such authority is, ~~subject to the provisions~~
13 ~~of G.S. 162A-7, hereby is~~ authorized and empowered:
14 (1) To adopt bylaws for the regulation of its affairs
15 and the conduct of its business;
16 (2) To adopt an official seal and alter the same at
17 pleasure;
18 (3) To maintain an office at such place or places as it
19 may designate;
20 (4) To sue and be sued in its own name, plead and be
21 impleaded;

- 1 (5) To acquire, lease as lessee or lessor, construct
2 reconstruct, improve, extend, enlarge, equip,
3 repair, maintain and operate any water system or
4 part thereof or any sewer system or part thereof or
5 any combination thereof within or without the
6 participating political subdivisions or any
7 thereof;
- 8 (6) To issue revenue bonds of the authority as
9 hereinafter provided to pay the cost of such
10 acquisition, construction, reconstruction,
11 improvement, extension, enlargement or equipment;
- 12 (7) To issue revenue refunding bonds of the authority
13 as hereinafter provided;
- 14 (8) To combine any water system and any sewer system as
15 a single system for the purpose of operation and
16 financing;
- 17 (9) To fix and revise from time to time and to collect
18 rates, fees and other charges for the use of or for
19 the services and facilities furnished by any system
20 operated by the authority;
- 21 (10) To acquire in the name of the authority by gift
22 grant, purchase, devise, exchange, lease,
23 acceptance of offers of dedication by plat, or any
24 other lawful method, to the same extent and in the
25 same manner as provided for cities and towns under
26 the provisions of G.S. 160A-240.1 and G.S. 160A-
27 374, or the exercise of the right of eminent domain
28 in accordance with the General Statutes of North
29 Carolina which may be applicable to the exercise of
30 such powers by municipalities or counties, any
31 lands or rights in land or water rights in
32 connection therewith, and to acquire such personal
33 property, as it may deem necessary in connection
34 with the acquisition, construction, reconstruction,
35 improvement, extension, enlargement or operation of
36 any water system or sewer system, and to hold and
37 dispose of all real and personal property under its
38 control; provided, that the taking of water from
39 any stream or reservoir by any authority created
40 under the provisions of this Article shall not vest
41 in the taker any rights by prescription; provided
42 further, that nothing in this section shall affect
43 rights by prescription, if any, now held by any
44 municipality and which may be later transferred to

- 1 any authority of which such municipality may become
2 a member;
- 3 (11) To make and enter into all contracts and agreements
4 necessary or incidental to the performance of its
5 duties and the execution of its powers under this
6 Article, including a trust agreement or trust
7 agreements securing any revenue bonds issued
8 hereunder, and to employ such consulting and other
9 engineers, superintendents, managers, construction
10 and financial experts, accountants and attorneys,
11 and such employees and agents as may, in the
12 judgment of the authority be deemed necessary, and
13 to fix their compensation; provided, however, that
14 all such expenses shall be payable solely from
15 funds made available under the provisions of this
16 Article;
- 17 (12) To enter into contracts with the government of the
18 United States or any agency or instrumentality
19 thereof, or with any political subdivision, private
20 corporation, copartnership, association or
21 individual providing for the acquisition,
22 construction, reconstruction, improvement,
23 extension, enlargement, operation or maintenance of
24 any water system or sewer system or providing for
25 or relating to the treatment and disposal of sewage
26 or providing for or relating to any water system or
27 the purchase or sale of water;
- 28 (13) To receive and accept from any federal, State or
29 other public agency and any private agency, person
30 or other entity, donations, loans, grants, aid or
31 contributions of any money, property, labor or
32 other things of value for any sewer system or water
33 system, and to agree to apply and use the same in
34 accordance with the terms and conditions under
35 which the same are provided;
- 36 (14) To enter into contract with any political
37 subdivision by which the authority shall assume the
38 payment of the principal of and interest on
39 indebtedness of such subdivision; and
- 40 (14a) To make special assessments against benefited
41 property within the area served or to be
42 served by the authority for the purpose of
43 constructing, reconstructing, extending, or
44 otherwise improving water systems or sanitary

1 collection, treatment, and sewage disposa
2 systems, in the same manner that a county may
3 make special assessments under authority of
4 Chapter 153A, Article 9, except that the
5 language appearing in G.S. 153A-185 reading as
6 follows: "A county may not assess property
7 within a city pursuant to subdivision (1) or
8 (2) of this section unless the governing board
9 of the city has by resolution approved the
10 project," shall not apply to assessments
11 levied by Water and Sewer Authorities
12 established pursuant to Chapter 162A, Article
13 1, of the General Statutes. For the purposes
14 of this paragraph, references in Chapter 153A,
15 Article 9, to the "county," the "board of
16 county commissioners," "the board" or a
17 specific county official or employee are
18 deemed to refer, respectively, to the
19 authority and to the official or employee of
20 the authority who performs most nearly the
21 same duties performed by the specified county
22 official or employee.

23 Assessment rolls after being confirmed shall be
24 filed for registration in the office of the
25 Register of Deeds of the county in which the
26 property being assessed is located, and the term
27 "county tax collector" wherever used in G.S. 153A-
28 195 and G.S. 153A-196, shall mean the Executive
29 Director or other administrative officer designated
30 by the authority to perform the functions described
31 in said sections of the statute.

32 (14b) To provide for the defense of civil and
33 criminal actions and payment of civil
34 judgments against employees and officers or
35 former employees and officers and members or
36 former members of the governing body as
37 authorized by G.S. 160A-167, as amended.

38 (14c) To adopt ordinances to regulate and control
39 the discharge of sewage or stormwater into any
40 sewerage system owned or operated by the
41 authority and to adopt ordinances to regulate
42 and control structural and natural stormwater
43 and drainage systems of all types. Prior to
44 the adoption of any such ordinance or any

1 amendment to any such ordinance, the authority
2 shall first pass a declaration of intent to
3 adopt such ordinance or amendment. The
4 declaration of intent shall describe the
5 ordinance which it is proposed that the
6 authority adopt. The declaration of intent
7 shall be submitted to each governing body for
8 review and comment. The authority shall
9 consider any comment or suggestions offered by
10 any governing body with respect to the
11 proposed ordinance or amendment. Thereafter,
12 the authority shall be authorized to adopt
13 such ordinance or amendment to it at any time
14 after 60 days following the submission of the
15 declaration of intent to each governing body.
16 (14d) To require the owners of developed property on
17 which there are situated one or more
18 residential dwelling units or commercial
19 establishments located within the jurisdiction
20 of the authority and within a reasonable
21 distance of any waterline or sewer collection
22 line owned, leased as lessee, or operated by
23 the authority to connect the property with the
24 waterline, sewer connection line, or both and
25 fix charges for the connections. The power
26 granted by this subdivision may be exercised
27 by an authority only to the extent that the
28 service, whether water, sewer, or a
29 combination thereof, to be provided by the
30 authority is not then being provided to the
31 improved property by any other political
32 subdivision or by a public utility regulated
33 by the North Carolina Utilities Commission
34 pursuant to Chapter 62 of the General
35 Statutes. In the case of improved property
36 that would qualify for the issuance of a
37 building permit for the construction of one or
38 more residential dwelling units or commercial
39 establishments and where the authority has
40 installed water or sewer lines or a
41 combination thereof directly available to the
42 property, the authority may require payment of
43 a periodic availability charge, not to exceed
44 the minimum periodic service charge for

1 properties that are connected. This
2 subdivision applies only to a water and sewer
3 authority whose membership includes part or
4 all of a county that has a population of at
5 least 40,000 according to the most recent
6 annual population estimates certified by the
7 State Planning Officer.

8 (15) To do all acts and things necessary or convenient
9 to carry out the powers granted by this Article.

10 (16) To purchase real or personal property as provided
11 by G.S. 160A-20, in addition to any other method
12 allowed under this Article.

13 (b) In addition to the powers given under subsection (a) of
14 this section, an authority created under G.S. 162A-3.1 and its
15 participating political subdivisions may enter into agreements
16 obligating these subdivisions to make payments to the authority
17 for treated water delivered or made available or expected to be
18 delivered or made available by the authority, regardless of
19 whether treated water is actually delivered or made available.
20 Such payments may be designed to cover the authority's operating
21 costs (including debt service and related amounts) by allocating
22 those costs among the participating political subdivisions and by
23 requiring these subdivisions to pay additional amounts to make up
24 for the nonpayment of defaulting subdivisions. The participating
25 political subdivisions may agree to budget for and appropriate
26 such payments. Such payment obligations may be made absolute,
27 unconditional and irrevocable and required to be performed
28 strictly in accordance with the terms of such agreements and
29 without abatement or reduction under all circumstances
30 whatsoever, including whether or not any facility of the
31 authority is completed, operable or operating and notwithstanding
32 the suspension, interruption, interference, reduction or
33 curtailment of the output of any such facility or the treated
34 water contracted for, and such obligations may be made subject to
35 no reduction, whether by offset or otherwise, and not conditioned
36 upon the performance or nonperformance of the authority or any
37 participating political subdivision under any agreement. Such
38 payment obligations are in consideration of any output or
39 capacity that may at any time be available from facilities of the
40 authority. The participating political subdivisions may agree to
41 make such payments from limited or specified sources. To the
42 extent such payments relate to debt service of the authority and
43 related amounts, they may not be made from any moneys derived
44 from exercise by the participating political subdivisions of

1 their taxing power, and such payment obligations shall not
2 constitute a pledge of such taxing power. The participating
3 political subdivisions may agree (i) not to pledge or encumber
4 any source of payment and (ii) to operate (including fixing rates
5 and charges) in a manner that enables them to make such payments
6 from such sources. The participating political subdivisions may
7 also secure such payment obligations with a pledge of or lien
8 upon any such sources of payment. Notwithstanding the provisions
9 of G.S. 162A-9 or any other law to the contrary, an authority
10 entering into any such agreement need not fix rates, fees and
11 other charges for its services except as provided herein, and
12 such rates, fees and charges need not be uniform through the
13 authority's service areas. Notwithstanding the provisions of
14 G.S. 160A-322 or any other law to the contrary, agreements
15 described herein may have a term not exceeding 50 years.
16 Notwithstanding any law to the contrary, the execution and
17 effectiveness of any agreement authorized hereby shall not be
18 subject to any authorizations or approvals by any entity except
19 the parties thereto. Each authority and its participating
20 political subdivisions shall have the power to do all acts and
21 things necessary or convenient to carry out the powers granted by
22 this subdivision. This subsection applies only to authorities
23 created under G.S. 162A-3.1, at least half the participating
24 political subdivisions of which have populations of at least
25 65,000 according to the most recent decennial federal census.
26 (c) In addition to the powers given under subsections (a) and
27 (b) of this section, an authority that holds a certificate issued
28 by the Environmental Management Commission under G.S. 162A-7
29 (repealed) may acquire property by the power of eminent domain or
30 by gift, purchase, grant, exchange, lease, or any other lawful
31 method for one or more of the following purposes:
32 1. To relocate a road or to construct a road
33 necessitated by construction of water supply
34 project.
35 2. To establish, extend, enlarge, or improve storm
36 sewer and drainage systems and works, or sewer and
37 septic tank lines and systems.
38 3. To establish drainage programs and programs to
39 prevent obstructions to the natural flow of
40 streams, creeks and natural water channels or
41 improving drainage facilities. The authority
42 contained in this subdivision is in addition to any
43 authority contained in Chapter 156.
44 4. To acquire property for wetlands mitigation."

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

EXPLANATION OF HOUSE BILL 847:
PROPOSED COMMITTEE SUBSTITUTE
Additional Powers/Certain Water Authorities

TO: Senate Finance Committee
FROM: Committee Counsel
DATE: June 25, 1997
SPONSOR: Rep. Culp

Proposed Committee Substitute for House Bill 847 adds new powers to those given to a water and sewer authority under G.S. 162A-7. A water and sewer authority may be created by a county or by the governing bodies of two or more political subdivisions. The purpose of a water and sewer authority is to provide a water supply system and to regulate and control treatment of sewage and stormwater drainage.

Under new subsection (b), water and sewer authorities created under G.S. 162A-3.1 and with respect to which at least half the participating political subdivisions have populations of at least 65,000 are authorized to enter into long-term (up to 50 years) continuing contracts with their participating subdivisions. (It is believed that the only authority that meets the criteria of G.S. 162A-3.1 is Piedmont Triad Water Authority.) These contracts would obligate the subdivisions to pay for treated water that is delivered or made available by their authority, regardless of whether the water actually is delivered or made available. The payments may cover the authority's operating costs, including debt service, by allocating the costs among the political subdivisions and by requiring payment by the other subdivisions upon the default of another subdivision. Payments that relate to the authority's debt service may not be made from tax revenue of the participating political subdivisions and may not constitute a pledge of their taxing power. In addition, the participating political subdivisions may agree not to pledge or encumber any source of payment and to operate, such as by fixing rates and charges, in order to enable them to make the payments from those sources. Unlike other rates set by the authority, rates and charges in connection to these agreements would not be required to be uniform throughout the authority's service area. A contract would not be subject to the authorization or approval by any entity other than the parties. (However, revenue bonds to be issued that are secured by one of these contracts would be subject to the scrutiny of the Local Government Commission.)

Subsection (b) of the bill was requested by bond counsel, and appears to address a project financed with revenue bonds, where the potential buyers do not feel as if the revenue is sufficiently secure since it probably is unclear how

much treated water will, in fact, be sold. According to David Lawrence, Institute of Government, a case in Washington that arose upon the financial collapse of a project, held that absent specific statutory authority to enter into these types of agreements, the agreements were void and the participating governmental units could not be made to pay the remaining debts. As a result of this case, bond counsel are asking for this type of law. There is precedent in North Carolina for this type of statutory authority. G.S. 159B-12 authorizes any municipality that is a member of a joint power agency to enter into similar contracts. The major exception is that certain contracts "in respect of a capital project to be used by or for the benefit" of the municipality must receive the prior approval of the Local Government Commission.

Under new subsection (c), an authority, that has a certificate issued by the Environmental Management Commission under G.S. 162A-7 (repealed) may exercise the powers of eminent domain for the following purposes:

1. To relocate a road or to construct a road necessitated by construction of a water supply project.
2. To establish, extend, enlarge, or improve storm sewer and drainage systems and works.
3. To establish drainage programs and programs to prevent obstructions to the natural flow of streams, creeks, and natural water channels.
4. To improve drainage facilities.
5. To acquire property for wetlands mitigation.

According to John Kime, with the Piedmont Triad Water Authority, subsection (c) is necessary to insure that the Authority has sufficient powers of eminent domain not only to acquire the property for Randleman Lake, but also to construct roads and to acquire property for wetlands mitigation necessary for completion of the project. The Authority is the only one holding a certificate under G.S. 162A-7 that has not completed its project.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

3

HOUSE BILL 96
Second Edition Engrossed 2/25/97
Committee Substitute Favorable 7/2/97

Short Title: Intangibles Tax Remedy.

(Public)

Sponsors:

Referred to:

February 11, 1997

- 1 A BILL TO BE ENTITLED
2 AN ACT TO DIRECT THE SECRETARY OF REVENUE TO MAKE REFUNDS
3 OF THE INTANGIBLES TAX TO TAXPAYERS WHO PRESERVED THEIR
4 RIGHT TO A REFUND BY PROTESTING PAYMENT WITHIN THE TIME
5 LIMITS SET BY G.S. 105-267.
6 The General Assembly of North Carolina enacts:
7 Section 1. Because the General Assembly has enacted S.L. 1997-17,
8 prohibiting the Secretary of Revenue from collecting intangibles tax liability arising
9 from a taxpayer's use of the taxable percentage deductions in former G.S. 105-203
10 (repealed) for any of the tax years from 1990 through 1994, G.S. 105-267 as it applies
11 to those tax years entitles a taxpayer to a refund for one or more of those tax years to
12 the extent the taxpayer meets all of the following requirements with respect to the
13 applicable tax year:
14 (1) The taxpayer paid intangibles tax on shares of stock for the tax
15 year.
16 (2) The taxpayer protested payment of the tax within 30 days of
17 payment and met the other requirements of G.S. 105-267, as it then
18 existed, to establish and preserve the taxpayer's refund claim for
19 the tax year.
20 (3) The taxpayer's established and preserved refund claim was
21 pending on February 21, 1996, the date the United States Supreme

1 Court held the taxable percentage deduction in former G.S. 105-
2 203 unconstitutional.

3 Section 2. The Secretary of Revenue shall make these refunds in
4 accordance with G.S. 105-267.

5 Section 3. This act is effective when it becomes law.
6

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

HOUSE BILL 96
Second Edition Engrossed 2/25/97
Committee Substitute Favorable 7/2/97
Proposed Senate Committee Substitute H96-PCS8260

Short Title: Intangibles Tax Remedy.

(Public)

Sponsors:

Referred to:

February 11, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO DIRECT THE SECRETARY OF REVENUE TO (1) MAKE
3 REFUNDS OF THE INTANGIBLES TAX TO TAXPAYERS WHO
4 PRESERVED THEIR RIGHT TO A REFUND BY PROTESTING PAYMENT
5 WITHIN THE TIME LIMITS SET BY G.S. 105-267 AND (2) NOTIFY
6 AFFECTED INTANGIBLES TAXPAYERS BY MAIL AS SOON AS POSSIBLE
7 OF THE COURT NOTICE IN THE CLASS ACTION LAWSUIT REGARDING
8 REFUNDS.

9 The General Assembly of North Carolina enacts:

10 Section 1. Because the General Assembly has enacted S.L. 1997-17,
11 prohibiting the Secretary of Revenue from collecting intangibles tax liability arising
12 from a taxpayer's use of the taxable percentage deductions in former G.S. 105-203
13 (repealed) for any of the tax years from 1990 through 1994, G.S. 105-267 as it applies
14 to those tax years entitles a taxpayer to a refund for one or more of those tax years to
15 the extent the taxpayer meets all of the following requirements with respect to the
16 applicable tax year:

- 17 (1) The taxpayer paid intangibles tax on shares of stock for the tax
18 year.
19 (2) The taxpayer protested payment of the tax within 30 days of
20 payment and met the other requirements of G.S. 105-267, as it then

1 existed, to establish and preserve the taxpayer's refund claim for
2 the tax year.

3 (3) The taxpayer's established and preserved refund claim was
4 pending on February 21, 1996, the date the United States Supreme
5 Court held the taxable percentage deduction in former G.S. 105-
6 203 unconstitutional.

7 Section 2. The Secretary of Revenue shall make these refunds in
8 accordance with G.S. 105-267.

9 Section 3. (a) The Secretary of Revenue shall, as soon as possible, mail
10 a copy of the Wake County Superior Court's notice in the class action lawsuit Smith
11 v. State to all intangibles taxpayers that she has identified as possibly being affected
12 and for whom she has identified a last known mailing address. The court's notice
13 requires immediate action by affected taxpayers. The Secretary of Revenue shall,
14 therefore, make an extraordinary effort to assure that the notices are sent as quickly
15 as possible.

16 (b) It is the intent of the General Assembly that as many affected
17 taxpayers as possible receive actual, complete information before the deadline set by
18 the court for taxpayers to make a decision regarding the class action lawsuit. The
19 Secretary of Revenue shall supplement the mailing required by this section with
20 circulation of the court's notice to tax professionals and media outlets throughout the
21 State and to any other person she considers appropriate to implement the intent of
22 this section.

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

EXPLANATION OF HOUSE BILL 96:
Intangibles Tax Remedy (PCS)

TO: Senate Finance Committee
FROM: Committee Staff
DATE: July 14, 1997

The proposed Senate committee substitute for House Bill 96 has two provisions regarding the intangibles tax:

1. It provides a refund of the intangibles tax on stock, with interest, to taxpayers who made a timely protest ("protesters") for the 1990 through 1994 tax years. (Sections 1 and 2)
2. It directs the Secretary of Revenue to, as soon as possible, mail a copy of the Wake County Superior Court's notice in the class action lawsuit Smith v. State to all protesters that she has identified. (Section 3)

Since the enactment of Senate Bill 388, S.L. 1997-17, the State is obligated to pay protesters their refunds. The bill does not provide relief to nonprotesters. The Attorney General's office issued an opinion in April that it would be unconstitutional for the General Assembly to refund intangible taxes not filed under protest.

There is a lawsuit pending in Wake County Superior Court called Smith v. State, seeking refunds of intangibles taxes paid for the 1991 through 1994 tax years. The court has certified the case as a class action representing all taxpayers who paid under timely protest. On June 11, 1997, the court entered judgment in favor of the protesters, awarding them full refunds with interest.

On August 8, 1997, the court will hold a hearing to decide various issues including an award of attorneys fees and costs to the plaintiffs' attorneys in the class action lawsuit. Any such award will be deducted from the interest paid on refunds to the protesters who are members of the class. The attorneys have requested a fee equal to 16% of the total amount to be paid to protesters. The Department of Revenue and the State of North Carolina are opposing any award of attorneys fees on the grounds that the Department of Revenue will pay all protesters for the 1992 through 1994 tax years anyway, whether or not there is a court order.

A taxpayer may decide to "opt out" of the class. By doing so, the taxpayer will avoid having attorneys fees deducted from the taxpayer's intangibles tax refund. A taxpayer who opts out will still receive a refund for any of the tax

years from 1992 through 1994 for which the taxpayer was a timely protester. Most taxpayers who protested did so only for 1993, 1994, or both. If a taxpayer paid under protest for 1991 but did not "preserve" the protest by filing suit, the taxpayer will not receive a refund for that year unless the taxpayer remains in the class. Most taxpayers did not pay under protest for the 1991 tax year, however.

The court has issued a notice of the lawsuit and the possibility opting out. The notice, which sets a July 28, 1997, deadline for opting out, has been published in newspapers across the State, but many affected taxpayers have not seen the notice because it was in the classifieds section. Section 3 of the bill directs the Secretary of Revenue to mail a notice to as many affected taxpayers as possible and provides funds for the cost of the mailing. Section 3 states the General Assembly's intent that as many affected taxpayers as possible receive actual, complete information before the deadline set by the court for taxpayers to make a decision regarding the class action lawsuit.

On February 10, 1997, the North Carolina Supreme Court held that the taxable percentage deduction in the North Carolina intangible tax on stock violated the commerce clause by discriminating against out-of-state companies. The deduction reduced a taxpayer's liability for the tax in proportion to the amount of business the corporation did in North Carolina. The court did not order refunds. Instead, it allowed the possibility of curing the past discrimination by the assessment of intangibles tax on those who did not pay in reliance on the unconstitutional taxable percentage deduction. The Secretary of Revenue began preparing to take this action in early March.

However, on April 9, 1997, the General Assembly ratified Senate Bill 388, and the Governor signed it into law, S.L. 1997-17, on April 10, 1997. That legislation directed the Secretary of Revenue to take no action to collect or assess back intangibles tax for tax years 1990 through 1994. The act forecloses the possibility of assessments on those who relied on the taxable percentage deduction. Therefore, to cure the past discrimination, the General Assembly must now provide intangibles tax refunds to those intangibles taxpayers who paid tax on shares of stock and who protested the payment of the tax within 30 days of payment.

House Bill 96 does not provide relief to nonprotesters. Because the State has no legal obligation to these taxpayers, any payments would be an exclusive emolument prohibited by Article I, Section 32 of the North Carolina Constitution. The exclusive emoluments provision of the State Constitution prohibits the legislature from extending special privileges to a select group of individuals except in consideration of public services.

1 Beginning at a point in the southern right-of-way line of NCSR 1166 (Whichards
2 Beach Road); said point being located the following courses and distances from a
3 concrete monument located at the southeasterly corner of the subdivision known as
4 Harbor Estates, as shown on a plat thereof recorded in plat Cabinet A, Slide 113A in
5 the office of the Register of Deeds of Beaufort County, North Carolina (said concrete
6 monument also being the southwesterly corner of Tract II described below): South
7 $35^{\circ} 52' 54''$ East 62.93 feet; South $36^{\circ} 20' 33''$ West 30.61 feet; and South $64^{\circ} 01' 09''$
8 East 16.66 feet to a point. THENCE FROM SAID POINT OF BEGINNING BEING
9 SO LOCATED, along and with the southern right-of-way line or Whichards Beach
10 Road South $64^{\circ} 01' 03''$ East 132.39 feet to a point; thence south $64^{\circ} 00' 52''$ East
11 49.07 feet to a point, thence South $64^{\circ} 01' 18''$ East 50.66 feet to a point; thence
12 South $64^{\circ} 01' 12''$ East 220.27 feet to a point; thence South $64^{\circ} 01' 09''$ East 45.61
13 feet to a point; thence continuing along and with the southern right-of-way line of
14 NCSR 1166 with a curve to the right in a southeastwardly direction which has a
15 chord bearing and distance of South $57^{\circ} 55' 13''$ East 341.99 feet to a point; thence
16 South $51^{\circ} 52' 17''$ East 22.40 feet to a point; thence continuing South $51^{\circ} 52' 17''$
17 East 300.00 feet to a point in the southern right-of-way line of NCSR 1166 (all
18 previous calls being along and with the southern right-of-way line of NCSR 1166);
19 thence leaving NCSR 1166 South $38^{\circ} 00' 08''$ West 140.26 feet to a point; thence
20 South $51^{\circ} 52' 37''$ East 31.00 feet to a point; thence South $51^{\circ} 52'$ East 99.57 feet to
21 an existing concrete monument; thence continuing North $38^{\circ} 18' 41''$ East 127.20 feet
22 to an existing concrete monument; thence North $38^{\circ} 18' 41''$ East 102.41 feet to an
23 existing concrete monument; thence continuing North $38^{\circ} 18' 41''$ East 363.45 feet to
24 an existing concrete monument; thence continuing North $38^{\circ} 18' 41''$ East 723.64 feet
25 more or less to the mean highwater line on the southern shoreline of the Pamlico
26 River; thence along and with the mean highwater line on the southern shoreline of
27 the Pamlico River South $03^{\circ} 46' 08''$ East 35.33 feet to a point; thence South $31^{\circ} 43'$
28 $09''$ West 1,725.69 feet more or less to the northern right-of-way line of NCSR 1166;
29 thence continuing along and with the northern right-of-way line of NCSR 1166 North
30 $51^{\circ} 54' 27''$ West 221.81 feet to the point or place of beginning, said property
31 containing approximately 4.84 acres. The above description is from a survey by W.
32 C. Owen of Quible and Associates, P.C.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

2

HOUSE BILL 251
Committee Substitute Favorable 6/9/97

Short Title: Well Contractors Certification.

(Public)

Sponsors:

Referred to:

February 17, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO CREATE THE WELL CONTRACTORS CERTIFICATION
3 COMMISSION, TO REQUIRE THAT WELL CONTRACTORS BE CERTIFIED,
4 AND TO MAKE VARIOUS AMENDMENTS TO THE WELL
5 CONSTRUCTION ACT, AS RECOMMENDED BY THE ENVIRONMENTAL
6 REVIEW COMMISSION.

7 The General Assembly of North Carolina enacts:

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

10 "Part 9A. Well Contractors Certification Commission.

11 "§ 143B-301.10. Definitions.

12 The definitions in G.S. 87-85 and G.S. 87-98.2 apply in this Part.

13 "§ 143B-301.11. Creation, powers, and duties of the Commission.

14 (a) Creation and Duties. -- The Well Contractors Certification Commission is
15 created within the Department. The Commission shall:

16 (1) Adopt rules with respect to the certification of well contractors as
17 provided by Article 7A of Chapter 87 of the General Statutes.

18 (2) Exercise quasi-judicial powers in accordance with the provisions of
19 Chapter 150B of the General Statutes. The Commission shall
20 make the final agency decision on any matter involving the
21 certification of well contractors pursuant to Article 7A of Chapter
22 87 of the General Statutes and on civil penalties assessed for
23 violations of that Article or rules adopted pursuant to that Article.

1 (3) Adopt rules as may be required to secure a federal grant-in-aid for
2 a program concerned with the certification of well contractors.
3 This subdivision is to be liberally construed in order that the State
4 and its citizens may benefit from federal grants-in-aid.

5 (b) Delegation. -- The Commission may, by rule, delegate to the Secretary any of
6 its powers, other than the power to adopt rules.

7 "§ 143B-301.12. Membership of Commission.

8 (a) Appointments. -- The Commission shall consist of seven members appointed
9 as follows:

10 (1) One member appointed by the General Assembly upon
11 recommendation of the Speaker of the House of Representatives
12 who, at the time of appointment, is (i) engaged in well contractor
13 activities, (ii) certified as a well contractor under Article 7A of
14 Chapter 87 of the General Statutes, (iii) engaged primarily in the
15 construction, installation, repair, alteration, or abandonment of
16 domestic water supply wells, and (iv) a resident of a county that is
17 located east of or is traversed by Interstate 95.

18 (2) One member appointed by the General Assembly upon
19 recommendation of the Speaker of the House of Representatives
20 who, at the time of appointment, is (i) engaged in well contractor
21 activities, (ii) certified as a well contractor under Article 7A of
22 Chapter 87 of the General Statutes, (iii) engaged primarily in the
23 construction, installation, repair, alteration, or abandonment of
24 domestic water supply wells, and (iv) a resident of a county that is
25 located wholly west of Interstate 95.

26 (3) One member appointed by the General Assembly upon
27 recommendation of the President Pro Tempore of the Senate who,
28 at the time of appointment, is (i) engaged in well contractor
29 activities, (ii) certified as a well contractor under Article 7A of
30 Chapter 87 of the General Statutes, and (iii) engaged primarily in
31 the construction, installation, repair, alteration, or abandonment of
32 industrial, municipal, or other large capacity water supply wells.

33 (4) One member appointed by the General Assembly upon
34 recommendation of the President Pro Tempore of the Senate who,
35 at the time of appointment, is (i) engaged in well contractor
36 activities, (ii) certified as a well contractor under Article 7A of
37 Chapter 87 of the General Statutes, and (iii) engaged primarily in
38 the construction, installation, repair, alteration, or abandonment of
39 nonwater supply wells, such as monitoring or recovery wells.

40 (5) One member appointed by the General Assembly upon
41 recommendation of the Speaker of the House of Representatives
42 who, at the time of appointment, is (i) employed by a local county
43 health department and (ii) actively engaged in well inspection and
44 permitting.

1 (6) One member appointed by the General Assembly upon
2 recommendation of the President Pro Tempore of the Senate who,
3 at the time of appointment, is (i) employed by a local county
4 health department and (ii) actively engaged in well inspection and
5 permitting.

6 (7) One member appointed by the Governor who is (i) appointed
7 from the public at large, (ii) not engaged in well contractor
8 activities, and (iii) not an employee of a firm or corporation
9 engaged in well contractor activities or a State or county
10 governmental agency.

11 (b) Additional Qualifications. -- Appointment of members to fill positions (1), (2),
12 (3), and (4) shall be made from among all those persons who are recommended for
13 appointment to the Commission by any person who is engaged in well contractor
14 activities and who is certified as a well contractor under Article 7A of Chapter 87 of
15 the General Statutes. No person shall be appointed to the Commission who is a
16 resident of, or has a principal place of business in, the same county as another
17 member of the Commission.

18 (c) Terms. -- Appointments to the Commission shall be for terms of three years.
19 The terms of members appointed to fill positions (1), (2), and (7) shall expire on 30
20 June of years evenly divisible by three. The terms of members appointed to fill
21 positions (3) and (4) shall expire on 30 June of years that follow by one year those
22 years that are evenly divisible by three. The terms of members appointed to fill
23 positions (5) and (6) shall expire on 30 June of years that precede by one year those
24 years that are evenly divisible by three. Members shall serve until their successors
25 are appointed and qualified. No member shall serve more than two consecutive
26 terms.

27 (d) Officers. -- The Commission shall elect a Chair and a Vice-Chair from among
28 its members. These officers shall serve from the time of their election until 30 June
29 of the following year, or until a successor is elected.

30 (e) Vacancies. -- An appointment to fill a vacancy on the Commission created by
31 the resignation, dismissal, disability, or death of a member shall be for the balance of
32 the unexpired term. Vacancies in appointments made by the General Assembly shall
33 be filled as provided in G.S. 120-122.

34 (f) Removal. -- The Governor may remove any member of the Commission from
35 office for misfeasance, malfeasance, or nonfeasance, as provided in G.S. 143-13.

36 (g) Compensation. -- The members of the Commission shall receive per diem and
37 necessary travel and subsistence expenses in accordance with the provisions of G.S.
38 138-5.

39 (h) Quorum. -- A majority of the membership of the Commission constitutes a
40 quorum for the transaction of business.

41 (i) Services. -- All clerical and other services required by the Commission shall be
42 supplied by the Secretary."

43 Section 2. Chapter 87 of the General Statutes is amended by adding a
44 new Article to read:

"ARTICLE 7A."Well Contractors Certification."§ 87-98.1. Title.

This Article may be cited as the North Carolina Well Contractors Certification Act.

"§ 87-98.2. Definitions.

The definitions in G.S. 87-85 and the following definitions apply in this Article:

- (1) Commission. -- The Well Contractors Certification Commission.
- (2) Department. -- The Department of Environment, Health, and Natural Resources.
- (3) Person. -- A natural person.
- (4) Secretary. -- The Secretary of Environment, Health, and Natural Resources.
- (5) Well contractor. -- A person in trade or business who undertakes to perform a well contractor activity or who undertakes to personally supervise or personally manage the performance of a well contractor activity on the person's own behalf or for any person, firm, or corporation.
- (6) Well contractor activity. -- The construction, installation, repair, alteration, or abandonment of any well.

"§ 87-98.3. Purpose.

It is the purpose of this Article to protect the public health and safety by ensuring the integrity and competence of well contractors, to protect and beneficially develop the groundwater resources of the State, to require the examination of well contractors and the certification of their competency to supervise or conduct well contractor activity, and to establish procedures for the examination and certification of well contractors.

"§ 87-98.4. Well contractor certification required; applicability.

(a) Certification Required. -- No well contractor shall perform any well contractor activity without being certified under this Article. The Commission may specify the types of general construction activities or geophysical activities that are not directly related to locating, testing, or withdrawing groundwater; evaluating, testing, developing, draining, or recharging any groundwater reservoir or aquifer; or controlling, diverting, or otherwise causing the movement of water from or into any aquifer and are therefore not well construction activities.

(b) Applicability. -- This Article does not apply to a person who meets any of the following descriptions:

- (1) Is employed by, or performs labor or services for, a certified well contractor in connection with well contractor activity performed under the personal supervision of the certified well contractor.
- (2) Constructs, repairs, or abandons a well that is located on land owned or leased by that person.

"§ 87-98.5. Types of certification; sole certification.

1 The Commission, with the advice and assistance of the Secretary, shall establish
2 the appropriate types of certification for well contractors. Each certification type
3 established by the Commission shall be the sole certification required to engage in
4 well contractor activity in the State.

5 **"§ 87-98.6. Well contractor qualifications and examination.**

6 The Commission, with the advice and assistance of the Secretary, shall establish
7 minimum requirements of education, experience, and knowledge for each type of
8 certification for well contractors and shall establish procedures for receiving
9 applications for certification, conducting examinations, and making investigations of
10 applicants as may be necessary and appropriate so that prompt and fair consideration
11 will be given to each applicant.

12 **"§ 87-98.7. Issuance and renewal of certificates; temporary certification.**

13 (a) Issuance. -- An applicant, upon satisfactorily meeting the appropriate
14 requirements, shall be certified to perform in the capacity of a well contractor and
15 shall be issued a suitable certificate by the Commission designating the level of the
16 person's competency. A certificate shall be valid for one year or until any of the
17 following occurs:

18 (1) The certificate holder voluntarily surrenders the certificate to the
19 Commission.

20 (2) The certificate is revoked or suspended by the Commission for
21 cause.

22 (b) Renewal. -- A certificate shall be renewed annually by payment of the annual
23 fee. A person who fails to renew a certificate within three months of the expiration
24 of the certificate must reapply for certification under this Article.

25 (c) Temporary Certification. -- A person may receive temporary certification to
26 construct a well upon submission of an application to the Commission and
27 subsequent approval in accordance with the criteria established by the Commission
28 and upon payment of a temporary certification fee. A temporary certification shall
29 be granted to the same person only once per calendar year and may not be valid for
30 a period in excess of 45 consecutive days. To perform additional well contractor
31 activity during that same calendar year, the person shall apply for certification under
32 this Article.

33 **"§ 87-98.8. Disciplinary actions.**

34 The Commission may issue a written reprimand to a well contractor or, in
35 accordance with the provisions of Article 3A of Chapter 150B of the General
36 Statutes, may suspend or revoke the certificate of a well contractor if the Commission
37 finds that the well contractor has:

38 (1) Engaged in fraud or deception in connection with obtaining
39 certification or in connection with any well contractor activity.

40 (2) Failed to use reasonable care, judgment, or the application of the
41 person's knowledge or ability in the performance of any well
42 contractor activity.

43 (3) Been grossly negligent or has demonstrated willful disregard of any
44 applicable laws or rules governing well construction.

(4) Failed to satisfactorily complete continuing education requirements established by the Commission.

"§ 87-98.9. Fees; Well Construction Fund.

(a) Fees. -- The Commission may set a fee for certification by examination, an annual fee for certification renewal, and a fee for temporary certification. The fee for certification by examination may not exceed one hundred dollars (\$100.00), the annual fee may not exceed two hundred dollars (\$200.00) per year, and the temporary certification fee shall not exceed one hundred dollars (\$100.00). A well contractor certificate is void if the well contractor fails to pay the annual fee within 30 days of the date the fee is due.

(b) Fund. -- The Well Construction Fund is created as a nonreverting account within the Department. All fees collected pursuant to this Article shall be credited to the Fund. The Fund shall be used for the costs of administering this Article.

"§ 87-98.10. Promotion of training.

The Commission and the Secretary may provide training for well contractors and cooperate with educational institutions and private and public associations, persons, or corporations in providing training for well contractors.

"§ 87-98.11. Responsibilities of well contractors.

All persons receiving certification under this Article to perform well contractor activities in this State shall be responsible for complying with all statutes, rules, and generally accepted construction practices, including all local rules or ordinances governing well contractor activities.

"§ 87-98.12. Continuing education requirements.

In order to continue to be certified under this Article, a well contractor shall satisfactorily complete the number of hours of approved continuing education required by the Commission. The Commission shall establish the minimum number of hours of continuing education that shall be required to maintain certification, shall specify the scope of required continuing education courses, and shall approve continuing education courses.

"§ 87-98.13. Injunctive relief.

Upon violation of this Article, a rule adopted under this Article, or an order issued under this Article, the Secretary may, either before or after the institution of proceedings for the collection of any penalty imposed under this Article for the violation, request the Attorney General to institute a civil action in the superior court in the name of the State for injunctive relief to restrain the violation or require corrective action and for any other relief the court finds proper. Initiating an action shall not relieve any party to the proceedings from any penalty prescribed by this Article."

Section 3. G.S. 87-94 reads as rewritten:

"§ 87-94. Civil penalties.

(a) Any person who violates any provision of this ~~Article~~, Article, Article 7A of this Chapter, or any order issued pursuant thereto, or any rule adopted thereunder, shall be subject to a civil penalty of not more than one hundred dollars (\$100.00) for each violation, as determined by the Secretary of Environment, Health, and Natural

1 Resources. Each day of a continuing violation shall be considered a separate offense.
2 No person shall be subject to a penalty who did not directly commit the violation or
3 cause it to be committed.

4 ~~(b) No penalty shall be assessed until the person alleged to be in violation has
5 been:~~

6 ~~(1) Notified of the violation in accordance with the notice provisions
7 set out in G.S. 87-91(a);~~

8 ~~(2) Informed by said notice of remedial action, which if taken within
9 30 days from receipt of the notice, will effect compliance with this
10 Article and the regulations under it, and~~

11 ~~(3) Warned by said notice that a civil penalty can be assessed for
12 failure to comply within the specified time.~~

13 (c) In determining the amount of the penalty the Secretary shall consider factors
14 set out in G.S. 143B-282.1(b). The procedures set out in ~~G.S. 143-215.6~~ G.S.
15 143-215.6A and G.S. 143B-282.1 shall apply to civil penalties assessed under this
16 section.

17 (d) The Secretary shall notify any person assessed a civil penalty of the assessment
18 and the specific reasons therefor by registered or certified mail, or by any means
19 authorized by G.S. 1A-1, Rule 4.

20 ~~(e) If any civil penalty has not been paid within 30 days after notice of assessment
21 has been served on the violator, the Secretary shall request the Attorney General to
22 institute a civil action in the Superior Court of any county in which the violator
23 resides or has his or its principal place of business to recover the amount of the
24 assessment, unless the violator contests the assessment or requests remission of the
25 assessment in whole or in part. If any civil penalty has not been paid within 30 days
26 after the final agency decision or court order has been served on the violator, the
27 Secretary shall request the Attorney General to institute a civil action in the Superior
28 Court of any county in which the violator resides or has his or its principal place of
29 business to recover the amount of the assessment."~~

30 Section 4. G.S. 87-85(14) reads as rewritten:

31 "(14) 'Well' means any excavation that is cored, bored, drilled, jetted,
32 dug or otherwise constructed for the purpose of locating, testing or
33 withdrawing groundwater or for evaluating, testing, developing,
34 draining or recharging any groundwater reservoirs or aquifer, or
35 that may control, divert, or otherwise cause the movement of water
36 from or into any aquifer. ~~Provided, however, this shall not include
37 a well constructed by an individual on land which is owned or
38 leased by him, appurtenant to a single family dwelling, and
39 intended for domestic use (including household purposes, farm
40 livestock, or gardens)."~~

41 Section 5. G.S. 143-355(e) reads as rewritten:

42 "(e) Registration with Department Required; Registration Periods. -- Every
43 person, firm or corporation engaged in the business of drilling, boring, coring or
44 constructing wells in any manner with the use of power machinery in this State; State

1 shall register annually with the Department on forms to be furnished by the said
2 Department. The registration required hereby shall be made during the period from
3 January 1 to January 31 of each year. Registration fees collected under this section
4 shall be credited to the Well Construction Fund created by G.S. 87-98.9."

5 Section 6. G.S. 143-355(e) is repealed.

6 Section 7. G.S. 87-91 reads as rewritten:

7 "**§ 87-91. Notice. Notice of violation; remedial action order.**

8 (a) Whenever the Environmental Management Commission has reasonable
9 grounds to believe that there has been a violation of this ~~Article~~, Article or any rule
10 ~~or regulation~~ adopted pursuant ~~thereto~~, to this Article, the Environmental
11 Management Commission or Department shall give written notice to the person or
12 persons alleged to be in violation. ~~Such~~ The notice shall identify the provision of this
13 ~~Article, or regulation issued hereunder~~, Article or rule adopted pursuant to this
14 Article alleged to be violated and the facts alleged to constitute ~~such~~ the violation.
15 The Environmental Management Commission may also issue an order requiring
16 specific remedial action. An order requiring remedial action shall specify the action
17 to be taken, the date by which the action must be completed, the possible
18 consequences of failing to comply with the order, and the procedure by which the
19 alleged violator may seek review of the order.

20 (b) ~~Such Department shall serve the notice and any order requiring remedial~~
21 ~~action on the person alleged to be in violation, shall be served on the person by~~
22 ~~sending the same to such person by registered or certified mail to his last known~~
23 ~~post office address or by personal service by an agent or employee of the Department~~
24 ~~of Environment, Health, and Natural Resources, and may be accompanied by an~~
25 ~~order of the Environmental Management Commission requiring described remedial~~
26 ~~action, which if taken within the time specified in such order, will effect compliance~~
27 ~~with the requirements of this Article and the rules issued hereunder. Such order~~
28 ~~shall become final unless a request for a hearing as hereinafter provided is made~~
29 ~~within 30 days from the date of service of such order. In addition to, or in lieu of~~
30 ~~such order, the Environmental Management Commission may appoint a time and~~
31 ~~place for such person to be heard. Notice by the Environmental Management~~
32 ~~Commission or Department may be given to any person upon whom a summons may~~
33 ~~be served in accordance with the provisions of law governing civil actions in the~~
34 ~~superior courts of this State. The Environmental Management Commission may~~
35 ~~prescribe the form and content of any particular notice. The notice may be served by~~
36 ~~any means authorized under G.S. 1A-1, Rule 4."~~

37 Section 8. (a) To provide for staggered terms, initial appointments to
38 the Well Contractors Certification Commission created in Section 1 of this act shall
39 be as follows:

- 40 (1) Initial appointments to positions (1), (2), and (7) shall expire on 30
41 June 2001.
- 42 (2) Initial appointments to positions (3) and (4) shall expire on 30
43 June 1999.

1 (3) Initial appointments to positions (5) and (6) shall expire on 30
2 June 2000.

3 (b) In the event that the General Assembly fails to appoint one or more
4 initial members to the Well Contractors Certification Commission while the General
5 Assembly is in session during 1997, the failure to make an initial appointment shall
6 be treated as though a vacancy had occurred, and the vacancy may be filled by
7 appointment as provided in G.S. 120-122.

8 Section 9. (a) Unless an applicant is found to have engaged in an act
9 that would constitute grounds for disciplinary action under G.S. 87-98.8, as enacted
10 by Section 2 of this act, the Well Contractors Certification Commission shall issue a
11 well contractor certificate without examination to any person who, since 1 July 1992,
12 has been actively and continuously engaged in well contractor activity and who has
13 been:

14 (1) Continuously registered with the Department as required by G.S.
15 143-355(e), or

16 (2) Employed by a firm or corporation that has been continuously
17 registered with the Department as required by G.S. 143-355(e).

18 (b) To obtain certification under this section, a person must submit an
19 application to the Commission and pay the annual fee prior to 1 January 1999. The
20 Commission shall establish procedures and rules for receipt and approval of these
21 applications.

22 (c) A well contractor who is certified under this section must
23 continuously maintain the certification in good standing in order to remain certified.
24 A certificate issued under this section that lapses, is suspended, or is revoked may not
25 be renewed or reinstated. A person whose certification under this section lapses, is
26 suspended, or is revoked must apply for certification by examination in order to be
27 recertified.

28 Section 10. This act constitutes a recent act of the General Assembly
29 within the meaning of G.S. 150B-21.1. The Well Contractors Certification
30 Commission may adopt temporary rules to implement the provisions of this act.

31 Section 11. Sections 1, 3, 4, and 7 through 11 of this act are effective
32 when they become law. Section 2 of this act is effective when it becomes law except
33 that G.S. 87-98.4(a) and G.S. 87-98.12, as enacted by Section 2 of this act, become
34 effective 1 January 1999. Section 5 of this act becomes effective 1 July 1997. Section
35 6 of this act becomes effective 1 January 1999.

EXPLANATION OF HOUSE BILL 251:
Well Contractors Certification (2nd Edition)

TO: House Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: July 14, 1997
SPONSOR: Representative Culp
Recommendation of the Environmental Review Commission

House Bill 251 creates the Well Contractors Certification Commission, requires that well contractors be certified under the Well Contractors Certification Act, and makes various changes to the Well Construction Act.

Under current law, a person engaged in the well construction business must register annually with the Department of Environment, Health, and Natural Resources and must construct wells consistent with the requirements of the North Carolina Well Construction Act. This bill will repeal the registration requirement, effective January 1, 1999, and substitute a certification requirement.

Under the bill, a person engaging in the well construction business must be certified by the North Carolina Well Contractors Certification Commission, which is created in this bill. The Commission may establish different types of well contractor certifications based on the activities performed. To be certified, a person must meet minimum education, knowledge, and experience requirements for the classification in which the person desires to be certified. The certification is valid for one year. The Commission will establish minimum continuing education requirements that must be met before the certification can be renewed. The fees for certification can not exceed the following:

Examination Fee	\$150
Annual certification fee	\$350
Temporary certification fee	\$100

The fees will be credited to a newly created Well Construction Fund. The Fund is created as a nonreverting account. Under current law, there is a \$50 fee for the annual registration of well contractors. The bill provides that this fee will also be credited to this Fund.

The Commission will consist of 6 members in the well construction business appointed by the General Assembly and 1 public member appointed by the Governor. The Commission may adopt rules for the certification of well contractors, make final agency decisions regarding civil penalties assessed for violations of well certification laws, and adopt rules to secure federal aid for well contraction certification programs.

A person who has engaged in the well construction business since July 1, 1986, and who has been registered with the DEHNR since July 1, 1992, or who has been an employee of a company registered with DEHNR since July 1, 1992, will be grandfathered into the certification process. These people will not need to pass an examination as a condition of certification. A person working under the supervision of a certified well contractor and a person who constructs a well on land owned or lease by that person is exempt from the certification requirements of this bill.

The bill also makes the following changes in the Well Construction Act:

1. It repeals the current exemption for wells constructed by a person on land owned or leased by the person. Thus, under this bill, all wells must meet the specifications of the Well Construction Act.
2. A person who violates the Well Construction Act or the Well Construction Certification Act may be assessed a civil penalty of not more than \$100 a day. Under current law, a penalty cannot be assessed until the person alleged to be in violation has been notified of the alleged violation and given an opportunity to take the remedial action described in the notice of noncompliance. If the person takes the remedial action within the time frame given, the penalty is not assessed. This bill removes this provision. Therefore, the civil penalty may be imposed regardless of whether or not the person undertakes the remedial action described in the notice.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: House Bill 251 (Second Edition)

SHORT TITLE: Well Contractors Certification

SPONSOR(S): Representative Culp

FISCAL IMPACT

Yes (x) ** No () No Estimate Available ()
Well Construction Fund (created by this act)

	<u>FY 1997-98</u>	<u>FY 1998-99</u>	<u>FY 1999-00</u>	<u>FY 2000-01</u>	<u>FY 2001-02</u>
REVENUES *					
Registration Fee	\$31,250				
Certification Renewal		\$130,000	\$135,000	\$140,000	\$145,000
Certification by Examination		\$20,000	\$2,500	\$2,500	\$2,500
Temporary Certification		\$2,500	\$2,500	\$2,500	\$2,500
Total	\$31,250	\$152,500	\$140,000	\$145,000	\$150,000
EXPENDITURES	\$10,652	\$96,752	\$85,925	\$88,115	\$90,446
POSITIONS:	0.0	2.0	2.0	2.0	2.0

PRINCIPAL DEPARTMENT(S) &

PROGRAM(S) AFFECTED: Department of Environment, Health, and Natural Resources, Division of Water Quality

EFFECTIVE DATE: When the act becomes law, except for G.S. 87-98(a), the certification requirement, and G.S. 87-98.14, injunctive relief, as enacted by Section 2, which become effective January 1, 1999, and Section 5 requiring registration fees to be credited to the Well Construction Fund, which becomes effective July 1, 1997, and Section 6 repealing the registration fee requirement, which becomes effective January 1, 1999.

* Revenue estimate based on the maximum fee allowed by the act.

** See statement on page 3, under Assumptions and Methodology regarding the creation of the Well Construction Fund.

◆ Annual Certification Renewal

The bill establishes a certification requirement for well contractors effective January 1, 1999 and sets the maximum annual certification fee charged by the commission at \$200.00. However, the commission is authorized to set a lower renewal fee to more accurately reflect actual program costs. The department estimates that an annual certification fee of \$125.00 is sufficient to cover the costs of the certification program.

All persons registered with the department for the 1997-98 fiscal year to perform well construction activities are expected to pay the certification fee beginning with the 1998-99 fiscal year. Again, the department expects the number of certifications to increase by 25 each year. Based on the number of annual certification renewals anticipated by the department, the projected revenue from the annual certification fee beginning with the 1998-99 fiscal year is reflected in the following table. The projected revenue from certifications based on a fee of \$125.00 as recommended by the department is also included.

Revenue from Annual Certification Renewal	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
# of Well Contractors	650	675	700	725
Maximum Annual Certification Revenue (\$200.00)	130,000	135,000	140,000	145,000
Annual Certification Revenue Based on Projected Operating Requirements (\$125.00)	81,250	84,375	87,500	90,625

◆ Certification by Examination

Any person performing well contractor activities who is not eligible for certification without examination must satisfactorily complete any training and examination requirements established by the commission. The bill authorizes the commission to charge up to \$100.00 for the examination. Because the well contractor certification requirement is new, the department initially expects 200 persons will be required to seek certification by examination for the 1998-99 fiscal year. However, the number of persons certified annually by examination is expected to level off immediately to 25, beginning with the 1999-2000 fiscal year.

Revenue from Certification by Examination	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
# Examined	200	25	25	25
Maximum Examination Fee (\$100.00)	20,000	2,500	2,500	2,500

◆ Temporary Certification

The bill also provides for temporary certification of persons approved by the commission. The department projects 25 persons will seek temporary certification each year. The commission may charge up to \$100.00 for each temporary certification.

Revenue from Temporary Certifications	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
# Temporary Well Contractors	25	25	25	25
Maximum Temporary Certification Fee (\$100.00)	2,500	2,500	2,500	2,500

Expenditures

The bill provides eighteen months for the commission to adopt permanent rules to meet the requirements of the bill, in accordance with the Administrative Procedures Act, before the certification requirement goes into effect January 1, 1999. Until such time, costs incurred by the commission are expected to be limited to allowable per diem, travel and subsistence for commission members, clerical support and operational expenses, such as postage, telephone and printing.

The commission is expected to meet more frequently during the first two years to adopt formal rules governing the certification of well contractors; therefore per diem and travel expenses for the commission will be higher the first two years. For the purpose of estimating commission expenses, it is assumed the commission will hold twelve meetings in 1997-98, eight meetings in 1998-99 and quarterly meetings each year thereafter.

According to the department, additional staff support will not required until the 1998-99 fiscal year, when the certification requirement becomes effective. The department will use existing staff to provide any clerical support needed by the commission during the 1997-98 fiscal year. Beginning with the 1998-99 fiscal year, the department anticipates the need for two full-time staff to support the commission and the certification program. An Office Assistant III will provide clerical support to the commission, as well as manage and maintain the certification records. A hydrogeologist will also be employed to provide technical expertise to the commission, to include assistance with certification oversight and enforcement.

The total estimated budget requirements for the Well Contractors Certification program are outlined in the following table:

	FY 1997-98	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
Personnel					
Office Assistant III		23,025	23,749	24,520	25,340
Hydrogeologist I		40,958	42,292	43,711	45,222
Total Salaries & Benefits *	-	63,984	66,041	68,231	70,562
Positions		2.0	2.0	2.0	2.0
Operating Expenses	2,000	27,000	17,000	17,000	17,000
Commission Expenses	8,652	5,768	2,884	2,884	2,884
Total Requirements	\$10,652	\$96,752	\$85,925	\$88,115	\$90,446

* Beginning with the 1998-99 fiscal year, salaries are adjusted to reflect the projected growth estimated for average hourly earnings in manufacturing. The inflation rates used are based on forecasts by Data Resources, Inc.

TECHNICAL CONSIDERATIONS:

The bill allows the commission and the Secretary of DEHNR to provide training for well contractors in cooperation with educational institutions, professional associations and others. If the commission and the Secretary decide to make training and continuing education offerings available to well contractors, the costs associated with those offerings will be funded with receipts from the Well Construction Fund, as required by the bill.

Until the scope of any proposed educational requirements/offerings is defined, the costs of implementing training and education programs for contractors cannot be estimated. However, according to the department, some professional associations offer well drilling review courses at a cost of \$100 per course. A more comprehensive training program is expected to require additional staff and operating support.

SOURCES OF DATA:

The Department of Environment, Health, and Natural Resources; Division of Water Quality, Groundwater Section

FISCAL RESEARCH DIVISION 733-4910

PREPARED BY: Mona Moon

APPROVED BY: Tom Covington

DATE: June 11, 1997



VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

7-17-96

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

R. Paul Williams	MEMBA
Richard W. Wansant	DEHNR
Jacky Jones	WC SR
Bruce Nicholson	NC DEHNR/DWM
Dwight "Buster" Dellinger	N.C. Groundwater Assoc.
Arthur Monberry	DEHNR-DWG Groundwater Section
Paul Zepin	OSBM
Jeanie Ranzger	NC SAS
Jane P Gray	DOJ
Charles Case	Hunter & Williams
Ashli Zwaegen	NCCBI
BILL SCOGGIN	NCBA

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

7-17-96

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Cam Cover	BPM#L
VLM Biele	WATA
John Kune	PTWA
Rochyn Sewall	lobbyist
Amy Anderson	Huntton: Williams
Sabra Faives	NC Dept. of Revenue
Jon Holman	CCNC / Sierra Club
Nathanial Mend	CCNC
Bob High	Dept State Treas.
Andy Romanet	N.C.L.M.
R. ROGERS	FHMR

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

FINANCE COMMITTEE REPORT

Senator David Hoyle, Co-Chair

Senator John Kerr, Co-Chair

Thursday, July 17, 1997

SENATOR HOYLE,

submits the following with recommendations as to passage:

FAVORABLE

H.B.(CS)251 Well Contractors Certification
 Sequential Referral: None
 Recommended Referral: None

H.B.(CS)722 Beaufort County Local Act
 Sequential Referral: None
 Recommended Referral: None

H.B.(CS#2)1121 Brownfields Property Reuse Act
 Sequential Referral: None
 Recommended Referral: None

**UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1 ,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL**

H.B.(CS) 96 Intangibles Tax Remedy
 Draft Number: PCS8260
 Sequential Referral: None
 Recommended Referral: None
 Long Title Amended: Yes

TOTAL REPORTED: 4

Committee Clerk Comment: None

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT

Senator David Hoyle, Co-Chair
Senator John Kerr, Co-Chair

Tuesday, July 22, 1997

SENATOR HOYLE,

submits the following with recommendations as to passage:

**UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL**

H.B.(CS #1)847

Addit. Powers/Certain Water Auth.

Draft Number: PCS2370

Sequential Referral: None

Recommended Referral: None

Long Title Amended: Yes

TOTAL REPORTED: 1

Committee Clerk Comment:

Bill taken up at 7-17-97 Sen Finance Meeting

SENATE FINANCE COMMITTEE

WEDNESDAY, JULY 23, 1997

8:30 A.M. - ROOM 544 LOB

The Senate Finance Committee met on July 23, 1997, with Senator Kerr presiding. There were 23 committee members present.

H.B. 859 - Various Room Tax Changes

Representative Redwine was recognized to explain this bill. Senator Hoyle offered an amendment which was adopted on his motion. On motion by Senator Albertson, the bill, as amended, was given a "favorable" report and will be rolled into a new senate committee substitute. Copy of bill, amendment, senate committee substitute and explanation included in the minutes.

H.B. 990 - Exempt Certain Nonprofit Utilities

Senator Phillips was recognized to explain this bill and made a motion that a proposed committee substitute be adopted. The motion carried and Senator Phillips explained the committee substitute. At the conclusion of his explanation, James Little with the public Staff of the North Carolina Utilities Commission, was introduced to comment on this bill. R. E. Schley, representing the North Carolina Rural Water Association was recognized and spoke in support of this bill. Senator Kerr announced that this bill would not be voted on today and would be discussed further and voted on at a later date. Copy of bill, committee substitute and explanation included in the minutes.

S.B. 956 - Venture Capital Investment Incentive

Representative Wilkins was recognized to explain this bill since he has an identical House Bill. Senator Hoyle moved that a proposed committee substitute be adopted and the motion carried. At the conclusion of Representative Wilkins's explanation of the bill the following were recognized to speak in support of this bill:

Bill Glynn, Southeastern Interactive Technology Funds

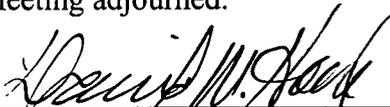
Scott Daughtery, North Carolina Business and Technology Development Center

Daniel R. Schultz, Coopers & Lybrand CPA Firm

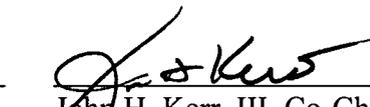
Senator Kerr asked for questions from the committee members to the speakers and also to Representative Wilkins. Senator Hoyle was recognized and spoke in support of the

venture capital concept and how the needs in the state could be addressed. After a lengthy question and answer session, staff was asked to furnish additional information concerning venture capital for a later meeting. Representative Wilkins was recognized to wrap up discussion on this bill for today. Copy of bill, committee substitute, explanation and other information included in the minutes.

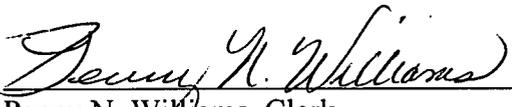
Meeting adjourned.



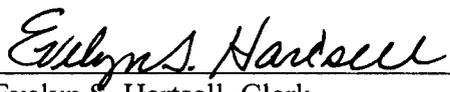
David W. Hoyle, Co-Chair
Senate Finance Committee



John H. Kerr, III, Co-Chair
Senate Finance Committee



Penny N. Williams, Clerk



Evelyn S. Hartsell, Clerk

NOTE:

Agenda is Attachment # 1
Visitors' Sign Up Sheet is Attachment # 2
Committee Report is Attachment # 3

H.B. Bill 225 on the Agenda was not heard at the committee meeting.

AGENDA

SENATE FINANCE COMMITTEE

July 23, 1997
8:30 A.M. - Room 544

- S.B. 956 - Venture Capital Investment Incentive. - Sen. Hoyle
- H.B. 225 - Dry-Cleaning Solvent Cleanup Act.. - Rep. Weatherly
- H.B. 859 - Various Room Tax Changes. - Rep. Redwine
- H.B. 990 - Exempt Certain Nonprofit Utilities. - Rep. Church

1 (b) Administration. A tax levied under this section shall be levied,
2 administered, collected, and repealed as provided in G.S. 153A-155. The penalties
3 provided in G.S. 153A-155 apply to a tax levied under this section.

4 (c) Distribution and use of tax revenue. Brunswick County shall, on a
5 monthly basis, remit the net proceeds of the occupancy tax to the Brunswick Tourism
6 Development Authority. The Authority shall use the funds remitted to it under this
7 subsection to promote travel and tourism in Brunswick County. No more than ten
8 percent (10%) of the funds remitted to the Authority under this subsection may be
9 used for the Authority's administrative expenses, including salaries and benefits.

10 The following definitions apply in this subsection:

11 (1) Net proceeds. -- Gross proceeds less the cost to the county of
12 administering and collecting the tax, as determined by the finance
13 officer, not to exceed three percent (3%) of the gross proceeds.

14 (2) Promote travel and tourism. -- To advertise or market an area or
15 activity, publish and distribute pamphlets and other materials,
16 conduct market research, or engage in similar promotional
17 activities that attract tourists or business travelers to the area; the
18 term includes administrative expenses incurred in engaging in the
19 listed activities.

20 Section 2. Brunswick Tourism Development Authority. (a)
21 Appointment and membership. When the board of commissioners of Brunswick
22 County adopts a resolution levying a room occupancy tax under Section 1 of this act,
23 it shall also adopt a resolution creating a county Tourism Development Authority,
24 which shall be a public authority under the Local Government Budget and Fiscal
25 Control Act. The Authority shall have 10 members appointed by the Brunswick
26 County Commissioners as follows:

27 (1) Five individuals who are currently involved in the promotion of
28 travel and tourism, selected by the Brunswick County
29 Commissioners.

30 (2) Five individuals selected jointly by the South Brunswick Islands
31 Chamber of Commerce and the Southport-Oak Island Chamber of
32 Commerce.

33 The resolution shall provide for the members' terms of office and for the
34 filling of vacancies on the Authority. The board of commissioners shall designate one
35 member of the Authority as chair. Members of the Authority shall serve without
36 compensation.

37 The Authority shall meet monthly and shall adopt rules of procedure to
38 govern its meetings. The Finance Officer for Brunswick County shall be the ex
39 officio finance officer of the Authority.

40 (b) Duties. The Authority shall expend the net proceeds of the tax
41 levied under Section 1 of this act to promote travel and tourism in Brunswick County
42 as provided in Section 1 of this act. The Authority shall promote travel, tourism, and
43 conventions in the county.

1 (c) Reports. The Authority shall report quarterly and at the close of the
2 fiscal year to the board of commissioners on its receipts and expenditures for the
3 preceding quarter and for the year in such detail as the board may require.

4 Section 3. County administrative provisions. Section 3(b) of S.L. 1997-
5 102, as amended by Section 2 of S.L. 1997-255, reads as rewritten:

6 "(b) This section applies only to ~~Madison and Nash~~ Brunswick, Madison, Nash,
7 and Person Counties."

8 Section 4. Conforming change. Section 2(a2) of Chapter 664 of the 1991
9 Session Laws, as enacted by Chapter 617 of the 1993 Session Laws, is repealed.

10 Section 5. Municipal administrative provisions. (a) Article 9 of Chapter
11 160A of the General Statutes is amended by adding a new section to read:

12 "§ 160A-215. Uniform provisions for room occupancy taxes.

13 (a) Scope. -- This section applies only to municipalities the General Assembly has
14 authorized to levy room occupancy taxes. For the purpose of this section, the term
15 'city' means a municipality.

16 (b) Levy. -- A room occupancy tax may be levied only by resolution, after not less
17 than 10 days' public notice and after a public hearing held pursuant thereto. A room
18 occupancy tax shall become effective on the date specified in the resolution levying
19 the tax. That date must be the first day of a calendar month, however, and may not
20 be earlier than the first day of the second month after the date the resolution is
21 adopted.

22 (c) Collection. -- Every operator of a business subject to a room occupancy tax
23 shall, on and after the effective date of the levy of the tax, collect the tax. The tax
24 shall be collected as part of the charge for furnishing a taxable accommodation. The
25 tax shall be stated and charged separately from the sales records and shall be paid by
26 the purchaser to the operator of the business as trustee for and on account of the
27 taxing city. The tax shall be added to the sales price and shall be passed on to the
28 purchaser instead of being borne by the operator of the business. The taxing city
29 shall design, print, and furnish to all appropriate businesses and persons in the city
30 the necessary forms for filing returns and instructions to ensure the full collection of
31 the tax. An operator of a business who collects a room occupancy tax may deduct
32 from the amount remitted to the taxing city a discount equal to the discount the State
33 allows the operator for State sales and use tax.

34 (d) Administration. -- The taxing city shall administer a room occupancy tax it
35 levies. A room occupancy tax is due and payable to the city finance officer in
36 monthly installments on or before the 15th day of the month following the month in
37 which the tax accrues. Every person, firm, corporation, or association liable for the
38 tax shall, on or before the 15th day of each month, prepare and render a return on a
39 form prescribed by the taxing city. The return shall state the total gross receipts
40 derived in the preceding month from rentals upon which the tax is levied. A room
41 occupancy tax return filed with the city finance officer is not a public record and may
42 not be disclosed except in accordance with G.S. 153A-148.1 or G.S. 160A-208.1.

43 (e) Penalties. -- A person, firm, corporation, or association who fails or refuses to
44 file a room occupancy tax return or pay a room occupancy tax as required by law is

1 subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file
2 a return for State sales and use taxes. The governing board of the taxing city has the
3 same authority to waive the penalties for a room occupancy tax that the Secretary of
4 Revenue has to waive the penalties for State sales and use taxes.

5 (f) Repeal or Reduction. -- A room occupancy tax levied by a city may be
6 repealed or reduced by a resolution adopted by the governing body of the city.
7 Repeal or reduction of a room occupancy tax shall become effective on the first day
8 of a month and may not become effective until the end of the fiscal year in which the
9 resolution was adopted. Repeal or reduction of a room occupancy tax does not affect
10 a liability for a tax that was attached before the effective date of the repeal or
11 reduction, nor does it affect a right to a refund of a tax that accrued before the
12 effective date of the repeal or reduction."

13 (b) This section applies only to the municipalities in Brunswick County.

14 Section 6. Shallotte occupancy tax. (a) Authorization and scope. The
15 Board of Aldermen of the Town of Shallotte may levy a room occupancy tax of up to
16 three percent (3%) of the gross receipts derived from the rental of any room, lodging,
17 or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place
18 within the town that is subject to sales tax imposed by the State under G.S.
19 105-164.4(a)(3) and from the rental of private residences and cottages within the town
20 that are exempt from the sales tax imposed under G.S. 105-164.4(a)(3) solely because
21 they are rented for less than 15 days. This tax is in addition to any State or local
22 sales tax. This tax does not apply to accommodations furnished by nonprofit
23 charitable, educational, or religious organizations when furnished in furtherance of
24 their nonprofit purpose.

25 (b) Administration. A tax levied under this section shall be levied,
26 administered, collected, and repealed as provided in G.S. 160A-215. The penalties
27 provided in G.S. 160A-215 apply to a tax levied under this section.

28 (c) Distribution and use of tax revenue. The Town of Shallotte shall, on
29 a quarterly basis, remit the net proceeds of the occupancy tax to the Shallotte
30 Tourism Development Authority. The Authority shall use at least one-half of the
31 funds remitted to it under this subsection to promote travel and tourism in Shallotte
32 and shall use the remainder for tourism-related expenditures.

33 The following definitions apply in this subsection:

- 34 (1) Net proceeds. -- Gross proceeds less the cost to the town of
35 administering and collecting the tax, as determined by the finance
36 officer, not to exceed three percent (3%) of the first five hundred
37 thousand dollars (\$500,000) of gross proceeds collected each year
38 and one percent (1%) of the remaining gross receipts collected
39 each year.
- 40 (2) Promote travel and tourism. -- To advertise or market an area or
41 activity, publish and distribute pamphlets and other materials,
42 conduct market research, or engage in similar promotional
43 activities that attract tourists or business travelers to the area; the

1 term includes administrative expenses incurred in engaging in the
2 listed activities.

3 (3) Tourism-related expenditures. -- Expenditures that, in the
4 judgment of the Authority, are designed to increase the use of
5 lodging facilities, meeting facilities, or convention facilities in the
6 town or to attract tourists or business travelers to the town. The
7 term includes tourism-related capital expenditures.

8 Section 7. Shallotte Tourism Development Authority. (a) Appointment
9 and membership. When the Board of Aldermen of the Town of Shallotte adopts a
10 resolution levying a room occupancy tax under Section 6 of this act, it shall also
11 adopt a resolution creating a town Tourism Development Authority, which shall be a
12 public authority under the Local Government Budget and Fiscal Control Act. The
13 Authority shall have five members appointed by the board of aldermen. The
14 resolution shall provide for the membership of the Authority, including the members'
15 terms of office, and for the filling of vacancies on the Authority. At least one-third of
16 the members must be individuals who are affiliated with businesses that collect the
17 tax in the town and at least three-fourths of the members must be individuals who are
18 currently active in the promotion of travel and tourism in the town. The Board of
19 Aldermen of the Town of Shallotte shall designate one member of the Authority as
20 chair and shall determine the compensation, if any, to be paid to members of the
21 Authority.

22 The Authority shall meet at the call of the chair and shall adopt rules of
23 procedure to govern its meetings. The Finance Officer for the Town of Shallotte
24 shall be the ex officio finance officer of the Authority.

25 (b) Duties. The Authority shall expend the net proceeds of the tax
26 levied under Section 6 of this act for the purposes provided in Section 6 of this act.
27 The Authority shall promote travel, tourism, and conventions in the town, sponsor
28 tourist-related events and activities in the town, and finance tourist-related capital
29 projects in the town.

30 (c) Reports. The Authority shall report quarterly and at the close of the
31 fiscal year to the Board of Aldermen of the Town of Shallotte on its receipts and
32 expenditures for the preceding quarter and for the year in such detail as the board
33 may require.

34 Section 8. Caswell Beach occupancy tax changes. Section 1 of Chapter
35 664 of the 1991 Session Laws reads as rewritten:

36 "Section 1. Caswell Beach Occupancy Tax. (a) Authorization and Scope. The
37 Board of Commissioners of the Town of Caswell Beach may ~~by resolution, after not~~
38 ~~less than 10 days' public notice and a public hearing held pursuant thereto,~~ levy a
39 room occupancy tax of up to three percent (3%) of the gross receipts derived from
40 the rental of accommodations within the town that are subject to sales tax imposed by
41 the State under G.S. 105-164.4(a)(3) and from the rental of private residences and
42 cottages within the town that are exempt from the sales tax imposed under G.S. 105-
43 164.4(a)(3) solely because they are rented for less than 15 days.

1 (a) Authorization of Additional Tax. In addition to the tax authorized by
2 subsection (a) of this section, the Board of Commissioners of the Town of Caswell
3 Beach may levy an additional room occupancy tax of up to two percent (2%) of the
4 gross receipts derived from the rental of accommodations taxable under subsection
5 (a). The levy, collection, administration, and repeal of the tax authorized by this
6 subsection shall be in accordance with the provisions of this section. The Town of
7 Caswell Beach may not levy a tax under this subsection unless it also levies the tax
8 authorized under subsection (a) of this section.

9 (b) Administration. A tax levied under this section shall be levied, administered,
10 collected, and repealed as provided in G.S. 160A-215. The penalties provided in
11 G.S. 160A-215 apply to a tax levied under this section.

12 ~~Collection. Every operator of a business subject to the tax levied by this act shall, on~~
13 ~~and after the effective date of the tax, collect the tax. This tax shall be collected as~~
14 ~~part of the charge for furnishing a taxable accommodation. The tax shall be stated~~
15 ~~and charged separately from the sales records, and shall be paid by the purchaser to~~
16 ~~the operator of the business as trustee for and on account of the town. The~~
17 ~~occupancy tax levied under this act shall be added to the sales price and shall be~~
18 ~~passed on to the purchaser instead of being borne by the owner of the business. The~~
19 ~~town shall design, print, and furnish to all appropriate businesses in the town the~~
20 ~~necessary forms for filing returns and instructions to ensure the full collection of the~~
21 ~~tax.~~

22 ~~(c) Administration. The town shall administer the occupancy tax levied under~~
23 ~~this act. A tax levied under this act is due and payable to the town tax collector in~~
24 ~~monthly installments on or before the fifteenth day of the month following the month~~
25 ~~in which the tax accrues. Every person, firm, or corporation liable for the tax shall,~~
26 ~~on or before the fifteenth day of each month, prepare and render a return on a form~~
27 ~~prescribed by the town. The return shall state the total gross receipts derived in the~~
28 ~~preceding month from rentals upon which the tax is levied.~~

29 ~~A return filed with the town tax collector under this act is not a public record as~~
30 ~~defined by G.S. 132-1 and may not be disclosed except as required by law.~~

31 ~~(d) Penalties. A person, firm, corporation, or association who fails or refuses to~~
32 ~~file the return required by this act shall pay a penalty of ten dollars (\$10.00) for each~~
33 ~~day's omission. In case of failure or refusal to file the return or pay the tax for a~~
34 ~~period of 30 days after the time required for filing the return or for paying the tax,~~
35 ~~there shall be an additional tax, as a penalty, of five percent (5%) of the tax due in~~
36 ~~addition to any other penalty, with an additional penalty of five percent (5%) for~~
37 ~~each additional month or fraction thereof until the tax is paid. The board of~~
38 ~~commissioners may, for good cause shown, compromise or forgive the additional tax~~
39 ~~penalties imposed by this subsection.~~

40 ~~Any person who willfully attempts in any manner to evade a tax imposed under~~
41 ~~this act or who willfully fails to pay the tax or make and file a return shall, in~~
42 ~~addition to all other penalties provided by law, be guilty of a misdemeanor and shall~~
43 ~~be punishable by a fine not to exceed one thousand dollars (\$1,000), imprisonment~~
44 ~~not to exceed six months, or both.~~

1 ~~(e)(c)~~ Use of Proceeds. The town may use the proceeds of a tax levied under this
2 ~~act subsection (a) of this section~~ only for tourism-related expenditures. As used in
3 this ~~act, section,~~ the term 'tourism-related expenditures' includes the following types
4 of expenditures: criminal justice system, fire protection, public facilities and utilities,
5 health facilities, solid waste and sewage treatment, and the control and repair of
6 waterfront erosion. These funds may not be used for services normally provided by
7 the town on behalf of its citizens unless these services promote tourism and enlarge
8 its economic benefits by enhancing the ability of the town to attract and provide for
9 tourists.

10 The town may use the proceeds of a tax levied under subsection (a1) of this
11 section only for beach renourishment.

12 ~~(f) Effective Date of Levy. A tax levied under this act shall become effective on~~
13 ~~the date specified in the resolution levying the tax. That date must be the first day of~~
14 ~~a calendar month, however, and may not be earlier than the first day of the second~~
15 ~~month after the date the resolution is adopted.~~

16 ~~(g) Repeal. The Board of Commissioners of the Town of Caswell Beach may by~~
17 ~~resolution repeal a tax levied under this act. Repeal of a tax levied under this act~~
18 ~~shall become effective on the first day of a month and may not become effective until~~
19 ~~the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax~~
20 ~~levied under this act does not affect a liability for a tax that was attached before the~~
21 ~~effective date of the repeal, nor does it affect a right to a refund of a tax that accrued~~
22 ~~before the effective date of the repeal."~~

23 Section 9. Holden Beach occupancy tax changes. Section 1 of Chapter
24 963 of the 1987 Session Laws reads as rewritten:

25 "Section 1. Occupancy tax. (a) Authorization and scope. The Holden Beach
26 Town Council may ~~by resolution, after not less than 10 days' public notice and after~~
27 ~~a public hearing held pursuant thereto,~~ levy a room occupancy tax of no more than
28 three percent (3%) of the gross receipts derived from the rental of any room, lodging,
29 or similar accommodation furnished by a hotel, motel, inn, or similar place within the
30 town that is subject to sales tax imposed by the State under G.S. ~~105-164.4(3)~~
31 105-164.4(a)(3) and on the rental of all private residences and cottages, regardless of
32 whether the residence or cottage is rented for less than 15 days. This tax is in
33 addition to any State or local sales tax. This tax does not apply to accommodations
34 furnished by nonprofit charitable, educational, or religious organizations.

35 (a1) Authorization of additional tax. In addition to the tax authorized by
36 subsection (a) of this section, the Holden Beach Town Council may levy an
37 additional room occupancy tax of up to two percent (2%) of the gross receipts
38 derived from the rental of accommodations taxable under subsection (a). The levy,
39 collection, administration, and repeal of the tax authorized by this subsection shall be
40 in accordance with the provisions of this section. The Holden Beach Town Council
41 may not levy a tax under this subsection unless it also levies the tax authorized under
42 subsection (a) of this section.

1 (b) Administration. A tax levied under this section shall be levied, administered,
2 collected, and repealed as provided in G.S. 160A-215. The penalties provided in
3 G.S. 160A-215 apply to a tax levied under this section.

4 ~~Collection.~~ Every operator of a business subject to the tax levied under this section
5 shall, on and after the effective date of the levy of the tax, collect the tax. This tax
6 shall be collected as part of the charge for furnishing a taxable accommodation. The
7 tax shall be stated and charged separately from the sales records, and shall be paid by
8 the purchaser to the operator of the business as trustee for and on account of the
9 town. The tax shall be added to the sales price and shall be passed on to the
10 purchaser instead of being borne by the operator of the business. The town shall
11 design, print, and furnish to all appropriate businesses and persons in the town the
12 necessary forms for filing returns and instructions to ensure the full collection of the
13 tax.

14 ~~(e) Administration.~~ The town shall administer a tax levied under this section. A
15 tax levied under this section is due and payable to the Holden Beach tax collector in
16 monthly installments on or before the 15th day of the month following the month in
17 which the tax accrues. Every person, firm, corporation, or association liable for the
18 tax shall, on or before the 15th day of each month, prepare and render a return on a
19 form prescribed by the town. The return shall state the total gross receipts derived in
20 the preceding month from rentals upon which the tax is levied. A return filed with
21 the tax collector under this section is not a public record as defined by G.S. 132-1
22 and may not be disclosed except as required by law.

23 The tax collector may collect any unpaid taxes levied under this act ~~section~~
24 through the use of attachment and garnishment proceedings as provided in G.S.
25 105-368 for collection of property taxes. The tax collector has the same enforcement
26 powers concerning the tax imposed by this act as does the Secretary of Revenue in
27 enforcing the State sales tax under G.S. 105-164.30.

28 ~~(d) Penalties.~~ A person, firm, corporation, or association who fails or refuses to
29 file the return required by this section shall pay a penalty of ten dollars (\$10.00) for
30 each day's omission. In case of failure or refusal to file the return or pay the tax for
31 a period of 30 days after the time required for filing the return or for paying the tax,
32 there shall be an additional tax, as a penalty, of five percent (5%) of the tax due in
33 addition to any other penalty, with an additional tax of five percent (5%) for each
34 additional month or fraction thereof until the tax is paid.

35 Any person who willfully attempts in any manner to evade a tax imposed under
36 this section or who willfully fails to pay the tax or make and file a return shall, in
37 addition to all other penalties provided by law, be guilty of a misdemeanor and shall
38 be punishable by a fine not to exceed one thousand dollars (\$1,000), imprisonment
39 not to exceed six months, or both. The town council may, for good cause shown,
40 compromise or forgive the penalties imposed by this subsection.

41 ~~(e)~~ (c) Distribution and use of tax revenue. The tax collector shall remit the
42 proceeds of this tax to the town on a monthly basis. The funds received by the town
43 pursuant to this act proceeds of the tax levied under subsection (a) of this section
44 shall be allocated to a special fund and used only for tourism-related expenditures.

1 As used in this act, the term 'tourism-related expenditures' includes the following
2 types of expenditures: criminal justice system, fire protection, public facilities and
3 utilities, health facilities, solid waste and sewage treatment, and the control and repair
4 of water front erosion. These funds may not be used for services normally provided
5 by the town on behalf of its citizens unless these services promote tourism and
6 enlarge its economic benefits by enhancing the ability of the town to attract and
7 provide for tourists.

8 The town may use the proceeds of a tax levied under subsection (a1) of this
9 section only for beach renourishment.

10 ~~(f) Effective date of levy. A tax levied under this section shall become effective~~
11 ~~on the date specified in the resolution levying the tax. That date must be the first~~
12 ~~day of a calendar month, however, and may not be earlier than the first day of the~~
13 ~~second month after the date the resolution is adopted.~~

14 ~~(g) Repeal. A tax levied under this section may be repealed by a resolution~~
15 ~~adopted by the Holden Beach Town Council. Repeal of a tax levied under this~~
16 ~~section shall become effective on the first day of a month and may not become~~
17 ~~effective until the end of the fiscal year in which the repeal resolution was adopted.~~
18 ~~Repeal of a tax levied under this section does not affect a liability for a tax that was~~
19 ~~attached before the effective date of the repeal, nor does it affect a right to a refund~~
20 ~~of a tax that accrued before the effective date of the repeal."~~

21 Section 10. Ocean Isle Beach occupancy tax changes. Part IX of Chapter
22 908 of the 1983 Session Laws, as amended by Chapter 985 of the 1983 Session Laws
23 and Chapter 857 of the 1989 Session Laws, as it relates to the Town of Ocean Isle
24 Beach only, is reenacted and rewritten as Section 11 of this act.

25 Section 11. Ocean Isle Beach occupancy tax. (a) Authorization and
26 scope. The Board of Commissioners of the Town of Ocean Isle Beach may levy a
27 room occupancy tax of up to three percent (3%) of the gross receipts derived from
28 the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn,
29 tourist camp, or similar place within the town that is subject to sales tax imposed by
30 the State under G.S. 105-164.4(a)(3) and from the rental of private residences and
31 cottages, whether or not the residence or cottage is rented for less than 15 days. This
32 tax is in addition to any State or local sales tax.

33 (b) Authorization of additional tax. In addition to the tax authorized by
34 subsection (a) of this section, the Board of Commissioners of the Town of Ocean Isle
35 Beach may levy an additional room occupancy tax of up to two percent (2%) of the
36 gross receipts derived from the rental of accommodations taxable under subsection
37 (a). The levy, collection, administration, and repeal of the tax authorized by this
38 subsection shall be in accordance with the provisions of this section. The town
39 council may not levy a tax under this subsection unless it also levies the tax
40 authorized under subsection (a) of this section.

41 (c) Administration. A tax levied under this section shall be levied,
42 administered, collected, and repealed as provided in G.S. 160A-215. The penalties
43 provided in G.S. 160A-215 apply to a tax levied under this section.

1 The tax collector may collect any unpaid taxes levied under this section
2 through the use of attachment and garnishment proceedings as provided in G.S.
3 105-368 for collection of property taxes. The tax collector has the same enforcement
4 powers concerning the tax imposed by this act as does the Secretary of Revenue in
5 enforcing the State sales tax under G.S. 105-164.30.

6 (d) Distribution and use of tax revenue. The Town of Ocean Isle Beach
7 may use the proceeds of the tax levied pursuant to subsection (a) of this section only
8 for tourism-related expenditures. As used in this section, "tourism-related
9 expenditures" includes any of the following expenditures: criminal justice system, fire
10 protection, public facilities and utilities, health facilities, solid waste and sewage
11 treatment, and the control and repair of waterfront erosion. The term does not
12 include, however, expenditures for services normally provided by the town on behalf
13 of its citizens unless these services promote tourism and enlarge its economic benefits
14 by enhancing the ability of the town to attract and provide for tourists.

15 The Town of Ocean Isle Beach may use the proceeds of the tax levied
16 pursuant to subsection (b) of this section only for beach renourishment.

17 Section 12. Sunset Beach occupancy tax changes. Section 1 of Chapter
18 956 of the 1987 Session Laws reads as rewritten:

19 "Section 1. Occupancy tax. (a) Authorization and scope. The Sunset Beach
20 Town Council may ~~by resolution, after not less than 10 days' public notice and after~~
21 ~~a public hearing held pursuant thereto,~~ levy a room occupancy tax of no more than
22 three percent (3%) of the gross receipts derived from the rental of any room, lodging,
23 or similar accommodation furnished by a hotel, motel, inn, or similar place within the
24 town that is subject to sales tax imposed by the State under G.S. ~~105-164.4(3)~~
25 105-164.4(a)(3) and on the rental of all private residences and cottages, regardless of
26 whether the residence or cottage is rented for less than 15 days. This tax is in
27 addition to any State or local sales tax. This tax does not apply to accommodations
28 furnished by nonprofit charitable, educational, or religious organizations.

29 (a1) Authorization of additional tax. In addition to the tax authorized by
30 subsection (a) of this section, the Sunset Beach Town Council may levy an additional
31 room occupancy tax of up to two percent (2%) of the gross receipts derived from the
32 rental of accommodations taxable under subsection (a). The levy, collection,
33 administration, and repeal of the tax authorized by this subsection shall be in
34 accordance with the provisions of this section. The Town of Sunset Beach may not
35 levy a tax under this subsection unless it also levies the tax authorized under
36 subsection (a) of this section.

37 (b) Administration. A tax levied under this section shall be levied, administered,
38 collected, and repealed as provided in G.S. 160A-215. The penalties provided in
39 G.S. 160A-215 apply to a tax levied under this section.

40 ~~Collection. Every operator of a business subject to the tax levied under this section~~
41 ~~shall, on and after the effective date of the levy of the tax, collect the tax. This tax~~
42 ~~shall be collected as part of the charge for furnishing a taxable accommodation. The~~
43 ~~tax shall be stated and charged separately from the sales records, and shall be paid by~~
44 ~~the purchaser to the operator of the business as trustee for and on account of the~~

1 ~~town. The tax shall be added to the sales price and shall be passed on to the~~
2 ~~purchaser instead of being borne by the operator of the business. The town shall~~
3 ~~design, print, and furnish to all appropriate businesses and persons in the town the~~
4 ~~necessary forms for filing returns and instructions to ensure the full collection of the~~
5 ~~tax.~~

6 ~~(e) Administration. The town shall administer a tax levied under this section. A~~
7 ~~tax levied under this section is due and payable to the Sunset Beach tax collector in~~
8 ~~monthly installments on or before the 15th day of the month following the month in~~
9 ~~which the tax accrues. Every person, firm, corporation, or association liable for the~~
10 ~~tax shall, on or before the 15th day of each month, prepare and render a return on a~~
11 ~~form prescribed by the town. The return shall state the total gross receipts derived in~~
12 ~~the preceding month from rentals upon which the tax is levied. A return filed with~~
13 ~~the tax collector under this section is not a public record as defined by G.S. 132-1~~
14 ~~and may not be disclosed except as required by law.~~

15 The tax collector may collect any unpaid taxes levied under this act section
16 through the use of attachment and garnishment proceedings as provided in G.S.
17 105-368 for collection of property taxes. The tax collector has the same enforcement
18 powers concerning the tax imposed by this act as does the Secretary of Revenue in
19 enforcing the State sales tax under G.S. 105-164.30.

20 ~~(d) Penalties. A person, firm, corporation, or association who fails or refuses to~~
21 ~~file the return required by this section shall pay a penalty of ten dollars (\$10.00) for~~
22 ~~each day's omission. In case of failure or refusal to file the return or pay the tax for~~
23 ~~a period of 30 days after the time required for filing the return or for paying the tax,~~
24 ~~there shall be an additional tax, as a penalty, of five percent (5%) of the tax due in~~
25 ~~addition to any other penalty, with an additional tax of five percent (5%) for each~~
26 ~~additional month or fraction thereof until the tax is paid.~~

27 ~~Any person who willfully attempts in any manner to evade a tax imposed under~~
28 ~~this section or who willfully fails to pay the tax or make and file a return shall, in~~
29 ~~addition to all other penalties provided by law, be guilty of a misdemeanor and shall~~
30 ~~be punishable by a fine not to exceed one thousand dollars (\$1,000), imprisonment~~
31 ~~not to exceed six months, or both. The town council may, for good cause shown,~~
32 ~~compromise or forgive the penalties imposed by this subsection.~~

33 ~~(e) (c) Distribution and use of tax revenue. The tax collector shall remit the~~
34 ~~proceeds of this tax to the town on a monthly basis. The funds received by the town~~
35 ~~pursuant to this act shall be allocated town shall allocate the proceeds of the tax~~
36 ~~levied pursuant to subsection (a) of this section to a special fund and ~~used~~ shall use~~
37 ~~them~~ only for tourism-related expenditures. As used in this act, the term
38 'tourism-related expenditures' includes the following types of expenditures: criminal
39 justice system, fire protection, public facilities and utilities, health facilities, solid
40 waste and sewage treatment, and the control and repair of water front erosion. These
41 funds may not be used for services normally provided by the town on behalf of its
42 citizens unless these services promote tourism and enlarge its economic benefits by
43 enhancing the ability of the town to attract and provide for tourists.

1 The town may use the proceeds of the tax levied pursuant to subsection (a1) of this
2 section only for beach renourishment.

3 ~~(f) Effective date of levy. A tax levied under this section shall become effective~~
4 ~~on the date specified in the resolution levying the tax. That date must be the first~~
5 ~~day of a calendar month, however, and may not be earlier than the first day of the~~
6 ~~second month after the date the resolution is adopted.~~

7 ~~(g) Repeal. A tax levied under this section may be repealed by a resolution~~
8 ~~adopted by the Sunset Beach Town Council. Repeal of a tax levied under this~~
9 ~~section shall become effective on the first day of a month and may not become~~
10 ~~effective until the end of the fiscal year in which the repeal resolution was adopted.~~
11 ~~Repeal of a tax levied under this section does not affect a liability for a tax that was~~
12 ~~attached before the effective date of the repeal, nor does it affect a right to a refund~~
13 ~~of a tax that accrued before the effective date of the repeal."~~

14 Section 13. Yaupon Beach occupancy tax changes. Section 1 of Chapter
15 820 of the 1991 Session Laws reads as rewritten:

16 "Section 1. Yaupon Beach Occupancy Tax. (a) Authorization and Scope. The
17 Board of Commissioners of the Town of Yaupon Beach may ~~by resolution, after not~~
18 ~~less than 10 days' public notice and a public hearing held pursuant thereto,~~ levy a
19 room occupancy tax of up to three percent (3%) of the gross receipts derived from
20 the rental of accommodations within the town that are subject to sales tax imposed by
21 the State under G.S. 105-164.4(a)(3) and from the rental of private residences and
22 cottages within the town that are exempt from the sales tax imposed under G.S.
23 105-164.4(a)(3) solely because they are rented for less than 15 days.

24 (a1) Authorization of Additional Tax. In addition to the tax authorized by
25 subsection (a) of this section, the Board of Commissioners of the Town of Yaupon
26 Beach may levy an additional room occupancy tax of up to two percent (2%) of the
27 gross receipts derived from the rental of accommodations taxable under subsection
28 (a). The levy, collection, administration, and repeal of the tax authorized by this
29 subsection shall be in accordance with the provisions of this section. The Town of
30 Yaupon Beach may not levy a tax under this subsection unless it also levies the tax
31 authorized under subsection (a) of this section.

32 (b) Administration. A tax levied under this section shall be levied, administered,
33 collected, and repealed as provided in G.S. 160A-215. The penalties provided in
34 G.S. 160A-215 apply to a tax levied under this section.

35 ~~Collection. Every operator of a business subject to the tax levied by this act shall, on~~
36 ~~and after the effective date of the tax, collect the tax. This tax shall be collected as~~
37 ~~part of the charge for furnishing a taxable accommodation. The tax shall be stated~~
38 ~~and charged separately from the sales records, and shall be paid by the purchaser to~~
39 ~~the operator of the business as trustee for and on account of the town. The~~
40 ~~occupaney tax levied under this act shall be added to the sales price and shall be~~
41 ~~passed on to the purchaser instead of being borne by the owner of the business. The~~
42 ~~town shall design, print, and furnish to all appropriate businesses in the town the~~
43 ~~necessary forms for filing returns and instructions to ensure the full collection of the~~
44 ~~tax.~~

1 ~~(e) Administration. The town shall administer the occupancy tax levied under~~
2 ~~this act. A tax levied under this act is due and payable to the town tax collector in~~
3 ~~monthly installments on or before the fifteenth day of the month following the month~~
4 ~~in which the tax accrues. Every person, firm, or corporation liable for the tax shall,~~
5 ~~on or before the fifteenth day of each month, prepare and render a return on a form~~
6 ~~prescribed by the town. The return shall state the total gross receipts derived in the~~
7 ~~preceding month from rentals upon which the tax is levied.~~

8 ~~A return filed with the town tax collector under this act is not a public record as~~
9 ~~defined by G.S. 132-1 and may not be disclosed except as required by law.~~

10 ~~(d) Penalties. A person, firm, corporation, or association who fails or refuses to~~
11 ~~file the return required by this act shall pay a penalty of ten dollars (\$10.00) for each~~
12 ~~day's omission. In case of failure or refusal to file the return or pay the tax for a~~
13 ~~period of 30 days after the time required for filing the return or for paying the tax,~~
14 ~~there shall be an additional tax, as a penalty, of five percent (5%) of the tax due in~~
15 ~~addition to any other penalty, with an additional penalty of five percent (5%) for~~
16 ~~each additional month or fraction thereof until the tax is paid. The board of~~
17 ~~commissioners may, for good cause shown, compromise or forgive the additional tax~~
18 ~~penalties imposed by this subsection.~~

19 ~~Any person who willfully attempts in any manner to evade a tax imposed under~~
20 ~~this act or who willfully fails to pay the tax or make and file a return shall, in~~
21 ~~addition to all other penalties provided by law, be guilty of a misdemeanor and shall~~
22 ~~be punishable by a fine not to exceed one thousand dollars (\$1,000), imprisonment~~
23 ~~not to exceed six months, or both.~~

24 ~~(e) (c) Use of Proceeds. The town may use the proceeds of a tax levied under this~~
25 ~~act subsection (a) of this section only for tourism-related expenditures. As used in~~
26 ~~this act, the term 'tourism-related expenditures' includes the following types of~~
27 ~~expenditures: criminal justice system, fire protection, public facilities and utilities,~~
28 ~~health facilities, solid waste and sewage treatment, and the control and repair of~~
29 ~~waterfront erosion. These funds may not be used for services normally provided by~~
30 ~~the town on behalf of its citizens unless these services promote tourism and enlarge~~
31 ~~its economic benefits by enhancing the ability of the town to attract and provide for~~
32 ~~tourists.~~

33 ~~The town may use the proceeds of a tax levied under subsection (a1) of this~~
34 ~~section only for beach renourishment.~~

35 ~~(f) Effective Date of Levy. A tax levied under this act shall become effective on~~
36 ~~the date specified in the resolution levying the tax. That date must be the first day of~~
37 ~~a calendar month, however, and may not be earlier than the first day of the second~~
38 ~~month after the date the resolution is adopted.~~

39 ~~(g) Repeal. The Board of Commissioners of the Town of Yaupon Beach may by~~
40 ~~resolution repeal a tax levied under this act. Repeal of a tax levied under this act~~
41 ~~shall become effective on the first day of a month and may not become effective until~~
42 ~~the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax~~
43 ~~levied under this act does not affect a liability for a tax that was attached before the~~

1 ~~effective date of the repeal, nor does it affect a right to a refund of a tax that accrued~~
2 ~~before the effective date of the repeal."~~

3 Section 14. Person County occupancy tax. (a) Authorization and scope.
4 The Person County Board of Commissioners may levy a room occupancy tax of up to
5 five percent (5%) of the gross receipts derived from the rental of any room, lodging,
6 or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place
7 within the county that is subject to sales tax imposed by the State under G.S. 105-
8 164.4(a)(3).

9 This tax is in addition to any State or local sales tax. This tax does not
10 apply to accommodations furnished by nonprofit charitable, educational, or religious
11 organizations when furnished in furtherance of their nonprofit purpose.

12 (b) Administration. Except as otherwise provided in this section, a tax
13 levied under this section shall be levied, administered, collected, and repealed as
14 provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax
15 levied under this section.

16 (c) Distribution and use of tax revenue. Person County shall, on a
17 quarterly basis, remit the net proceeds of the occupancy tax to the Person Tourism
18 Development Authority. Of the net proceeds that accrue during the first four years
19 that a tax is levied under this section, the Authority may use up to two-thirds only for
20 the following tourism-related expenditures: (i) constructing or operating the Person
21 County Historical Museum, (ii) developing Lake Mayo for fishing tournaments, skiing
22 tournaments, and other activities designed to attract tourists to the lake from outside
23 the county, and (iii) supporting the May Festival and other festivals designed to
24 attract tourists from outside the county. The Authority shall use the remaining net
25 proceeds that accrue during the first four years that a tax is levied under this section
26 only to promote travel and tourism in Person County.

27 Of the net proceeds that accrue after this four-year period, the Authority
28 shall use at least two-thirds of the funds remitted to it under this subsection to
29 promote travel and tourism in Person County and shall use the remainder for
30 tourism-related expenditures.

31 The following definitions apply in this subsection:

32 (1) Net proceeds. -- Gross proceeds less the cost to the county of
33 administering and collecting the tax, as determined by the finance
34 officer, not to exceed three percent (3%) of the gross proceeds.

35 (2) Promote travel and tourism. -- To advertise or market an area or
36 activity, publish and distribute pamphlets and other materials,
37 conduct market research, or engage in similar promotional
38 activities that attract tourists or business travelers to the area; the
39 term includes administrative expenses incurred by the Authority in
40 engaging in the listed activities.

41 (3) Tourism-related expenditures. -- Expenditures that, in the
42 judgment of the Authority, are designed to increase the use of
43 lodging facilities, meeting facilities, and convention facilities in a

1 county or to attract tourists or business travelers to the county.
2 The term includes tourism-related capital expenditures.

3 Section 15. Person Tourism Development Authority. (a) Appointment
4 and membership. When the board of commissioners adopts a resolution levying a
5 room occupancy tax under Section 17 of this act, it shall also adopt a resolution
6 creating a county Tourism Development Authority, which shall be a public authority
7 under the Local Government Budget and Fiscal Control Act.

8 The Authority shall be composed of six members, three appointed by the
9 Person County Board of Commissioners and three appointed by the Roxboro City
10 Council. One of the three members appointed by each governing body must be an
11 owner or manager of a Person County hotel or motel. The remaining members must
12 be individuals who are currently active in the promotion of travel and tourism in the
13 county. The resolution shall determine the compensation, if any, to be paid to
14 members of the Authority.

15 The initial terms of the members who are owners or managers of a hotel
16 or motel shall be three years. Each governing body shall designate one of its
17 remaining appointees to serve an initial term of two years and the other to serve an
18 initial term of one year. Thereafter, all terms shall be three years. Vacancies shall be
19 filled in the same manner as original appointments, and members appointed to fill
20 vacancies shall serve for the remainder of the unexpired term.

21 At its first meeting and at the first meeting of each calendar year, the
22 membership of the Authority shall elect one member to serve as chair until the first
23 meeting of the following calendar year. The Authority shall meet at the call of the
24 chair and shall adopt rules of procedure to govern its meetings. The Finance Officer
25 for Person County shall be the ex officio finance officer of the Authority.

26 (b) Duties. The Authority shall expend the net proceeds of the tax
27 levied under Section 17 of this act for the purposes provided in Section 17 of this act.
28 The Authority shall promote travel, tourism, and conventions in the county, sponsor
29 tourist-related events and activities in the county, and finance tourist-related capital
30 projects in the county.

31 (c) Reports. The Authority shall report quarterly and at the close of the
32 fiscal year to the board of commissioners on its receipts and expenditures for the
33 preceding quarter and for the year in such detail as the board may require.

34 Section 16. This act is effective when it becomes law.



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 859

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

H859-ARB-7/22

Date July 23, 1997

Comm. Sub. [YES]
Amends Title []
Third Edition

Senator Hoyle

1 moves to amend the bill on page 15, lines 5 and 27, by deleting
2 "Section 17" each time it appears and substituting "Section 14";
3
4 and on page 7, line 11; page 9, line 9; page 12, line 2; and on page
5 13, line 34, by deleting the word "renourishment." and substituting
6 the phrase "renourishment and protection." each time it appears;
7
8 and on page 10, line 16, by deleting the word "renourishment." and
9 substituting the phrase "renourishment and protection.".

SIGNED [Signature]
Amendment Sponsor

SIGNED [Signature]
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

HOUSE BILL 859
Committee Substitute Favorable 7/3/97
Committee Substitute #2 Favorable 7/10/97
Proposed Senate Committee Substitute H859-PCS7357

Short Title: Various Room Tax Changes.

(Local)

Sponsors:

Referred to:

April 7, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE BRUNSWICK COUNTY TO LEVY A ROOM
3 OCCUPANCY AND TOURISM DEVELOPMENT TAX, TO AUTHORIZE
4 CERTAIN MUNICIPALITIES IN BRUNSWICK COUNTY TO LEVY OR
5 INCREASE LOCAL OCCUPANCY TAXES, AND TO AUTHORIZE PERSON
6 COUNTY TO LEVY A ROOM OCCUPANCY AND TOURISM
7 DEVELOPMENT TAX.

8 The General Assembly of North Carolina enacts:

9 Section 1. Brunswick County occupancy tax. (a) Authorization and
10 scope. The Brunswick County Board of Commissioners may levy a room occupancy
11 tax of one percent (1%) of the gross receipts derived from the rental of any room,
12 lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar
13 place within the county that is subject to sales tax imposed by the State under G.S.
14 105-164.4(a)(3) and from the rental of private residences and cottages within the
15 county that are exempt from the sales tax imposed under G.S. 105-164.4(a)(3) solely
16 because they are rented for less than 15 days. This tax is in addition to any State or
17 local sales tax. This tax does not apply to accommodations furnished by nonprofit
18 charitable, educational, or religious organizations when furnished in furtherance of
19 their nonprofit purpose, or to accommodations subject to a municipal room
20 occupancy tax at the rate of six percent (6%).

1 (b) Administration. A tax levied under this section shall be levied,
2 administered, collected, and repealed as provided in G.S. 153A-155. The penalties
3 provided in G.S. 153A-155 apply to a tax levied under this section.

4 (c) Distribution and use of tax revenue. Brunswick County shall, on a
5 monthly basis, remit the net proceeds of the occupancy tax to the Brunswick Tourism
6 Development Authority. The Authority shall use the funds remitted to it under this
7 subsection to promote travel and tourism in Brunswick County. No more than ten
8 percent (10%) of the funds remitted to the Authority under this subsection may be
9 used for the Authority's administrative expenses, including salaries and benefits.

10 The following definitions apply in this subsection:

11 (1) Net proceeds. -- Gross proceeds less the cost to the county of
12 administering and collecting the tax, as determined by the finance
13 officer, not to exceed three percent (3%) of the gross proceeds.

14 (2) Promote travel and tourism. -- To advertise or market an area or
15 activity, publish and distribute pamphlets and other materials,
16 conduct market research, or engage in similar promotional
17 activities that attract tourists or business travelers to the area; the
18 term includes administrative expenses incurred in engaging in the
19 listed activities.

20 Section 2. Brunswick Tourism Development Authority. (a)
21 Appointment and membership. When the board of commissioners of Brunswick
22 County adopts a resolution levying a room occupancy tax under Section 1 of this act,
23 it shall also adopt a resolution creating a county Tourism Development Authority,
24 which shall be a public authority under the Local Government Budget and Fiscal
25 Control Act. The Authority shall have 10 members appointed by the Brunswick
26 County Commissioners as follows:

27 (1) Five individuals who are currently involved in the promotion of
28 travel and tourism, selected by the Brunswick County
29 Commissioners.

30 (2) Five individuals selected jointly by the South Brunswick Islands
31 Chamber of Commerce and the Southport-Oak Island Chamber of
32 Commerce.

33 The resolution shall provide for the members' terms of office and for the
34 filling of vacancies on the Authority. The board of commissioners shall designate one
35 member of the Authority as chair. Members of the Authority shall serve without
36 compensation.

37 The Authority shall meet monthly and shall adopt rules of procedure to
38 govern its meetings. The Finance Officer for Brunswick County shall be the ex
39 officio finance officer of the Authority.

40 (b) Duties. The Authority shall expend the net proceeds of the tax
41 levied under Section 1 of this act to promote travel and tourism in Brunswick County
42 as provided in Section 1 of this act. The Authority shall promote travel, tourism, and
43 conventions in the county.

1 (c) Reports. The Authority shall report quarterly and at the close of the
2 fiscal year to the board of commissioners on its receipts and expenditures for the
3 preceding quarter and for the year in such detail as the board may require.

4 Section 3. County administrative provisions. Section 3(b) of S.L. 1997-
5 102, as amended by Section 2 of S.L. 1997-255, reads as rewritten:

6 "(b) This section applies only to ~~Madison and Nash~~ Brunswick, Madison, Nash,
7 and Person Counties."

8 Section 4. Conforming change. Section 2(a2) of Chapter 664 of the 1991
9 Session Laws, as enacted by Chapter 617 of the 1993 Session Laws, is repealed.

10 Section 5. Municipal administrative provisions. (a) Article 9 of Chapter
11 160A of the General Statutes is amended by adding a new section to read:

12 "**§ 160A-215. Uniform provisions for room occupancy taxes.**

13 (a) Scope. -- This section applies only to municipalities the General Assembly has
14 authorized to levy room occupancy taxes. For the purpose of this section, the term
15 'city' means a municipality.

16 (b) Levy. -- A room occupancy tax may be levied only by resolution, after not less
17 than 10 days' public notice and after a public hearing held pursuant thereto. A room
18 occupancy tax shall become effective on the date specified in the resolution levying
19 the tax. That date must be the first day of a calendar month, however, and may not
20 be earlier than the first day of the second month after the date the resolution is
21 adopted.

22 (c) Collection. -- Every operator of a business subject to a room occupancy tax
23 shall, on and after the effective date of the levy of the tax, collect the tax. The tax
24 shall be collected as part of the charge for furnishing a taxable accommodation. The
25 tax shall be stated and charged separately from the sales records and shall be paid by
26 the purchaser to the operator of the business as trustee for and on account of the
27 taxing city. The tax shall be added to the sales price and shall be passed on to the
28 purchaser instead of being borne by the operator of the business. The taxing city
29 shall design, print, and furnish to all appropriate businesses and persons in the city
30 the necessary forms for filing returns and instructions to ensure the full collection of
31 the tax. An operator of a business who collects a room occupancy tax may deduct
32 from the amount remitted to the taxing city a discount equal to the discount the State
33 allows the operator for State sales and use tax.

34 (d) Administration. -- The taxing city shall administer a room occupancy tax it
35 levies. A room occupancy tax is due and payable to the city finance officer in
36 monthly installments on or before the 15th day of the month following the month in
37 which the tax accrues. Every person, firm, corporation, or association liable for the
38 tax shall, on or before the 15th day of each month, prepare and render a return on a
39 form prescribed by the taxing city. The return shall state the total gross receipts
40 derived in the preceding month from rentals upon which the tax is levied. A room
41 occupancy tax return filed with the city finance officer is not a public record and may
42 not be disclosed except in accordance with G.S. 153A-148.1 or G.S. 160A-208.1.

43 (e) Penalties. -- A person, firm, corporation, or association who fails or refuses to
44 file a room occupancy tax return or pay a room occupancy tax as required by law is

1 subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file
2 a return for State sales and use taxes. The governing board of the taxing city has the
3 same authority to waive the penalties for a room occupancy tax that the Secretary of
4 Revenue has to waive the penalties for State sales and use taxes.

5 (f) Repeal or Reduction. -- A room occupancy tax levied by a city may be
6 repealed or reduced by a resolution adopted by the governing body of the city.
7 Repeal or reduction of a room occupancy tax shall become effective on the first day
8 of a month and may not become effective until the end of the fiscal year in which the
9 resolution was adopted. Repeal or reduction of a room occupancy tax does not affect
10 a liability for a tax that was attached before the effective date of the repeal or
11 reduction, nor does it affect a right to a refund of a tax that accrued before the
12 effective date of the repeal or reduction."

13 (b) This section applies only to the municipalities in Brunswick County.

14 Section 6. Shallotte occupancy tax. (a) Authorization and scope. The
15 Board of Aldermen of the Town of Shallotte may levy a room occupancy tax of up to
16 three percent (3%) of the gross receipts derived from the rental of any room, lodging,
17 or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place
18 within the town that is subject to sales tax imposed by the State under G.S.
19 105-164.4(a)(3) and from the rental of private residences and cottages within the town
20 that are exempt from the sales tax imposed under G.S. 105-164.4(a)(3) solely because
21 they are rented for less than 15 days. This tax is in addition to any State or local
22 sales tax. This tax does not apply to accommodations furnished by nonprofit
23 charitable, educational, or religious organizations when furnished in furtherance of
24 their nonprofit purpose.

25 (b) Administration. A tax levied under this section shall be levied,
26 administered, collected, and repealed as provided in G.S. 160A-215. The penalties
27 provided in G.S. 160A-215 apply to a tax levied under this section.

28 (c) Distribution and use of tax revenue. The Town of Shallotte shall, on
29 a quarterly basis, remit the net proceeds of the occupancy tax to the Shallotte
30 Tourism Development Authority. The Authority shall use at least one-half of the
31 funds remitted to it under this subsection to promote travel and tourism in Shallotte
32 and shall use the remainder for tourism-related expenditures.

33 The following definitions apply in this subsection:

34 (1) Net proceeds. -- Gross proceeds less the cost to the town of
35 administering and collecting the tax, as determined by the finance
36 officer, not to exceed three percent (3%) of the first five hundred
37 thousand dollars (\$500,000) of gross proceeds collected each year
38 and one percent (1%) of the remaining gross receipts collected
39 each year.

40 (2) Promote travel and tourism. -- To advertise or market an area or
41 activity, publish and distribute pamphlets and other materials,
42 conduct market research, or engage in similar promotional
43 activities that attract tourists or business travelers to the area; the

1 term includes administrative expenses incurred in engaging in the
2 listed activities.

3 (3) Tourism-related expenditures. -- Expenditures that, in the
4 judgment of the Authority, are designed to increase the use of
5 lodging facilities, meeting facilities, or convention facilities in the
6 town or to attract tourists or business travelers to the town. The
7 term includes tourism-related capital expenditures.

8 Section 7. Shallotte Tourism Development Authority. (a) Appointment
9 and membership. When the Board of Aldermen of the Town of Shallotte adopts a
10 resolution levying a room occupancy tax under Section 6 of this act, it shall also
11 adopt a resolution creating a town Tourism Development Authority, which shall be a
12 public authority under the Local Government Budget and Fiscal Control Act. The
13 Authority shall have five members appointed by the board of aldermen. The
14 resolution shall provide for the membership of the Authority, including the members'
15 terms of office, and for the filling of vacancies on the Authority. At least one-third of
16 the members must be individuals who are affiliated with businesses that collect the
17 tax in the town and at least three-fourths of the members must be individuals who are
18 currently active in the promotion of travel and tourism in the town. The Board of
19 Aldermen of the Town of Shallotte shall designate one member of the Authority as
20 chair and shall determine the compensation, if any, to be paid to members of the
21 Authority.

22 The Authority shall meet at the call of the chair and shall adopt rules of
23 procedure to govern its meetings. The Finance Officer for the Town of Shallotte
24 shall be the ex officio finance officer of the Authority.

25 (b) Duties. The Authority shall expend the net proceeds of the tax
26 levied under Section 6 of this act for the purposes provided in Section 6 of this act.
27 The Authority shall promote travel, tourism, and conventions in the town, sponsor
28 tourist-related events and activities in the town, and finance tourist-related capital
29 projects in the town.

30 (c) Reports. The Authority shall report quarterly and at the close of the
31 fiscal year to the Board of Aldermen of the Town of Shallotte on its receipts and
32 expenditures for the preceding quarter and for the year in such detail as the board
33 may require.

34 Section 8. Caswell Beach occupancy tax changes. Section 1 of Chapter
35 664 of the 1991 Session Laws reads as rewritten:

36 "Section 1. Caswell Beach Occupancy Tax. (a) Authorization and Scope. The
37 Board of Commissioners of the Town of Caswell Beach may ~~by resolution, after not~~
38 ~~less than 10 days' public notice and a public hearing held pursuant thereto,~~ levy a
39 room occupancy tax of up to three percent (3%) of the gross receipts derived from
40 the rental of accommodations within the town that are subject to sales tax imposed by
41 the State under G.S. 105-164.4(a)(3) and from the rental of private residences and
42 cottages within the town that are exempt from the sales tax imposed under G.S. 105-
43 164.4(a)(3) solely because they are rented for less than 15 days.

1 (a1) Authorization of Additional Tax. In addition to the tax authorized by
2 subsection (a) of this section, the Board of Commissioners of the Town of Caswell
3 Beach may levy an additional room occupancy tax of up to two percent (2%) of the
4 gross receipts derived from the rental of accommodations taxable under subsection
5 (a). The levy, collection, administration, and repeal of the tax authorized by this
6 subsection shall be in accordance with the provisions of this section. The Town of
7 Caswell Beach may not levy a tax under this subsection unless it also levies the tax
8 authorized under subsection (a) of this section.

9 (b) Administration. A tax levied under this section shall be levied, administered,
10 collected, and repealed as provided in G.S. 160A-215. The penalties provided in
11 G.S. 160A-215 apply to a tax levied under this section.

12 ~~Collection. Every operator of a business subject to the tax levied by this act shall, on~~
13 ~~and after the effective date of the tax, collect the tax. This tax shall be collected as~~
14 ~~part of the charge for furnishing a taxable accommodation. The tax shall be stated~~
15 ~~and charged separately from the sales records, and shall be paid by the purchaser to~~
16 ~~the operator of the business as trustee for and on account of the town. The~~
17 ~~occupancy tax levied under this act shall be added to the sales price and shall be~~
18 ~~passed on to the purchaser instead of being borne by the owner of the business. The~~
19 ~~town shall design, print, and furnish to all appropriate businesses in the town the~~
20 ~~necessary forms for filing returns and instructions to ensure the full collection of the~~
21 ~~tax.~~

22 ~~(c) Administration. The town shall administer the occupancy tax levied under~~
23 ~~this act. A tax levied under this act is due and payable to the town tax collector in~~
24 ~~monthly installments on or before the fifteenth day of the month following the month~~
25 ~~in which the tax accrues. Every person, firm, or corporation liable for the tax shall,~~
26 ~~on or before the fifteenth day of each month, prepare and render a return on a form~~
27 ~~prescribed by the town. The return shall state the total gross receipts derived in the~~
28 ~~preceding month from rentals upon which the tax is levied.~~

29 ~~A return filed with the town tax collector under this act is not a public record as~~
30 ~~defined by G.S. 132-1 and may not be disclosed except as required by law.~~

31 ~~(d) Penalties. A person, firm, corporation, or association who fails or refuses to~~
32 ~~file the return required by this act shall pay a penalty of ten dollars (\$10.00) for each~~
33 ~~day's omission. In case of failure or refusal to file the return or pay the tax for a~~
34 ~~period of 30 days after the time required for filing the return or for paying the tax,~~
35 ~~there shall be an additional tax, as a penalty, of five percent (5%) of the tax due in~~
36 ~~addition to any other penalty, with an additional penalty of five percent (5%) for~~
37 ~~each additional month or fraction thereof until the tax is paid. The board of~~
38 ~~commissioners may, for good cause shown, compromise or forgive the additional tax~~
39 ~~penalties imposed by this subsection.~~

40 ~~Any person who willfully attempts in any manner to evade a tax imposed under~~
41 ~~this act or who willfully fails to pay the tax or make and file a return shall, in~~
42 ~~addition to all other penalties provided by law, be guilty of a misdemeanor and shall~~
43 ~~be punishable by a fine not to exceed one thousand dollars (\$1,000), imprisonment~~
44 ~~not to exceed six months, or both.~~

1 ~~(e)(c)~~ Use of Proceeds. The town may use the proceeds of a tax levied under this
2 act subsection (a) of this section only for tourism-related expenditures. As used in
3 this act, section, the term 'tourism-related expenditures' includes the following types
4 of expenditures: criminal justice system, fire protection, public facilities and utilities,
5 health facilities, solid waste and sewage treatment, and the control and repair of
6 waterfront erosion. These funds may not be used for services normally provided by
7 the town on behalf of its citizens unless these services promote tourism and enlarge
8 its economic benefits by enhancing the ability of the town to attract and provide for
9 tourists.

10 The town may use the proceeds of a tax levied under subsection (a1) of this
11 section only for beach renourishment and protection.

12 ~~(f) Effective Date of Levy. A tax levied under this act shall become effective on~~
13 ~~the date specified in the resolution levying the tax. That date must be the first day of~~
14 ~~a calendar month, however, and may not be earlier than the first day of the second~~
15 ~~month after the date the resolution is adopted.~~

16 ~~(g) Repeal. The Board of Commissioners of the Town of Caswell Beach may by~~
17 ~~resolution repeal a tax levied under this act. Repeal of a tax levied under this act~~
18 ~~shall become effective on the first day of a month and may not become effective until~~
19 ~~the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax~~
20 ~~levied under this act does not affect a liability for a tax that was attached before the~~
21 ~~effective date of the repeal, nor does it affect a right to a refund of a tax that accrued~~
22 ~~before the effective date of the repeal."~~

23 Section 9. Holden Beach occupancy tax changes. Section 1 of Chapter
24 963 of the 1987 Session Laws reads as rewritten:

25 "Section 1. Occupancy tax. (a) Authorization and scope. The Holden Beach
26 Town Council may ~~by resolution, after not less than 10 days' public notice and after~~
27 ~~a public hearing held pursuant thereto,~~ levy a room occupancy tax of no more than
28 three percent (3%) of the gross receipts derived from the rental of any room, lodging,
29 or similar accommodation furnished by a hotel, motel, inn, or similar place within the
30 town that is subject to sales tax imposed by the State under G.S. ~~105-164.4(3)~~
31 105-164.4(a)(3) and on the rental of all private residences and cottages, regardless of
32 whether the residence or cottage is rented for less than 15 days. This tax is in
33 addition to any State or local sales tax. This tax does not apply to accommodations
34 furnished by nonprofit charitable, educational, or religious organizations.

35 (a1) Authorization of additional tax. In addition to the tax authorized by
36 subsection (a) of this section, the Holden Beach Town Council may levy an
37 additional room occupancy tax of up to two percent (2%) of the gross receipts
38 derived from the rental of accommodations taxable under subsection (a). The levy,
39 collection, administration, and repeal of the tax authorized by this subsection shall be
40 in accordance with the provisions of this section. The Holden Beach Town Council
41 may not levy a tax under this subsection unless it also levies the tax authorized under
42 subsection (a) of this section.

1 (b) Administration. A tax levied under this section shall be levied, administered,
2 collected, and repealed as provided in G.S. 160A-215. The penalties provided in
3 G.S. 160A-215 apply to a tax levied under this section.

4 ~~Collection.~~ Every operator of a business subject to the tax levied under this section
5 shall, on and after the effective date of the levy of the tax, collect the tax. This tax
6 shall be collected as part of the charge for furnishing a taxable accommodation. The
7 tax shall be stated and charged separately from the sales records, and shall be paid by
8 the purchaser to the operator of the business as trustee for and on account of the
9 town. The tax shall be added to the sales price and shall be passed on to the
10 purchaser instead of being borne by the operator of the business. The town shall
11 design, print, and furnish to all appropriate businesses and persons in the town the
12 necessary forms for filing returns and instructions to ensure the full collection of the
13 tax.

14 (c) ~~Administration.~~ The town shall administer a tax levied under this section. A
15 tax levied under this section is due and payable to the Holden Beach tax collector in
16 monthly installments on or before the 15th day of the month following the month in
17 which the tax accrues. Every person, firm, corporation, or association liable for the
18 tax shall, on or before the 15th day of each month, prepare and render a return on a
19 form prescribed by the town. The return shall state the total gross receipts derived in
20 the preceding month from rentals upon which the tax is levied. A return filed with
21 the tax collector under this section is not a public record as defined by G.S. 132-1
22 and may not be disclosed except as required by law.

23 The tax collector may collect any unpaid taxes levied under this act section
24 through the use of attachment and garnishment proceedings as provided in G.S.
25 105-368 for collection of property taxes. The tax collector has the same enforcement
26 powers concerning the tax imposed by this act as does the Secretary of Revenue in
27 enforcing the State sales tax under G.S. 105-164.30.

28 (d) ~~Penalties.~~ A person, firm, corporation, or association who fails or refuses to
29 file the return required by this section shall pay a penalty of ten dollars (\$10.00) for
30 each day's omission. In case of failure or refusal to file the return or pay the tax for
31 a period of 30 days after the time required for filing the return or for paying the tax,
32 there shall be an additional tax, as a penalty, of five percent (5%) of the tax due in
33 addition to any other penalty, with an additional tax of five percent (5%) for each
34 additional month or fraction thereof until the tax is paid.

35 Any person who willfully attempts in any manner to evade a tax imposed under
36 this section or who willfully fails to pay the tax or make and file a return shall, in
37 addition to all other penalties provided by law, be guilty of a misdemeanor and shall
38 be punishable by a fine not to exceed one thousand dollars (\$1,000), imprisonment
39 not to exceed six months, or both. The town council may, for good cause shown,
40 compromise or forgive the penalties imposed by this subsection.

41 (e) (c) Distribution and use of tax revenue. The tax collector shall remit the
42 proceeds of this tax to the town on a monthly basis. The funds received by the town
43 pursuant to this act proceeds of the tax levied under subsection (a) of this section
44 shall be allocated to a special fund and used only for tourism-related expenditures.

1 As used in this act, the term 'tourism-related expenditures' includes the following
2 types of expenditures: criminal justice system, fire protection, public facilities and
3 utilities, health facilities, solid waste and sewage treatment, and the control and repair
4 of water front erosion. These funds may not be used for services normally provided
5 by the town on behalf of its citizens unless these services promote tourism and
6 enlarge its economic benefits by enhancing the ability of the town to attract and
7 provide for tourists.

8 The town may use the proceeds of a tax levied under subsection (a1) of this
9 section only for beach renourishment and protection.

10 ~~(f) Effective date of levy. A tax levied under this section shall become effective~~
11 ~~on the date specified in the resolution levying the tax. That date must be the first~~
12 ~~day of a calendar month, however, and may not be earlier than the first day of the~~
13 ~~second month after the date the resolution is adopted.~~

14 ~~(g) Repeal. A tax levied under this section may be repealed by a resolution~~
15 ~~adopted by the Holden Beach Town Council. Repeal of a tax levied under this~~
16 ~~section shall become effective on the first day of a month and may not become~~
17 ~~effective until the end of the fiscal year in which the repeal resolution was adopted.~~
18 ~~Repeal of a tax levied under this section does not affect a liability for a tax that was~~
19 ~~attached before the effective date of the repeal, nor does it affect a right to a refund~~
20 ~~of a tax that accrued before the effective date of the repeal."~~

21 Section 10. Ocean Isle Beach occupancy tax changes. Part IX of Chapter
22 908 of the 1983 Session Laws, as amended by Chapter 985 of the 1983 Session Laws
23 and Chapter 857 of the 1989 Session Laws, as it relates to the Town of Ocean Isle
24 Beach only, is reenacted and rewritten as Section 11 of this act.

25 Section 11. Ocean Isle Beach occupancy tax. (a) Authorization and
26 scope. The Board of Commissioners of the Town of Ocean Isle Beach may levy a
27 room occupancy tax of up to three percent (3%) of the gross receipts derived from
28 the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn,
29 tourist camp, or similar place within the town that is subject to sales tax imposed by
30 the State under G.S. 105-164.4(a)(3) and from the rental of private residences and
31 cottages, whether or not the residence or cottage is rented for less than 15 days. This
32 tax is in addition to any State or local sales tax.

33 (b) Authorization of additional tax. In addition to the tax authorized by
34 subsection (a) of this section, the Board of Commissioners of the Town of Ocean Isle
35 Beach may levy an additional room occupancy tax of up to two percent (2%) of the
36 gross receipts derived from the rental of accommodations taxable under subsection
37 (a). The levy, collection, administration, and repeal of the tax authorized by this
38 subsection shall be in accordance with the provisions of this section. The town
39 council may not levy a tax under this subsection unless it also levies the tax
40 authorized under subsection (a) of this section.

41 (c) Administration. A tax levied under this section shall be levied,
42 administered, collected, and repealed as provided in G.S. 160A-215. The penalties
43 provided in G.S. 160A-215 apply to a tax levied under this section.

1 The tax collector may collect any unpaid taxes levied under this section
2 through the use of attachment and garnishment proceedings as provided in G.S.
3 105-368 for collection of property taxes. The tax collector has the same enforcement
4 powers concerning the tax imposed by this act as does the Secretary of Revenue in
5 enforcing the State sales tax under G.S. 105-164.30.

6 (d) Distribution and use of tax revenue. The Town of Ocean Isle Beach
7 may use the proceeds of the tax levied pursuant to subsection (a) of this section only
8 for tourism-related expenditures. As used in this section, "tourism-related
9 expenditures" includes any of the following expenditures: criminal justice system, fire
10 protection, public facilities and utilities, health facilities, solid waste and sewage
11 treatment, and the control and repair of waterfront erosion. The term does not
12 include, however, expenditures for services normally provided by the town on behalf
13 of its citizens unless these services promote tourism and enlarge its economic benefits
14 by enhancing the ability of the town to attract and provide for tourists.

15 The Town of Ocean Isle Beach may use the proceeds of the tax levied
16 pursuant to subsection (b) of this section only for beach renourishment and
17 protection.

18 Section 12. Sunset Beach occupancy tax changes. Section 1 of Chapter
19 956 of the 1987 Session Laws reads as rewritten:

20 "Section 1. Occupancy tax. (a) Authorization and scope. The Sunset Beach
21 Town Council may ~~by resolution, after not less than 10 days' public notice and after~~
22 ~~a public hearing held pursuant thereto,~~ levy a room occupancy tax of no more than
23 three percent (3%) of the gross receipts derived from the rental of any room, lodging,
24 or similar accommodation furnished by a hotel, motel, inn, or similar place within the
25 town that is subject to sales tax imposed by the State under G.S. ~~105-164.4(3)~~
26 105-164.4(a)(3) and on the rental of all private residences and cottages, regardless of
27 whether the residence or cottage is rented for less than 15 days. This tax is in
28 addition to any State or local sales tax. This tax does not apply to accommodations
29 furnished by nonprofit charitable, educational, or religious organizations.

30 (a1) Authorization of additional tax. In addition to the tax authorized by
31 subsection (a) of this section, the Sunset Beach Town Council may levy an additional
32 room occupancy tax of up to two percent (2%) of the gross receipts derived from the
33 rental of accommodations taxable under subsection (a). The levy, collection,
34 administration, and repeal of the tax authorized by this subsection shall be in
35 accordance with the provisions of this section. The Town of Sunset Beach may not
36 levy a tax under this subsection unless it also levies the tax authorized under
37 subsection (a) of this section.

38 (b) Administration. A tax levied under this section shall be levied, administered,
39 collected, and repealed as provided in G.S. 160A-215. The penalties provided in
40 G.S. 160A-215 apply to a tax levied under this section.

41 ~~Collection. Every operator of a business subject to the tax levied under this section~~
42 ~~shall, on and after the effective date of the levy of the tax, collect the tax. This tax~~
43 ~~shall be collected as part of the charge for furnishing a taxable accommodation. The~~
44 ~~tax shall be stated and charged separately from the sales records, and shall be paid by~~

1 ~~the purchaser to the operator of the business as trustee for and on account of the~~
2 ~~town. The tax shall be added to the sales price and shall be passed on to the~~
3 ~~purchaser instead of being borne by the operator of the business. The town shall~~
4 ~~design, print, and furnish to all appropriate businesses and persons in the town the~~
5 ~~necessary forms for filing returns and instructions to ensure the full collection of the~~
6 ~~tax.~~

7 ~~(e) Administration. The town shall administer a tax levied under this section. A~~
8 ~~tax levied under this section is due and payable to the Sunset Beach tax collector in~~
9 ~~monthly installments on or before the 15th day of the month following the month in~~
10 ~~which the tax accrues. Every person, firm, corporation, or association liable for the~~
11 ~~tax shall, on or before the 15th day of each month, prepare and render a return on a~~
12 ~~form prescribed by the town. The return shall state the total gross receipts derived in~~
13 ~~the preceding month from rentals upon which the tax is levied. A return filed with~~
14 ~~the tax collector under this section is not a public record as defined by G.S. 132-1~~
15 ~~and may not be disclosed except as required by law.~~

16 The tax collector may collect any unpaid taxes levied under this act section
17 through the use of attachment and garnishment proceedings as provided in G.S.
18 105-368 for collection of property taxes. The tax collector has the same enforcement
19 powers concerning the tax imposed by this act as does the Secretary of Revenue in
20 enforcing the State sales tax under G.S. 105-164.30.

21 ~~(d) Penalties. A person, firm, corporation, or association who fails or refuses to~~
22 ~~file the return required by this section shall pay a penalty of ten dollars (\$10.00) for~~
23 ~~each day's omission. In case of failure or refusal to file the return or pay the tax for~~
24 ~~a period of 30 days after the time required for filing the return or for paying the tax,~~
25 ~~there shall be an additional tax, as a penalty, of five percent (5%) of the tax due in~~
26 ~~addition to any other penalty, with an additional tax of five percent (5%) for each~~
27 ~~additional month or fraction thereof until the tax is paid.~~

28 ~~Any person who willfully attempts in any manner to evade a tax imposed under~~
29 ~~this section or who willfully fails to pay the tax or make and file a return shall, in~~
30 ~~addition to all other penalties provided by law, be guilty of a misdemeanor and shall~~
31 ~~be punishable by a fine not to exceed one thousand dollars (\$1,000), imprisonment~~
32 ~~not to exceed six months, or both. The town council may, for good cause shown,~~
33 ~~compromise or forgive the penalties imposed by this subsection.~~

34 ~~(e) (c) Distribution and use of tax revenue. The tax collector shall remit the~~
35 ~~proceeds of this tax to the town on a monthly basis. The funds received by the town~~
36 ~~pursuant to this act shall be allocated town shall allocate the proceeds of the tax~~
37 ~~levied pursuant to subsection (a) of this section to a special fund and used shall use~~
38 ~~them only for tourism-related expenditures. As used in this act, the term~~
39 ~~'tourism-related expenditures' includes the following types of expenditures: criminal~~
40 ~~justice system, fire protection, public facilities and utilities, health facilities, solid~~
41 ~~waste and sewage treatment, and the control and repair of water front erosion. These~~
42 ~~funds may not be used for services normally provided by the town on behalf of its~~
43 ~~citizens unless these services promote tourism and enlarge its economic benefits by~~
44 ~~enhancing the ability of the town to attract and provide for tourists.~~

1 The town may use the proceeds of the tax levied pursuant to subsection (a1) of this
2 section only for beach renourishment and protection.

3 ~~(f) Effective date of levy. A tax levied under this section shall become effective~~
4 ~~on the date specified in the resolution levying the tax. That date must be the first~~
5 ~~day of a calendar month, however, and may not be earlier than the first day of the~~
6 ~~second month after the date the resolution is adopted.~~

7 ~~(g) Repeal. A tax levied under this section may be repealed by a resolution~~
8 ~~adopted by the Sunset Beach Town Council. Repeal of a tax levied under this~~
9 ~~section shall become effective on the first day of a month and may not become~~
10 ~~effective until the end of the fiscal year in which the repeal resolution was adopted.~~
11 ~~Repeal of a tax levied under this section does not affect a liability for a tax that was~~
12 ~~attached before the effective date of the repeal, nor does it affect a right to a refund~~
13 ~~of a tax that accrued before the effective date of the repeal."~~

14 Section 13. Yaupon Beach occupancy tax changes. Section 1 of Chapter
15 820 of the 1991 Session Laws reads as rewritten:

16 "Section 1. Yaupon Beach Occupancy Tax. (a) Authorization and Scope. The
17 Board of Commissioners of the Town of Yaupon Beach may ~~by resolution, after not~~
18 ~~less than 10 days' public notice and a public hearing held pursuant thereto,~~ levy a
19 room occupancy tax of up to three percent (3%) of the gross receipts derived from
20 the rental of accommodations within the town that are subject to sales tax imposed by
21 the State under G.S. 105-164.4(a)(3) and from the rental of private residences and
22 cottages within the town that are exempt from the sales tax imposed under G.S.
23 105-164.4(a)(3) solely because they are rented for less than 15 days.

24 (a1) Authorization of Additional Tax. In addition to the tax authorized by
25 subsection (a) of this section, the Board of Commissioners of the Town of Yaupon
26 Beach may levy an additional room occupancy tax of up to two percent (2%) of the
27 gross receipts derived from the rental of accommodations taxable under subsection
28 (a). The levy, collection, administration, and repeal of the tax authorized by this
29 subsection shall be in accordance with the provisions of this section. The Town of
30 Yaupon Beach may not levy a tax under this subsection unless it also levies the tax
31 authorized under subsection (a) of this section.

32 (b) Administration. A tax levied under this section shall be levied, administered,
33 collected, and repealed as provided in G.S. 160A-215. The penalties provided in
34 G.S. 160A-215 apply to a tax levied under this section.

35 ~~Collection. Every operator of a business subject to the tax levied by this act shall, on~~
36 ~~and after the effective date of the tax, collect the tax. This tax shall be collected as~~
37 ~~part of the charge for furnishing a taxable accommodation. The tax shall be stated~~
38 ~~and charged separately from the sales records, and shall be paid by the purchaser to~~
39 ~~the operator of the business as trustee for and on account of the town. The~~
40 ~~occupancy tax levied under this act shall be added to the sales price and shall be~~
41 ~~passed on to the purchaser instead of being borne by the owner of the business. The~~
42 ~~town shall design, print, and furnish to all appropriate businesses in the town the~~
43 ~~necessary forms for filing returns and instructions to ensure the full collection of the~~
44 ~~tax.~~

1 ~~(e) Administration. The town shall administer the occupancy tax levied under~~
2 ~~this act. A tax levied under this act is due and payable to the town tax collector in~~
3 ~~monthly installments on or before the fifteenth day of the month following the month~~
4 ~~in which the tax accrues. Every person, firm, or corporation liable for the tax shall,~~
5 ~~on or before the fifteenth day of each month, prepare and render a return on a form~~
6 ~~prescribed by the town. The return shall state the total gross receipts derived in the~~
7 ~~preceding month from rentals upon which the tax is levied.~~

8 ~~A return filed with the town tax collector under this act is not a public record as~~
9 ~~defined by G.S. 132-1 and may not be disclosed except as required by law.~~

10 ~~(d) Penalties. A person, firm, corporation, or association who fails or refuses to~~
11 ~~file the return required by this act shall pay a penalty of ten dollars (\$10.00) for each~~
12 ~~day's omission. In case of failure or refusal to file the return or pay the tax for a~~
13 ~~period of 30 days after the time required for filing the return or for paying the tax,~~
14 ~~there shall be an additional tax, as a penalty, of five percent (5%) of the tax due in~~
15 ~~addition to any other penalty, with an additional penalty of five percent (5%) for~~
16 ~~each additional month or fraction thereof until the tax is paid. The board of~~
17 ~~commissioners may, for good cause shown, compromise or forgive the additional tax~~
18 ~~penalties imposed by this subsection.~~

19 ~~Any person who willfully attempts in any manner to evade a tax imposed under~~
20 ~~this act or who willfully fails to pay the tax or make and file a return shall, in~~
21 ~~addition to all other penalties provided by law, be guilty of a misdemeanor and shall~~
22 ~~be punishable by a fine not to exceed one thousand dollars (\$1,000), imprisonment~~
23 ~~not to exceed six months, or both.~~

24 ~~(e) (c) Use of Proceeds. The town may use the proceeds of a tax levied under this~~
25 ~~act subsection (a) of this section only for tourism-related expenditures. As used in~~
26 ~~this act, the term 'tourism-related expenditures' includes the following types of~~
27 ~~expenditures: criminal justice system, fire protection, public facilities and utilities,~~
28 ~~health facilities, solid waste and sewage treatment, and the control and repair of~~
29 ~~waterfront erosion. These funds may not be used for services normally provided by~~
30 ~~the town on behalf of its citizens unless these services promote tourism and enlarge~~
31 ~~its economic benefits by enhancing the ability of the town to attract and provide for~~
32 ~~tourists.~~

33 ~~The town may use the proceeds of a tax levied under subsection (a1) of this~~
34 ~~section only for beach renourishment and protection.~~

35 ~~(f) Effective Date of Levy. A tax levied under this act shall become effective on~~
36 ~~the date specified in the resolution levying the tax. That date must be the first day of~~
37 ~~a calendar month, however, and may not be earlier than the first day of the second~~
38 ~~month after the date the resolution is adopted.~~

39 ~~(g) Repeal. The Board of Commissioners of the Town of Yaupon Beach may by~~
40 ~~resolution repeal a tax levied under this act. Repeal of a tax levied under this act~~
41 ~~shall become effective on the first day of a month and may not become effective until~~
42 ~~the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax~~
43 ~~levied under this act does not affect a liability for a tax that was attached before the~~

1 ~~effective date of the repeal, nor does it affect a right to a refund of a tax that accrued~~
2 ~~before the effective date of the repeal."~~

3 Section 14. Person County occupancy tax. (a) Authorization and scope.
4 The Person County Board of Commissioners may levy a room occupancy tax of up to
5 five percent (5%) of the gross receipts derived from the rental of any room, lodging,
6 or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place
7 within the county that is subject to sales tax imposed by the State under G.S. 105-
8 164.4(a)(3).

9 This tax is in addition to any State or local sales tax. This tax does not
10 apply to accommodations furnished by nonprofit charitable, educational, or religious
11 organizations when furnished in furtherance of their nonprofit purpose.

12 (b) Administration. Except as otherwise provided in this section, a tax
13 levied under this section shall be levied, administered, collected, and repealed as
14 provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax
15 levied under this section.

16 (c) Distribution and use of tax revenue. Person County shall, on a
17 quarterly basis, remit the net proceeds of the occupancy tax to the Person Tourism
18 Development Authority. Of the net proceeds that accrue during the first four years
19 that a tax is levied under this section, the Authority may use up to two-thirds only for
20 the following tourism-related expenditures: (i) constructing or operating the Person
21 County Historical Museum, (ii) developing Lake Mayo for fishing tournaments, skiing
22 tournaments, and other activities designed to attract tourists to the lake from outside
23 the county, and (iii) supporting the May Festival and other festivals designed to
24 attract tourists from outside the county. The Authority shall use the remaining net
25 proceeds that accrue during the first four years that a tax is levied under this section
26 only to promote travel and tourism in Person County.

27 Of the net proceeds that accrue after this four-year period, the Authority
28 shall use at least two-thirds of the funds remitted to it under this subsection to
29 promote travel and tourism in Person County and shall use the remainder for
30 tourism-related expenditures.

31 The following definitions apply in this subsection:

32 (1) Net proceeds. -- Gross proceeds less the cost to the county of
33 administering and collecting the tax, as determined by the finance
34 officer, not to exceed three percent (3%) of the gross proceeds.

35 (2) Promote travel and tourism. -- To advertise or market an area or
36 activity, publish and distribute pamphlets and other materials,
37 conduct market research, or engage in similar promotional
38 activities that attract tourists or business travelers to the area; the
39 term includes administrative expenses incurred by the Authority in
40 engaging in the listed activities.

41 (3) Tourism-related expenditures. -- Expenditures that, in the
42 judgment of the Authority, are designed to increase the use of
43 lodging facilities, meeting facilities, and convention facilities in a

1 county or to attract tourists or business travelers to the county.

2 The term includes tourism-related capital expenditures.

3 Section 15. Person Tourism Development Authority. (a) Appointment
4 and membership. When the board of commissioners adopts a resolution levying a
5 room occupancy tax under Section 14 of this act, it shall also adopt a resolution
6 creating a county Tourism Development Authority, which shall be a public authority
7 under the Local Government Budget and Fiscal Control Act.

8 The Authority shall be composed of six members, three appointed by the
9 Person County Board of Commissioners and three appointed by the Roxboro City
10 Council. One of the three members appointed by each governing body must be an
11 owner or manager of a Person County hotel or motel. The remaining members must
12 be individuals who are currently active in the promotion of travel and tourism in the
13 county. The resolution shall determine the compensation, if any, to be paid to
14 members of the Authority.

15 The initial terms of the members who are owners or managers of a hotel
16 or motel shall be three years. Each governing body shall designate one of its
17 remaining appointees to serve an initial term of two years and the other to serve an
18 initial term of one year. Thereafter, all terms shall be three years. Vacancies shall be
19 filled in the same manner as original appointments, and members appointed to fill
20 vacancies shall serve for the remainder of the unexpired term.

21 At its first meeting and at the first meeting of each calendar year, the
22 membership of the Authority shall elect one member to serve as chair until the first
23 meeting of the following calendar year. The Authority shall meet at the call of the
24 chair and shall adopt rules of procedure to govern its meetings. The Finance Officer
25 for Person County shall be the ex officio finance officer of the Authority.

26 (b) Duties. The Authority shall expend the net proceeds of the tax
27 levied under Section 14 of this act for the purposes provided in Section 14 of this act.
28 The Authority shall promote travel, tourism, and conventions in the county, sponsor
29 tourist-related events and activities in the county, and finance tourist-related capital
30 projects in the county.

31 (c) Reports. The Authority shall report quarterly and at the close of the
32 fiscal year to the board of commissioners on its receipts and expenditures for the
33 preceding quarter and for the year in such detail as the board may require.

34 Section 16. This act is effective when it becomes law.

EXPLANATION OF HOUSE BILL 859:
Various Room Tax Changes (3rd Edition)

TO: Senate Finance Committee
FROM: Martha H. Harris, Staff Attorney
DATE: July 22, 1997
SPONSOR: Representative Redwine

House Bill 859 contains the following provisions:

- Brunswick County is authorized to levy a 1% tax. The net proceeds will be remitted monthly to the Tourism Development Authority, which will use all of the net proceeds to promote tourism. The Tourism Development Authority may use no more than 10% for administrative expenses, including salary and benefits. (Section 1)
- The Brunswick County tax would not apply to any accommodations subject to a 6% municipal occupancy tax (Bald Head Island). (Sections 1 and 4)
- The Brunswick Tourism Development Authority will consist of 10 members, 5 selected by the county commissioners and 5 selected jointly by the two chambers of commerce. It will meet monthly and members will receive no compensation. (Section 2)
- The Town of Shallotte is authorized to levy a 3% room occupancy tax. Proceeds (net of the cost of collection) are distributed to a five-member tourism development authority, which will use ½ to promote travel and tourism and ½ for tourist-related expenditures. (Sections 6 and 7)
- The following municipalities are authorized to levy an additional 2% occupancy tax to be used for beach renourishment: Caswell Beach (Section 8), Holden Beach (Section 9), Ocean Isle Beach (Sections 10 and 11), Sunset Beach (Section 12) and Yaupon Beach (Section 13).
- Person County is authorized to levy a 5% occupancy tax. The net proceeds will be remitted to a Tourism Development Authority. For the first four years the tax is in effect, up to 2/3 may be used for specified tourist-related expenditures and the remainder must be used to promote tourism. After the end of this four-year period, at least 2/3 must be used to promote tourism and the rest may be used for tourist-related expenditures. (Sections 14 and 15)

1 for compensation, or operating a public sewerage
2 system for compensation; provided, however, that the
3 term 'public utility' shall not include any person or
4 company whose sole operation consists of selling
5 water to less than ~~40~~ 15 residential customers, except
6 that any person or company which constructs a water
7 system in a subdivision with plans for ~~40~~ 15 or more
8 lots and which holds itself out by contracts or other
9 means at the time of said construction to serve an
10 area containing more than ~~40~~ 15 residential building
11 lots shall be a public utility at the time of such
12 planning or holding out to serve such ~~40~~ 15 or more
13 building lots, without regard to the number of actual
14 customers connected;

15 3. Transporting persons or household goods by street,
16 suburban or interurban bus or railways for the public
17 for compensation;

18 4. Transporting persons or household goods by railways
19 or motor vehicles, or any other form of transportation
20 for the public for compensation, except motor carriers
21 exempted in G.S. 62-260, and except carriers by air;

22 5. Transporting or conveying gas, crude oil or other
23 fluid substance by pipeline for the public for
24 compensation;

25 6. Conveying or transmitting messages or
26 communications by telephone or telegraph, or any
27 other means of transmission, where such service is
28 offered to the public for compensation.

29 b. The term 'public utility' shall for rate-making purposes
30 include any person producing, generating or furnishing any
31 of the foregoing services to another person for distribution
32 to or for the public for compensation.

33 c. The term 'public utility' shall include all persons affiliated
34 through stock ownership with a public utility doing business
35 in this State as parent corporation or subsidiary corporation
36 as defined in G.S. 55-2 to such an extent that the
37 Commission shall find that such affiliation has an effect on
38 the rates or service of such public utility.

39 d. The term 'public utility,' except as otherwise expressly
40 provided in this Chapter, shall not include a municipality,
41 an authority organized under the North Carolina Water and
42 Sewer Authorities Act, electric or telephone membership
43 ~~corporation or nonprofit water membership or~~
44 ~~consumer-owned corporations financed by the Farmers~~

1 ~~Home Administration, the United States Department of~~
2 ~~Housing and Urban Development, or any similar or~~
3 ~~successor federal financing agency, provided, that (i) any~~
4 ~~such financing administration, department or agency~~
5 ~~exercise substantial control over and regulation of any such~~
6 ~~corporation's rates and terms and conditions of service, and~~
7 ~~(ii) the members or consumer owners of any such~~
8 ~~corporation, pursuant to the corporation's articles of~~
9 ~~incorporation and bylaws, shall elect the governing board of~~
10 ~~the corporation; corporation; or any person not otherwise a~~
11 ~~public utility who furnishes such service or commodity only~~
12 ~~to himself, his employees or tenants when such service or~~
13 ~~commodity is not resold to or used by others; provided,~~
14 ~~however, that any person other than a nonprofit~~
15 ~~organization serving only its members, who distributes or~~
16 ~~provides utility service to his employees or tenants by~~
17 ~~individual meters or by other coin-operated devices with a~~
18 ~~charge for metered or coin-operated utility service shall be a~~
19 ~~public utility within the definition and meaning of this~~
20 ~~Chapter with respect to the regulation of rates and~~
21 ~~provisions of service rendered through such meter or coin-~~
22 ~~operated device imposing such separate metered utility~~
23 ~~charge. If any person conducting a public utility shall also~~
24 ~~conduct any enterprise not a public utility, such enterprise is~~
25 ~~not subject to the provisions of this Chapter. A water or~~
26 ~~sewer system owned by a homeowners' association that~~
27 ~~provides water or sewer service only to members or~~
28 ~~leaseholds of members is not subject to the provisions of this~~
29 ~~Chapter.~~

- 30 e. The term 'public utility' shall include the University of
31 North Carolina insofar as said University supplies telephone
32 service, electricity or water to the public for compensation
33 from the University Enterprises defined in G.S. 116-41.1(9).
34 f. The term 'public utility' shall include the Town of Pineville
35 insofar as said town supplies telephone services to the public
36 for compensation. The territory to be served by the Town of
37 Pineville in furnishing telephone services, subject to the
38 Public Utilities Act, shall include the town limits as they
39 exist on May 8, 1973, and shall also include the area
40 proposed to be annexed under the town's ordinance
41 adopted May 3, 1971, until January 1, 1975.
42 g. The term 'public utility' shall not include a hotel, motel,
43 time share or condominium complex operated primarily to
44 serve transient occupants, which imposes charges to

1 occupants for local, long-distance, or wide area
2 telecommunication services when such calls are completed
3 through the use of facilities provided by a public utility, and
4 provided further that the local services received are rated in
5 accordance with the provisions of G.S. 62-110(d) and the
6 applicable charges for telephone calls are prominently
7 displayed in each area where occupant rooms are located.

8 h. The term 'public utility' shall not include the resale of
9 electricity by (i) a campground operated primarily to serve
10 transient occupants, or (ii) a marina; provided that (i) the
11 campground or marina charges no more than the actual cost
12 of the electricity supplied to it, (ii) the amount of electricity
13 used by each campsite or marina slip occupant is measured
14 by an individual metering device, (iii) the applicable rates
15 are prominently displayed at or near each campsite or
16 marina slip, and (iv) the campground or marina only resells
17 electricity to campsite or marina slip occupants.

18 i. The term 'public utility' shall not include the State, the
19 Office of the State Controller, or the Microelectronics
20 Center of North Carolina in the provision or sharing of
21 switched broadband telecommunications services with non-
22 State entities or organizations of the kind or type set forth in
23 G.S. 143B-426.39.

24 j. The term 'public utility' shall not include any person, not
25 otherwise a public utility, conveying or transmitting
26 messages or communications by mobile radio
27 communications service. Mobile radio communications
28 service includes one-way or two-way radio service provided
29 to mobile or fixed stations or receivers using mobile radio
30 service frequencies."

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44

- 2. Diverting, developing, pumping, impounding, distributing or furnishing water to or for the public for compensation, or operating a public sewerage system for compensation; provided, however, that the term 'public utility' shall not include any person or company whose sole operation consists of selling water to less than ~~40~~ 15 residential customers, except that any person or company which constructs a water system in a subdivision with plans for ~~40~~ 15 or more lots and which holds itself out by contracts or other means at the time of said construction to serve an area containing more than ~~40~~ 15 residential building lots shall be a public utility at the time of such planning or holding out to serve such ~~40~~ 15 or more building lots, without regard to the number of actual customers connected;
- 3. Transporting persons or household goods by street, suburban or interurban bus or railways for the public for compensation;
- 4. Transporting persons or household goods by railways or motor vehicles, or any other form of transportation for the public for compensation, except motor carriers exempted in G.S. 62-260, and except carriers by air;
- 5. Transporting or conveying gas, crude oil or other fluid substance by pipeline for the public for compensation;
- 6. Conveying or transmitting messages or communications by telephone or telegraph, or any other means of transmission, where such service is offered to the public for compensation.
- b. The term 'public utility' shall for rate-making purposes include any person producing, generating or furnishing any of the foregoing services to another person for distribution to or for the public for compensation.
- c. The term 'public utility' shall include all persons affiliated through stock ownership with a public utility doing business in this State as parent corporation or subsidiary corporation as defined in G.S. 55-2 to such an extent that the Commission shall find that such affiliation has an effect on the rates or service of such public utility.
- d. The term 'public utility,' except as otherwise expressly provided in this Chapter, shall not include a municipality, an authority organized under the North Carolina Water and Sewer Authorities Act, electric or telephone membership

- 1 ~~corporation or nonprofit water membership or~~
2 ~~consumer-owned corporations financed by the Farmers~~
3 ~~Home Administration, the United States Department of~~
4 ~~Housing and Urban Development, or any similar or~~
5 ~~successor federal financing agency, provided, that (i) any~~
6 ~~such financing administration, department or agency~~
7 ~~exercise substantial control over and regulation of any such~~
8 ~~corporation's rates and terms and conditions of service, and~~
9 ~~(ii) the members or consumer owners of any such~~
10 ~~corporation, pursuant to the corporation's articles of~~
11 ~~incorporation and bylaws, shall elect the governing board of~~
12 ~~the corporation; corporation; or any person not otherwise a~~
13 ~~public utility who furnishes such service or commodity only~~
14 ~~to himself, his employees or tenants when such service or~~
15 ~~commodity is not resold to or used by others; provided,~~
16 ~~however, that any person other than a nonprofit~~
17 ~~organization serving only its members, who distributes or~~
18 ~~provides utility service to his employees or tenants by~~
19 ~~individual meters or by other coin-operated devices with a~~
20 ~~charge for metered or coin-operated utility service shall be a~~
21 ~~public utility within the definition and meaning of this~~
22 ~~Chapter with respect to the regulation of rates and~~
23 ~~provisions of service rendered through such meter or coin-~~
24 ~~operated device imposing such separate metered utility~~
25 ~~charge. If any person conducting a public utility shall also~~
26 ~~conduct any enterprise not a public utility, such enterprise is~~
27 ~~not subject to the provisions of this Chapter. A water or~~
28 ~~sewer system owned by a homeowners' association that~~
29 ~~provides water or sewer service only to members or~~
30 ~~leaseholds of members is not subject to the provisions of this~~
31 ~~Chapter.~~
32 e. The term 'public utility' shall include the University of
33 North Carolina insofar as said University supplies telephone
34 service, electricity or water to the public for compensation
35 from the University Enterprises defined in G.S. 116-41.1(9).
36 f. The term 'public utility' shall include the Town of Pineville
37 insofar as said town supplies telephone services to the public
38 for compensation. The territory to be served by the Town of
39 Pineville in furnishing telephone services, subject to the
40 Public Utilities Act, shall include the town limits as they
41 exist on May 8, 1973, and shall also include the area
42 proposed to be annexed under the town's ordinance
43 adopted May 3, 1971, until January 1, 1975.

- 1 g. The term 'public utility' shall not include a hotel, motel,
2 time share or condominium complex operated primarily to
3 serve transient occupants, which imposes charges to
4 occupants for local, long-distance, or wide area
5 telecommunication services when such calls are completed
6 through the use of facilities provided by a public utility, and
7 provided further that the local services received are rated in
8 accordance with the provisions of G.S. 62-110(d) and the
9 applicable charges for telephone calls are prominently
10 displayed in each area where occupant rooms are located.
- 11 h. The term 'public utility' shall not include the resale of
12 electricity by (i) a campground operated primarily to serve
13 transient occupants, or (ii) a marina; provided that (i) the
14 campground or marina charges no more than the actual cost
15 of the electricity supplied to it, (ii) the amount of electricity
16 used by each campsite or marina slip occupant is measured
17 by an individual metering device, (iii) the applicable rates
18 are prominently displayed at or near each campsite or
19 marina slip, and (iv) the campground or marina only resells
20 electricity to campsite or marina slip occupants.
- 21 i. The term 'public utility' shall not include the State, the
22 Office of the State Controller, or the Microelectronics
23 Center of North Carolina in the provision or sharing of
24 switched broadband telecommunications services with non-
25 State entities or organizations of the kind or type set forth in
26 G.S. 143B-426.39.
- 27 j. The term 'public utility' shall not include any person, not
28 otherwise a public utility, conveying or transmitting
29 messages or communications by mobile radio
30 communications service. Mobile radio communications
31 service includes one-way or two-way radio service provided
32 to mobile or fixed stations or receivers using mobile radio
33 service frequencies."

34 Section 2. Article 6 of Chapter 62 of the General Statutes is amended by
35 adding a new section to read:

36 "§ 62-110.5. Commission may exempt certain nonprofit and consumer-owned water
37 or sewer utilities.

38 The Commission may exempt any water or sewer utilities owned by nonprofit
39 membership or consumer-owned corporations from regulation under this Chapter,
40 subject to those conditions the Commission deems appropriate, if:

- 41 (1) The members or consumer-owners of the corporation elect the
42 governing board of the corporation pursuant to the corporation's
43 articles of incorporation and bylaws; and

1 (2) The Commission finds that the organization and the quality of
2 service of the utility are adequate to protect the public interest to
3 the extent that additional regulation is not required by the public
4 convenience and necessity."
5 Section 3. G.S. 62-300(a) is amended by adding a new subdivision to
6 read:
7 "(15) One hundred dollars (\$100.00) for each application for exemption
8 filed by nonprofit and consumer-owned water or sewer utilities
9 pursuant to G.S. 62-110.5."
10 Section 4. This act is effective when it becomes law.

EXPLANATION OF HOUSE BILL 990:
Exempt Certain Nonprofit Utilities (PCS)

TO: Senate Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: July 22, 1997
SPONSOR: Representative Church

The proposed committee substitute for **House Bill 990** does two things:

1. It provides that the Utilities Commission may exempt nonprofit and consumer-owned water or sewer utilities from regulation.
2. It increases the regulatory exemption for utilities selling water to less than ten residential customers to utilities selling water to less than 15 residential customers.

Under current law, nonprofit membership or consumer-owned corporations that supply water are exempt from regulation by the Utilities Commission if both of the following conditions are met:

- A federal financing agency exercises substantial control over and regulation of the corporation's rates and terms and conditions of service.
- The members or consumer-owners elect the governing board of the corporation.

The Utilities Commission and legislative staff recently learned, however, that no federal financing agency does, or ever has, exercised such control. Therefore, no nonprofit membership or consumer-owned corporation can possibly qualify for the exemption from regulation under the current law.

To rectify this problem, Section 1 deletes the current exemption. Section 2 provides that the Utilities Commission may exempt nonprofit and consumer-owned water or sewer utilities from regulation, subject to conditions the Commission deems appropriate, if both of the following conditions are met:

- The members or consumer-owners elect the governing board of the corporation.
- The Commission finds that the organization and quality of service of the utility are adequate to protect the public interest.

The exemption will be granted on a case-by-case basis. To obtain an exemption, a nonprofit or consumer-owned water or sewer utility would need to apply to the Commission. Section 3 imposes a \$100 fee for each application for exemption filed by a nonprofit or consumer-owned water or sewer utility.

Section 1 also increases the regulatory exemption for utilities that sell water to less than ten residential customers. The exemption will now apply to those selling to less than 15 residential customers. This will match exemptions allowed by the Department of Environment, Health, and Natural Resources.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 956*

Short Title: Venture Capital Investment Incentive.

(Public)

Sponsors: Senators Hoyle, Cooper, and Odom.

Referred to: Rules and Operations of the Senate.

April 17, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO STIMULATE A SUBSTANTIAL INCREASE IN VENTURE
3 CAPITAL INVESTMENTS IN NORTH CAROLINA BY ALLOWING AN
4 INSURANCE PREMIUMS TAX CREDIT FOR THESE INVESTMENTS.

5 The General Assembly of North Carolina enacts:

6 Section 1. G.S. 53A-35 through G.S. 53A-37 are designated Part 1 of
7 Article 3 of Chapter 53A of the General Statutes, entitled "General Provisions" and
8 the remainder of Article 3 of Chapter 53A of the General Statutes is designated Part
9 2, entitled "North Carolina Enterprise Corporations".

10 Section 2. Article 3 of Chapter 53A of the General Statutes, as amended
11 by this act, is further amended by adding a new Part to read:

12 "Part 3. Certified North Carolina Capital Companies.

13 "§ 53A-70. Requirements for certification of a certified North Carolina capital
14 company.

15 (a) Initial Certification. -- In order to be initially certified as a certified North
16 Carolina capital company, a company must satisfy the following requirements:

17 (1) It is a partnership, corporation, trust, or limited liability company,
18 whether for-profit or nonprofit, whose primary business activity is
19 the investment of cash in approved business ventures.

20 (2) Its cash, marketable securities, and other liquid assets equal at least
21 five hundred thousand dollars (\$500,000).

22 (3) Its officers and its board of directors, partners, trustees, or
23 managers are thoroughly acquainted with the requirements of this
24 Part.

1 (4) No insurance company or affiliate of an insurance company is a
2 managing general partner of the certified North Carolina capital
3 company or controls the direction of investments of the certified
4 North Carolina capital company. This subdivision does not
5 preclude an insurance company or any other party from exercising
6 its legal rights and remedies, which may include interim
7 management of a certified North Carolina capital company, in the
8 event that a certified North Carolina capital company is in default
9 of its statutory obligations or its contractual obligations to the
10 insurance company or other party.

11 **(b) Continuing Certification. -- To remain certified as a certified North Carolina**
12 **capital company, the company must satisfy the following requirements:**

13 (1) Within three years after the date it was initially certified, at least
14 thirty percent (30%) of the certified capital invested in the
15 company must be placed in approved investments.

16 (2) Within five years after the date it was initially certified, at least
17 fifty percent (50%) of the certified capital invested in the company
18 must be placed in approved investments.

19 (3) It shall not invest in a single approved business venture an amount
20 that is more than fifteen percent (15%) of the total certified capital
21 under the company's management at the time of the investment.

22 (4) No insurance company or affiliate of an insurance company is a
23 managing general partner of the certified North Carolina capital
24 company or controls the direction of investments of the certified
25 North Carolina capital company. This subdivision does not
26 preclude an insurance company or any other party from exercising
27 its legal rights and remedies, which may include interim
28 management of a certified North Carolina capital company, in the
29 event that a certified North Carolina capital company is in default
30 of its statutory obligations or its contractual obligations to the
31 insurance company or other party.

32 **(c) Permanent Certification. -- A certified North Carolina capital company that**
33 **has satisfied the requirements of G.S. 53A-70(b) and has invested all of its certified**
34 **capital in approved investments, as demonstrated by its most recent financial**
35 **statement and report filed in accordance with G.S. 53A-71, qualifies for permanent**
36 **certification and is no longer required to obtain continuing certification as required in**
37 **G.S. 53A-71. A certified North Carolina capital company that has qualified for**
38 **permanent certification must continue to submit annual financial statements and**
39 **reports under G.S. 53A-71 for three years after it qualifies for permanent**
40 **certification.**

41 **"§ 53A-71. Procedure for initial and continuing certification; reports.**

42 **(a) Initial Certification. -- In order to be initially certified as a certified North**
43 **Carolina capital company, a company must file an application with the Department**
44 **and pay the initial certification fee. The application shall include any information**

1 and supporting documents required by the Secretary of State to determine whether
2 the company qualifies for initial certification. Within 60 days after an application is
3 filed, the Department shall determine whether the applicant qualifies for initial
4 certification and shall either issue the certification or shall refuse the certification and
5 notify the applicant in detail of the grounds for the refusal, including suggestions for
6 the removal of those grounds.

7 The Department shall review and approve or reject applications in the order
8 submitted. If more than one application is received by the Department on the same
9 day, all applications received on that day shall be reviewed and approved
10 simultaneously, except in the case of incomplete applications or applications for
11 which additional information is requested by the Department and is not supplied by
12 the applicant within the allowable time limits established by the Department. If more
13 than one applicant is certified on the same day, the Department shall ensure that all
14 applicants certified on that day are notified of certification at the same time.

15 (b) Continuing Certification. -- A certified North Carolina capital company that
16 has not qualified for permanent certification must, in order to remain certified,
17 submit an annual application for continued certification and pay the annual review
18 fee. The request shall include any information and supporting documents required
19 by the Secretary of State to determine whether the company qualifies for continued
20 certification.

21 The Department shall conduct an annual review of each certified North Carolina
22 capital company that has not qualified for permanent certification to determine if the
23 company is in compliance with the requirements for initial and continuing
24 certification and to ensure that the company's investments are in compliance with
25 this Part. The review shall be based upon the company's financial statements and
26 other information submitted in accordance with this section.

27 (c) Application Forms; Fees. -- Applications for initial and continuing certification
28 under this section shall be in the form required by the Secretary of State. The
29 Secretary of State shall prepare blank forms for the applications. Each application
30 shall be signed by the owners, a manager, or an executive officer of the company.
31 There shall be annexed to the application the affirmation of the person making the
32 application in the following form: 'Under penalties prescribed by law, I certify and
33 affirm that to the best of my knowledge and belief this application is true and
34 complete.' A person who submits a false application is guilty of a Class 1
35 misdemeanor.

36 The Secretary of State shall charge an applicant a fee of one thousand dollars
37 (\$1,000) for initial certification as a certified North Carolina capital company and a
38 fee of one thousand dollars (\$1,000) for annual review for continuing certification as
39 a certified North Carolina capital company. Fees collected under this section shall be
40 applied to the cost of administering this Part.

41 (d) Periodic Reports. -- Each certified North Carolina capital company shall
42 provide the Department an annual audited financial statement and report that
43 includes an opinion of an independent certified public accountant. The audit shall
44 address the methods of operation and conduct of the business of the company to

1 determine whether the company has complied with this Part and whether the cash
2 invested in the company has been invested as required by this Part. The audit shall
3 also determine whether each business in which the company has invested is an
4 approved business venture as defined in this Article. In addition, each certified
5 North Carolina capital company shall provide the Department a midyear, unaudited
6 update of its annual financial statement and report. The reports and updates shall be
7 in the form prescribed by the Secretary of State and shall include any information
8 required by the Secretary of State about the company and about the approved
9 business ventures in which it has invested.

10 A certified North Carolina capital company that has not qualified for permanent
11 certification shall submit the annual financial statement and report and the midyear
12 update on the due dates specified by the Department. A certified North Carolina
13 capital company that has qualified for permanent certification is no longer required
14 to submit midyear updates but shall continue to submit the annual financial statement
15 and report on the due dates specified by the Department for three years after the
16 company qualifies for permanent certification. Thereafter, no additional financial
17 statements and reports are required under this subsection.

18 "§ 53A-72. Distributions; maximum interest rate.

19 (a) Distributions. -- A certified North Carolina capital company may make
20 qualified distributions at any time. A certified North Carolina capital company may,
21 without restriction, make distributions and payments to debt holders with respect to
22 debt owed them by the company, but no distributions or payments may be made to
23 an equity holder, or any of its affiliates, that is entitled to a credit under Article 8C of
24 Chapter 105 of the General Statutes until the certified North Carolina capital
25 company has qualified for permanent certification. A certified North Carolina capital
26 company may make other distributions only after it has qualified for permanent
27 certification.

28 (b) Maximum Interest Rate. -- A certified North Carolina capital company shall
29 not charge interest on a senior, secured loan at an annual rate that exceeds the prime
30 rate plus three percent (3%).

31 "§ 53A-73. Tax credits.

32 (a) Credit Allowed. -- A person who invests cash in a certified North Carolina
33 capital company is entitled to a tax credit as provided in Article 8C of Chapter 105 of
34 the General Statutes but, notwithstanding the provisions of Division V of Article 4 of
35 Chapter 105 of the General Statutes, is not allowed a tax credit under that Division
36 for the investment. In addition, notwithstanding the provisions of Division V of
37 Article 4 of Chapter 105 of the General Statutes, a certified North Carolina capital
38 company is not allowed a tax credit under that Division for its investments.

39 (b) Allocation of Credits. -- The Department shall allocate the total amount of
40 credit allowed pursuant to G.S. 105-228.10E among taxpayers as provided in this
41 section. A certified North Carolina capital company may apply for allocation of
42 credits on behalf of its investors no earlier than the first business day after it is
43 certified. The application shall be in the form required by the Secretary of State and
44 shall provide all of the following:

- 1 (1) The name of each investor.
- 2 (2) The amount each investor has committed to invest in the company.
- 3 (3) Proof that the investor has committed to invest the funds subject to
4 allocation of the applicable credits pursuant to this section.
- 5 (4) The maximum amount of credit the investment would entitle the
6 investor to under G.S. 105-228.10C for the current taxable year
7 and the following nine taxable years.
- 8 (5) Any other information required by the Secretary of State:

9 Upon receipt of a completed application, the Department shall determine the
10 amount of available credit not yet allocated for each taxable year specified in the
11 application. Within seven business days after receipt of the application, the
12 Department shall allocate to the North Carolina capital company, on behalf of the
13 investors named in the application, the total amount of credit applied for in the
14 application, but only to the extent of available credit not yet allocated for each
15 taxable year. The Department's allocations of credit under this section shall be in
16 writing.

17 The Department shall allocate available credit to applicants in the order the
18 applications are received. If more than one certified North Carolina capital company
19 submits a completed application on the same day, the Department shall make the
20 allocations to those applicants simultaneously. If the amount of credit applied for in
21 the simultaneous applications exceeds the amount of available credit not yet allocated
22 for a taxable year, the Department shall allocate the available credit for that taxable
23 year among the simultaneous applicants on a pro rata basis in proportion to the
24 amount of credit applied for by each.

25 **"§ 53A-74. Decertification of certified North Carolina capital company.**

26 (a) Grounds for Decertification. -- Any material violation of this Part shall be
27 grounds for decertification under this section.

28 (b) Procedure for Decertification. -- If the Department determines that a certified
29 North Carolina capital company is not in compliance with any requirement for
30 continuing certification, it shall, by written notice, inform the officers of the company
31 and the board of directors, manager, trustees, or general partners that the company
32 will be decertified in 120 days after the date the notice is mailed unless the company
33 corrects the deficiencies to bring itself in compliance with the requirements for
34 certification. At the end of the 120-day grace period, if the certified North Carolina
35 capital company is still not in compliance, the Department shall decertify the
36 company and send a notice of decertification to the company and to the Department
37 of Revenue and the Department of Insurance.

38 (c) Effect of Decertification. -- If a certified North Carolina capital company is
39 decertified, no further tax credits for an investment in the company are allowed
40 pursuant to G.S. 105-228.10D.

41 **"§ 53A-75. Rules; report.**

42 The Secretary of State may adopt rules to implement this Part. The Secretary of
43 State shall report to the Legislative Research Commission by October 1 of each
44 odd-numbered year and by February 1 of each even-numbered year the number of

1 certified North Carolina capital companies certified under this Part, the date each
2 company was created, the amount and percentage of certified capital invested by each
3 company, the amount of tax credits allocated to each company, and any other
4 information requested by the Legislative Research Commission."

5 Section 3. G.S. 53A-37 reads as rewritten:

6 "§ 53A-37. Definitions.

7 The following definitions apply in this Article:

8 (1) Affiliate of a certified North Carolina capital company or
9 insurance company. -- Any of the following:

10 a. A person who directly or indirectly beneficially owns
11 (whether through rights, options, convertible interests, or
12 otherwise), controls, or holds power to vote ten percent
13 (10%) or more of the outstanding voting securities or other
14 ownership interests of the company.

15 b. A person ten percent (10%) or more of whose outstanding
16 voting securities or other ownership interests are, directly or
17 indirectly, beneficially owned (whether through rights,
18 options, convertible interests, or otherwise), controlled or
19 held with power to vote by the company.

20 c. A person who directly or indirectly controls, is controlled
21 by, or is under common control with the company.

22 d. A partnership in which the company is a general partner.

23 e. A person who is an officer, a director, or an agent of the
24 company, or is an immediate family member of an officer, a
25 director, or an agent of the company.

26 (2) Approved business venture. -- A business that satisfies all of the
27 following conditions as of the time of a certified North Carolina
28 capital company's first investment in the business:

29 a. It is headquartered in this State, it operates primarily in this
30 State or does substantially all of its production in this State,
31 and it employs a majority of its employees in this State.

32 b. It has no more than 300 employees and, during its most
33 recent fiscal year, it had gross revenues of no more than
34 seven million dollars (\$7,000,000) on a consolidated basis as
35 determined in accordance with generally accepted
36 accounting principles.

37 c. It is not a subsidiary of another corporation.

38 d. It satisfies the conditions established in G.S.
39 105-163.013(b)(3) through (6).

40 (3) Approved investment. -- The investment of cash by a certified
41 North Carolina capital company in such a manner as to acquire
42 capital in a business that, at the time of the first investment in the
43 business by a certified North Carolina capital company, was an
44 approved business venture. The capital acquired may be any debt.

- 1 equity, or hybrid security, whether secured or unsecured, of any
2 nature, including a debt instrument or security that has the
3 characteristics of debt but provides for conversion into equity or
4 equity participation instruments such as options or warrants.
- 5 (4) Business. -- A corporation, a partnership, an association, a limited
6 liability company, or a sole proprietorship operated for profit.
- 7 (5) Certified capital. -- The cash invested in a certified North Carolina
8 capital company, either in the form of equity or debt capital,
9 during the 365-day period after the company has been initially
10 certified as provided in Part 3 of this Article. If the certified
11 capital is in the form of debt capital, the debt instrument issued by
12 the certified North Carolina capital company, at par value or a
13 premium, must have an original maturity date of at least five years
14 after the date of issuance and a repayment schedule that is no
15 faster than a level principal amortization.
- 16 (6) Certified North Carolina capital company. -- A partnership,
17 corporation, trust, or limited liability company whose primary
18 business activity is the investment of cash in approved business
19 ventures and that is certified by the Secretary of State as provided
20 in Part 3 of this Article.
- 21 (7) Department. -- The Department of the Secretary of State.
- 22 (2) (8) Equity security. -- Common stock, preferred stock, an interest in a
23 partnership, subordinated debt, or a warrant that is convertible
24 into, or entitles the holder to receive upon its exercise, common
25 stock, preferred stock, or an interest in a partnership.
- 26 (9) Insurance company. -- Defined in G.S. 58-1-5.
- 27 (3) (10) Mezzanine finance. -- An investment in the equity securities or
28 subordinated debt of a Qualified North Carolina Business.
- 29 (11) Person. -- An individual, a corporation, a partnership, an
30 association, a trust, a limited liability company, or another legal
31 entity.
- 32 (12) Qualified distribution. -- A distribution or payment to equity
33 owners of a certified North Carolina capital company or to their
34 shareholders, officers, directors, partners, members, managers,
35 employees, or affiliates, in connection with any of the following:
36 a. Reasonable costs and expenses of forming, syndicating,
37 managing, and operating the company, including
38 management fees.
39 b. An increase in State or federal taxes, penalties, or interest of
40 the company's equity owners to the extent the increase
41 relates to the ownership, management, or operation of the
42 company.
- 43 (4) (13) Qualified North Carolina Business. -- A business whose
44 headquarters and principal business operations are located in

- 1 North Carolina and which, together with its affiliates on a
 2 consolidated basis, had gross income during the immediately
 3 preceding fiscal year, determined in accordance with generally
 4 accepted accounting principles without taking into account
 5 extraordinary items, of less than forty million dollars (\$40,000,000).
- 6 (5) (14) Rural areas. -- Any county in North Carolina which does not
 7 include within its boundaries a city, as defined by G.S. 160A-1(2),
 8 with a population greater than one percent (1%) of the population
 9 of North Carolina.
- 10 (6) (15) Security. -- A security as defined in G.S. 78A-2(11).
- 11 (7) (16) Subordinated debt. -- Indebtedness that is or will be subordinated
 12 to other indebtedness of the issuer. Subordinated debt may be
 13 convertible into common stock, preferred stock, or an interest in a
 14 partnership.
- 15 (8) (17) ~~Traditional Financial Institutions.~~ financial institutions. --
 16 Corporations or associations chartered under ~~Chapters~~ Chapter 53
 17 or 54B of the General Statutes."

18 Section 4. Chapter 105 of the General Statutes is amended by adding a
 19 new Article to read:

20 "ARTICLE 8C.

21 "Premiums Tax Credit for Investments in
 22 North Carolina Small Businesses.

23 "§ 105-228.10A. Purpose.

24 The purpose of this Article is to stimulate a substantial increase in venture capital
 25 investments in North Carolina by providing an incentive for insurance companies to
 26 invest in certified North Carolina capital companies.

27 "§ 105-228.10B. Definitions.

28 The following definitions apply in this Article:

- 29 (1) Certified capital. -- Defined in G.S. 53A-37.
 30 (2) Certified North Carolina capital company. -- A certified North
 31 Carolina capital company created under Article 3 of Chapter 53A
 32 of the General Statutes.

33 "§ 105-228.10C. Premiums tax credit for investments.

34 (a) Credit. -- A person who invests certified capital in a certified North Carolina
 35 capital company is allowed against the gross premiums tax imposed by G.S. 105-228.5
 36 and G.S. 105-228.8 a credit equal to the amount of certified capital invested by the
 37 taxpayer during the taxable year, subject to the limitations provided in this Article.
 38 To claim the credit allowed by this section, the taxpayer must provide the Secretary a
 39 copy of the certified North Carolina capital company's application for allocation of
 40 credit under G.S. 53A-73, a copy of the Secretary of State's written allocation of
 41 credit under G.S. 53A-73, and any other supporting documentation the Secretary
 42 requires.

43 (b) Limitations. -- The taxpayer may not take the entire credit for the taxable year
 44 the investment is made, but may take up to ten percent (10%) of the aggregate credit

1 allowed under this section for that taxable year and for each succeeding taxable year
2 until the entire credit has been used. The amount of credit taken may not exceed the
3 taxpayer's gross premiums tax liability for a taxable year reduced by the sum of all
4 credits allowable except payments of tax by or on behalf of the taxpayer. Subject to
5 the ten percent (10%) limitation, any unused portion of the credit may be carried
6 forward to the five succeeding taxable years.

7 (c) Transfer of Credit. -- A taxpayer may transfer a credit allowed under this
8 section to another taxpayer. The taxpayer must apply for the approval of the
9 Commissioner of Insurance before transferring the credit. The application shall be in
10 the form prescribed by the Commissioner. The application shall identify the
11 proposed transferor and transferee, state the transferor's tax credit balance before and
12 after the proposed transfer, state the amount of the credit to be transferred and the
13 proposed date of the transfer, and include any other information the Commissioner
14 requires regarding the proposed transfer.

15 The Commissioner of Insurance shall approve the proposed transfer if the
16 application is accurate and complete and the Commissioner determines that the
17 proposed transfer will not have an adverse effect on either taxpayer or their
18 policyholders or shareholders. Within 60 days after receiving an application, the
19 Commissioner shall notify the applicant that the proposed transfer has been approved
20 or disapproved.

21 The Commissioner of Insurance shall maintain records and monitor all transferred
22 credits to ensure that transfers do not result in multiple parties claiming the same
23 credit. The Commissioner shall provide the Secretary complete records of all
24 transferred credits.

25 "§ 105-228.10D. Effect of decertification.

26 If a certified North Carolina capital company is decertified under G.S. 53A-74, no
27 tax credit or carryforward of a tax credit for an investment in the company is allowed
28 under this Article for a taxpayer's taxable year beginning in the calendar year the
29 decertification occurred or for subsequent taxable years. Decertification of a certified
30 North Carolina capital company does not affect a tax credit allowed under this
31 Article for a taxpayer's taxable year that began before the calendar year in which the
32 decertification occurred.

33 "§ 105-228.10E. Annual ceiling; cap.

34 (a) Annual Ceiling. -- The total amount of tax credits that may be taken by all
35 taxpayers under this Article in a taxable year may not exceed fifteen million dollars
36 (\$15,000,000). This amount shall be allocated among taxpayers for each taxable year
37 as provided in G.S. 53A-73.

38 (b) Cap. -- The amount of credit allowed a taxpayer under this Article for a
39 taxable year may not exceed ten percent (10%) of the annual ceiling for that year."

40 Section 5. G.S. 105-228.8(e) reads as rewritten:

41 "(e) This section shall not apply to special purpose obligations or assessments
42 based on premiums imposed in connection with particular kinds of insurance, to the
43 special purpose regulatory charge imposed under G.S. 58-6-25, or to dedicated special
44 purpose taxes based on premiums. For purposes of this section, seventy-five percent

1 (75%) of the one and thirty-three hundredths percent (1.33%) tax on amounts
 2 collected on contracts of insurance applicable to fire and lightning coverage shall not
 3 be a special purpose obligation or assessment or a dedicated special purpose tax
 4 within the meaning of this subsection. The credit allowed by G.S. 105-228.10C shall
 5 not be considered in determining the amount of premium taxes imposed by this
 6 State."

7 Section 6. G.S. 58-6-25(a) reads as rewritten:

8 "(a) Charge Levied. -- There is levied on each insurance company an annual
 9 charge for the purposes stated in subsection (d) of this section. As used in this
 10 section, the term 'insurance company' means a company that pays the gross
 11 premiums tax levied in G.S. 105-228.5 and G.S. 105-228.8, except that the term does
 12 not include a hospital, medical, or dental service corporation regulated under Articles
 13 65 and 66 of this Chapter. The term 'insurance company' does not include a
 14 company regulated under Article 67 of this Chapter. The charge levied in this section
 15 is in addition to all other fees and taxes. The charge shall be at a percentage rate of
 16 the company's premium tax liability for the taxable year. In determining an insurance
 17 company's premium tax liability for a taxable year, the following shall be disregarded:

- 18 (1) The additional taxes imposed by G.S. ~~105-228.8~~ and the 105-228.8.
 19 (2) The additional local fire and lightning tax imposed by G.S.
 20 ~~105-228.5(d)(4)~~ shall be disregarded. 105-228.5(d)(4).
 21 (3) The credit allowed by G.S. 105-228.10C."

22 Section 7. The title of Chapter 53A of the General Statutes reads as
 23 rewritten:

24 "Chapter 53A.

25 "~~Business Development Corporations and North~~
 26 ~~Carolina Capital Resource Corporations: and Access to Capital."~~

27 Section 8. The title of Article 3 of Chapter 53A of the General Statutes
 28 reads as rewritten:

29 "ARTICLE 3.

30 "~~North Carolina Enterprise Corporations: Corporations and~~
 31 ~~Certified North Carolina Capital Companies."~~

32 Section 9. G.S. 53A-35 and G.S. 53A-47 are repealed.

33 Section 10. G.S. 53A-36 reads as rewritten:

34 "§ 53A-36. Legislative findings and purpose.

35 (a) The General Assembly finds ~~and declares~~ that there exists in ~~the State of~~
 36 North Carolina a serious shortage of mezzanine finance capital and credit available
 37 for investment in rural ~~areas~~ areas and other areas in the State. This shortage of
 38 mezzanine finance capital and credit is severe throughout ~~the rural areas of~~ the State,
 39 has persisted for a number of years, and constitutes a grave threat to the welfare and
 40 prosperity of all residents of the State. The lack of access to capital prevents North
 41 Carolina businesses from creating jobs that would otherwise enhance the economy of
 42 the State and provide livelihoods for North Carolina citizens.

43 (b) The General Assembly finds ~~and declares further~~ that private enterprise and
 44 existing federal and State governmental programs have not adequately alleviated the

1 severe shortage of mezzanine finance capital and credit available for investments in
2 rural areas in the this State.

3 (c) The General Assembly finds ~~and declares~~ that it is a matter of grave public
4 necessity that North Carolina Enterprise Corporations be authorized to be created
5 and ~~to be~~ empowered to alleviate these severe shortages of mezzanine finance capital
6 and credit for investment in rural areas of the State. North Carolina Enterprise
7 Corporations shall help eliminate barriers to rural economic development by
8 providing mezzanine finance capital and credit, and other types of financing as
9 appropriate, to businesses in rural areas that have been unable to obtain sufficient
10 financing through traditional financial institutions.

11 (d) The General Assembly finds that it is a matter of grave public necessity that
12 certified North Carolina capital companies be authorized to be created as venture
13 capital companies whose primary business activity is the investment of cash in small
14 North Carolina business ventures that are in need of capital for survival, expansion,
15 new product development, or similar purposes."

16 Section 11. G.S. 53A-38(a) reads as rewritten:

17 "(a) One or more persons, a majority of whom are residents of this State, may, by
18 filing a certificate of incorporation as provided in subsection (b), incorporate a North
19 Carolina Enterprise Corporation under the provisions of this ~~Article~~. Part."

20 Section 12. G.S. 53A-41 reads as rewritten:

21 "§ 53A-41. Governing law.

22 Except as otherwise provided in this ~~Article~~, Part, a North Carolina Enterprise
23 Corporation shall be governed by Chapter 55 of the General Statutes."

24 Section 13. G.S. 53A-42 reads as rewritten:

25 "§ 53A-42. Powers.

26 A North Carolina Enterprise Corporation created under this ~~Article~~ Part shall
27 have all the powers conferred on business corporations by Chapter 55 of the General
28 Statutes."

29 Section 14. Sections 4, 5, and 6 of this act and G.S. 53A-73, as enacted
30 by Section 2 of this act, become effective for taxable years beginning on or after
31 January 1, 1997, and apply to investments made on or after that date. The remainder
32 of this act is effective when this act becomes law. An application for initial
33 certification as a North Carolina capital company pursuant to G.S. 53A-71 may not
34 be submitted until the first Monday that falls at least 45 days after this act becomes
35 law. G.S. 53A-73 and Article 8C of Chapter 105 of the General Statutes, as enacted
36 by this act, are repealed effective for investments made on or after January 1, 2000.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

D

SENATE BILL 956*
Proposed Finance Committee Substitute S956-CSLC-7/22
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Venture Capital Investment Incentive. (Public)

Sponsors: Senators

Referred to:

April 17, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO STIMULATE A SUBSTANTIAL INCREASE IN VENTURE CAPITAL
3 INVESTMENTS IN NORTH CAROLINA BY ALLOWING AN INSURANCE PREMIUMS
4 TAX CREDIT FOR THESE INVESTMENTS.
5 The General Assembly of North Carolina enacts:
6 Section 1. This act shall be known as the Venture
7 Capital Investment Incentive Act of 1997.
8 Section 2. G.S. 53A-35 through G.S. 53A-37 are
9 designated Part 1 of Article 3 of Chapter 53A of the General
10 Statutes, entitled "General Provisions" and the remainder of
11 Article 3 of Chapter 53A of the General Statutes is designated
12 Part 2, entitled "North Carolina Enterprise Corporations".
13 Section 3. Article 3 of Chapter 53A of the General
14 Statutes, as amended by this act, is further amended by adding a
15 new Part to read:
16 "Part 3. Certified North Carolina Capital Companies.
17 "§ 53A-70. Requirements for certification of a certified North
18 Carolina capital company.
19 (a) Initial Certification. -- In order to be initially
20 certified as a certified North Carolina capital company, a
21 company must satisfy the following requirements:

- 1 (1) It is a partnership, corporation, trust, or limited
2 liability company, whether for-profit or nonprofit,
3 whose primary business activity is the investment
4 of cash in approved business ventures.
- 5 (2) Its cash, marketable securities, and other liquid
6 assets equal at least five hundred thousand dollars
7 (\$500,000).
- 8 (3) Its officers and its board of directors, partners,
9 trustees, or managers have certified that they have
10 a copy of the Venture Capital Investment Incentive
11 Act of 1997 and any applicable rules.
- 12 (4) No insurance company or affiliate of an insurance
13 company is a managing general partner of the
14 certified North Carolina capital company or
15 controls the direction of investments of the
16 certified North Carolina capital company. This
17 subdivision does not preclude an insurance company
18 or any other party from exercising its legal rights
19 and remedies, which may include interim management
20 of a certified North Carolina capital company, in
21 the event that a certified North Carolina capital
22 company is in default of its statutory obligations
23 or its contractual obligations to the insurance
24 company or other party.
- 25 (5) It agrees that, because the tax credits provided by
26 law are considered an investment by the State of
27 North Carolina, it will pay to the State an
28 investment return calculated as provided in G.S.
29 53A-75. In addition, it agrees that its contracts
30 with investors will provide for the company's
31 payment of this investment return to the State.
- 32 (b) Continuing Certification. -- To remain certified as a
33 certified North Carolina capital company, the company must
34 satisfy the following requirements:
- 35 (1) Within two years after the date it was initially
36 certified, at least twenty-five percent (25%) of
37 the certified capital invested in the company must
38 be placed in approved investments.
- 39 (2) Within three years after the date it was initially
40 certified, at least forty percent (40%) of the
41 certified capital invested in the company must be
42 placed in approved investments.
- 43 (3) Within four years after the date it was initially
44 certified, at least fifty percent (50%) of the

- 1 certified capital invested in the company must be
2 placed in approved investments.
- 3 (4) It shall not invest in a single approved business
4 venture an amount that is more than fifteen percent
5 (15%) of the total certified capital under the
6 company's management at the time of the investment.
- 7 (5) No insurance company or affiliate of an insurance
8 company is a managing general partner of the
9 certified North Carolina capital company or
10 controls the direction of investments of the
11 certified North Carolina capital company. This
12 subdivision does not preclude an insurance company
13 or any other party from exercising its legal rights
14 and remedies, which may include interim management
15 of a certified North Carolina capital company, in
16 the event that a certified North Carolina capital
17 company is in default of its statutory obligations
18 or its contractual obligations to the insurance
19 company or other party.
- 20 (c) Permanent Certification. -- A certified North Carolina
21 capital company that has satisfied the requirements of G.S.
22 53A-70(b) and has invested all of its certified capital in
23 approved investments, as demonstrated by its most recent
24 financial statement and report filed in accordance with G.S.
25 53A-71, qualifies for permanent certification and is no longer
26 required to obtain continuing certification as required in G.S.
27 53A-71. A certified North Carolina capital company that has
28 qualified for permanent certification must continue to submit
29 annual financial statements and reports under G.S. 53A-71 for
30 three years after it qualifies for permanent certification.
31 "§ 53A-71. Procedure for initial and continuing certification;
32 reports.
- 33 (a) Initial Certification. -- In order to be initially
34 certified as a certified North Carolina capital company, a
35 company must file an application with the Department and pay the
36 initial certification fee. The application shall include any
37 information and supporting documents required by the Secretary of
38 State to determine whether the company qualifies for initial
39 certification. Within 60 days after an application is filed, the
40 Department shall determine whether the applicant qualifies for
41 initial certification and shall either issue the certification or
42 shall refuse the certification and notify the applicant in detail
43 of the grounds for the refusal, including suggestions for the
44 removal of those grounds.

1 The Department shall review and approve or reject applications
2 in the order submitted. If more than one application is received
3 by the Department on the same day, all applications received on
4 that day shall be reviewed and approved simultaneously, except in
5 the case of incomplete applications or applications for which
6 additional information is requested by the Department and is not
7 supplied by the applicant within 15 days after the request by the
8 Department. If more than one applicant is certified on the same
9 day, the Department shall ensure that all applicants certified on
10 that day are notified of certification at the same time.

11 (b) Continuing Certification. -- A certified North Carolina
12 capital company that has not qualified for permanent
13 certification must, in order to remain certified, submit an
14 annual application for continued certification and pay the annual
15 review fee by July 1 of each year. The request shall include any
16 information and supporting documents required by the Secretary of
17 State to determine whether the company qualifies for continued
18 certification. The request shall also include copies of the
19 certified North Carolina capital company's applications for
20 allocation of credit under G.S. 105-228.10E and of the
21 Secretary's written allocation of credit to the company under
22 G.S. 105-228.10E.

23 The Department shall conduct an annual review of each certified
24 North Carolina capital company that has not qualified for
25 permanent certification to determine if the company is in
26 compliance with the requirements for initial and continuing
27 certification and to ensure that the company's investments are in
28 compliance with this Part. The review shall be based upon the
29 company's financial statements and other information submitted in
30 accordance with this section.

31 (c) Application Forms; Fees. -- Applications for initial and
32 continuing certification under this section shall be in the form
33 required by the Secretary of State. The Secretary of State shall
34 prepare blank forms for the applications. Each application shall
35 be signed by the owners, a manager, or an executive officer of
36 the company. There shall be annexed to the application the
37 affirmation of the person making the application in the following
38 form: 'Under penalties prescribed by law, I certify and affirm
39 that to the best of my knowledge and belief this application is
40 true and complete.' A person who submits a false application is
41 guilty of a Class 1 misdemeanor.

42 The Secretary of State shall charge an applicant a fee of five
43 thousand dollars (\$5,000) for initial certification as a
44 certified North Carolina capital company, a fee of five thousand

1 dollars (\$5,000) for annual review for continuing certification
2 as a certified North Carolina capital company, and a fee of five
3 thousand dollars (\$5,000) for issuing a certificate of permanent
4 certification. The Secretary of State shall credit forty percent
5 (40%) of each fee to the Department of Revenue and shall retain
6 the balance. Fees collected under this section shall be applied
7 to the cost of administering this Part and Article 8C of Chapter
8 105 of the General Statutes.

9 (d) Periodic Reports Before Permanent Certification. -- Each
10 certified North Carolina capital company shall provide the
11 Department the following reports and updates on the due dates
12 specified by the Department. The reports and updates shall be in
13 the form prescribed by the Secretary of State and shall include
14 any information required by the Secretary of State about the
15 company and about the approved business ventures in which it has
16 invested.

17 (1) Annual Audit. -- An annual audited financial
18 statement and report that includes an opinion of an
19 independent certified public accountant approved by
20 the Secretary of State. The audit shall address
21 the methods of operation and conduct of the
22 business of the company to determine whether the
23 company has complied with this Part and whether the
24 cash invested in the company has been invested as
25 required by this Part. The audit shall also
26 determine whether each business in which the
27 company has invested is an approved business
28 venture as defined in this Article.

29 (2) Annual Audit of Cumulative Distributions. -- An
30 audited report of the company's cumulative,
31 nonqualified distributions that includes an opinion
32 of an independent certified public accountant
33 approved by the Secretary of State. The audit
34 shall detail the company's cumulative
35 distributions, other than qualified distributions,
36 to equity holders and debt holders, as compared to
37 the amount of the company's original certified
38 capital and any additional capital contributions to
39 the company. The audit shall determine what annual
40 internal rate of return these cumulative
41 nonqualified distributions, when combined with all
42 tax credits allocated to debt holders and equity
43 holders pursuant to G.S. 105-228.10E, have resulted
44 in, when computed on the amount of the company's

1 original certified capital and any additional
2 capital contributions to the company. The audit
3 shall then compute an amount equal to twenty-five
4 percent (25%) of the amount of these cumulative
5 nonqualified distributions in excess of the amount,
6 combined with the allocated tax credits, required
7 to produce an annual internal rate of return of
8 fifteen percent (15%) and compare that amount with
9 the total amount of investment return the company
10 has paid to the State pursuant to G.S. 35A-75.

11 (3) Midyear Update. -- A midyear, unaudited update of
12 the certified North Carolina capital company's
13 annual financial statement and report described in
14 subdivision (1) of this subsection.

15 (e) Periodic Reports After Permanent certification. -- A
16 certified North Carolina capital company that has qualified for
17 permanent certification is no longer required to submit midyear
18 updates but shall continue to submit, for informational purposes
19 only, the annual financial statement and report described in
20 subdivision (d)(1) of this section on the due dates specified by
21 the Department for three years after the company qualifies for
22 permanent certification. In addition, the company shall continue
23 to submit the annual cumulative distributions audit described in
24 subdivision (d)(2) of this section until it has made final
25 distributions to its investors and will not be making any future
26 distributions other than qualified distributions. Thereafter, no
27 additional financial statements and reports are required under
28 this subsection.

29 "§ 53A-72. Distributions; maximum interest rate.

30 (a) Distributions. -- A certified North Carolina capital
31 company may make qualified distributions at any time. A
32 certified North Carolina capital company may, without
33 restriction, make distributions and payments to debt holders with
34 respect to debt owed them by the company, but no distributions or
35 payments may be made to an equity holder, or any of its
36 affiliates, that is entitled to a credit under Article 8C of
37 Chapter 105 of the General Statutes until the certified North
38 Carolina capital company has qualified for permanent
39 certification. A certified North Carolina capital company may
40 make other distributions only after it has qualified for
41 permanent certification.

42 (b) Maximum Interest Rate. -- A certified North Carolina
43 capital company shall not charge interest on a senior, secured

1 loan at an annual rate that exceeds the prime rate plus three
2 percent (3%).

3 "§ 53A-73. Tax credits.

4 A person who invests cash in a certified North Carolina capital
5 company is entitled to a tax credit as provided in Article 8C of
6 Chapter 105 of the General Statutes but, notwithstanding the
7 provisions of Division V of Article 4 of Chapter 105 of the
8 General Statutes, is not allowed a tax credit under that Division
9 for the investment. In addition, notwithstanding the provisions
10 of Division V of Article 4 of Chapter 105 of the General
11 Statutes, a certified North Carolina capital company is not
12 allowed a tax credit under that Division for its investments.

13 "§ 53A-74. Decertification of certified North Carolina capital
14 company.

15 (a) Grounds for Decertification. -- Any material violation of
16 this Part not cured pursuant to subsection (b) of this section
17 shall be grounds for decertification under this section of a
18 certified North Carolina capital company that has not qualified
19 for permanent certification.

20 (b) Procedure for Decertification. -- If the Department
21 determines that a certified North Carolina capital company is not
22 in compliance with any requirement for continuing certification,
23 it shall, by written notice, inform the officers of the company
24 and the board of directors, manager, trustees, or general
25 partners that the company will be decertified in 120 days after
26 the date the notice is mailed unless the company corrects the
27 deficiencies to bring itself in compliance with the requirements
28 for certification. If the deficiencies are corrected so as to
29 bring the certified North Carolina capital company into
30 compliance within the 120-day grace period, then the violation of
31 this Part shall be considered not to have occurred. At the end
32 of the 120-day grace period, if the certified North Carolina
33 capital company is still not in compliance, the Department shall
34 decertify the company and send a notice of decertification to the
35 company and to the Department of Revenue and the Department of
36 Insurance.

37 (c) Effect of Decertification. -- If a certified North
38 Carolina capital company is decertified, no further tax credits
39 or carryforwards of credits for an investment in the company are
40 allowed as provided in G.S. 105-228.10D. In addition, if a
41 certified North Carolina capital company is decertified before it
42 has met all the requirements of G.S. 53A-70(b)(1) through (3),
43 all tax credits for investment in the company are forfeited as
44 provided in G.S. 105-228.10D.

1 "§ 53A-75. Investment return to State.

2 (a) The tax credits provided in Article 8C of Chapter 105 of
3 the General Statutes are an investment by the State of North
4 Carolina in each certified North Carolina capital company. Each
5 certified North Carolina capital company, as part of its initial
6 certification, has agreed to pay the State a return on its
7 investment. Each year, every certified North Carolina capital
8 company shall determine from its annual audit of cumulative
9 distributions filed pursuant to G.S. 53A-71(d)(2), an amount
10 equal to twenty-five percent (25%) of its cumulative nonqualified
11 distributions that exceed the amount of distributions, combined
12 with all tax credits allocated to debt holders and equity
13 holders, required to produce an annual internal rate of return of
14 fifteen percent (15%). Within 30 days after filing its annual
15 audit of cumulative distributions, the company shall pay the
16 Department of Revenue the excess of this amount over the total
17 cumulative amount it has paid under this section in past years.
18 If a company's annual audit demonstrates that the annual internal
19 rate of return of the company's cumulative nonqualified
20 distributions, combined with all tax credits allocated to debt
21 holders and equity holders, does not exceed fifteen percent
22 (15%), the company is not required to make a payment under this
23 section for that year.

24 (b) A company that fails to make a payment required by this
25 section is subject to the penalties and remedies provided in
26 Article 9 of Chapter 105 of the General Statutes to the same
27 extent as if the required payment were a tax. The Department of
28 Revenue shall credit payments made under this section to the
29 General Fund as nontax revenue.

30 "§ 53A-76. Rules; report.

31 The Secretary of State may adopt rules to implement this Part.
32 The Secretary of State shall report to the Legislative Research
33 Commission by October 1 of each year the number of certified
34 North Carolina capital companies certified under this Part, the
35 date each company was created, the amount and percentage of
36 certified capital invested by each company, the amount of tax
37 credits allocated to each company, and any other information
38 requested by the Legislative Research Commission."

39 Section 4. G.S. 53A-37 reads as rewritten:

40 "§ 53A-37. Definitions.

41 The following definitions apply in this Article:

- 42 (1) Affiliate of a company. -- Any of the following:
43 a. A person who directly or indirectly
44 beneficially owns (whether through rights,

- 1 options, convertible interests, or otherwise),
2 controls, or holds power to vote ten percent
3 (10%) or more of the outstanding voting
4 securities or other ownership interests of the
5 company.
- 6 b. A person ten percent (10%) or more of whose
7 outstanding voting securities or other
8 ownership interests are, directly or
9 indirectly, beneficially owned (whether
10 through rights, options, convertible
11 interests, or otherwise), controlled, or held
12 with power to vote by the company.
- 13 c. A person who directly or indirectly controls,
14 is controlled by, or is under common control
15 with the company on account of common
16 ownership, common directors, or common
17 management.
- 18 d. A partnership in which the company is a
19 general partner.
- 20 e. A person who is an officer, a director, or a
21 management employee of the company, or is a
22 close family member of an officer, a director,
23 or a management employee of the company. For
24 the purpose of this requirement, a close
25 family member is a spouse, parent, child,
26 sibling, parent-in-law, sibling-in-law,
27 son-in-law, or daughter-in-law.
- 28 (2) Approved business venture. -- A business that
29 satisfies all of the following conditions as of the
30 time of a certified North Carolina capital
31 company's first investment in the business:
- 32 a. It has its principal business office in this
33 State, it does a majority of its production in
34 this State, and it employs a majority of its
35 employees in this State.
- 36 b. It has no more than 300 employees and, during
37 its most recent fiscal year, it had gross
38 revenues of no more than seven million dollars
39 (\$7,000,000) on a consolidated basis as
40 determined in accordance with generally
41 accepted accounting principles.
- 42 c. It is not a majority-owned subsidiary of
43 another corporation.

- 1 d. It satisfies the conditions established in
2 G.S. 105-163.013(b)(3) through (6).
- 3 e. Its authorized representative has given the
4 certified North Carolina company investing in
5 it a sworn affidavit certifying that a
6 majority of the proceeds of the investment
7 will be used for operations or capital
8 improvements in North Carolina.
- 9 (3) Approved investment. -- The investment of cash by a
10 certified North Carolina capital company in such a
11 manner as to acquire capital in a business that, at
12 the time of the first investment in the business by
13 a certified North Carolina capital company, was an
14 approved business venture. The capital acquired
15 may be any debt, equity, or hybrid security,
16 whether secured or unsecured, of any nature,
17 including a debt instrument or security that has
18 the characteristics of debt but provides for
19 conversion into equity or equity participation
20 instruments such as options or warrants.
- 21 (4) Business. -- A corporation, a partnership, a
22 association, a limited liability company, or a sole
23 proprietorship operated for profit.
- 24 (5) Certified capital. -- The cash invested in a
25 certified North Carolina capital company, either in
26 the form of equity or debt capital, during the
27 365-day period after the company has been initially
28 certified as provided in Part 3 of this Article.
29 If the certified capital is in the form of debt
30 capital, the debt instrument issued by the
31 certified North Carolina capital company, at par
32 value or a premium, must have an original maturity
33 date of at least five years after the date of
34 issuance and a repayment schedule that is no faster
35 than a level principal amortization.
- 36 (6) Certified North Carolina capital company. -- A
37 partnership, corporation, trust, or limited
38 liability company whose primary business activity
39 is the investment of cash in approved business
40 ventures and that is certified by the Secretary of
41 State as provided in Part 3 of this Article.
- 42 (7) Department. -- The Department of the Secretary of
43 State.

1 issuer. Subordinated debt may be convertible into
2 common stock, preferred stock, or an interest in a
3 partnership.

4 ~~(8)~~ (17) ~~Traditional Financial Institutions.~~ financial
5 institutions. -- Corporations or associations
6 chartered under ~~Chapters~~ Chapter 53 or 54B of the
7 General Statutes."

8 Section 5. Chapter 105 of the General Statutes is
9 amended by adding a new Article to read:

10 "ARTICLE 8C.
11 "Premiums Tax Credit for Investments in
12 North Carolina Small Businesses.

13 "§ 105-228.10A. Purpose.

14 The purpose of this Article is to stimulate a substantial
15 increase in venture capital investments in North Carolina by
16 providing an incentive for insurance companies to invest in
17 certified North Carolina capital companies.

18 "§ 105-228.10B. Definitions.

19 The following definitions apply in this Article:

20 (1) Certified capital. -- Defined in G.S. 53A-37.

21 (2) Certified North Carolina capital company. -- A
22 certified North Carolina capital company created
23 under Article 3 of Chapter 53A of the General
24 Statutes.

25 "§ 105-228.10C. Premiums tax credit for investments.

26 (a) Credit. -- A person who invests certified capital in one
27 or more certified North Carolina capital companies is allowed
28 against the gross premiums tax imposed by G.S. 105-228.5 and G.S.
29 105-228.8 a credit equal to the amount of certified capital
30 invested by the taxpayer during the taxable year, subject to the
31 limitations provided in this Article. To claim the credit
32 allowed by this section, the taxpayer must provide the Secretary
33 a copy of each certified North Carolina capital company's
34 application for allocations of credit under G.S. 105-228.10E, a
35 copy of the Secretary's written allocation of credit under G.S.
36 105-228.10E, and any other supporting documentation the Secretary
37 requires.

38 (b) Limitations. -- The taxpayer may not take the entire
39 credit for the taxable year the investment is made, but may take
40 up to ten percent (10%) of the aggregate credit allowed under
41 this section for that taxable year and for each succeeding
42 taxable year until the entire credit has been used. The amount
43 of credit taken may not exceed the taxpayer's gross premiums tax
44 liability for a taxable year reduced by the sum of all credits

1 allowable except payments of tax by or on behalf of the taxpayer.
2 Subject to the ten percent (10%) limitation, to the extent a
3 taxpayer does not use all of the credit it is entitled to take in
4 any year, the unused portion of that year's credit may be carried
5 forward to the five succeeding taxable years.

6 "§ 105-228.10D. Effect of decertification.

7 If a certified North Carolina capital company is decertified
8 under G.S. 53A-74, no tax credit or carryforward of a tax credit
9 for an investment in the company is allowed under this Article
10 for a taxpayer's taxable year beginning in the calendar year the
11 decertification occurred or for subsequent taxable years.
12 Decertification of a certified North Carolina capital company
13 after it has met all the requirements of G.S. 53A-70(b)(1)
14 through (3) does not affect a tax credit allowed under this
15 Article for a taxpayer's taxable year that began before the
16 calendar year in which the decertification occurred. If a
17 certified North Carolina capital company is decertified before it
18 has met all the requirements of G.S. 53A-70(b)(1) through (3),
19 all tax credits previously allowed to taxpayers for investment in
20 the company are forfeited. A taxpayer who forfeits a credit
21 under this section is liable for all past taxes avoided as a
22 result of the credit plus interest at the rate established under
23 G.S. 105-241.1(i), computed from the date the taxes would have
24 been due if the credit had not been allowed. The past taxes and
25 interest are due 30 days after the date the company is
26 decertified; a taxpayer who fails to pay the past taxes and
27 interest by the due date is subject to the penalties provided in
28 G.S. 105-236.

29 "§ 105-228.10E. Cap; annual ceiling.

30 (a) Cap. -- The amount of credit allowed a taxpayer under this
31 Article for a taxable year may not exceed ten percent (10%) of
32 the annual ceiling for that year.

33 (b) Annual Ceiling. -- The total amount of tax credits that may
34 be taken by all taxpayers under this Article in a taxable year
35 may not exceed fifteen million dollars (\$15,000,000). The
36 Department of Revenue shall allocate this amount among taxpayers
37 as provided in this subsection. A certified North Carolina
38 capital company may apply for allocation of credits on behalf of
39 its investors no earlier than the first business day after it is
40 certified. The application shall be in the form required by the
41 Secretary and shall provide all of the following:

- 42 (1) The name of each investor.
43 (2) The amount each investor has committed to invest in
44 the company.

1 (3) Proof that the investor has committed to invest the
2 funds subject to allocation of the applicable
3 credits pursuant to this section.

4 (4) The maximum amount of credit the investment would
5 entitle the investor to under this Article for the
6 current taxable year and the following nine taxable
7 years.

8 (5) Any other information required by the Secretary.

9 Upon receipt of a completed application, the Department shall
10 determine the amount of available credit not yet allocated for
11 each taxable year specified in the application. Within 20
12 business days after receipt of the application, the Department
13 shall allocate to the North Carolina capital company, on behalf
14 of the investors named in the application, the total amount of
15 credit applied for in the application, but only to the extent of
16 available credit not yet allocated for each taxable year. The
17 Department's allocations of credit under this subsection shall be
18 in writing.

19 The Department shall allocate available credit to applicants in
20 the order the applications are received. If more than one
21 certified North Carolina capital company submits a completed
22 application on the same day, the Department shall make the
23 allocations to those applicants simultaneously. If the amount of
24 credit applied for in the simultaneous applications exceeds the
25 amount of available credit not yet allocated for a taxable year,
26 the Department shall allocate the available credit for that
27 taxable year among the simultaneous applicants on a pro rata
28 basis in proportion to the amount of credit applied for by each."

29 Section 6. G.S. 105-228.8(e) reads as rewritten:

30 "(e) This section shall not apply to special purpose
31 obligations or assessments based on premiums imposed in
32 connection with particular kinds of insurance, to the special
33 purpose regulatory charge imposed under G.S. 58-6-25, or to
34 dedicated special purpose taxes based on premiums. For purposes
35 of this section, seventy-five percent (75%) of the one and
36 thirty-three hundredths percent (1.33%) tax on amounts collected
37 on contracts of insurance applicable to fire and lightning
38 coverage shall not be a special purpose obligation or assessment
39 or a dedicated special purpose tax within the meaning of this
40 subsection. The credit allowed by G.S. 105-228.10C shall not be
41 considered in determining the amount of premium taxes imposed by
42 this State."

43 Section 7. G.S. 58-6-25(a) reads as rewritten:

1 "(a) Charge Levied. -- There is levied on each insurance
2 company an annual charge for the purposes stated in subsection
3 (d) of this section. As used in this section, the term 'insurance
4 company' means a company that pays the gross premiums tax levied
5 in G.S. 105-228.5 and G.S. 105-228.8, except that the term does
6 not include a hospital, medical, or dental service corporation
7 regulated under Articles 65 and 66 of this Chapter. The term
8 'insurance company' does not include a company regulated under
9 Article 67 of this Chapter. The charge levied in this section is
10 in addition to all other fees and taxes. The charge shall be at a
11 percentage rate of the company's premium tax liability for the
12 taxable year. In determining an insurance company's premium tax
13 liability for a taxable year, the following shall be disregarded:

- 14 (1) The additional taxes imposed by G.S. ~~105-228.8~~ and
15 the 105-228.8.
16 (2) The additional local fire and lightning tax imposed
17 by G.S. ~~105-228.5(d)(4)~~ shall be disregarded.
18 105-228.5(d)(4).
19 (3) The credit allowed by G.S. 105-228.10C."

20 Section 8. The title of Chapter 53A of the General
21 Statutes reads as rewritten:

22 "Chapter 53A.

23 "~~Business Development Corporations and North~~
24 ~~Carolina Capital Resource Corporations, and Access to Capital.~~"

25 Section 9. The title of Article 3 of Chapter 53A of the
26 General Statutes reads as rewritten:

27 "ARTICLE 3.

28 "~~North Carolina Enterprise Corporations, Corporations and~~
29 Certified North Carolina Capital Companies."

30 Section 10. G.S. 53A-35 and G.S. 53A-47 are repealed.

31 Section 11. G.S. 53A-36 reads as rewritten:

32 "§ 53A-36. Legislative findings and purpose.

33 (a) The General Assembly finds ~~and declares~~ that there exists
34 ~~in the State of~~ North Carolina a serious shortage of mezzanine
35 finance capital and credit available for investment in rural
36 ~~areas~~ areas and other areas in the State. This shortage of
37 mezzanine finance capital and credit is severe throughout ~~the~~
38 ~~rural areas of~~ the State, has persisted for a number of years,
39 and constitutes a grave threat to the welfare and prosperity of
40 all residents of the State. The lack of access to capital
41 prevents North Carolina businesses from creating jobs that would
42 otherwise enhance the economy of the State and provide
43 livelihoods for North Carolina citizens.

1 (b) The General Assembly finds ~~and declares further~~ that
2 private enterprise and existing federal and State governmental
3 programs have not adequately alleviated the severe shortage of
4 mezzanine finance capital and credit available for investments in
5 ~~rural areas in the~~ this State.

6 (c) The General Assembly finds ~~and declares~~ that it is a
7 matter of grave public necessity that North Carolina Enterprise
8 Corporations be authorized to be created and ~~to be~~ empowered to
9 alleviate these severe shortages of mezzanine finance capital and
10 credit for investment in rural areas of the State. North
11 Carolina Enterprise Corporations shall help eliminate barriers to
12 rural economic development by providing mezzanine finance capital
13 and credit, and other types of financing as appropriate, to
14 businesses in rural areas that have been unable to obtain
15 sufficient financing through traditional financial institutions.

16 (d) The General Assembly finds that it is a matter of grave
17 public necessity that certified North Carolina capital companies
18 be authorized to be created as venture capital companies whose
19 primary business activity is the investment of cash in small
20 North Carolina business ventures that are in need of capital for
21 survival, expansion, new product development, or simila
22 purposes."

23 Section 12. G.S. 53A-38(a) reads as rewritten:

24 "(a) One or more persons, a majority of whom are residents of
25 this State, may, by filing a certificate of incorporation as
26 provided in subsection (b), incorporate a North Carolina
27 Enterprise Corporation under the provisions of this ~~Article~~
28 Part."

29 Section 13. G.S. 53A-41 reads as rewritten:

30 "§ 53A-41. Governing law.

31 Except as otherwise provided in this ~~Article~~, Part, a North
32 Carolina Enterprise Corporation shall be governed by Chapter 55
33 of the General Statutes."

34 Section 14. G.S. 53A-42 reads as rewritten:

35 "§ 53A-42. Powers.

36 A North Carolina Enterprise Corporation created under this
37 ~~Article~~ Part shall have all the powers conferred on business
38 corporations by Chapter 55 of the General Statutes."

39 Section 15. Sections 5, 6, and 7 of this act and G.S.
40 53A-73, as enacted by Section 3 of this act, become effective for
41 taxable years beginning on or after January 1, 1999, and apply to
42 investments made on or after that date. The remainder of this
43 act is effective when this act becomes law. An application for
44 initial certification as a North Carolina capital company

1 pursuant to G.S. 53A-71 may not be submitted until the first
2 Monday that falls at least 45 days after this act becomes law.
3 G.S. 53A-73 and Article 8C of Chapter 105 of the General
4 Statutes, as enacted by this act, are repealed effective for
5 investments made on or after January 1, 2001. If any provision
6 of this act or its application is held invalid, then G.S. 53A-73
7 and Article 8C of Chapter 105 of the General Statutes, as enacted
8 by this act, are repealed effective for investments made on or
9 after the date of the holding of invalidity.

10

EXPLANATION OF SENATE BILL 956 (PCS):
Venture Capital Investment Incentive

TO: Senate Finance Committee
FROM: Committee Staff
DATE: July 22, 1997
SPONSOR: Senator Hoyle

Senate Bill 956 seeks to provide start-up and expansion capital to small businesses by giving private insurance companies that make certain venture capital investments a dollar for dollar tax credit to be applied against the insurance premiums tax owed by these companies. The tax credit is effective for taxable years beginning on or after January 1, 1999, and applies to investments made on or after that date, and it expires for investments made on or after January 1, 2001.

Under the bill, an insurance company invests in a certified North Carolina capital company (CAPCO), which in turn provides capital to approved North Carolina business ventures. The insurance company is entitled to a tax credit of 100% of the cash it invests in a CAPCO during the 365-day period after the company has been initially certified. The credit may be taken at the rate of up to 10% per year until the entire credit is used, subject to an annual maximum credit amount of \$1,500,000. Any unused installment of the credit may be carried forward for five years, subject to the 10% limit. If a CAPCO is decertified, the insurance company is not permitted to take any unused tax credits or carryforwards. If the CAPCO is decertified before it has met the requirement that it invest 50% of its certified capital within four years in approved investments, the taxpayer also forfeits all tax credits and carryforwards previously taken and must repay all back taxes avoided because of the credit, with interest.

The total amount of credit that may be taken by all taxpayers in any one taxable year is \$15,000,000. The credit is allocated to taxpayers on a "first come, first served" basis. The CAPCO must apply to the Department of Revenue for the allocation of credits on behalf of its investors. Upon receipt of the application, the Department will determine the amount of available credit not yet allocated for each taxable year specified in the application. The Department must allocate to the CAPCO, on behalf of its investors, the total amount of credit applied for in the application to the extent of the available credit not yet allocated for each taxable year. To claim the credit, the taxpayer must provide the Secretary of Revenue with a copy of the CAPCO's application for allocation of credit, a copy of the Secretary of Revenue's written allocation of credit, and any other supporting documentation the Secretary may require. The original bill required the Secretary of State to make the allocation; the proposed committee substitute shifts that responsibility to the Department of Revenue. The Department of Revenue has stated that it will have recurring costs of \$22,325 and nonrecurring costs of \$3,200 in taking on this responsibility.

The allocation of the credit appears to violate the uniformity provisions of the North Carolina Constitution. The General Assembly has the authority to create classifications for

taxation, but the class must be reasonable and based on a rational difference of situation and condition. In other words, there must be a rational basis reasonably related to the purpose of the legislation to justify the decision to exclude some parties from the application of the law. Under the allocation method proposed by this bill, a taxpayer who made an investment and applied for allocation of the credit early in the taxable year would be allowed a tax credit and an identical taxpayer who applied for allocation later in the year would not. If this "first come, first served" allocation were held unconstitutional, the bill has a nonseverability clause stating that the tax credit is repealed for investments made on or after that date. For the tax years challenged, however, the State would probably be liable for refunds for those who paid under protest. Other tax credits in existing law provide a cap by allocating the credits on a pro rata basis after all identical applicants have applied for credit, which does not violate the constitution.

An insurance company must invest cash, either in the form of equity or debt capital, in a certified North Carolina capital company to be eligible for the credit allowed by this bill. Traditional private sector venture capital financing involves risks greater than those inherent in other investments. Under this bill, the State assumes this increased risk on behalf of the insurance company by providing tax credits equal to the amount of the investment, thus essentially reimbursing the company for its investment. The proposed committee substitute provides the State a potential return on its investment. Under proposed G.S. 53A-75, a CAPCO would pay the State 25% of the excess of its cumulative distributions that exceed the amount that, when combined with all tax credits allocated, would produce an annual internal rate of return of 15%. The calculation would be made as part of the CAPCO's annual audit and payment to the Department of Revenue would be due within 30 days after the audit. The payments would be credited to the General Fund as nontax revenue.

To be initially certified by the Secretary of State, a capital company must have at least \$500,000 of liquid assets which it would invest in approved business ventures. An approved business venture is a business that meets all of the following conditions:

1. It is headquartered in this State, does a majority of its production in this State, and employs a majority of its employees in this State.
2. It employs no more than 300 employees.
3. It has gross revenues of no more than \$7,000,000 a year.
4. It is not a majority-owned subsidiary of another company.
5. It is engaged primarily in manufacturing, processing, warehousing, wholesaling, research and development, or a service related industry.
6. It does not engage in providing professional services, construction or contracting, selling or leasing at retail, purchase or sale of commercial paper or real estate, personal grooming or cosmetic services, entertainment, athletic or recreation services for a fee.
7. It is not formed for the purpose of acquiring the stock or assets of another business.
8. It is not a real estate related business.

9. Its authorized representative has provided a sworn affidavit that a majority of the proceeds of the CAPCO's investment in it will be used for operations or capital improvements in North Carolina.

For a CAPCO's certification to be renewed, it must invest 25% of the capital invested in it in approved business ventures within two years, 40% within three years, and 50% within five years. The company is also limited to investing no more than 15% of its capital in any one business. Once a CAPCO has invested 100% of the capital invested in it in approved business ventures, it qualifies for permanent certification. It may then distribute investment returns to investors and is no longer required to obtain continuing certification. The company must continue to file annual financial statements and reports for three years after it qualifies for permanent certification. The initial certification, annual review, and permanent certification are handled by the Secretary of State's office for a fee of \$5,000 each, which will be distributed 40% to the Department of Revenue and 60% to the Secretary of State. The Secretary of State is to report to the Legislative Research Commission annually on the amount of the credit taken and the number of taxpayers taking the credit.

The credit allowed by this bill for insurance companies is similar to the income tax credit currently allowed to individuals and small partnerships for investing directly in qualified businesses. Prior to January 1, 1997, the definition of a qualified business was very similar to an approved business venture. The General Assembly expanded the credit to include businesses outside of North Carolina because the credit violated the Commerce Clause of the Constitution when it was limited to investments in North Carolina businesses. Although the credit allowed by this bill is limited to indirect investments in North Carolina businesses and thus discriminates against out-of-state businesses, the Attorney General's office believes that the credit would not be held unconstitutional if challenged because this credit applies only to insurance companies. Congress, through the McCarran-Ferguson Act, has removed all Commerce Clause limitations on the authority of the states to regulate and tax the business of insurance. Committee staff has found no case law on point with the tax credit proposed by this bill. Most of the cases surrounding the McCarran-Ferguson Act concern the differing tax treatment between in-state and out-of-state insurance companies. The Supreme Court has consistently held that a state may discriminate in its tax treatment of insurance companies because of the McCarran-Ferguson Act. The courts have not addressed whether this discrimination may be extended beyond insurance companies to the business ventures in which they invest without a violation of the Commerce Clause. If the bill were invalidated under the Commerce Clause, the bill has a nonseverability clause stating that the tax credit is repealed for investments made on or after that date. For the tax years challenged, however, the State would probably be liable for refunds for those who paid under protest.



SOUTHEAST INTERACTIVE
TECHNOLOGY FUNDS

July 1, 1997

The Honorable Mike Wilkins
Legislative Office Building
Raleigh, NC 27601

Dear Representative Wilkins:

I understand that you are sponsoring legislation to encourage the formation of more early stage venture capital in North Carolina. We are generally supportive of any efforts to provide more early stage capital for North Carolina entrepreneurs.

While there are many qualified early stage venture capital investing opportunities in our North Carolina, only a small subset of these transactions are actually funded because of the lack of adequate capital sources. Providing more North Carolina sources of early stage capital to these companies is critical to their success. These promising young companies can be tremendous engines of job growth as they provide high wage employment opportunities.

If we can provide further information about the need for early stage venture capital in our state, please do not hesitate to contact us. You are to be commended for your efforts in helping make capital more readily available for North Carolina entrepreneurs.

Best wishes.

Sincerely,

SOUTHEAST INTERACTIVE
TECHNOLOGY FUNDS

David C. Blivin, CPA
Managing Director

DCB:0780kt



June 30, 1997

Mr. Samuel H. Poole
Attorney at Law
The Sanford Holshauser Law Firm, PLLC
234 Fayetteville Street Mall, Suite 100
P.O. Box 2447
Raleigh, N.C. 27602

Dear Sam:

I appreciate the opportunity to express some thoughts about North Carolina's support of entrepreneurs. After having obtained my MBA from Duke University's Fuqua School of Business in 1981 and having worked at Duke Medical Center for nearly seven years as Director of Development and Administrative Manager of the Duke Comprehensive Cancer Center, I decided to become an entrepreneur.

In 1982 Eugene Stead, Jr., MD and I co-invented a no-fault malpractice insurance program and partnered with an insurance company in Georgia. There was virtually no venture money in North Carolina at that time, so our sole source of capital was from our partner. Our company was vastly under-funded and while policies were approved in North Carolina, Florida and Massachusetts, it eventually failed because we did not have the financial resources and independence to pursue paths that we felt would have given us a good chance of success.

In 1986 a partner and I started Johnston, Zabor & Associates, Inc., a marketing research firm that developed innovative technologies. We attempted to raise venture capital, but were unsuccessful identifying any North Carolina funds. We were able to obtain \$250,000 in "angel money," which allowed us to survive during some lean times. We are now a firm with over 60 employees and a firm that is nationally recognized. The technology we developed in 1989 still exists, but never realized its potential, we think largely because we never had the resources to completely develop or market it nationally.

In 1995 I began developing a revolutionary approach toward using The Internet, Intranets and CD ROM interactive multi-media to help consumers make complex decisions on benefit selection. Our first products are called PlanSmartChoice™ Decision Tools. We have obtained more than \$800,000 from two Small Business Innovative Research (SBIR) contracts with the federal government and more than \$250,000 from one corporate sponsor in North Carolina.

We now have products, almost fully designed, that reviewers nationally have told us are the most sophisticated decision support for consumers and employees they have ever seen. Organizations with far greater resources have not been able to design tools that are as intuitive and easy to use, while helping people make very complex decisions on health care and other benefits.

We have been attempting to raise \$1.5 to \$2 million dollars in first round funding for nearly a year. We are nearly finished with the product design phase and are now moving into the marketing phase. We have an opportunity to be the nation's leader in consumer decision support systems, but without capital our products will languish. Timing is critical.

P.O. Box 14255, Research Triangle Park, North Carolina 27709

(919) 561-0970 • fax (919) 544-0954 • DecisionInnovation@MSN.CO.II



Venture capital firms in North Carolina are so small that they do not have the capital resources to take much risk or to hire sophisticated staff members to work with start-up companies in a "seed" deal. It does appear we will raise \$750,000 to \$1 million this year from North Carolina VCs and angels, but it has been a laborious task.

Venture capital firms I have dealt with in Boston, Washington, New York and California all have \$200 million, \$600 million or \$4 billion dollars under management. Getting them to invest in North Carolina start-ups is a real challenge. Most out-of-state VC's want a local "seed" partner, but the venture capital firms in North Carolina are often considered under-funded and insignificant as meaningful partners.

I have had one venture capital firm in Boston tell me that we would be easily funded if we moved to Boston. Similar comments have been made by firms in Washington, DC and in Silicon Valley, California. We love North Carolina and believe this area is a melting pot for technology. What it lacks is capital resources.

Decision Innovations has the potential to be a \$100,000,000 company, employing 1,000 or more people, but without the resources we may have to move out-of-state or risk failure.

North Carolina must recognize that entrepreneurial enterprises, not just large business, offer a rich future of employment, taxes and quality of life for North Carolinians. This potential will only be realized if there is adequate capital in the region to support companies like mine.

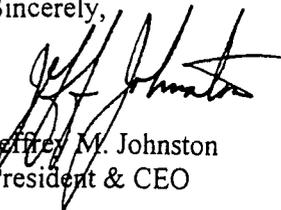
It is my sincere hope that initiatives, currently being considered by The State Legislature, to channel significant funding to North Carolina venture investments, would be realized. While investing in start-up ventures in North Carolina might be considered riskier than investing in blue chip stocks and bonds, the potential to invigorate the North Carolina economy long into the future far out-weighs the risk.

I am sure there are many more examples like mine where funding from sources of venture capital could have made a significant difference.

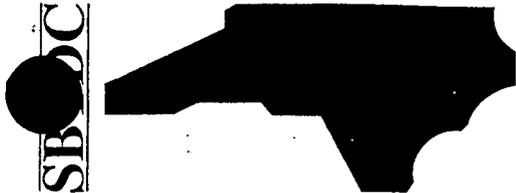
Please feel free to share this letter with whomever you please. I am happy to have had the opportunity to express my feelings and beliefs about the need for greater support.

Thank you.

Sincerely,



Jeffrey M. Johnston
President & CEO



North Carolina
Small Business and Technology
Development Center

333 Fayetteville Street Mall, Suite 1150
Raleigh, NC 27601-1742

919/715-7272
800/258-0862 (in NC only)
FAX: 919/715-7777

June 25, 1997

**Sponsoring Institutions
and Offices**

Appalachian State University
Boone, 704/262-2492
Hickory, 704/345-1110

East Carolina University
Greenville, 919/328-6157

Elizabeth City State University
North Carolina Wesleyan College
Elizabeth City, 919/335-3247

Fayetteville State University
University of North Carolina
at Pembroke
Campbell University
Methodist College
St. Andrews Presbyterian College
Fayetteville, 910/486-1727
Pembroke, 910/521-6603

North Carolina A&T State University
University of North Carolina
at Greensboro
Greensboro, 910/334-7005

University of North Carolina
at Chapel Hill
North Carolina Central University
Chapel Hill, 919/962-0389
Raleigh, 919/715-0520

University of North Carolina
at Charlotte
Charlotte, 704/548-1090

University of North Carolina
at Wilmington
Wilmington, 910/962-3744

Western Carolina University
University of North Carolina
at Asheville
Asheville, 704/251-6025
Cullowhee, 704/227-7492

Winston-Salem State University
Wake Forest University
Winston-Salem, 910/750-2030

State Headquarters
Raleigh, 919/715-7272
800/258-0862

*A business and technology
extension service
operated as an inter-
institutional program of
the University of
North Carolina*

The Honorable John Kerr
NC Senate
NC General Assembly
Room 526 Legislative Office Bldg.
Raleigh, NC 27601-1096

Dear Senator Kerr:

I write to you with regard to concerns which have arisen with respect to HB 987—the bill which has been introduced to attract venture capital investments from insurance companies doing business in North Carolina.

First, there are some who believe that small firms in North Carolina have adequate access to venture capital (and debt capital) and that the good deals get funded. Second, there is a presumption among some that the shortage of North Carolina based venture capital is adequately offset by the investments of out-of-state venture capital firms in North Carolina. Third, there are a few who believe that providing state incentives to attract capital is inappropriate; and somewhat more who feel that the proposed incentives to the insurance industry under HB 987 are too large.

From our experience with thousands of small to medium sized businesses, many of which were seeking outside financing, neither of the first two concerns noted are correct. We do, in fact, have a critical deficiency in the level of locally based venture capital—about 2.2% of the total U.S. pool. And this deficiency is not offset by investments from out-of-state venture capital firms—less than 1% of all venture investments were made in North Carolina in the most recently reported year.

The third concern is harder to address because it is essentially philosophically based. However, if one believes as has been the case in North Carolina since the early railroad development days that public investment incentives are appropriate tools to support economic development objectives, then the proposed incentive under HR 987 to insurance companies doing business in North Carolina may be very appropriate. It creates an effective mechanism for leveraging venture capital from one of the three major capital resource institutions in this country (pensions, insurance companies and banks), all of which have significant constraints to capital venture investments.

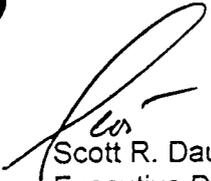
Venture capital investing is unique in several other respects. First, it is based more on "personal" connectedness than many other types of financing. For instance, venture firms only invest in 1% to 2% of all deals brought before them (and it's patently absurd to believe that 98% to 99% of all proposed venture deals are unworthy). As a consequence, personal contacts/connections with members of firms are an important key to accessing venture capital. It's clear, too, that venture capital firms have a strong preference for doing deals in their own back yard. They want to be able to see and touch their investments regularly and with ease. We are aware of a number of North Carolina originated deals which have been lost to the state because venture money was not found here. Venture firms also like to spread their risks. They do so by co-investing in projects with other firms.

These factors argue for the expansion of our local venture capital base. The approach proposed in HB 987 has proven effective in the two other states (Louisiana and Missouri) which have followed this model in creating relatively large venture capital pools. From our experience we, again, believe that there will be sufficient deal flow from North Carolina firms with strong growth potential should added capital for investment be available. We need to keep them here.

I hope this is helpful. I would be pleased to meet with you to discuss these issues further, if needed.

Thanks for your help.

Sincerely yours,



Scott R. Daugherty
Executive Director

SRD:ms
c:\martha\misc\HR987.doc



**North
Carolina
Biotechnology
Center**

15 T.W. Alexander Drive

Post Office Box 13547

Research Triangle Park

North Carolina 27709-3547

919-541-9366

main fax 919-549-9710

24 April 1997

To *Co-Chairs, House Finance Committee:*
Representative Lyons Gray
Representative Walter W. Dickson
Representative Clyde R. Brawley
Representative Constance K. Wilson
Representative Dewey L. Hill

From Charles E. Hamner, DVM, PhD
President

*Venture Capital for Young and Growing North Carolina Companies
and
HB 987*

Development of new technologies and new, home-grown companies requires locally based sources of capital.

I write to urge your support of HB 987, which will increase funding available to small, rapidly growing companies in North Carolina. Experience shows that without such monies available in-state, companies are less likely to develop here – and might well move elsewhere. We can, for example, document at least two companies that have recently left the state – after being initially established here – because necessary financing was available elsewhere. In 1996, Research Triangle Pharmaceuticals moved to Canada to gain access to a government venture capital program; in 1995, Icagen, Inc., set up an R&D subsidiary in Canada for the same reason.

Other examples of North Carolina losses due to insufficient capital can be documented:

- We know of developing biopharmaceutical companies that, unable to secure capital in-state, are working with venture funds that would require them to leave North Carolina.
- The Biotechnology Center is currently in discussion with start-up companies to bring technologies to North Carolina from other states. The Center will have to wait for new appropriations before we can secure these companies for North Carolina; moreover, no other appropriate in-state funds are targeted to assist these companies.

- The state also this year lost recruitment to the Greenville area of an enormously promising biotechnology company developing pharmaceutical uses of tobacco. BioSource Technologies, based in California, looked finally at North Carolina and Kentucky as sites for its new facility. The company chose Kentucky because the state could lend it monies to move and to set up a R&D facility near the University of Kentucky.

Such losses will be replicated with other young technology companies until sufficient venture capital monies are available in North Carolina to fund them. Over time, the diminishment to our economy, technological base, and future will be enormous.

Thank you for your support and for the ongoing public service you render.

bcc: Rep. Michael Wilkins



M.J. "Mike" Foeter, Jr.
Governor

State of Louisiana
DEPARTMENT OF ECONOMIC DEVELOPMENT

Kevin P. Reilly
Secretary

March 20, 1996

Mr. Joseph Driskill, Director
Missouri Department of Economic Development
Truman State Office Building
Jefferson City, Missouri 65102

Dear Mr. Driskill:

It has come to my attention that the Missouri Legislature is considering enactment of Certified Capital Company legislation. The Louisiana Capital Companies (CAPCO) Tax Credit Program was initially enacted in 1983 and provided a 35% income tax credit for investors in certified Louisiana capital companies. In 1989 the program was expanded to provide insurance companies a 120% credit against their premium taxes to be taken over a ten year period. Beginning around 1992, CAPCOs began to raise significant amounts of venture capital from insurance company investors.

We had a severe shortage of venture capital funding and this program has helped a lot. We consider the CAPCO program to be an integral part of our economic development efforts. Venture capital invested in Louisiana companies has created jobs and increased tax revenues for the state. Seed investments by CAPCOs have enabled Louisiana companies to grow and gain access to other capital provided by banks and the public security markets.

Within the Louisiana Department of Economic Development, CAPCOs are regulated by the Office of Financial Institutions (OFI). The individual at OFI most familiar with the CAPCO program is Ms. Dale Jacobs (504/922-0632). Should your staff wish to discuss CAPCO statutes or regulations or the general operation of the program, please do not hesitate to contact Ms. Jacobs.

If I can be of any assistance, please feel free to call.

Sincerely yours,

Kevin P. Reilly, Sr.
Secretary of Economic Development

KPR:gmv
www.LEOCD.com

cc: Ms. Dale Jacobs, OFI



STATE OF LOUISIANA
DEPARTMENT OF REVENUE AND TAXATION

M. J. "MIKE" FOSTER, JR.
GOVERNOR

April 23, 1996

JOHN NEELY KENNEDY
SECRETARY

Mr. Joseph Driskill, Director
Missouri Department of Economic Development
Truman State Office Building
Jefferson City, Missouri 65102

Dear Mr. Driskill:

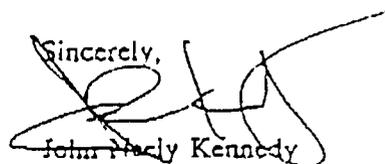
I understand that the Missouri Legislature is currently considering the adoption of legislation authorizing the creation of Certified Capital Companies in Missouri. I have been familiar with the Louisiana Certified Capital Company ("CAPCO") Tax Credit Program since serving as legal counsel to Governor Buddy Roemer in 1987-91. As a result of certain changes to the CAPCO program by the Roemer administration, Louisiana CAPCOs have generated over one hundred million dollars of new private venture capital for investment in growing Louisiana businesses.

Historically, Louisiana has lacked adequate sources of venture capital to assist new businesses in their efforts to expand and create jobs and economic opportunity for our citizens. The CAPCO program has helped to close the gap by providing seed capital for exciting technology start-ups as well as expansion financing for more established businesses with high growth potential. One company funded initially by a group of Louisiana CAPCOs has already accessed the broader securities market with an initial public offering of \$180 million completed last fall.

As Secretary of the Department of Revenue and Taxation under our new Governor, Mike Foster, I am acutely aware of Louisiana's budget needs and the impact of business growth on tax revenues. Not only are we confident that the CAPCO program will contribute to the formation of new companies and the creation of well-paying jobs, but we also anticipate that the burgeoning growth of high-tech industries will over time produce tax revenues far in excess of the cost of the program. Thus, it is not surprising that this program has received broad, bipartisan support through four gubernatorial administrations and has been extended and revised several times by legislative majorities.

I consider the CAPCO program to be an important and fiscally responsible part of our state's overall economic development plan. It is certainly worth a close and careful look in Missouri. Please contact me if I can provide you with any information that might be helpful to you in your analysis and decision-making.

Sincerely,



John Neely Kennedy

Post Office Box 201 • Baton Rouge 70821-0201
Telephone 504-925-7537 • 504-925-7533 (TDD)
An Equal Opportunity Employer

Start-up tax credits proposed

\$100M would go to insurers

By JAV GALLAGHER
Albany Bureau Chief

ALBANY — The Assembly's top Democrat and a key committee chair on Tuesday proposed giving out \$100 million in tax credits over 10 years to try to make it easier for start-up companies in New York to get financing.

"New York State is not attracting venture capital commensurate with our size," said Assembly Speaker Sheldon Silver, D-Manhatten. "This state needs a more aggressive approach."

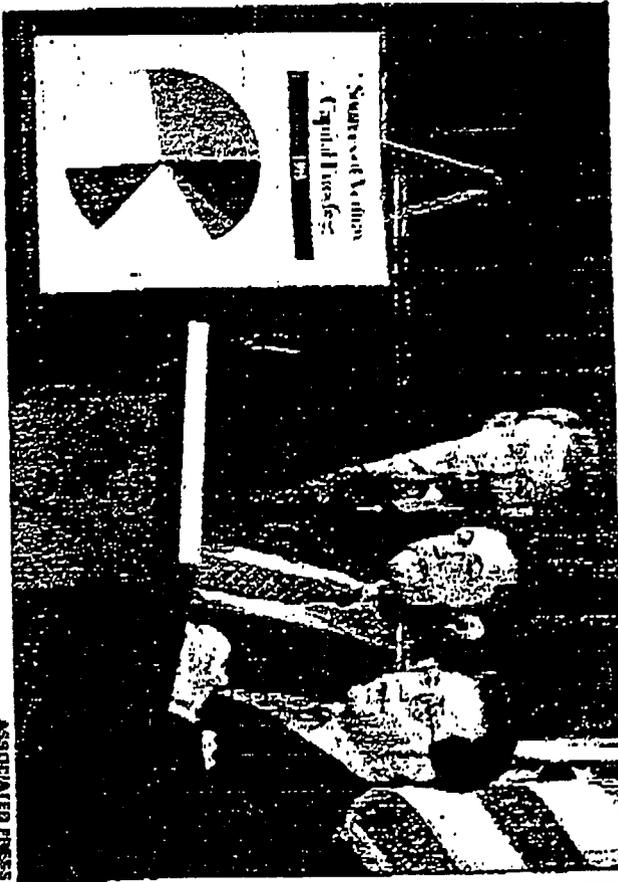
In 1995, New York ranked only ninth among states in attracting venture capital, according to a report done by Silver's staff. The \$224.1 million represented only 3 percent of the national total, according to the report.

"Businesses that are promising but non-traditional have difficulty obtaining the backing they need to get off the ground," said Assembly Small Business Committee chairman Joseph Morelle, D-Rondaquon.

State leaders frequently blame the relative lack of available financing for the state's lagging growth in high-tech industries compared to states like Massachusetts and California.

In fact, employment in high-tech companies actually dropped almost 2 percent in New York between 1993 and 1995, while it went up 6.3 percent in the country as a whole, according to the Assembly study.

The Assembly plan, which Silver admitted hasn't been explained to the Senate yet, calls for the state to give tax credits of \$50 million in each of the next two years to insurance companies that invest in venture-capital firms.



ASSOCIATED PRESS

New York Assembly Speaker Sheldon Silver, D-Manhatten, center, along with Assemblymen Joseph D. Morelle, D-Rochester,

right, and Robert Sweeney, D-Suffolk County, left, announce a plan to increase venture capital in the state Tuesday in Albany.

'Businesses that are promising but non-traditional have difficulty obtaining the backing they need to get off the ground.'

Joseph Morelle, Assembly Small Business Committee chairman

The companies would take a 10 percent credit annually for 10 years.

Silver said the state would more than recoup the lost revenues from the increased business activity the investments would spark.

Morelle said the plan, targeted to small businesses, would use the

money efficiently, since it would be venture capitalists and not state officials who would decide where to invest the money.

The idea got a backhanded compliment from the Empire Development Corp., Gov. George Pataki's main economic-development agency.

"Gov. Pataki is committed to helping small businesses, and we would like to see the state take a leadership role in this area," said John McCardle, spokesman for the agency.

take a look at this one."

The Republican-led Senate also didn't dissent the idea out of hand, which it frequently does with proposals from the Democratic Assembly.

"If this is something that will help businesses, we'll certainly be supporting," said Senate Republican spokesman John McCardle.

JUL 08 1997

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

July 23, 1997

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

<i>M. W. ...</i>	<i>Code Call & Storage</i>
<i>R. E. Schley</i>	<i>NC Rural Water Assoc.</i>
<i>Maria Schley</i>	<i>N.C. Rural Water Assoc.</i>
<i>Sam Taylor</i>	<i>Wamble County</i>
<i>Stevl Wungiele</i>	<i>NCALC (DRY CLEANERS)</i>
<i>Jenny Shaffer</i>	<i>" "</i>
<i>Fari Ann Harris</i>	<i>Sanford (Shower)</i>
<i>... ..</i>	<i>" "</i>
<i>... ..</i>	<i>SBTDC</i>
<i>Daniel R. Schultz</i>	<i>Coopers + Lybrand</i>
<i>Scott Zajac</i>	<i>Advantage Capital</i>
<i>Sharon E. ...</i>	<i>EGHS</i>

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

July 23, 1997
Date

Name of Committee

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
<i>Cam Crow</i>	<i>BPMHL</i>
<i>VL McBride</i>	<i>NCSA</i>
<i>E.L. Peters</i>	<i>NC Trucking Assn.</i>
<i>Howe Murchette</i>	<i>Fryer & Spurr</i>
<i>Doug Duncan</i>	<i>N.C. Forestry Assoc.</i>
<i>Alicia Kostzewa</i>	<i>SHIGES</i>
<i>Molly Diggins</i>	<i>NC Sierra Club</i>
<i>Jim Hobbs</i>	<i>NCHMA</i>
<i>Paul Zisin</i>	<i>OSBM</i>
<i>Donna M. Lee</i>	<i>Secretary of State</i>
<i>Scott Tompkins</i>	<i>SOS</i>

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

July 23, 1997
Date

Name of Committee

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Professor [Signature]	Dept. of State Treasury
James [Signature]	Public Staff - Util. Comm
Arthur Manberry	DEHNR - MWA - Groundwater Section
Sarah Fidler	DEHNR
Sabra Faires	Dept of Revenue
[Signature]	V
Phil [Signature]	Dept. of Revenue
George Long	NC DOR
Allison Metzger	intern
[Signature]	Bone & Assoc / Venture Partners
[Signature]	Publ & Tax Center

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

July 23, 1997
Date

Name of Committee

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

<i>Gene Upchurch</i>	<i>CPL</i>
<i>AS Swindell</i>	<i>BFI</i>
<i>John Bowditch</i>	<i>Zeb Alley P.A.</i>
<i>[Signature]</i>	<i>[Signature]</i>
<i>Walter Popper</i>	<i>ZDA, PA.</i>
<i>Suzanne Williams</i>	<i>Bone Pass.</i>
<i>[Signature]</i>	

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT

John H. Kerr, III, Co-Chair
David W. Hoyle, Co-Chair

AMENDED REPORT

Thursday, July 24, 1997

SENATOR JOHN KERR,

submits the following with recommendations as to passage:

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL #2, BUT FAVORABLE AS TO SENATE C.S. BILL

H.B.(CS#2)859

Various Room Tax Changes.

Draft Number: PCS7357
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 1

Committee Clerk Comment:

HB 859 7 23 97

Box 8

1. 1997 Senate Finance (begin July 24, 1997)
2. 1998 Senate Finance
3. 1997 Senate Judiciary (cont'd. to Box 9)

SENATE FINANCE COMMITTEE

THURSDAY, JULY 24, 1997

8:30 A.M. - ROOM 544 LOB

The Senate Finance Committee met. There were 21 members of the Committee present. Senator David W. Hoyle, Co-Chairman, called the meeting to order and introduced the Pages, they were Michelle Gilliam from Raleigh, N. C., sponsored by Senator Basnight and Kanika Johnson from Knightdale, N. C., sponsored by Senator Ballance.

H. B. 485 - Funeral Establishments

Representative Dockham came to explain the bill. Mr. Bill Hoke representing the N. C. Licensing Board for Funeral Homes spoke on the bill. Senator Hartsell moved for a "favorable" report, motion passed.

H. B. 225 - Dry-Cleaning Solvent Cleanup Act

Representative Weatherly came to explain the Bill. Senator Rand moved for adoption of proposed committee substitute, motion passed. Mr. Denny Shaffer with the N. C. Laundry & Cleaners Association spoke on the Bill, Mr. Richard Whisnant, General Counselor for DEHNR, spoke on the Bill. Senator Hoyle stated that there would be two (2) amendments to this committee substitute bill. Senator Hoyle sent forth the first amendment and made motion for adoption, motion passed. Mr. George Givens, Staff Counsel, read the second proposed amendment. Senator Albertson made a motion for adoption of the second amendment, motion passed. Senator Rand moved for a "favorable" report, motion passed.

H. B. 631 - Forsyth Local Act

Representative Decker came to explain the bill. Senator McDaniel moved for a "favorable" report, motion passed.

H. B. 566 - Wake Schools Development Changes

Representative Ellis explained the bill. Senator Rand moved for a "favorable" report, motion passed.

H. B. 568 - Wake Forest Annexation

Representative Ellis explained the Bill. Senator Rand made a motion for adoption of a committee substitute, motion passed. Senator McDaniel made a motion for a "favorable" report, motion passed.

H. B. 495 - Natural Gas

Representative Owens came to explain the Bill. Senator Cooper moved for adoption of a proposed committee substitute, motion passed. Senator Robert Shaw made a motion for a "favorable" report, motion passed.

H. B. 1027 - State Treasurer Venture Capital

Representative Owens came to explain the bill. Mr. Doug Chappell with the State Treasurer's Office spoke on the Bill. Mr. Rick Carlisle from the Department of Commerce spoke on the Bill. Senator Hoyle stated that this Bill might possibly be put into a study committee. He stated further that the decision would be made and that the Members of this Committee would be so advised.

H. B. 990 - Exempt Certain Nonprofit Utilities

Senator Phillips came to explain this Bill again (NOTE: Bill was first taken up for discussion at 7-23-97 Senate Finance Committee Meeting). Senator Hartsell made a motion for a "favorable" report on proposed committee substitute, motion passed.

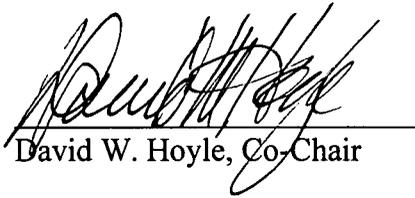
Senator Hoyle advised the Committee that today would be Allison Stiles', Intern for Senator Hoyle, last Meeting with us. He expressed to Allison appreciation for all of her hard work for the Committee.

Meeting adjourned.

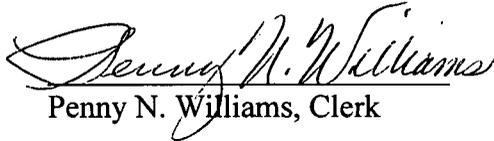
SENATE FINANCE COMMITTEE

Thursday, July 24, 1997

Page -3-


David W. Hoyle, Co-Chair


John H. Kerr, III Co-Chair


Penny N. Williams, Clerk


Evelyn S. Hartsell, Clerk

NOTE:

Agenda is Attachment # 1

Visitor's Registration is Attachment # 2

Committee Report dated 7-28-97 is Attachment # 3

Committee Report dated 8-4-97 is Attachment # 4

AGENDA

SENATE FINANCE COMMITTEE

THURSDAY, JULY 24, 1997

8:30 A.M., ROOM 544

- H.B. 225 - Dry-Cleaning Solvent Cleanup Act. - Rep. Weatherly
- H.B. 990 - Exempt Certain Nonprofit Utilities - Rep. Church
- H.B. 485 - Funeral Establishments - Rep. Dockham
- H.B. 495 - Natural Gas - Rep. Owens
- H.B. 631 - Forsyth Local Act - Rep. Decker
- H.B. 1027 - State Treasurer Venture Capital - Rep. Owens
- H.B. 566 - Wake Schools Development Changes - Rep. Ellis
- H.B. 568 - Wake Forest Annexation - Rep. Ellis

EXPLANATION OF HOUSE BILL 485:
Funeral Establishment (3rd Edition)

TO: Senate Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: July 23, 1997
SPONSOR: Representative Dockham
Agency Bill (The North Carolina Board of Mortuary Science)

House Bill 485 makes several changes to the statutes governing funeral services, cremation, and preneed funeral contracts. The bill becomes effective October 1, 1997. The bill is before the Finance Committee because of the following changes in the law:

1. Clarification that the reinspection fee of \$100 applies to embalming facilities that are not contained in funeral homes. (page 12)
2. The establishment of a crematory license year and an annual renewal process. The annual renewal fee is already set by statute at \$150. (Pages 14)
3. The bill establishes a list of late fee requirements for late renewals and for late reports. The late renewal fees are currently set by statute. The fee for filing a cremation report late is set at \$75 a month and the late penalty for paying the \$10 per cremation fee is set at \$10. (page 17)
4. Provides that a crematory must pay a reinspection fee of \$100 when a reinspection is necessary. (page 15 and 17)
5. Allows the Board to accept a monetary offer of not more than \$1,000 instead of suspending or revoking the license of a funeral establishment or a crematory. (pages 15 and 22)
6. Establishes a preneed license year for a preneed funeral establishment and annual renewal procedures. The annual renewal fee may not exceed \$150. The bill sets a late renewal fee of an amount that may not exceed \$100. (page 19)
7. Establishes a license year for a preneed sales license and its annual renewal procedures. The annual renewal fee may not exceed \$50. The bill sets a late renewal fee of an amount that may not exceed \$25. (page 19-20)
8. When a preneed funeral contract is sold, the licensee must remit a fee of \$15 to the Board. The bill provides that this fee may be increased up to \$20 and it sets a late filing and payment fee of an amount not to exceed \$25. (page 20)

9. The bill also sets a late fee for the late filing of a certificate of performance (\$25) and for the late filing of an annual report (\$150); it also establishes a reinspection fee for preneed licensee of up to \$100. (page 20)

Some of the other changes made by the bill include:

1. Giving the Board the authority to inspect embalming facilities that are not contained in funeral homes and requiring these facilities to be registered with the Board.
2. Recognizing the existence of limited liability companies.
3. Changing the contents of funeral directing and service examinations and embalming examinations to conform with the contents of examinations currently being given throughout the United States.
4. Establishing an inactive license that will allow a inactive licensee to vote for the members of the Board.
5. Setting the requirements for cremation reports, requiring a body to be enclosed in a container when it is cremated, and requiring the crematory operator to have a signed cremation authorization form before cremating a body.
6. Requiring a funeral home that is paid through a preneed funeral contract to mail proof of its performance of the contract to the Board, requiring a preneed licensee to divest itself of all the preneed contracts it holds when it is no longer licensed, and specifying that the names and addresses of preneed contract purchasers and beneficiaries are not public records.
7. Deleting the requirement that the Board use an administrative law judge for its hearings.
8. Deleting the requirement that the Board report evidence of misdemeanors to district attorney.
9. Setting the order of priority in authorizing the disposition of body or body parts.

Several sections of the bill add late fees for delinquent payments. Section 22 adds a late fee for crematories that do not submit their cremation fees (\$10 late fee per cremation) and their cremation report (\$75 per month past due date) in a timely manner. Only 2 of the 37 crematories in the state are habitual offenders of the filing deadlines. No revenue is projected from these late fees, because the Board thinks the late penalties will encourage the delinquent filers to follow Board rules. Section 27 adds a late fee for failure to timely renew a preneed funeral establishment license (\$100) or a preneed sales license (\$25) and failure to timely file a certificate of performance (\$150). Again, no revenue is anticipated from the late fees, because the Board believes the threat of late fees will encourage compliance with their deadlines.

There are two other sections that add a new license, but there is no revenue impact. Section 9 adds a new inactive license for individuals, but no fee is charged. A \$100 reinspection fee for preneed licensees is added in Section 28, but little or no revenue is expected since the Board has done only 2 reinspections in 5 years.

FISCAL RESEARCH DIVISION

733-4910

PREPARED BY: Richard Bostic

APPROVED BY: Tom Covington

DATE: July 23, 1997

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1997

H

3

HOUSE BILL 225*
Committee Substitute Favorable 5/22/97
Committee Substitute #2 Favorable 7/7/97

Short Title: Dry-Cleaning Solvent Cleanup Act.

(Public)

Sponsors:

Referred to:

February 17, 1997

1 A BILL TO BE ENTITLED

2 AN ACT TO PROVIDE FOR CLEANUP OF DRY-CLEANING SOLVENT
3 CONTAMINATION IN NORTH CAROLINA, AS RECOMMENDED BY THE
4 ENVIRONMENTAL REVIEW COMMISSION.

5 The General Assembly of North Carolina enacts:

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

8 "Part 6. Dry-Cleaning Solvent Cleanup.

9 "§ 143-215.104A. Title.

10 This Part is the 'North Carolina Dry-Cleaning Solvent Cleanup Act' and may be
11 cited by that name.

12 "§ 143-215.104B. Definitions.

13 (a) Unless a different meaning is required by the context or unless a different
14 meaning is set out in subsection (b) of this section, the definitions in G.S. 143-215.77,
15 130A-2, and 130A-290 apply throughout this Part.

16 (b) Unless a different meaning is required by the context, the following definitions
17 apply in this Part:

18 (1) 'Abandoned dry-cleaning facility site' or 'abandoned site' means
19 any real property or individual leasehold space on which a dry-
20 cleaning facility or wholesale distribution facility formerly
21 operated.

- 1 (2) 'Affiliate' has the same meaning as in 17 Code of Federal
2 Regulations § 240.12b-2 (1 April 1996 Edition).
- 3 (3) 'Commission' means the North Carolina Environmental
4 Management Commission.
- 5 (4) 'Contaminant' means a regulated substance released into the
6 environment.
- 7 (5) 'Current standards' when used in connection with 'cleanup',
8 'remediated', or 'remediation' means that cleanup or remediation
9 of contamination comply with generally applicable standards,
10 guidance, or established methods governing the contaminants that
11 are established by statute or adopted, published, or implemented
12 by the Commission, the Commission for Health Services, or the
13 Department instead of the risk-based standards established by the
14 Commission pursuant to this Part.
- 15 (6) 'Department' means the North Carolina Department of
16 Environment, Health, and Natural Resources.
- 17 (7) 'Disposal' shall have the meaning ascribed to it in G.S. 130A-290.
- 18 (8) 'Dry-cleaning facility' means a place of business located in this
19 State and engaged in on-site dry-cleaning operations, other than a
20 commercial uniform service or commercial linen supply facility.
- 21 (9) 'Dry-cleaning operations' means cleaning of apparel and
22 household fabrics by using one or more dry-cleaning solvents
23 instead of water.
- 24 (10) 'Dry-cleaning solvent' means Perchloroethylene F-1,1,3 or 1,1,1
25 trichloroethane, a petroleum-based solvent, another comparable
26 product used as a cleaning agent in a dry-cleaning operation or the
27 degradation products from such hazardous substances.
- 28 (11) 'Dry-Cleaning Solvent Assessment Agreement' or 'assessment
29 agreement' means an agreement between the Commission and a
30 potentially responsible party who desires to access whether a
31 release of dry-cleaning solvents at a dry-cleaning facility, an
32 abandoned dry-cleaning facility site, or a wholesale distribution
33 facility may be eligible for remediation under this Part and
34 whether any other contaminants, which are identified in the
35 agreement, may require remediation under other remedial
36 programs operated or administered by the Department.
- 37 (12) 'Dry-Cleaning Solvent Remediation Agreement' or 'remediation
38 agreement' means an agreement between the Commission and a
39 potentially responsible party who desires to clean up dry-cleaning
40 solvent contamination resulting from a release at a dry-cleaning
41 facility, an abandoned dry-cleaning facility site, or a wholesale
42 distribution facility under this Part and any other contaminants,
43 which are identified in the agreement, under other remedial
44 programs operated or administered by the Department.

- 1 (13) 'Dry-cleaning solvent contamination' means, for the purposes of
2 determining eligibility for participation under this Part only, the
3 presence of dry-cleaning solvent in the waters or surface or
4 subsurface soils of the State, the bedrock or other rock formations,
5 or buildings in a concentration above the level requiring
6 remediation pursuant to the rules implementing Article 21A of
7 Chapter 143.
8 (14) 'Facility' means a dry-cleaning facility or a wholesale distribution
9 facility.
10 (15) 'Fund' means the Dry-Cleaning Solvent Cleanup Fund.
11 (16) 'Hazardous waste' shall have the meaning ascribed to it in G.S.
12 130A-290.
13 (17) 'Imminent hazard' means a situation which is likely to cause an
14 immediate threat to human life, an immediate threat of serious
15 physical injury, an immediate threat of serious adverse health
16 effects, or a serious risk of irreparable damage to the environment
17 if no immediate action is taken.
18 (18) 'Local government' means a town, city, or county.
19 (18a) 'Operator' means any person operating a dry-cleaning facility or
20 wholesale distribution facility, whether by lease, contract, or any
21 other form of agreement.
22 (19) 'Parent' has the same meaning as in 17 Code of Federal
23 Regulations § 240.12b-2 (1 April 1996 Edition).
24 (20) 'Pollution and remediation legal liability insurance' means
25 property and casualty insurance coverage on a claims-made for
26 response costs authorized to be reimbursed from the Fund in G.S.
27 143-215.104N(a).
28 (21) 'Potentially responsible party' means any person who may have
29 liability for assessment, monitoring, treatment, mitigation, or
30 remediation of dry-cleaning solvent contamination resulting from a
31 release at a dry-cleaning facility, an abandoned dry-cleaning facility
32 site, or a wholesale distribution facility.
33 (22) 'Public health' means public health as the term is used in Article 9
34 of Chapter 130A of the General Statutes and 'human health' as the
35 term is used in Articles 21 and 21A of Chapter 143 of the General
36 Statutes.
37 (23) 'Regulated substance' means a hazardous waste, as defined in G.S.
38 130A-290; a hazardous substance, as defined in G.S. 143-215.77A;
39 oil, as defined in G.S. 143-215.77; or other substance regulated
40 under any remedial program implemented by the Department
41 other than Part 2A of Article 21A of Chapter 143 of the General
42 Statutes.
43 (24) 'Release' means any spillage, leakage, pumping, placement,
44 emptying, or dumping of dry-cleaning solvents resulting from a

1 dry-cleaning operation or the operation of a wholesale distribution
2 facility.

3 (25) 'Remedial program' means a program implemented by the
4 Department for the remediation of any contaminant, including the
5 programs implemented under Article 9 of Chapter 130A of the
6 General Statutes and the Oil Pollution and Hazardous Substances
7 Control Act of 1978 under Part 2 of Article 21a of Chapter 143 of
8 the General Statutes but not the remedial program implemented
9 under Part 2A of Article 21A of Chapter 143 of the General
10 Statutes.

11 (26) 'Remediation' means action to cleanup, mitigate, correct, abate,
12 minimize, eliminate, control, or prevent the spreading, migration,
13 leaking, leaching, volatilization, spilling, transporting, or further
14 release of a contaminant into the environment in order to protect
15 public health or the environment.

16 (27) 'Response costs' means costs incurred in connection with a
17 certified facility or abandoned site which the Commission
18 determines are reasonably necessary and consistent with the
19 applicable requirements of the Commission and any applicable
20 Dry-Cleaning Solvent Assessment Agreement or Dry-Cleaning
21 Solvent Remediation Agreement.

22 (28) 'Secretary' means the North Carolina Secretary of Environment,
23 Health, and Natural Resources.

24 (29) 'Subsidiary' has the same meaning as in 17 Code of Federal
25 Regulations § 240.12b-2 (1 April 1996 Edition).

26 (30) 'Treatment' shall have the meaning ascribed to it in G.S. 130A-
27 290.

28 (31) 'Waters' means any stream, river, creek, brook, run, canal, swamp,
29 lake, sound, tidal estuary, bay, reservoir, waterway, wetlands, or
30 any other body or accumulation of water, surface or underground,
31 public or private, natural or artificial, which is contained within,
32 flows through, or borders upon this State, or any portion thereof,
33 including those portions of the Atlantic Ocean over which this
34 State has jurisdiction.

35 (32) 'Wholesale distributor' means a person who operates a wholesale
36 distribution facility.

37 (33) 'Wholesale distribution facility' means a place of business located
38 in this State and engaged in the storage, distribution, or sale of dry-
39 cleaning solvents for use in dry-cleaning facilities.

40 **"§ 143-215.104C. Dry-Cleaning Solvent Cleanup Fund.**

41 (a) Creation. -- The Dry-Cleaning Solvent Cleanup Fund is established as a
42 special revenue fund to be administered by the Commission. Accordingly, revenue in
43 the Fund at the end of a fiscal year does not revert and interest and other investment

1 income earned by the Fund must be credited to it. The Fund is created to provide
2 revenue to implement this Part.

3 (b) Sources of Revenue. -- The following revenue is credited to the Fund:

4 (1) Dry-cleaning solvent taxes collected under Article 5D of Chapter
5 105 of the General Statutes.

6 (2) Recoveries made pursuant to G.S. 143-215.104N and G.S. 143-
7 215.104O.

8 (3) Gifts and grants made to the Fund.

9 (c) Disbursements. -- A claim filed against the Fund may be paid only from
10 revenue in the Fund and only in accordance with the provisions of this Part. Any
11 obligation to pay or reimburse response costs pursuant to this Part shall be expressly
12 contingent upon availability of monies in the Fund, and the State and its departments
13 and agencies shall have no obligation to pay or reimburse eligible expenses if monies
14 are not available in the Fund. The provisions of this Part shall not constitute a
15 contract, either express or implied, to pay or reimburse response costs in excess of the
16 monies available in the Fund. In making disbursements from the Fund, the
17 Commission shall pay the claims with the highest priority before claims of lower
18 priority, and claims of equal priority in the order in which the facility or abandoned
19 site was certified until the revenue is exhausted. Consistent with the provisions of
20 this Part, the Commission may disburse monies from the Fund to abate imminent
21 hazards caused by dry-cleaning solvent contamination at abandoned dry-cleaning
22 facility sites which have not been certified. Up to twenty percent (20%) of the
23 amount of revenue credited to the Fund in a year may be used to defray costs
24 incurred by the Department and the Attorney General's Office in connection with
25 administration of the program described in this Part, including oversight of response
26 activities.

27 "§ 143-215.104D. Powers of the Commission.

28 (a) Administrative Functions. -- The Commission may delegate any or all of the
29 powers enumerated in this subsection to the Department or engage a private
30 contractor or contractors to carry out the activities enumerated in this subsection. If
31 the Commission engages a private contractor to carry out the functions enumerated
32 in subdivisions (1) through (6) of this subsection, no action of the contractor shall be
33 effective until ratified by the Commission. The Commission shall:

34 (1) Accept petitions for certification and petitions to enter into dry-
35 cleaning solvent assessment or remediation agreements under this
36 Part.

37 (2) Prioritize certified dry-cleaning facilities, certified wholesale
38 distribution facilities, or certified abandoned dry-cleaning facility
39 sites for the initiation of assessment or remediation activities that
40 are reimbursable from the Fund.

41 (3) Develop forms to be used by persons applying for reimbursement
42 of assessment or remediation costs.

43 (4) Schedule funding of assessment and remedial response activities.

1 (5) Determine whether assessment or remediation is necessary at a
2 contamination site.

3 (6) Determine that all necessary assessment and remediation has been
4 completed at a contamination site.

5 (7) Make payments from the Fund to reimburse the costs of assessment
6 and remediation, provided, however, that any such payments made
7 by a private contractor engaged by the Commission shall be
8 authorized by the Commission prior to disbursement.

9 (b) Rulemaking. -- The Commission shall adopt such rules as are necessary to
10 implement the provisions of this Part. Rules adopted by the Commission shall be
11 consistent with and shall not duplicate, but may incorporate by reference, the rules
12 adopted by the Commission for Health Services pursuant to Article 9 of Chapter
13 130A of the General Statutes. The Commission shall not delegate the rule-making
14 powers provided in this subsection.

15 (1) The Commission may adopt rules governing:

16 a. Fees for response costs reimbursable under this Part.

17 b. The certification and decertification of facilities or
18 abandoned sites.

19 c. The prioritization of facilities or abandoned sites and
20 scheduling of funding for assessment and remedial response
21 activities. These rules shall take into consideration the
22 degree of harm or risk to public health and the
23 environment; the order in which certification issued for the
24 facility or abandoned site; and other factors the Commission
25 finds appropriate in the use of the Fund to maximize the
26 reduction of harm or risk posed by certified facilities,
27 certified abandoned sites, and uncertified facilities and sites.

28 d. The disbursement of revenue from the Fund for payment or
29 reimbursement of approved assessment or remedial
30 responses costs.

31 e. The determination whether assessment or remediation is
32 necessary at a contamination site.

33 f. The determination that all necessary assessment and
34 remediation has been completed at a contamination site.

35 g. The terms and conditions of dry-cleaning solvent assessment
36 and remediation agreements.

37 h. The determination whether additional assessment or
38 remediation is necessary at a contamination site previously
39 closed under this Part.

40 (2) The Commission may adopt rules establishing minimum
41 management practices for handling of dry-cleaning solvent at dry-
42 cleaning facilities and wholesale distribution facilities. The rules
43 may:

- 1 a. Require that all perchloroethylene dry-cleaning machines
2 installed at a dry-cleaning facility after the effective date of
3 the rule or temporary rule meet air emission standards that
4 equal or exceed the standards that apply to comparable dry-
5 to-dry perchloroethylene dry-cleaning machines with
6 integral refrigerated condensation.
- 7 b. Prohibit the discharge of dry-cleaning solvents or water that
8 contains dry-cleaning solvents into sanitary sewers, septic
9 systems, storm sewers, or waters of the State.
- 10 c. Require spill containment structures around dry-cleaning
11 machines, filters, stills, vapor absorbers, solvent storage
12 areas, and waste solvent storage areas.
- 13 d. Require floor sealants for cleaning room areas, provided that
14 the Commission finds the sealants to be effective.
- 15 e. Require, by 1 January 2002, the use of improved solvent
16 transfer systems to prevent releases at the time of delivery of
17 solvents to a dry-cleaning facility.
- 18 f. Require any solvent handling practices the Commission may
19 find necessary and appropriate to minimize the risk of
20 releases at wholesale distribution facilities.
- 21 (3) The Commission shall adopt rules establishing a risk-based
22 approach applicable to the assessment, prioritization, and cleanup
23 of dry-cleaning solvent contamination resulting from releases at
24 facilities or abandoned sites certified pursuant to G.S. 143-
25 215.104G. The rules shall address, at a minimum:
- 26 a. Criteria and methods for determining cleanup requirements,
27 including the level of cleanup necessary to assure adequate
28 protection of public health and the environment.
- 29 b. The circumstances under which information specific to the
30 dry-cleaning solvent contamination site should be considered
31 and required.
- 32 c. The circumstances under which restrictions on the future
33 use of any remediated dry-cleaning solvent contamination
34 site should be considered and required as a means of
35 achieving and maintaining an adequate level of protection
36 for public health and the environment.
- 37 d. Strategies for the assessment and remediation of dry-
38 cleaning solvent contamination, including presumptive
39 remedial responses sufficient to provide an adequate level of
40 protection as described under sub-subdivision a. of this
41 subdivision.
- 42 (c) All rules adopted by the Commission shall be applicable to all dry-cleaning
43 facilities, wholesale distribution facilities, and abandoned dry-cleaning facilities in the
44 State and shall, to the maximum extent practicable, be cost-effective and technically

1 feasible while protecting public health and the environment from the release of dry-
2 cleaning solvents.

3 (d) Unless otherwise provided in this Part, the Commission may delegate any of
4 its rights, duties, and responsibilities under this Part to the Department.

5 **"§ 143-215.104E. Requirement of financial responsibility for dry-cleaning facilities.**

6 (a) The owner or operator of any dry-cleaning facility or any wholesale
7 distribution facility operating in the State shall establish and continuously maintain
8 financial responsibility for legal liability arising in connection with dry-cleaning
9 solvent contamination resulting from a release at the facility by either:

10 (1) Obtaining pollution and remediation legal liability insurance for
11 the facility with coverage limits not less than one million dollars
12 (\$1,000,000) from an insurance carrier authorized to do business in
13 this State, or

14 (2) Depositing with the Commission, securities or a third-party bond
15 acceptable to the Commission in an amount not less than one
16 million dollars (\$1,000,000).

17 (b) If the owner or operator of a dry-cleaning facility or any wholesale distribution
18 facility demonstrates to the satisfaction of the Commission an inability to establish
19 financial responsibility consistent with the standards of subsection (a) of this section,
20 then the Commission shall issue a determination of uninsurability to the operator of
21 the facility. When a facility is designated as uninsurable by the Commission, the
22 financial responsibility requirements of subsection (a) of this section are satisfied.

23 (c) Unless the Commissioner of Insurance adopts rules providing otherwise, a dry-
24 cleaning facility or wholesale distribution facility shall be determined to be
25 uninsurable if the annual premium for coverage of the dry-cleaning facility or
26 wholesale distribution facility meeting the requirements of this Part is more than
27 three times the average premium for similar coverage for dry-cleaning facilities or
28 wholesale distribution facilities where dry-cleaning solvent contamination is not
29 known to have occurred. Each insurer selling pollution and remediation legal
30 liability insurance in this State shall annually report to the Commission the number
31 of policies held in force by the company in this State for dry-cleaning facilities and
32 for wholesale distribution facilities, and the average premium rate for each type of
33 facility. The first report required by this section shall be made no later than 1
34 January 1998.

35 (d) Dry-cleaning facilities and abandoned dry-cleaning facility sites located on a
36 United States military base or owned by the United States or a department or agency
37 of the United States and dry-cleaning facilities and abandoned dry-cleaning facility
38 sites owned by the State or an agency or department of the State are exempt from
39 complying with this section.

40 **"§ 143-215.104F. Requirements for certification, assessment agreements, and**
41 **remediation agreements.**

42 (a) Any person petitioning for certification of a facility or abandoned site pursuant
43 to G.S. 143-215.104G, for a Dry-Cleaning Solvent Assessment Agreement pursuant to
44 G.S. 143-215.104H, or for a Dry-Cleaning Solvent Remediation Agreement pursuant

1 to G.S. 143-215.104I, shall meet the requirements set out in this section and any other
2 applicable requirements of this Part.

3 (b) Requirements for Potentially Responsible Persons Generally. -- Every
4 petitioner shall provide the Commission with:

5 (1) Information necessary for the Commission to determine the
6 priority ranking of the facility or abandoned site described in the
7 petition.

8 (2) Information necessary to demonstrate the person's ability to incur
9 the response costs specified in subsection (e) of this section.

10 (3) Evidence of financial responsibility established in accordance with
11 G.S. 143-104.215E(a) or a copy of a determination of uninsurability
12 issued by the Commission pursuant to G.S. 143-25.104E(b).

13 (c) Requirement for Property Owners. -- In addition to the information required
14 by subsection (b) of this section, a petitioner who is the owner of the property on
15 which the dry-cleaning solvent contamination identified in the petition is located shall
16 provide the Commission a written agreement authorizing the Commission or its agent
17 to have access to the property for purposes of determining whether assessment or
18 remediation activities are being conducted in compliance with this Part and any
19 assessment or remediation agreement.

20 (d) The Commission shall reject any petition made pursuant to this Part in any of
21 the following circumstances:

22 (1) The petitioner is an owner or operator of the facility described in
23 the petition and the facility was not being operated in compliance
24 with minimum management practices adopted by the Commission
25 pursuant to G.S. 143-215.104D(b)(2) at the time the contamination
26 was discovered.

27 (2) The petitioner is an owner or operator of a facility described in the
28 petition and the petitioner owed delinquent taxes under Article 5D
29 of Chapter 105 of the General Statutes at the time the dry-cleaning
30 solvent contamination was discovered.

31 (3) The petitioner is the owner or operator of the facility described in
32 the petition and the petitioner had failed, at the time the
33 contamination was discovered, to establish financial responsibility
34 for the facility pursuant to G.S. 143-215.104E(a) or to obtain a
35 determination of uninsurability pursuant to G.S. 143-215.104E(b).

36 (e) The Commission may reject any petition made pursuant to this Part in any of
37 the following circumstances:

38 (1) The petitioner fails to provide the information required by
39 subsection (b) of this section.

40 (2) The petitioner falsified any information in its petition which was
41 material to the determination of the priority ranking, the nature,
42 scope and extent of contamination to be assessed or remediated, or
43 the appropriate means to contain and remediate the contaminants.

1 (f) Financial Responsibility Requirements. -- Each potentially responsible person
 2 who petitions the Commission to enter into a Dry-Cleaning Solvent Assessment or
 3 Remediation Agreement shall accept written responsibility in the amount specified in
 4 this section for the assessment or remediation of the dry-cleaning solvent
 5 contamination identified in the petition. If two or more potentially responsible
 6 persons petition the Commission jointly, the requirements below shall be the
 7 aggregate requirements for the financial responsibility of all potentially responsible
 8 persons who are party to the petition. Unless an alternative arrangement is agreed to
 9 by copetitioners, the financial responsibility requirements of this section shall be
 10 apportioned equally among the copetitioners. The requirements in this subsection
 11 shall be in addition to any insurance or other financial responsibility, including
 12 deductibles or retentions, established pursuant to G.S. 143-215.104E.

<u>Facility or Abandoned Site Where Release Occurred</u>	<u>Costs</u>
<u>Dry-cleaning facilities owned by persons who employ fewer than five full-time employees or the equivalent in activities related to dry-cleaning operations during the preceding calendar year</u>	<u>\$5,000</u>
<u>Dry-cleaning facilities owned by persons who employ at least five but fewer than 10 full-time employees or their equivalent in activities related to dry-cleaning operations during the preceding calendar year</u>	<u>\$10,000</u>
<u>Dry-cleaning facilities owned by persons who employ 10 or more full-time employees or their equivalent in activities related to dry-cleaning operations during the preceding calendar year</u>	<u>\$15,000</u>
<u>Wholesale distribution facilities</u>	<u>\$25,000</u>
<u>Abandoned dry-cleaning facility sites</u>	<u>\$50,000</u>

32 Provided, however, that if a dry-cleaning facility is determined to be uninsurable, the
 33 financial responsibility requirements for the facility shall be three times the amount
 34 provided above; and provided further, that the financial responsibility requirement
 35 for a wholesale distribution facility that is determined to be uninsurable shall be fifty
 36 thousand dollars (\$50,000).

37 **"§ 143-215.104G. Certification of facilities and abandoned sites.**

38 (a) A potentially responsible party who meets the applicable requirements of G.S.
 39 143-215.104F may petition the Commission to certify a facility or abandoned site
 40 where a release of dry-cleaning solvent is believed to have occurred. The
 41 Commission shall certify the facility or abandoned site if the petitioner meets the
 42 requirements of this Part. Upon its decision to certify a facility or abandoned site, the
 43 Commission shall inform the petitioner of its decision and of the initial priority
 44 ranking of the facility or site.

1 (b) The Commission may change the initial priority rankings of any facility or
2 abandoned site as additional facilities or abandoned sites are certified which are
3 determined by the Commission, in its sole discretion, to pose a higher degree of harm
4 or risk to public health and the environment; provided, however, that the
5 Commission shall not change the priority ranking of an abandoned site that is set in a
6 Dry-Cleaning Solvent Remediation Agreement.

7 (c) A potentially responsible person petitioning for certification of a facility or
8 abandoned site shall provide the Commission with either of the following:

9 (1) A proposed Dry-Cleaning Solvent Assessment or Remediation
10 Agreement, or an indication of the petitioner's intent to enter into
11 such an agreement.

12 (2) A written statement of the petitioner's intent to conduct assessment
13 and remediation activities pursuant to subsection (d) of this
14 section.

15 (d) A person who has access to the property on which a facility or abandoned site
16 is located and who has successfully petitioned for certification of the abandoned site
17 pursuant to this section may undertake assessment or remediation of dry-cleaning
18 solvent contamination located on the property consistent with the standards
19 established by the Commission pursuant to G.S. 143-215.104D(b)(3) without first
20 entering into a Dry-Cleaning Solvent Assessment Agreement or a Dry-Cleaning
21 Solvent Remediation Agreement; provided, however, no assessment or remediation
22 activities undertaken pursuant to this subsection shall rely on standards that require
23 the creation of land-use restrictions. A person who undertakes assessment or
24 remediation activities pursuant to this subsection shall provide the Commission prior
25 written notice of the activity. Costs associated with assessment or remediation
26 activities undertaken pursuant to this subsection shall not be eligible for
27 reimbursement from the Fund.

28 (e) The rejection of any petition filed pursuant to this section shall not affect the
29 rights of any other petitioner, other than any parent, subsidiary, or other affiliate of
30 the petitioner, under this Part. The rejection of a petition or the decertification of a
31 facility or abandoned site may be the basis for rejection of a petition by any parent,
32 subsidiary, or other affiliate of the petitioner for the facility or abandoned site.

33 **§ 143-215.104H. Dry-Cleaning Solvent Assessment Agreements.**

34 (a) Assessment Agreements. -- One or more potentially responsible parties may
35 petition the Commission to enter into a Dry-Cleaning Solvent Assessment Agreement
36 regarding a facility or abandoned site that has been certified pursuant to G.S. 143-
37 215.104G and for which the party may have responsibility. The Commission may, in
38 its discretion, enter into an assessment agreement with any potentially responsible
39 party who satisfied the requirements of this section and the applicable requirements
40 of G.S. 143-215.104F. If more than one potentially responsible party petitions the
41 Commission, the Commission may enter into a single agreement with one or more of
42 the petitioners. The Commission shall not unreasonably refuse to enter into an
43 assessment agreement pursuant to this section. Petitioners shall provide the
44 Commission with any information necessary to demonstrate:

- 1 (1) The priority ranking assigned to the facility or site is consistent
2 with the rules adopted by the Commission or the adjusted priority
3 ranking which the petitioner agrees to accept is consistent with the
4 rules adopted by the Commission.
- 5 (2) The projected schedule for funding of assessment activities,
6 including reimbursements from the Fund.
- 7 (3) The assessment activities to be undertaken with respect to the dry-
8 cleaning solvent contamination and any other contamination at the
9 contamination site.
- 10 (4) The person who will be responsible for implementation of the
11 activities is capable and qualified to conduct the assessment.
- 12 (5) The financial responsibilities of the petitioner with respect to the
13 costs of the assessment activities and the ability to meet those
14 responsibilities.
- 15 (6) The permits or other authorizations required to conduct the
16 assessment activities and to lawfully dispose of any hazardous
17 substances or wastes generated by the assessment activities have
18 been or can be obtained.
- 19 (7) The assessment activities will not increase the existing level of
20 public exposure to health or environmental hazards at the
21 contamination site.
- 22 (8) The petitioner continues to have available the financial resources
23 necessary to satisfy the share of response costs imposed on the
24 petitioner by G.S. 143-215.104F.
- 25 (9) The response costs to be incurred in connection with the
26 agreement are reasonable and necessary.
- 27 (10) The consent of other property owners to enter into their property
28 for purpose of conducting assessment activities specified in the
29 assessment agreement.
- 30 (11) The date that any necessary remediation of the contamination site
31 could begin assuming the availability of monies in the Fund.
- 32 (b) The terms and conditions of an assessment agreement regarding dry-cleaning
33 solvent contamination shall be guided by and consistent with the rules adopted by the
34 Commission pursuant to G.S. 143-215.104D and the reimbursement authorities and
35 limitations set out in this Part. Agreements shall provide, subject to availability of
36 monies in the Fund, for prompt reimbursement of response costs incurred in
37 assessment activities that are found by the Commission to be consistent with the
38 assessment agreement and this Part.
- 39 (c) The Commission may refuse to enter into a dry-cleaning solvent assessment
40 agreement with any potentially responsible person if:
 - 41 (1) The petitioner will not accept financial responsibility for the share
42 of the response costs established in G.S. 143-215.104F.

1 (2) The petitioner will not accept responsibility for conducting,
2 supervising, or otherwise undertaking assessment activities required
3 by the Commission.

4 (3) The petitioner fails to provide any information required by
5 subsection (a) of this section.

6 (d) The refusal of the Commission to enter into a Dry-Cleaning Solvent
7 Assessment Agreement with any potentially responsible person shall not affect the
8 rights of any other petitioner, other than any parent, subsidiary or other affiliate of
9 the petitioner, other than any parent, subsidiary or other affiliate of the petitioner,
10 under this Part. The refusal of the Commission to enter into an agreement may be
11 the basis for rejection of a petition by any parent, subsidiary or other affiliate of the
12 petitioner for the facility or abandoned site.

13 (e) If the Commission determines from the assessment prepared pursuant to this
14 Part that the degree of risk to public health or the environment resulting from dry-
15 cleaning solvent contamination otherwise subject to assessment or remediation under
16 this Part and Article 9 of Chapter 130A is acceptable in light of the criteria
17 established pursuant to G.S. 143-215.104D(b)(3) and Article 9 of Chapter 130A, the
18 Commission shall issue a written statement of its determination and notify the owner
19 or operator of the facility or abandoned site responsible for the contamination that no
20 cleanup, no further cleanup, or no further action is required in connection with the
21 contamination.

22 (f) If the Commission determines that no remediation or further action is required
23 in connection with dry-cleaning solvent contamination otherwise subject to
24 assessment or remediation pursuant to this Part and Article 9 of Chapter 130A, the
25 Commission shall not pay or reimburse any response costs otherwise payable or
26 reimbursable under this Part from the Fund other than costs reasonable and necessary
27 to conduct the risk assessment pursuant to this section and in compliance with a Dry-
28 Cleaning Solvent Assessment Agreement.

29 **§ 143-215.104I. Dry-Cleaning Solvent Remediation Agreements.**

30 (a) Upon the completion of assessment activities required by a Dry-Cleaning
31 Solvent Assessment Agreement, a potentially responsible party may petition the
32 Commission to enter into a Dry-Cleaning Solvent Remediation Agreement for any
33 contamination requiring remediation. The Commission may, in its discretion, enter
34 into a remediation agreement with any petitioner who satisfies the requirements of
35 this section and the applicable requirements of G.S. 143-215.104F. If more than one
36 potentially responsible party petitions the Commission, the Commission may enter
37 into a single agreement with one or more of the petitioners. The Commission shall
38 not unreasonably refuse to enter into an assessment agreement pursuant to this
39 section. The Commission may, in its discretion, enter into a remediation agreement
40 that includes the assessment described in G.S. 143-215.104H. Petitioners shall
41 provide the Commission with any information necessary to demonstrate that:

42 (1) The petitioner, and any parent, subsidiary or other affiliate of the
43 petitioner has substantially complied with:

- 1 a. The terms of the Dry-Cleaning Solvent Assessment
2 Agreement and any Dry-Cleaning Solvent Remediation
3 Agreement, brownfields agreement or similar agreement to
4 which the requesting party, or any parent, subsidiary or
5 other affiliate of the requesting person has been a party.
6 b. The requirements applicable to any remediation in which
7 the petitioner has previously engaged.
8 c. Federal and State laws, regulations, and rules for the
9 protection of the environment.
10 (2) As a result of the remediation agreement, the contamination site
11 will be suitable for the uses specified in the agreement while fully
12 protecting public health and the environment from dry-cleaning
13 solvent contamination and any other contaminants included in the
14 remediation agreement instead of being remediated to current
15 standards.
16 (3) There is a public benefit commensurate with the liability
17 protection provided under this Part.
18 (4) The petitioner has or can obtain the financial, managerial, and
19 technical means to fully implement the remediation agreement and
20 assure the safe use of the contamination site.
21 (5) The petitioner has complied with or will comply with all
22 applicable procedural requirements.
23 (6) The agreement will not cause the Department to violate, or
24 potentially violate, the terms and conditions under which it
25 operates and administers remedial programs, including the
26 programs established or operated pursuant to Article 9 of Chapter
27 130A of the General Statutes, by delegation or similar
28 authorization from the United States or its departments or agencies
29 including the Environmental Protection Agency.
30 (7) The priority ranking assigned to the facility or site is consistent
31 with the rules adopted by the Commission or the adjusted priority
32 ranking which the petitioner agrees to accept is consistent with the
33 rules adopted by the Commission.
34 (8) The projected schedule for funding of remediation activities,
35 including reimbursements from the Fund.
36 (9) The petitioner continues to have available the financial resources
37 necessary to satisfy the share of response costs imposed on the
38 petitioner by G.S. 143-215.104F.
39 (10) The expenditures eligible for reimbursement from the Fund and to
40 be incurred in connection with the agreement are reasonable and
41 necessary.
42 (11) The consent of other property owners to enter into their property
43 for purposes of conducting remediation activities specified in the
44 assessment agreement.

1 (b) In negotiating a remediation agreement, parties may rely on land-use
2 restrictions that will be included in a notice of Dry-Cleaning Solvent Remediation
3 notice required under G.S. 143-215.104M. A remediations agreement may provide
4 for remediations standards that are based on those land-use restriction.

5 (c) A Dry-Cleaning Solvent Remediation Agreement shall contain a description of
6 the contamination site that would be sufficient as a description of the property in an
7 instrument of conveyance and, as applicable, a statement of:

8 (1) Any remediation, including remediation of contaminants other
9 than dry-cleaning solvents, to be conducted on the property,
10 including:

11 a. A description of specific areas where remediation is to be
12 conducted.

13 b. The remediation method or methods to be employed.

14 c. The resources that the petitioner will make available and
15 the degree to which the petitioner intends to rely on the
16 Fund for resources.

17 d. A schedule of remediation activities.

18 e. Applicable remediation methods which for dry-cleaning
19 solvent contamination shall not be in excess of the
20 requirements adopted by the Commission pursuant to G.S.
21 143-104D(b)(3).

22 f. A schedule and the method or methods for evaluating the
23 remediation.

24 (2) Any land-use restrictions that will apply to the contamination site
25 or other property.

26 (3) The desired results of any remediation or land-use restrictions with
27 respect to the contamination site.

28 (4) The guidelines, including parameters, principles, and policies
29 within which the desired results are to be accomplished.

30 (5) The consequences of achieving or not achieving the desired results.

31 (6) The final priority ranking of the facility or abandoned site.

32 (7) The person who will conduct the remediation if that person is not
33 the potentially responsible party entering the agreement.

34 (d) In addition to the bases in subsection (c) of this section, the Commission may
35 refuse to enter into a dry-cleaning solvent assessment or remediation agreement with
36 any potentially responsible person if:

37 (1) The petitioner will not accept financial responsibility for the share
38 of the response costs established in G.S. 143-215.104F. This
39 requirement shall not apply to a potentially responsible person
40 who (i) is the owner of property upon which the dry-cleaning
41 solvent contamination is located, and (ii) is not a current or former
42 owner or operator of a facility believed to be responsible for the
43 contamination.

1 (2) The petitioner will not accept responsibility for conducting,
2 supervising, or otherwise undertaking remediation activities
3 required by the Commission.

4 (3) The petitioner does not provide any information that is necessary
5 to demonstrate the facts required to be shown by subsection (a) of
6 this section.

7 (e) In addition to the bases set forth in subsection (d) of this section, the
8 Commission may refuse to enter into a dry-cleaning solvent remediation agreement
9 with the owner of the property on which a contamination site is located if the owner
10 refuses to accept limitations on the future use of the property and to give notice of
11 such limitations pursuant to G.S. 143-215.104M.

12 (f) The refusal of the Commission to enter into a Dry-Cleaning Remediation
13 Agreement with any potentially responsible person shall not affect the rights of any
14 other petitioner, other than any parent, subsidiary or other affiliate of the petitioner,
15 under this Part. The refusal of the Commission to enter into an agreement may be
16 the basis for rejection of a petition by any parent, subsidiary or other affiliate of the
17 petitioner for the facility or abandoned site.

18 (g) The terms and conditions of a Dry-Cleaning Solvent Remediation Agreement
19 concerned with dry-cleaning solvent contamination shall be guided by and consistent
20 with the rules adopted by the Commission pursuant to G.S. 143-215.104D and the
21 reimbursement authorities and limitations set out in this Part. Agreements shall
22 provide, subject to availability of monies in the Fund, for prompt reimbursement of
23 response costs incurred in assessment activities that are found by the Commission to
24 be consistent with the remediation agreement and this Part.

25 (h) Any failure of the requesting person or the requesting person's agents or
26 employees to comply with the Dry-Cleaning Solvent Remediation Agreement
27 constitutes a violation of this part by the requesting party.

28 **"§ 143-215.104J. Decertification; termination of assessment or remediation**
29 **agreements.**

30 (a) The Commission may decertify a facility or abandoned site, renegotiate a Dry-
31 Cleaning Solvent Assessment or Remediation Agreement, or terminate a Dry-
32 Cleaning Solvent Assessment or Remediation Agreement with respect to any party
33 thereto in the following circumstances:

34 (1) The owner or operator of the facility, at any time subsequent to the
35 certification of the facility, violates any of the minimum
36 management requirements adopted by the Commission pursuant to
37 G.S. 143-215.104D(b)(2).

38 (2) In the case of dry-cleaning contamination on property that is
39 owned by a petitioner, the petitioner fails to file a notice of dry-
40 cleaning solvent remediation as provided in G.S. 143-215.104M.

41 (3) The potentially responsible persons who are parties to a Dry-
42 Cleaning Solvent Assessment Agreement are unable to reach an
43 agreement with the Commission to enter into a Dry-Cleaning

- 1 Solvent Remediation Agreement within the time specified in the
2 assessment agreement.
- 3 (4) The payment of taxes assessed to the facility under Article 5D of
4 Chapter 105 of the General Statutes is delinquent.
- 5 (5) The financial responsibility to meet the requirement of G.S. 143-
6 215.104E is not maintained continuously for any facility, unless a
7 determination of uninsurability has been issued for the facility.
- 8 (6) The owner or operator fails to comply with all applicable
9 requirements of this Part to complete any assessment or
10 remediation activities required by a Dry-Cleaning Solvent
11 Assessment and Remediation Agreement.
- 12 (7) The owner or operator of a facility where assessment or
13 remediation activities are scheduled or in progress transfers the
14 ownership or operation of the facility or abandoned site to another
15 person without the prior consent of the Commission and the
16 execution of a substitute Dry-Cleaning Solvent Assessment or
17 Remediation Agreement.
- 18 (8) The standards applied to the dry-cleaning solvent contamination
19 remediation or containment under the provisions of this Part and
20 the Dry-Cleaning Solvent Remediation Agreement will, or are
21 likely to, cause the Department to fail to comply with the terms
22 and conditions under which it operates and administers a
23 remediation program by delegation or similar authorization from
24 the United States or one of its departments and agencies, including
25 the Environmental Protection Agency.
- 26 (b) Prior to decertifying any facility or abandoned site or renegotiating or
27 terminating any assessment or remediation agreement, the Commission shall give the
28 petitioners notice and opportunity for hearing. The Commission is not required to
29 give the petitioners notice and opportunity for hearing when the Commission
30 reasonably takes an emergency action to abate an imminent hazard caused by or
31 arising from assessment or remediation activities at a contamination site whether the
32 Commission issues a special order pursuant to G.S. 143-215.2 or takes other action.
- 33 (c) Neither the decertification of any facility or abandoned site, the renegotiation
34 of any agreement, nor the termination of any agreement pursuant to this subsection
35 shall not affect the rights of any petitioner, other than any parent, subsidiary or other
36 affiliate of the petitioner, found to be in violation of the provisions of subsection (a)
37 of this section. If the Commission decertifies a facility or abandoned site or
38 terminates an assessment or remediation agreement with any party to the agreement
39 pursuant to subsection (a) of this section, the Commission shall use its best efforts to
40 negotiate a substitute agreement with any remaining parties to the agreement.
- 41 "§ 143-215.104K. Liability protection.
- 42 (a) A potentially responsible party who enters into a Dry-Cleaning Solvent
43 Assessment or Remediation Agreement with the Commission and who is complying
44 with the agreement shall not be held liable for assessment or remediation of areas of

1 contamination identified in the agreement except as specified in the assessment or
2 remediation agreement, so long as the activities conducted at the contamination site
3 by and under the control or direction of the petitioner do not increase the risk of
4 harm to public health or the environment and the petitioner is not required to
5 undertake additional remediation to current standards pursuant to subsection (c) of
6 this section. The liability protection provided under this Part applies to all of the
7 following persons to the same extent as the petitioner, so long as these persons are
8 not otherwise potentially responsible parties or parent, subsidiaries, or affiliates of
9 potentially responsible parties and the person is not required to undertake additional
10 remediation to current standards pursuant to subsection (c) of this section:

11 (1) Any person under the direction or control of the requesting person
12 who directs or contracts for remediation or redevelopment of the
13 contamination site.

14 (2) Any future owner of the contamination site.

15 (3) A person who develops or occupies the contamination site.

16 (4) A successor or assign of any person to whom the liability
17 protection provided under this Part applies.

18 (5) Any lender or fiduciary that provides financing for remediation or
19 redevelopment of the contamination site.

20 (b) A person who conducts an environmental assessment or transaction screen on
21 contamination resulting from a release at a certified facility or certified abandoned
22 site consistent contamination resulting from a release at a certified facility or certified
23 abandoned site consistent with the Dry-Cleaning Solvent Assessment Agreement, if
24 any was required under this Part, and who is not otherwise a potentially responsible
25 party is not a potentially responsible party as a result of conducting the
26 environmental assessment or transaction screen unless that person increases the risk
27 of harm to public health, or the environment by failing to exercise due diligence and
28 reasonable care in performing the environmental assessment or transaction screen.

29 (c) If a land-use restriction set out in the Dry-Cleaning Solvent Remediation
30 Notice required under G.S. 143-215.104M is violated, the owner of the contamination
31 site at the time the land-use restriction is violated, the owner's successors and assigns,
32 and the owner's agents who direct or contract for alteration of the contamination site
33 in violation of a land-use restriction shall be liable for remediation of all
34 contaminants to current standards. A petitioner who completes the remediation or
35 redevelopment required under a Dry-Cleaning Solvent Remediation Agreement or
36 other person who receives liability protection under this Part shall not be required to
37 undertake additional remediation unless any of the following apply:

38 (1) The petitioner knowingly or recklessly provides false information
39 that forms a basis for the remediation agreement or that is offered
40 to demonstrate compliance with the agreement or fails to disclose
41 relevant information about contamination related to a facility or
42 abandoned site.

43 (2) New information indicates the existence of previously unreported
44 dry-cleaning solvent contaminants or any other contaminants to be

1 remediated under the remediation agreement, or an area of
2 previously unreported contamination by contaminants addressed in
3 the agreement on or associated with the facility or abandoned site
4 which has not been remediated to current standards, unless the
5 agreement is amended to include any previously unreported
6 contaminants and any additional area of contamination. If the
7 agreement sets maximum concentrations for contaminants and new
8 information indicates the existence of previously unreported areas
9 of these contaminants, further remediation shall be required only if
10 the areas of previously unreported contaminants raise the risk of
11 the contamination to public health or the environment to a level
12 less protective of public health and the environment than that
13 required by the agreement.

14 (3) The level of risk to public health and the environment from
15 contaminants is unacceptable at or in the vicinity of the
16 contamination site due to changes in exposure conditions,
17 including (i) a change in land use that increases the probability of
18 exposure to contaminants at or in the vicinity of the contamination
19 site or (ii) the failure of remediation to mitigate risks to the extent
20 required to make the contamination site fully protective of public
21 health and the environment as planned in the agreement.

22 (4) The Commission obtains new information about a contaminant to
23 be remediated under the remediation agreement and associated
24 with the facility or abandoned site or exposures at or around the
25 contamination site that raises the risk to public health and the
26 environment associated with the contamination site beyond an
27 acceptable range and in a manner or to a degree not anticipated in
28 the agreement. Any person whose use, including any change in
29 use, of the contamination site causes an unacceptable risk to public
30 health and the environment may be required by the Commission to
31 undertake additional remediation measures under the provisions of
32 this Part.

33 (5) A petitioner fails to file a timely and proper Dry-Cleaning Solvent
34 Remediation Notice under this Part.

35 (6) A facility or abandoned site loses its certification before the
36 assessment and any remediation required under the provisions of
37 this Part and the Dry-Cleaning Solvent Remediation Agreement
38 are completed to the satisfaction of the Department.

39 (7) The remediation required in the remediation agreement has
40 resulted in notification from the United States or its departments
41 and agencies, including the Environmental Protection Agency, that
42 the Department will violate the terms and conditions under which
43 it operates and administers remedial programs by delegation or
44 similar authorization.

1 "§ 143-215.104L. Public notice and community involvement.

2 (a) If a petitioner desires to enter into a Dry-Cleaning Solvent Remediation
3 Agreement based on remediation standards that rely on the creation of land-use
4 restriction, the petitioner shall notify the public and the community in which the
5 facility or abandoned site is located of planned remediation and redevelopment
6 activities. The petitioner shall submit Notice of Intent to Remediate a Dry-Cleaning
7 Solvent Facility or Abandoned Site and a summary of the Notice of Intent to the
8 Commission. The Notice of Intent shall provide, to the extent known, a legal
9 description of the location of the contamination site, a map showing the location of
10 the contamination site, a description of the contaminants involved and their
11 concentrations in the media of the contamination site, a description of the future use
12 of the contamination site, any proposed investigation and remediation, and a
13 proposed Dry-Cleaning Solvent Remediation Notice prepared in accordance with
14 G.S. 143-215.104M. Both the Notice of Intent and the summary of the Notice of
15 Intent shall state the time period and means for submitting written comment and for
16 requesting a public meeting on the proposed Dry-Cleaning Solvent Remediation
17 Agreement. The summary of the Notice of Intent shall include a statement as to the
18 public availability of the full Notice of Intent. After approval of the Notice of Intent
19 and summary of the Notice of Intent by the Commission, the petitioner shall provide
20 a copy of the Notice of Intent to all local governments having jurisdiction over the
21 contamination site. The petitioner shall publish the summary of the Notice of Intent
22 in a newspaper of general circulation serving the area in which the contamination is
23 located and shall file a copy of the summary of the Notice of Intent with the Codifier
24 of Rules, who shall publish the summary of the Notice of Intent in the North
25 Carolina Register. The petitioner shall also conspicuously post a copy of the
26 summary of the Notice of Intent at the contamination site.

27 (b) Publication of the approved summary of the Notice of Intent in the North
28 Carolina Register and publication in a newspaper of general circulation shall begin a
29 public comment period of at least 60 days from the later date of publication. During
30 the public comment period, members of the public, residents of the community in
31 which the contamination site is located, and local governments having jurisdiction
32 over the contamination site may submit comment on the proposed Dry-Cleaning
33 Solvent Remediation Agreement, including methods and degree of remediation,
34 future land uses, and impact on local employment.

35 (c) Any person who desires a public meeting on a proposed Dry-Cleaning Solvent
36 Remediation Agreement shall submit a written request for a public meeting to the
37 Commission within 30 days after the public comment period begins. The
38 Commission shall consider all requests for a public meeting and shall hold a public
39 meeting if the Commission determines that there is significant public interest in the
40 proposed agreement. If the Commission decides to hold a public meeting, the
41 Commission shall, at least 30 days prior to the public meeting, mail written notice of
42 the public meeting to all persons who requested the public meeting and to any other
43 person who had previously requested notice. The Commission shall also direct the
44 petitioner to publish, at least 30 days prior to the date of the public meeting, a notice

1 of the public meeting at least one time in a newspaper having general circulation in
2 such county where the contamination site is located. In any county in which there is
3 more than one newspaper having general circulation, the Commission shall direct the
4 petitioner to publish a copy of the notice in as many newspapers having general
5 circulation in the county as the Commission in its discretion determines to be
6 necessary to assure that the notice is generally available throughout the county. The
7 Commission shall prescribe the form and content of the notice to be published. The
8 Commission shall prescribe the procedures to be followed in the public meeting. The
9 Commission shall take detailed minutes of the meeting. The minutes shall include
10 any written Dry-Cleaning Solvent Remediation Agreement, the Commission shall
11 take into account the comment received during the comment period and at the public
12 meeting if the Commission holds a public meeting. The Commission shall
13 incorporate into the agreement provisions that reflect comment received during the
14 comment period and at the public meeting to the extent practical. The Commission
15 shall give particular consideration to written comment that is supported by valid
16 scientific and technical information and analysis.

17 "§ 143-215.104M. Dry-Cleaning Solvent Remediation Notice; land-use restrictions in
18 deeds.

19 (a) Land-Use Restriction. -- In order to reduce or eliminate the danger to public
20 health or the environment posed by a dry-cleaning solvent contamination site, the
21 owner of property upon which dry-cleaning solvent contamination has been
22 discovered may prepare a Dry-Cleaning Solvent Remediation Notice identifying the
23 site on which the contamination has been discovered and providing for current or
24 future restrictions on the use of the property. If a petitioner requests that a
25 contamination site be remediated to standards which require land-use restrictions, the
26 petitioner must file a Dry-Cleaning Solvent Remediation Notice for the remediation
27 agreement to become effective.

28 (b) Notice of Restriction. -- A Dry-Cleaning Solvent Remediation Notice shall
29 include:

- 30 (1) A survey plat of the contamination site that has been prepared and
31 certified by a professional land surveyor and that meets the
32 requirements of G.S. 47-30.
33 (2) A legal description of the property that would be sufficient as a
34 description in an instrument of conveyance.
35 (3) A description of the location and dimensions of the areas of
36 potential environmental concern with respect to permanently
37 surveyed benchmarks.
38 (4) The type, location, and quantity of dry-cleaning solvent known to
39 exist on the property.
40 (5) Any restrictions on the current or future use of the property or
41 other property that are necessary to assure adequate protection of
42 public health and the environment as provided in rules adopted
43 pursuant to G.S. 143-215.104D(b)(3). These land-use restrictions
44 may apply to activities on, over, or under the land, including, but

1 not limited to, use of groundwater, building, filling, grading,
2 excavating, and mining. Where a contamination site encompasses
3 more than one parcel or tract of land, a composite map or plat
4 showing all parcels or tracts may be recorded.

5 (c) Recordation of Notice. -- After the Commission approves and certifies the
6 Dry-Cleaning Solvent Remediation Notice under subsection (a) of this section, a
7 certified copy of a Dry-Cleaning Solvent Remediation Notice shall be filed in the
8 office of the register of deeds of the county or counties in which the property
9 described is located. The petitioner shall file the Dry-Cleaning Solvent Remediation
10 Notice within 15 days of the petitioner's receipt of the Commission's approval of the
11 notice or the petitioner's entry into the Dry-Cleaning Solvent Remediation
12 Agreement, whichever is later. The register of deeds shall record the certified copy
13 of the Dry-Cleaning Solvent Remediation Notice and index it in the grantor index
14 under the names of the owners of the land.

15 (d) Notice of Transfer. -- When property for which a Dry-Cleaning Solvent
16 Remediation Notice has been filed is sold, leased, conveyed, or transferred, the deed
17 or other instrument of transfer shall contain in the description section, in no smaller
18 type than that used in the body of the deed or instrument, a statement that the
19 property has been contaminated with dry-cleaning solvent and, if appropriate,
20 cleaned up under this Part.

21 (e) Cancellation of Notice. -- A Dry-Cleaning Solvent Remediation Notice filed
22 pursuant to this Part may, at the request of the owner of the property subject to the
23 Dry-Cleaning Solvent Remediation Notice, be canceled by the Secretary after the risk
24 to public health and the environment associated with the dry-cleaning solvent
25 contamination and any other contaminants included in the Dry-Cleaning Solvent
26 Remediation Agreement has been eliminated as a result of remediation of the
27 property. The Secretary shall forward notice of cancellation to the register of deeds
28 of the county or counties where the Dry-Cleaning Solvent Remediation Notice is
29 recorded and request that the Dry-Cleaning Solvent Remediation Notice be canceled.
30 The notice of cancellation shall contain the names of the landowners as shown in the
31 Dry-Cleaning Solvent Remediation Notice. The register of deeds shall record the
32 notice of cancellation in the deed books and index it on the grantor index in the
33 name of the landowner as shown in the Dry-Cleaning Solvent Remediation Notice
34 and on the grantee index in the name 'Secretary of Environment, Health, and Natural
35 Resources'. The register of deeds shall make a marginal entry on the Dry-Cleaning
36 Solvent Remediation Notice showing the date of cancellation and the book and page
37 where the notice of cancellation is recorded, and the register of deeds shall sign the
38 entry. If a marginal entry is impracticable because of the method used to record
39 maps and plats, the register of deeds shall not be required to make a marginal entry.

40 (f) Enforcement. -- Any restriction on the current or future use of property subject
41 to a Dry-Cleaning Solvent Remediation Notice filed pursuant to this section shall be
42 enforced by any owner of the property or by any other responsible party. Any land-
43 use restriction may also be enforced by the Commission through the remedies
44 provided in this Part or by means of a civil action in the superior court. The

1 Commission may enforce any land-use restriction without first having exhausted any
2 available administrative remedies. Restrictions also may be enforced by any unit of
3 local government having jurisdiction over any part of the property by means of a civil
4 action without the unit of local government having first exhausted any available
5 administrative remedy. A land-use restriction may also be enforced by any person
6 eligible for liability protection under this Part who will lose liability protection if the
7 land-use restriction is violated. A restriction shall not be declared unenforceable due
8 to lack of privity of estate or contract, due to lack of benefit to particular land, or due
9 to lack of privity of any property interest in particular land. Any person who owns
10 or leases a property subject to a land-use restriction under this section shall abide by
11 the land-use restriction.

12 (g) Relation to Brownfields Notice. -- Unless the Commission decertifies a
13 previously certified facility or a previously certified abandoned site, this section shall
14 apply in lieu of the provisions of Article 9 of Chapter 130A of the General Statutes
15 and Parts 1 and 2 of Article 21A of Chapter 143 of the General Statutes for
16 properties remediated under this Part.

17 "§ 143-215.104N. Reimbursement of dry-cleaning solvent assessment and remediation
18 costs; limitations; collection of reimbursement.

19 (a) Reimbursement. -- To the extent monies are available in the Fund for
20 reimbursement of response costs, the Commission shall reimburse any person
21 responsible for implementing assessment and remediation activities at a
22 contamination site associated with a certified facility or a certified abandoned site
23 pursuant to a Dry-Cleaning Solvent Assessment or Remediation Agreement for the
24 following assessment and remediation response costs:

- 25 (1) Costs of assessment with respect to dry-cleaning solvent
26 contamination.
- 27 (2) Costs of treatment or replacement of potable water supplies
28 affected by the contamination.
- 29 (3) Costs of remediation of affected soil, groundwater, and surface
30 waters.
- 31 (4) Monitoring of the contamination.
- 32 (5) Inspection and supervision of activities described in this subsection.
- 33 (6) Reasonable costs of restoring property as nearly as practicable to
34 the conditions that existed prior to activities associated with
35 assessment and remediation conducted pursuant to this Part.
- 36 (7) Other activities reasonably required to protect public health and
37 the environment.

38 (b) Limitations. -- Notwithstanding subsection (a) of this section, the Commission
39 shall not make any disbursement from the Fund:

- 40 (1) For costs incurred in connection with facilities or abandoned sites
41 not certified pursuant to G.S. 143-215.104G.
- 42 (2) For costs not incurred pursuant to a Dry-Cleaning Solvent
43 Assessment Agreement or a Dry-Cleaning Solvent Remediation
44 Agreement.

- 1 (3) For costs before funds available through the financial responsibility
2 demonstrated by the owner or operator of the facility or
3 abandoned site pursuant to G.S. 143-215.104E and funds obligated
4 by potentially responsible persons pursuant to a Dry-Cleaning
5 Solvent Assessment or Remediation Agreement in accordance with
6 G.S. 143-215.104F(f) are exhausted.
- 7 (4) For costs at a contamination site that has been identified by the
8 United States Environmental Protection Agency as a federal
9 Superfund site pursuant to 40 Code of Federal Regulations, Part
10 300, except that the Commission may authorize distribution of the
11 required State matchup to two hundred thousand dollars
12 (\$200,000) per year per site. The Commission shall not delegate
13 its authority to disburse funds pursuant to this subdivision.
- 14 (5) For remediation beyond the level required under the
15 Commission's risk-based criteria for determining the appropriate
16 level of remediation and the remediations agreement.
- 17 (6) For assessment or remediation response costs incurred in
18 connection with any individual dry-cleaning solvent assessment or
19 remediation agreement in excess of two hundred thousand dollars
20 (\$200,000) per year; provided, however, that the Commission may
21 disburse up to four hundred thousand dollars (\$400,000) per year
22 for assessment and remediation costs incurred in connection with a
23 certified facility or a certified abandoned site that poses an
24 imminent hazard.
- 25 (7) That would result in a diminution of the Fund balance below one
26 hundred thousand dollars (\$100,000), unless an emergency exists in
27 connection with a dry-cleaning solvent contamination abandoned
28 site that constitutes an imminent hazard.
- 29 (8) For any costs incurred in connection with dry-cleaning solvent
30 contamination from a facility located on a United State military
31 base or owned by the United States or a department or agency of
32 the United States.
- 33 (9) For any costs incurred in connection with dry-cleaning solvent
34 contamination from a facility or abandoned site owned by the State
35 or a department or agency of the State.

36 The Commission shall not pay or reimburse any response costs arising from a dry-
37 cleaning solvent assessment or remediation agreement until the petitioners who are
38 party to the agreement have exhausted the financial resources made available under
39 the agreement pursuant to G.S. 143-215.104E and G.S. 143-215.104F.

40 (c) All dry-cleaning solvent assessment or remediation agreements made by the
41 Commission pursuant to this Part shall expressly state that the Commission's
42 obligation to reimburse response costs incurred pursuant to such agreements shall be
43 contingent upon the availability of monies from the Fund and that the State and its
44 departments and agencies have no obligation to reimburse otherwise eligible expenses

1 if monies are not available in the Fund to pay the reimbursements. If, at any time,
2 the Commission determines that the cost of assessment and remediation activities
3 reimbursable pursuant to existing dry-cleaning solvent assessment or remediation
4 agreements equals or exceeds the total revenues expected to be credited to the Fund
5 over the life of the Fund, the Commission shall publish notice of the determination in
6 the North Carolina Register. Following the publication of a notice pursuant to this
7 Section, the Commission may continue to enter into dry-cleaning solvent assessment
8 or remediation agreements until the day of adjournment of the first regular session of
9 the General Assembly that begins after the date the notice is published, but shall
10 have no authority to enter into additional dry-cleaning solvent assessment or
11 remediation agreements after that date unless the Commission first determines either
12 (i) that revenues will be available from the Fund to reimburse the costs of assessment
13 and remediation activities expected to be reimbursable pursuant to the agreement, or
14 (ii) that assessment and remediation activities undertaken pursuant to the agreement
15 will be paid entirely from sources other than the Fund. For the purposes of this
16 subsection, the term 'day of adjournment' shall mean: (i) in the case of a regular
17 session held in an odd-numbered year, the day the General Assembly adjourns by
18 joint resolution for more than 10 days, and (ii) in the case of a regular session held in
19 an even-numbered year, the day the General Assembly adjourns sine die.

20 (d) The Commission shall reimburse the response costs of eligible parties as they
21 are incurred. If the cleanup of the contamination site is not completed as required by
22 the agreement, any response costs previously reimbursed for the cleanup shall be
23 repaid to the Fund, with interest. The Commission shall request the Attorney
24 General to commence a civil action to secure repayment of such response costs and
25 interest of the costs.

26 **"§ 143-215.1040. Remediation of uncertified sites.**

27 (a) In the event the owner or operator of a dry-cleaning facility or wholesale
28 distribution facility or the current owner of an abandoned dry-cleaning facility site
29 cannot be identified or located, unreasonably refuses to enter into either an
30 assessment or remediation agreement or cannot be made to comply with the
31 provisions of the remediation agreement between the petitioner and the Commission,
32 the Commission may direct the Department or a private contractor engaged by the
33 Commission to use staff, equipment, or materials under the control of the
34 Department or contractor or provided by other cooperating federal, State, or local
35 agencies to develop and implement a plan for abatement of an imminent hazard, or
36 to provide interim alternative sources of drinking water to third parties affected by
37 dry-cleaning solvent contamination resulting from a release at a dry-cleaning facility,
38 wholesale distribution facility, or abandoned dry-cleaning facility site. The cost of
39 any of these actions shall be paid from the Fund. The Department or private
40 contractor shall keep a record of all expenses incurred for personnel and for the use
41 of equipment and materials and all other expenses of developing and implementing
42 the remediation plan.

43 (b) The Commission shall request the Attorney General to commence a civil
44 action to secure reimbursement of costs incurred under this subsection.

1 (c) In the event a civil action is commenced pursuant to this Part to recover
2 monies paid from the Fund, the Commission may recover, in addition to any amount
3 due, the costs of the action, including reasonable attorneys' fees and investigation
4 expenses. Any moneys received or recovered as reimbursement shall be paid into the
5 Fund or other source from which the expenditures were made.

6 "§ 143-215.104P Enforcement procedures; civil penalties.

7 (a) Unless the violation involves a hazardous waste as defined in G.S. 130A-290, a
8 civil penalty of not more than ten thousand dollars (\$10,000) may be assessed by the
9 Secretary against any person who:

- 10 (1) Fails to establish financial responsibility for a dry-cleaning facility
11 or a wholesale distribution facility as required by this Part.
- 12 (2) Engages in dry-cleaning operations using dry-cleaning solvent for
13 which the appropriate sales or use tax has not been paid.
- 14 (3) Fails to comply with rules adopted by the Commission pursuant to
15 this Part.
- 16 (4) Fails to file, submit, or make available, as the case may be, any
17 documents, data, or reports required by this Part.
- 18 (5) Violates or fails to act in accordance with the terms, conditions, or
19 requirements of any special order or other appropriate document
20 issued pursuant to G.S. 143-215.2.
- 21 (6) Falsifies or tampers with any recording or monitoring device or
22 method required to be operated or maintained under this Part or
23 rules implementing this Part.
- 24 (7) Knowingly renders inaccurate any recording or monitoring device
25 or method required to be operated or maintained under this Part
26 or rules implementing this Part.
- 27 (8) Knowingly makes any false statement, representation, or
28 certification in any application, record, report, plan, or other
29 document filed or required to be maintained under this Part or
30 rule implementing this Part.
- 31 (9) Knowingly makes a false statement of material fact in a rule-
32 making proceeding or contested case under this Part.
- 33 (10) Refuses access to the Commission or its duly designated
34 representative to any premises for purposes of conducting a lawful
35 inspection provided for in this Part or rule implementing this Part.
- 36 (11) Fails to comply with the terms and conditions established in the
37 Dry-Cleaning Solvent Assessment or Remediation Agreement.

38 If the violation involves a hazardous waste as defined in G.S. 130-290, the penalty
39 shall not exceed twenty-five thousand dollars (\$25,000) per day.

40 (b) If any action or failure to act for which a penalty may be assessed under this
41 section is continuous, the Secretary may assess a penalty not to exceed ten thousand
42 dollars (\$10,000) per day for so long as the violation continues. A penalty for a
43 continuous violation shall not exceed two hundred thousand dollars (\$200,000) for
44 each period of 30 days during which the violation continues. If the violation involves

1 a hazardous waste as defined in G.S. 130-290, the penalty shall not exceed twenty-five
2 thousand dollars (\$25,000) per day.

3 (c) In determining the amount of the penalty, the Secretary shall consider the
4 factors set out in G.S. 143B-282.1(b). The procedures set out in G.S. 143B-282.1 shall
5 apply to civil penalty assessments that are presented to the Commission for final
6 agency decision.

7 (d) The Secretary shall notify any person assessed a civil penalty for the
8 assessment and the specific reasons therefor by registered or certified mail or by any
9 means authorized by G.S. 1A-1, Rule 4. Contested case petitions shall be filed
10 pursuant to G.S. 150B-23 within 30 days of receipt of the notice of assessment. The
11 Secretary shall make the final decision regarding assessment of a civil penalty under
12 this section.

13 (e) Requests for remission of civil penalties shall be filed with the Secretary.
14 Remission requests shall not be considered unless made within 30 days of receipt of
15 the notice of assessment. Remission requests must be accompanied by a waiver of the
16 right to a contested case hearing pursuant to Chapter 150B of the General Statutes
17 and a stipulation of the facts on which the assessment was based. Consistent with the
18 limitations in G.S. 143B-282.1(c) and (d), remission requests may be resolved by the
19 Secretary and the violator. If the Secretary and the violator are unable to resolve the
20 request, the Secretary shall deliver the remission request and the recommended
21 action to the Committee on Civil Penalty Remissions of the Environmental
22 Management Commission appointed pursuant to G.S. 143B-282.1(c).

23 (f) If any civil penalty has not been paid within 30 days after notice of assessment
24 has been served on the violator, the Secretary shall request the Attorney General to
25 institute a civil action in the superior court of any county in which the violator
26 resides or the violator's principal place of business is located in order to recover the
27 amount of the assessment, unless the violator contests the assessment as provided in
28 subsection (d) of this section or requests remission of the assessment in whole or in
29 part as provided in subsection (e) of this section. If any civil penalty has not been
30 paid within 30 days after the final agency decision or order has been served on the
31 violator, the Secretary shall request the Attorney General to institute a civil action in
32 the superior court of any county in which the violator resides or the violator's
33 principal place of business is located to recover the amount of the assessment. Such
34 civil actions must be filed within three years of the date the final agency decision or
35 court order was served on the violator.

36 **"§ 143-215.104O. Enforcement procedures; criminal penalties.**

37 (a) Any person who negligently commits any of the offenses set out in
38 subdivisions (1) through (12) of G.S. 143-215.104P(a) shall be guilty of a Class 2
39 misdemeanor which may include a fine not to exceed fifteen thousand dollars
40 (\$15,000) per day of violation, provided that such fine shall not exceed a cumulative
41 total of two hundred thousand dollars (\$200,000) for each period of 30 days during
42 which a violation continues.

43 (b) Any person who knowingly and willfully commits any of the offenses set out
44 in subdivisions (1) through (12) of G.S. 143-215.104P(a) shall be guilty of a Class I

1 felony, which may include a fine not to exceed one hundred thousand dollars
2 (\$100,000) per day of violation, provided that this fine shall not exceed a cumulative
3 total of five hundred thousand dollars (\$500,000) for each period of 30 days during
4 which the violation continues. For the purposes of this subsection, the phrase
5 'knowingly and willfully' shall mean 'intentionally and consciously' as the courts of
6 this State, according to the principles of common law, interpret the phrase in the
7 light of reason and experience.

8 (c) (1) Any person who knowingly commits any of the offenses set out in
9 subdivisions (4) through (12) of G.S. 143-215.104P(a) and who
10 knows at that time that he thereby places another person in
11 imminent danger of death or serious bodily injury shall be guilty of
12 a Class C felony, which may include a fine not to exceed two
13 hundred fifty thousand dollars (\$250,000) per day of violation,
14 provided that this fine shall not exceed a cumulative total of one
15 million dollars (\$1,000,000) for each period of 30 days during
16 which the violation continues.

17 (2) For the purposes of this subsection, a person's state of mind is
18 knowing with respect to:

19 a. His conduct, if he is aware of the nature of his conduct.

20 b. An existing circumstance, if he is aware or believes that the
21 circumstance exists.

22 c. A result of his conduct, if he is aware or believes that his
23 conduct is substantially certain to cause danger of death or
24 serious bodily injury.

25 (3) Under this subsection, the following should be considered in
26 determining whether a defendant who is a natural person knew
27 that his conduct placed another person in imminent danger of
28 death or serious bodily injury:

29 a. The person is responsible only for actual awareness or actual
30 belief that he possessed, and

31 b. knowledge possessed by a person other than the defendant
32 but not by the defendant himself may not be attributed to
33 the defendant.

34 (4) It is an affirmative defense to a prosecution under this subsection
35 that the conduct charged was conduct consented to by the person
36 endangered and that the danger and conduct charged were
37 reasonably foreseeable hazards of an occupation, a business or
38 profession, or of medical treatment or medical or scientific
39 experimentation conducted by professionally approved methods,
40 and such other person had been made aware of the risks involved
41 prior to giving consent. The defendant may establish an
42 affirmative defense under this subdivision by a preponderance of
43 the evidence.

1 (d) No proceeding shall be brought or continued under this section for or on
2 account of a violation by any person who has previously been convicted of a federal
3 violation based upon the same set of facts.

4 (e) In proving the defendant's possession of actual knowledge, circumstantial
5 evidence may be used, including evidence that the defendant took affirmative steps to
6 shield himself from relevant information. Consistent with the principles of common
7 law, the subjective mental state of defendants may be inferred from their conduct.

8 (f) For the purposes of the felony provisions of this section, a person's state of
9 mind shall not be found 'knowingly and willfully' or 'knowingly' if the conduct that
10 is the subject of the prosecution is the result of any of the following occurrences or
11 circumstances:

12 (1) A natural disaster or other act of God which could not have been
13 prevented or avoided by the exercise of due care or foresight.

14 (2) An act of third parties other than agents, employees, contractors,
15 or subcontractors of the defendant.

16 (3) An act done in reliance on the written advice or emergency on-
17 site direction of an employee of the Department. In emergencies,
18 oral advice may be relied upon if written confirmation is delivered
19 to the employee as soon as practicable after receiving and relying
20 on the advice.

21 (4) An act causing no significant harm to the environment or risk to
22 public health, safety, or welfare and done in compliance with other
23 conflicting environmental requirements or other constraints
24 imposed in writing by environmental agencies or officials after
25 written notice is delivered to all relevant agencies that the conflict
26 exists and will cause a violation of the identified standard.

27 (5) Violations causing no significant harm to the environment or risk
28 to public health, safety, or welfare for which no enforcement action
29 or civil penalty could have been imposed under any written civil
30 enforcement guidelines in use by the Department at the time. This
31 subdivision shall not be construed to require the Department to
32 develop or use written civil enforcement guidelines.

33 (6) Occasional, inadvertent, short-term violations causing no significant
34 harm to the environment or risk to public health, safety, or
35 welfare. If the violation occurs within 30 days of a prior violation
36 or lasts for more than 24 hours, it is not an occasional, short-term
37 violation.

38 (g) All general defenses, affirmative defenses, and bars to prosecution that may
39 apply with respect to other criminal offenses under law may apply to prosecutions
40 brought under this section or other criminal statutes that refer to this section and
41 shall be determined by the courts of this State according to the principles of common
42 law as they may be applied in light of reason and experience. Concepts of
43 justification and excuse applicable under this section may be developed in light of
44 reason and experience.

1 (h) All general defenses, affirmative defenses, and bars to prosecution that may
2 apply with respect to other criminal offenses under law may apply to prosecutions
3 brought under this section or other criminal statutes that refer to this section and
4 shall be determined by the courts of this State according to the principles of common
5 law as they maybe applied in light of reason and experience. Concepts of
6 justification and excuse applicable under this section maybe developed in light of
7 reason and experience.

8 (h) For purposes of this section, the term "person" shall mean, in addition to the
9 definition contained in G.S. 143-212, any responsible corporate or public office or
10 employee; provided, however, that where a vote of the people is required to
11 effectuate the intent and purpose of this Article by a county, city, town, or other
12 political subdivision of the State, and the vote on the referendum is against the means
13 or machinery for carrying out said intent and purpose into effect, then, and only then,
14 this section shall not apply to elected officials or to any responsible appointed
15 officials or employees of such county, city, town, or other political subdivision.

16 **"§ 143-215.104R. Enforcement procedures; injunctive relief.**

17 Whenever the Commission has reasonable cause to believe that any person has
18 violated or is threatening to violate any of the provisions of this Part or rule
19 implementing this Part, the Commission may, either before or after the institution of
20 any other action or proceeding authorized by this Part, request the Attorney General
21 to institute a civil action in the name of the State upon the relation of the
22 Commission for injunctive relief to restrain the violation or threatened violation and
23 for such other and further relief in the premises as the court shall deem proper. The
24 Attorney General may institute such action in the superior court of the county in
25 which the violation occurred or may occur or, in his discretion, in the superior court
26 of the county in which the person responsible for the violation or threatened
27 violation resides or has his or its principal place of business. Upon a determination
28 by the court that the alleged violation of the provisions of this Part or the rules of the
29 Commission has occurred or is threatened, the court shall grant the relief necessary to
30 prevent or abate the violation or threatened violation. Neither the institution of the
31 action nor any of the proceedings thereon shall relieve any part to such proceedings
32 from any penalty prescribed for violation of this Part. In the event a civil action is
33 commenced pursuant to this section, the Commission may recover the costs of the
34 action, including attorneys' fees and investigation expenses. All monies received or
35 recovered shall be paid into the Fund or other source from which the expenditures
36 were made.

37 **"§ 143-215.104S. Appeals.**

38 Any person who is aggrieved by a decision of the Commission under G.S. 143-
39 215.104F through G.S. 143-215.104O may commence a contested case by filing a
40 petition under G.S. 150B-23 within 60 days after the Commission's decision. If no
41 contested case is initiated within the allotted time period, the Commission's decision
42 shall be final and not subject to review. The Commission shall make the final agency
43 decision in contested cases initiated pursuant to this section. The Commission shall
44 not delegate its authority to make a final agency decision pursuant to this section.

1 "§ 143-215.104T. Construction of the Part.

2 (a) This Part is not intended to and shall not be construed to:

- 3 (1) Affect the ability of local governments to regulate land use under
4 Article 19 of Chapter 160A of the General Statutes and Article 18
5 of Chapter 153A of the General Statutes. The use of the identified
6 contamination site and any land-use restrictions in the Dry-
7 Cleaning Solvent Remediation Agreement shall be consistent with
8 local land-use controls adopted under those statutes.
- 9 (2) Amend, modify, repeal, or otherwise alter any provision of any use
10 remedial program or other provision of law relating to civil and
11 criminal penalties or enforcement actions and remedies available
12 to the Department, except as may be provided in a Dry-Cleaning
13 Solvent Remediation Agreement.
- 14 (3) Prevent or impede the immediate response of the Department or
15 responsible party to an emergency that involves an imminent or
16 actual release of a regulated substance that threatens public health
17 or the environment.
- 18 (4) Relieve a person receiving liability protection under this Part from
19 any liability for contamination later caused by that person at a
20 facility or abandoned site.
- 21 (5) Affect the right of any person to seek any relief available against
22 any party to the Dry-Cleaning Solvent Remediation Agreement
23 who may have liability with respect to the facility or abandoned
24 site, except that this Part does limit the relief available against any
25 party to an agreement with respect to remediation of the
26 contamination site to the remediation required under the
27 agreement.
- 28 (6) Affect the right of any person who may have liability with respect
29 to the facility or abandoned site to seek contribution from any
30 other person who may have liability with respect to the facility or
31 abandoned site and who neither received nor has liability
32 protection under this Part.
- 33 (7) Prevent the State from enforcing specific numerical remediation
34 standards, monitoring, or compliance requirements specifically
35 required to be enforced by the federal government as condition to
36 receive program authorization, delegation, primacy or federal
37 funds.
- 38 (8) Create a defense against the imposition of criminal and civil fines
39 or penalties or administrative penalties otherwise authorized by
40 law and imposed as the result of the illegal disposal of waste or
41 from the pollution of the land, air, or waters of this State on
42 facility or abandoned site.

(9) Relieve a person of any liability for failure to exercise due diligence and reasonable care in performing an environmental assessment or transaction screen.

(b) Notwithstanding the provision of the Tort Claims Act, G.S. 143-291 through G.S. 143-300.1 or any other provision of law waiving the sovereign immunity of the State of North Carolina, the State, its agencies, officers, employees, and agents shall be absolutely immune from any liability in any proceeding for any injury or claim arising from negotiating, entering, monitoring, or enforcing a Dry-Cleaning Solvent Remediation Agreement or a Dry-Cleaning Solvent Remediation Notice under this Part or any other action implementing this Part.

"§ 143-215.104U. Reporting requirements.

(a) The Secretary shall present an annual report to the Environmental Review Commission which shall include at least the following:

- (1) A list of all dry-cleaning solvent contamination reported to the Department.
- (2) A list of all dry-cleaning facilities, wholesale distribution facilities, and abandoned dry-cleaning facilities, certified by the Commission, and the status of contamination associated with each such facility or abandoned site.
- (3) An estimate of the cost of assessment and remediation required in connection with facilities or abandoned sites certified by the Commission and an estimate of such assessment and remediation costs expected to be paid from the Fund.
- (4) A statement of receipts and disbursements for the Fund.
- (5) A statement of all claims against the Fund, including claims paid, claims denied, pending claims, anticipated claims, and any other obligations.
- (6) The adequacy of the Fund to carry out the purposes of this Part together with any recommendations as to measures that may be necessary to assure the continued solvency of the Fund.

(b) The Secretary shall make the annual report required by this section on or before 1 October of each year."

Section 2. (a) G.S. 143B-282(a)(1)t. reads as rewritten:

"t. To have jurisdiction and supervision over oil pollution and dry-cleaning solvent use, contamination, and remediation pursuant to Article 21A of Chapter 143."

(b) G.S. 143B-282(a)(2) is amended by the addition of a new subdivision to read:

"j. To implement the provisions of Part 6 of Chapter 143."

Section 3. G.S. 58-2-40 is amended by adding a new subdivision to read:

"(9) Adopt rules governing what shall constitute an uninsurable facility for the purposes of G.S. 143-215.104E(b). The rules shall base the determination of uninsurability on the availability of pollution and remediation legal liability insurance at an annual premium amount

1 that is affordable and proportionate to premium amounts charged
2 for coverage of facilities at which dry-cleaning solvent
3 contamination is not known to be present, but in no event greater
4 than three times the average premium amount for such facilities."

5 Section 4. Subchapter I of Chapter 105 of the General Statutes is
6 amended by adding a new Article to read:

7 "ARTICLE 5D.

8 "Dry-Cleaning Solvent Tax.

9 "§ 105-187.30. Definitions.

10 The definitions in G.S. 105-164.3 apply to this Article and the following definitions
11 apply to this Article:

12 (1) Dry-Cleaning facility. -- Defined in G.S. 143-215.104B

13 (2) Dry-Cleaning solvent. -- Defined in G.S. 143-215.104B.

14 "§ 105-187.31. Tax imposed.

15 A Privilege tax is imposed on a dry-cleaning solvent retailer at a flat rate for each
16 gallon of dry-cleaning solvent sold by the retailer to a dry-cleaning facility. An excise
17 tax is imposed on dry-cleaning solvent purchased outside the State for storage, use, or
18 consumption by a dry-cleaning facility in this State. The rate of the privilege tax and
19 the excise tax is five dollars and eighty-five cents (\$5.85) for each gallon of dry-
20 cleaning solvent that is chlorine-based and eighty cents (80¢) for each gallon of dry-
21 cleaning solvent that is hydrocarbon-based. These taxes are in addition to all other
22 taxes.

23 "§ 105-187.32. Administration.

24 The privilege tax this Article imposes on a dry-cleaning solvent retailer is an
25 additional State sales tax, and the excise tax this Article imposes on the storage, use,
26 or consumption of dry-cleaning solvent by a dry-cleaning facility in this State is an
27 additional State use tax. Except as otherwise provided in this Article, these taxes
28 shall be collected and administered in the same manner as the State sales and use
29 taxes imposed by Article 5 of this Chapter. As under Article 5 of this Chapter, the
30 additional State sales tax paid when dry-cleaning solvent is sold at retail is a credit
31 against the additional State use tax imposed on the storage, use, or consumption of
32 the same dry-cleaning solvent.

33 "§ 105-187.33. Exemptions and refunds.

34 The exemptions in G.S. 105-164.13 do not apply to the taxes imposed by this
35 Article. The refunds allowed in G.S. 105-164.14 do not apply to the taxes imposed
36 by this Article.

37 "§ 105-187.34. Use of tax proceeds.

38 The Secretary must credit the taxes collected under this Article, less the
39 Department of Revenue's allowance for administrative expenses, to the Dry-Cleaning
40 Solvent Cleanup Fund. The Secretary may retain the Department's cost of
41 collection, not to exceed one hundred twenty-five thousand dollars (\$125,000) a year,
42 as reimbursement to the Department."

1 Section 5. This act constitutes a recent act of the General Assembly
2 within the meaning of G.S. 150B-21.1. The Environmental Management Commission
3 may adopt temporary rules to implement this act.

4 Section 6. (a) The statutes in Sections 1 and 4 of this act become
5 effective on the date specified in the following table:

6 Statute	Effective Date
7 143-215.104A	When this act becomes law
8 143-215.104B	When this act becomes law
9 143-215.104C	When this act becomes law
10 143-215.104D	When this act becomes law
11 143-215.104E	1 April 1998
12 143-215.104F	1 January 1999
13 143-215.104G	1 January 1999
14 143-215.104H	1 January 1999
15 143-215.104I	1 January 1999
16 143-215.104J	1 January 1999
17 143-215.104K	1 January 1999
18 143-215.104L	1 January 1999
19 143-215.104M	1 January 1999
20 143-215.104N	1 January 1999
21 143-215.104O	1 January 1999
22 143-215.104P	1 January 1998
23 143-215.104Q	1 January 1998
24 143-215.104R	1 January 1998
25 143-215.104S	1 January 1998
26 143-215.104T	1 January 1998
27 143-215.104U	1 January 1998
28 105-187.30	1 October 1997
29 105-187.31	1 October 1997
30 105-187.32	1 October 1997
31 105-187.33	1 October 1997
32 105-187.34	1 October 1997

33 Sections 2 and 3 of this act become effective 1 October 1997.

34 (b) The Secretary of Environment, Health, and Natural Resources shall
35 make the first annual report required under G.S. 143-215.104U on or before 1
36 October 1998.

37 (c) The Environmental Management Commission shall adopt rules and
38 develop forms, strategies, and other procedures required or authorized by
39 subdivisions (1) and (3) of G.S. 143-215.104D(b) on or before 1 January 2000.

40 Section 7. (a) Any person who undertakes assessment or remediation of
41 dry-cleaning solvent contamination pursuant to an enforcement action by the
42 Department of Environment, Health, and Natural Resources during the period
43 beginning 1 October 1997 and 1 January 1999 may, on or after 1 January 1999 seek
44 reimbursement from the Dry-Cleaning Solvent Clean-Up Fund for any such costs

1 exceeding fifty thousand dollars (\$50,000). The Commission shall pay such
2 reimbursement if it finds that the costs incurred were (i) reasonably necessary to
3 assess or remediate the dry-cleaning solvent contamination; (ii) for any of the
4 activities described in G.S. 143-215.104N(a)(1) through (7); (iii) not subject to any of
5 the limitations in G.S. 143-215.104N(b)(2), (4), or (5); and (iv) not reimbursable from
6 pollution and remediation legal liability insurance: Provided, however, that no
7 reimbursement may be paid pursuant to this section for dry-cleaning solvent
8 contamination that did not result from operations at a dry-cleaning or wholesale
9 distribution facility.

10 (b) Any person who, as of 1 January 1999 is undertaking assessment or
11 remediation of dry-cleaning solvent contamination shall be eligible to petition the
12 Commission to enter into a dry-cleaning solvent assessment or remediation agreement
13 with respect to the contamination. In calculating the required financial contribution
14 of parties to such an agreement, the Commission shall determine the cost of any
15 unreimbursed assessment or remediation activity undertaken by the parties with
16 respect to the contamination site prior to 1 January 1999 and shall credit such
17 amount toward any applicable financial responsibility limits established in G.S. 143-
18 215.104F.

19 Section 8. Section 7 of this act is repealed effective 1 January 2000;
20 provided, however, that any reimbursement authorized pursuant to that section prior
21 to 1 January 2000 shall be paid in accordance with the provisions of that section.
22 Section 4 of this act is repealed effective 1 January 2010. Section 1 of this act is
23 repealed effective 1 January 2012; provided, however, that G.S. 143-215.104K is not
24 repealed to the extent that it applies to liability arising from dry-cleaning solvent
25 contamination described in dry-cleaning assessment or remediation agreements
26 entered into by the Environmental Management Commission pursuant to G.S. 143-
27 215.104H and G.S. 143-215.104I; and provided further that any such agreements in
28 force as of 1 January 2012 shall continue to be subject to the requirements of the
29 statutes in Section 1 of this act; and provided further that the Commission shall
30 continue to be authorized to adopt rules described in G.S. 143-215.104D(b)(2) and to
31 enforce the rules in accordance with the provisions of G.S. 143-215.104P, 143-
32 215.104Q, and 143-215.104R.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 225 (House Finance Committee Sub)

SHORT TITLE: Dry-Cleaning Solvent Cleanup Act

SPONSOR(S): Representative Weatherly

FISCAL IMPACT

	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 1997-98</u>	<u>FY 1998-99</u>	<u>FY 1999-00</u>	<u>FY 2000-01</u>	<u>FY 2001-02</u>
REVENUES					
Dry-Cleaning Solvent Cleanup Fund					
(1)Solvent Privilege Tax	\$1,181,304	\$1,491,350	\$1,413,489	\$1,341,077	\$1,273,735
(2)Interest, Gifts, Grants	NA	NA	NA	NA	NA
TOTAL	\$1,181,304	\$1,491,350	\$1,413,489	\$1,341,077	\$1,273,735
EXPENDITURES					
Dry-Cleaning Solvent Cleanup Fund					
Transfer to:					
Department of Revenue	(125,000)	(125,000)	(125,000)	(125,000)	(125,000)
DEHNR & Justice	(211,261)	(273,270)	(257,698)	(243,215)	(229,747)
NET DEPOSIT TO FUND	\$845,043	\$1,093,080	\$1,030,791	\$972,862	\$918,988
POSITIONS:	Revenue	2	3	3	3
	DEHNR	see ASSUMPTIONS AND METHODOLOGY			
	Justice	see ASSUMPTIONS AND METHODOLOGY			

PRINCIPAL DEPARTMENT(S) &

PROGRAM(S) AFFECTED: Department of Environment Health and Natural Resources (DEHNR), Environmental Management Commission, Department of Revenue/Sales Tax Division, Commissioner of Insurance, Department of Justice

EFFECTIVE DATE: The sections of the bill establishing the Dry-Cleaning Solvent Cleanup Fund and the powers of the Environmental Management Commission over this fund are effective when the act becomes law. The new dry-cleaning solvent tax is effective October 1, 1997 and is repealed on January 1, 2010. The enforcement procedures and penalties are effective January 1, 1998. The requirement of financial responsibility for dry-cleaning facilities is effective on April 1, 1998. The provisions on certification, land-use restrictions, assessment and remediation agreements, appeals, risk assessment, and

reporting requirements to the Environmental Review Commission begin January 1, 1999. This act is repealed January 1, 2012.

BILL SUMMARY: The bill creates a Dry-Cleaning Solvent Cleanup Fund to reimburse persons who cleanup sites polluted with dry-cleaning solvents. The Fund will be administered by the Department of Environment, Health and Natural Resources (DEHNR). The rules governing the Fund will be developed by the Environmental Management Commission. The source of revenue for the new Dry-Cleaning Solvent Cleanup Fund is a dry-cleaning solvent tax. The solvent tax is a per gallon privilege tax equal to \$5.85 per gallon of chlorine based solvents (perchloroethylene) and 80 cents per gallon of hydrocarbon or petroleum based solvents.

ASSUMPTIONS AND METHODOLOGY:

REVENUE

A privilege tax is imposed on a dry-cleaning solvent retailer for each gallon of dry-cleaning solvent it sells to a dry-cleaning facility. If a dry-cleaning facility purchases the solvent from an out-of-state supplier, an excise tax is imposed on each gallon purchased. The privilege/excise tax is equal to \$5.85 per gallon of chlorine based solvents (perchloroethylene or perc) and 80 cents per gallon of hydrocarbon or petroleum based solvents.

The N. C. Association of Launderers and Cleaners provided information on the gallonage of solvents consumed by cleaners. The Association surveyed 50 plants that use perchloroethylene and 11 plants that use petroleum based products. This sample was used to construct the average number of gallons in the chart below.

Type of Facility	Perchloroethylene Users			Petroleum Users			Total
	Number	Gallons	Tax	Number	Gallons	Tax	
0 to 5 employees	113	250	\$165,263	38	1,750	\$ 53,200	\$ 218,463
6 to 10 employees	138	400	\$322,920	46	2,750	\$ 101,200	\$ 424,120
11+ employees	220	550	\$707,850	72	3,900	\$224,640	\$ 932,490
	471		\$1,196,033	156		\$379,040	\$1,575,073

With an October 1 1997 effective date, the revenue in FY 1997-98 will be 75% of the total shown above or \$1,181,304.

There is a debate between the dry cleaning industry and DEHNR officials concerning the level of solvent use in future years. DEHNR estimates that the use of perc will be reduced 7% each year and the use of oil solvents will be reduced 5% each year. For perc, DEHNR cites an EPA study estimating a 20% reduction in perc use from 1994 to 1996. However, the industry argues that the reductions in the last five years due to tougher environmental laws and to new machinery cannot

be sustained in the future. The industry representative for North Carolina estimates solvent use will decline 1% each year for both perc and oil-based solvents.

This fiscal note assumes a 7% reduction in perc use each year and no change in the consumption of oil-based solvents. The Center for Emissions Control reported in Chemical Week magazine (5/4/94) that perc use in dry cleaning dropped 40% from 1986 to 1993. Dr. Joseph DeSimone, Professor of Chemistry and Chemical Engineering at UNC-CH and N. C. State, agrees with DEHNR's estimated 7% annual reduction in perc use. He believes environmental restrictions will force the dry cleaning industry to continue reducing its perc use and eventually find an alternative method of cleaning. With funding from the EPA, the National Science Foundation and eight chemical companies, Dr. DeSimone has developed and will market in 1998 a dry cleaning machine that uses liquid carbon dioxide. This and other technological breakthroughs will continue driving perc use down. As for oil-based solvents, this fiscal note assumes no change in consumption. In fact, a spokesperson for the International Fabricare Institute believes that oil-based solvents may actually increase due to a new product that will soon be on the market that is safer to use.

	<u>1997-98</u>	<u>1998-99</u>	<u>1999-00</u>	<u>2000-01</u>	<u>2001-02</u>
Perc use (gals)	204,450	190,139	176,829	164,451	152,939
Fees	\$1,196,033	\$1,112,310	\$1,034,449	\$962,037	\$894,695
Petrol use (gals)	473,800	473,800	473,800	473,800	473,800
Fees	\$379,040	\$379,040	\$379,040	\$379,040	\$379,040
Total Fees	\$1,575,073	\$1,491,350	\$1,413,489	\$1,341,077	\$1,273,735

EXPENDITURES

The Department of Revenue is allowed to spend up to \$125,000 a year to administer this act. The Department has made a preliminary estimate that it will need \$115,000 to \$120,000 each year to collect the new dry-cleaning solvent tax. It will hire two clerical positions in FY 1997-98 for the Returns Processing and Office Exam sections and in FY 1998-99 it will add an auditor in the Field Operations Unit. This number will be revised downward if it is determined that solvents are sold by a limited number of distributors in the state and not by out of state vendors.

On the other hand, the Department of Environment, Health and Natural Resources (DEHNR) and the Department of Justice will share 20% of the revenue credited to the Dry-Cleaning Solvent Cleanup Fund to administer this program. Based on its experience with the Underground Storage Tank program, DEHNR has requested 10 positions to handle the certifications, inspections, assessments, billing, etc. at an annual cost of \$403,401. The Department of Justice has requested an Attorney III and a Paralegal II at an annual cost of \$108,706 for the preparation of legal agreements concerning site cleanups. After deducting the \$125,000 for the Department of Revenue, DEHNR and Justice will be given only \$211,261 in FY 1997-98 or 41.2% of their requested operating budget for this bill. In the following years, the amount budgeted will decline as revenues into the fund decline, but the administrative workload will remain steady.

SOLVENT CLEANUP FUND

Based on the Revenue and Expenditure data presented above, the Dry-Cleaning Solvent Cleanup Fund will receive \$10.5 million in revenues from the dry-cleaning solvent tax from 1997 to 2010. However, it is not certain whether this amount will be sufficient to cover all cleanup costs. The dry-cleaning industry projects 69 sites will be cleaned up by the Fund at an average cost of \$167,500 per site. Using the industry cost per cleanup, the \$10.5 million in the Fund will cover the cleanup of only 63 of the 69 projected sites. This gap is even larger based on data supplied by DEHNR. DEHNR projects cleanup costs to be \$300,000 per site and expects 120 contaminated sites will be found over the next 10 years. At \$300,000 per site, the Fund will pay for the cleanup of 35 of the 120 sites.

FISCAL RESEARCH DIVISION 733-4910

PREPARED BY: Richard Bostic

APPROVED BY: Tom Covington



DATE: July 3, 1997

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

HOUSE BILL 225*
Committee Substitute Favorable 5/22/97
Committee Substitute #2 Favorable 7/7/97
Proposed Senate Committee Substitute H225-PCS4142

Short Title: Dry-Cleaning Solvent Cleanup Act.

(Public)

Sponsors:

Referred to:

February 17, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR CLEANUP OF DRY-CLEANING SOLVENT
3 CONTAMINATION IN NORTH CAROLINA, AS RECOMMENDED BY THE
4 ENVIRONMENTAL REVIEW COMMISSION.

5 Whereas, there are dry-cleaning operations in the State at which
6 dry-cleaning solvent contamination has or may have occurred; and

7 Whereas, many instances of dry-cleaning solvent contamination have
8 resulted from solvent handling practices that were lawful and common at the time
9 such practices were undertaken; and

10 Whereas, the financial resources of individual dry-cleaning operators are
11 frequently insufficient to assess and remediate dry-cleaning solvent contamination to
12 current environmental standards; and

13 Whereas, the dry-cleaning industry, through the North Carolina
14 Association of Launderers and Cleaners, has expressed a willingness and desire to
15 work cooperatively and to share financial resources to address dry-cleaning solvent
16 contamination resulting from dry-cleaning facilities; and

17 Whereas, the level of remediation required for dry-cleaning solvent
18 contamination can be determined using the same risk-assessment techniques that are
19 currently being applied to releases of other regulated substances; and

1 Whereas, assessment and remediation of dry-cleaning solvent
2 contamination sites in this State can be accelerated through the use of an industry-
3 supported funding mechanism; Now, therefore,
4 The General Assembly of North Carolina enacts:

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

7 "Part 6. Dry-Cleaning Solvent Cleanup.

8 "§ 143-215.104A. Title.

9 This Part is the 'Dry-Cleaning Solvent Cleanup Act of 1997' and may be cited by
10 that name.

11 "§ 143-215.104B. Definitions.

12 (a) Unless a different meaning is required by the context or unless a different
13 meaning is set out in subsection (b) of this section, the definitions in G.S. 143-215.77,
14 130A-2, and 130A-290 apply throughout this Part.

15 (b) Unless a different meaning is required by the context, the following definitions
16 apply in this Part. The definitions set out in this subsection apply only to the
17 implementation of this Part and do not define or limit the scope of any other
18 remedial program:

- 19 (1) 'Abandoned dry-cleaning facility site' or 'abandoned site' means
20 any real property or individual leasehold space on which a
21 dry-cleaning facility or wholesale distribution facility formerly
22 operated.
- 23 (2) 'Affiliate' has the same meaning as in 17 Code of Federal
24 Regulations § 240.12b-2 (1 April 1996 Edition).
- 25 (3) 'Commission' means the Environmental Management Commission.
- 26 (4) 'Contaminant' means a regulated substance released into the
27 environment.
- 28 (5) 'Current standards' when used in connection with 'cleanup',
29 'remediated', or 'remediation' means that cleanup or remediation
30 of contamination complies with generally applicable standards,
31 guidance, or established methods governing the contaminants that
32 are established by statute or adopted, published, or implemented
33 by the Commission, the Commission for Health Services, or the
34 Department instead of the risk-based standards established by the
35 Commission pursuant to this Part.
- 36 (6) 'Disposal' shall have the meaning ascribed to it in G.S. 130A-290.
- 37 (7) 'Dry-cleaning facility' means a place of business located in this
38 State and engaged in on-site dry-cleaning operations, other than a
39 commercial uniform service or commercial linen supply facility.
- 40 (8) 'Dry-cleaning operations' means cleaning of apparel and
41 household fabrics by using one or more dry-cleaning solvents
42 instead of water.
- 43 (9) 'Dry-cleaning solvent' means Perchloroethylene F-1,1,3 or 1,1,1
44 trichloroethane, a petroleum-based solvent, another comparable

- 1 product used as a cleaning agent in a dry-cleaning operation or the
2 degradation products from these hazardous substances.
- 3 (10) 'Dry-cleaning solvent assessment agreement' or 'assessment
4 agreement' means an agreement between the Commission and a
5 potentially responsible party who desires to assess whether a
6 release of dry-cleaning solvents at a dry-cleaning facility, an
7 abandoned dry-cleaning facility site, or a wholesale distribution
8 facility may be eligible for remediation under this Part and
9 whether any other contaminants that are identified in the
10 agreement may require remediation under other remedial
11 programs operated or administered by the Department.
- 12 (11) 'Dry-cleaning solvent remediation agreement' or 'remediation
13 agreement' means an agreement between the Commission and a
14 potentially responsible party who desires to clean up dry-cleaning
15 solvent contamination resulting from a release at a dry-cleaning
16 facility, an abandoned dry-cleaning facility site, or a wholesale
17 distribution facility under this Part and any other contaminants that
18 are identified in the agreement under other remedial programs
19 operated or administered by the Department.
- 20 (12) 'Dry-cleaning solvent contamination' means the presence of
21 dry-cleaning solvent in the waters or surface or subsurface soils of
22 the State, the bedrock or other rock formations, or buildings in a
23 concentration above the level requiring remediation pursuant to
24 the rules implementing Article 21A of Chapter 143.
- 25 (13) 'Facility' means a dry-cleaning facility or a wholesale distribution
26 facility.
- 27 (14) 'Fund' means the Dry-Cleaning Solvent Cleanup Fund.
- 28 (15) 'Hazardous waste' shall have the meaning ascribed to it in G.S.
29 130A-290.
- 30 (16) 'Imminent hazard' means a situation that is likely to cause an
31 immediate threat to human life, an immediate threat of serious
32 physical injury, an immediate threat of serious adverse health
33 effects, or a serious risk of irreparable damage to the environment
34 if no immediate action is taken.
- 35 (17) 'Local government' means a town, city, or county.
- 36 (18) 'Operator' means any person operating a dry-cleaning facility or
37 wholesale distribution facility, whether by lease, contract, or any
38 other form of agreement.
- 39 (19) 'Parent' has the same meaning as in 17 Code of Federal
40 Regulations § 240.12b-2 (1 April 1996 Edition).
- 41 (20) 'Pollution and remediation legal liability insurance' means
42 property and casualty insurance coverage on a claims-made basis
43 for response costs authorized to be reimbursed from the Fund in
44 G.S. 143-215.104N(a).

- 1 (21) 'Potentially responsible party' means any person who may have
2 liability for assessment, monitoring, treatment, mitigation, or
3 remediation of dry-cleaning solvent contamination resulting from a
4 release at a dry-cleaning facility, an abandoned dry-cleaning facility
5 site, or a wholesale distribution facility.
- 6 (22) 'Public health' means public health as the term is used in Article 9
7 of Chapter 130A of the General Statutes and 'human health' as the
8 term is used in Articles 21 and 21A of Chapter 143 of the General
9 Statutes.
- 10 (23) 'Regulated substance' means a hazardous waste, as defined in G.S.
11 130A-290; a hazardous substance, as defined in G.S. 143-215.77A;
12 oil, as defined in G.S. 143-215.77; or other substance regulated
13 under any remedial program implemented by the Department
14 other than Part 2A of Article 21A of Chapter 143 of the General
15 Statutes.
- 16 (24) 'Release' means any spillage, leakage, pumping, placement,
17 emptying, or dumping of dry-cleaning solvents resulting from a
18 dry-cleaning operation or the operation of a wholesale distribution
19 facility.
- 20 (25) 'Remedial program' means a program implemented by the
21 Department for the remediation of any contaminant, including the
22 programs implemented under Article 9 of Chapter 130A of the
23 General Statutes and the Oil Pollution and Hazardous Substances
24 Control Act of 1978 under Part 2 of Article 21A of Chapter 143 of
25 the General Statutes but not the remedial program implemented
26 under Part 2A of Article 21A of Chapter 143 of the General
27 Statutes.
- 28 (26) 'Remediation' means action to clean up, mitigate, correct, abate,
29 minimize, eliminate, control, or prevent the spreading, migration,
30 leaking, leaching, volatilization, spilling, transporting, or further
31 release of a contaminant into the environment in order to protect
32 public health or the environment.
- 33 (27) 'Response costs' means costs incurred in connection with a
34 certified facility or abandoned site that the Commission determines
35 are reasonably necessary and consistent with the applicable
36 requirements of the Commission and any applicable dry-cleaning
37 solvent assessment agreement or dry-cleaning solvent remediation
38 agreement.
- 39 (28) 'Subsidiary' has the same meaning as in 17 Code of Federal
40 Regulations § 240.12b-2 (1 April 1996 Edition).
- 41 (29) 'Treatment' shall have the meaning ascribed to it in G.S.
42 130A-290.
- 43 (30) 'Waters' means any stream, river, creek, brook, run, canal, swamp,
44 lake, sound, tidal estuary, bay, reservoir, waterway, wetlands, or

1 any other body or accumulation of water, surface or underground,
2 public or private, natural or artificial, that is contained within,
3 flows through, or borders upon this State, or any portion thereof,
4 including those portions of the Atlantic Ocean over which this
5 State has jurisdiction.

6 (31) 'Wholesale distributor' means a person who operates a wholesale
7 distribution facility.

8 (32) 'Wholesale distribution facility' means a place of business located
9 in this State and engaged in the storage, distribution, or sale of
10 dry-cleaning solvents for use in dry-cleaning facilities.

11 **"§ 143-215.104C. Dry-Cleaning Solvent Cleanup Fund.**

12 (a) Creation. -- The Dry-Cleaning Solvent Cleanup Fund is established as a
13 special revenue fund to be administered by the Commission. Accordingly, revenue in
14 the Fund at the end of a fiscal year does not revert and interest and other investment
15 income earned by the Fund must be credited to it. The Fund is created to provide
16 revenue to implement this Part.

17 (b) Sources of Revenue. -- The following revenue is credited to the Fund:

18 (1) Dry-cleaning solvent taxes collected under Article 5D of Chapter
19 105 of the General Statutes.

20 (2) Recoveries made pursuant to G.S. 143-215.104N and G.S.
21 143-215.104O.

22 (3) Gifts and grants made to the Fund.

23 (c) Disbursements. -- A claim filed against the Fund may be paid only from
24 monies in the Fund and only in accordance with the provisions of this Part. Any
25 obligation to pay or reimburse claims against the Fund shall be expressly contingent
26 upon availability of monies in the Fund. Neither the State nor any of its agencies
27 shall have any obligation to pay or reimburse any costs for which monies are not
28 available in the Fund. The provisions of this Part shall not constitute a contract,
29 either express or implied, to pay or reimburse costs in excess of the monies available
30 in the Fund. In making disbursements from the Fund, the Commission shall pay the
31 claims with the highest priority before claims of lower priority, and claims of equal
32 priority in the order in which the facility or abandoned site was certified until the
33 revenue is exhausted. Consistent with the provisions of this Part, the Commission
34 may disburse monies from the Fund to abate imminent hazards caused by
35 dry-cleaning solvent contamination at abandoned dry-cleaning facility sites that have
36 not been certified. Up to twenty percent (20%) of the amount of revenue credited to
37 the Fund in a year may be used to defray costs incurred by the Department and the
38 Attorney General's Office in connection with administration of the program
39 described in this Part, including oversight of response activities.

40 **"§ 143-215.104D. Powers of the Commission.**

41 (a) Administrative Functions. -- The Commission may delegate any or all of the
42 powers enumerated in this subsection to the Department or engage a private
43 contractor or contractors to carry out the activities enumerated in this subsection. If
44 the Commission engages a private contractor to carry out the functions enumerated

1 in subdivisions (1) through (6) of this subsection, no action of the contractor shall be
2 effective until ratified by the Commission. The Commission shall:

- 3 (1) Accept petitions for certification and petitions to enter into
4 dry-cleaning solvent assessment agreements or remediation
5 agreements under this Part.
- 6 (2) Prioritize certified dry-cleaning facilities, certified wholesale
7 distribution facilities, or certified abandoned dry-cleaning facility
8 sites for the initiation of assessment or remediation activities that
9 are reimbursable from the Fund.
- 10 (3) Develop forms to be used by persons applying for reimbursement
11 of assessment or remediation costs.
- 12 (4) Schedule funding of assessment and remediation activities.
- 13 (5) Determine whether assessment or remediation is necessary at a site
14 at which dry-cleaning solvent contamination has occurred.
- 15 (6) Determine that all necessary assessment and remediation has been
16 completed at a contamination site.
- 17 (7) Make payments from the Fund to reimburse the costs of assessment
18 and remediation. Any payments made by a private contractor
19 engaged by the Commission shall be authorized by the
20 Commission prior to disbursement.

21 (b) Rule making. -- The Commission shall adopt rules as are necessary to
22 implement the provisions of this Part. Rules adopted by the Commission shall be
23 consistent with and shall not duplicate, but may incorporate by reference, the rules
24 adopted by the Commission for Health Services pursuant to Article 9 of Chapter
25 130A of the General Statutes. The Commission shall not delegate the rule-making
26 powers provided in this subsection.

- 27 (1) The Commission may adopt rules governing:
 - 28 a. Fees for response costs reimbursable under this Part.
 - 29 b. The certification and decertification of facilities or
30 abandoned sites.
 - 31 c. The prioritization of facilities or abandoned sites and
32 scheduling of funding for assessment and remediation
33 activities. These rules shall provide for:
 - 34 1. Consideration of the degree of harm or risk to public
35 health and the environment.
 - 36 2. Consideration of the order in which certification is
37 issued for the facility or abandoned site.
 - 38 3. Consideration of the relative cost of assessment and
39 remediation activities.
 - 40 4. Use of the Fund so as to maximize the reduction of
41 harm or risk posed by certified facilities, certified
42 abandoned sites, uncertified facilities and uncertified
43 sites.

- 1 d. The disbursement of revenue from the Fund for payment or
2 reimbursement of approved assessment or remediation costs.
3 e. The determination whether assessment or remediation is
4 necessary at a contamination site.
5 f. The determination that all necessary assessment and
6 remediation has been completed at a contamination site.
7 g. The terms and conditions of dry-cleaning solvent assessment
8 agreements and remediation agreements.
9 h. The determination whether additional assessment or
10 remediation is necessary at a contamination site previously
11 closed under this Part.
12 (2) The Commission may adopt rules establishing minimum
13 management practices for handling of dry-cleaning solvent at
14 dry-cleaning facilities and wholesale distribution facilities. The
15 rules may:
16 a. Require that all perchloroethylene dry-cleaning machines
17 installed at a dry-cleaning facility after the effective date of
18 the rule or temporary rule meet air emission standards that
19 equal or exceed the standards that apply to comparable
20 dry-to-dry perchloroethylene dry-cleaning machines with
21 integral refrigerated condensation.
22 b. Prohibit the discharge of dry-cleaning solvents or water that
23 contains dry-cleaning solvents into sanitary sewers, septic
24 systems, storm sewers, or waters of the State.
25 c. Require spill containment structures around dry-cleaning
26 machines, filters, stills, vapor adsorbers, solvent storage
27 areas, and waste solvent storage areas.
28 d. Require floor sealants for cleaning room areas if the
29 Commission finds the sealants to be effective.
30 e. Require, by 1 January 2002, the use of improved solvent
31 transfer systems to prevent releases at the time of delivery of
32 solvents to a dry-cleaning facility.
33 f. Require any other solvent-handling practices the
34 Commission may find necessary and appropriate to
35 minimize the risk of releases at dry-cleaning facilities or
36 wholesale distribution facilities.
37 (3) The Commission shall adopt rules establishing a risk-based
38 approach applicable to the assessment, prioritization, and
39 remediation of dry-cleaning solvent contamination resulting from
40 releases at facilities or abandoned sites certified pursuant to G.S.
41 143-215.104G. The rules shall address, at a minimum:
42 a. Criteria and methods for determining remediation
43 requirements, including the level of remediation necessary

1 to assure adequate protection of public health and the
2 environment.

3 b. The circumstances under which information specific to the
4 dry-cleaning solvent contamination site should be considered
5 and required.

6 c. The circumstances under which restrictions on the future
7 use of any remediated dry-cleaning solvent contamination
8 site should be considered and required as a means of
9 achieving and maintaining an adequate level of protection
10 for public health and the environment.

11 d. Strategies for the assessment and remediation of
12 dry-cleaning solvent contamination, including presumptive
13 remedial responses sufficient to provide an adequate level of
14 protection as described under sub-subdivision a. of this
15 subdivision.

16 (c) All rules adopted by the Commission shall be applicable to all dry-cleaning
17 facilities, wholesale distribution facilities, and abandoned dry-cleaning facilities in the
18 State and shall, to the maximum extent practicable, be cost-effective and technically
19 feasible while protecting public health and the environment from the release of
20 dry-cleaning solvents.

21 (d) Unless otherwise provided in this Part, the Commission may delegate any of
22 its rights, duties, and responsibilities under this Part to the Department.

23 **§ 143-215.104E. Requirement of financial responsibility for dry-cleaning facilities.**

24 (a) The owner or operator of any dry-cleaning facility or any wholesale
25 distribution facility operating in the State shall establish and continuously maintain
26 financial responsibility for legal liability arising in connection with dry-cleaning
27 solvent contamination resulting from a release at the facility by either:

28 (1) Obtaining pollution and remediation legal liability insurance for
29 the facility with coverage limits not less than one million dollars
30 (\$1,000,000) from an insurance carrier authorized to do business in
31 this State, or

32 (2) Depositing with the Commission, securities or a third-party bond
33 acceptable to the Commission in an amount not less than one
34 million dollars (\$1,000,000).

35 (b) If the owner or operator of a dry-cleaning facility or any wholesale distribution
36 facility demonstrates to the satisfaction of the Commission an inability to establish
37 financial responsibility consistent with the standards of subsection (a) of this section,
38 then the Commission shall issue a determination of uninsurability to the operator of
39 the facility. When a facility is designated as uninsurable by the Commission, the
40 financial responsibility requirements of subsection (a) of this section are satisfied.

41 (c) Unless the Commissioner of Insurance adopts rules providing otherwise, a
42 dry-cleaning facility or wholesale distribution facility shall be determined to be
43 uninsurable if the annual premium for coverage of the dry-cleaning facility or
44 wholesale distribution facility meeting the requirements of this Part is more than

1 three times the average premium for similar coverage for dry-cleaning facilities or
2 wholesale distribution facilities where dry-cleaning solvent contamination is not
3 known to have occurred. Each insurer selling pollution and remediation legal
4 liability insurance in this State shall, on or before 1 March of each year, report to the
5 Commission the number of policies held in force by the company in this State for
6 dry-cleaning facilities and for wholesale distribution facilities and the average
7 premium rate for each type of facility during the preceding calendar year.

8 (d) Dry-cleaning facilities and abandoned dry-cleaning facility sites located on a
9 United States military base or owned by the United States or a department or agency
10 of the United States and dry-cleaning facilities and abandoned dry-cleaning facility
11 sites owned by the State or an agency or department of the State are exempt from
12 complying with this section.

13 "§ 143-215.104F. Requirements for certification, assessment agreements, and
14 remediation agreements.

15 (a) Any person petitioning for certification of a facility or abandoned site pursuant
16 to G.S. 143-215.104G, for a dry-cleaning solvent assessment agreement pursuant to
17 G.S. 143-215.104H, or for a dry-cleaning solvent remediation agreement pursuant to
18 G.S. 143-215.104I, shall meet the requirements set out in this section and any other
19 applicable requirements of this Part.

20 (b) Requirements for Potentially Responsible Persons Generally. -- Every
21 petitioner shall provide the Commission with:

22 (1) Information necessary for the Commission to determine the
23 priority ranking of the facility or abandoned site described in the
24 petition.

25 (2) Information necessary to demonstrate the person's ability to incur
26 the response costs specified in subsection (f) of this section.

27 (3) Evidence of financial responsibility established in accordance with
28 G.S. 143-104.215E(a) or a copy of a determination of uninsurability
29 issued by the Commission pursuant to G.S. 143-25.104E(b).

30 (c) Requirement for Property Owners. -- In addition to the information required
31 by subsection (b) of this section, a petitioner who is the owner of the property on
32 which the dry-cleaning solvent contamination identified in the petition is located shall
33 provide the Commission a written agreement authorizing the Commission or its agent
34 to have access to the property for purposes of determining whether assessment or
35 remediation activities are being conducted in compliance with this Part and any
36 assessment agreement or remediation agreement.

37 (d) The Commission shall reject any petition made pursuant to this Part in any of
38 the following circumstances:

39 (1) The petitioner is an owner or operator of the facility described in
40 the petition and the facility was not being operated in compliance
41 with minimum management practices adopted by the Commission
42 pursuant to G.S. 143-215.104D(b)(2) at the time the contamination
43 was discovered.

- 1 (2) The petitioner is an owner or operator of the facility described in
 2 the petition and the petitioner owed delinquent taxes under Article
 3 5D of Chapter 105 of the General Statutes at the time the
 4 dry-cleaning solvent contamination was discovered.
- 5 (3) The petitioner is an owner or operator of the facility described in
 6 the petition and the petitioner had failed, at the time the
 7 contamination was discovered, to establish financial responsibility
 8 for the facility pursuant to G.S. 143-215.104E(a) or to obtain a
 9 determination of uninsurability pursuant to G.S. 143-215.104E(b).
- 10 (e) The Commission may reject any petition made pursuant to this Part in any of
 11 the following circumstances:
- 12 (1) The petitioner fails to provide the information required by
 13 subsection (b) of this section.
- 14 (2) The petitioner falsified any information in its petition that was
 15 material to the determination of the priority ranking, the nature,
 16 scope and extent of contamination to be assessed or remediated, or
 17 the appropriate means to contain and remediate the contaminants.
- 18 (f) Financial Responsibility Requirements. -- Each potentially responsible person
 19 who petitions the Commission to enter into a dry-cleaning solvent assessment
 20 agreement or dry-cleaning solvent remediation agreement shall accept written
 21 responsibility in the amount specified in this section for the assessment or
 22 remediation of the dry-cleaning solvent contamination identified in the petition. If
 23 two or more potentially responsible persons petition the Commission jointly, the
 24 requirements below shall be the aggregate requirements for the financial
 25 responsibility of all potentially responsible persons who are party to the petition.
 26 Unless an alternative arrangement is agreed to by co-petitioners, the financial
 27 responsibility requirements of this section shall be apportioned equally among the
 28 co-petitioners. The requirements in this subsection shall be in addition to any
 29 insurance or other financial responsibility, including deductibles or retentions,
 30 established pursuant to G.S. 143-215.104E.

<u>Facility or Abandoned Site Where Release Occurred</u>	<u>Costs</u>
<u>Dry-cleaning facilities owned by persons who employ fewer than five full-time employees, or the equivalent, in activities related to dry-cleaning operations during the preceding calendar year</u>	<u>\$5,000</u>
<u>Dry-cleaning facilities owned by persons who employ at least five but fewer than 10 full-time employees, or the equivalent, in activities related to dry-cleaning operations during the preceding calendar year</u>	<u>\$10,000</u>
<u>Dry-cleaning facilities owned by persons who employ 10 or more full-time employees, or the equivalent, in activities related to dry-cleaning operations during the preceding calendar year</u>	<u>\$15,000</u>

1
2 Wholesale distribution facilities \$25,000

3
4 Abandoned dry-cleaning facility sites \$50,000.

5
6 (g) If a dry-cleaning facility is determined to be uninsurable, the financial
7 responsibility requirements for the dry-cleaning facility shall be three times the
8 amount provided above. The financial responsibility requirement for a wholesale
9 distribution facility that is determined to be uninsurable shall be fifty thousand dollars
10 (\$50,000).

11 "§ 143-215.104G. Certification of facilities and abandoned sites.

12 (a) A potentially responsible party may petition the Commission to certify a
13 facility or abandoned site where a release of dry-cleaning solvent is believed to have
14 occurred. The Commission shall certify the facility or abandoned site if the
15 petitioner meets the applicable requirements of G.S. 143-215.104F. Upon its decision
16 to certify a facility or abandoned site, the Commission shall inform the petitioner of
17 its decision and of the initial priority ranking of the facility or site.

18 (b) The Commission may change the initial priority rankings of any facility or
19 abandoned site as additional facilities or abandoned sites are certified if the
20 Commission, in its sole discretion, determines that additional facilities or sites pose a
21 higher degree of harm or risk to public health and the environment. However, the
22 Commission shall not change the priority ranking of a facility or an abandoned site
23 that is set in a dry-cleaning solvent remediation agreement.

24 (c) A potentially responsible party who petitions for certification of a facility or
25 abandoned site shall provide the Commission with either of the following:

26 (1) A proposed dry-cleaning solvent assessment agreement or
27 dry-cleaning solvent remediation agreement or an indication of the
28 petitioner's intent to enter into an assessment agreement or
29 remediation agreement.

30 (2) A written statement of the petitioner's intent to conduct assessment
31 and remediation activities pursuant to subsection (d) of this
32 section.

33 (d) A person who has access to property that is contaminated by dry-cleaning
34 solvent and who has successfully petitioned for certification of the facility or
35 abandoned site from which the contamination is believed to have resulted may
36 undertake assessment or remediation of dry-cleaning solvent contamination located
37 on the property consistent with the standards established by the Commission pursuant
38 to G.S. 143-215.104D(b)(3) without first entering into a dry-cleaning solvent
39 assessment agreement or a dry-cleaning solvent remediation agreement. No
40 assessment or remediation activities undertaken pursuant to this subsection shall rely
41 on standards that require the creation of land-use restrictions. A person who
42 undertakes assessment or remediation activities pursuant to this subsection shall
43 provide the Commission prior written notice of the activity. Costs associated with

1 assessment or remediation activities undertaken pursuant to this subsection shall not
2 be eligible for reimbursement from the Fund.

3 (e) The rejection of any petition filed pursuant to this section shall not affect the
4 rights of any other petitioner, other than any parent, subsidiary, or other affiliate of
5 the petitioner, under this Part. The rejection of a petition or the decertification of a
6 facility or abandoned site may be the basis for rejection of a petition by any parent,
7 subsidiary, or other affiliate of the petitioner for the facility or abandoned site.

8 "§ 143-215.104H. Dry-Cleaning Solvent Assessment Agreements.

9 (a) Assessment Agreements. -- One or more potentially responsible parties may
10 petition the Commission to enter into a dry-cleaning solvent assessment agreement
11 regarding a facility or abandoned site that has been certified pursuant to G.S.
12 143-215.104G. The Commission may, in its discretion, enter into an assessment
13 agreement with any potentially responsible party who satisfies the requirements of
14 this section and the applicable requirements of G.S. 143-215.104F. If more than one
15 potentially responsible party petitions the Commission, the Commission may enter
16 into a single assessment agreement with one or more of the petitioners. The
17 Commission shall not unreasonably refuse to enter into an assessment agreement
18 pursuant to this section. Petitioners shall provide the Commission with any
19 information necessary to demonstrate that the:

20 (1) Priority ranking assigned to the facility or site is consistent with the
21 rules adopted by the Commission or the adjusted priority ranking
22 that the petitioner agrees to accept is consistent with the rules
23 adopted by the Commission.

24 (2) Projected schedule for funding of assessment activities, including
25 reimbursements from the Fund is adequate.

26 (3) Assessment activities to be undertaken with respect to the
27 dry-cleaning solvent contamination and any other contamination at
28 the contamination site are adequate.

29 (4) Person who will be responsible for implementation of the activities
30 is capable and qualified to conduct the assessment.

31 (5) Petitioner has and will continue to have available the financial
32 resources necessary to pay the costs of assessment activities and the
33 share of response costs imposed on the petitioner by G.S.
34 143-215.104F.

35 (6) Permits or other authorizations required to conduct the assessment
36 activities and to lawfully dispose of any hazardous substances or
37 wastes generated by the assessment activities have been or can be
38 obtained.

39 (7) Assessment activities will not increase the existing level of public
40 exposure to health or environmental hazards at the contamination
41 site.

42 (8) Costs to be incurred in connection with the assessment activities
43 contemplated by the assessment agreement are reasonable and
44 necessary.

1 (9) Petitioner has obtained the consent of other property owners to
2 enter into their property for the purpose of conducting assessment
3 activities specified in the assessment agreement.

4 (b) The terms and conditions of an assessment agreement regarding dry-cleaning
5 solvent contamination shall be guided by and consistent with the rules adopted by the
6 Commission pursuant to G.S. 143-215.104D and the reimbursement authorities and
7 limitations set out in this Part. An assessment agreement shall, subject to the
8 availability of monies from the Fund:

9 (1) Specify the date on which remediation will begin.

10 (2) Provide for the prompt reimbursement of response costs incurred
11 in assessment activities that are found by the Commission to be
12 consistent with the assessment agreement and this Part.

13 (c) The Commission may refuse to enter into a dry-cleaning solvent assessment
14 agreement with any petitioner if:

15 (1) The petitioner will not accept financial responsibility for the share
16 of the response costs required by G.S. 143-215.104F.

17 (2) The petitioner will not accept responsibility for conducting,
18 supervising, or otherwise undertaking assessment activities required
19 by the Commission.

20 (3) The petitioner fails to provide any information required by
21 subsection (a) of this section.

22 (d) The refusal of the Commission to enter into a dry-cleaning solvent assessment
23 agreement with any petitioner shall not affect the rights of any other petitioner under
24 this Part, except that the refusal may be the basis for rejection of a petition by any
25 parent, subsidiary or other affiliate of the petitioner for the facility or abandoned site.

26 (e) If the Commission determines from an assessment prepared pursuant to this
27 Part that the degree of risk to public health or the environment resulting from
28 dry-cleaning solvent contamination otherwise subject to assessment or remediation
29 under this Part and Article 9 of Chapter 130A is acceptable in light of the criteria
30 established pursuant to G.S. 143-215.104D(b)(3) and Article 9 of Chapter 130A, the
31 Commission shall issue a written statement of its determination and notify the owner
32 or operator of the facility or abandoned site responsible for the contamination that no
33 cleanup, no further cleanup, or no further action is required in connection with the
34 contamination.

35 (f) If the Commission determines that no remediation or further action is required
36 in connection with dry-cleaning solvent contamination otherwise subject to
37 assessment or remediation pursuant to this Part and Article 9 of Chapter 130A, the
38 Commission shall not pay or reimburse any response costs otherwise payable or
39 reimbursable under this Part from the Fund other than costs reasonable and necessary
40 to conduct the risk assessment pursuant to this section and in compliance with a
41 dry-cleaning solvent assessment agreement.

42 "§ 143-215.104I. Dry-Cleaning Solvent Remediation Agreements.

43 (a) Upon the completion of assessment activities required by a dry-cleaning
44 solvent assessment agreement, one or more potentially responsible parties may

1 petition the Commission to enter into a dry-cleaning solvent remediation agreement
2 for any contamination requiring remediation. The Commission may, in its discretion,
3 enter into a remediation agreement with any petitioner who satisfies the requirements
4 of this section and the applicable requirements of G.S. 143-215.104F. If more than
5 one potentially responsible party petitions the Commission, the Commission may
6 enter into a single remediation agreement with one or more of the petitioners. The
7 Commission shall not unreasonably refuse to enter into a remediation agreement
8 pursuant to this section. The Commission may, in its discretion, enter into a
9 remediation agreement that includes the assessment described in G.S. 143-215.104H.
10 Petitioners shall provide the Commission with any information necessary to
11 demonstrate that:

- 12 (1) The petitioner, and any parent, subsidiary, or other affiliate of the
13 petitioner has substantially complied with:
14 a. The terms of any dry-cleaning solvent assessment agreement,
15 dry-cleaning solvent remediation agreement, brownfields
16 agreement, or other similar agreement to which the
17 petitioner or any parent, subsidiary, or other affiliate of the
18 petitioner has been a party.
19 b. The requirements applicable to any remediation in which
20 the petitioner has previously engaged.
21 c. Federal and State laws, regulations, and rules for the
22 protection of the environment.
23 (2) As a result of the remediation agreement, the contamination site
24 will be suitable for the uses specified in the remediation agreement
25 while fully protecting public health and the environment from
26 dry-cleaning solvent contamination and any other contaminants
27 included in the remediation agreement.
28 (3) There is a public benefit commensurate with the liability
29 protection provided under this Part.
30 (4) The petitioner has or can obtain the financial, managerial, and
31 technical means to fully implement the remediation agreement and
32 assure the safe use of the contamination site.
33 (5) The petitioner has complied with or will comply with all
34 applicable procedural requirements.
35 (6) The remediation agreement will not cause the Department to
36 violate the terms and conditions under which the Department
37 operates and administers remedial programs, including the
38 programs established or operated pursuant to Article 9 of Chapter
39 130A of the General Statutes, by delegation or similar
40 authorization from the United States or its departments or
41 agencies, including the United States Environmental Protection
42 Agency.
43 (7) The priority ranking assigned to the facility or site is consistent
44 with the rules adopted by the Commission or the adjusted priority

- 1 ranking that the petitioner agrees to accept is consistent with the
2 rules adopted by the Commission.
- 3 (8) The projected schedule for funding of remediation activities,
4 including reimbursements from the Fund.
- 5 (9) The petitioner will continue to have available the financial
6 resources necessary to satisfy the share of response costs imposed
7 on the petitioner by G.S. 143-215.104F.
- 8 (10) The expenditures eligible for reimbursement from the Fund and to
9 be incurred in connection with the remediation agreement are
10 reasonable and necessary.
- 11 (11) The consent of other property owners to enter into their property
12 for purposes of conducting remediation activities specified in the
13 remediation agreement.
- 14 (b) In negotiating a remediation agreement, parties may rely on land-use
15 restrictions that will be included in a Notice of Dry-Cleaning Solvent Remediation
16 required under G.S. 143-215.104M. A remediation agreement may provide for
17 remediation in accordance with standards that are based on those land-use
18 restrictions.
- 19 (c) A dry-cleaning solvent remediation agreement shall contain a description of
20 the contamination site that would be sufficient as a description of the property in an
21 instrument of conveyance and, as applicable, a statement of:
- 22 (1) Any remediation, including remediation of contaminants other
23 than dry-cleaning solvents, to be conducted on the property,
24 including:
- 25 a. A description of specific areas where remediation is to be
26 conducted.
- 27 b. The remediation method or methods to be employed.
- 28 c. The resources that the petitioner will make available and
29 the degree to which the petitioner intends to rely on the
30 Fund for resources.
- 31 d. A schedule of remediation activities.
- 32 e. Applicable remediation standards. Applicable remediation
33 standards for dry-cleaning solvent contamination shall not
34 exceed the requirements adopted by the Commission
35 pursuant to G.S. 143-104D(b)(3).
- 36 f. A schedule and the method or methods for evaluating the
37 remediation.
- 38 (2) Any land-use restrictions that will apply to the contamination site
39 or other property.
- 40 (3) The desired results of any remediation or land-use restrictions with
41 respect to the contamination site.
- 42 (4) The guidelines, including parameters, principles, and policies
43 within which the desired results are to be accomplished.
- 44 (5) The consequences of achieving or not achieving the desired results.

1 (6) The final priority ranking of the facility or abandoned site.

2 (7) The person who will conduct the remediation if that person is not
3 the potentially responsible party entering the remediation
4 agreement.

5 (d) The Commission may refuse to enter into a dry-cleaning solvent assessment
6 agreement or dry-cleaning solvent remediation agreement with any petitioner if:

7 (1) The petitioner will not accept financial responsibility for the share
8 of the response costs established in G.S. 143-215.104F. This
9 requirement shall not apply to a petitioner who (i) is the owner of
10 property upon which the dry-cleaning solvent contamination is
11 located, and (ii) is not a current or former owner or operator of a
12 facility believed to be responsible for the contamination.

13 (2) The petitioner will not accept responsibility for conducting,
14 supervising, or otherwise undertaking remediation activities
15 required by the Commission.

16 (3) The petitioner fails to provide any information that is necessary to
17 demonstrate the facts required to be shown by subsection (a) of
18 this section.

19 (e) In addition to the bases set forth in subsection (d) of this section, the
20 Commission may refuse to enter into a dry-cleaning solvent remediation agreement
21 with the owner of the property on which a contamination site is located if the owner
22 refuses to accept limitations on the future use of the property and to give notice of
23 these limitations pursuant to G.S. 143-215.104M.

24 (f) The refusal of the Commission to enter into a dry-cleaning remediation
25 agreement with any petitioner shall not affect the rights of any other petitioner, other
26 than any parent, subsidiary, or other affiliate of the petitioner, under this Part. The
27 refusal of the Commission to enter into a remediation agreement may be the basis for
28 rejection of a petition by any parent, subsidiary, or other affiliate of the petitioner for
29 the facility or abandoned site.

30 (g) The terms and conditions of a dry-cleaning solvent remediation agreement
31 concerned with dry-cleaning solvent contamination shall be guided by and consistent
32 with the rules adopted by the Commission pursuant to G.S. 143-215.104D and the
33 reimbursement authorities and limitations set out in this Part. A remediation
34 agreement shall provide, subject to availability of monies in the Fund, for prompt
35 reimbursement of response costs incurred in assessment activities that are found by
36 the Commission to be consistent with the remediation agreement and this Part.

37 (h) Any failure of a petitioner or the petitioner's agents or employees to comply
38 with the dry-cleaning solvent remediation agreement constitutes a violation of this
39 Part by the petitioner.

40 "§ 143-215.104J. Decertification; termination of assessment agreements and
41 remediation agreements.

42 (a) The Commission may decertify a facility or abandoned site or renegotiate or
43 terminate an assessment agreement or remediation agreement with respect to any
44 party thereto in the following circumstances:

- 1 (1) The owner or operator of the facility, at any time subsequent to the
2 certification of the facility, violates any of the minimum
3 management requirements adopted by the Commission pursuant to
4 G.S. 143-215.104D(b)(2).
- 5 (2) In the case of dry-cleaning contamination on property that is
6 owned by a petitioner, the petitioner fails to file a Notice of
7 Dry-Cleaning Solvent Remediation, if required, as provided in
8 G.S. 143-215.104M.
- 9 (3) The potentially responsible persons who are parties to a
10 dry-cleaning solvent assessment agreement are unable to reach an
11 agreement with the Commission to enter into a dry-cleaning
12 solvent remediation agreement within the time specified in the
13 assessment agreement.
- 14 (4) The payment of taxes assessed to the facility under Article 5D of
15 Chapter 105 of the General Statutes is delinquent.
- 16 (5) The financial responsibility to meet the requirement of G.S.
17 143-215.104E is not maintained continuously for any facility, unless
18 a determination of uninsurability has been issued for the facility.
- 19 (6) The owner or operator fails to comply with all applicable
20 requirements of this Part to complete any assessment or
21 remediation activities required by an assessment agreement or
22 remediation agreement.
- 23 (7) The owner or operator of a facility for which an assessment or
24 remediation activity is scheduled or in progress transfers the
25 ownership or operation of the facility or abandoned site to another
26 person without the prior consent of the Commission and the
27 execution of a substitute assessment agreement or remediation
28 agreement.
- 29 (8) The standards applied to the dry-cleaning solvent contamination
30 remediation or containment under the provisions of this Part and
31 the dry-cleaning solvent remediation agreement will, or are likely
32 to, cause the Department to fail to comply with the terms and
33 conditions under which it operates and administers a remediation
34 program by delegation or similar authorization from the United
35 States or one of its departments or agencies, including the
36 Environmental Protection Agency.
- 37 (b) Prior to decertifying any facility or abandoned site or renegotiating or
38 terminating any assessment agreement or remediation agreement, the Commission
39 shall give the petitioners notice and opportunity for hearing. The Commission is not
40 required to give the petitioners notice and opportunity for hearing when the
41 Commission reasonably takes an emergency action to abate an imminent hazard
42 caused by or arising from assessment or remediation activities at a contamination site
43 whether the Commission issues a special order pursuant to G.S. 143-215.2 or takes
44 other action.

1 (c) Decertification of any facility or abandoned site or renegotiation or
2 termination of any assessment agreement or remediation agreement pursuant to this
3 section shall not affect the rights of any petitioner, other than a petitioner whose
4 violation of the provisions of subsection (a) of this section was the basis for the
5 decertification, renegotiation, or termination and any parent, subsidiary, or other
6 affiliate of that petitioner. If the Commission decertifies a facility or abandoned site
7 or terminates an assessment agreement or remediation agreement with any party to
8 the agreement pursuant to subsection (a) of this section, the Commission shall use its
9 best efforts to negotiate a substitute agreement with any remaining parties to the
10 agreement.

11 **"§ 143-215.104K. Liability protection.**

12 (a) A potentially responsible party who enters into an assessment agreement or
13 remediation agreement with the Commission and who is complying with the
14 agreement shall not be held liable for assessment or remediation of areas of
15 contamination identified in the agreement except as specified in the assessment
16 agreement or remediation agreement, so long as the activities conducted at the
17 contamination site by or under the control or direction of the petitioner do not
18 increase the risk of harm to public health or the environment and the petitioner is
19 not required to undertake additional remediation to current standards pursuant to
20 subsection (c) of this section. The liability protection provided under this Part
21 applies to all of the following persons to the same extent as the petitioner, so long as
22 these persons are not otherwise potentially responsible parties or parents, subsidiaries,
23 or affiliates of potentially responsible parties and the person is not required to
24 undertake additional remediation to current standards pursuant to subsection (c) of
25 this section:

- 26 (1) Any person under the direction or control of the petitioner who
27 directs or contracts for assessment, remediation, or redevelopment
28 of the contamination site.
29 (2) Any future owner of the contamination site.
30 (3) A person who develops or occupies the contamination site.
31 (4) A successor or assign of any person to whom the liability
32 protection provided under this Part applies.
33 (5) Any lender or fiduciary that provides financing for assessment,
34 remediation, or redevelopment of the contamination site.

35 (b) A person who conducts an environmental assessment or transaction screen on
36 contamination resulting from a release at a certified facility or certified abandoned
37 site consistent with a dry-cleaning solvent assessment agreement, if any was required
38 under this Part, and who is not otherwise a potentially responsible party is not a
39 potentially responsible party as a result of conducting the environmental assessment
40 or transaction screen unless that person increases the risk of harm to public health or
41 the environment by failing to exercise due diligence and reasonable care in
42 performing the environmental assessment or transaction screen.

43 (c) If a land-use restriction set out in a Notice of Dry-Cleaning Solvent
44 Remediation required under G.S. 143-215.104M is violated, the owner of the

1 contamination site at the time the land-use restriction is violated, the owner's
2 successors and assigns, and the owner's agents who direct or contract for alteration of
3 the contamination site in violation of a land-use restriction shall be liable for
4 remediation of all contaminants to current standards. A petitioner who completes the
5 remediation or redevelopment required under a dry-cleaning solvent remediation
6 agreement or other person who receives liability protection under this Part shall not
7 be required to undertake additional remediation unless:

8 (1) The petitioner knowingly or recklessly provides false information
9 that forms a basis for the remediation agreement or that is offered
10 to demonstrate compliance with the remediation agreement or fails
11 to disclose relevant information about contamination related to a
12 facility or abandoned site.

13 (2) New information indicates the existence of previously unreported
14 dry-cleaning solvent contaminants or any other contaminants to be
15 remediated under the remediation agreement, or an area of
16 previously unreported contamination by contaminants addressed in
17 the remediation agreement is discovered to be associated with the
18 facility or abandoned site and has not been remediated to current
19 standards, unless the remediation agreement is amended to include
20 any previously unreported contaminants and any additional area of
21 contamination. If the remediation agreement sets maximum
22 concentrations for contaminants and new information indicates the
23 existence of previously unreported areas of these contaminants,
24 further remediation shall be required only if the areas of previously
25 unreported contaminants raise the risk of the contamination to
26 public health or the environment to a level less protective of public
27 health and the environment than that required by the remediation
28 agreement.

29 (3) The level of risk to public health and the environment from
30 contaminants is unacceptable at or in the vicinity of the
31 contamination site due to changes in exposure conditions,
32 including (i) a change in land use that increases the probability of
33 exposure to contaminants at or in the vicinity of the contamination
34 site or (ii) the failure of remediation to mitigate risks to the extent
35 required to make the contamination site fully protective of public
36 health and the environment as planned in the remediation
37 agreement.

38 (4) The Commission obtains new information about a contaminant to
39 be remediated under the remediation agreement and associated
40 with the facility or abandoned site or exposures at or around the
41 contamination site that raises the risk to public health or the
42 environment associated with the contamination site beyond an
43 acceptable range and in a manner or to a degree not anticipated in
44 the remediation agreement. Any person whose use, including any

1 change in use, of the contamination site causes an unacceptable
2 risk to public health or the environment may be required by the
3 Commission to undertake additional remediation measures under
4 the provisions of this Part.

5 (5) A petitioner fails to file a timely and proper Notice of
6 Dry-Cleaning Solvent Remediation under this Part.

7 (6) A facility or abandoned site loses its certification before the
8 assessment and any remediation required under the provisions of
9 this Part and the dry-cleaning solvent remediation agreement are
10 completed to the satisfaction of the Department.

11 (7) The remediation required in the remediation agreement has
12 resulted in notification from the United States or its departments
13 and agencies, including the Environmental Protection Agency, that
14 the Department will violate the terms and conditions under which
15 it operates and administers remedial programs by delegation or
16 similar authorization.

17 **"§ 143-215.104L. Public notice and community involvement.**

18 (a) If a petitioner desires to enter into a dry-cleaning solvent remediation
19 agreement based on remediation standards that rely on the creation of land-use
20 restrictions, the petitioner shall notify the public and the community in which the
21 facility or abandoned site is located of the planned remediation and redevelopment
22 activities. The petitioner shall submit a Notice of Intent to Remediate a
23 Dry-Cleaning Solvent Facility or Abandoned Site and a summary of the Notice of
24 Intent to the Commission. The Notice of Intent shall provide, to the extent known, a
25 legal description of the location of the contamination site, a map showing the location
26 of the contamination site, a description of the contaminants involved and their
27 concentrations in the media of the contamination site, a description of the future use
28 of the contamination site, any proposed investigation and remediation, and a
29 proposed Notice of Dry-Cleaning Solvent Remediation prepared in accordance with
30 G.S. 143-215.104M. Both the Notice of Intent and the summary of the Notice of
31 Intent shall state the time period and means for submitting written comment and for
32 requesting a public meeting on the proposed dry-cleaning solvent remediation
33 agreement. The summary of the Notice of Intent shall include a statement as to the
34 public availability of the full Notice of Intent. After approval of the Notice of Intent
35 and summary of the Notice of Intent by the Commission, the petitioner shall provide
36 a copy of the Notice of Intent to all local governments having jurisdiction over the
37 contamination site. The petitioner shall publish the summary of the Notice of Intent
38 in a newspaper of general circulation serving the area in which the contamination is
39 located and shall file a copy of the summary of the Notice of Intent with the Codifier
40 of Rules, who shall publish the summary of the Notice of Intent in the North
41 Carolina Register. The petitioner shall also conspicuously post a copy of the
42 summary of the Notice of Intent at the contamination site.

43 (b) Publication of the approved summary of the Notice of Intent in the North
44 Carolina Register and publication in a newspaper of general circulation shall begin a

1 public comment period of at least 60 days from the later date of publication. During
2 the public comment period, members of the public, residents of the community in
3 which the contamination site is located, and local governments having jurisdiction
4 over the contamination site may submit comment on the proposed dry-cleaning
5 solvent remediation agreement, including methods and degree of remediation, future
6 land uses, and impact on local employment.

7 (c) Any person who desires a public meeting on a proposed dry-cleaning solvent
8 remediation agreement shall submit a written request for a public meeting to the
9 Commission within 30 days after the public comment period begins. The
10 Commission shall consider all requests for a public meeting and shall hold a public
11 meeting if the Commission determines that there is significant public interest in the
12 proposed remediation agreement. If the Commission decides to hold a public
13 meeting, the Commission shall, at least 30 days prior to the public meeting, mail
14 written notice of the public meeting to all persons who requested the public meeting
15 and to any other person who had previously requested notice. The Commission shall
16 also direct the petitioner to publish, at least 30 days prior to the date of the public
17 meeting, a notice of the public meeting at least one time in a newspaper having
18 general circulation in the county where the contamination site is located. In any
19 county in which there is more than one newspaper having general circulation, the
20 Commission shall direct the petitioner to publish a copy of the notice in as many
21 newspapers having general circulation in the county as the Commission in its
22 discretion determines to be necessary to assure that the notice is generally available
23 throughout the county. The Commission shall prescribe the form and content of the
24 notice to be published. The Commission shall prescribe the procedures to be
25 followed in the public meeting. The Commission shall take detailed minutes of the
26 meeting. The minutes shall include any written dry-cleaning solvent remediation
27 agreement. The Commission shall take into account the comment received during
28 the comment period and at the public meeting if the Commission holds a public
29 meeting. The Commission shall incorporate into the remediation agreement
30 provisions that reflect comment received during the comment period and at the
31 public meeting to the extent practical. The Commission shall give particular
32 consideration to written comment that is supported by valid scientific and technical
33 information and analysis.

34 "§ 143-215.104M. Notice of Dry-Cleaning Solvent Remediation; land-use restrictions
35 in deeds.

36 (a) Land-Use Restriction. -- In order to reduce or eliminate the danger to public
37 health or the environment posed by a dry-cleaning solvent contamination site, the
38 owner of property upon which dry-cleaning solvent contamination has been
39 discovered may prepare and submit to the Commission for approval a Notice of
40 Dry-Cleaning Solvent Remediation identifying the site on which the contamination
41 has been discovered and providing for current or future restrictions on the use of the
42 property. If a petitioner requests that a contamination site be remediated to
43 standards that require land-use restrictions, the owner of the property must file a

1 Notice of Dry-Cleaning Solvent Remediation for the remediation agreement to
2 become effective.

3 (b) Notice of Restriction. -- A Notice of Dry-Cleaning Solvent Remediation shall
4 include:

5 (1) A survey plat of the contamination site that has been prepared and
6 certified by a professional land surveyor and that meets the
7 requirements of G.S. 47-30.

8 (2) A legal description of the property that would be sufficient as a
9 description in an instrument of conveyance.

10 (3) A description of the location and dimensions of the areas of
11 potential environmental concern with respect to permanently
12 surveyed benchmarks.

13 (4) The type, location, and quantity of dry-cleaning solvent
14 contamination known to exist on the property.

15 (5) Any restrictions on the current or future use of the property or
16 other property that are necessary to assure adequate protection of
17 public health and the environment as provided in rules adopted
18 pursuant to G.S. 143-215.104D(b)(3). These land-use restrictions
19 may apply to activities on, over, or under the land, including, but
20 not limited to, use of groundwater, building, filling, grading,
21 excavating, and mining. Where a contamination site encompasses
22 more than one parcel or tract of land, a composite map or plat
23 showing all parcels or tracts may be recorded.

24 (c) Recordation of Notice. -- After the Commission approves and certifies the
25 Notice of Dry-Cleaning Solvent Remediation under subsection (a) of this section, a
26 certified copy of a Notice of Dry-Cleaning Solvent Remediation shall be filed in the
27 office of the register of deeds of the county or counties in which the property
28 described is located. The owner of the property shall file the Notice of
29 Dry-Cleaning Solvent Remediation within 15 days of the property owner's receipt of
30 the Commission's approval of the notice or the effective date of the dry-cleaning
31 solvent remediation agreement, whichever is later. The register of deeds shall record
32 the certified copy of the Notice of Dry-Cleaning Solvent Remediation and index it in
33 the grantor index under the names of the owners of the land.

34 (d) Notice of Transfer. -- When property for which a Notice of Dry-Cleaning
35 Solvent Remediation has been filed is sold, leased, conveyed, or transferred, the deed
36 or other instrument of transfer shall contain in the description section, in no smaller
37 type than that used in the body of the deed or instrument, a statement that the
38 property has been contaminated with dry-cleaning solvent and, if appropriate,
39 cleaned up under this Part.

40 (e) Cancellation of Notice. -- A Notice of Dry-Cleaning Solvent Remediation filed
41 pursuant to this Part may, at the request of the owner of the property subject to the
42 Notice of Dry-Cleaning Solvent Remediation, be canceled by the Secretary after the
43 risk to public health and the environment associated with the dry-cleaning solvent
44 contamination and any other contaminants included in the dry-cleaning solvent

1 remediation agreement has been eliminated as a result of remediation of the property.
2 The Secretary shall forward notice of cancellation to the register of deeds of the
3 county or counties where the Notice of Dry-Cleaning Solvent Remediation is
4 recorded and request that the Notice of Dry-Cleaning Solvent Remediation be
5 canceled. The notice of cancellation shall contain the names of the landowners as
6 shown in the Notice of Dry-Cleaning Solvent Remediation. The register of deeds
7 shall record the notice of cancellation in the deed books and index it on the grantor
8 index in the name of the landowner as shown in the Notice of Dry-Cleaning Solvent
9 Remediation and on the grantee index in the name 'Secretary of Environment,
10 Health, and Natural Resources'. The register of deeds shall make a marginal entry
11 on the Notice of Dry-Cleaning Solvent Remediation showing the date of cancellation
12 and the book and page where the notice of cancellation is recorded, and the register
13 of deeds shall sign the entry. If a marginal entry is impracticable because of the
14 method used to record maps and plats, the register of deeds shall not be required to
15 make a marginal entry.

16 (f) Enforcement. -- Any restriction on the current or future use of property subject
17 to a Notice of Dry-Cleaning Solvent Remediation filed pursuant to this section shall
18 be enforced by any owner of the property or by any other potentially responsible
19 party. Any land-use restriction may also be enforced by the Commission through the
20 remedies provided in this Part or by means of a civil action in the superior court.
21 The Commission may enforce any land-use restriction without first having exhausted
22 any available administrative remedies. Restrictions also may be enforced by any unit
23 of local government having jurisdiction over any part of the property by means of a
24 civil action without the unit of local government having first exhausted any available
25 administrative remedy. A land-use restriction may also be enforced by any person
26 eligible for liability protection under this Part who will lose liability protection if the
27 land-use restriction is violated. A restriction shall not be declared unenforceable due
28 to lack of privity of estate or contract, due to lack of benefit to particular land, or due
29 to lack of privity of any property interest in particular land. Any person who owns
30 or leases a property subject to a land-use restriction under this section shall abide by
31 the land-use restriction.

32 (g) Relation to Brownfields Notice. -- Unless the Commission decertifies a
33 previously certified facility or a previously certified abandoned site, this section shall
34 apply in lieu of the provisions of Article 9 of Chapter 130A of the General Statutes
35 and Parts 1 and 2 of Article 21A of Chapter 143 of the General Statutes for
36 properties remediated under this Part.

37 **"§ 143-215.104N. Reimbursement of dry-cleaning solvent assessment and remediation**
38 **costs; limitations; collection of reimbursement.**

39 (a) Reimbursement. -- To the extent monies are available in the Fund for
40 reimbursement of response costs, the Commission shall reimburse any person
41 responsible for implementing assessment and remediation activities at a
42 contamination site associated with a certified facility or a certified abandoned site
43 pursuant to a dry-cleaning solvent assessment agreement or dry-cleaning solvent
44 remediation agreement for the following assessment and remediation response costs:

- 1 (1) Costs of assessment with respect to dry-cleaning solvent
2 contamination.
- 3 (2) Costs of treatment or replacement of potable water supplies
4 affected by the contamination.
- 5 (3) Costs of remediation of affected soil, groundwater, surface waters,
6 bedrock or other rock formations, or buildings.
- 7 (4) Monitoring of the contamination.
- 8 (5) Inspection and supervision of activities described in this subsection.
- 9 (6) Reasonable costs of restoring property as nearly as practicable to
10 the conditions that existed prior to activities associated with
11 assessment and remediation conducted pursuant to this Part.
- 12 (7) Other activities reasonably required to protect public health and
13 the environment.
- 14 **(b) Limitations.** -- Notwithstanding subsection (a) of this section, the Commission
15 shall not make any disbursement from the Fund:
- 16 (1) For costs incurred in connection with facilities or abandoned sites
17 not certified pursuant to G.S. 143-215.104G.
- 18 (2) For costs not incurred pursuant to a dry-cleaning solvent
19 assessment agreement or a dry-cleaning solvent remediation
20 agreement.
- 21 (3) For costs before funds available through the financial responsibility
22 demonstrated by the owner or operator of the facility or
23 abandoned site pursuant to G.S. 143-215.104E and funds obligated
24 by petitioners pursuant to a dry-cleaning solvent assessment
25 agreement or dry-cleaning solvent remediation agreement in
26 accordance with G.S. 143-215.104F(f) are exhausted.
- 27 (4) For costs at a contamination site that has been identified by the
28 United States Environmental Protection Agency as a federal
29 Superfund site pursuant to 40 Code of Federal Regulations, Part
30 300 (1 July 1996 Edition), except that the Commission may
31 authorize distribution of the required State match in an amount
32 not to exceed two hundred thousand dollars (\$200,000) per year
33 per site. The Commission shall not delegate its authority to
34 disburse funds pursuant to this subdivision.
- 35 (5) For remediation beyond the level required under the
36 Commission's risk-based criteria for determining the appropriate
37 level of remediation.
- 38 (6) For assessment or remediation response costs incurred in
39 connection with any individual dry-cleaning solvent assessment
40 agreement or dry-cleaning solvent remediation agreement in excess
41 of two hundred thousand dollars (\$200,000) per year. However,
42 that the Commission may disburse up to four hundred thousand
43 dollars (\$400,000) per year for assessment and remediation costs

- 1 incurred in connection with a certified facility or a certified
2 abandoned site that poses an imminent hazard.
- 3 (7) That would result in a diminution of the Fund balance below one
4 hundred thousand dollars (\$100,000), unless an emergency exists in
5 connection with a dry-cleaning solvent contamination abandoned
6 site that constitutes an imminent hazard.
- 7 (8) For any costs incurred in connection with dry-cleaning solvent
8 contamination from a facility located on a United States military
9 base or owned by the United States or a department or agency of
10 the United States.
- 11 (9) For any costs incurred in connection with dry-cleaning solvent
12 contamination from a facility or abandoned site owned by the State
13 or a department or agency of the State.
- 14 (c) Commission shall not pay or reimburse any response costs arising from a
15 dry-cleaning solvent assessment agreement or dry-cleaning solvent remediation
16 agreement until the petitioners who are party to the agreement have exhausted the
17 financial resources made available under the agreement pursuant to G.S.
18 143-215.104E and G.S. 143-215.104F.
- 19 (d) Each dry-cleaning solvent assessment agreement or dry-cleaning solvent
20 remediation agreements made by the Commission pursuant to this Part shall expressly
21 state that the Commission's obligation to reimburse response costs incurred pursuant
22 to these agreements shall be contingent upon the availability of monies from the
23 Fund and that the State and its departments and agencies have no obligation to
24 reimburse otherwise eligible expenses if monies are not available in the Fund to pay
25 the reimbursements. If, at any time, the Commission determines that the cost of
26 assessment and remediation activities reimbursable pursuant to existing dry-cleaning
27 solvent assessment agreements and dry-cleaning solvent remediation agreements
28 equals or exceeds the total revenues expected to be credited to the Fund over the life
29 of the Fund, the Commission shall publish notice of the determination in the North
30 Carolina Register. Following the publication of a notice pursuant to this section, the
31 Commission may continue to enter into dry-cleaning solvent assessment agreements
32 and dry-cleaning solvent remediation agreements until the day of adjournment of the
33 first regular session of the General Assembly that begins after the date the notice is
34 published, but shall have no authority to enter into additional dry-cleaning solvent
35 assessment agreements and dry-cleaning solvent remediation agreements after that
36 date unless the Commission first determines either (i) that revenues will be available
37 from the Fund to reimburse the costs of assessment and remediation activities
38 expected to be reimbursable pursuant to the agreements, or (ii) that assessment and
39 remediation activities undertaken pursuant to the agreements will be paid entirely
40 from sources other than the Fund. For the purposes of this subsection, the term 'day
41 of adjournment' shall mean: (i) in the case of a regular session held in an
42 odd-numbered year, the day the General Assembly adjourns by joint resolution for
43 more than 10 days, and (ii) in the case of a regular session held in an even-numbered
44 year, the day the General Assembly adjourns sine die.

1 (e) The Commission shall pay the reimbursable response costs of eligible parties
2 as they are incurred. If the cleanup of the contamination site is not completed as
3 required by the remediation agreement, any response costs previously reimbursed for
4 the cleanup shall be repaid to the Fund, with interest. The Commission shall request
5 the Attorney General to commence a civil action to secure repayment of response
6 costs and interest of the costs.

7 **"§ 143-215.104O. Remediation of uncertified sites.**

8 (a) In the event the owner or operator of a facility or the current owner of an
9 abandoned site cannot be identified or located, unreasonably refuses to enter into
10 either an assessment agreement or remediation agreement or cannot be made to
11 comply with the provisions of an assessment agreement or remediation agreement
12 between the petitioner and the Commission, the Commission may direct the
13 Department or a private contractor engaged by the Commission to use staff,
14 equipment, or materials under the control of the Department or contractor or
15 provided by other cooperating federal, State, or local agencies to develop and
16 implement a plan for abatement of an imminent hazard, or to provide interim
17 alternative sources of drinking water to third parties affected by dry-cleaning solvent
18 contamination resulting from a release at the facility or abandoned site. The cost of
19 any of these actions shall be paid from the Fund. The Department or private
20 contractor shall keep a record of all expenses incurred for personnel and for the use
21 of equipment and materials and all other expenses of developing and implementing
22 the remediation plan.

23 (b) The Commission shall request the Attorney General to commence a civil
24 action to secure reimbursement of costs incurred under this subsection.

25 (c) In the event a civil action is commenced pursuant to this Part to recover
26 monies paid from the Fund, the Commission may recover, in addition to any amount
27 due, the costs of the action, including reasonable attorneys' fees and investigation
28 expenses. Any monies received or recovered as reimbursement shall be paid into the
29 Fund or other source from which the expenditures were made.

30 **"§ 143-215.104P. Enforcement procedures; civil penalties.**

31 (a) The Secretary may assess a civil penalty of not more than ten thousand dollars
32 (\$10,000) or, if the violation involves a hazardous waste, as defined in G.S. 130-290,
33 of not more than twenty-five thousand dollars (\$25,000) against any person who:

- 34 (1) Fails to establish financial responsibility for a dry-cleaning facility
35 or a wholesale distribution facility as required by this Part.
- 36 (2) Engages in dry-cleaning operations using dry-cleaning solvent for
37 which the appropriate sales or use tax has not been paid.
- 38 (3) Fails to comply with rules adopted by the Commission pursuant to
39 this Part.
- 40 (4) Fails to file, submit, or make available, as the case may be, any
41 documents, data, or reports required by this Part.
- 42 (5) Violates or fails to act in accordance with the terms, conditions, or
43 requirements of any special order or other appropriate document
44 issued pursuant to G.S. 143-215.2.

- 1 (6) Falsifies or tampers with any recording or monitoring device or
2 method required to be operated or maintained under this Part or
3 rules implementing this Part.
- 4 (7) Knowingly renders inaccurate any recording or monitoring device
5 or method required to be operated or maintained under this Part
6 or rules implementing this Part.
- 7 (8) Knowingly makes any false statement, representation, or
8 certification in any application, record, report, plan, or other
9 document filed or required to be maintained under this Part or
10 rule implementing this Part.
- 11 (9) Knowingly makes a false statement of material fact in a
12 rule-making proceeding or contested case under this Part.
- 13 (10) Refuses access to the Commission or its duly designated
14 representative to any premises for purposes of conducting a lawful
15 inspection provided for in this Part or rule implementing this Part.
- 16 (b) If any action or failure to act for which a penalty may be assessed under
17 subsection (a) of this section is continuous, the Secretary may assess a penalty not to
18 exceed ten thousand dollars (\$10,000) per day or, if the violation involves a
19 hazardous waste, as defined in G.S. 130-290, not exceed twenty-five thousand dollars
20 (\$25,000) per day. A penalty for a continuous violation shall not exceed two
21 hundred thousand dollars (\$200,000) for each period of 30 days during which the
22 violation continues.
- 23 (c) In determining the amount of the penalty, the Secretary shall consider the
24 factors set out in G.S. 143B-282.1(b). The procedures set out in G.S. 143B-282.1 shall
25 apply to civil penalty assessments that are presented to the Commission for final
26 agency decision.
- 27 (d) The Secretary shall notify any person assessed a civil penalty for the
28 assessment and the specific reasons therefor by registered or certified mail or by any
29 means authorized by G.S. 1A-1, Rule 4. Contested case petitions shall be filed
30 pursuant to G.S. 150B-23 within 30 days of receipt of the notice of assessment. The
31 Secretary shall make the final decision regarding assessment of a civil penalty under
32 this section.
- 33 (e) Requests for remission of civil penalties shall be filed with the Secretary.
34 Remission requests shall not be considered unless made within 30 days of receipt of
35 the notice of assessment. Remission requests must be accompanied by a waiver of the
36 right to a contested case hearing pursuant to Chapter 150B of the General Statutes
37 and a stipulation of the facts on which the assessment was based. Consistent with the
38 limitations in G.S. 143B-282.1(c) and (d), remission requests may be resolved by the
39 Secretary and the violator. If the Secretary and the violator are unable to resolve the
40 request, the Secretary shall deliver the remission request and the recommended
41 action to the Committee on Civil Penalty Remissions of the Environmental
42 Management Commission appointed pursuant to G.S. 143B-282.1(c).
- 43 (f) If any civil penalty has not been paid within 30 days after notice of assessment
44 has been served on the violator, the Secretary shall request the Attorney General to

1 institute a civil action in the superior court of any county in which the violator
2 resides or the violator's principal place of business is located in order to recover the
3 amount of the assessment, unless the violator contests the assessment as provided in
4 subsection (d) of this section or requests remission of the assessment in whole or in
5 part as provided in subsection (e) of this section. If any civil penalty has not been
6 paid within 30 days after the final agency decision or order has been served on the
7 violator, the Secretary shall request the Attorney General to institute a civil action in
8 the superior court of any county in which the violator resides or the violator's
9 principal place of business is located to recover the amount of the assessment. A
10 civil action must be filed within three years of the date the final agency decision or
11 court order was served on the violator.

12 **"§ 143-215.104O. Enforcement procedures; criminal penalties.**

13 (a) Any person who negligently commits any of the offenses set out in
14 subdivisions (1) through (10) of G.S. 143-215.104P(a) shall be guilty of a Class 2
15 misdemeanor, which may include a fine not to exceed fifteen thousand dollars
16 (\$15,000) per day of violation, provided that the fine shall not exceed a cumulative
17 total of two hundred thousand dollars (\$200,000) for each period of 30 days during
18 which a violation continues.

19 (b) Any person who knowingly and willfully commits any of the offenses set out
20 in subdivisions (1) through (10) of G.S. 143-215.104P(a) shall be guilty of a Class I
21 felony, which may include a fine not to exceed one hundred thousand dollars
22 (\$100,000) per day of violation, provided that this fine shall not exceed a cumulative
23 total of five hundred thousand dollars (\$500,000) for each period of 30 days during
24 which the violation continues. For the purposes of this subsection, the phrase
25 'knowingly and willfully' shall mean 'intentionally and consciously' as the courts of
26 this State, according to the principles of common law, interpret the phrase in the
27 light of reason and experience.

28 (c) (1) Any person who knowingly commits any of the offenses set out in
29 subdivisions (3) through (10) of G.S. 143-215.104P(a) and who
30 knows at that time that he thereby places another person in
31 imminent danger of death or serious bodily injury shall be guilty of
32 a Class C felony, which may include a fine not to exceed two
33 hundred fifty thousand dollars (\$250,000) per day of violation,
34 provided that this fine shall not exceed a cumulative total of one
35 million dollars (\$1,000,000) for each period of 30 days during
36 which the violation continues.

37 (2) For the purposes of this subsection, a person's state of mind is
38 knowing with respect to:

- 39 a. His conduct, if he is aware of the nature of his conduct.
40 b. An existing circumstance, if he is aware or believes that the
41 circumstance exists.
42 c. A result of his conduct, if he is aware or believes that his
43 conduct is substantially certain to cause danger of death or
44 serious bodily injury.

- 1 (3) Under this subsection, the following should be considered in
2 determining whether a defendant who is a natural person knew
3 that his conduct placed another person in imminent danger of
4 death or serious bodily injury:
- 5 a. The person is responsible only for actual awareness or actual
6 belief that he possessed, and
- 7 b. Knowledge possessed by a person other than the defendant
8 but not by the defendant himself may not be attributed to
9 the defendant.
- 10 (4) It is an affirmative defense to a prosecution under this subsection
11 that the conduct charged was conduct consented to by the person
12 endangered and that the danger and conduct charged were
13 reasonably foreseeable hazards of an occupation, a business or
14 profession, or of medical treatment or medical or scientific
15 experimentation conducted by professionally approved methods,
16 and the person had been made aware of the risks involved prior to
17 giving consent. The defendant may establish an affirmative
18 defense under this subdivision by a preponderance of the evidence.
- 19 (d) No proceeding shall be brought or continued under this section for or on
20 account of a violation by any person who has previously been convicted of a federal
21 violation based upon the same set of facts.
- 22 (e) In proving the defendant's possession of actual knowledge, circumstantial
23 evidence may be used, including evidence that the defendant took affirmative steps to
24 shield himself from relevant information. Consistent with the principles of common
25 law, the subjective mental state of defendants may be inferred from their conduct.
- 26 (f) For the purposes of the felony provisions of this section, a person's state of
27 mind shall not be found 'knowingly and willfully' or 'knowingly' if the conduct that
28 is the subject of the prosecution is the result of any of the following occurrences or
29 circumstances:
- 30 (1) A natural disaster or other act of God that could not have been
31 prevented or avoided by the exercise of due care or foresight.
- 32 (2) An act of third parties other than agents, employees, contractors,
33 or subcontractors of the defendant.
- 34 (3) An act done in reliance on the written advice or emergency on-site
35 direction of an employee of the Department. In emergencies, oral
36 advice may be relied upon if written confirmation is delivered to
37 the employee as soon as practicable after receiving and relying on
38 the advice.
- 39 (4) An act causing no significant harm to the environment or risk to
40 public health, safety, or welfare and done in compliance with other
41 conflicting environmental requirements or other constraints
42 imposed in writing by environmental agencies or officials after
43 written notice is delivered to all relevant agencies that the conflict
44 exists and will cause a violation of the identified standard.

1 (5) Violations causing no significant harm to the environment or risk
2 to public health, safety, or welfare for which no enforcement action
3 or civil penalty could have been imposed under any written civil
4 enforcement guidelines in use by the Department at the time. This
5 subdivision shall not be construed to require the Department to
6 develop or use written civil enforcement guidelines.

7 (6) Occasional, inadvertent, short-term violations causing no significant
8 harm to the environment or risk to public health, safety, or
9 welfare. If the violation occurs within 30 days of a prior violation
10 or lasts for more than 24 hours, it is not an occasional, short-term
11 violation.

12 (g) All general defenses, affirmative defenses, and bars to prosecution that may
13 apply with respect to other criminal offenses under law may apply to prosecutions
14 brought under this section or other criminal statutes that refer to this section and
15 shall be determined by the courts of this State according to the principles of common
16 law as they may be applied in light of reason and experience. Concepts of
17 justification and excuse applicable under this section may be developed in light of
18 reason and experience.

19 (h) All general defenses, affirmative defenses, and bars to prosecution that may
20 apply with respect to other criminal offenses under law may apply to prosecutions
21 brought under this section or other criminal statutes that refer to this section and
22 shall be determined by the courts of this State according to the principles of common
23 law as they may be applied in light of reason and experience. Concepts of
24 justification and excuse applicable under this section may be developed in light of
25 reason and experience.

26 (i) For purposes of this section, the term 'person' means, in addition to the
27 definition contained in G.S. 143-212, any responsible corporate or public office or
28 employee. If a vote of the people is required to effectuate the intent and purpose of
29 this Article by a county, city, town, or other political subdivision of the State and the
30 vote on the referendum is against the means or machinery for carrying out the intent
31 and purpose, then this section shall not apply to elected officials or to any responsible
32 appointed officials or employees of the county, city, town, or other political
33 subdivision.

34 **"§ 143-215.104R. Enforcement procedures; injunctive relief.**

35 Whenever the Commission has reasonable cause to believe that any person has
36 violated or is threatening to violate any of the provisions of this Part or rule
37 implementing this Part, the Commission may, either before or after the institution of
38 any other action or proceeding authorized by this Part, request the Attorney General
39 to institute a civil action in the name of the State upon the relation of the
40 Commission for injunctive relief to restrain the violation or threatened violation and
41 for other and further relief in the premises as the court shall deem proper. The
42 Attorney General may institute an action in the superior court of the county in which
43 the violation occurred or may occur or, in the Attorney General's discretion, in the
44 superior court of the county in which the person responsible for the violation or

1 threatened violation resides or has a principal place of business. Upon a
2 determination by the court that the alleged violation of the provisions of this Part or
3 the rules of the Commission has occurred or is threatened, the court shall grant the
4 relief necessary to prevent or abate the violation or threatened violation. Neither the
5 institution of the action nor any of the proceedings thereon shall relieve any party to
6 the proceedings from any penalty prescribed for violation of this Part. In the event a
7 civil action is commenced pursuant to this section, the Commission may recover the
8 costs of the action, including attorneys' fees and investigation expenses. All monies
9 received or recovered shall be paid into the Fund or other source from which the
10 expenditures were made.

11 **"§ 143-215.104S. Appeals.**

12 Any person who is aggrieved by a decision of the Commission under G.S.
13 143-215.104E through G.S. 143-215.104O may commence a contested case by filing a
14 petition under G.S. 150B-23 within 60 days after the Commission's decision. If no
15 contested case is initiated within the allotted time period, the Commission's decision
16 shall be final and not subject to review. The Commission shall make the final agency
17 decision in contested cases initiated pursuant to this section. The Commission shall
18 not delegate its authority to make a final agency decision pursuant to this section.

19 **"§ 143-215.104T. Construction of this Part.**

20 (a) This Part is not intended to and shall not be construed to:

- 21 (1) Affect the ability of local governments to regulate land use under
22 Article 19 of Chapter 160A of the General Statutes and Article 18
23 of Chapter 153A of the General Statutes. The use of the identified
24 contamination site and any land-use restrictions in the dry-cleaning
25 solvent remediation agreement shall be consistent with local
26 land-use controls adopted under those statutes.
- 27 (2) Amend, modify, repeal, or otherwise alter any provision of any
28 remedial program or other provision of law relating to civil and
29 criminal penalties or enforcement actions and remedies available
30 to the Department, except as may be provided in a dry-cleaning
31 solvent remediation agreement.
- 32 (3) Prevent or impede the immediate response of the Department or
33 responsible party to an emergency that involves an imminent or
34 actual release of a regulated substance that threatens public health
35 or the environment.
- 36 (4) Relieve a person receiving liability protection under this Part from
37 any liability for contamination later caused by that person at a
38 facility or abandoned site.
- 39 (5) Affect the right of any person to seek any relief available against
40 any party to the dry-cleaning solvent remediation agreement who
41 may have liability with respect to the facility or abandoned site,
42 except that this Part does limit the relief available against any party
43 to a remediation agreement with respect to assessment or

1 remediation of the contamination site to the assessment
2 remediation required under the remediation agreement.

3 (6) Affect the right of any person who may have liability with respect
4 to the facility or abandoned site to seek contribution from any
5 other person who may have liability with respect to the facility or
6 abandoned site and who neither received nor has liability
7 protection under this Part.

8 (7) Prevent the State from enforcing specific numerical remediation
9 standards, monitoring, or compliance requirements specifically
10 required to be enforced by the federal government as condition to
11 receive program authorization, delegation, primacy, or federal
12 funds.

13 (8) Create a defense against the imposition of criminal and civil fines
14 or penalties or administrative penalties otherwise authorized by
15 law and imposed as the result of the illegal disposal of waste or
16 from the pollution of the land, air, or waters of this State on a
17 facility or abandoned site.

18 (9) Relieve a person of any liability for failure to exercise due
19 diligence and reasonable care in performing an environmental
20 assessment or transaction screen.

21 (b) Notwithstanding the provision of the Tort Claims Act, G.S. 143-291 through
22 G.S. 143-300.1 or any other provision of law waiving the sovereign immunity of the
23 State of North Carolina, the State, its agencies, officers, employees, and agents shall
24 be absolutely immune from any liability in any proceeding for any injury or claim
25 arising from negotiating, entering into, monitoring, or enforcing a dry-cleaning
26 solvent assessment agreement, a dry-cleaning solvent remediation agreement, or a
27 Notice of Dry-Cleaning Solvent Remediation under this Part or any other action
28 implementing this Part.

29 "§ 143-215.104U. Reporting requirements.

30 (a) The Secretary shall present an annual report to the Environmental Review
31 Commission that shall include at least the following:

32 (1) A list of all dry-cleaning solvent contamination reported to the
33 Department.

34 (2) A list of all facilities and abandoned sites certified by the
35 Commission and the status of contamination associated with each
36 facility or abandoned site.

37 (3) An estimate of the cost of assessment and remediation required in
38 connection with facilities or abandoned sites certified by the
39 Commission and an estimate of assessment and remediation costs
40 expected to be paid from the Fund.

41 (4) A statement of receipts and disbursements for the Fund.

42 (5) A statement of all claims against the Fund, including claims paid,
43 claims denied, pending claims, anticipated claims, and any other
44 obligations.

1 **"§ 105-187.32. Administration.**

2 The privilege tax this Article imposes on a dry-cleaning solvent retailer is an
3 additional State sales tax, and the excise tax this Article imposes on the storage, use,
4 or consumption of dry-cleaning solvent by a dry-cleaning facility in this State is an
5 additional State use tax. Except as otherwise provided in this Article these taxes shall
6 be collected and administered in the same manner as the State sales and use taxes
7 imposed by Article 5 of this Chapter. As under Article 5 of this Chapter, the
8 additional State sales tax paid when dry-cleaning solvent is sold at retail is a credit
9 against the additional State use tax imposed on the storage, use, or consumption of
10 the same dry-cleaning solvent.

11 **"§ 105-187.33. Exemptions and refunds.**

12 The exemptions in G.S. 105-164.13 do not apply to the taxes imposed by this
13 Article. The refunds allowed in G.S. 105-164.14 do not apply to the taxes imposed
14 by this Article.

15 **"§ 105-187.34. Use of tax proceeds.**

16 The Secretary must credit the taxes collected under this Article, less the
17 Department of Revenue's allowance for administrative expenses, to the Dry-Cleaning
18 Solvent Cleanup Fund. The Secretary may retain the Department's cost of
19 collection, not to exceed one hundred twenty-five thousand dollars (\$125,000) a year,
20 as reimbursement to the Department."

21 Section 4.1. G.S. 105-259(b) is amended by adding a new subdivision to
22 read:

23 "(20) To furnish to the Environmental Management Commission
24 information concerning whether a person who is requesting
25 certification of a dry-cleaning facility or wholesale distribution
26 facility from the Commission is liable for privilege tax under
27 Article 5D of this Chapter."

28 Section 4.2. G.S. 130A-310.31(b)(3) reads as rewritten:

29 "(3) 'Brownfields property' or 'brownfields site' means abandoned,
30 idled, or underused property at which expansion or redevelopment
31 is hindered by actual environmental contamination or the
32 possibility of environmental contamination and that is or may be
33 subject to remediation under any State remedial program other
34 than Part 2A of Article ~~24~~ 21A of Chapter 143 of the General
35 Statutes or that is or may be subject to remediation under the
36 Comprehensive Environmental Response, Compensation and
37 Liability Act of 1980, as amended (42 U.S.C. § 9601 et seq.)."

38 Section 4.3. G.S. 130A-310.31(b)(5) reads as rewritten:

39 "(5) 'Current standards' when used in connection with 'cleanup',
40 'remediated', or 'remediation' means that cleanup or remediation
41 activities ~~at the site comply~~ of contamination complies with
42 generally applicable standards, guidance, or established methods
43 governing ~~the~~ the contaminants ~~at the site that are adopted or~~
44 ~~published~~ established by statute or adopted, published, or

1 implemented by the Commission, the Environmental Management
 2 Commission, the Commission, or the Department. Department
 3 instead of the risk-based standards established by the Commission
 4 pursuant to this Part."

5 Section 4.4. G.S. 130A-310.31(b)(11) reads as rewritten:
 6 "(11) 'Regulated substance' means a hazardous waste, as defined in G.S
 7 130A-290; a hazardous substance, as defined in G.S. 143-215.77A;
 8 oil, as defined in G.S. 143-215.77; or other substance regulated
 9 under any remedial program implemented by the Department
 10 other than Part 2A of Article 21A of Chapter 143 of the General
 11 Statutes."

12 Section 4.5. G.S. 130A-310.37 is amended by adding a new subsection to
 13 read:

14 "(c) The Department shall not enter into a brownfields agreement for a
 15 brownfields site that is identified by the United States Environmental Protection
 16 Agency as a federal Superfund site pursuant to 40 Code of Federal Regulations, Part
 17 300 (1 July 1996 Edition)."

18 Section 5. This act constitutes a recent act of the General Assembly
 19 within the meaning of G.S. 150B-21.1. The Environmental Management Commission
 20 may adopt temporary rules to implement this act until 1 January 1999.

21 Section 6. (a) The General Statutes set out in Sections 1, 4, and 4.1 of
 22 this act become effective on the date specified in the following table:

23 Statute	Effective Date
24 143-215.104A	When this act becomes law
25 143-215.104B	When this act becomes law
26 143-215.104C	When this act becomes law
27 143-215.104D	When this act becomes law
28 143-215.104E	1 April 1998
29 143-215.104F	1 January 1999
30 143-215.104G	1 January 1999
31 143-215.104H	1 January 1999
32 143-215.104I	1 January 1999
33 143-215.104J	1 January 1999
34 143-215.104K	1 January 1999
35 143-215.104L	1 January 1999
36 143-215.104M	1 January 1999
37 143-215.104N	1 January 1999
38 143-215.104O	1 January 1999
39 143-215.104P	1 January 1998
40 143-215.104Q	1 January 1998
41 143-215.104R	1 January 1998
42 143-215.104S	1 January 1998
43 143-215.104T	1 January 1998
44 143-215.104U	1 January 1998

- 1 105-187.30 1 October 1997
2 105-187.31 1 October 1997
3 105-187.32 1 October 1997
4 105-187.33 1 October 1997
5 105-187.34 1 October 1997
6 105-259(b)(20) 1 January 1999.
- 7 (b) Sections 2 and 3 of this act become effective 1 October 1997.
8 (c) Sections 4.2 through 4.5 of this act become effective if and when 1997
9 House Bill 1121 becomes law.
- 10 (d) Sections 5 through 8 of this act are effective when this act becomes
11 law.
- 12 (e) The Secretary of Environment, Health, and Natural Resources shall
13 make the first annual report required under G.S. 143-215.104U on or before 1
14 October 1998.
- 15 (f) The Environmental Management Commission shall adopt rules and
16 develop forms, strategies, and other procedures required or authorized by
17 subdivisions (1) and (3) of G.S. 143-215.104D(b) on or before 1 January 1999.
- 18 Section 7. (a) Any person who undertakes assessment or remediation of
19 dry-cleaning solvent contamination pursuant to an enforcement action by the
20 Department of Environment, Health, and Natural Resources during the period
21 beginning 1 October 1997 and 1 January 1999 may, on or after 1 January 1999 seek
22 reimbursement from the Dry-Cleaning Solvent Cleanup Fund for any costs exceeding
23 fifty thousand dollars (\$50,000). The Commission shall reimburse costs if it finds that
24 the costs incurred were (i) reasonably necessary to assess or remediate the
25 dry-cleaning solvent contamination; (ii) for any of the activities described in
26 subdivisions (1) through (7) of G.S. 143-215.104N(a); (iii) not subject to any of the
27 limitations in subdivisions (4) or (5) of G.S. 143-215.104N(b); (iv) not reimbursable
28 from pollution and remediation legal liability insurance; and (v) required by a
29 specific order of the Department of Environment, Health, and Natural Resources
30 issued on or after 30 June 1996. No reimbursement may be paid pursuant to this
31 section for dry-cleaning solvent contamination that did not result from operations at a
32 dry-cleaning or wholesale distribution facility.
- 33 (b) Any person who, as of 1 January 1999, is undertaking assessment or
34 remediation of dry-cleaning solvent contamination shall be eligible to petition the
35 Commission to enter into a dry-cleaning solvent assessment agreement or
36 dry-cleaning solvent remediation agreement with respect to the contamination. In
37 calculating the required financial contribution of parties to any agreement, the
38 Commission shall determine the cost of any unreimbursed assessment or remediation
39 activity undertaken by the parties with respect to the contamination site prior to 1
40 January 1999 and shall credit the amount toward any applicable financial
41 responsibility limits established in G.S. 143-215.104F.
- 42 Section 8. Section 7 of this act is repealed effective 1 January 2000. Any
43 reimbursement authorized pursuant to Section 7 prior to 1 January 2000 shall be paid
44 in accordance with the provisions of that section. Section 4 of this act is repealed

1 effective 1 January 2010. Sections 1 and 4.1 of this act are repealed effective 1
2 January 2012. However:

- 3 (1) G.S. 143-215.104K is not repealed to the extent that it applies to
4 liability arising from dry-cleaning solvent contamination described
5 in a Dry-Cleaning Solvent Assessment Agreement or Dry-Cleaning
6 Solvent Remediation Agreement entered into by the
7 Environmental Management Commission pursuant to G.S.
8 143-215.104H and G.S. 143-215.104I.
- 9 (2) Any Dry-Cleaning Solvent Assessment Agreement or Dry-Cleaning
10 Solvent Remediation Agreement in force as of 1 January 2012 shall
11 continue to be governed by the provisions of Part 6 of Article 21A
12 of Chapter 143 of the General Statutes as though those provisions
13 had not been repealed.
- 14 (3) G.S. 143-215.104D(b)(2) is not repealed; rules adopted by the
15 Environmental Management Commission pursuant to G.S.
16 143-215.104D(b)(2) shall continue in effect; and those rules may be
17 enforced pursuant to G.S. 143-215.104P, 143-215.104Q, and
18 143-215.104R, which shall remain in effect for that purpose.



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 225

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

H225-ART-002.1

Page 1 of ____

Date _____, 1997

Comm. Sub. [YES]
Amends Title []
Third Edition PCS 4140

1 moves to amend the bill on page 1, line 5,
2 by rewriting that line to read:

3
4 "Whereas, there are drycleaning operations in the State at
5 which drycleaning solvent contamination has or may have occurred;
6 and

7 Whereas, many instances of drycleaning solvent
8 contamination have resulted from solvent handling practices that
9 were lawful and common at the time such practices were undertaken;
10 and

11 Whereas, the financial resources of individual drycleaning
12 operators are frequently insufficient to assess and remediate
13 drycleaning solvent contamination to current environmental
14 standards; and

15 Whereas, the drycleaning industry, through the North
16 Carolina Association of Launderers and Cleaners, has expressed a
17 willingness and desire to work cooperatively and to share financial
18 resources to address drycleaning solvent contamination resulting
19 from drycleaning facilities; and

20 Whereas, the level of remediation required for drycleaning
21 solvent contamination can be determined using the same risk-
22 assessment techniques that are currently being applied to releases
23 of other regulated substances; and

24 Whereas, assessment and remediation of drycleaning solvent
25 contamination sites in this State can be accelerated through the use
26 of an industry-supported funding mechanism; Now, therefore,
27 The General Assembly of North Carolina enacts:"



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 225

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

H225-ART-002.1

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 3rd Ed, Law PCS 4140

H. B. No. 225

DATE _____

S. B. No. _____

Amendment No. _____

(to be filled in by
Principal Clerk)

COMMITTEE SUBSTITUTE Yes

Rep.) Albertson
Sen.)

1 moves to amend the bill on page 34, line 6

2 () WHICH CHANGES THE TITLE "Review"
3 by deleting and inserting
4 "Management" and as

5
6 on page 34 lines 24 through 28
7 by rewriting those lines to read:

8 "of contamination complies
9 with generally
10 accepted applicable standards, guidance, or
11 established methods governing the
12 contaminants that are established by
13 statute or adopted, published, or
14 implemented by the ~~Environmental Management~~
15 Commission, the ~~Health Services~~, or the
16 Department instead of the risk-based
17 standards established by the
18 Commission pursuant to this Part."
19

SIGNED [Signature]

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

4

HOUSE BILL 631
Committee Substitute Favorable 4/23/97
Committee Substitute #2 Favorable 7/10/97
Fourth Edition Engrossed 7/17/97

Short Title: Forsyth Room Tax Distribution.

(Local)

Sponsors:

Referred to:

March 26, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO MODIFY THE FORMULA FOR DISTRIBUTING THE PROCEEDS
3 OF THE FORSYTH COUNTY OCCUPANCY TAXES.
4 The General Assembly of North Carolina enacts:
5 Section 1. Section 28 of Chapter 908 of the 1983 Session Laws, as
6 amended, reads as rewritten:
7 "Sec. 28. Disposition of ~~Taxes Collected~~. Two Percent (2%) and One Percent
8 (1%) Taxes. (a) Forsyth County shall remit the net proceeds of the occupancy ~~tax~~
9 taxes levied under Sections 24, 25, and 30.1 of this Part on a quarterly basis as
10 follows: ~~(i) five~~
11 (1) Five percent (5%) of the net proceeds shall be divided among the
12 municipalities in Forsyth County, other than Winston-Salem, on a
13 pro rata ~~basis, and (ii) the~~ basis.
14 (2) The remaining net proceeds shall be remitted to the Forsyth
15 County Tourism Development Authority.
16 'Net proceeds' ~~means gross proceeds less the cost to the county of administering and~~
17 ~~collecting the tax.~~ has the meaning provided in Section 30.2(d) of this Part.
18 (b) A municipality may expend funds distributed to it pursuant to subsection (a)
19 only for economic development and cultural and recreational purposes. The Forsyth
20 County Tourism Development Authority shall expend the funds distributed to it
21 pursuant to subsection (a) to further the development of travel, tourism, and

1 conventions within Forsyth County. The Forsyth County Tourism Development
2 Authority may not use more than ten percent (10%) of the funds distributed to it
3 pursuant to subsection (a) for administrative expenses."

4 Section 2. Section 30.2 of Part VII of Chapter 908 of the 1983 Session
5 Laws, as enacted by Chapter 870 of the 1989 Session Laws, reads as rewritten:

6 "Sec. 30.2. Additional Tax. (a) Levy. -- In addition to the taxes authorized by
7 Sections 24, 25, and 30.1 of this Part, the Forsyth County Board of Commissioners
8 may levy a room occupancy and tourism development tax of three percent (3%) of
9 the gross receipts derived from the rental of accommodations taxable under those
10 sections. The levy, collection, administration, and repeal of the tax authorized by this
11 section shall be in accordance with Sections 24 through 27 and 29 through 30 of this
12 Part. Forsyth County may not levy a tax under this section unless it also levies taxes
13 under Sections 24, 25, and 30.1 of this Part.

14 (b) Distribution. -- The net proceeds of the tax levied under this section shall be
15 distributed as follows:

16 (1) ~~(i) five~~ Five percent (5%) of the net proceeds shall be divided
17 among the municipalities in Forsyth County, other than Winston-
18 Salem, on a pro rata ~~basis; and (ii) the~~ basis.

19 (2) After subtracting the amount provided in subdivision (1) of this
20 subsection, one-third of the remaining net proceeds shall be
21 divided among Forsyth County, the City of Winston-Salem, and
22 remitted to the Forsyth County Tourism Development Authority
23 on a pro rata basis. Authority.

24 (3) After subtracting the amounts provided in subdivisions (1) and (2)
25 of this subsection, ten percent (10%) of the remaining net proceeds
26 shall be divided among those municipalities in Forsyth County,
27 other than Winston-Salem, in which taxable establishments are
28 located, in proportion to the amount of tax proceeds collected in
29 each municipality.

30 (4) After subtracting the amounts provided in subdivisions (1), (2), and
31 (3) of this subsection, the remaining net proceeds shall be divided
32 between Forsyth County and the City of Winston-Salem on a pro
33 rata basis.

34 ~~'Net proceeds' means gross proceeds less the cost to the county of administering and~~
35 ~~collecting the tax.~~

36 (c) Use. -- A municipality that receives funds pursuant to subdivision (b)(3) of this
37 section shall, on a quarterly basis, remit all the funds it receives pursuant to this Part
38 to its municipal Tourism Development Authority. Each municipal Authority shall
39 use at least two-thirds of the funds remitted to it under this subsection to promote
40 travel and tourism in the municipality and shall use the remainder for tourism-related
41 expenditures. No more than ten percent (10%) of the funds remitted to an Authority
42 under this subsection may be used for the Authority's administrative expenses,
43 including salaries and benefits.

1 Forsyth County or a municipality that does not receive funds pursuant to
2 subdivision (b)(3) of this section may expend funds distributed to it pursuant to
3 subsection (b) only for economic development and cultural and recreational
4 purposes. The Forsyth County Tourism Development Authority shall expend the
5 funds distributed to it pursuant to subsection (b) in accordance with Section 28(b) of
6 this Part.

7 (d) Definitions. -- The following definitions apply in this section:

- 8 (1) Net proceeds. -- Gross proceeds less the cost to the county of
9 administering and collecting the tax, as determined by the finance
10 officer.
- 11 (2) Promote travel and tourism. -- To advertise or market an area or
12 activity, publish and distribute pamphlets and other materials,
13 conduct market research, or engage in similar promotional
14 activities that attract tourists or business travelers to the area; the
15 term includes administrative expenses incurred in engaging in
16 these activities.
- 17 (3) Tourism-related expenditures. -- Expenditures that, in the
18 judgment of the entity making the expenditure, are designed to
19 increase the use of lodging and meeting and convention facilities in
20 the area by attracting tourists or business travelers to the area; the
21 term includes tourism-related capital expenditures."

22 Section 3. Part VII of Chapter 908 of the 1983 Session Laws, as amended
23 by Chapters 33 and 924 of the 1985 Session Laws and Chapter 870 of the 1989
24 Session Laws, is amended by adding a new section to read:

25 "Sec. 30.3. Municipal Tourism Development Authorities. (a) When a
26 municipality first receives a distribution of funds pursuant to Section 30.2(b)(3) of this
27 Part, its governing body shall adopt a resolution creating a municipal Tourism
28 Development Authority, which shall be a public authority under the Local
29 Government Budget and Fiscal Control Act. The resolution shall provide that there
30 will be five members of the Authority appointed by the governing body of the
31 municipality and shall provide for the members' terms of office and for the filling of
32 vacancies on the Authority. At least one-third of the members must be individuals
33 who are affiliated with businesses that collect the tax in the municipality and at least
34 three-fourths of the members must be individuals who are currently active in the
35 promotion of travel and tourism in the municipality. The governing body of the
36 municipality shall designate one member of the Authority as chair and shall
37 determine the compensation, if any, to be paid to members of the Authority.

38 The Authority shall meet at the call of the chair and shall adopt rules of procedure
39 to govern its meetings. The Finance Officer for the municipality shall be the ex
40 officio finance officer of the Authority.

41 (b) Duties. The Authority shall expend the funds distributed to it pursuant to
42 Section 30.2(c) of this Part for the purposes provided in Section 30.2(c) of this Part.
43 The Authority shall promote travel and tourism and make tourism-related
44 expenditures.

1 (c) Reports. The Authority shall report quarterly and at the close of the fiscal
2 year to the governing body of the municipality on its receipts and expenditures for
3 the preceding quarter and for the year in such detail as the governing body may
4 require."

5 Section 4. This act becomes effective August 1, 1997, and applies to taxes
6 levied on or after that date.

EXPLANATION OF HOUSE BILL 631:
Forsyth Room Tax Distribution (4th Edition)

TO: Senate Finance Committee
FROM: Martha H. Harris, Staff Attorney
DATE: July 22, 1997

This bill changes the method by which the Forsyth County occupancy tax is distributed. Forsyth County levies a total of 6% in occupancy taxes, made up of a 2% tax, a 1% tax, and a 3% tax. The county deducts the cost of collecting and administering the taxes and distributes the net proceeds. Under current law, the 1% and 2% taxes are distributed as follows: 5% to the municipalities (other than Winston-Salem) in the county; the remainder to the Forsyth County Tourism Development Authority. Under current law, the 3% tax is distributed as follows: 5% to the municipalities (other than Winston-Salem) in the county; the remainder divided evenly between Winston-Salem, Forsyth County, and the Forsyth County Tourism Development Authority.

Section by Section Analysis

1. Section 1 of the bill makes clarifying changes to the 2% and 1% taxes.
2. Section 2 of the bill changes the distribution of the 3% tax by redirecting 10% of the amount that Winston Salem and Forsyth County would otherwise receive to those municipalities in Forsyth County (other than Winston-Salem) in which taxable establishments are located. Section 2 of the bill also provides that municipalities (other than Winston-Salem) that have taxable establishments must create a five-member Tourism Development Authority to expend the room tax proceeds, at least 2/3 to promote tourism and the remainder for tourism-related expenditures.
3. Section 3 of the bill provides for the creation of these Tourism Development Authorities and states that they may not spend more than 10% of the room tax proceeds for administrative expenses, including salaries and benefits.
4. Section 4 of the bill sets the effective date at August 1, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

2

HOUSE BILL 566
Committee Substitute Favorable 7/3/97

Short Title: Wake Schools Development Charges. (Local)

Sponsors:

Referred to:

March 20, 1997

- 1 A BILL TO BE ENTITLED
2 AN ACT EXEMPTING THE WAKE COUNTY PUBLIC SCHOOL SYSTEM
3 FROM DEVELOPMENT CHARGES RELATED TO THE CONSTRUCTION,
4 RENOVATION, AND REPAIR OF PUBLIC SCHOOL SYSTEM
5 INFRASTRUCTURE FACILITIES IN WAKE COUNTY AND THE
6 MUNICIPALITIES THEREIN.
7 The General Assembly of North Carolina enacts:
8 Section 1. Notwithstanding any other provision of law, the Wake County
9 Public School System shall be exempt from development charges assessed by Wake
10 County or any municipality having territory within Wake County where the
11 development charge is assessed against the construction, renovation, or repair of
12 public school infrastructure facilities.
13 Section 2. For the purposes of this act:
14 (a) "Development charge" means any:
15 (1) Impact fee, facility fee, development fee, project fee, regulatory fee,
16 or other similar fee assessed in connection with the construction,
17 renovation, or repair of a public school infrastructure facility
18 where the fee is based on the student seating capacity of the
19 facility.
20 (2) Water and sewer acreage fee when the Wake County Public School
21 System has installed water and sewer improvements.
22 (3) Transportation development fee when the Wake County Public
23 School System has installed transportation improvements.

- 1 (4) Utility tap fee.
- 2 (5) Plan review fee.
- 3 (6) Building permit fee.
- 4 (7) Fee to place a mobile classroom unit on property owned by the
- 5 Wake County Public School System.

6 (b) "Public school infrastructure facility" means any building, structure,
7 or other facility used or to be used by the Wake County Public School System for
8 instructional, administrative, or maintenance purposes. The term includes mobile
9 classroom units.

10 Section 3. This act is effective when it becomes law and applies to Wake
11 County Public School System construction, renovation, and repair projects started or
12 in progress on or after that date, except that any valid development charge that
13 accrued prior to that date shall remain valid and payable by the Wake County Public
14 School System.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1997

H

3

HOUSE BILL 568
Committee Substitute Favorable 6/26/97
Committee Substitute #2 Favorable 7/16/97

Short Title: Wake Forest Annexation.

(Local)

Sponsors:

Referred to:

March 20, 1997

1 A BILL TO BE ENTITLED
2 AN ACT CONCERNING SATELLITE ANNEXATIONS BY THE TOWN OF
3 WAKE FOREST.
4 The General Assembly of North Carolina enacts:
5 Section 1. (a) G.S. 160A-58.1(b) is amended by adding a new
6 subdivision to read:
7 "(2a) If any territory proposed for annexation under this Part is an area
8 that another city has agreed not to annex under an agreement with
9 the annexing city under Part 6 of this Article, then the proximity to
10 that other city shall not be considered in applying subdivision (2)
11 of this subsection. This subdivision applies only where the
12 annexing city is the Town of Wake Forest."
13 (b) Section 2(b) of Chapter 882 of the 1989 Session Laws reads as
14 rewritten:
15 "(b) Except as provided by G.S. 160A-58.1(b)(2a) or subsection (a) of this section,
16 the provisions of Part 4 of Article 4A of Chapter 160A of the General Statutes shall
17 continue to apply to the Town of Wake Forest."
18 Section 2. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1997

H

D

HOUSE BILL 568
Committee Substitute Favorable 6/26/97
Committee Substitute #2 Favorable 7/16/97
Proposed Senate Committee Substitute H568-PCS7358

Short Title: Wake Forest/Beaufort Annexation.

(Local)

Sponsors:

Referred to:

March 20, 1997

1 A BILL TO BE ENTITLED
2 AN ACT CONCERNING SATELLITE ANNEXATIONS BY THE TOWN OF
3 WAKE FOREST AND CONCERNING A SATELLITE ANNEXATION BY THE
4 TOWN OF BEAUFORT.
5 The General Assembly of North Carolina enacts:
6 Section 1. (a) G.S. 160A-58.1(b) is amended by adding a new
7 subdivision to read:
8 "(2a) If any territory proposed for annexation under this Part is an area
9 that another city has agreed not to annex under an agreement with
10 the annexing city under Part 6 of this Article, then the proximity to
11 that other city shall not be considered in applying subdivision (2)
12 of this subsection. This subdivision applies only where the
13 annexing city is the Town of Wake Forest."
14 (b) Section 2(b) of Chapter 882 of the 1989 Session Laws reads as
15 rewritten:
16 "(b) Except as provided by G.S. 160A-58.1(b)(2a) or subsection (a) of this section,
17 the provisions of Part 4 of Article 4A of Chapter 160A of the General Statutes shall
18 continue to apply to the Town of Wake Forest."
19 Section 1.1. The provisions of G.S. 160A-58.1(b)(5) do not apply to the
20 annexation of the Harry Taylor Farms property by the Town of Beaufort.
21 Section 2. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

2

HOUSE BILL 495
Committee Substitute Favorable 5/21/97

Short Title: Natural Gas.

(Public)

Sponsors:

Referred to:

March 11, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO ADDRESS NORTH CAROLINA'S URGENT INFRASTRUCTURE
3 NEEDS BY CLARIFYING THAT THE NORTH CAROLINA UTILITIES
4 COMMISSION MAY ESTABLISH DIFFERENT RATES FOR NATURAL GAS
5 SERVICE TO UNSERVED COUNTIES THAT REFLECT THE COST OF
6 PROVIDING SERVICE TO THE UNSERVED COUNTIES AND
7 AUTHORIZING THE CREATION OF NATURAL GAS DISTRICTS FOR
8 NATURAL GAS EXPANSION.

9 The General Assembly of North Carolina enacts:

10 PART I.

11 DIFFERENT RATES

12 Section 1. G.S. 62-140(a) reads as rewritten:

13 "(a) No public utility shall, as to rates or services, make or grant any unreasonable
14 preference or advantage to any person or subject any person to any unreasonable
15 prejudice or disadvantage. No public utility shall establish or maintain any
16 unreasonable difference as to rates or services either as between localities or as
17 between classes of service. The Commission may determine any questions of fact
18 arising under this section; provided that it shall not be an unreasonable preference or
19 advantage or constitute discrimination against any person, firm or corporation or
20 general rate payer for telephone utilities to contract with motels, hotels and hospitals
21 to pay reasonable commissions in connection with the handling of intrastate toll calls
22 charged to a guest or patient and collected by the motel, hotel or hospital; provided
23 further, that payment of such commissions shall be in accordance with uniform tariffs

1 which shall be subject to the approval of the Commission. Provided further, that it
2 shall not be considered an unreasonable preference or advantage for the Commission
3 to order, if it finds the public interest so requires, a reduction in local telephone rates
4 for low-income residential consumers meeting a means test established by the
5 Commission in order to match any reduction in the interstate subscriber line charge
6 authorized by the Federal Communications Commission.

7 Nothing in this section prohibits the Commission from establishing different rates
8 for natural gas service to counties that are substantially unserved, to the extent that
9 those rates reflect the cost of providing service to the unserved counties and upon a
10 finding by the Commission that natural gas service would not otherwise become
11 available to the counties."

12 PART II.

13 NATURAL GAS DISTRICTS

14 Section 2. Chapter 160A of the General Statutes is amended by adding a
15 new Article to read:

16 "ARTICLE 27.

17 "Regional Natural Gas District.

18 "§ 160A-630. Title.

19 This Article is the 'Regional Natural Gas District Act' and may be cited by that
20 name.

21 "§ 160A-631. Purpose; definitions.

22 (a) The purpose of a district created under this Article is to enhance the quality of
23 life in its territorial jurisdiction by promoting the development of natural gas
24 distribution systems to enhance the economic development of the area.

25 (b) The following definitions apply in this Article:

26 (1) Board of Trustees. -- The governing board of the district in which
27 the general legislative powers of the district are vested.

28 (2) District. -- A regional natural gas district.

29 (3) Regional natural gas district. -- A body corporate and politic
30 organized in accordance with the provisions of this Article for the
31 purposes, with the powers, and subject to the restrictions set forth
32 in this Article.

33 (4) Unit of local government. -- Any county, city, town, or
34 municipality of this State, and any other political subdivision,
35 public corporation, or district in this State, that is or may be
36 authorized by law to acquire, establish, construct, enlarge, improve,
37 maintain, own, or operate natural gas systems.

38 (5) Unit of local government's chief administrative official. -- The
39 county manager, city manager, town manager, or other person, by
40 whatever title known, in whom the responsibility for the unit of
41 local government's administrative duties is vested.

42 "§ 160A-632. Territorial jurisdiction and service area of district.

43 (a) A district may be created for one or more entire counties that are totally
44 unserved with natural gas and in which a specific natural gas project has not been

1 approved by the Utilities Commission at the time of creation of the district. This
2 area is the territorial jurisdiction and the service area of the district.

3 (b) The creation of a district does not confer on the district the exclusive right to
4 provide natural gas service in that territorial jurisdiction.

5 "§ 160A-633. Creation of district.

6 (a) The boards of commissioners of any one or more counties within an area for
7 which a district may be created as provided by G.S. 160A-632 may by resolution
8 signify their determination to organize a district under the provisions of this Article.
9 Each of these resolutions shall be adopted after a public hearing thereon, notice of
10 which hearing shall be given by publication at least once, not less than 10 days prior
11 to the date fixed for the hearing, in a newspaper having a general circulation in the
12 county. The notice shall contain a brief statement of the substance of the proposed
13 resolution, shall set forth the proposed articles of incorporation of the district, and
14 shall state the time and place of the public hearing. A copy of the notice shall be
15 mailed not later than the first day of newspaper publication to the business office of
16 any public utility that holds a franchise from the North Carolina Utilities Commission
17 to serve any part of the proposed district with natural gas service. No county shall be
18 required to make any other publication of the resolution under the provisions of any
19 other law. Any municipality located within the area may join the district by following
20 the procedures set out in this section.

21 (b) Each resolution shall include articles of incorporation which shall set forth all
22 of the following:

- 23 (1) The name of the district.
24 (2) The composition of the board of trustees, terms of office, and the
25 manner of making appointments and filling vacancies.
26 (3) A statement that the district is organized under this Article.
27 (4) The names of the organizing counties and municipalities.
28 (5) Provision for the distribution of assets in the event the district is
29 terminated.

30 (c) A certified copy of each of the resolutions signifying the determination to
31 organize a district under the provisions of this Article shall be filed with the
32 Secretary of State, together with proof of publication and mailing of the notice of
33 hearing on each of the resolutions. If the Secretary of State finds that the resolutions,
34 including the articles of incorporation, conform to the provisions of this Article and
35 that the notices of hearing were properly published and mailed, the Secretary of State
36 shall file the resolutions and proofs of publication and mailing, shall issue a certificate
37 of incorporation under the seal of the State, and shall record the certificate in an
38 appropriate book of record. The issuance of this certificate of incorporation by the
39 Secretary of State shall constitute the district a public body and body politic and
40 corporate of the State of North Carolina. The certificate of incorporation shall be
41 conclusive evidence of the fact that the district has been duly created and established
42 under this Article.

43 (d) When the district has been duly organized and its officers elected, the
44 secretary of the district shall certify to the Secretary of State the names and addresses

1 of the officers, the name and address of the registered agent, and the address of the
2 principal office of the district. The district shall be subject to the provisions of
3 Article 5 of Chapter 55A of the General Statutes.

4 **"§ 160A-634. Membership; officers; compensation.**

5 (a) The governing body of a district is the Board of Trustees. The Board of
6 Trustees shall consist of members as provided in the articles of incorporation.

7 (b) Service on the Board of Trustees may be in addition to any other office which
8 a person is entitled to hold. Each voting member of the Board of Trustees may hold
9 elective public office as defined by G.S. 128-1.1(d).

10 (c) Members of the Board of Trustees shall reside within the territorial jurisdiction
11 of the district as defined by G.S. 160A-632.

12 (d) The Board of Trustees shall annually elect from its membership a Chair and a
13 Vice-chair, and shall annually elect a Secretary and a Treasurer.

14 (e) Members of the Board of Trustees shall receive a sum not to exceed fifty
15 dollars (\$50.00) as compensation for attendance at each duly conducted meeting of
16 the district.

17 **"§ 160A-635. Quorum.**

18 A majority of the members of the Board of Trustees shall constitute a quorum for
19 the transaction of business.

20 **"§ 160A-636. Advisory committees.**

21 The Board of Trustees may provide for the selection of any advisory committees
22 that it finds appropriate, which may or may not include members of the Board of
23 Trustees.

24 **"§ 160A-637. General powers of the district.**

25 The general powers of the district include all of the following:

- 26 (1) To sue and be sued.
- 27 (2) To have a seal.
- 28 (3) To make rules not inconsistent with this Article, for its
29 organization and internal management.
- 30 (4) To employ persons deemed necessary to carry out the functions
31 and duties assigned to them by the district and to fix their
32 compensation, within the limit of available funds.
- 33 (5) With the approval of the unit of local government's chief
34 administrative official, to use officers, employees, agents, and
35 facilities of the unit of local government for such purposes and
36 upon such terms as may be mutually agreeable.
- 37 (6) To retain and employ counsel, auditors, engineers, and private
38 consultants on an annual salary, contract basis, or otherwise for
39 rendering professional or technical services and advice.
- 40 (7) To acquire, lease as lessee with or without option to purchase,
41 hold, own, and use any franchise, property, real or personal,
42 tangible or intangible, or any interest therein and to sell, lease as
43 lessor with or without option to purchase, transfer (or dispose
44 thereof) whenever the property is no longer required for purposes

- 1 of the district, or exchange it for other property or rights which are
2 useful for the district's purposes. Except as provided in any
3 covenant or debt instrument designed to protect the creditor, if any
4 loans or grants by the Department of Commerce have not been
5 repaid, all or a substantial part of an operating natural gas district
6 may not be disposed of without the approval of the Department of
7 Commerce. If the sale is approved by the Department of
8 Commerce, the district shall repay the State the lesser of the
9 amount of any capital grant made by the State or one-half of the
10 amount of the proceeds.
- 11 (8) To acquire by gift, purchase, lease as lessee with or without option
12 to purchase or otherwise to construct, improve, maintain, repair,
13 operate, or administer any component parts of a natural gas
14 system. The district also may contract for the maintenance,
15 operation, or administration thereof or to lease as lessor the same
16 for maintenance, operation, or administration by private parties.
- 17 (9) To make or enter into contracts, agreements, deeds, leases with or
18 without option to purchase, conveyances, or other instruments,
19 including contracts and agreements with the United States, the
20 State of North Carolina, and units of local government.
- 21 (10) To develop and make data, plans, information, surveys, and studies
22 of natural gas facilities within the territorial jurisdiction of the
23 district and to prepare and make recommendations in regard
24 thereto.
- 25 (11) To enter in a reasonable manner lands, waters, or premises for the
26 purpose of making surveys, soundings, drillings, and examinations.
27 This entry shall not be deemed a trespass except that the district
28 shall be liable for any actual and consequential damages resulting
29 from the entry.
- 30 (12) To develop and carry out demonstration projects.
- 31 (13) To make, enter into, and perform contracts with private parties
32 and natural gas companies with respect to the management and
33 operation of natural gas systems.
- 34 (14) To make, enter into, and perform contracts with any public utility,
35 railroad, or transportation company for the joint use of property or
36 rights.
- 37 (15) To own, lease, and operate gas production, storage, transmission,
38 and distribution systems. These systems may also include the
39 purchase or lease, or both, of natural gas fields and natural gas
40 reserves within the State, and the purchase of natural gas supplies
41 within or without the State. A district may operate that part of a
42 gas system involving the purchase or lease, or both, of natural gas
43 fields, natural gas reserves, and natural gas supplies, in an
44 operating agreement, partnership or joint venture arrangement

1 with natural gas utilities and private enterprise. The district may
2 acquire, purchase, construct, receive, own, operate, maintain,
3 enlarge, and improve natural gas systems, and transport and sell at
4 wholesale all or any part of its gas supply.

5 (16) To purchase or finance real or personal property under G.S. 160A-
6 20.

7 (17) To obtain grants, loans, and assistance from the United States, the
8 State of North Carolina, any public body, or any private source.

9 (18) To enter into and perform contracts and agreements with other
10 natural gas districts, regional natural gas districts, or units of local
11 government pursuant to the provisions of Part 1 of Article 20 of
12 Chapter 160A of the General Statutes) and to enter into contracts
13 and agreements with private natural gas companies, but this
14 subdivision does not authorize the operation of, or contracting for
15 the operation of, service of a natural gas system outside the service
16 area of the district.

17 (19) Except as restricted by covenants in bonds, notes, security interests,
18 or trust certificates, to set in its sole discretion rates, fees, and
19 charges for use of its natural gas system in accordance with G.S.
20 160A-648.

21 (20) To do all related things necessary to carry out its purpose and to
22 exercise the powers granted to the district.

23 (21) To issue bonds or other obligations of the district as provided by
24 law and apply the proceeds thereof to the financing of any natural
25 gas system or any part thereof and to refund, whether or not in
26 advance of maturity or the earliest redemption date, any such
27 bonds or other obligations.

28 **§ 160A-638. Fiscal accountability.**

29 A district is a public authority subject to the provisions of Chapter 159 of the
30 General Statutes.

31 **§ 160A-639. Funds.**

32 The establishment and operation of a district is a public purpose, and the State of
33 North Carolina and any unit of local government may appropriate funds to support
34 the establishment and operation of the district. The State of North Carolina and any
35 unit of local government may also dedicate, sell, convey, donate, or lease any of their
36 interests in any property to the district. A district may apply for grants from the State
37 of North Carolina, or from the United States or any department, agency, or
38 instrumentality thereof. The Department of Commerce may allocate to a district any
39 funds appropriated for natural gas.

40 **§ 160A-640. Effect on existing franchises and operations.**

41 Creation of the district does not affect any existing franchises granted by any unit
42 of local government. Those existing franchises shall continue in full force and effect
43 until legally terminated, and all ordinances and resolutions of the unit of local
44 government regulating local natural gas systems shall continue in full force and effect

1 unless superseded by rules of the district. This superseding, if any, may occur only
2 on the basis of prior mutual agreement between the district and the respective unit of
3 local government.

4 **"§ 160A-641. Termination of district.**

5 The Board of Trustees, after providing for the continued availability of natural gas
6 service to its customers, if any, may terminate the existence of the district at any time
7 when it has no outstanding indebtedness. The Board of Trustees shall file
8 notification of the termination with the Secretary of State.

9 **"§ 160A-642. Controlling provisions.**

10 Insofar as the provisions of this Article are not consistent with the provisions of
11 any other law, public or private, the provisions of this Article shall be controlling.

12 **"§ 160A-643. Bonds and notes authorized.**

13 In addition to the powers granted by this Article, the district may issue bonds and
14 notes pursuant to the provisions of the State and Local Government Revenue Bond
15 Act, Article 5 of Chapter 159 of the General Statutes, for the purpose of financing
16 natural gas systems or any part thereof and to refund the bonds and notes, whether or
17 not in advance of their maturity or earliest redemption date.

18 **"§ 160A-644. Equipment trust certificates.**

19 In addition to the powers granted in this Article, the district shall have continuing
20 power to purchase equipment, and in connection therewith to execute agreements,
21 leases with or without option to purchase, or equipment trust certificates. All money
22 required to be paid by the district under the provisions of these agreements, leases
23 with or without option to purchase, and equipment trust certificates shall be payable
24 solely from the fares, fees, rentals, charges, revenues, and earnings of the district,
25 moneys derived from the sale of any surplus property of the district and gifts, grants,
26 and contributions from any source. Payment for such equipment or rentals therefore,
27 may be made in installments; the deferred installments may be evidenced by
28 equipment trust certificates payable solely from the aforesaid revenues or receipts and
29 title to the equipment may or may not vest in the district until the equipment trust
30 certificates are paid.

31 **"§ 160A-645. Acquisition, power of eminent domain.**

32 (a) The district shall have continuing power to acquire, by gift, grant, devise,
33 bequest, exchange, purchase, lease with or without option to purchase, or any other
34 lawful method including, but not limited to, the power of eminent domain, the fee or
35 any lesser interest in real or personal property for use by the district.

36 (b) Exercise of the power of eminent domain by the district shall be as a private
37 condemnor in accordance with Chapter 40A of the General Statutes.
38 Notwithstanding Chapter 40A of the General Statutes, before final judgment may be
39 entered in any action of condemnation initiated by the district, the district shall
40 furnish proof that the county board of commissioners of the county where the land is
41 located has consented by resolution or ordinance to the taking.

42 **"§ 160A-646. Tax exemption.**

43 Property owned by the district is exempt from property tax. Income of the district
44 is exempt from State income tax. This tax exemption does not apply to the lease, or

1 other arrangement that amounts to a leasehold interest, of district property to a
2 private party, or to the income of the lessee, unless the property is leased solely for
3 the purpose of the district, in which case the activities of the lessee are considered the
4 activities of the district. The interest on bonds or obligations issued by the district are
5 exempt from State taxes.

6 **"§ 160A-647. Authority to fix and enforce rates.**

7 (a) A district may establish and revise from time to time schedules of rents, rates,
8 fees, charges, and penalties made applicable throughout the district for the gas
9 services. Schedules of rents, rates, fees, charges, or penalties may vary according to
10 classes of service. Before it establishes or revises a schedule of rents, rates, fees,
11 charges, or penalties, the district Board of Trustees shall hold a public hearing on the
12 matter. A notice of the hearing shall be given at least once in a newspaper having
13 general circulation in the area, not less than seven days before the public hearing.

14 (b) A district may collect delinquent accounts by any remedy provided by law for
15 collecting and enforcing private debts. A district may also discontinue service to any
16 customer whose account remains delinquent for more than 30 days. When service is
17 discontinued for delinquency, it shall be unlawful for any person other than a duly
18 authorized agent or employee of the district to do any act that results in a resumption
19 of services. If a delinquent customer is not the owner of the premises to which the
20 services are delivered, the payment of the delinquent account may not be required
21 before providing services at the request of a new and different tenant or occupant of
22 the premises, but this restriction shall not apply when the premises are occupied by
23 two or more tenants whose services are measured by the same meter.

24 (c) Rents, rates, fees, charges, and penalties for services shall be legal obligations
25 of the person contracting for them and shall in no case be a lien upon the property or
26 premises served.

27 (d) Rents, rates, fees, charges, and penalties for services shall be legal obligations
28 of the owner of the premises served when the property or premises are leased or
29 rented to more than one tenant and services rendered to more than one tenant are
30 measured by the same meter."

31 Section 3. G.S. 105-116 reads as rewritten:

32 **"§ 105-116. Franchise or privilege tax on electric power, natural gas, water, and**
33 **sewerage companies.**

34 (a) Tax. -- An annual franchise or privilege tax is imposed on ~~a person, firm, or~~
35 ~~corporation, other than a municipal corporation, that is:~~ the following:

36 (1) An electric power company engaged in the business of furnishing
37 electricity, electric lights, current, or power.

38 (2) A natural gas company engaged in the business of furnishing piped
39 natural gas.

40 (2a) A regional natural gas district created under Article 27 of Chapter
41 160A of the General Statutes.

42 (3) A water company engaged in owning or operating a water system
43 subject to regulation by the North Carolina Utilities Commission.

1 (4) A public sewerage company engaged in owning or operating a
2 public sewerage system.

3 The tax on an electric power company is three and twenty-two hundredths percent
4 (3.22%) of the company's taxable gross receipts from the business of furnishing
5 electricity, electric lights, current, or power. The tax on a natural gas company is
6 three and twenty-two hundredths percent (3.22%) of the company's taxable gross
7 receipts from the business of furnishing piped natural gas. The tax on a regional
8 natural gas district is three and twenty-two hundredths percent (3.22%) of the
9 district's taxable gross receipts from the furnishing of piped natural gas. The tax on a
10 water company is four percent (4%) of the company's taxable gross receipts from
11 owning or operating a water system subject to regulation by the North Carolina
12 Utilities Commission. The tax on a public sewerage company is six percent (6%) of
13 the company's taxable gross receipts from owning or operating a public sewerage
14 company. A company's taxable gross receipts are its gross receipts from business
15 inside the State less the amount of gross receipts from sales reported under
16 subdivision (b)(2). A company that engages in more than one business taxed under
17 this section shall pay tax on each business. A company is allowed a credit against the
18 tax imposed by this section for the company's investments in certain entities in
19 accordance with Division V of Article 4 of this Chapter.

20 (b) Report and Payment. -- The tax imposed by this section is payable monthly or
21 quarterly as specified in this subsection. A report is due quarterly. An electric power
22 ~~company or company,~~ a natural gas ~~company company,~~ or a regional natural gas
23 district shall pay tax monthly. A monthly tax payment is due by the last day of the
24 month that follows the month in which the tax accrues, except the payment for tax
25 that accrues in May. The payment for tax that accrues in May is due by June 25. ~~An~~
26 ~~electric power company or a natural gas company~~ A taxpayer is not subject to
27 interest on or penalties for an underpayment of a monthly amount due if the
28 ~~company taxpayer~~ taxpayer timely pays at least ninety-five percent (95%) of the amount due
29 and includes the underpayment with the next report the company files. A water
30 company or a public sewerage company shall pay tax quarterly when filing a report.

31 A quarterly report covers a calendar quarter and is due by the last day of the
32 month that follows the quarter covered by the report. A ~~company taxpayer~~ taxpayer shall
33 submit a report on a form provided by the Secretary. The report shall include the
34 ~~company's taxpayer's~~ gross receipts from all property it owned or operated during the
35 reporting period in connection with its business taxed under this section and shall
36 contain the following information:

37 (1) The ~~company's taxpayer's~~ gross receipts for the reporting period
38 from business inside and outside this State, stated separately.

39 (2) The ~~company's taxpayer's~~ gross receipts from commodities or
40 services described in subsection (a) that are sold to a vendee
41 subject to the tax levied by this section or to a joint agency
42 established under G.S. Chapter 159B or a municipality having an
43 ownership share in a project established under that Chapter.

1 (3) The amount of and price paid by the ~~company~~ taxpayer for
2 commodities or services described in subsection (a) that are
3 purchased from others engaged in business in this State and the
4 name of each vendor.

5 (4) For an electric power ~~company~~ or company, a natural gas
6 company, or a regional natural gas district, the ~~company's~~ entity's
7 gross receipts from the sale within each municipality of the
8 commodities and services described in subsection (a).

9 A ~~company~~ taxpayer shall report its gross receipts on an accrual basis.

10 (c) Gas Special Charges. -- Gross receipts of a natural gas company and a regional
11 natural gas district do not include the following:

12 (1) Special charges collected within this State by the company or
13 district pursuant to drilling and exploration surcharges approved
14 by the North Carolina Utilities Commission, if the surcharges are
15 segregated from the other receipts of the company or district and
16 are devoted to drilling, exploration, and other means to acquire
17 additional supplies of natural gas for the account of natural gas
18 customers in North Carolina and the beneficial interest in the
19 surcharge collections is preserved for the natural gas customers
20 paying the surcharges under rules established by the Commission.

21 (2) Natural gas expansion surcharges imposed under G.S. 62-158.

22 (d) Distribution. -- For the purpose of this subsection, the term 'distribution
23 amount' means three and nine hundredths percent (3.09%) of the taxable gross
24 receipts derived during a period by an electric power ~~company~~ and company, a
25 natural gas ~~company~~ company, or a regional natural gas district from sales within a
26 municipality of the commodities and services described in subsection (a) of this
27 section. The Secretary shall distribute to each municipality the distribution amount
28 for that municipality for the preceding calendar quarter less an amount equal to one-
29 fourth of the excess of the distribution amount for that municipality for the period
30 April 1, 1994, to March 31, 1995, over the distribution amount for that municipality
31 for the period April 1, 1990, to March 31, 1991, as certified by the Secretary. The
32 Secretary shall distribute the revenue within 75 days after the end of each quarter. If
33 a ~~company's~~ taxpayer's report does not state the ~~company's~~ taxpayer's taxable gross
34 receipts derived within a municipality, the Secretary shall determine a practical
35 method of allocating part of the ~~company's~~ taxpayer's taxable gross receipts to the
36 municipality.

37 As used in this subsection, the term 'municipality' includes an urban service
38 district defined by the governing board of a consolidated city-county. The amount
39 due an urban service district shall be distributed to the governing board of the
40 consolidated city-county.

41 (e) Local Tax. -- So long as there is a distribution to municipalities of the amount
42 herein provided from the tax imposed by this section, no municipality shall impose or
43 collect any greater franchise, privilege or license taxes, in the aggregate, on the
44 businesses taxed under this section, than was imposed and collected on or before

1 January 1, 1947. If any municipality shall have collected any privilege, license or
2 franchise tax between January 1, 1947, and April 1, 1949, in excess of the tax
3 collected by it prior to January 1, 1947, then upon distribution of the taxes imposed
4 by this section to municipalities, the amount distributable to any municipality shall be
5 credited with such excess payment.

6 (f) Municipal Exemption. -- The tax imposed by this section does not apply to a
7 municipal corporation. A regional natural gas district is not considered a municipal
8 corporation under this section."

9 Section 4. G.S. 105-164.3(25) reads as rewritten:

10 "(25) 'Utility' means an electric power company, a gas company, ~~or~~ a
11 telephone ~~company~~ company, or a regional natural gas district that
12 is subject to a privilege tax based on gross receipts under G.S. 105-
13 116 or 105-120, a business entity that provides local, toll, or private
14 telecommunications service as defined by G.S. 105-120(e) or a
15 municipality that sells electric power, other than a municipality
16 whose only wholesale supplier of electric power is a federal agency
17 and who is required by a contract with that federal agency to make
18 payments in lieu of taxes."

19 Section 5. G.S. 105-164.14(c) is amended by adding a new subdivision to
20 read:

21 "(22) A regional natural gas district created pursuant to Article 27 of
22 Chapter 160A of the General Statutes."

23 Section 6. G.S. 159-81(1) reads as rewritten:

24 "(1) 'Municipality' means a county, city, town, incorporated village,
25 sanitary district, metropolitan sewerage district, metropolitan water
26 district, county water and sewer district, water and sewer authority,
27 hospital authority, hospital district, parking authority, special
28 airport district, regional public transportation authority, regional
29 natural gas district, regional sports authority, airport authority,
30 joint agency created pursuant to Part 1 of Article 20 of Chapter
31 160A of the General Statutes, and joint agency authorized by
32 agreement between two cities to operate an airport pursuant to
33 G.S. 63-56, but not any other forms of local government."

34 Section 7. G.S. 160A-20(h) reads as rewritten:

35 "(h) As used in this section, the term 'unit of local government' means any of the
36 following:

- 37 (1) A county.
- 38 (2) A city.
- 39 (3) A water and sewer authority created under Article 1 of Chapter
40 162A of the General Statutes.
- 41 (4) An airport authority whose situs is entirely within a county that
42 has (i) a population of over 120,000 according to the most recent
43 federal decennial census and (ii) an area of less than 200 square
44 miles.

- 1 (5) An airport authority in a county in which there are two
- 2 incorporated municipalities with a population of more than 65,000
- 3 according to the most recent federal decennial census.
- 4 (5a) An airport board or commission authorized by agreement between
- 5 two cities pursuant to G.S. 63-56, one of which is located partially
- 6 but not wholly in the county in which the jointly owned airport is
- 7 located, and where the board or commission provided water and
- 8 wastewater services off the airport premises before January 1, 1995;
- 9 provided that the authority granted by this section may be
- 10 exercised by such a board or commission with respect to water and
- 11 wastewater systems or improvements only.
- 12 (6) A local school administrative unit (i) that is located in a county
- 13 that has a population of over 90,000 according to the most recent
- 14 federal decennial census and (ii) whose board of education is
- 15 authorized to levy a school tax.
- 16 (7) An area mental health, developmental disabilities, and substance
- 17 abuse authority, acting in accordance with G.S. 122C-147.
- 18 (8) A consolidated city-county, as defined by G.S. 160B-2(1).
- 19 (9) A regional natural gas district, as defined by Article 27 of this
- 20 Chapter."

21 Section 8. G.S. 62-3(23) is amended by adding a new sub-subdivision to
 22 read:

23 "k. The term 'public utility' shall not include a regional natural
 24 gas district organized and operated pursuant to Article 27 of
 25 Chapter 160A of the General Statutes."

26 Section 9. G.S. 62-50(g) reads as rewritten:

27 "(g) For the purpose of this section, 'gas operators' include gas utilities and gas
 28 pipeline carriers operating under a franchise from the Utilities Commission,
 29 municipal corporations operating municipally owned gas distribution systems,
 30 regional natural gas districts organized and operated pursuant to Article 27 of
 31 Chapter 160A of the General Statutes, and public housing authorities and any person
 32 operating apartment complexes or mobile home parks that distribute or submeter
 33 natural gas to their tenants. This section does not confer any other jurisdiction over
 34 municipally owned gas distribution systems, regional natural gas districts, public
 35 housing authorities or persons operating apartment complexes or mobile home
 36 parks."

37 PART III.
 38 EFFECTIVE DATES

39 Section 10. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

HOUSE BILL 495
Committee Substitute Favorable 5/21/97
Proposed Committee Substitute H495-PCS7354.

Short Title: Natural Gas.

(Public)

Sponsors:

Referred to:

March 11, 1997

A BILL TO BE ENTITLED

1
2 AN ACT TO ADDRESS NORTH CAROLINA'S URGENT INFRASTRUCTURE
3 NEEDS BY CLARIFYING THAT THE NORTH CAROLINA UTILITIES
4 COMMISSION MAY ESTABLISH DIFFERENT RATES FOR NATURAL GAS
5 SERVICE TO UNSERVED COUNTIES THAT REFLECT THE COST OF
6 PROVIDING SERVICE TO THE UNSERVED COUNTIES AND
7 AUTHORIZING THE CREATION OF NATURAL GAS DISTRICTS FOR
8 NATURAL GAS EXPANSION.

9 The General Assembly of North Carolina enacts:

10 PART I.

11 DIFFERENT RATES

12 Section 1. G.S. 62-140(a) reads as rewritten:

13 "(a) No public utility shall, as to rates or services, make or grant any unreasonable
14 preference or advantage to any person or subject any person to any unreasonable
15 prejudice or disadvantage. No public utility shall establish or maintain any
16 unreasonable difference as to rates or services either as between localities or as
17 between classes of service. The Commission may determine any questions of fact
18 arising under this section; provided that it shall not be an unreasonable preference or
19 advantage or constitute discrimination against any person, firm or corporation or
20 general rate payer for telephone utilities to contract with motels, hotels and hospitals
21 to pay reasonable commissions in connection with the handling of intrastate toll calls
22 charged to a guest or patient and collected by the motel, hotel or hospital; provided

1 further, that payment of such commissions shall be in accordance with uniform tariffs
2 which shall be subject to the approval of the Commission. Provided further, that it
3 shall not be considered an unreasonable preference or advantage for the Commission
4 to order, if it finds the public interest so requires, a reduction in local telephone rates
5 for low-income residential consumers meeting a means test established by the
6 Commission in order to match any reduction in the interstate subscriber line charge
7 authorized by the Federal Communications Commission.

8 Nothing in this section prohibits the Commission from establishing different rates
9 for natural gas service to counties that are substantially unserved, to the extent that
10 those rates reflect the cost of providing service to the unserved counties and upon a
11 finding by the Commission that natural gas service would not otherwise become
12 available to the counties."

13 PART II.

14 NATURAL GAS DISTRICTS

15 Section 2. Chapter 160A of the General Statutes is amended by adding a
16 new Article to read:

17 "ARTICLE 27.

18 "Regional Natural Gas District.

19 "§ 160A-630. Title.

20 This Article is the 'Regional Natural Gas District Act' and may be cited by that
21 name.

22 "§ 160A-631. Purpose; definitions.

23 (a) The purpose of a district created under this Article is to enhance the quality of
24 life in its territorial jurisdiction by promoting the development of natural gas systems
25 to enhance the economic development of the area.

26 (b) The following definitions apply in this Article:

27 (1) Board of Trustees. -- The governing board of the district in which
28 the general legislative powers of the district are vested.

29 (2) District. -- A regional natural gas district.

30 (3) Natural gas system. -- A gas production, storage, transmission and
31 distribution system, or any part or parts thereof.

32 (4) Regional natural gas district. -- A public body and body politic and
33 corporate of the State of North Carolina organized in accordance
34 with the provisions of this Article exercising public and essential
35 governmental functions to provide for the preservation and
36 promotion of the public welfare for the purposes, with the powers,
37 and subject to the restrictions set forth in this Article.

38 (5) Unit of local government. -- Any county, city, town, or
39 municipality of this State, and any other political subdivision,
40 public corporation, or district in this State, that is or may be
41 authorized by law to acquire, establish, construct, enlarge, improve,
42 maintain, own, or operate natural gas systems.

43 (6) Unit of local government's chief administrative official. -- The
44 county manager, city manager, town manager, or other person, by

1 whatever title known, in whom the responsibility for the unit of
2 local government's administrative duties is vested.

3 **"§ 160A-632. Territorial jurisdiction and service area of district.**

4 (a) A district may be created for one or more entire counties that are totally
5 unserved with natural gas and in which a specific natural gas project has not been
6 approved by the Utilities Commission at the time of creation of the district. A letter
7 from the Utilities Commission to this effect shall conclusively establish that the area is
8 totally unserved and that a project has not been approved. This area is the territorial
9 jurisdiction and the service area of the district.

10 (b) The creation of a district does not confer on the district the exclusive right to
11 provide natural gas service in that territorial jurisdiction.

12 **"§ 160A-633. Creation of district.**

13 (a) The boards of commissioners of any one or more counties within an area for
14 which a district may be created as provided by G.S. 160A-632, and the governing
15 body of any city geographically located within one or more of these counties and that
16 chooses to join in the organization of a district, may by resolution signify their
17 determination to organize a district under the provisions of this Article. Each of
18 these resolutions shall be adopted after a public hearing thereon, notice of which
19 hearing shall be given by publication at least once, not less than 10 days prior to the
20 date fixed for the hearing, in a newspaper having a general circulation in the county.
21 The notice shall contain a brief statement of the substance of the proposed resolution,
22 shall set forth the proposed articles of incorporation of the district, and shall state the
23 time and place of the public hearing. A copy of the notice shall be mailed not later
24 than the first day of newspaper publication to the business office of any public utility
25 that holds a franchise from the North Carolina Utilities Commission to serve any part
26 of the proposed district with natural gas service. No county or city shall be required
27 to make any other publication of the resolution under the provisions of any other
28 law.

29 (b) Each resolution shall include articles of incorporation which shall set forth all
30 of the following:

- 31 (1) The name of the district.
- 32 (2) The composition of the board of trustees, terms of office, and the
33 manner of making appointments and filling vacancies.
- 34 (3) A statement that the district is organized under this Article.
- 35 (4) The names of the organizing counties and cities.
- 36 (5) Provision for the distribution of assets in the event the district is
37 terminated.

38 (c) A certified copy of each of the resolutions signifying the determination to
39 organize a district under the provisions of this Article shall be filed with the
40 Secretary of State, together with proof of publication and mailing of the notice of
41 hearing on each of the resolutions. If the Secretary of State finds that the resolutions,
42 including the articles of incorporation, conform to the provisions of this Article and
43 that the notices of hearing were properly published and mailed, the Secretary of State
44 shall file the resolutions and proofs of publication and mailing, shall issue a certificate

1 of incorporation under the seal of the State, and shall record the certificate in an
2 appropriate book of record. The issuance of this certificate of incorporation by the
3 Secretary of State shall constitute the district a public body and body politic and
4 corporate of the State of North Carolina. The certificate of incorporation shall be
5 conclusive evidence of the fact that the district has been duly created and established
6 under this Article.

7 (d) When the district has been duly organized and its officers elected, the
8 secretary of the district shall certify to the Secretary of State the names and addresses
9 of the officers, the name and address of the registered agent, and the address of the
10 principal office of the district. The district shall be subject to the provisions of
11 Article 5 of Chapter 55A of the General Statutes.

12 **"§ 160A-634. Membership; officers; compensation.**

13 (a) The governing body of a district is the Board of Trustees. The Board of
14 Trustees shall consist of members as provided in the articles of incorporation.

15 (b) Service on the Board of Trustees may be in addition to any other office which
16 a person is entitled to hold. Each voting member of the Board of Trustees may hold
17 elective public office as defined by G.S. 128-1.1(d).

18 (c) Members of the Board of Trustees shall reside within the territorial jurisdiction
19 of the district as defined by G.S. 160A-632.

20 (d) The Board of Trustees shall annually elect from its membership a Chair and a
21 Vice-Chair and shall annually elect a Secretary and a Treasurer.

22 (e) Members of the Board of Trustees shall receive a sum not to exceed fifty
23 dollars (\$50.00) as compensation for attendance at each duly conducted meeting of
24 the district.

25 **"§ 160A-635. Quorum.**

26 A majority of the members of the Board of Trustees shall constitute a quorum for
27 the transaction of business.

28 **"§ 160A-636. Advisory committees.**

29 The Board of Trustees may provide for the selection of any advisory committees
30 that it finds appropriate, which may or may not include members of the Board of
31 Trustees.

32 **"§ 160A-637. General powers of the district.**

33 The general powers of the district include all of the following:

34 (1) To sue and be sued.

35 (2) To have a seal.

36 (3) To make rules not inconsistent with this Article, for its
37 organization and internal management.

38 (4) To employ persons deemed necessary to carry out the functions
39 and duties assigned to them by the district and to fix their
40 compensation, within the limit of available funds.

41 (5) With the approval of the unit of local government's chief
42 administrative official, to use officers, employees, agents, and
43 facilities of the unit of local government for such purposes and
44 upon such terms as may be mutually agreeable.

- 1 (6) To retain and employ counsel, auditors, engineers, and private
2 consultants on an annual salary, contract basis, or otherwise for
3 rendering professional or technical services and advice.
- 4 (7) To acquire, lease as lessee with or without option to purchase,
5 hold, own, and use any franchise, property, real or personal,
6 tangible or intangible, or any interest therein and to sell, lease as
7 lessor with or without option to purchase, transfer (or dispose
8 thereof) whenever the property is no longer required for purposes
9 of the district, or exchange it for other property or rights which are
10 useful for the district's purposes. Except as provided in any
11 covenant or debt instrument designed to protect the creditor, if any
12 loans or grants by the Department of Commerce have not been
13 repaid, all or a substantial part of an operating natural gas district
14 may not be disposed of without the approval of the Department of
15 Commerce. If the sale is approved by the Department of
16 Commerce, the district shall repay the State the lesser of the
17 amount of any capital grant made by the State or one-half of the
18 amount of the proceeds.
- 19 (8) To acquire by gift, purchase, lease as lessee with or without option
20 to purchase or otherwise to construct, improve, maintain, repair,
21 operate, or administer any component parts of a natural gas
22 system. The district also may contract for the maintenance,
23 operation, or administration thereof or to lease as lessor the same
24 for maintenance, operation, or administration by private parties.
- 25 (9) To make or enter into contracts, agreements, deeds, leases with or
26 without option to purchase, conveyances, or other instruments,
27 including contracts and agreements with the United States, the
28 State of North Carolina, and units of local government.
- 29 (10) To develop and make data, plans, information, surveys, and studies
30 of natural gas systems within the territorial jurisdiction of the
31 district and to prepare and make recommendations in regard
32 thereto.
- 33 (11) To enter in a reasonable manner lands, waters, or premises for the
34 purpose of making surveys, soundings, drillings, and examinations.
35 This entry shall not be deemed a trespass except that the district
36 shall be liable for any actual and consequential damages resulting
37 from the entry.
- 38 (12) To develop and carry out demonstration projects.
- 39 (13) To make, enter into, and perform contracts with private parties
40 and natural gas companies with respect to the management and
41 operation of natural gas systems.
- 42 (14) To make, enter into, and perform contracts with any public utility,
43 railroad, or transportation company for the joint use of property or
44 rights.

- 1 (15) To own, lease, and operate natural gas systems. These systems may
2 also include the purchase or lease, or both, of natural gas fields
3 and natural gas reserves within the State, and the purchase of
4 natural gas supplies within or without the State. A district may
5 operate that part of a gas system involving the purchase or lease, or
6 both, of natural gas fields, natural gas reserves, and natural gas
7 supplies, in an operating agreement, partnership or joint venture
8 arrangement with natural gas utilities and private enterprise. The
9 district may acquire, purchase, construct, receive, own, operate,
10 maintain, enlarge, and improve natural gas systems and transport
11 and sell at wholesale all or any part of its gas supply.
- 12 (16) To purchase or finance real or personal property under G.S. 160A-
13 20.
- 14 (17) To obtain grants, loans, and assistance from the United States, the
15 State of North Carolina, any public body, or any private source.
- 16 (18) To enter into and perform contracts and agreements with other
17 natural gas districts, regional natural gas districts, or units of local
18 government pursuant to the provisions of Part 1 of Article 20 of
19 Chapter 160A of the General Statutes and to enter into contracts
20 and agreements with private natural gas companies, but this
21 subdivision does not authorize the operation of, or contracting for
22 the operation of, service of a natural gas system outside the service
23 area of the district. A district may provide service or contract for
24 the providing of service to a city geographically located within a
25 district, notwithstanding that the city did not join the district
26 pursuant to G.S. 160A-633(a) or G.S. 160A-642.
- 27 (19) Except as restricted by covenants in bonds, notes, security interests,
28 or trust certificates, to set in its sole discretion rates, fees, and
29 charges for use of its natural gas system in accordance with G.S.
30 160A-647.
- 31 (20) To do all related things necessary to carry out its purpose and to
32 exercise the powers granted to the district.
- 33 (21) To issue revenue bonds and notes and to incur other obligations as
34 authorized by this Article.

35 **"§ 160A-638. Fiscal accountability.**

36 A district is a public authority subject to the provisions of Chapter 159 of the
37 General Statutes.

38 **"§ 160A-639. Funds.**

39 The establishment and operation of a district is a public purpose, and the State of
40 North Carolina and any unit of local government may appropriate funds to support
41 the establishment and operation of the district. The State of North Carolina and any
42 unit of local government may also dedicate, sell, convey, donate, or lease any of their
43 interests in any property to the district. A district may apply for grants from the State
44 of North Carolina, or from the United States or any department, agency, or

1 instrumentality thereof. The Department of Commerce may allocate to a district any
2 funds appropriated for natural gas.

3 **"§ 160A-640. Effect on existing franchises and operations.**

4 Creation of the district does not affect any existing franchises granted by any unit
5 of local government. Those existing franchises shall continue in full force and effect
6 until legally terminated, and all ordinances and resolutions of the unit of local
7 government regulating local natural gas systems shall continue in full force and effect
8 unless superseded by rules of the district. This superseding, if any, may occur only
9 on the basis of prior mutual agreement between the district and the respective unit of
10 local government.

11 **"§ 160A-641. Termination of district.**

12 The Board of Trustees, after providing for the continued availability of natural gas
13 service to its customers, if any, may terminate the existence of the district at any time
14 when it has no outstanding indebtedness. The Board of Trustees shall file
15 notification of the termination with the Secretary of State.

16 **"§ 160A-642. Joinder of county or city.**

17 (a) Whenever a district has been organized under the provisions of this Article, a
18 county as defined in G.S. 160A-332(a) or a city within that county, or a city that did
19 not join in the organization of a district but is geographically located within the
20 district may, with the consent of the district as evidenced by a resolution adopted by
21 a majority of the members of the Board of Trustees of the district, join the district.

22 (b) A county or city desiring to join an existing district shall signify its desire by
23 resolution adopted after a public hearing thereon, notice of which hearing shall be
24 given in the manner and at the time provided in G.S. 160A-633. Such notice shall
25 contain a brief statement of the substance of said resolution and shall state the time
26 and place of the public hearing.

27 (c) A certified copy of each resolution signifying the desire of a county or city to
28 join an existing district, together with proof of publication of the notice of hearing on
29 the resolution, and a certified copy of the resolution of the Board of Trustees of the
30 district consenting to the joining shall be filed with the Secretary of State. If the
31 Secretary of State finds that the resolutions conform to the provisions of this Article
32 and that the notices of hearing were properly published, the Secretary of State shall
33 file such resolutions and proofs of publication in the office of the Secretary of State,
34 shall issue a certificate of joinder, and shall record the certificate in the appropriate
35 book of record. The issuance of the certificate shall be conclusive evidence of the
36 joinder of the county or city to the district.

37 **"§ 160A-643. Bonds and notes authorized.**

38 The district may issue revenue bonds and revenue bond anticipation notes
39 pursuant to the provisions of the State and Local Government Revenue Bond Act,
40 Article 5 of Chapter 159 of the General Statutes, and Article 9 of Chapter 159 for the
41 purposes provided in this Article. If and to the extent any provisions of Articles 5
42 and 9 of Chapter 159 are inconsistent with the provisions of this Article, the
43 provisions of this Article shall be controlling. A district may proceed with the
44 issuance of bonds and notes under Articles 5 and 9 of Chapter 159 notwithstanding

1 that, to the extent of any inconsistency only, the district complies with the provisions
2 of this Article and not the provisions of Articles 5 and 9 of Chapter 159.

3 **"§ 160A-644. Acquisition, power of eminent domain.**

4 (a) The district shall have continuing power to acquire, by gift, grant, devise,
5 bequest, exchange, purchase, lease with or without option to purchase, or any other
6 lawful method including, but not limited to, the power of eminent domain, the fee or
7 any lesser interest in real or personal property for use by the district.

8 (b) Exercise of the power of eminent domain by the district shall be as a private
9 condemnor in accordance with Chapter 40A of the General Statutes.
10 Notwithstanding Chapter 40A of the General Statutes, before final judgment may be
11 entered in any action of condemnation initiated by the district, the district shall
12 furnish proof that the board of commissioners of the county where the land is located
13 has consented by resolution or ordinance to the taking.

14 **"§ 160A-645. Tax exemption.**

15 A district, and its property, bonds and notes, and income, are exempt from
16 property taxes and income taxes to the same extent as if it were a city. A district is
17 subject to gross receipts tax under G.S. 105-116.

18 **"§ 160A-646. Authority to fix and enforce rates.**

19 (a) A district may establish and revise from time to time schedules of rents, rates,
20 fees, charges, and penalties made applicable throughout the district for the gas
21 services. Schedules of rents, rates, fees, charges, or penalties may vary according to
22 classes of service. Before it establishes or revises a schedule of rents, rates, fees,
23 charges, or penalties, the district Board of Trustees shall hold a public hearing on the
24 matter. A notice of the hearing shall be given at least once in a newspaper having
25 general circulation in the area, not less than seven days before the public hearing.

26 (b) A district may collect delinquent accounts by any remedy provided by law for
27 collecting and enforcing private debts. A district may also discontinue service to any
28 customer whose account remains delinquent for more than 30 days. When service is
29 discontinued for delinquency, it shall be unlawful for any person other than a duly
30 authorized agent or employee of the district to do any act that results in a resumption
31 of services. If a delinquent customer is not the owner of the premises to which the
32 services are delivered, the payment of the delinquent account may not be required
33 before providing services at the request of a new and different tenant or occupant of
34 the premises, but this restriction shall not apply when the premises are occupied by
35 two or more tenants whose services are measured by the same meter.

36 (c) Rents, rates, fees, charges, and penalties for services shall be legal obligations
37 of the person contracting for them and shall in no case be a lien upon the property or
38 premises served.

39 (d) Rents, rates, fees, charges, and penalties for services shall be legal obligations
40 of the owner of the premises served when the property or premises are leased or
41 rented to more than one tenant and services rendered to more than one tenant are
42 measured by the same meter."

43 Section 3. G.S. 105-116 reads as rewritten:

1 "§ 105-116. Franchise or privilege tax on electric power, natural gas, water, and
2 sewerage companies.

3 (a) Tax. -- An annual franchise or privilege tax is imposed on ~~a person, firm, or~~
4 ~~corporation, other than a municipal corporation, that is:~~ the following:

5 (1) An electric power company engaged in the business of furnishing
6 electricity, electric lights, current, or power.

7 (2) A natural gas company engaged in the business of furnishing piped
8 natural gas.

9 (2a) A regional natural gas district created under Article 27 of Chapter
10 160A of the General Statutes.

11 (3) A water company engaged in owning or operating a water system
12 subject to regulation by the North Carolina Utilities Commission.

13 (4) A public sewerage company engaged in owning or operating a
14 public sewerage system.

15 The tax on an electric power company is three and twenty-two hundredths percent
16 (3.22%) of the company's taxable gross receipts from the business of furnishing
17 electricity, electric lights, current, or power. The tax on a natural gas company is
18 three and twenty-two hundredths percent (3.22%) of the company's taxable gross
19 receipts from the business of furnishing piped natural gas. The tax on a regional
20 natural gas district is three and twenty-two hundredths percent (3.22%) of the
21 district's taxable gross receipts from the furnishing of piped natural gas. The tax on a
22 water company is four percent (4%) of the company's taxable gross receipts from
23 owning or operating a water system subject to regulation by the North Carolina
24 Utilities Commission. The tax on a public sewerage company is six percent (6%) of
25 the company's taxable gross receipts from owning or operating a public sewerage
26 company. A company's taxable gross receipts are its gross receipts from business
27 inside the State less the amount of gross receipts from sales reported under
28 subdivision (b)(2). A company that engages in more than one business taxed under
29 this section shall pay tax on each business. A company is allowed a credit against the
30 tax imposed by this section for the company's investments in certain entities in
31 accordance with Division V of Article 4 of this Chapter.

32 (b) Report and Payment. -- The tax imposed by this section is payable monthly or
33 quarterly as specified in this subsection. A report is due quarterly. An electric power
34 ~~company or company,~~ a natural gas ~~company company,~~ or a regional natural gas
35 ~~district~~ shall pay tax monthly. A monthly tax payment is due by the last day of the
36 month that follows the month in which the tax accrues, except the payment for tax
37 that accrues in May. The payment for tax that accrues in May is due by June 25. ~~At~~
38 ~~electric power company or a natural gas company~~ A taxpayer is not subject to
39 interest on or penalties for an underpayment of a monthly amount due if the
40 ~~company~~ taxpayer timely pays at least ninety-five percent (95%) of the amount due
41 and includes the underpayment with the next report the company files. A water
42 company or a public sewerage company shall pay tax quarterly when filing a report.

43 A quarterly report covers a calendar quarter and is due by the last day of the
44 month that follows the quarter covered by the report. A ~~company~~ taxpayer shall

1 submit a report on a form provided by the Secretary. The report shall include the
2 ~~company's taxpayer's~~ gross receipts from all property it owned or operated during the
3 reporting period in connection with its business taxed under this section and shall
4 contain the following information:

- 5 (1) The ~~company's taxpayer's~~ gross receipts for the reporting period
6 from business inside and outside this State, stated separately.
- 7 (2) The ~~company's taxpayer's~~ gross receipts from commodities or
8 services described in subsection (a) that are sold to a vendee
9 subject to the tax levied by this section or to a joint agency
10 established under G.S. Chapter 159B or a city having an ownership
11 share in a project established under that Chapter.
- 12 (3) The amount of and price paid by the ~~company taxpayer~~ for
13 commodities or services described in subsection (a) that are
14 purchased from others engaged in business in this State and the
15 name of each vendor.
- 16 (4) For an electric power ~~company or company~~, a natural gas
17 company, or a regional natural gas district, the ~~company's~~ entity's
18 gross receipts from the sale within each city of the commodities
19 and services described in subsection (a).

20 A ~~company taxpayer~~ shall report its gross receipts on an accrual basis. If a
21 ~~company's taxpayer's~~ report does not state the ~~company's taxpayer's~~ taxable gross
22 receipts derived within a city, the Secretary must determine a practical method of
23 allocating part of the ~~company's taxpayer's~~ taxable gross receipts to the city.

24 (c) Gas Special Charges. -- Gross receipts of a natural gas company do not
25 include the following:

- 26 (1) Special charges collected within this State by the company
27 pursuant to drilling and exploration surcharges approved by the
28 North Carolina Utilities Commission, if the surcharges are
29 segregated from the other receipts of the company and are devoted
30 to drilling, exploration, and other means to acquire additional
31 supplies of natural gas for the account of natural gas customers in
32 North Carolina and the beneficial interest in the surcharge
33 collections is preserved for the natural gas customers paying the
34 surcharges under rules established by the Commission.
- 35 (2) Natural gas expansion surcharges imposed under G.S. 62-158.

36 (d) Distribution. -- Part of the taxes imposed by this section on electric power
37 ~~companies and natural gas companies~~ companies, natural gas companies, and regional
38 natural gas districts is distributed to cities under G.S. 105-116.1.

39 (e) Local Tax. -- So long as there is a distribution to cities from the tax imposed
40 by this section, no city shall impose or collect any greater franchise, privilege or
41 license taxes, in the aggregate, on the businesses taxed under this section, than was
42 imposed and collected on or before January 1, 1947. If any municipality shall have
43 collected any privilege, license or franchise tax between January 1, 1947, and April 1,
44 1949, in excess of the tax collected by it prior to January 1, 1947, then upon

1 distribution of the taxes imposed by this section to municipalities, the amount
2 distributable to any municipality shall be credited with such excess payment.

3 (f) Gas City Exemption. -- The tax imposed by this section does not apply to the
4 following cities that operate their own piped natural gas systems: Bessemer City,
5 Kings Mountain, Lexington, Shelby, Greenville, Monroe, Rocky Mount, and Wilson."

6 Section 3.1. G.S. 105-116.1 reads as rewritten:

7 "**§ 105-116.1. Distribution of gross receipts taxes to cities.**

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

- 9 (1) Freeze deduction. -- The amount by which the percentage
10 distribution amount of a city was required to be reduced in fiscal
11 year 1995-96 in determining the amount to distribute to the city.
12 (2) Percentage distribution amount. -- Three and nine hundredths
13 percent (3.09%) of the gross receipts derived by an electric power
14 company, a natural gas company, a regional natural gas district,
15 and a telephone company from sales within a city that are taxable
16 under G.S. 105-116 or G.S. 105-120.

17 (b) Distribution. -- The Secretary must distribute to the cities part of the taxes
18 collected under this Article on electric power companies, natural gas companies,
19 regional natural gas districts, and telephone companies. Each city's share for a
20 calendar quarter is the percentage distribution amount for that city for that quarter
21 minus one-fourth of the city's hold-back amount. The Secretary must make the
22 distribution within 75 days after the end of each calendar quarter.

23 (c) Limited Hold-Harmless Adjustment. -- The hold-back amount for a city that,
24 in the 1995-96 fiscal year, received from gross receipts taxes less than ninety-five
25 percent (95%) of the amount it received in the 1990-91 fiscal year is the amount
26 determined by the following calculation:

- 27 (1) Adjust the city's 1995-96 distribution by adding the city's freeze
28 deduction to the amount distributed to the city for that year.
29 (2) Compare the adjusted 1995-96 amount with the city's 1990-91
30 distribution.
31 (3) If the adjusted 1995-96 amount is less than or equal to the city's
32 1990-91 distribution, the hold-back amount for the city is zero.
33 (4) If the adjusted 1995-96 amount is more than the city's 1990-91
34 distribution, the hold-back amount for the city is the city's freeze
35 deduction minus the difference between the city's adjusted 1995-96
36 amount and the city's 1990-91 distribution.

37 (d) Allocation of Hold-Harmless Adjustment. -- The hold-back amount for a city
38 that, in the 1995-96 fiscal year, received from gross receipts taxes at least ninety-five
39 percent (95%) of the amount it received in the 1990-91 fiscal year is the amount
40 determined by the following calculation:

- 41 (1) Determine the amount by which the freeze deduction is reduced
42 for all cities whose hold-back amount is determined under
43 subsection (c) of this section. This amount is the total hold-
44 harmless adjustment.

1 (2) Determine the amount of gross receipts taxes that would be
2 distributed for the quarter to cities whose hold-back amount is
3 determined under this subsection if these cities received their
4 percentage distribution amount minus one-fourth of their freeze
5 deduction.

6 (3) For each city included in the calculation in subdivision (2) of this
7 subsection, determine that city's percentage share of the amount
8 determined under that subdivision.

9 (4) Add to the city's freeze deduction an amount equal to the city's
10 percentage share under subdivision (3) of this subsection
11 multiplied by the total hold-harmless adjustment."

12 Section 4. G.S. 105-164.3(25) reads as rewritten:

13 "(25) 'Utility' means an electric power company, a gas company, a
14 regional natural gas district, or a telephone company that is subject
15 to a privilege tax based on gross receipts under G.S. 105-116 or
16 105-120, a business entity that provides local, toll, or private
17 telecommunications service as defined by G.S. 105-120(e) or a
18 municipality that sells electric power, other than a municipality
19 whose only wholesale supplier of electric power is a federal agency
20 and who is required by a contract with that federal agency to make
21 payments in lieu of taxes."

22 Section 5. G.S. 105-164.14(c) is amended by adding a new subdivision to

23 read:

24 "(22) A regional natural gas district created pursuant to Article 27 of
25 Chapter 160A of the General Statutes."

26 Section 6. G.S. 159-81(1) reads as rewritten:

27 "(1) 'Municipality' means a county, city, town, incorporated village,
28 sanitary district, metropolitan sewerage district, metropolitan water
29 district, county water and sewer district, water and sewer authority,
30 hospital authority, hospital district, parking authority, special
31 airport district, regional public transportation authority, regional
32 natural gas district, regional sports authority, airport authority,
33 joint agency created pursuant to Part 1 of Article 20 of Chapter
34 160A of the General Statutes, and joint agency authorized by
35 agreement between two cities to operate an airport pursuant to
36 G.S. 63-56, but not any other forms of local government."

37 Section 7. G.S. 160A-20(h) reads as rewritten:

38 "(h) As used in this section, the term 'unit of local government' means any of the
39 following:

40 (1) A county.

41 (2) A city.

42 (3) A water and sewer authority created under Article 1 of Chapter
43 162A of the General Statutes.

- 1 (4) An airport authority whose situs is entirely within a county that
2 has (i) a population of over 120,000 according to the most recent
3 federal decennial census and (ii) an area of less than 200 square
4 miles.
- 5 (5) An airport authority in a county in which there are two
6 incorporated municipalities with a population of more than 65,000
7 according to the most recent federal decennial census.
- 8 (5a) An airport board or commission authorized by agreement between
9 two cities pursuant to G.S. 63-56, one of which is located partially
10 but not wholly in the county in which the jointly owned airport is
11 located, and where the board or commission provided water and
12 wastewater services off the airport premises before January 1, 1995;
13 provided that the authority granted by this section may be
14 exercised by such a board or commission with respect to water and
15 wastewater systems or improvements only.
- 16 (6) A local school administrative unit (i) that is located in a county
17 that has a population of over 90,000 according to the most recent
18 federal decennial census and (ii) whose board of education is
19 authorized to levy a school tax.
- 20 (7) An area mental health, developmental disabilities, and substance
21 abuse authority, acting in accordance with G.S. 122C-147.
- 22 (8) A consolidated city-county, as defined by G.S. 160B-2(1).
- 23 (9) A regional natural gas district, as defined by Article 27 of this
24 Chapter."

25 Section 8. G.S. 62-3(23) is amended by adding a new sub-subdivision to

26 read:

27 "k. The term 'public utility' shall not include a regional natural
28 gas district organized and operated pursuant to Article 27 of
29 Chapter 160A of the General Statutes."

30 Section 9. G.S. 62-50(g) reads as rewritten:

31 "(g) For the purpose of this section, 'gas operators' include gas utilities and gas
32 pipeline carriers operating under a franchise from the Utilities Commission,
33 municipal corporations operating municipally owned gas distribution systems,
34 regional natural gas districts organized and operated pursuant to Article 27 of
35 Chapter 160A of the General Statutes, and public housing authorities and any person
36 operating apartment complexes or mobile home parks that distribute or submeter
37 natural gas to their tenants. This section does not confer any other jurisdiction over
38 municipally owned gas distribution systems, regional natural gas districts, public
39 housing authorities or persons operating apartment complexes or mobile home
40 parks."

41 Section 10. (a) Insofar as the provisions of this act are not consistent with
42 the provisions of any other law, public or private, the provisions of this act shall be
43 controlling.

1 (b) References in this act to specific sections or Chapters of the General
2 Statutes are intended to be references to such sections or Chapters as they may be
3 amended from time to time by the General Assembly.

4 (c) This act, being necessary for the health and welfare of the people of
5 the State, shall be liberally construed to effect the purposes thereof.

6 (d) If any provision of this act or the application thereof to any person or
7 circumstance is held invalid, such invalidity shall not affect other provisions or
8 applications of the act which can be given effect without the invalid provision or
9 application, and to this end the provisions of this act are declared to be severable.

10 PART III.

11 EFFECTIVE DATES

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

EXPLANATION OF HOUSE BILL 495 (PCS):
Natural Gas

TO: Senate Finance Committee
FROM: Committee Counsel
DATE: July 23, 1997
SPONSOR: Representative Owens

House Bill 495 is intended to promote the extension of natural gas service to unserved counties by permitting public utilities to charge different rates in those counties in order to reflect the additional cost of providing service and by authorizing the creation of natural gas districts for the purpose of providing expansion into unserved areas.

The bill was discussed in the Utilities Subcommittee of Commerce. The Subcommittee adopted a proposed committee substitute. However, the full Commerce Committee did not hear the bill. The bill was withdrawn from committee and referred to finance. The proposed committee substitute before you is the proposed committee substitute the subcommittee adopted, with changes recommended by the Department of State Treasurer and changes dictated by recently ratified Senate Bill 34. (This Bill was enacted to adjust the share the cities receive from the State gross receipts tax to make the distribution more equitable).

Section 1 authorizes the Utilities Commission to establish different rates for natural gas service to counties that are substantially unserved. The Commission must find that natural gas would become available to those counties without the rate differential. Current law prohibits unreasonable differences as to rates or service to exist between localities or between classes of service.

Section 2 authorizes the creation of regional natural gas districts. A district may be created for one or more entire counties that are totally unserved with natural gas at the time the district is created. This area constitutes the territorial jurisdiction and the service area of the district. A city geographically located in the county or counties that are totally unserved may also join in the organization of the district. The district's right to serve does not extend beyond its jurisdiction and service area. The district's right to serve does not prevent a public utility or municipality from providing service.

The district is created by the boards of county commissioners and the governing body of any city located in the county if the city chooses to join in the organization of the district. The governing body of the district is its board of

trustees, the membership of which is as provided in the district's articles of incorporation. Persons serving on the board of trustees may hold an elective public office as well.

The district may be terminated after the board of trustees provides for the continued availability of natural gas service to its customers, provided it has no outstanding indebtedness.

A city within the county making up the district may later join the district with the consent of the board of trustees of the district. A county totally unserved by natural gas and a city within that county may also join a district with the consent of the board of trustees.

The powers of the district include the following:

1. To purchase, construct, and operate natural gas systems.
2. To contract with private parties and natural gas companies for management and operation of natural gas systems.
3. To own, lease and operate gas systems.
4. To purchase natural gas supplies.
5. To set rates, rents, fees, charges, and penalties
6. to make surveys, soundings, drillings, and examinations.
7. To issue bonds and notes
8. To purchase equipment and finance it in various ways, such as installment financing.
9. To acquire property by eminent domain, with the consent of the boards of county commissioners.

The district is exempt from property taxes and income taxes to the same extent as if it were a city. However a district is subject to gross receipts taxes under G.S. 105-116. The district is allowed an annual refund of sales and use taxes to the same extent as other governmental entities. The district is subject to an annual franchise or privilege tax to the same extent as natural gas companies (3.22% of the district's taxable gross receipts from the furnishing of piped natural gas) The sale of natural gas is also subject to sales tax.

Section 6 of the bill adds "regional natural gas district" to the definition of "municipality" in the Revenue Bond Act.

Section 7 of the bill adds "regional gas district" to the definition of "unit of local government" in G.S. 160A-20. This statute allows units of local government to purchase or finance the purchase of property by installment contracts that create in the property purchased a security interest.

Sections 8 and 9 of the bill provide that regional gas districts are not regulated by the Utilities Commission but they are subject to safety oversight by the Commission.

Section 10 clarifies the statutory interpretation of the act.

The act is effective when it becomes law.

1 for compensation, or operating a public sewerage
2 system for compensation; provided, however, that the
3 term 'public utility' shall not include any person or
4 company whose sole operation consists of selling
5 water to less than ~~40~~ 15 residential customers, except
6 that any person or company which constructs a water
7 system in a subdivision with plans for ~~40~~ 15 or more
8 lots and which holds itself out by contracts or other
9 means at the time of said construction to serve an
10 area containing more than ~~40~~ 15 residential building
11 lots shall be a public utility at the time of such
12 planning or holding out to serve such ~~40~~ 15 or more
13 building lots, without regard to the number of actual
14 customers connected;

15 3. Transporting persons or household goods by street,
16 suburban or interurban bus or railways for the public
17 for compensation;

18 4. Transporting persons or household goods by railways
19 or motor vehicles, or any other form of transportation
20 for the public for compensation, except motor carriers
21 exempted in G.S. 62-260, and except carriers by air;

22 5. Transporting or conveying gas, crude oil or other
23 fluid substance by pipeline for the public for
24 compensation;

25 6. Conveying or transmitting messages or
26 communications by telephone or telegraph, or any
27 other means of transmission, where such service is
28 offered to the public for compensation.

29 b. The term 'public utility' shall for rate-making purposes
30 include any person producing, generating or furnishing any
31 of the foregoing services to another person for distribution
32 to or for the public for compensation.

33 c. The term 'public utility' shall include all persons affiliated
34 through stock ownership with a public utility doing business
35 in this State as parent corporation or subsidiary corporation
36 as defined in G.S. 55-2 to such an extent that the
37 Commission shall find that such affiliation has an effect on
38 the rates or service of such public utility.

39 d. The term 'public utility,' except as otherwise expressly
40 provided in this Chapter, shall not include a municipality,
41 an authority organized under the North Carolina Water and
42 Sewer Authorities Act, electric or telephone membership
43 ~~corporation or nonprofit water membership or~~
44 ~~consumer-owned corporations financed by the Farmers~~

1 ~~Home Administration, the United States Department of~~
2 ~~Housing and Urban Development, or any similar or~~
3 ~~successor federal financing agency, provided, that (i) any~~
4 ~~such financing administration, department or agency~~
5 ~~exercise substantial control over and regulation of any such~~
6 ~~corporation's rates and terms and conditions of service, and~~
7 ~~(ii) the members or consumer owners of any such~~
8 ~~corporation, pursuant to the corporation's articles of~~
9 ~~incorporation and bylaws, shall elect the governing board of~~
10 ~~the corporation; corporation; or any person not otherwise a~~
11 public utility who furnishes such service or commodity only
12 to himself, his employees or tenants when such service or
13 commodity is not resold to or used by others; provided,
14 however, that any person other than a nonprofit
15 organization serving only its members, who distributes or
16 provides utility service to his employees or tenants by
17 individual meters or by other coin-operated devices with a
18 charge for metered or coin-operated utility service shall be a
19 public utility within the definition and meaning of this
20 Chapter with respect to the regulation of rates and
21 provisions of service rendered through such meter or coin-
22 operated device imposing such separate metered utility
23 charge. If any person conducting a public utility shall also
24 conduct any enterprise not a public utility, such enterprise is
25 not subject to the provisions of this Chapter. A water or
26 sewer system owned by a homeowners' association that
27 provides water or sewer service only to members or
28 leaseholds of members is not subject to the provisions of this
29 Chapter.

- 30 e. The term 'public utility' shall include the University of
31 North Carolina insofar as said University supplies telephone
32 service, electricity or water to the public for compensation
33 from the University Enterprises defined in G.S. 116-41.1(9).
34 f. The term 'public utility' shall include the Town of Pineville
35 insofar as said town supplies telephone services to the public
36 for compensation. The territory to be served by the Town of
37 Pineville in furnishing telephone services, subject to the
38 Public Utilities Act, shall include the town limits as they
39 exist on May 8, 1973, and shall also include the area
40 proposed to be annexed under the town's ordinance
41 adopted May 3, 1971, until January 1, 1975.
42 g. The term 'public utility' shall not include a hotel, motel,
43 time share or condominium complex operated primarily to
44 serve transient occupants, which imposes charges to

1 occupants for local, long-distance, or wide area
2 telecommunication services when such calls are completed
3 through the use of facilities provided by a public utility, and
4 provided further that the local services received are rated in
5 accordance with the provisions of G.S. 62-110(d) and the
6 applicable charges for telephone calls are prominently
7 displayed in each area where occupant rooms are located.

8 h. The term 'public utility' shall not include the resale of
9 electricity by (i) a campground operated primarily to serve
10 transient occupants, or (ii) a marina; provided that (i) the
11 campground or marina charges no more than the actual cost
12 of the electricity supplied to it, (ii) the amount of electricity
13 used by each campsite or marina slip occupant is measured
14 by an individual metering device, (iii) the applicable rates
15 are prominently displayed at or near each campsite or
16 marina slip, and (iv) the campground or marina only resells
17 electricity to campsite or marina slip occupants.

18 i. The term 'public utility' shall not include the State, the
19 Office of the State Controller, or the Microelectronics
20 Center of North Carolina in the provision or sharing of
21 switched broadband telecommunications services with non-
22 State entities or organizations of the kind or type set forth in
23 G.S. 143B-426.39.

24 j. The term 'public utility' shall not include any person, not
25 otherwise a public utility, conveying or transmitting
26 messages or communications by mobile radio
27 communications service. Mobile radio communications
28 service includes one-way or two-way radio service provided
29 to mobile or fixed stations or receivers using mobile radio
30 service frequencies."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

HOUSE BILL 990
Committee Substitute Favorable 4/24/97
Third Edition Engrossed 4/29/97
Proposed Senate Committee Substitute H990-PCS2371

Short Title: Exempt Certain Nonprofit Utilities.

(Public)

Sponsors:

Referred to:

April 17, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO EXEMPT CERTAIN NONPROFIT AND CONSUMER-OWNED
3 WATER OR SEWER UTILITIES AND CERTAIN SMALL WATER OR SEWER
4 UTILITIES FROM REGULATION BY THE UTILITIES COMMISSION.
5 The General Assembly of North Carolina enacts:
6 Section 1. G.S. 62-3(23) reads as rewritten:
7 "(23) a. 'Public utility' means a person, whether organized under the
8 laws of this State or under the laws of any other state or
9 country, now or hereafter owning or operating in this State
10 equipment or facilities for:
11 1. Producing, generating, transmitting, delivering or
12 furnishing electricity, piped gas, steam or any other
13 like agency for the production of light, heat or power
14 to or for the public for compensation; provided,
15 however, that the term 'public utility' shall not
16 include persons who construct or operate an electric
17 generating facility, the primary purpose of which
18 facility is for such person's own use and not for the
19 primary purpose of producing electricity, heat, or
20 steam for sale to or for the public for compensation;

- 1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
2. Diverting, developing, pumping, impounding, distributing or furnishing water to or for the public for compensation, or operating a public sewerage system for compensation; provided, however, that the term 'public utility' shall not include any person or company whose sole operation consists of selling water to less than ~~40~~ 15 residential customers, except that any person or company which constructs a water system in a subdivision with plans for ~~40~~ 15 or more lots and which holds itself out by contracts or other means at the time of said construction to serve an area containing more than ~~40~~ 15 residential building lots shall be a public utility at the time of such planning or holding out to serve such ~~40~~ 15 or more building lots, without regard to the number of actual customers connected;
 3. Transporting persons or household goods by street, suburban or interurban bus or railways for the public for compensation;
 4. Transporting persons or household goods by railways or motor vehicles, or any other form of transportation for the public for compensation, except motor carriers exempted in G.S. 62-260, and except carriers by air;
 5. Transporting or conveying gas, crude oil or other fluid substance by pipeline for the public for compensation;
 6. Conveying or transmitting messages or communications by telephone or telegraph, or any other means of transmission, where such service is offered to the public for compensation.
- b. The term 'public utility' shall for rate-making purposes include any person producing, generating or furnishing any of the foregoing services to another person for distribution to or for the public for compensation.
 - c. The term 'public utility' shall include all persons affiliated through stock ownership with a public utility doing business in this State as parent corporation or subsidiary corporation as defined in G.S. 55-2 to such an extent that the Commission shall find that such affiliation has an effect on the rates or service of such public utility.
 - d. The term 'public utility,' except as otherwise expressly provided in this Chapter, shall not include a municipality, an authority organized under the North Carolina Water and Sewer Authorities Act, electric or telephone membership

1 ~~corporation or nonprofit water membership or~~
2 ~~consumer owned corporations financed by the Farmers~~
3 ~~Home Administration, the United States Department of~~
4 ~~Housing and Urban Development, or any similar or~~
5 ~~successor federal financing agency, provided, that (i) any~~
6 ~~such financing administration, department or agency~~
7 ~~exercise substantial control over and regulation of any such~~
8 ~~corporation's rates and terms and conditions of service, and~~
9 ~~(ii) the members or consumer owners of any such~~
10 ~~corporation, pursuant to the corporation's articles of~~
11 ~~incorporation and bylaws, shall elect the governing board of~~
12 ~~the corporation; corporation; or any person not otherwise a~~
13 ~~public utility who furnishes such service or commodity only~~
14 ~~to himself, his employees or tenants when such service or~~
15 ~~commodity is not resold to or used by others; provided,~~
16 ~~however, that any person other than a nonprofit~~
17 ~~organization serving only its members, who distributes or~~
18 ~~provides utility service to his employees or tenants by~~
19 ~~individual meters or by other coin-operated devices with a~~
20 ~~charge for metered or coin-operated utility service shall be a~~
21 ~~public utility within the definition and meaning of this~~
22 ~~Chapter with respect to the regulation of rates and~~
23 ~~provisions of service rendered through such meter or coin-~~
24 ~~operated device imposing such separate metered utility~~
25 ~~charge. If any person conducting a public utility shall also~~
26 ~~conduct any enterprise not a public utility, such enterprise is~~
27 ~~not subject to the provisions of this Chapter. A water or~~
28 ~~sewer system owned by a homeowners' association that~~
29 ~~provides water or sewer service only to members or~~
30 ~~leaseholds of members is not subject to the provisions of this~~
31 ~~Chapter.~~

32 e. The term 'public utility' shall include the University of
33 North Carolina insofar as said University supplies telephone
34 service, electricity or water to the public for compensation
35 from the University Enterprises defined in G.S. 116-41.1(9).

36 f. The term 'public utility' shall include the Town of Pineville
37 insofar as said town supplies telephone services to the public
38 for compensation. The territory to be served by the Town of
39 Pineville in furnishing telephone services, subject to the
40 Public Utilities Act, shall include the town limits as they
41 exist on May 8, 1973, and shall also include the area
42 proposed to be annexed under the town's ordinance
43 adopted May 3, 1971, until January 1, 1975.

- 1 g. The term 'public utility' shall not include a hotel, motel,
2 time share or condominium complex operated primarily to
3 serve transient occupants, which imposes charges to
4 occupants for local, long-distance, or wide area
5 telecommunication services when such calls are completed
6 through the use of facilities provided by a public utility, and
7 provided further that the local services received are rated in
8 accordance with the provisions of G.S. 62-110(d) and the
9 applicable charges for telephone calls are prominently
10 displayed in each area where occupant rooms are located.
- 11 h. The term 'public utility' shall not include the resale of
12 electricity by (i) a campground operated primarily to serve
13 transient occupants, or (ii) a marina; provided that (i) the
14 campground or marina charges no more than the actual cost
15 of the electricity supplied to it, (ii) the amount of electricity
16 used by each campsite or marina slip occupant is measured
17 by an individual metering device, (iii) the applicable rates
18 are prominently displayed at or near each campsite or
19 marina slip, and (iv) the campground or marina only resells
20 electricity to campsite or marina slip occupants.
- 21 i. The term 'public utility' shall not include the State, the
22 Office of the State Controller, or the Microelectronics
23 Center of North Carolina in the provision or sharing of
24 switched broadband telecommunications services with non-
25 State entities or organizations of the kind or type set forth in
26 G.S. 143B-426.39.
- 27 j. The term 'public utility' shall not include any person, not
28 otherwise a public utility, conveying or transmitting
29 messages or communications by mobile radio
30 communications service. Mobile radio communications
31 service includes one-way or two-way radio service provided
32 to mobile or fixed stations or receivers using mobile radio
33 service frequencies."

34 Section 2. Article 6 of Chapter 62 of the General Statutes is amended by
35 adding a new section to read:

36 "§ 62-110.5. Commission may exempt certain nonprofit and consumer-owned water
37 or sewer utilities.

38 The Commission may exempt any water or sewer utilities owned by nonprofit
39 membership or consumer-owned corporations from regulation under this Chapter,
40 subject to those conditions the Commission deems appropriate, if:

- 41 (1) The members or consumer-owners of the corporation elect the
42 governing board of the corporation pursuant to the corporation's
43 articles of incorporation and bylaws; and

1 (2) The Commission finds that the organization and the quality of
2 service of the utility are adequate to protect the public interest to
3 the extent that additional regulation is not required by the public
4 convenience and necessity."

5 Section 3. G.S. 62-300(a) is amended by adding a new subdivision to
6 read:

7 "(15) One hundred dollars (\$100.00) for each application for exemption
8 filed by nonprofit and consumer-owned water or sewer utilities
9 pursuant to G.S. 62-110.5."

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

EXPLANATION OF HOUSE BILL 990:
Exempt Certain Nonprofit Utilities (PCS)

TO: Senate Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: July 22, 1997
SPONSOR: Representative Church

The proposed committee substitute for **House Bill 990** does two things:

1. It provides that the Utilities Commission may exempt nonprofit and consumer-owned water or sewer utilities from regulation.
2. It increases the regulatory exemption for utilities selling water to less than ten residential customers to utilities selling water to less than 15 residential customers.

Under current law, nonprofit membership or consumer-owned corporations that supply water are exempt from regulation by the Utilities Commission if both of the following conditions are met:

- A federal financing agency exercises substantial control over and regulation of the corporation's rates and terms and conditions of service.
- The members or consumer-owners elect the governing board of the corporation.

The Utilities Commission and legislative staff recently learned, however, that no federal financing agency does, or ever has, exercised such control. Therefore, no nonprofit membership or consumer-owned corporation can possibly qualify for the exemption from regulation under the current law.

To rectify this problem, Section 1 deletes the current exemption. Section 2 provides that the Utilities Commission may exempt nonprofit and consumer-owned water or sewer utilities from regulation, subject to conditions the Commission deems appropriate, if both of the following conditions are met:

- The members or consumer-owners elect the governing board of the corporation.
- The Commission finds that the organization and quality of service of the utility are adequate to protect the public interest.

The exemption will be granted on a case-by-case basis. To obtain an exemption, a nonprofit or consumer-owned water or sewer utility would need to apply to the Commission. Section 3 imposes a \$100 fee for each application for exemption filed by a nonprofit or consumer-owned water or sewer utility.

Section 1 also increases the regulatory exemption for utilities that sell water to less than ten residential customers. The exemption will now apply to those selling to less than 15 residential customers. This will match exemptions allowed by the Department of Environment, Health, and Natural Resources.

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

7-24-97

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Joy Williams

Energy Div.

Joe McClers

TDA

David Simmons

ZDA, PA

Sheresa Hostywa

STARKS

For Con Harris

"

Karen Munkit

Payson + Sprinell

J. M. Magan

Morgan Van Allen

Nathaniel M. J.

ccve

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

7-24-97

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jim Ritchey	TTA
Ronald Bone	Boone Assoc / Venture Partner
Deborah Lamm	Commerce / Energy
Dan Hulek	Budget / Tax Cuts
Lawrence Davis	Womble Carlyle
Samuel M. Taylor	"
Bernard Allen	505
Kirk Cahste	Co. Co.
Alan Miles	Bailey & Dixon LLP
Jane B. Gray	DOJ
John Bowditch	Zeb Alley P.A.

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

7-24-97

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

<i>Denny Steffer</i>	NCLEC Assoc
A. B. Swindell IV	BFI
SUSAN HARRISON	WCPSS
Cam Cook	BPMHL
<i>Dennis Kinzie</i>	EGHAS
DOUG CHAPPELL	STATE TREASURERS OFFICE
<i>James Lute</i>	Public Staff- NCUC
Richard Whitman	DEHNR
R. ROGERS	DEHNR
<i>Curt Williams</i>	Gov's Office
LEIGHTON ROPEZ	234, PA

July 28, 1997

H.B.(CS #2)568

Wake Forest Annexation

Draft Number: PCS7358
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

TOTAL REPORTED: 6

Committee Clerk Comment:

Bills taken up at 7-24-97 Meeting

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

FINANCE COMMITTEE REPORT

Senator David Hoyle, Co-Chair
Senator John Kerr, Co-Chair

Monday, August 04, 1997

SENATOR HOYLE,
submits the following with recommendations as to passage:

FAVORABLE

H.B.(CS#2)631	Forsyth Room Tax Distribution	
	Sequential Referral:	None
	Recommended Referral:	None

TOTAL REPORTED: 1

Committee Clerk Comment: Bill taken up 7-24-97

SENATE FINANCE COMMITTEE

TUESDAY, JULY 29, 1997

8:30 A.M. - ROOM 544 LOB

The Senate Finance Committee met on July 29, 1997, with Senator Kerr presiding. There were 24 committee members present.

H.B. 611 - Increase Comp. For Err. Convictions

Representative Hackney was recognized to explain his H.B. 611. At the conclusion of his explanation, there were several questions from the committee members. Senator Albertson moved for a "favorable" report and the motion carried. Copy of bill, explanation and fiscal note included in the minutes.

Senator Kerr welcomed Senator William A. Purcell who is replacing Senator Conder to the Finance Committee.

H.B. 844 - Reidsville Annexation Restricted

Representative Cole was recognized to explain this bill and Senator Foxx made a motion that this bill be given a "favorable" report. The motion carried. Copy of bill included in the minutes.

H.B. 1097 - Fisheries Reform Act-2

Representative Preston was recognized to explain this bill. Senator Lee was recognized and made a motion to adopt a proposed committee substitute and the motion carried. Jeff Hudson, Staff Attorney, was recognized to explain the changes that had been made in this bill. At the conclusion of Mr. Hudson's explanation, the following were recognized to speak on the bill:

Jerry Schill, President of the North Carolina Fisheries Association, stated that they had problems with the bill.

Sheri Evans Stanton, Assistant Secretary for Natural Resources with DEHNR, spoke in support of this bill.

Mr. Dick Huffman, small commercial fisherman from Carteret County, spoke on this bill supporting parts of it and opposing some of the issues.

Jess Hawkins, North Carolina Division of Marine Fisheries, spoke on the bill.

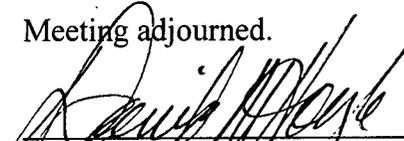
Tom Bean, Executive Director of the North Carolina Wildlife Federation, spoke in favor of the bill.

Sandy Sands, Coastal Conservation Association of North Carolina, spoke in support of the bill that came out of the Agriculture Committee.

Senator Cochrane and Senator Phillips have amendments that will be held and discussed in Appropriations.

Senator Hoyle sent forth an amendment (#1) and Senator McDaniel sent forth an amendment (#2). These amendments change the annual SCFL fee. Dan McLawhorn with the Attorney General's Office was recognized to speak on differential fees and how these amendments will affect this bill. Senator McDaniel's amendment was adopted by the committee and there will be further discussion on the bill at a later date. Copy of bill, committee substitute, amendment and other information included in the minutes.

Meeting adjourned.



David W. Hoyle, Co-Chair
Senate Finance Committee



John H. Kerr, III, Co-Chair
Senate Finance Committee



Penny N. Williams, Clerk



Evelyn S. Hartsell, Clerk

NOTE:

Agenda is Attachment # 1
Visitors' Sign Up Sheet is attachment # 2
Committee Report is Attachment # 3

H.B. 136 and H.B. 418 were pulled from the agenda for this meeting.
H.B. 1110 and H.B. 1156 were not taken up at this committee meeting.

AGENDA

SENATE FINANCE COMMITTEE

**July 29, 1997 - 8:30 A.M.
Room 643**

H.B. 136 - Late Video Return/Sales Tax - Rep. Weatherly

H.B. 418 - Miscellaneous Local Acts - Rep. Thompson

H.B. 611 - Increase Comp. For Err. Convictions - Rep. Hackney

H.B. 844 - Reidsville Annexation Restricted - Rep. Cole

H.B. 1097 - Fisheries Reform Act-2 - Rep. Preston

H.B. 1110 - Landscape Architects - Rep. McMahan

H.B. 1156 - March of Dimes License Plates - Rep. Morris

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

3

HOUSE BILL 611
Committee Substitute Favorable 4/23/97
Senate Judiciary Committee Substitute Adopted 6/9/97

Short Title: Increase Comp. for Err. Conviction.

(Public)

Sponsors:

Referred to: Appropriations.

March 25, 1997

A BILL TO BE ENTITLED

1
2 AN ACT TO INCREASE THE COMPENSATION PROVIDED TO PERSONS
3 ERRONEOUSLY CONVICTED OF FELONIES WHO HAVE RECEIVED
4 PARDONS OF INNOCENCE, TO EXEMPT THE COMPENSATION FROM
5 STATE INCOME TAX, AND TO PROVIDE FOR THE INDUSTRIAL
6 COMMISSION TO HANDLE THE CLAIMS OF THOSE PERSONS.

7 The General Assembly of North Carolina enacts:

8 Section 1. G.S. 148-82 reads as rewritten:

9 "**§ 148-82. Provision for compensation.**

10 Any person who, having been convicted of a felony and having been imprisoned
11 therefor in a State prison of this State, and who was thereafter or who shall hereafter
12 be ~~pardoned~~ granted a pardon of innocence by the Governor upon the grounds that
13 the crime with which ~~he~~ the person was charged either was not committed at all or
14 was not committed by ~~him~~, that person, may as hereinafter provided present by
15 petition a claim against the State for the pecuniary loss sustained by ~~him~~ the person
16 through his or her erroneous conviction and ~~imprisonment~~. imprisonment, provided
17 the petition is presented within five years of the granting of the pardon."

18 Section 2. G.S. 148-83 reads as rewritten:

19 "**§ 148-83. Form, requisites and contents of petition; nature of hearing.**

20 Such petition shall be addressed to the ~~Department of Correction~~, Industrial
21 Commission, and must include a full statement of the facts upon which the claim is
22 based, verified in the manner provided for verifying complaints in civil actions, and it

1 may be supported by affidavits substantiating such claim. Upon its presentation the
2 ~~Department of Correction~~ Industrial Commission shall fix a time and a place for a
3 hearing, and shall mail notice to the claimant, and shall notify the Attorney General,
4 at least 15 days before the time fixed therefor."

5 Section 3. G.S. 148-84 reads as rewritten:

6 "**§ 148-84. Evidence; action by ~~Parole~~ Industrial Commission; payment and amount of**
7 **compensation.**

8 At the hearing the claimant may introduce evidence in the form of affidavits or
9 testimony to support the claim, and the Attorney General may introduce counter
10 affidavits or testimony in refutation. If the ~~Parole~~ Industrial Commission finds from
11 the evidence that the claimant ~~was pardoned~~ received a pardon of innocence for the
12 reason that the crime was not committed at all, or was not committed by the
13 claimant, and that the claimant was imprisoned and has been vindicated in
14 connection with the alleged offense for which he or she was ~~imprisoned, and that he~~
15 ~~has sustained pecuniary loss through such erroneous conviction and imprisonment,~~
16 ~~the Parole Commission shall report the facts, together with his [its] conclusions and~~
17 ~~recommendations to the Governor, and the Governor, with the approval of the~~
18 Council of State, may pay to the claimant imprisoned, the Industrial Commission
19 shall determine the amount the claimant is entitled to be paid for the claimant's
20 pecuniary loss and shall enter an award for that amount. The Director of the Budget
21 shall pay the amount of the award to the claimant out of the Contingency and
22 Emergency Fund, or out of any other available State fund, such amounts as may
23 partially compensate the claimant for such pecuniary loss as he may be found to have
24 suffered by reason of his erroneous conviction and imprisonment, such compensation
25 not to be in excess of five hundred dollars (\$500.00) funds. The Industrial
26 Commission shall award to the claimant an amount equal to ten thousand dollars
27 (\$10,000) for each year or the pro rata amount for the portion of each year of such
28 the imprisonment actually served, and served, but in no event shall such the
29 compensation exceed a total amount of five thousand dollars (\$5,000). one hundred
30 fifty thousand dollars (\$150,000). The Industrial Commission shall give written notice
31 of its decision to all parties concerned. The determination of the Industrial
32 Commission shall be subject to judicial review upon appeal of the claimant or the
33 State according to the provisions and procedures set forth in Article 31 of Chapter
34 143 of the General Statutes."

35 Section 4. G.S. 105-134.6(b) is amended by adding a new subdivision to
36 read:

37 "(12) The amount paid to the taxpayer by the State under G.S. 148-84 as
38 compensation for pecuniary loss suffered by reason of erroneous
39 conviction and imprisonment."

40 Section 5. Section 4 of this act is effective for taxable years beginning on
41 or after January 1, 1997. The remainder of this act is effective when it becomes law
42 and applies to persons pardoned on or after July 1, 1995.

EXPLANATION OF HOUSE BILL 611:
Increase Compensation for Erroneous Conviction (3rd Edition)

TO: Senate Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: July 28, 1997
SPONSOR: Representative Hackney

House Bill 611 makes several changes to the law that allows the State to compensate people who have been erroneously convicted and imprisoned of a felony:

- It increases the amount a person may be awarded.
- It changes the agency that determines the award from the Department of Correction to the Industrial Commission.
- It provides that the petition must be presented to the Commission within five years of the granting of the pardon.
- It repeals the requirement that the Commission must find that the claimant sustained pecuniary loss through the erroneous conviction and imprisonment.
- It allows the Commission to award the amount to the claimant, rather than the Governor upon the approval of the Council of State.
- It clarifies that the amount awarded to the claimant is exempt from State income tax.

Under current law, a person who has been granted a pardon of innocence for the erroneous conviction and imprisonment of a felony may petition the State for the financial loss sustained by the person through the erroneous conviction and imprisonment. The petition is presented to the Department of Correction. At the hearing, the Department must find that the person was erroneously convicted and imprisoned and that the person sustained a financial loss because of it. The Department reports its conclusions and recommendations to the Governor. The Governor, upon the approval of the Council of State, may award the claimant the amount recommended by the Department. The Department may not award an amount that exceeds \$500 for each year imprisoned and the total compensation may not exceed \$5,000.

Under the bill, a person would have five years from the granting of the pardon to present a petition to the Industrial Commission for compensation from the State for the financial loss the person suffered because of an erroneous conviction and imprisonment. Upon finding that the person was granted a pardon of innocence, the Commission must determine the amount the claimant is

entitled to be paid for the claimant's pecuniary loss and must enter an award for that amount. A claimant will be entitled to an amount equal to \$10,000 for each year or the pro rata amount for the portion of each year of the imprisonment. The compensation may not exceed a total amount of \$150,000. The Commission must give written notice of its decision to all parties concerned. Its determination is subject to judicial review.

Section 4 of the bill clarifies that the amount awarded to a claimant is not subject to State income tax. Under current law, it is unclear whether the amount awarded to a claimant is exempt from federal income tax. Prior to 1996, section 104 of the Code excluded amounts received as damages on account of personal injuries and sickness. Last year, Congress amended this section to say that gross income does not include "the amount of damages received on account of personal physical injuries or physical sickness." Because of the 1996 federal tax law change, it is questionable whether the compensation would be taxable under federal law. To the extent the income is subject to federal income tax, it would also be subject to State income tax. Section 4 provides that to the extent the compensation is included in federal taxable income, it may be deducted for State income tax purposes.

The bill is effective when it becomes law and applies to persons pardoned on or after July 1, 1995.

ASSUMPTIONS AND METHODOLOGY: GS 148-82, GS 148-83 and GS148-84 specify a claims for pecuniary loss procedure for felons who were imprisoned and then pardoned by the Governor, on the ground that the crime for which they were convicted was not committed at all or not committed by them (a "pardon of innocence"). Current law specifies that the individual can petition the Department of Correction for a hearing before the Parole Commission. This bill moves the petition/hearing to the Industrial Commission and raises the compensation (paid from the Contingency and Emergency Fund) from a maximum of \$500 per year of imprisonment to \$10,000 per year and from a total of \$5,000 to a total of \$150,000. It also specifies claims must be made within 5 years of the pardon and that compensation is exempt from state income tax.

According to the Governor's Office of Pardon and the Post Release Supervision and Parole Commission, only one individual has received a pardon of innocence in memory. That individual was incarcerated roughly 10 years and pardoned in 1995 (within the time period specified in this bill). Their claim may be as high as \$100,000 (10*10000) depending on the findings of the Industrial Commission. Under existing law, their claim would be limited to \$5,000 (10*500) and would be subject to tax (assume 6%, tax due would be \$300) with a net cost of \$4,700. Therefore, the net cost of HB 611 is \$95,300 (=\$100,000-\$4,700).

Because pardons of innocence are rare events, no impact is projected on the Industrial Commission.

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION

733-4910

PREPARED BY: Elisa Wolper

APPROVED BY:

DATE: July 25, 1997

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

2

HOUSE BILL 844
Committee Substitute Favorable 4/30/97

Short Title: Reidsville Annexation Restricted.

(Local)

Sponsors:

Referred to:

April 7, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE CHARTER OF THE CITY OF REIDSVILLE TO
3 RESTRICT ANNEXATION OF THE CITY BEYOND A LINE.
4 The General Assembly of North Carolina enacts:
5 Section 1. The Charter of the City of Reidsville, being Chapter 957 of
6 the Session Laws of 1989, is amended by adding a new section to read:
7 "Section 1.4. **Annexation Restricted.** The City may not annex under Article 4A of
8 Chapter 160A of the General Statutes any territory west of the following line:
9 Beginning at a point in the centerline of the Iron Works Road; said point being
10 westerly and 400 feet perpendicular to the western right-of-way of Woolen Store
11 Road Extended to the centerline of the Iron Works Road; thence from said point
12 northerly about 430 feet to a point; said point being 400 feet perpendicular to and
13 northerly from the northern right-of-way of the Iron Works Road; thence from said
14 point in a generally northeasterly direction and being 400 feet parallel to the northern
15 right-of-way of the Iron Works Road and Sandy Cross Road to a point said point
16 being 400 feet perpendicular to and northwesterly from the northwestern right-of-way
17 of Sandy Cross Road and being in the southwestern line of the Calvary Baptist
18 Church extend northwesterly about 460 feet, thence from said point southeasterly
19 with the extension of said line and the southwestern line of Calvary Baptist Church
20 about 610 feet to a point, said point being the southwest corner of Calvary Baptist
21 Church, thence from said point northeasterly with the southeastern line of Calvary
22 Baptist Church about 410 feet to a point, said point being the southeast corner of
23 Calvary Baptist Church, thence from said point northeasterly with said line extended

1 about 50 feet to the centerline of N.C. Hwy. 65 and 87, thence northwesterly with the
2 centerline of N.C. Hwy. 65 and 87 about 760 feet to a point, thence from said point
3 in a northeasterly direction about 450 feet to a point; said point being 400 feet
4 perpendicular to and northeasterly from the northern right-of-way of NC Hwy. 65
5 and 87 and 400 feet perpendicular to and northwesterly from the northern right-of-
6 way of Wentworth Street; thence from said point 400 feet parallel to the northern
7 right-of-way of Wentworth Street and running in a generally northeasterly direction
8 to a point; said point being about 200 feet east of Setliff Road and 400 feet north of
9 Wentworth Street; thence in a northerly direction about 2100 feet to the northeast
10 corner of lot 7 of the Setliff Glenn Subdivision (MB 28-275); said point located about
11 850 feet east of the cul-de-sac at the end of Setliff Road; thence northeasterly about
12 2030 feet to a point at the corner of the University Estates Subdivision; thence
13 easterly about 2000 feet along the southeasterly boundary line of the University
14 Estates Subdivision to a point near Cedar Lane which intersects the boundary of the
15 existing Wentworth Fire District boundary line; thence northerly along the
16 Wentworth Fire District line about 5500 feet to a point; said point being about 400
17 feet south of the intersection of NC 1992 and Berrymore Road; thence parallel to and
18 400 feet from and on the southeast side of Berrymore Road to a point; said point
19 being on NC 14 about 400 feet southeast of the intersection of Berrymore Road and
20 NC 14."

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

1 Whereas, the General Assembly recognizes the need to protect our
2 coastal fishery resources and to balance the commercial and recreational interests
3 through better management of these resources; Now, therefore,
4 The General Assembly of North Carolina enacts:

5
6 **PART I. SHORT TITLE; PERFORMANCE AUDIT**

7
8 Section 1.1. This act shall be known as the "Fisheries Reform Act of
9 1997".

10 Section 1.2. The State Auditor shall conduct a performance audit,
11 including a detailed operational review, of the Division of Marine Fisheries of the
12 Department of Environment, Health, and Natural Resources. The performance audit
13 shall include an assessment of the capacity of the Division of Marine Fisheries to
14 effectively implement the provisions of Part V of this act. The performance audit
15 report shall be delivered to the Joint Legislative Commission on Seafood and
16 Aquaculture no later than 1 February 1998. The Joint Legislative Commission on
17 Seafood and Aquaculture shall review the performance audit and make a specific
18 recommendation to the 1998 Session of the 1997 General Assembly as to whether the
19 provisions of Part V of this act should be implemented.

20
21 **PART II. MARINE FISHERIES COMMISSION**

22
23 Section 2.1. Article 7 of Chapter 143B is amended by adding a new Part
24 to read:

25 "Part 5B. Marine Fisheries Commission.

26 "§ 143B-289.20. Definitions.

27 (a) As used in this Part:

- 28 (1) 'Commission' means the Marine Fisheries Commission.
29 (2) 'Department' means the Department of Environment, Health, and
30 Natural Resources.
31 (3) 'Fisheries Director' means the Director of the Division of Marine
32 Fisheries of the Department of Environment, Health, and Natural
33 Resources.
34 (4) 'Secretary' means the Secretary of Environment, Health, and
35 Natural Resources.

36 (b) The definitions set out in G.S. 113-129 and G.S. 113-130 shall apply
37 throughout this Part.

38 "§ 143B-289.21. Marine Fisheries Commission -- creation; purposes.

39 (a) There is hereby created the Marine Fisheries Commission in the Department
40 of Environment, Health, and Natural Resources.

41 (b) The functions, purposes, and duties of the Marine Fisheries Commission are
42 to:

- 43 (1) Manage, restore, develop, cultivate, conserve, protect, and regulate
44 the marine and estuarine resources of the State.

- 1 (2) Implement the laws relating to coastal fisheries, coastal fishing,
2 shellfish, crustaceans, and other marine and estuarine resources
3 enacted by the General Assembly by the adoption of rules and
4 policies, to provide a sound, constructive, comprehensive,
5 continuing, and economical coastal fisheries program directed by
6 citizens who are knowledgeable in the protection, restoration,
7 proper use, and management of marine and estuarine resources.
- 8 (3) Advise the State regarding ocean and marine fisheries within the
9 jurisdiction of the Atlantic States Marine Fisheries Compact, the
10 South Atlantic Fishery Management Council, the Mid-Atlantic
11 Fishery Management Council, and other similar organizations
12 established to manage or regulate fishing in the Atlantic Ocean.
- 13 **§ 143B-289.22. Marine Fisheries Commission -- powers and duties.**
- 14 (a) The Marine Fisheries Commission shall adopt rules to be followed in the
15 management, protection, preservation, and enhancement of the marine and estuarine
16 resources of the State including commercial and sports fisheries resources. The
17 Marine Fisheries Commission shall have the power and duty:
- 18 (1) To authorize, license, regulate, prohibit, prescribe, or restrict all
19 forms of marine and estuarine resources in coastal fishing waters
20 with respect to:
- 21 a. Time, place, character, or dimensions of any methods or
22 equipment that may be employed in taking fish.
- 23 b. Seasons for taking fish.
- 24 c. Size limits on and maximum quantities of fish that may be
25 taken, possessed, bailed to another, transported, bought,
26 sold, or given away.
- 27 (2) To provide fair regulation of commercial and recreational fishing
28 groups in the interest of the public.
- 29 (3) To adopt rules and take all steps necessary to develop and improve
30 mariculture, including the cultivation, harvesting, and marketing of
31 shellfish and other marine resources in the State, involving the use
32 of public grounds and private beds as provided in G.S. 113-201.
- 33 (4) To close areas of public bottoms under coastal fishing waters for
34 such time as may be necessary in any program of propagation of
35 shellfish as provided in G.S. 113-204.
- 36 (5) In the interest of conservation of the marine and estuarine
37 resources of the State, to institute an action in the superior court to
38 contest the claim of title or claimed right of fishery in any
39 navigable waters of the State registered with the Department as
40 provided in G.S. 113-206(d).
- 41 (6) To make reciprocal agreements with other jurisdictions respecting
42 any of the matters governed in this Subchapter as provided by G.S.
43 113-223.

- 1 (7) To adopt relevant provisions of federal laws and regulations as
2 State rules pursuant to G.S. 113-228.
- 3 (8) To delegate to the Fisheries Director the authority by proclamation
4 to suspend or implement, in whole or in part, a particular rule of
5 the Commission that may be affected by variable conditions as
6 provided in G.S. 113-221(e).
- 7 (9) To comment on and otherwise participate in the determination of
8 permit applications received by State agencies that may have an
9 effect on the marine and estuarine resources of the State.
- 10 (10) To adopt Fishery Management Plans as provided in G.S. 113-182.1,
11 to establish a Priority List to determine the order in which Fishery
12 Management Plans are developed, to establish a Schedule for the
13 development and adoption of each Fishery Management Plan, and
14 to establish guidance criteria as to the contents of Fishery
15 Management Plans.
- 16 (11) To approve Coastal Habitat Protection Plans as provided in G.S.
17 143B-279.8.
- 18 (12) Except as may otherwise be provided, to make the final agency
19 decision in all contested cases involving matters within the
20 jurisdiction of the Commission.
- 21 **(b) The Marine Fisheries Commission shall have the power and duty to establish**
22 **standards and adopt rules:**
- 23 (1) To implement the provisions of Subchapter IV of Chapter 113 as
24 provided in G.S. 113-134.
- 25 (2) To manage the disposition of confiscated property as set forth in
26 G.S. 113-137.
- 27 (3) To govern all license requirements and taxes prescribed in Article
28 14A of Chapter 113 of the General Statutes.
- 29 (4) To regulate the importation and exportation of fish, and equipment
30 that may be used in taking or processing fish, as necessary to
31 enhance the conservation of marine and estuarine resources of the
32 State as provided in G.S. 113-170.
- 33 (5) To regulate the possession, transportation, and disposition of
34 seafood, as provided in G.S. 113-170.4.
- 35 (6) To regulate the disposition of the young of edible fish, as provided
36 by G.S. 113-185.
- 37 (7) To manage the leasing of public grounds for mariculture, including
38 oysters and clam production, as provided in G.S. 113-202.
- 39 (8) To govern the utilization of private fisheries, as provided in G.S.
40 113-205.
- 41 (9) To impose further restrictions upon the throwing of fish offal in
42 any coastal fishing waters, as provided in G.S. 113-265.
- 43 (10) To regulate the location and utilization of artificial reefs in coastal
44 waters.

1 (11) To regulate the placement of nets and other sports or commercial
2 fishing apparatus in coastal fishing waters with regard to
3 navigational or recreational safety as well as from a conservation
4 standpoint.

5 (c) The Commission is authorized to authorize, license, prohibit, prescribe, or
6 restrict:

7 (1) The opening and closing of coastal fishing waters, except as to
8 inland game fish, whether entirely or only as to the taking of
9 particular classes of fish, use of particular equipment, or as to other
10 activities.

11 (2) The possession, cultivation, transportation, importation,
12 exportation, sale, purchase, acquisition, and disposition of all
13 marine and estuarine resources and all related equipment,
14 implements, vessels, and conveyances as necessary to carry out its
15 duties.

16 (d) The Commission may adopt rules required by the federal government for
17 grants-in-aid for coastal resource purposes that may be made available to the State by
18 the federal government. This section is to be liberally construed in order that the
19 State and its citizens may benefit from federal grants-in-aid.

20 (e) The Commission shall adopt rules as provided in this Chapter. All rules
21 adopted by the Commission shall be enforced by the Department of Environment,
22 Health, and Natural Resources.

23 (f) As a quasi-judicial agency, the Commission, in accordance with Article IV,
24 Section 3 of the Constitution of North Carolina, has those judicial powers reasonably
25 necessary to accomplish the purposes for which it was created.

26 **"§ 143B-289.23. Marine Fisheries Commission -- quasi-judicial powers; procedures.**

27 (a) With respect to those matters within its jurisdiction, the Marine Fisheries
28 Commission shall exercise quasi-judicial powers in accordance with the provisions of
29 Chapter 150B of the General Statutes. This section and any rules adopted by the
30 Marine Fisheries Commission shall govern the following proceedings:

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

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

38 (3) Deliberations of the Commission shall be conducted in its public
39 meeting unless the Commission determines that consultation with
40 its counsel should be held in a closed session pursuant to G.S.
41 143-318.11.

42 (b) The final agency decision in contested cases that arise from civil penalty
43 assessments shall be made by the Commission. In the evaluation of each violation, the
44 Commission shall recognize that harm to the marine and estuarine resources of the

1 State arising from the violation of a statute or rule enacted or adopted to protect
2 those resources may be immediately observed through damaged resources or may be
3 incremental or cumulative with no damage that can be immediately observed or
4 documented. Penalties up to the maximum authorized may be based on any one or
5 combination of the following factors:

6 (1) The degree and extent of harm to the marine and estuarine
7 resources of the State, to the public health, or to private property
8 resulting from the violation.

9 (2) The frequency and gravity of the violation.

10 (3) The cost of rectifying the damage.

11 (4) Whether the violation was committed willfully or intentionally.

12 (5) The prior record of the violator in complying or failing to comply
13 with programs over which the Marine Fisheries Commission has
14 regulatory authority.

15 (6) The cost to the State of the enforcement procedures.

16 (c) The Chair shall appoint a Committee on Civil Penalty Remissions from the
17 members of the Commission. No member of the Committee on Civil Penalty
18 Remissions may hear or vote on any matter in which the member has an economic
19 interest. The Committee on Civil Penalty Remissions shall make the final agency
20 decision on remission requests. In determining whether a remission request will be
21 approved, the Committee shall consider the recommendation of the Secretary and the
22 following factors:

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

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

28 (3) Whether the violation was inadvertent.

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

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

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

37 (e) If any civil penalty has not been paid within 30 days after the final agency
38 decision or court order has been served on the violator, the Secretary of
39 Environment, Health, and Natural Resources shall request the Attorney General to
40 institute a civil action in the superior court of any county in which the violator
41 resides or has his or its principal place of business to recover the amount of the
42 assessment.

43 (f) The Secretary may delegate his powers and duties under this section to the
44 Fisheries Director.

1 "§ 143B-289.24. Marine Fisheries Commission -- members; appointment; term; oath;
2 ethical standards; removal; compensation; staff.

3 (a) Members, Selection. -- The Marine Fisheries Commission shall consist of nine
4 members appointed by the Governor as follows:

5 (1) One person actively engaged in, or recently retired from,
6 commercial fishing as demonstrated by currently or recently
7 deriving at least fifty percent (50%) of annual earned income from
8 taking and selling fishery resources in coastal fishing waters of the
9 State. The spouse of a commercial fisherman who meets the
10 criteria of this subdivision may be appointed under this
11 subdivision.

12 (2) One person actively engaged in, or recently retired from,
13 commercial fishing as demonstrated by currently or recently
14 deriving at least fifty percent (50%) of annual earned income from
15 taking and selling fishery resources in coastal fishing waters of the
16 State. The spouse of a commercial fisherman who meets the
17 criteria of this subdivision may be appointed under this
18 subdivision.

19 (3) One person actively connected with, and experienced as, a licensed
20 fish dealer or in seafood processing or distribution as demonstrated
21 by deriving at least fifty percent (50%) of annual earned income
22 from activities involving the buying, selling, processing, or
23 distribution of seafood landed in this State. The spouse of a
24 person qualified under this subdivision may be appointed provided
25 that the spouse is actively involved in the qualifying business.

26 (4) One person actively engaged in recreational sports fishing in
27 coastal waters in this State. An appointee under this subdivision
28 may not derive more than ten percent (10%) of annual earned
29 income from sports fishing activities.

30 (5) One person actively engaged in recreational sports fishing in
31 coastal waters in this State. An appointee under this subdivision
32 may not derive more than ten percent (10%) of annual earned
33 income from sports fishing activities.

34 (6) One person actively engaged in the sports fishing industry as
35 demonstrated by deriving at least fifty percent (50%) of annual
36 earned income from selling goods or services in this State. The
37 spouse of a person qualified under this subdivision may be
38 appointed provided that the spouse is actively involved in the
39 qualifying business.

40 (7) One person having general knowledge of and experience related to
41 subjects and persons regulated by the Commission.

42 (8) One person having general knowledge of and experience related to
43 subjects and persons regulated by the Commission.

1 (9) One person who is a fisheries scientist having special training and
2 expertise in marine and estuarine fisheries biology, ecology,
3 population dynamics, water quality, habitat protection, or similar
4 knowledge. A person appointed under this subdivision may not
5 receive more than ten percent (10%) of annual earned income
6 from either the commercial or sports fishing industries, including
7 the processing and distribution of seafood.

8 (b) Residential Qualifications. -- For purposes of providing regional representation
9 on the Commission, the following three coastal regions of the State are designated: (i)
10 Northeast Coastal Region comprised of Bertie, Camden, Chowan, Currituck, Dare,
11 Gates, Halifax, Hertford, Martin, Northampton, Pasquotank, Perquimans, Tyrrell, and
12 Washington Counties; (ii) Central Coastal Region comprised of Beaufort, Carteret,
13 Craven, Hyde, Jones, and Pamlico Counties; and (iii) Southeast Coastal Region
14 comprised of Bladen, Brunswick, Columbus, New Hanover, Onslow, and Pender
15 Counties. Persons appointed under subdivisions (1), (2), (3), (4), and (8) of
16 subsection (a) of this section shall be residents of one of the coastal regions of the
17 State. The membership of the Commission shall include at least one person who is a
18 resident of each of the three coastal regions of the State.

19 (c) Additional Considerations. -- In making appointments to the Commission, the
20 Governor shall provide for appropriate representation of women and minorities on
21 the Commission.

22 (d) Terms. -- The term of office of members of the Commission is three years. A
23 member may be reappointed to any number of successive three-year terms. Upon the
24 expiration of a three-year term, a member shall continue to serve until a successor is
25 appointed and duly qualified as provided by G.S. 128-7. The term of members
26 appointed under subdivisions (1), (2), and (3) of subsection (a) of this section shall
27 expire on 30 June of years evenly divisible by three. The term of members appointed
28 under subdivisions (4), (5), and (6) of subsection (a) of this section shall expire on 30
29 June of years that precede by one year those years that are evenly divisible by three.
30 The term of members appointed under subdivisions (7), (8), and (9) of subsection (a)
31 of this section shall expire on 30 June of years that follow by one year those years
32 that are evenly divisible by three.

33 (e) Vacancies. -- An appointment to fill a vacancy shall be for the unexpired
34 balance of the term.

35 (f) Oath of Office. -- Each member of the Commission, before assuming the duties
36 of office, shall take an oath of office as provided in Chapter 11 of the General
37 Statutes.

38 (g) Ethical Standards. --

39 (1) Disclosure statements. -- Any person under consideration for
40 appointment to the Commission shall provide both a financial
41 disclosure statement and a potential bias disclosure statement to
42 the Governor. A financial disclosure statement shall include
43 statements of the nominee's financial interests in and related to
44 State fishery resources use, licenses issued by the Division of

1 Marine Fisheries held by the nominee or any business in which the
2 nominee has a financial interest, and uses made by the nominee or
3 by any business in which the nominee has a financial interest of
4 the regulated resources. A potential bias disclosure statement shall
5 include a statement of the nominee's membership or other
6 affiliation with, including offices held, in societies, organizations, or
7 advocacy groups pertaining to the management and use of the
8 State's coastal fishery resources. Disclosure statements shall be
9 treated as public records under Chapter 132 of the General
10 Statutes and shall be updated on an annual basis.

11 (2) Voting/conflict of interest. -- A member of the Commission shall
12 not vote on any issue before the Commission that would have a
13 'significant and predictable effect' on the member's financial
14 interest. For purposes of this subdivision, 'significant and
15 predictable effect' means there is or may be a close causal link
16 between the decision of the Commission and an expected
17 disproportionate financial benefit to the member that is shared
18 only by a minority of persons within the same industry sector or
19 gear group. A member of the Commission shall also abstain from
20 voting on any petition submitted by an advocacy group of which
21 the member is an officer or sits as a member of the advocacy
22 group's board of directors. A member of the Commission shall not
23 use the member's official position as a member of the Commission
24 to secure any special privilege or exemption of substantial value for
25 any person. No member of the Commission shall, by the member's
26 conduct, create an appearance that any person could improperly
27 influence the member in the performance of the member's official
28 duties.

29 (3) Regular attendance. -- It shall be the duty of each member of the
30 Commission to regularly attend meetings of the Commission.

31 (h) Removal. -- The Governor may remove, as provided in G.S. 143-13, any
32 member of the Commission for misfeasance, malfeasance, or nonfeasance.

33 (i) Office May Be Held Concurrently With Others. -- The office of member of the
34 Marine Fisheries Commission may be held concurrently with any other elected or
35 appointed office, as authorized by Article VI, Section 9, of the Constitution of North
36 Carolina.

37 (j) Compensation. -- Members of the Commission who are State officers or
38 employees shall receive no per diem compensation for serving on the Commission,
39 but shall be reimbursed for their expenses in accordance with G.S. 138-6. Members
40 of the Commission who are full-time salaried public officers or employees other than
41 State officers or employees shall receive no per diem compensation for serving on the
42 Commission, but shall be reimbursed for their expenses in accordance with G.S.
43 138-6 in the same manner as State officers or employees. All other Commission

1 members shall receive per diem compensation and reimbursement in accordance with
2 the compensation rate established in G.S. 93B-5.

3 (k) Staff. -- All clerical and other services required by the Commission shall be
4 supplied by the Fisheries Director and the Department.

5 (l) Legal Services. -- The Attorney General shall: (i) act as attorney for the
6 Commission; (ii) at the request of the Commission, initiate actions in the name of the
7 Commission; and (iii) represent the Commission in any appeal or other review of any
8 order of the Commission.

9 **"§ 143B-289.25. Marine Fisheries Commission -- officers; organization; seal.**

10 (a) The Governor shall appoint a member of the Commission to serve as Chair.
11 The Chair shall serve at the pleasure of the Governor. The Commission shall elect
12 one of its members to serve as Vice-Chair. The Vice-Chair shall serve a one-year
13 term beginning 1 July and ending 30 June of the following year. The Vice-Chair may
14 serve any number of consecutive terms.

15 (b) The Chair shall guide and coordinate the activities of the Commission in
16 fulfilling its duties as set out in this Article. The Chair shall report to and advise the
17 Governor and the Secretary on the activities of the Commission, on marine and
18 estuarine conservation matters, and on all marine fisheries matters.

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

23 (d) The Commission may adopt a common seal and may alter it as necessary.

24 **"§ 143B-289.26. Marine Fisheries Commission -- meetings; quorum.**

25 (a) The Commission shall meet at least once each calendar quarter and may hold
26 additional meetings at any time and place within the State at the call of the Chair or
27 upon the written request of at least four members. At least three of the four
28 quarterly meetings of the Commission shall be held in one of the coastal regions
29 designated in G.S. 143B-289.24.

30 (b) Five members of the Commission shall constitute a quorum for the transaction
31 of business.

32 **"§ 143B-289.27. Marine Fisheries Commission Advisory Committees established;**
33 **members; selection; duties.**

34 (a) The Commission shall be assisted in the performance of its duties by four
35 standing advisory committees and four regional advisory committees. Each standing
36 and regional advisory committee shall consist of no more than 11 members. The
37 Chair of the Commission shall designate one member of each advisory committee to
38 serve as Chair of the committee. Members shall serve staggered three-year terms as
39 determined by the Commission. The Commission shall establish other policies and
40 procedures for standing and regional advisory committees that are consistent with
41 those governing the Commission as set out in this Part.

42 (b) The Chair of the Commission shall appoint the following standing advisory
43 committees:

- 1 (1) The Finfish Committee, which shall consider matters concerning
2 finfish.
- 3 (2) The Crustacean Committee, which shall consider matters
4 concerning shrimp and crabs.
- 5 (3) The Shellfish Committee, which shall consider matters concerning
6 oysters, clams, scallops, and other molluscan shellfish.
- 7 (4) The Habitat and Water Quality Committee, which shall consider
8 matters concerning habitat and water quality that may affect
9 coastal fisheries resources.

10 (c) Each standing advisory committee shall be composed of commercial and
11 recreational fishermen, scientists, and other persons who have expertise in the matters
12 to be considered by the advisory committee to which they are appointed. In making
13 appointments to advisory committees, the Chair of the Commission shall ensure that
14 both commercial and recreational fishing interests are fairly represented and shall
15 consider for appointment persons who are recommended by groups representing
16 commercial fishing interests, recreational fishing interests, environmental protection
17 and conservation interests, and other groups interested in coastal fisheries
18 management.

19 (d) Each standing advisory committee shall review all matters referred to the
20 committee by the Commission and shall make findings and recommendations on
21 these matters. A standing advisory committee may, on its own motion, make findings
22 and recommendations as to any matter related to its subject area. The Commission,
23 in the performance of its duties, shall consider all findings and recommendations
24 submitted by standing advisory committees.

25 (e) The Chair of the Commission shall appoint a regional advisory committee for
26 each of the three coastal regions designated in G.S. 143B-289.24(b) and shall appoint
27 a regional advisory committee for that part of the State that is not included in the
28 three coastal regions. In making appointments to regional advisory committees, the
29 Chair of the Commission shall ensure that both commercial and recreational fishing
30 interests are fairly represented.

31 **"§ 143B-289.28. Marine Fisheries Endowment Fund.**

32 (a) Recognizing the inestimable importance to the State and its people of
33 conserving the marine and estuarine resources of the State, and for the purpose of
34 providing the opportunity for citizens and residents of the State to invest in the future
35 of its marine and estuarine resources, there is created the North Carolina Marine
36 Fisheries Endowment Fund, the income and principal of which shall be used only for
37 the purpose of supporting marine and estuarine resource conservation programs of
38 the State in accordance with this section.

39 (b) There is created the Board of Trustees of the Marine Fisheries Endowment
40 Fund of the Marine Fisheries Commission, with full authority over the administration
41 of the Marine Fisheries Endowment Fund, whose ex officio Chair, Vice-Chair, and
42 members shall be the Chair, Vice-Chair, and members of the Marine Fisheries
43 Commission. The State Treasurer shall be the custodian of the Marine Fisheries

1 Endowment Fund and shall invest its assets in accordance with the provisions of G.S.
2 147-69.2 and G.S. 147-69.3.

3 (c) The assets of the Marine Fisheries Endowment Fund shall be derived from the
4 following:

5 (1) The proceeds of any gifts, grants, and contributions to the State
6 that are specifically designated for inclusion in the Fund.

7 (2) Any other sources specified by law.

8 (d) The Marine Fisheries Endowment Fund is declared to constitute a special
9 trust derived from a contractual relationship between the State and the members of
10 the public whose investments contribute to the Fund. In recognition of this special
11 trust, the following limitations and restrictions are placed on expenditures from the
12 Fund:

13 (1) Any limitations or restrictions specified by the donors on the uses
14 of the income derived from the gifts, grants, and voluntary
15 contributions shall be respected but shall not be binding.

16 (2) No expenditure or disbursement shall be made from the principal
17 of the Marine Fisheries Endowment Fund except as otherwise
18 provided by law.

19 (3) The income received and accruing from the investments of the
20 Marine Fisheries Endowment Fund must be spent only to further
21 the conservation of marine and estuarine resources.

22 (e) The Board of Trustees of the Marine Fisheries Endowment Fund may
23 accumulate the investment income of the Fund until the income, in the sole judgment
24 of the trustees, can provide a significant supplement to the budget for the
25 conservation and management of marine and estuarine resources. After that time the
26 trustees, in their sole discretion and authority, may direct expenditures from the
27 income of the Fund for the purposes set out in subdivision (3) of subsection (d)
28 above.

29 (f) Expenditure of the income derived from the Marine Fisheries Endowment
30 Fund shall be made through the State budget accounts of the Marine Fisheries
31 Commission in accordance with the provisions of the Executive Budget Act. The
32 Marine Fisheries Endowment Fund is subject to the oversight of the State Auditor
33 pursuant to Article 5A of Chapter 147 of the General Statutes.

34 (g) The Marine Fisheries Endowment Fund and the income therefrom shall not
35 take the place of State appropriations, but any portion of the income of the Marine
36 Fisheries Endowment Fund available for the purpose set out in subdivision (3) of
37 subsection (d) above shall be used to supplement other income of and appropriations
38 for the conservation and management of marine and estuarine resources to the end
39 that the Commission may improve and increase its services and become more useful
40 to a greater number of people.

41 **"§ 143B-289.29. Conservation Fund; Commission may accept gifts.**

42 (a) The Marine Fisheries Commission may accept gifts, donations, or
43 contributions from any sources. These funds shall be held in a separate account and
44 used solely for the purposes of marine and estuarine conservation and management.

1 These funds shall be administered by the Marine Fisheries Commission and shall be
2 used for marine and estuarine resources management, including education about the
3 importance of conservation, in a manner consistent with marine and estuarine
4 conservation management principles.

5 (b) The Marine Fisheries Commission is hereby authorized to issue and sell
6 appropriate emblems by which to identify recipients thereof as contributors to a
7 special marine and estuarine resources Conservation Fund that shall be made
8 available to the Marine Fisheries Commission for conservation, protection,
9 enhancement, preservation, and perpetuation of marine and estuarine species that
10 may be endangered or threatened with extinction and for education about these
11 issues. The special Conservation Fund is subject to oversight of the State Auditor
12 pursuant to Article 5A of Chapter 147 of the General Statutes. Emblems of different
13 sizes, shapes, types, or designs may be used to recognize contributions in different
14 amounts, but no emblem shall be issued for a contribution amounting in value to less
15 than five dollars (\$5.00).

16 **"§ 143B-289.30. Article subject to Chapter 113.**

17 Nothing in this Article shall be construed to affect the jurisdictional division
18 between the Marine Fisheries Commission and the Wildlife Resources Commission
19 contained in Subchapter IV of Chapter 113 of the General Statutes or in any way to
20 alter or abridge the powers and duties of the two agencies conferred in that
21 Subchapter.

22 **"§ 143B-289.31. Jurisdictional questions.**

23 In the event of any question arising between the Wildlife Resources Commission
24 and the Marine Fisheries Commission or between the Department of Environment,
25 Health, and Natural Resources and the Marine Fisheries Commission as to any duty,
26 responsibility, or authority imposed upon any of these bodies by law or with respect
27 to conflict involving rules or administrative practices, the question or conflict shall be
28 resolved by the Governor, whose decision shall be binding."

29

30 **PART III. COASTAL HABITAT PROTECTION PLANS; FISHERY**
31 **MANAGEMENT PLANS**

32

33 Section 3.1. Article 7 of Chapter 143B of the General Statutes is
34 amended by adding a new section to read:

35 **"§ 143B-279.8. Coastal Habitat Protection Plans.**

36 (a) The Department shall coordinate the preparation of draft Coastal Habitat
37 Protection Plans for critical fisheries habitats. The Department shall use the staff of
38 those divisions within the Department that have jurisdiction over marine fisheries,
39 water quality, and coastal area management in the preparation of the Coastal Habitat
40 Protection Plans and shall request assistance from other federal and State agencies as
41 necessary. The plans shall:

42

43

44

(1) Describe and classify biological systems in the habitats, including
wetlands, fish spawning grounds, estuarine or aquatic endangered
or threatened species, primary or secondary nursery areas, shellfish

1 beds, submerged aquatic vegetation (SAV) beds, and habitats in
2 outstanding resource waters.

3 (2) Evaluate the function, value to coastal fisheries, status, and trends
4 of the habitats.

5 (3) Identify existing and potential threats to the habitats and the
6 impact on coastal fishing.

7 (4) Recommend actions to protect and restore the habitats.

8 (b) Once a draft Coastal Habitat Protection Plan has been prepared, the chairs of
9 the Coastal Resources Commission, the Environmental Management Commission,
10 and the Marine Fisheries Commission shall each appoint two members of the
11 commission he or she chairs to a six-member review committee. The six-member
12 review committee, in consultation with the Department, shall review the draft Plan
13 and may revise the draft Plan on a consensus basis. The draft Plan, as revised by the
14 six-member review committee, shall then be submitted to the Coastal Resources
15 Commission, the Environmental Management Commission, and the Marine Fisheries
16 Commission, each of which shall independently consider the Plan for adoption. If
17 any of the three commissions is unable to agree to any aspect of a Plan, the chair of
18 each commission shall refer that aspect of the Plan to a six-member conference
19 committee to facilitate the resolution of any differences. The six-member conference
20 committee shall be appointed in the same manner as a six-member review committee
21 and may include members of the six-member review committee that reviewed the
22 Plan. Each final Coastal Habitat Protection Plan shall consist of those provisions
23 adopted by all three commissions. The three commissions shall review and revise
24 each Coastal Habitat Protection Plan at least once every five years.

25 (c) In carrying out their powers and duties, the Coastal Resources Commission,
26 the Environmental Management Commission, and the Marine Fisheries Commission
27 shall ensure, to the maximum extent practicable, that their actions are consistent with
28 the Coastal Habitat Protection Plans as adopted by the three commissions. The
29 obligation to act in a manner consistent with a Coastal Habitat Protection Plan is
30 prospective only and does not oblige any commission to modify any rule adopted,
31 permit decision made, or other action taken prior to the adoption or revision of the
32 Coastal Habitat Protection Plan by the three commissions. The Coastal Resources
33 Commission, the Environmental Management Commission, and the Marine Fisheries
34 Commission shall adopt rules to implement Coastal Habitat Protection Plans in
35 accordance with Chapter 150B of the General Statutes.

36 (d) If any of the three commissions concludes that another commission has taken
37 an action that is inconsistent with a Coastal Habitat Protection Plan, that commission
38 may request a written explanation of the action from the other commission. A
39 commission shall provide a written explanation: (i) upon the written request of one
40 of the other two commissions, or (ii) upon its own motion if the commission
41 determines that it must take an action that is inconsistent with a Coastal Habitat
42 Protection Plan.

43 (e) The Coastal Resources Commission, the Environmental Management
44 Commission, and the Marine Fisheries Commission shall report to the Joint

1 Legislative Commission on Seafood and Aquaculture and the Environmental Review
2 Commission on progress in developing and implementing the Coastal Habitat
3 Protection Plans, including the extent to which the actions of the three commissions
4 are consistent with the Plans, on or before 1 September of each year."

5 (f) The Secretary of Environment, Health, and Natural Resources shall report to
6 the Environmental Review Commission within 30 days of the completion or
7 substantial revision of each draft Coastal Habitat Protection Plan. The
8 Environmental Review Commission shall review each draft Coastal Habitat
9 Protection Plan within 30 days of the date the draft Plan is submitted to the
10 Environmental Review Commission. The Environmental Review Commission may
11 submit comments and recommendations on the draft Plan to the Secretary within 30
12 days of the date the draft Plan is submitted by the Secretary."

13 Section 3.2. G.S. 143B-282(a)(1) is amended by adding a new sub-
14 subdivision to read:

15 "v. To approve Coastal Habitat Protection Plans as provided in
16 G.S. 143B-279.8."

17 Section 3.3. Part 1 of Article 7 of Chapter 113A of the General Statutes
18 is amended by adding a new section to read:

19 "§ 113A-106.1. Adoption of Coastal Habitat Protection Plans.

20 The Commission shall approve Coastal Habitat Protection Plans as provided in
21 G.S. 143B-279.8."

22 Section 3.4. Article 15 of Chapter 113 of the General Statutes is
23 amended by adding a new section to read:

24 "§ 113-182.1. Fishery Management Plans.

25 (a) The Department shall prepare proposed Fishery Management Plans for
26 adoption by the Marine Fisheries Commission for all commercially or recreationally
27 significant species or fisheries that comprise State marine or estuarine resources.
28 Proposed Fishery Management Plans shall be developed in accordance with the
29 Priority List, Schedule, and guidance criteria established by the Marine Fisheries
30 Commission under G.S. 143B-289.22.

31 (b) The goal of the plans shall be to ensure the long-term viability of the State's
32 commercially and recreationally significant species or fisheries. Each plan shall be
33 designed to reflect fishing practices so that one plan may apply to a specific fishery,
34 while other plans may be based on gear or geographic areas. Each plan shall:

35 (1) Contain necessary information pertaining to the fishery or fisheries,
36 including management goals and objectives, status of relevant fish
37 stocks, stock assessments for multiyear species, fishery habitat and
38 water quality considerations consistent with Coastal Habitat
39 Protection Plans adopted pursuant to G.S. 143B-279.8, social and
40 economic impact of the fishery to the State, and user conflicts.

41 (2) Recommend management actions pertaining to the fishery or
42 fisheries.

1 (3) Include conservation and management measures that prevent
2 overfishing, while achieving, on a continuing basis, the optimal
3 yield from each fishery.

4 (c) To assist in the development of each Fishery Management Plan, the Chair of
5 the Marine Fisheries Commission shall appoint an Advisory Council. Each Advisory
6 Council shall be composed of commercial fishermen, recreational fishermen, and
7 scientists, all with expertise in the fishery for which the Fishery Management Plan is
8 being developed.

9 (d) Each Fishery Management Plan shall be revised at least once every three
10 years. The Marine Fisheries Commission may revise the Priority List and guidance
11 criteria whenever it determines that a revision of the Priority List or guidance criteria
12 will facilitate or improve the development of Fishery Management Plans or is
13 necessary to restore, conserve, or protect the marine and estuarine resources of the
14 State. The Marine Fisheries Commission may not revise the Schedule for the
15 development of a Fisheries Management Plan, once adopted, without the approval of
16 the Secretary of Environment, Health, and Natural Resources.

17 (e) The Secretary of Environment, Health, and Natural Resources shall monitor
18 progress in the development and adoption of Fishery Management Plans in relation
19 to the Schedule for development and adoption of the plans established by the Marine
20 Fisheries Commission. If the Secretary determines that the Division of Marine
21 Fisheries has failed to develop or the Marine Fisheries Commission has failed to
22 adopt a Fishery Management Plan in compliance with the Schedule, the Secretary
23 may issue a proclamation prohibiting the taking of species to which the Plan would
24 apply. The completion of any act within 30 days of the time specified by the
25 Schedule constitutes compliance with the Schedule. A proclamation issued pursuant
26 to this subsection is not subject to Article 2A of Chapter 150B of the General
27 Statutes.

28 (f) The Secretary of Environment, Health, and Natural Resources shall report to
29 the Joint Legislative Commission on Seafood and Aquaculture and the
30 Environmental Review Commission on progress in developing and implementing the
31 Fishery Management Plans on or before 1 September of each year. The Secretary of
32 Environment, Health, and Natural Resources shall report to the Joint Legislative
33 Commission on Seafood and Aquaculture and the Environmental Review
34 Commission within 30 days of the completion or substantial revision of each
35 proposed Fishery Management Plan. The Joint Legislative Commission on Seafood
36 and Aquaculture and the Environmental Review Commission shall review each
37 proposed Fishery Management Plan within 30 days of the date the proposed Plan is
38 submitted to the commission. The Joint Legislative Commission on Seafood and
39 Aquaculture and the Environmental Review Commission may submit comments and
40 recommendations on the proposed Plan to the Secretary within 30 days of the date
41 the proposed Plan is submitted by the Secretary.

42 (g) The Marine Fisheries Commission shall adopt rules to implement Fishery
43 Management Plans in accordance with Chapter 150B of the General Statutes."

1 Section 3.5. G.S. 113-129 is amended by adding two new subdivisions to
2 read:

3 "(12a) Optimal yield. -- The amount of fish that:

- 4 a. Will provide the greatest overall benefit to the State,
5 particularly with respect to food production and recreational
6 opportunities, and taking into account the protection of
7 marine ecosystems;
8 b. Is prescribed on the basis of the maximum sustainable yield
9 from the fishery, as reduced by any relevant economic,
10 social, or ecological factor; and
11 c. In the case of an overfished fishery, provides for rebuilding
12 to a level consistent with producing the maximum
13 sustainable yield in the fishery.

14 (12b) Overfishing or overfished. -- A rate or level of fishing mortality
15 that jeopardizes the capacity of a fishery to produce the maximum
16 sustainable yield on a continuing basis."
17

18 PART IV. MARINE FISHERIES LAW ENFORCEMENT

19

20 Section 4.1. G.S. 113-187 reads as rewritten:

21 **"§ 113-187. Penalties for violations of Subchapter and rules.**

22 (a) Any person who participates in a commercial fishing operation conducted in
23 violation of any provision of this Subchapter and its implementing rules or in an
24 operation in connection with which any vessel is used in violation of any provision of
25 this Subchapter and its implementing rules is guilty of a ~~Class 4~~ Class A1
26 misdemeanor.

27 (b) Any owner of a vessel who knowingly permits it to be used in violation of any
28 provision of this Subchapter and its implementing rules is guilty of a ~~Class 4~~ Class A1
29 misdemeanor.

30 (c) Any person in charge of a commercial fishing operation conducted in violation
31 of any provision of this Subchapter and its implementing rules or in charge of any
32 vessel used in violation of any provision of this Subchapter and its implementing
33 rules is guilty of a ~~Class 4~~ Class A1 misdemeanor.

34 (d) Any person in charge of a commercial fishing operation conducted in
35 violation of the following provisions of this Subchapter or the following rules of the
36 Marine Fisheries Commission; and any person in charge of any vessel used in
37 violation of the following provisions of the Subchapter or the following rules, shall be
38 guilty of a ~~Class 2~~ Class A1 misdemeanor. The violations of the statute or the rules
39 for which the penalty is mandatory are:

- 40 (1) Taking or attempting to take, possess, sell, or offer for sale any
41 oysters, mussels, or clams taken from areas closed by statute, rule,
42 or proclamation because of suspected pollution.
43 (2) Taking or attempting to take or have in possession aboard a vessel,
44 shrimp taken by the use of a trawl net, in areas not opened to

1 shrimping, pulled by a vessel not showing lights required by G.S.
2 75A-6 after sunset and before sunrise.

3 (3) Using a trawl net in any coastal fishing waters closed by
4 proclamation or rule to trawl nets.

5 (4) Violating the provisions of a special permit or gear license issued
6 by the Department.

7 (5) Using or attempting to use any trawl net, long haul seine, swipe
8 net, mechanical methods for oyster or clam harvest or dredge in
9 designated primary nursery areas."

10 Section 4.2. Article 15 of Chapter 113 of the General Statutes is
11 amended by adding a new section to read:

12 "§ 113-190. Unlawful sale or purchase of fish; criminal and civil penalties.

13 (a) Any person who sells fish in violation of G.S. 113-168.4 or a rule of the
14 Marine Fisheries Commission to implement that section is guilty of a Class A1
15 misdemeanor.

16 (b) Any person who purchases fish in violation of G.S. 113-169.3 or a rule of the
17 Marine Fisheries Commission to implement that section is guilty of a Class A1
18 misdemeanor.

19 (c) A civil penalty of not more than ten thousand dollars (\$10,000) may be
20 assessed by the Secretary against any person who sells fish in violation of G.S.
21 113-168.4 or purchases fish in violation of G.S. 113-169.3.

22 (d) In determining the amount of the penalty, the Secretary shall consider the
23 factors set out in G.S. 143B-289.23(b). The procedures set out in G.S. 143B-289.23
24 shall apply to civil penalty assessments that are presented to the Commission for final
25 agency decision.

26 (e) The Secretary shall notify any person assessed a civil penalty of the assessment
27 and the specific reasons therefor by registered or certified mail or by any means
28 authorized by G.S. 1A-1, Rule 4. Contested case petitions shall be filed pursuant to
29 G.S. 150B-23 within 30 days of receipt of the notice of assessment.

30 (f) Requests for remission of civil penalties shall be filed with the Secretary.
31 Remission requests shall not be considered unless filed within 30 days of receipt of
32 the notice of assessment. Remission requests must be accompanied by a waiver of the
33 right to a contested case hearing pursuant to Chapter 150B of the General Statutes
34 and a stipulation of the facts on which the assessment was based. Consistent with the
35 limitations in G.S. 143B-289.23(c), remission requests may be resolved by the
36 Secretary and the violator. If the Secretary and the violator are unable to resolve the
37 request, the Secretary shall deliver remission requests and his recommended action to
38 the Committee on Civil Penalty Remissions of the Marine Fisheries Commission
39 appointed pursuant to G.S. 143B-289.23(c).

40 (g) If any civil penalty has not been paid within 30 days after notice of assessment
41 has been served on the violator, the Secretary shall request the Attorney General to
42 institute a civil action in the superior court of any county in which the violator
43 resides or has his or its principal place of business to recover the amount of the
44 assessment, unless the violator contests the assessment as provided in subsection (e) of

1 this section, or requests remission of the assessment in whole or in part as provided in
2 subsection (f) of this section. If any civil penalty has not been paid within 30 days
3 after the final agency decision or court order has been served on the violator, the
4 Secretary shall request the Attorney General to institute a civil action in the superior
5 court of any county in which the violator resides or has his or its principal place of
6 business to recover the amount of the assessment. Civil actions must be filed within
7 three years of the date the final agency decision or court order was served on the
8 violator."

9 Section 4.3. G.S. 113-221(e) reads as rewritten:

10 "(e) The Marine Fisheries Commission may delegate to the Fisheries Director the
11 authority to issue proclamations suspending or implementing, in whole or in part,
12 particular rules of the Commission which may be affected by variable conditions.
13 Such proclamations are to be issued by the Fisheries Director or by a person
14 designated by the Fisheries Director. All proclamations must state the hour and date
15 upon which they become effective and must be issued at least 48 hours in advance of
16 the effective date and time. In those situations in which the proclamation prohibits
17 the taking of certain fisheries resources for reasons of public health, the proclamation
18 can be made effective immediately upon issuance. Notwithstanding any other
19 provisions of this subsection, a proclamation can be issued at least 12 hours in
20 advance of the effective date and time to reopen the taking of certain fisheries
21 resources closed for reason of public health through a prior proclamation made
22 effective immediately upon issuance. Persons violating any proclamation which is
23 made effective immediately shall not be charged with a criminal offense during the
24 time between the issuance and 48 hours after such issuance unless such person had
25 actual notice of the issuance of such proclamation. Fisheries resources taken or
26 possessed by any person in violation of any proclamation may be seized regardless of
27 whether such person had actual notice of the proclamation. A permanent file of the
28 text of all proclamations shall be maintained in the office of the Fisheries Director.
29 Certified copies of proclamations are entitled to judicial notice in any civil or
30 criminal proceeding.

31 The Fisheries Director must make every reasonable effort to give actual notice of
32 the terms of any proclamation to the persons who may be affected thereby. ~~Such~~
33 Reasonable effort includes press releases to communications media, posting of notices
34 at docks and other places where persons affected may gather, personal
35 communication by inspectors and other agents of the Fisheries Director, and such
36 other measures designed to reach the persons who may be affected. The Fisheries
37 Director may determine, on a case-by-case basis and at the Fisheries Director's sole
38 discretion, that a proclamation did not apply to an individual licensee when an act of
39 God occurred that prevented the licensee from receiving notice of the proclamation."

40 Section 4.4. The Marine Fisheries Commission shall develop a Violation
41 Points System applicable to the fishing licenses of all persons who violate marine
42 fisheries statutes or rules. In developing this system, the Marine Fisheries
43 Commission shall consider the recommendations made in the Final Report of the
44 Moratorium Steering Committee and the suspension, revocation, and reissuance

1 procedures under G.S. 113-166. The Marine Fisheries Commission shall also develop
2 an implementation schedule for the Violation Points System. The Marine Fisheries
3 Commission shall report to the Joint Legislative Commission on Seafood and
4 Aquaculture no later than 1 July 1999, on the development of the Violation Points
5 System and the implementation schedule.

6
7 **PART V. COMMERCIAL FISHING LICENSES; TRANSITIONAL PROVISIONS**

8
9 Section 5.1. Chapter 113 of the General Statutes is amended by adding a
10 new Article to read:

11 "ARTICLE 14A.

12 "Coastal and Estuarine Commercial Fishing Licenses.

13 "§ 113-168. Definitions.

14 As used in this Article:

- 15 (1) 'Commercial fishing operation' means any activity preparatory to,
16 during, or subsequent to the taking of any fish, the taking of which
17 is subject to regulation by the Commission, either with the use of
18 commercial fishing equipment or gear, or by any means if the
19 purpose of the taking is to obtain fish for sale. Commercial fishing
20 operation includes taking people fishing for hire.
21 (2) 'Commission' means the Marine Fisheries Commission.
22 (3) 'Division' means the Division of Marine Fisheries in the
23 Department of Environment, Health, and Natural Resources.
24 (4) 'License year' means the period beginning 1 July of a year and
25 ending on 30 June of the following year.
26 (5) 'North Carolina resident' means a person is a resident within the
27 meaning of G.S. 113-130(4) and who filed a State income tax
28 return as a resident of the State for the previous calendar or tax
29 year.
30 (6) 'RCGL' means Recreational Commercial Gear License.
31 (7) 'RSCFL' means Retired Standard Commercial Fishing License.
32 (8) 'SCFL' means Standard Commercial Fishing License.

33 "§ 113-168.1. General provisions for commercial licenses and endorsements.

34 (a) Duration, Fees. -- All licenses and endorsements issued under this Article
35 expire on the last day of the license year. An applicant for any license shall pay the
36 full annual license fee at the time the applicant applies for the license regardless of
37 when application is made.

38 (b) Licenses Required to Engage in Commercial Fishing. -- It is unlawful for any
39 person to engage in a commercial fishing operation without being licensed as
40 required by this Article. It is unlawful for anyone to command a vessel engaged in a
41 commercial fishing operation without complying with the provisions of this Article
42 and rules adopted by the Commission under this Article.

43 (c) Licenses and Endorsements Available for Inspection. -- It is unlawful for any
44 person to engage in a commercial fishing operation in the State without having ready

1 at hand for inspection all currently valid licenses and endorsements required under
2 this Article. To comply with this subsection, a person must have either a currently
3 valid (i) license issued in the person's true name and bearing the person's current
4 address or (ii) an assignment of a SCFL authorized under this Article. A licensee or
5 assignee shall not refuse to exhibit the licenses and endorsements upon the request of
6 an inspector or any other law enforcement officer authorized to enforce federal or
7 State laws, regulations, or rules relating to marine fisheries.

8 (d) No Dual Residency. -- It is unlawful for any person to hold any currently valid
9 license issued under this Article to the person as a North Carolina resident if that
10 person holds any currently valid commercial or recreational fishing license issued by
11 another state to the person as a resident of that state.

12 (e) License Format. -- Licenses issued under this Article shall be issued in the
13 name of the applicant. Each license shall show the type of license and any
14 endorsements; the name, address, and date of birth of the licensee; the date on which
15 the license is issued; the date on which the license expires; and any other information
16 that the Commission or the Division determines to be necessary to accomplish the
17 purposes of this Subchapter.

18 **"§ 113-168.2. Standard Commercial Fishing License.**

19 (a) Requirement. -- No person shall engage in a commercial fishing operation in
20 the coastal fishing waters without holding a Standard Commercial Fishing License
21 issued by the Division. A person who works as a member of the crew of a vessel
22 engaged in a commercial fishing operation under the direction of a person who holds
23 a valid SCFL or RSCFL is not required to hold a SCFL or RSCFL.

24 (b) Purchase; Renewal. -- A person may purchase a SCFL at any office of the
25 Division. The SCFL and endorsements may be renewed by mail by forwarding a
26 completed application, including applicable fees, to the Division's Morehead City
27 office. Any person who is issued a SCFL or a RSCFL is eligible to renew the SCFL
28 or RSCFL and any endorsements if the SCFL or RSCFL has not been suspended or
29 revoked.

30 (c) Replacement License. -- A licensee may obtain a replacement license for a lost
31 or destroyed license, including all endorsements, upon receipt of a proper application
32 in the offices of the Division together with a ten-dollar (\$10.00) fee. The Division
33 shall not accept an application for a replacement license unless the Division
34 determines that the applicant's current license has not been suspended or revoked. A
35 copy of an application duly filed with the Division shall serve as the license until the
36 replacement license has been received. The Commission may provide by rule for the
37 replacement of lost, obliterated, destroyed, or otherwise illegible license plates or
38 decals upon tender of the original license receipt or upon other evidence that the
39 Commission deems sufficient.

40 (d) Nonresident Certification Required. -- Persons obtaining licenses who are not
41 North Carolina residents shall certify that their conviction record in their state of
42 residence is such that they would not be denied a license under the standards in G.S.
43 113-171. When a license application is denied for violations of fisheries laws,
44 whether the violations occurred in North Carolina or another jurisdiction, the license

1 fees shall not be refunded and shall be applied to the costs of processing the
2 application.

3 (e) Fees. -- The annual SCFL fee for a North Carolina resident shall be two
4 hundred dollars (\$200.00). The annual SCFL fee for a person who is not a resident
5 of North Carolina shall be two thousand dollars (\$2,000) or the amount charged to a
6 North Carolina resident in the nonresident's state, whichever is lesser.

7 (f) Assignment. -- The holder of a SCFL may assign the SCFL to any individual,
8 provided that a SCFL or RSCFL issued to the individual is not suspended or
9 revoked. If the SCFL is endorsed for one or more vessels, each vessel endorsement
10 may be assigned, independently of the SCFL, to another holder of a SCFL. An
11 assignment of a SCFL vessel endorsement shall be valid only for use by a holder or
12 assignee of a SCFL in the operation of the vessel for which the SCFL is endorsed.
13 The assignment shall be in writing on a form provided by the Division and shall
14 include the name of the licensee, the license number, any endorsements, the
15 assignee's name and mailing address, and the duration of the assignment. A
16 notarized copy of the assignment shall be filed with the Division. The assignee shall
17 carry the assignment on the assignee's person and have the assignment available for
18 inspection at all times while using the vessel. The assignment may be revoked by: (i)
19 written notification by the assignor that the assignment has been terminated; or (ii) a
20 determination by the Division that the assignee is operating in violation of the terms
21 and conditions applicable to the assignment.

22 (g) Transfer. -- A SCFL may be transferred:

23 (1) By the license holder to a member of the license holder's
24 immediate family.

25 (2) By the State to the estate of the license holder upon the death of
26 the license holder.

27 (3) By a surviving family member to whom a license was transferred
28 pursuant to subdivision (2) of this subsection to a third-party
29 purchaser of the license holder's fishing vessel upon the death of
30 the license holder.

31 (4) By the license holder to a third-party purchaser of the license
32 holder's fishing vessel upon retirement of the license holder from
33 commercial fishing.

34 (5) Under any other circumstance authorized by rule of the
35 Commission.

36 (h) Identification as Commercial Fisherman. -- The receipt of a current and valid
37 SCFL, RSCFL, or shellfish license issued by the Division shall serve as proper
38 identification of the licensee as a commercial fisherman.

39 (i) Record-Keeping Requirements. -- The fish dealer shall record each transaction
40 at the time and place of landing on a form provided by the Division. The transaction
41 form shall include the information on the SCFL, RSCFL, or shellfish license, the
42 quantity of the fish, the identity of the fish dealer, and other information as the
43 Division deems necessary to accomplish the purposes of this Subchapter. The person
44 who records the transaction shall provide a completed copy of the transaction form to

1 the Division and to the other party of the transaction. The Division's copy of each
2 transaction form shall be transmitted to the Division by the fish dealer on or before
3 the tenth day of the month following the transaction.

4 **"§ 113-168.3. Retired Standard Commercial Fishing License.**

5 (a) SCFL Provisions Applicable. -- Except as provided in this section, the
6 provisions set forth in G.S. 113-168.2 concerning the SCFL shall apply to the RSCFL.

7 (b) Eligibility; Fee. -- Any person who is 65 years of age or older and who is
8 otherwise eligible for a SCFL under G.S. 113-168.2 may purchase a RSCFL for an
9 annual fee of one hundred dollars (\$100.00). Proof of age shall be supplied at the
10 time the application is made.

11 (c) Transfer. -- The holder of a RSCFL may transfer the RSCFL as provided in
12 G.S. 113-168.2 or, upon retirement from commercial fishing, to a third-party
13 purchaser of the RSCFL holder's fishing vessel. If the third-party purchaser is less
14 than 65 years of age, that purchaser shall pay the fee for the SCFL set forth in G.S.
15 113-168.2.

16 (d) Assignment. -- The RSCFL shall not be assignable.

17 **"§ 113-168.4. Regulations concerning the sale of fish.**

18 (a) Except as otherwise provided in this section, it is unlawful for any person who
19 takes or lands any species of fish under the authority of the Commission from coastal
20 fishing waters by any means whatever, including mariculture operations, to sell, offer
21 for sale, barter or exchange for merchandise these fish, without holding a current and
22 valid SCFL or RSCFL issued under G.S. 113-168.2 or G.S. 113-168.3, or a valid
23 shellfish license issued under G.S. 113-169.2. It is unlawful for fish dealers to buy fish
24 unless the seller presents a current and valid SCFL, RSCFL, or shellfish license at the
25 time of the transaction. Any subsequent sale of fish shall be subject to the licensing
26 requirements of fish dealers under G.S. 113-169.3.

27 (b) It is unlawful for any person licensed under this section to sell fish taken
28 outside the territorial waters of the State or to sell fish taken from coastal fishing
29 waters except to:

30 (1) Fish dealers licensed under G.S. 113-169.3; or

31 (2) The public, if the seller is also licensed as a fish dealer under G.S.
32 113-169.3.

33 (c) A person who organizes a nonprofit recreational fishing tournament may sell
34 fish taken in connection with the tournament pursuant to a recreational fishing
35 tournament license to sell fish. A person who organizes a nonprofit recreational
36 fishing tournament may obtain a recreational fishing tournament license to sell fish
37 upon application to the Division and payment of a fee of one hundred dollars
38 (\$100.00). A recreational fishing tournament is an organized fishing competition
39 occurring within a specified time period not to exceed one week and that is not a
40 commercial fishing operation. Proceeds derived from the sale of fish may be used
41 only for charitable purposes.

42 **"§ 113-168.5. License endorsements for Standard Commercial Fishing License and**
43 **Retired Standard Commercial Fishing License.**

1 (a) A SCFL or RSCFL may be endorsed to authorize the use of a vessel in a
2 commercial fishing operation.

3 (b) Vessel Endorsements. --

4 (1) As used in this subsection, a North Carolina vessel is a vessel that
5 has its primary situs in the State. A vessel has its primary situs in
6 the State if:

7 a. A certificate of number has been issued for the vessel under
8 Article 1 of Chapter 75A of the General Statutes;

9 b. A certificate of title has been issued for the vessel under
10 Article 4 of Chapter 75A of the General Statutes; or

11 c. A certification of documentation has been issued for the
12 vessel that lists a home port in the State under 42 U.S.C. §
13 12101, et seq., as amended.

14 (2) It is unlawful to use a vessel in a commercial fishing operation in
15 the coastal fishing waters of the State without a vessel endorsement
16 of the license required under this Article for that commercial
17 fishing operation. It is unlawful to use a North Carolina vessel to
18 land or sell fish in the State that are taken during a commercial
19 fishing operation outside the coastal fishing waters of the State
20 without a vessel endorsement of the license required under this
21 Article for that commercial fishing operation. No endorsement is
22 required, however, for a vessel of any length that does not have a
23 motor if the vessel is used only in connection with another vessel
24 for which the required license has been properly endorsed.

25 (3) The fee for a vessel endorsement shall be determined by the length
26 of the vessel and shall be in addition to the fee for a SCFL,
27 RSCFL, or shellfish license. The length of a vessel shall be
28 determined by measuring the distance between the ends of the
29 vessel along the deck and through the cabin, excluding the sheer.
30 The fee for a vessel endorsement is:

31 a. One dollar (\$1.00) per foot for a vessel not over 18 feet in
32 length.

33 b. One dollar and fifty cents (\$1.50) per foot for a vessel over
34 18 feet but not over 38 feet in length.

35 c. Three dollars (\$3.00) per foot for a vessel over 38 feet but
36 not over 50 feet in length.

37 d. Six dollars (\$6.00) per foot for a vessel over 50 feet in
38 length.

39 (4) A vessel endorsement may be assigned as provided in G.S.
40 113-168.2(f).

41 (5) When the owner of a vessel for which a SCFL, RSCFL, or shellfish
42 license has been endorsed transfers ownership of the vessel to a
43 holder of a SCFL, RSCFL, or shellfish license, the vessel
44 endorsement may be transferred from the former owner's SCFL,

1 RSCFL, or shellfish license to the new owner's SCFL, RSCFL, or
2 shellfish license upon the request of the new owner. The new
3 owner of the vessel shall notify the Division of the change in
4 ownership and request that the vessel endorsement be transferred
5 within 30 days of the date on which the transfer of ownership
6 occurred. The notification of a change in the ownership of a
7 vessel and request that the vessel endorsement be transferred shall
8 be made on a form provided by the Division and shall be
9 accompanied by satisfactory proof of the transfer of vessel
10 ownership. Transfer of vessel ownership may be proven by a
11 notarized copy of: (i) the bill of sale; (ii) a temporary vessel
12 registration; or (iii) a vessel documentation transfer.

13 (c) Menhaden Endorsements. -- Except as provided in G.S. 113-169, it is unlawful
14 to use a vessel to take menhaden by purse seine in the coastal fishing waters of the
15 State, to land menhaden in the State, or to sell menhaden from a vessel in the State
16 without obtaining a menhaden endorsement of a SCFL or RSCFL. The fee for a
17 menhaden endorsement shall be two dollars (\$2.00) per ton, based on gross tonnage
18 as determined by the custom house measurement for the mother ship. The
19 menhaden endorsement shall be required for the mother ship but no separate
20 endorsement shall be required for a purse boat carrying a purse seine. The
21 application for a menhaden endorsement must state the name of the person in
22 command of the vessel. Upon a change in command of a menhaden vessel, the
23 owner must notify the Division in writing within 30 days.

24 (d) Shellfish Endorsement for North Carolina Residents. -- The Division shall
25 issue a shellfish endorsement of a SCFL or RSCFL to a North Carolina resident at
26 no charge.

27 **"§ 113-169. Menhaden license for nonresidents not eligible for a SCFL.**

28 A person who is not a resident of North Carolina, who is not eligible for a SCFL
29 under this Article, and who only seeks to engage in menhaden fishing is eligible to
30 purchase a menhaden license for nonresidents. The fee for the menhaden license for
31 nonresidents shall be two dollars (\$2.00) per ton, gross tonnage, customhouse
32 measurements for the mother ship. The menhaden license for nonresidents shall be
33 required for the mother ship to take, land, or sell menhaden in North Carolina taken
34 by purse seine. No separate endorsement shall be required for a purse boat carrying
35 a purse seine. The application for a menhaden license for nonresidents must state the
36 name of the person in command of the vessel. Upon change in command of a
37 menhaden vessel, the owner must notify the Division within 30 days.

38 **"§ 113-169.1. Other commercial licenses and permits authorized by the Commission.**

39 The Commission may adopt rules to establish licenses or permits as set forth in this
40 section. Licenses or permits shall be issued upon the payment of fees as prescribed
41 by the Commission in its duly adopted rules at a rate to be established by the
42 Commission. The fee rate for licenses or permits authorized under this section shall,
43 at a minimum, be adequate to compensate the Division for the actual and
44 administrative cost associated with the conservation and management of the fishery.

1 (1) Crew licenses. -- The Commission may adopt rules to establish an
2 individual crew license for persons working aboard a vessel
3 engaged in a commercial fishing operation at a rate not to exceed
4 one hundred dollars (\$100.00) per license.

5 (2) Permits. -- The Commission may adopt rules to establish permits
6 for gear, equipment, and specialized activities at a rate not to
7 exceed fifty dollars (\$50.00) per permit. The Commission may
8 require permits for commercial fishing operations that do not
9 involve the use of a vessel. The Commission may require that a
10 person obtain a special permit prior to transplanting oysters or
11 clams.

12 **"§ 113-169.2. Shellfish license for North Carolina residents without a SCFL.**

13 (a) License or Endorsement Necessary to Take or Sell Shellfish. -- It is unlawful
14 for an individual to take shellfish from the public grounds of the State by mechanical
15 means or for commercial use by any means without holding either a shellfish license
16 or a shellfish endorsement of a SCFL or RSCFL. A North Carolina resident who
17 seeks only to take and sell shellfish shall be eligible to purchase a shellfish license
18 without holding a SCFL or RSCFL. The license includes the privilege to sell shellfish
19 to a licensed fish dealer.

20 (b) Purchase; Renewal. -- A person may purchase a shellfish license at any office
21 of the Division. The shellfish license and endorsements may be renewed by mail by
22 forwarding a completed application, including applicable fees, to the Division's
23 Morehead City Office. Any person who is issued a shellfish license is eligible to
24 renew the shellfish license and any endorsements if the shellfish license has not been
25 suspended or revoked.

26 (c) Fees. -- Shellfish licenses shall be issued annually upon payment of a fee of
27 twenty-five dollars (\$25.00) upon proof that the license applicant is a North Carolina
28 resident: Provided, that persons under 16 years of age are exempt from the license
29 requirements of this section if accompanied by a parent, grandparent, or guardian
30 who is in compliance with the requirements of this section or if in possession of a
31 parent's, grandparent's, or guardian's shellfish license.

32 (d) License Available for Inspection. -- It is unlawful for any individual to take
33 shellfish for commercial use from the public grounds of the State without having
34 ready at hand for inspection a current and valid shellfish license issued to the licensee
35 personally and bearing the licensee's correct name and address. It is unlawful for any
36 individual taking or possessing freshly taken shellfish to refuse to exhibit the
37 individual's license upon the request of an officer authorized to enforce the fishing
38 laws.

39 (e) Vessel Endorsement Required. -- A license holder under this section shall be
40 required to purchase a vessel endorsement under G.S. 113-168.5 if a vessel is used in
41 the take or sale of shellfish. A vessel endorsement of a shellfish license does not
42 authorize the use of the vessel for any commercial fishing operation other than the
43 taking or selling of shellfish.

1 (f) Name or Address Change. -- In the event of a change in name or address or
2 upon receipt of an erroneous shellfish license, the licensee shall, within 30 days, apply
3 for a replacement shellfish license bearing the correct name and address. Upon a
4 showing by the individual that the name or address change occurred within the past
5 30 days, the trial court or prosecutor shall dismiss any charges brought pursuant to
6 this subsection.

7 (g) Transfer Prohibited. -- It is unlawful for an individual issued a shellfish license
8 to transfer or offer to transfer the license, either temporarily or permanently, to
9 another. It is unlawful for an individual to secure or attempt to secure a shellfish
10 license from a source not authorized by the Commission.

11 (h) Limitation on Taking Shellfish Without a License. --

12 (1) A person who is not required to obtain a shellfish license under
13 subsection (a) of this section shall not take more than:

14 a. One bushel of oysters per day.

15 b. One-half bushel of scallops per day.

16 c. One hundred clams per day.

17 (2) Two or more persons who are not required to obtain a shellfish
18 license under subsection (a) of this section and who are using a
19 vessel to take shellfish shall not take more than:

20 a. Two bushels of oysters per day.

21 b. One bushel of scallops per day.

22 c. Two hundred clams per day.

23 **§ 113-169.3. Licenses for fish dealers.**

24 (a) Eligibility. -- A fish dealer license shall be issued to a North Carolina resident
25 upon receipt of a proper application in the Morehead City Office of the Division
26 together with all license fees including the total number of dealer categories set forth
27 in this section. The license shall be issued in the name of the applicant and shall
28 include all dealer categories on the license.

29 (b) Application for License. -- Applications shall not be accepted from persons
30 ineligible to hold a license issued by the Division, including any applicant whose
31 license is suspended or revoked on the date of the application. The applicant shall be
32 provided with a copy of the application marked received. The copy shall serve as the
33 fish dealer's license until the license issued by the Division is received, or the
34 Division determines that the applicant is ineligible to hold a license. Where an
35 applicant does not have an established location for transacting the fisheries business
36 within the State, the license application shall be denied unless the applicant satisfies
37 the Secretary that his residence, or some other office or address within the State, is a
38 suitable substitute for an established location and that records kept in connection
39 with licensing, sale, and purchase requirements will be available for inspection when
40 necessary. Fish dealers' licenses are issued on a fiscal year basis upon payment of a
41 fee as set forth herein upon proof, satisfactory to the Secretary, that the license
42 applicant is a North Carolina resident.

43 (c) License Requirement. -- Except as otherwise provided in this section, it is
44 unlawful for any person not licensed pursuant to this article:

1 (1) To buy fish for resale from any person involved in a commercial
2 fishing operation that takes any species of fish from coastal fishing
3 waters. For purposes of this subdivision, a retailer who purchases
4 fish from a fish dealer shall not be liable if the fish dealer has not
5 complied with the licensing requirements of this section;

6 (2) To sell fish to the public; or

7 (3) To sell to the public any species of fish under the authority of the
8 Commission taken from coastal fishing waters.

9 Any person subject to the licensing requirements of this section is a fish dealer.
10 Any person subject to the licensing requirements of this section shall obtain a
11 separate license for each physical location conducting activities required to be
12 licensed under this section.

13 (d) Exceptions to License Requirements. -- The Commission may adopt rules to
14 implement this subsection including rules to clarify the status of the listed classes of
15 exempted persons, require submission of statistical data, and require that records be
16 kept in order to establish compliance with this section. Any person not licensed
17 pursuant to this section is exempt from the licensing requirements of this section if all
18 fish handled within any particular licensing category meet one or more of the
19 following requirements:

20 (1) The fish are sold by persons whose dealings in fish are primarily
21 educational, scientific, or official, and who have been issued a
22 permit by the Division that authorizes the educational, scientific, or
23 official agency to sell fish taken or processed in connection with
24 research or demonstration projects;

25 (2) The fish are sold by individual employees of fish dealers when
26 transacting the business of their duly licensed employer;

27 (3) The fish are shipped to a person by a dealer from without the
28 State;

29 (4) The fish are of a kind the sale of which is regulated exclusively by
30 the Wildlife Resources Commission; or

31 (5) The fish are purchased from a licensed dealer.

32 (e) Application Fee for New Fish Dealers. -- An applicant for a new fish dealer
33 license shall pay a nonrefundable application fee of fifty dollars (\$50.00) in addition
34 to the license category fees set forth in this section.

35 (f) License Category Fees. -- Every fish dealer subject to licensing requirements
36 shall secure an annual license at each established location for each of the following
37 activities transacted there, upon payment of the fee set out:

38 (1) Dealing in oysters: \$50.00;

39 (2) Dealing in scallops: \$50.00;

40 (3) Dealing in clams: \$50.00;

41 (4) Dealing in hard or soft crabs: \$50.00;

42 (5) Dealing in shrimp, including bait: \$50.00;

43 (6) Dealing in finfish, including bait: \$50.00;

1 (7) Operating menhaden or other fish-dehydrating or oil-extracting
2 processing plants: \$50.00; or

3 (8) Consolidated license (all categories): \$300.00.

4 Any person subject to fish dealer licensing requirements who deals in fish not
5 included in the above categories shall secure a finfish dealer license. The Commission
6 may adopt rules implementing and clarifying the dealer categories of this subsection.
7 Bait operations shall be licensed under either the finfish or shrimp dealer license
8 categories.

9 (g) License Format. -- The format of the license shall include the name of the
10 licensee, date of birth, name and physical address of each business location,
11 expiration date of the license, and any other information the Division deems
12 necessary to accomplish the purposes of this Subchapter.

13 (h) Application for Replacement License. -- A replacement license shall only be
14 obtained from an office of the Division. The Division shall not accept an application
15 for a replacement license unless the Division determines that the applicant's current
16 license has not been suspended or revoked. A copy of an application duly filed with
17 the Division shall serve as the license until the replacement license has been received.

18 (i) Purchase and Sale of Fish. -- It is unlawful for a fish dealer to buy fish unless
19 the seller possesses a current and valid SCFL, RSCFL, shellfish license, menhaden
20 license for nonresidents, or a special fisheries sale permit issued under G.S.
21 113-168.4(c), and the dealer records the transaction consistent with the
22 record-keeping requirements of G.S. 113-168.2(i). It is unlawful for any person to
23 purchase, possess, or sell fish taken from coastal fishing waters in violation of this
24 Subchapter or the rules adopted by the Commission implementing this Subchapter.

25 (j) Transfer Prohibited. -- Any fish dealer license issued under this section is
26 nontransferable. It is unlawful to use a fish dealer license issued to another person in
27 the sale or attempted sale of fish or for a licensee to lend or transfer a fish dealer
28 license for the purpose of circumventing the requirements of this section.

29 **"§ 113-169.4. Licensing of ocean fishing piers: fees.**

30 (a) Every manager of an ocean fishing pier within the coastal fishing waters who
31 charges the public a fee to fish in any manner from the pier shall secure a current
32 and valid pier license from the Division. An application for a pier license shall
33 disclose the names of all parties involved in the pier operations, including the owner
34 of the property, owner of the pier if different, and all leasehold or other corporate
35 arrangements, and all persons with a substantial financial interest in the pier.

36 (b) Within 30 days following a change of ownership of a pier, or a change as to
37 the manager, the manager or new manager shall secure a replacement pier license
38 from the Division. The replacement license is issued without charge.

39 (c) Pier licenses are issued upon payment of fifty cents (50¢) per linear foot, to
40 the nearest foot, that the pier extends into coastal fishing waters beyond the mean
41 high waterline. The length of the pier shall be measured to include all extensions of
42 the pier.

43 (d) The manager who secures the pier license shall be the individual with the duty
44 of executive-level supervision of pier operations.

1 **"§ 113-169.5. Land or sell license; vessels fishing beyond territorial waters.**

2 (a) Persons aboard vessels not having their primary situs in the State that are
3 carrying a cargo of fish taken outside the waters of the State may land or sell their
4 catch in the State by purchasing a land or sell license as set forth in this section with
5 respect to the vessel in question. The Commission may by rule modify the land or sell
6 licensing procedure in order to devise an efficient and convenient procedure for
7 licensing out-of-state vessels to only land, or after landing to permit sale of cargo.

8 (b) The fee for a land or sell license for a vessel not having its primary situs in
9 North Carolina is two hundred dollars (\$200.00), or an amount equal to the
10 nonresident fee charged by the nonresident's state, whichever is greater. Persons
11 aboard vessels having a primary situs in a jurisdiction that would allow North
12 Carolina vessels without restriction to land or sell their catch, taken outside the
13 jurisdiction, may land or sell their catch in the State without complying with this
14 section if the persons are in possession of a valid license from their state of residence.

15 **"§ 113-170. Exportation and importation of fish and equipment.**

16 The Commission may adopt rules governing the importation and exportation of
17 fish, and equipment that may be used in taking or processing fish, as necessary to
18 enhance the conservation of marine and estuarine resources of the State. These rules
19 may regulate, license, prohibit, or restrict importation into the State and exportation
20 from the State of any and all species of fish that are native to coastal fishing waters or
21 may thrive if introduced into these waters.

22 **"§ 113-170.1. Nonresidents reciprocal agreements.**

23 Persons who are not North Carolina residents are not entitled to obtain licenses
24 under the provisions of this Article except as provided in this section. Residents of
25 jurisdictions that sell commercial fishing licenses to North Carolina residents are
26 entitled to North Carolina commercial fishing licenses under the provisions of G.S.
27 113-168.2. Licenses may be restricted in terms of area, gear, and fishery by the
28 Commission so that the nonresidents are licensed to engage in North Carolina
29 fisheries on the same or similar terms that North Carolina residents can be licensed to
30 engage in the fisheries of other jurisdictions. The Secretary may enter into reciprocal
31 agreements with other jurisdictions as necessary to allow nonresidents to obtain
32 commercial fishing licenses in the State subject to the foregoing provisions.

33 **"§ 113-170.2. Fraud or deception as to licenses, permits, or records.**

34 (a) It is unlawful for any person to give any false information or willfully to omit
35 giving required information to the Division or any license agent when the information
36 is material to the securing of any license or permit under this Article. It is unlawful
37 to falsify, fraudulently alter, or counterfeit any license, permit, identification, or
38 record to which this Article applies or otherwise practice any fraud or deception
39 designed to evade the provisions of this Article or reasonable administrative
40 directives made under the authority of this Article.

41 (b) A violation of this section is punishable by a fine of not less than one hundred
42 dollars (\$100.00) nor more than five hundred dollars (\$500.00).

43 **"§ 113-170.3. Record-keeping requirements.**

1 (a) The Commission may require all licensees under this Article to keep and to
2 exhibit upon the request of an authorized agent of the Department records and
3 accounts as may be necessary to the equitable and efficient administration and
4 enforcement of this Article. In addition, licensees may be required to keep additional
5 information of a statistical nature or relating to location of catch as may be needed to
6 determine conservation policy. Records and accounts required to be kept must be
7 preserved for inspection for not less than three years.

8 (b) It is unlawful for any licensee to refuse or to neglect without justifiable excuse
9 to keep records and accounts as may be reasonably required. The Department may
10 distribute forms to licensees to aid in securing compliance with its requirements, or it
11 may inform licensees of requirements in other effective ways such as distributing
12 memoranda and sending agents of the Department to consult with licensees who have
13 been remiss. Detailed forms or descriptions of records, accounts, collection and
14 inspection procedures, and the like that reasonably implement the objectives of this
15 Article need not be embodied in rules of the Commission in order to be validly
16 required.

17 (c) The following records collected and compiled by the Department shall not be
18 considered public records within the meaning of Chapter 132 of the General Statutes,
19 but shall be confidential and shall be used only for the equitable and efficient
20 administration and enforcement of this Article or for determining conservation
21 policy, and shall not be disclosed except when required by the order of a court of
22 competent jurisdiction; all records, accounts, and reports that licensees are required
23 by the Commission to make, keep, and exhibit pursuant to the provisions of this
24 section, and all records, accounts, and memoranda compiled by the Department from
25 records, accounts, and reports of licensees and from investigations and inspections,
26 containing data and information concerning the business and operations of licensees
27 reflecting their assets, liabilities, inventories, revenues, and profits; the number,
28 capacity, capability, and type of fishing vessels owned and operated; the type and
29 quantity of fishing gear used; the catch of fish or other seafood by species in numbers,
30 size, weight, quality, and value; the areas in which fishing was engaged in; the
31 location of catch; the time of fishing, number of hauls, and the disposition of the fish
32 and other seafood. The Department may compile statistical information in any
33 aggregate or summary form that does not directly or indirectly disclose the identity of
34 any licensee who is a source of the information, and any compilation of statistical
35 information by the Department shall be a public record open to inspection and
36 examination by any person, and may be disseminated to the public by the
37 Department.

38 "§ 113-170.4. Rules as to possession, transportation, and disposition of fisheries
39 resources.

40 The Commission may adopt rules governing possession, transportation, and
41 disposition of fisheries resources by all persons, including those not subject to fish
42 dealer licensing requirements, in order that inspectors may adequately distinguish
43 regulated coastal fisheries resources from those not so regulated and enforce the
44 provisions of this Article equitably and efficiently. These rules may include

1 requirements as to giving notice, filing declarations, securing permits, marking
2 packages, and the like.

3 "§ 113-170.5. Violations with respect to coastal fisheries resources.

4 It is unlawful to take, possess, transport, process, sell, buy, or in any way deal in
5 coastal fisheries resources without conforming with the provisions of this Article or of
6 rules adopted under the authority of this Article.

7 "§ 113-171. Suspension, revocation, and reissuance of licenses.

8 (a) Upon receipt of reliable notice that a person licensed under this Article has
9 had imposed against the person a conviction of a criminal offense within the
10 jurisdiction of the Department under the provisions of this Subchapter or of rules of
11 the Commission adopted under the authority of this Subchapter, the Secretary must
12 suspend or revoke all licenses held by the person in accordance with the terms of this
13 section. Reliable notice includes information furnished the Secretary in prosecution
14 or other reports from inspectors. As used in this section, a conviction includes a plea
15 of guilty or nolo contendere, any other termination of a criminal prosecution
16 unfavorably to the defendant after jeopardy has attached, or any substitute for
17 criminal prosecution whereby the defendant expressly or impliedly confesses the
18 defendant's guilt. In particular, procedures whereby bond forfeitures are accepted in
19 lieu of proceeding to trial and cases indefinitely continued upon arrest of judgment or
20 prayer for judgment continued are deemed convictions. The Secretary may act to
21 suspend or revoke licenses upon the basis of any conviction in which:

22 (1) No notice of appeal has been given;

23 (2) The time for appeal has expired without an appeal having been
24 perfected; or

25 (3) The conviction is sustained on appeal. Where there is a new trial,
26 finality of any subsequent conviction will be determined in the
27 manner set out above.

28 (b) The Secretary must initiate an administrative procedure designed to give the
29 Secretary systematic notice of all convictions of criminal offenses by licensees
30 covered by subsection (a) of this section above and keep a file of all convictions
31 reported. Upon receipt of notice of conviction, the Secretary must determine whether
32 it is a first, a second, a third, or a fourth or subsequent conviction of some offense
33 covered by subsection (a). In the case of second convictions, the Secretary must
34 suspend all licenses issued to the licensee for a period of 10 days. In the case of third
35 convictions, the Secretary must suspend all licenses issued to the licensee for a period
36 of 30 days. In the case of fourth or subsequent convictions, the Secretary must
37 revoke all licenses issued to the licensee. Where several convictions result from a
38 single transaction or occurrence, they are to be treated as a single conviction so far as
39 suspension or revocation of the licenses of any licensee is concerned. Anyone
40 convicted of taking or of knowingly possessing, transporting, buying, selling, or
41 offering to buy or sell oysters or clams from areas closed because of suspected
42 pollution will be deemed by the Secretary to have been convicted of two separate
43 offenses on different occasions for license suspension or revocation purposes.

1 (c) Where a license has been suspended or revoked, the former licensee is not
2 eligible to apply for reissuance of license or for any additional license authorized in
3 this Article during the suspension or revocation period. Licenses must be returned to
4 the licensee by the Secretary or the Secretary's agents at the end of a period of
5 suspension. Where there has been a revocation, application for reissuance of license
6 or for an additional license may not be made until six months following the date of
7 revocation. In such case of revocation, the eligible former licensee must satisfy the
8 Secretary that the licensee will strive in the future to conduct the operations for
9 which the license is sought in accord with all applicable laws and rules. Upon the
10 application of an eligible former licensee after revocation, the Secretary, in the
11 Secretary's discretion, may issue one license sought but not another, as deemed
12 necessary to prevent the hazard of recurring violations of the law.

13 (d) Upon receiving reliable information of a licensee's conviction of a second or
14 subsequent criminal offense covered by subsection (a) of this section, the Secretary
15 shall promptly cause the licensee to be personally served with written notice of
16 suspension or revocation, as the case may be. The written notice may be served upon
17 any responsible individual affiliated with the corporation, partnership, or association
18 where the licensee is not an individual. The notice of suspension or revocation may
19 be served by an inspector or other agent of the Department, must state the ground
20 upon which it is based, and takes effect immediately upon personal service. The
21 agent of the Secretary making service shall then or subsequently, as may be feasible
22 under the circumstances, collect all license certificates and plates and other forms or
23 records relating to the license as directed by the Secretary. It is unlawful for any
24 licensee willfully to evade the personal service prescribed in this subsection.

25 (e) A licensee served with a notice of suspension or revocation may obtain an
26 administrative review of the suspension or revocation by filing a petition for a
27 contested case under G.S. 150B-23 within 20 days after receiving the notice. The
28 only issue in the hearing shall be whether the licensee was convicted of a criminal
29 offense for which a license must be suspended or revoked. A license remains
30 suspended or revoked pending the final decision by the Secretary.

31 (f) If the Secretary refuses to reissue the license or issue an additional license to
32 an applicant whose license was revoked, the applicant may contest the decision by
33 filing a petition for a contested case under G.S. 150B-23 within 20 days after the
34 Secretary makes the decision. The Commission shall make the final agency decision
35 in a contested case under this subsection. An applicant whose license is denied
36 under this subsection may not reapply for the same license for at least six months.

37 (g) The Commission may adopt rules to provide for the disclosure of the identity
38 of any individual or individuals in responsible positions of control respecting
39 operations of any licensee that is not an individual. For the purposes of this section,
40 individuals in responsible positions of control are deemed to be individual licensees
41 and subject to suspension and revocation requirements in regard to any applications
42 for license they may make -- either as individuals or as persons in responsible
43 positions of control in any corporation, partnership, or association. In the case of

1 individual licensees, the individual applying for a license or licensed under this
2 Article must be the real party in interest.

3 (h) In determining whether a conviction is a second or subsequent offense under
4 the provisions of this section, the Secretary may not consider convictions for:

5 (1) Offenses that occurred three years prior to the effective date of this
6 Article; or

7 (2) Offenses that occurred more than three years prior to the time of
8 the latest offense the conviction for which is in issue as a
9 subsequent conviction.

10 "§ 113-171.1. Use of spotter planes in commercial fishing operations regulated.

11 (a) Spotter Plane Defined. -- A 'spotter plane' is an aircraft used for aerial
12 identification of the location of fish in coastal fishing waters so that a vessel may be
13 directed to the fish.

14 (b) License. -- Before an aircraft is used as a spotter plane in a commercial fishing
15 operation, the owner or operator of the aircraft must obtain a license for the aircraft
16 from the Division. The fee for a license for a spotter plane is one hundred dollars
17 (\$100.00). An applicant for a license for a spotter plane shall include in the
18 application the identity, either by boat or by company, of the specific commercial
19 fishing operations in which the spotter plane will be used during the license year. If,
20 during the course of the license year, the aircraft is used as a spotter plane in a
21 commercial fishing operation that is not identified in the original license application,
22 the owner or operator of the aircraft shall amend the license application to add the
23 identity of the additional commercial fishing operation.

24 (c) Unlawful Activity. -- It shall be unlawful to:

25 (1) Use a spotter plane directed at food fish, except in connection with
26 a purse seine operation authorized by a rule of the Commission.

27 (2) Use or permit the use of an unlicensed spotter plane or a licensed
28 spotter plane whose license application does not identify the
29 specific commercial fishing operation involved.

30 (3) Participate knowingly in a commercial fishing operation that uses
31 an unlicensed spotter plane or a licensed spotter plane whose
32 license application does not identify the specific commercial fishing
33 operation involved.

34 (d) Violation a Misdemeanor. -- A violation of subsection (c) of this section is a
35 Class 1 misdemeanor.

36 "§ 113-172. License agents.

37 (a) The Secretary shall designate license agents for the Department. At least one
38 license agent shall be designated for each county that contains or borders on coastal
39 fishing waters. The Secretary may designate additional license agents in any county if
40 the Secretary determines that additional agents are needed to provide efficient service
41 to the public. The Division and license agents designated by the Secretary under this
42 section shall issue all licenses authorized under this Article in accordance with this
43 Article and the rules of the Commission. The Secretary shall require license agents
44 to enter into a contract that provides for their duties and compensation, post a bond,

1 and submit to reasonable inspections and audits. If a license agent violates any
2 provision of this Article, the rules of the Commission, or the terms of the contract,
3 the Secretary may initiate proceedings for the forfeiture of the license agent's bond
4 and may summarily suspend, revoke, or refuse to renew a designation as a license
5 agent and may impound or require the return of all licenses, moneys, record books,
6 reports, license forms and other documents, ledgers, and materials pertinent or
7 apparently pertinent to the license agency. The Secretary shall report evidence or
8 misuse of State property, including license fees, by a license agent to the State Bureau
9 of Investigation as provided by G.S. 114-15.1.

10 (b) License agents shall be compensated by adding a surcharge of one dollar
11 (\$1.00) to each license sold and retaining the surcharge. If more than one license is
12 listed on a consolidated license form, the license agent shall be compensated as if a
13 single license were sold. It is unlawful for a license agent to add more than the
14 surcharge authorized by this section to the fee for each license sold.

15 "§ 113-173. Recreational Commercial Gear License.

16 (a) License Required. -- Except as provided in subsection (j) of this section, it is
17 unlawful for any person to take or attempt to take fish for recreational purposes by
18 means of commercial fishing equipment or gear in coastal fishing waters without
19 holding a RCGL. As used in this section, fish are taken for recreational purposes if
20 the fish are not taken for the purpose of sale. The RCGL entitles the licensee to use
21 authorized commercial gear to take fish for personal use subject to recreational
22 quotas or limits.

23 (b) Sale of Fish Prohibited. -- It is unlawful for the holder of a RCGL or for a
24 person who is exempt under subsection (k) of this section to sell fish taken under the
25 RCGL or pursuant to the exemption.

26 (c) Authorized Commercial Gear. -- The Commission shall adopt rules
27 authorizing the use of a limited amount of commercial fishing equipment or gear for
28 recreational fishing under a RCGL. The Commission may authorize the limited use
29 of commercial gear on a uniform basis in all coastal fishing waters or may vary the
30 limited use of commercial gear within specified areas of the coastal fishing waters.
31 The Commission shall periodically evaluate and revise the authorized use of
32 commercial gear for recreational fishing. Authorized commercial gear shall be
33 identified by visible colored tags or other means specified by the Commission in
34 order to distinguish between commercial gear used in a commercial operation and
35 commercial gear used for recreational purposes.

36 (d) Purchase; Renewal. -- A RCGL may be purchased at designated offices of the
37 Division and from a license agent authorized under G.S. 113-172. A RCGL may be
38 renewed by mail.

39 (e) Replacement RCGL. -- Upon receipt of a proper application and a two-dollar
40 (\$2.00) replacement fee, the Division may issue a duplicate RCGL to replace an
41 unexpired RCGL that has been lost or destroyed.

42 (f) Duration; Fees. -- The RCGL shall be valid for a one-year period from the
43 date of purchase. The fee for a RCGL for a North Carolina resident shall be

1 thirty-five dollars (\$35.00). The fee for a RCGL for an individual who is not a North
2 Carolina resident shall be two hundred fifty dollars (\$250.00).

3 (g) RCGL Available for Inspection. -- It is unlawful for any person to engage in
4 recreational fishing by means of restricted commercial gear in the State without
5 having ready at hand for inspection a valid RCGL. A holder of a RCGL shall not
6 refuse to exhibit the RCGL upon the request of an inspector or any other law
7 enforcement officer authorized to enforce federal or State laws, regulations, or rules
8 relating to marine fisheries.

9 (h) Assignment and Transfer Prohibited. -- A RCGL is not transferable. It is
10 unlawful to buy, sell, lend, borrow, assign, or otherwise transfer a RCGL, or to
11 attempt to buy, sell, lend, borrow, assign, or otherwise transfer a RCGL.

12 (i) Reporting Requirements. -- The holder of a RCGL shall comply with the
13 biological data sampling and survey programs of the Commission and the Division.

14 (j) Exemptions. --

15 (1) A person who is under 16 years of age may take fish for
16 recreational purposes by means of authorized commercial gear
17 without holding a RCGL if the person is accompanied by a parent,
18 grandparent, or guardian who holds a valid RCGL or if the person
19 has in the person's possession a valid RCGL issued to the person's
20 parent, grandparent, or guardian.

21 (2) A person may take crabs for recreational purposes by means of one
22 or more crab pots attached to the shore along privately owned land
23 or to a privately owned pier without holding a RCGL provided
24 that the crab pots are attached with the permission of the owner of
25 the land or pier.

26 (3) A person who is on a vessel may take fish for recreational purposes
27 by means of authorized commercial gear without holding a RCGL
28 if there is another person on the vessel who holds a valid RCGL.
29 This exemption does not authorize the use of commercial gear in
30 excess of that authorized for use by the person who holds the valid
31 RCGL or, if more than one person on the vessel holds a RCGL, in
32 excess of that authorized for use by those persons."

33 Section 5.2. (a) Definitions; Citations. The definitions set out in G.S.
34 113-168 apply to this section. A citation to a provision of the General Statutes in this
35 section means that provision of the General Statutes as enacted by this act.

36 (b) Transitional Provisions. In order to effect an orderly implementation
37 of this act and the transition from the moratorium imposed by subsection (a) of
38 Section 3 of Chapter 576 of the 1993 Session Laws, Regular Session 1994, as
39 amended by Section 3 of Chapter 675 of the 1993 Session Laws, Regular Session
40 1994; subsection (a) of Section 26.5 of Chapter 507 of the 1995 Session Laws; Section
41 7 of Chapter 256 of the 1997 Session Laws; and subsection (a) of Section 6.1 of this
42 act, to the licensing provision of Article 14A of Chapter 113 of the General Statutes,
43 the provisions of this section shall apply to the issuance of licenses under Article 14A

1 of Chapter 113 of the General Statutes until all Fishery Management Plans have been
2 adopted as required by G.S. 113-182.1 and G.S. 143B-289.22.

3 (c) Temporary Cap. There is hereby imposed a temporary cap on the
4 total number of SCFLs that the Division may issue. The temporary cap equals the
5 total number of endorsements to sell fish that establish eligibility for a SCFL under
6 subsection (g) of this section plus 500 additional SCFLs, authorized by subsection (d)
7 of this section.

8 (d) 1999-2000 License Year. For the 1999-2000 license year, the
9 Commission is authorized to issue SCFLs as provided in subsection (g) of this section
10 plus an additional 500 SCFLs using the procedure set out in subsection (h) of this
11 section.

12 (e) Subsequent License Years. For license years beginning with the
13 2000-01 license year, the Commission is authorized to issue SCFLs from the pool of
14 available SCFLs as provided in subsection (f) of this section using the procedure set
15 out in subsection (h) of this section.

16 (f) Adjustment of Number of SCFLs. The number of SCFLs in the pool
17 of available SCFLs in license years beginning with the 2000-01 license year is the
18 temporary cap less the number of SCFLs that are renewed. The Commission may
19 increase or decrease the number of SCFLs that are issued from the pool of available
20 SCFLs. The Commission may increase the number of SCFLs that are issued from
21 the pool of available SCFLs up to the temporary cap. The Commission may decrease
22 the number of SCFLs that are issued from the pool of available SCFLs but may not
23 refuse to renew a SCFL that is issued during the previous license year and that has
24 not been suspended or revoked. The Commission shall increase or decrease the
25 number of SCFLs that are issued to reflect its determination as to the effort that the
26 fishery can support, based on the best available scientific evidence.

27 (g) Eligibility for SCFL. Any person who holds a valid endorsement to
28 sell fish of a vessel license on 1 July 1999 is eligible to receive a SCFL. The Division
29 shall issue a SCFL to any person who is eligible under this subsection upon receipt of
30 an application and required fees. If the person held more than one endorsement to
31 sell fish, the person is eligible to receive a SCFL for each endorsement to sell
32 previously held. Eligibility to receive a SCFL under this subsection shall expire 1
33 July 2000.

34 (h) Procedure for Issuing Additional SCFLs. The Commission shall
35 determine a procedure for issuing the 500 additional SCFLs authorized by subsection
36 (d) of this section for the 1999-2000 license year and for issuing SCFLs from the pool
37 of available SCFLs authorized by subsection (e) of this section. The procedure shall
38 set a date on which the Division will begin receiving applications and a date on
39 which the determination by lot of which applicants will receive a SCFL will be made.
40 The Commission shall develop criteria for determining eligibility for a SCFL under
41 this subsection. Criteria shall include the past involvement of the applicant and the
42 applicant's family in commercial fishing; the extent to which the applicant has relied
43 on commercial fishing for the applicant's livelihood; the extent to which the applicant
44 has complied with federal and State laws, regulations, and rules relating to coastal

1 fishing and protection of the environment; and any other factors the Commission
2 determines to be relevant. The Division shall review each application for a SCFL
3 that it receives during the application period to determine whether the applicant is
4 eligible under the eligibility criteria established by the Commission. The Division
5 shall issue SCFLs under this subsection by lot. All applicants who are determined to
6 be eligible shall have an equal chance of being issued a SCFL.

7 Section 5.3. The Marine Fisheries Commission shall adopt rules
8 authorizing the use of a limited amount commercial gear for recreational fishing
9 under a Recreational Commercial Gear License, as required by G.S. 113-173, as
10 enacted by Section 5.1 of this act, on or before 1 July 1999.

11 Section 5.4. (a) G.S. 113-153.1 is recodified as G.S. 113-168.9 in Article
12 14A of Chapter 113 of the General Statutes, as enacted by Section 5.1 of this act.

13 (b) G.S. 113-168.9(e), as recodified by subsection (a) of this section, reads
14 as rewritten:

15 "(e) The owner of a vessel ~~licensed under G.S. 113-152~~ shall be eligible to
16 purchase a vessel crab license for crabs as an alternative to the purchase of individual
17 licenses under this section. A vessel crab license authorizes the owner of the vessel
18 and up to two unlicensed persons serving as crew to fish for crabs from that vessel. It
19 is unlawful for the owner of a vessel to take crabs from the coastal fishing waters of
20 North Carolina for commercial use by any means, when unlicensed persons not
21 authorized by the vessel crab license are on the vessel. The Secretary shall revoke a
22 vessel crab license issued under this subsection ~~shall be revoked when~~ if the owner of
23 the vessel or any other person using the owner's vessel is convicted of a violation
24 under this section, except for subsection (b): section, other than conviction for a
25 violation under subsection (b) of this section."

26 (c) All sections of Article 14 of Chapter 113 of the General Statutes
27 other than G.S. 113-153.1 are repealed.

28 Section 5.5. The Marine Fisheries Commission shall adopt a Fishery
29 Management Plan for the blue crab fishery in accordance with G.S. 143B-289.22, as
30 enacted by Section 2.1 of this act, and G.S. 113-182.1, as enacted by Section 3.4 of
31 this act, no later than 1 January 2000.

32 Section 5.6. Notwithstanding the provisions of G.S. 113-168.2 and G.S.
33 113-168.3, as enacted by Section 5.1 of this act, it is unlawful for any person to take
34 crabs from the coastal fishing waters of the State for commercial use without being
35 licensed under G.S. 113-168.9.

36 Section 5.7. G.S. 113-168.9, as recodified from G.S. 113-153.1 by Section
37 5.4 of this act, is repealed.

38 Section 5.8. The Revisor of Statutes shall set out Section 5.2 of this act as
39 a note to G.S. 113-168.2, as enacted by Section 5.1 of this act.

40 Section 5.9. G.S. 113-203(a)(2) reads as rewritten:

41 "(2) When the transplanting is done by a dealer in accordance with the
42 provisions of G.S. ~~113-158~~ 113-169.1(2) and implementing rules;
43 or"

44 Section 5.10. G.S. 113-154.1 reads as rewritten:

1 "§ 113-154.1. Endorsement to sell fish.

2 (a) Requirements. -- Except as otherwise provided in this section, it is unlawful for
3 any person who takes or lands any species of fish under the authority of the Marine
4 Fisheries Commission from coastal fishing waters by any means whatever, including
5 aquaculture operations, to sell, offer for sale, barter or exchange for merchandise
6 such fish, without having first procured a current and valid endorsement to sell fish.
7 It is unlawful for fish dealers to buy fish unless the seller presents a current and valid
8 vessel license with an endorsement to sell, or a separate endorsement to sell if no
9 vessel is involved, at the time of the transaction. Any subsequent sale of fish shall be
10 subject to the licensing requirements of fish dealers under G.S. 113-156.

11 (b) Fees. -- The annual fee for an endorsement to sell fish on a vessel license for a
12 resident of this State is set forth in G.S. 113-152(h). The annual fee for an
13 endorsement to sell fish when no vessel is involved for a resident of this State is
14 fifteen dollars (\$15.00) and for a nonresident of this State is one hundred dollars
15 (\$100.00) or an amount equal to the nonresident fee charged by the nonresident's
16 state, whichever is greater. The license shall be valid for the period July 1 through
17 June 30 of a given year.

18 (c) Non-Vessel Endorsement Format. -- The format of an endorsement when the
19 applicant is not seeking a vessel license shall include the name of the applicant, date
20 of birth, expiration date of the endorsement, and any other information the Division
21 deems necessary to accomplish the purposes of this Subchapter. The endorsement
22 shall be issued on a card made of hard plastic or metal capable of being used to make
23 imprints of the sale or transaction. An applicant who is applying for an endorsement
24 on a vessel license shall comply with G.S. 113-152.

25 (d) Application for Non-Vessel Endorsement. -- An application for issuance or
26 renewal of an endorsement to sell shall be filed with the Morehead City offices of the
27 Division of Marine Fisheries or license agents authorized to sell licenses under this
28 Article. An application shall be accompanied by the fee established in subsection (b)
29 of this section. Applications shall not be accepted from persons ineligible to hold a
30 license issued by the Marine Fisheries Commission, including any applicant whose
31 endorsement is suspended or revoked on the date of the application. The applicant
32 shall be provided with a copy of the application marked received. The copy shall
33 serve as the endorsement to sell, until the endorsement issued by the Division is
34 received or the Division determines that the applicant is ineligible to hold an
35 endorsement. In addition to the information required in subsection (c) of this section,
36 the applicant shall disclose on the application a valid address, and such other
37 information as the Division may require.

38 (e) Application for Replacement Non-Vessel Endorsement to Sell. -- A
39 replacement endorsement shall only be obtained from the Morehead City offices of
40 the Division of Marine Fisheries. The Division shall not accept an application for a
41 replacement endorsement unless the Division determines that the applicant's current
42 license has not been suspended or revoked. A copy of an application duly filed with
43 the Division shall serve as the endorsement until the replacement license has been
44 received.

1 (f) Sale of Fish. -- It is unlawful for any person licensed under this section to sell
2 fish taken outside the territorial waters of North Carolina or to sell fish taken from
3 coastal fishing waters except to:

4 (1) Fish dealers licensed under G.S. 113-156; or

5 (2) The public, if the seller is also licensed as a fish dealer under G.S.
6 113-156.

7 (g) Recordkeeping Requirements. -- The fish dealer shall record each transaction
8 on a form provided by the Department. The transaction form shall include the
9 information on the endorsement to sell of the seller, the quantity of the fish, the
10 identity of the fish dealer, and such other information as the Division deems
11 necessary to accomplish the purposes of this Subchapter. The person who records the
12 transaction shall provide a completed copy of the transaction form to the
13 Department, and to the other party of the transaction. The Department copy of each
14 transaction from the preceding month shall be transmitted to the Department by the
15 fish dealer on or before the tenth day of the following month.

16 (h) Non-Vessel Endorsement to Sell Nontransferable. -- ~~An~~ A non-vessel
17 endorsement to sell fish issued under this section is nontransferable. It is unlawful to
18 use ~~an~~ a non-vessel endorsement to sell issued to another person in the sale or
19 attempted sale of fish or for a licensee to lend or transfer a license to sell with the
20 following two exceptions: (i) an individual under the age of 16 may sell fish under the
21 license of a relative or guardian; or (ii) a license may be transferred within a single
22 fishing operation if the person to whom it is transferred is a U.S. citizen. It is
23 unlawful for a licensee to lend or transfer a license to sell for the purpose of
24 circumventing the requirements of this section.

25 (h1) Endorsement to Sell Fish of a Vessel License Transferable. -- An
26 endorsement to sell fish of a vessel license may be transferred to the purchaser of the
27 vessel upon application to the Division of Marine Fisheries at the Morehead City
28 office of the Division if the purchaser of the vessel is otherwise qualified to hold an
29 endorsement to sell fish of a vessel license.

30 (i) (See note) Penalties. -- Any person who violates any provision of this section or
31 any rule by the Marine Fisheries Commission to implement this section is guilty of a
32 misdemeanor.

33 (1) A violation of subsections (a), (f), or (h) or a rule of the Marine
34 Fisheries Commission implementing any of those subsections is
35 punishable as follows:

36 a. For a first conviction or a subsequent conviction not
37 described in subdivision (1)b. or c., a violation is a Class 3
38 misdemeanor. A fine shall be imposed of not less than fifty
39 dollars (\$50.00) or double the value of the fish which are
40 the subject of the transaction, whichever is greater, not to
41 exceed two hundred fifty dollars (\$250.00).

42 b. For a second conviction within three years, a violation is a
43 Class 2 misdemeanor. A fine shall be imposed of not less
44 than two hundred fifty dollars (\$250.00) or double the value

- 1 of the fish which are the subject of the transaction,
2 whichever is greater, not to exceed five hundred dollars
3 (\$500.00).
- 4 c. For a third or subsequent conviction within three years, a
5 violation is a Class 2 misdemeanor. A fine shall be imposed
6 of not less than five hundred dollars (\$500.00) or double the
7 value of the fish which are the subject of the transaction,
8 whichever is greater.
- 9 (2) A violation of any other provision of this section other than
10 subsections (a), (f), or (h), or of any rule of the Marine Fisheries
11 Commission other than a rule implementing subsections (a), (f), or
12 (h) of this section, is punishable under G.S. 113-135(a).
- 13 (j) Use of Fees. -- Fees paid under G.S. 113-152(h) or G.S. 113-154.1 for an
14 endorsement to sell fish shall be applied to the cost of a fisheries data information
15 system that compiles fisheries data obtained from the endorsement program
16 established by G.S. 113-152 and this section or to marine fisheries programs or
17 research projects that enhance knowledge and use of marine and estuarine
18 resources."

19
20 **PART VI. MORATORIUM EXTENSION; MISCELLANEOUS PROVISIONS;**
21 **EFFECTIVE DATES**
22

23 Section 6.1. (a) Subsection (a) of Section 3 of Chapter 576 of the 1993
24 Session Laws, Regular Session 1994, as amended by Section 3 of Chapter 675 of the
25 1993 Session Laws, Regular Session 1994; subsection (a) of Section 26.5 of Chapter
26 507 of the 1995 Session Laws; and Section 7 of Chapter 256 of the 1997 Session
27 Laws, reads as rewritten:

28 "(a) Except as provided in subsections (b), (c), (c1), or (c2) of this section, the
29 Department shall not issue any new licenses for a period beginning 1 July 1, 1994,
30 1994 and ending ~~June 30, 1997,~~ 1 July 1999 under the following statutes:

- 31 (1) G.S. 113-152. ~~Vessel licenses.~~ Consolidated license for vessels,
32 equipment, and operations; fees.
- 33 (2) G.S. 113-153.1. ~~Crab license.~~ License.
- 34 (3) G.S. 113-154. ~~Shellfish license license.~~
- 35 (4) G.S. 113-154.1. ~~Nonvessel endorsements to sell fish.~~ Endorsement
36 to sell fish."

37 (b) It is the intent of the General Assembly that the moratorium imposed
38 by the amendment made by subsection (a) of this section to subdivision (4) of
39 subsection (a) of Section 3 of Chapter 576 of the 1993 Session Laws, Regular Session
40 1994, as amended by Section 3 of Chapter 675 of the 1993 Session Laws, Regular
41 Session 1994; subsection (a) of Section 26.5 of Chapter 507 of the 1995 Session Laws;
42 and Section 7 of Chapter 256 of the 1997 Session Laws shall apply to both non-vessel
43 endorsements to sell fish and endorsements to sell fish of vessel licenses.

1 Section 6.2. Subsection (a) of Section 3 of Chapter 576 of the 1993
2 Session Laws, Regular Session 1994, as amended by Section 3 of Chapter 675 of the
3 1993 Session Laws, Regular Session 1994; subsection (a) of Section 26.5 of Chapter
4 507 of the 1995 Session Laws; Section 7 of Chapter 256 of the 1997 Session Laws;
5 and subsection (a) of Section 6.1 of this act, reads as rewritten:

6 "(a) Except as provided in subsections (b), (c), (c1), or (c2) of this section, the
7 Department shall not issue any new licenses for a period beginning 1 July 1994 and
8 ending 1 July ~~1999~~ 2000 under the following statutes:

- 9 (1) ~~G.S. 113-152. Consolidated license for vessels, equipment, and~~
10 ~~operations; fees.~~
11 (2) ~~G.S. 113-153.1.~~ 113-168.9, Crab license.
12 (3) ~~G.S. 113-154. Shellfish license.~~
13 (4) ~~G.S. 113-154.1. Endorsement to sell fish."~~

14 Section 6.3. (a) Part 5A of Article 7 of Chapter 143B of the General
15 Statutes is repealed, except that G.S. 143B-289.19 is not repealed but is recodified as
16 G.S. 143B-289.40 within Part 5C of Article 7 of Chapter 143B of the General Statutes
17 and reads as rewritten:

18 "~~§ 143B-289.19.~~ 143B-289.40. Office of Marine Affairs -- creation.

19 ~~There~~ The Office of Marine Affairs is created in the Department of ~~Administration~~
20 ~~the Office of Marine Affairs.~~ Environment, Health, and Natural Resources."

21 (b) Part 5B of Article 7 of Chapter 143B of the General Statutes (G.S.
22 143B-289.20 through G.S. 143B-289.22) is recodified as Part 5C of Article 7 of
23 Chapter 143B of the General Statutes (G.S. 143B-289.41 through G.S. 143B-289.43).

24 (c) G.S. 143B-289.40(a)(1b)g., as recodified by subsection (a) of this
25 section, reads as rewritten:

26 "g. Create local advisory committees in accordance with the
27 provisions of G.S. ~~143B-289.22.~~ 143B-289.42."

28 Section 6.4. The records, personnel, property, unexpended balances of
29 appropriations, allocations, and other funds, including the functions of budgeting and
30 purchasing, heretofore vested in the Marine Fisheries Commission created under Part
31 5A of Article 7 of Chapter 143B of the General Statutes, repealed by Section 6.3 of
32 this act, are transferred to the Marine Fisheries Commission created under Part 5B of
33 Article 7 of Chapter 143B of the General Statutes, as enacted by Section 2.1 of this
34 act. All rules, decisions, and actions, heretofore adopted, made, or taken by the
35 Marine Fisheries Commission created under Part 5 of Article 7 of Chapter 143B of
36 the General Statutes, repealed by Section 1 of Chapter 641 of the 1987 Session Laws,
37 and all rules, decisions, and actions, heretofore adopted, made, or taken by the
38 Marine Fisheries Commission created under Part 5A of Article 7 of Chapter 143B of
39 the General Statutes, repealed by Section 6.2 of this act, that have not been
40 heretofore repealed or rescinded shall continue in effect until repealed or rescinded
41 by the Marine Fisheries Commission created under Part 5B of Article 7 of Chapter
42 143B of the General Statutes, as enacted by Section 2.1 of this act.

43 Section 6.5. In order to establish a schedule of staggered terms of three
44 years for the Marine Fisheries Commission, the terms of members of the Commission

1 initially filling positions established by subdivisions (1), (2), and (3) of subsection (a)
2 of G.S. 143B-289.24, as enacted by Section 2.1 of this act, shall begin on the date the
3 member is appointed and duly qualified and shall expire on 30 June 2001; the terms
4 of members of the Commission initially filling positions established by subdivisions
5 (4), (5), and (6) of subsection (a) of G.S. 143B-289.24, as enacted by Section 2.1 of
6 this act, shall begin on the date the member is appointed and duly qualified and shall
7 expire on 30 June 2000; the terms of members of the Commission initially filling
8 positions established by subdivisions (7), (8), and (9) of subsection (a) of G.S.
9 143B-289.24, as enacted by Section 2.1 of this act, shall begin on the date the member
10 is appointed and duly qualified and shall expire on 30 June 1999.

11 Section 6.6. G.S. 113-182(b) reads as rewritten:

12 "(b) The Marine Fisheries Commission is authorized to authorize, regulate,
13 prohibit, prescribe, or restrict and the Department is authorized to license:

- 14 (1) The opening and closing of coastal fishing waters, except as to
15 inland game fish, whether entirely or only as to the taking of
16 particular classes of fish, use of particular equipment, or as to other
17 activities within the jurisdiction of the Department; and
18 (2) The possession, cultivation, transportation, importation,
19 exportation, sale, purchase, acquisition, and disposition of all
20 marine and estuarine resources and all related equipment,
21 implements, vessels, and conveyances as necessary to implement
22 the work of the Department in carrying out its duties.
23 (3) The possession, transportation, importation, exportation, sale,
24 purchase, acquisition, and disposition of all fish taken in the
25 Atlantic Ocean out to a distance of 200 miles from the State's
26 mean low watermark, consistent with the Magnuson Fishery
27 Conservation and Management Act, 16 U.S.C. § 1801, et seq., as
28 amended, when the harvest or landing of the fish is controlled by a
29 quota imposed on the State by a federal fisheries management
30 plan."

31 Section 6.7. G.S. 113-190, as enacted by Section 2 of Chapter 633 of the
32 1995 Session Laws (1996 Regular Session), is recodified as G.S. 113-200.

33 Section 6.8. All of the Coastal Habitat Protection Plans required by G.S.
34 143B-279.8, as enacted by Section 3.1 of this act, shall be adopted no later than 1 July
35 2003. The Coastal Resources Commission, the Environmental Management
36 Commission, and the Marine Fisheries Commission shall make the first report on
37 progress in developing and implementing Coastal Habitat Protection Plans, as
38 required by G.S. 143B-279.8(d), as enacted by Section 3.1 of this act, on or before 1
39 September 1999. The Secretary of Environment, Health, and Natural Resources shall
40 make the first report on progress in developing and implementing Fishery
41 Management Plans, as required by G.S. 113-182.1(f), as enacted by Section 3.4 of this
42 act, on or before 1 September 1999.

43 Section 6.9. The Joint Legislative Commission on Seafood and
44 Aquaculture shall study the establishment of a comprehensive State program to

1 acquire, preserve, and restore habitats critical to marine and estuarine fisheries. The
2 Joint Legislative Commission on Seafood and Aquaculture shall report its findings
3 and recommendations, if any, to the 1998 Regular Session of the 1997 General
4 Assembly.

5 Section 6.10. This act constitutes a recent act of the General Assembly
6 within the meaning of G.S. 150B-21.1. Every agency to which this act applies that is
7 authorized to adopt rules to implement the provisions of this act may adopt
8 temporary rules to implement the provisions of this act. This section shall continue
9 in effect until all rules necessary to implement the provisions of this act have become
10 effective as either temporary rules or permanent rules.

11 Section 6.11. The Marine Fisheries Commission may adopt temporary
12 rules to implement or comply with a fisheries management plan adopted by the
13 Atlantic States Marine Fisheries Commission or an interstate fisheries management
14 council.

15 Section 6.12. The headings to the Parts of this act are a convenience to
16 the reader and are for reference only. The headings do not expand, limit, or define
17 the text of this act.

18 Section 6.13. If any section or provision of this act is declared
19 unconstitutional or invalid by the courts, the unconstitutional or invalid section or
20 provision does not affect the validity of this act as a whole or any part of this act
21 other than the part declared to be unconstitutional or invalid.

22 Section 6.14. Section 3 of Chapter 547 of the 1995 Session Laws, Regular
23 Session 1996, as amended by subsection (b) of Section 1 of Chapter 633 of the 1995
24 Session Laws, Regular Session 1996, and Section 27.33 of Chapter 18 of the 1996
25 Session Laws, Second Extra Session, and Section 12 of Chapter 256 of the 1997
26 Session Laws, reads as rewritten:

27 "Sec. 3. Notwithstanding G.S. 113-202, a moratorium on new shellfish cultivation
28 leases shall be imposed in the remaining area of Core Sound not described in Section
29 1 of this act. During the moratorium, a comprehensive study of the shellfish lease
30 program shall be conducted. The moratorium established under this section covers
31 that part of Core Sound bounded by a line beginning at a point on Cedar Island at
32 35°00'39"N - 76°17'48"W, thence 109°(M) to a point in Core Sound 35°00'00"N -
33 76°12'42"W, thence 229°(M) to Marker No. 37 located 0.9 miles off Bells Point at
34 34°43'30"N - 76°29'00"W, thence 207°(M) to the Cape Lookout Lighthouse at
35 34°37'24"N - 76°31'30"W, thence 12°(M) to a point at Marshallberg at 34°43'07"N -
36 76°31'12"W, thence following the shoreline in a northerly direction to the point of
37 beginning except that the highway bridges at Salters Creek, Thorofare Bay, and the
38 Rumley Bay ditch shall be considered shoreline. The moratorium shall expire
39 ~~August 1, 1997.~~ 1 July 1998."

40 Section 6.15. Sections 1.1, 5.8, 6.7, 6.9, 6.10, 6.12, 6.13, and 6.15 of this
41 act are effective when this act becomes law. Sections 2.1, 4.4, 5.3, 6.3, 6.4, 6.5, 6.6,
42 and 6.11 of this act become effective 1 September 1997. Sections 4.1 through 4.3 of
43 this act become effective 1 September 1997 and apply to violations and offenses on or
44 after 1 September 1997. Section 1.2 of this act is effective retroactively as of 1 March

1 1997. Sections 6.1 and 6.10 of this act become effective 31 July 1997. Section 6.14 of
2 this act becomes effective 1 August 1997. Sections 3.1, 3.2, 3.3, 3.4, 3.5, 5.5, and 6.8
3 of this act become effective 1 July 1998. Sections 5.1, 5.2, 5.4, 5.6, 5.9, and 6.2 of this
4 act become effective 1 July 1999. Section 5.6 of this act expires 1 July 2000. Section
5 5.7 of this act becomes effective 1 July 2000. Sections 5.1 and 5.2 of this act expire 1
6 September 2003.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

HOUSE BILL 1097

Committee Substitute Favorable 4/23/97

Committee Substitute #2 Favorable 5/15/97

Committee Substitute #3 Favorable 5/28/97

Fifth Edition Engrossed 6/10/97

Senate Agriculture/Environment/Natural Resources Committee Substitute Adopted
7/23/97

Proposed Senate Committee Substitute H1097-PCS4143

Short Title: Fisheries Reform Act-2.

(Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

1
2 AN ACT TO ENACT THE FISHERIES REFORM ACT OF 1997 TO PROTECT,
3 ENHANCE, AND BETTER MANAGE COASTAL FISHERIES IN NORTH
4 CAROLINA.

5 Whereas, the State of North Carolina has one of the most diverse fisheries
6 in the United States; and

7 Whereas, the General Assembly recognizes that commercial fishermen
8 perform an essential function by providing wholesome food for the citizens of the
9 State and thereby properly earn a livelihood; and

10 Whereas, the General Assembly recognizes the economic contribution
11 and important heritage of traditional full-time and part-time commercial fishing; and

12 Whereas, the General Assembly recognizes that for many citizens fishing
13 is an important recreational activity and that recreational fishing is a source of great
14 personal enjoyment and satisfaction; and

15 Whereas, the General Assembly recognizes the importance of providing
16 plentiful fishery resources to maintain and enhance tourism as a major contributor to
17 the economy of the State; and

1 Whereas, the General Assembly recognizes the need to protect our
2 coastal fishery resources and to balance the commercial and recreational interests
3 through better management of these resources; Now, therefore,
4 The General Assembly of North Carolina enacts:

5

6 **PART I. SHORT TITLE; PERFORMANCE AUDIT; STUDIES**

7

8 Section 1.1. This act shall be known as the "Fisheries Reform Act of
9 1997".

10 Section 1.2. The State Auditor shall conduct a performance audit,
11 including a detailed operational review, of the Division of Marine Fisheries of the
12 Department of Environment, Health, and Natural Resources. The performance audit
13 shall include an assessment of the capacity of the Division of Marine Fisheries to
14 effectively implement the provisions of Part V of this act. The performance audit
15 report shall be delivered to the Joint Legislative Commission on Seafood and
16 Aquaculture no later than 1 February 1998. The Joint Legislative Commission on
17 Seafood and Aquaculture shall review the performance audit and make a specific
18 recommendation to the 1998 Session of the 1997 General Assembly as to whether the
19 provisions of Part V of this act should be implemented.

20 Section 1.3. The Joint Legislative Commission on Seafood and
21 Aquaculture shall study issues relating to licensing coastal recreational fishing. The
22 Joint Legislative Commission on Seafood and Aquaculture shall make specific
23 findings as to whether a licensing system should be adopted for coastal recreational
24 fishing and, if so, what that system should be and how it should be implemented. In
25 conducting the study required by this section, the Joint Legislative Commission on
26 Seafood and Aquaculture shall consider the findings and recommendations of the
27 final report of the Fisheries Moratorium Steering Committee and the final report of
28 the State Auditor on the performance audit of the Division of Marine Fisheries
29 required by Section 1.2 of this act. The Joint Legislative Commission on Seafood
30 and Aquaculture shall present its findings and recommendations to the 1998 Regular
31 Session of the General Assembly.

32 Section 1.4. The Joint Legislative Commission on Seafood and
33 Aquaculture shall study issues related to the establishment of a crew license for
34 persons working aboard a vessel engaged in the taking of fish for sale. The Joint
35 Legislative Commission on Seafood and Aquaculture shall make a specific
36 determination as to whether a crew license should be established. The Joint
37 Legislative Commission on Seafood and Aquaculture shall present its findings and
38 recommendations to the 1998 Regular Session of the General Assembly.

39 Section 1.5. The Joint Legislative Commission on Seafood and
40 Aquaculture shall study issues relating to the enhancement and management of
41 shellfish resources and shall develop a set of comprehensive recommendations for the
42 enhancement and management of the shellfish resources of the State. The Joint
43 Legislative Commission on Seafood and Aquaculture shall present its findings and
44 recommendations to the 1998 Regular Session of the General Assembly.

1
2 **PART II. MARINE FISHERIES COMMISSION**

3
4 Section 2.1. Article 7 of Chapter 143B is amended by adding a new Part
5 to read:

6 "Part 5B. Marine Fisheries Commission.

7 "§ 143B-289.20. Definitions.

8 (a) As used in this Part:

9 (1) 'Commission' means the Marine Fisheries Commission.

10 (2) 'Department' means the Department of Environment, Health, and
11 Natural Resources.

12 (3) 'Fisheries Director' means the Director of the Division of Marine
13 Fisheries of the Department of Environment, Health, and Natural
14 Resources.

15 (4) 'Secretary' means the Secretary of Environment, Health, and
16 Natural Resources.

17 (b) The definitions set out in G.S. 113-129 and G.S. 113-130 shall apply
18 throughout this Part.

19 "§ 143B-289.21. Marine Fisheries Commission -- creation; purposes.

20 (a) There is hereby created the Marine Fisheries Commission in the Department
21 of Environment, Health, and Natural Resources.

22 (b) The functions, purposes, and duties of the Marine Fisheries Commission are
23 to:

24 (1) Manage, restore, develop, cultivate, conserve, protect, and regulate
25 the marine and estuarine resources of the State.

26 (2) Implement the laws relating to coastal fisheries, coastal fishing,
27 shellfish, crustaceans, and other marine and estuarine resources
28 enacted by the General Assembly by the adoption of rules and
29 policies, to provide a sound, constructive, comprehensive,
30 continuing, and economical coastal fisheries program directed by
31 citizens who are knowledgeable in the protection, restoration,
32 proper use, and management of marine and estuarine resources.

33 (3) Advise the State regarding ocean and marine fisheries within the
34 jurisdiction of the Atlantic States Marine Fisheries Compact, the
35 South Atlantic Fishery Management Council, the Mid-Atlantic
36 Fishery Management Council, and other similar organizations
37 established to manage or regulate fishing in the Atlantic Ocean.

38 "§ 143B-289.22. Marine Fisheries Commission -- powers and duties.

39 (a) The Marine Fisheries Commission shall adopt rules to be followed in the
40 management, protection, preservation, and enhancement of the marine and estuarine
41 resources of the State including commercial and sports fisheries resources. The
42 Marine Fisheries Commission shall have the power and duty:

- 1 (1) To authorize, license, regulate, prohibit, prescribe, or restrict all
2 forms of marine and estuarine resources in coastal fishing waters
3 with respect to:
 - 4 a. Time, place, character, or dimensions of any methods or
5 equipment that may be employed in taking fish.
 - 6 b. Seasons for taking fish.
 - 7 c. Size limits on and maximum quantities of fish that may be
8 taken, possessed, bailed to another, transported, bought,
9 sold, or given away.
- 10 (2) To provide fair regulation of commercial and recreational fishing
11 groups in the interest of the public.
- 12 (3) To adopt rules and take all steps necessary to develop and improve
13 mariculture, including the cultivation, harvesting, and marketing of
14 shellfish and other marine resources in the State, involving the use
15 of public grounds and private beds as provided in G.S. 113-201.
- 16 (4) To close areas of public bottoms under coastal fishing waters for
17 such time as may be necessary in any program of propagation of
18 shellfish as provided in G.S. 113-204.
- 19 (5) In the interest of conservation of the marine and estuarine
20 resources of the State, to institute an action in the superior court to
21 contest the claim of title or claimed right of fishery in any
22 navigable waters of the State registered with the Department as
23 provided in G.S. 113-206(d).
- 24 (6) To make reciprocal agreements with other jurisdictions respecting
25 any of the matters governed in this Subchapter as provided by G.S.
26 113-223.
- 27 (7) To adopt relevant provisions of federal laws and regulations as
28 State rules pursuant to G.S. 113-228.
- 29 (8) To delegate to the Fisheries Director the authority by proclamation
30 to suspend or implement, in whole or in part, a particular rule of
31 the Commission that may be affected by variable conditions as
32 provided in G.S. 113-221(e).
- 33 (9) To comment on and otherwise participate in the determination of
34 permit applications received by State agencies that may have an
35 effect on the marine and estuarine resources of the State.
- 36 (10) To adopt Fishery Management Plans as provided in G.S. 113-182.1,
37 to establish a Priority List to determine the order in which Fishery
38 Management Plans are developed, to establish a Schedule for the
39 development and adoption of each Fishery Management Plan, and
40 to establish guidance criteria as to the contents of Fishery
41 Management Plans.
- 42 (11) To approve Coastal Habitat Protection Plans as provided in G.S.
43 143B-279.8.

1 (12) Except as may otherwise be provided, to make the final agency
2 decision in all contested cases involving matters within the
3 jurisdiction of the Commission.

4 (b) The Marine Fisheries Commission shall have the power and duty to establish
5 standards and adopt rules:

6 (1) To implement the provisions of Subchapter IV of Chapter 113 as
7 provided in G.S. 113-134.

8 (2) To manage the disposition of confiscated property as set forth in
9 G.S. 113-137.

10 (3) To govern all license requirements and taxes prescribed in Article
11 14A of Chapter 113 of the General Statutes.

12 (4) To regulate the importation and exportation of fish, and equipment
13 that may be used in taking or processing fish, as necessary to
14 enhance the conservation of marine and estuarine resources of the
15 State as provided in G.S. 113-170.

16 (5) To regulate the possession, transportation, and disposition of
17 seafood, as provided in G.S. 113-170.4.

18 (6) To regulate the disposition of the young of edible fish, as provided
19 by G.S. 113-185.

20 (7) To manage the leasing of public grounds for mariculture, including
21 oysters and clam production, as provided in G.S. 113-202.

22 (8) To govern the utilization of private fisheries, as provided in G.S.
23 113-205.

24 (9) To impose further restrictions upon the throwing of fish offal in
25 any coastal fishing waters, as provided in G.S. 113-265.

26 (10) To regulate the location and utilization of artificial reefs in coastal
27 waters.

28 (11) To regulate the placement of nets and other sports or commercial
29 fishing apparatus in coastal fishing waters with regard to
30 navigational or recreational safety as well as from a conservation
31 standpoint.

32 (c) The Commission is authorized to authorize, license, prohibit, prescribe, or
33 restrict:

34 (1) The opening and closing of coastal fishing waters, except as to
35 inland game fish, whether entirely or only as to the taking of
36 particular classes of fish, use of particular equipment, or as to other
37 activities.

38 (2) The possession, cultivation, transportation, importation,
39 exportation, sale, purchase, acquisition, and disposition of all
40 marine and estuarine resources and all related equipment,
41 implements, vessels, and conveyances as necessary to carry out its
42 duties.

43 (d) The Commission may adopt rules required by the federal government for
44 grants-in-aid for coastal resource purposes that may be made available to the State by

1 the federal government. This section is to be liberally construed in order that the
2 State and its citizens may benefit from federal grants-in-aid.

3 (e) The Commission shall adopt rules as provided in this Chapter. All rules
4 adopted by the Commission shall be enforced by the Department of Environment,
5 Health, and Natural Resources.

6 (f) As a quasi-judicial agency, the Commission, in accordance with Article IV,
7 Section 3 of the Constitution of North Carolina, has those judicial powers reasonably
8 necessary to accomplish the purposes for which it was created.

9 **"§ 143B-289.23. Marine Fisheries Commission -- quasi-judicial powers; procedures.**

10 (a) With respect to those matters within its jurisdiction, the Marine Fisheries
11 Commission shall exercise quasi-judicial powers in accordance with the provisions of
12 Chapter 150B of the General Statutes. This section and any rules adopted by the
13 Marine Fisheries Commission shall govern the following proceedings:

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

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

21 (3) Deliberations of the Commission shall be conducted in its public
22 meeting unless the Commission determines that consultation with
23 its counsel should be held in a closed session pursuant to G.S.
24 143-318.11.

25 (b) The final agency decision in contested cases that arise from civil penalty
26 assessments shall be made by the Commission. In the evaluation of each violation, the
27 Commission shall recognize that harm to the marine and estuarine resources of the
28 State arising from the violation of a statute or rule enacted or adopted to protect
29 those resources may be immediately observed through damaged resources or may be
30 incremental or cumulative with no damage that can be immediately observed or
31 documented. Penalties up to the maximum authorized may be based on any one or
32 combination of the following factors:

33 (1) The degree and extent of harm to the marine and estuarine
34 resources of the State, to the public health, or to private property
35 resulting from the violation.

36 (2) The frequency and gravity of the violation.

37 (3) The cost of rectifying the damage.

38 (4) Whether the violation was committed willfully or intentionally.

39 (5) The prior record of the violator in complying or failing to comply
40 with programs over which the Marine Fisheries Commission has
41 regulatory authority.

42 (6) The cost to the State of the enforcement procedures.

43 (c) The Chair shall appoint a Committee on Civil Penalty Remissions from the
44 members of the Commission. No member of the Committee on Civil Penalty

1 Remissions may hear or vote on any matter in which the member has an economic
2 interest. The Committee on Civil Penalty Remissions shall make the final agency
3 decision on remission requests. In determining whether a remission request will be
4 approved, the Committee shall consider the recommendation of the Secretary and the
5 following factors:

- 6 (1) Whether one or more of the civil penalty assessment factors in
7 subsection (b) of this section were wrongly applied to the
8 detriment of the petitioner.
9 (2) Whether the violator promptly abated continuing environmental
10 damage resulting from the violation.
11 (3) Whether the violation was inadvertent.
12 (4) Whether the violator had been assessed civil penalties for any
13 previous violations.
14 (5) Whether payment of the civil penalty will prevent payment for the
15 remaining necessary remedial actions.

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

20 (e) If any civil penalty has not been paid within 30 days after the final agency
21 decision or court order has been served on the violator, the Secretary of
22 Environment, Health, and Natural Resources shall request the Attorney General to
23 institute a civil action in the superior court of any county in which the violator
24 resides or has his or its principal place of business to recover the amount of the
25 assessment.

26 (f) The Secretary may delegate his powers and duties under this section to the
27 Fisheries Director.

28 **§ 143B-289.24. Marine Fisheries Commission -- members; appointment; term; oath;**
29 **ethical standards; removal; compensation; staff.**

30 (a) Members, Selection. -- The Marine Fisheries Commission shall consist of nine
31 members appointed by the Governor as follows:

- 32 (1) One person actively engaged in, or recently retired from,
33 commercial fishing as demonstrated by currently or recently
34 deriving at least fifty percent (50%) of annual earned income from
35 taking and selling fishery resources in coastal fishing waters of the
36 State. The spouse of a commercial fisherman who meets the
37 criteria of this subdivision may be appointed under this
38 subdivision.
39 (2) One person actively engaged in, or recently retired from,
40 commercial fishing as demonstrated by currently or recently
41 deriving at least fifty percent (50%) of annual earned income from
42 taking and selling fishery resources in coastal fishing waters of the
43 State. The spouse of a commercial fisherman who meets the

1 criteria of this subdivision may be appointed under this
2 subdivision.

3 (3) One person actively connected with, and experienced as, a licensed
4 fish dealer or in seafood processing or distribution as demonstrated
5 by deriving at least fifty percent (50%) of annual earned income
6 from activities involving the buying, selling, processing, or
7 distribution of seafood landed in this State. The spouse of a
8 person qualified under this subdivision may be appointed provided
9 that the spouse is actively involved in the qualifying business.

10 (4) One person actively engaged in recreational sports fishing in
11 coastal waters in this State. An appointee under this subdivision
12 may not derive more than ten percent (10%) of annual earned
13 income from sports fishing activities.

14 (5) One person actively engaged in recreational sports fishing in
15 coastal waters in this State. An appointee under this subdivision
16 may not derive more than ten percent (10%) of annual earned
17 income from sports fishing activities.

18 (6) One person actively engaged in the sports fishing industry as
19 demonstrated by deriving at least fifty percent (50%) of annual
20 earned income from selling goods or services in this State. The
21 spouse of a person qualified under this subdivision may be
22 appointed provided that the spouse is actively involved in the
23 qualifying business.

24 (7) One person having general knowledge of and experience related to
25 subjects and persons regulated by the Commission.

26 (8) One person having general knowledge of and experience related to
27 subjects and persons regulated by the Commission.

28 (9) One person who is a fisheries scientist having special training and
29 expertise in marine and estuarine fisheries biology, ecology,
30 population dynamics, water quality, habitat protection, or similar
31 knowledge. A person appointed under this subdivision may not
32 receive more than ten percent (10%) of annual earned income
33 from either the commercial or sports fishing industries, including
34 the processing and distribution of seafood.

35 (b) Residential Qualifications. -- For purposes of providing regional representation
36 on the Commission, the following three coastal regions of the State are designated: (i)
37 Northeast Coastal Region comprised of Bertie, Camden, Chowan, Currituck, Dare,
38 Gates, Halifax, Hertford, Martin, Northampton, Pasquotank, Perquimans, Tyrrell, and
39 Washington Counties, (ii) Central Coastal Region comprised of Beaufort, Carteret,
40 Craven, Hyde, Jones, and Pamlico Counties; and (iii) Southeast Coastal Region
41 comprised of Bladen, Brunswick, Columbus, New Hanover, Onslow, and Pender
42 Counties. Persons appointed under subdivisions (1), (2), (3), (4), and (8) of
43 subsection (a) of this section shall be residents of one of the coastal regions of the

1 State. The membership of the Commission shall include at least one person who is a
2 resident of each of the three coastal regions of the State.

3 (c) Additional Considerations. -- In making appointments to the Commission, the
4 Governor shall provide for appropriate representation of women and minorities on
5 the Commission.

6 (d) Terms. -- The term of office of members of the Commission is three years. A
7 member may be reappointed to any number of successive three-year terms. Upon the
8 expiration of a three-year term, a member shall continue to serve until a successor is
9 appointed and duly qualified as provided by G.S. 128-7. The term of members
10 appointed under subdivisions (1), (2), and (3) of subsection (a) of this section shall
11 expire on 30 June of years evenly divisible by three. The term of members appointed
12 under subdivisions (4), (5), and (6) of subsection (a) of this section shall expire on 30
13 June of years that precede by one year those years that are evenly divisible by three.
14 The term of members appointed under subdivisions (7), (8), and (9) of subsection (a)
15 of this section shall expire on 30 June of years that follow by one year those years
16 that are evenly divisible by three.

17 (e) Vacancies. -- An appointment to fill a vacancy shall be for the unexpired
18 balance of the term.

19 (f) Oath of Office. -- Each member of the Commission, before assuming the duties
20 of office, shall take an oath of office as provided in Chapter 11 of the General
21 Statutes.

22 (g) Ethical Standards. --

23 (1) Disclosure statements. -- Any person under consideration for
24 appointment to the Commission shall provide both a financial
25 disclosure statement and a potential bias disclosure statement to
26 the Governor. A financial disclosure statement shall include
27 statements of the nominee's financial interests in and related to
28 State fishery resources use, licenses issued by the Division of
29 Marine Fisheries held by the nominee or any business in which the
30 nominee has a financial interest, and uses made by the nominee or
31 by any business in which the nominee has a financial interest of
32 the regulated resources. A potential bias disclosure statement shall
33 include a statement of the nominee's membership or other
34 affiliation with, including offices held, in societies, organizations, or
35 advocacy groups pertaining to the management and use of the
36 State's coastal fishery resources. Disclosure statements shall be
37 treated as public records under Chapter 132 of the General
38 Statutes and shall be updated on an annual basis.

39 (2) Voting/conflict of interest. -- A member of the Commission shall
40 not vote on any issue before the Commission that would have a
41 'significant and predictable effect' on the member's financial
42 interest. For purposes of this subdivision, 'significant and
43 predictable effect' means there is or may be a close causal link
44 between the decision of the Commission and an expected

1 disproportionate financial benefit to the member that is shared
2 only by a minority of persons within the same industry sector or
3 gear group. A member of the Commission shall also abstain from
4 voting on any petition submitted by an advocacy group of which
5 the member is an officer or sits as a member of the advocacy
6 group's board of directors. A member of the Commission shall not
7 use the member's official position as a member of the Commission
8 to secure any special privilege or exemption of substantial value for
9 any person. No member of the Commission shall, by the member's
10 conduct, create an appearance that any person could improperly
11 influence the member in the performance of the member's official
12 duties.

13 (3) Regular attendance. -- It shall be the duty of each member of the
14 Commission to regularly attend meetings of the Commission.

15 (h) Removal. -- The Governor may remove, as provided in G.S. 143-13, any
16 member of the Commission for misfeasance, malfeasance, or nonfeasance.

17 (i) Office May Be Held Concurrently With Others. -- The office of member of the
18 Marine Fisheries Commission may be held concurrently with any other elected or
19 appointed office, as authorized by Article VI, Section 9, of the Constitution of North
20 Carolina.

21 (j) Compensation. -- Members of the Commission who are State officers or
22 employees shall receive no per diem compensation for serving on the Commission,
23 but shall be reimbursed for their expenses in accordance with G.S. 138-6. Members
24 of the Commission who are full-time salaried public officers or employees other than
25 State officers or employees shall receive no per diem compensation for serving on the
26 Commission, but shall be reimbursed for their expenses in accordance with G.S.
27 138-6 in the same manner as State officers or employees. All other Commission
28 members shall receive per diem compensation and reimbursement in accordance with
29 the compensation rate established in G.S. 93B-5.

30 (k) Staff. -- All clerical and other services required by the Commission shall be
31 supplied by the Fisheries Director and the Department.

32 (l) Legal Services. -- The Attorney General shall: (i) act as attorney for the
33 Commission; (ii) at the request of the Commission, initiate actions in the name of the
34 Commission; and (iii) represent the Commission in any appeal or other review of any
35 order of the Commission.

36 **"§ 143B-289.25. Marine Fisheries Commission -- officers; organization; seal.**

37 (a) The Governor shall appoint a member of the Commission to serve as Chair.
38 The Chair shall serve at the pleasure of the Governor. The Commission shall elect
39 one of its members to serve as Vice-Chair. The Vice-Chair shall serve a one-year
40 term beginning 1 July and ending 30 June of the following year. The Vice-Chair may
41 serve any number of consecutive terms.

42 (b) The Chair shall guide and coordinate the activities of the Commission in
43 fulfilling its duties as set out in this Article. The Chair shall report to and advise the

1 Governor and the Secretary on the activities of the Commission, on marine and
2 estuarine conservation matters, and on all marine fisheries matters.

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

7 (d) The Commission may adopt a common seal and may alter it as necessary.

8 **"§ 143B-289.26. Marine Fisheries Commission -- meetings; quorum.**

9 (a) The Commission shall meet at least once each calendar quarter and may hold
10 additional meetings at any time and place within the State at the call of the Chair or
11 upon the written request of at least four members. At least three of the four
12 quarterly meetings of the Commission shall be held in one of the coastal regions
13 designated in G.S. 143B-289.24.

14 (b) Five members of the Commission shall constitute a quorum for the transaction
15 of business.

16 **"§ 143B-289.27. Marine Fisheries Commission Advisory Committees established;**
17 **members; selection; duties.**

18 (a) The Commission shall be assisted in the performance of its duties by four
19 standing advisory committees and four regional advisory committees. Each standing
20 and regional advisory committee shall consist of no more than 11 members. The
21 Chair of the Commission shall designate one member of each advisory committee to
22 serve as Chair of the committee. Members shall serve staggered three-year terms as
23 determined by the Commission. The Commission shall establish other policies and
24 procedures for standing and regional advisory committees that are consistent with
25 those governing the Commission as set out in this Part.

26 (b) The Chair of the Commission shall appoint the following standing advisory
27 committees:

28 (1) The Finfish Committee, which shall consider matters concerning
29 finfish.

30 (2) The Crustacean Committee, which shall consider matters
31 concerning shrimp and crabs.

32 (3) The Shellfish Committee, which shall consider matters concerning
33 oysters, clams, scallops, and other molluscan shellfish.

34 (4) The Habitat and Water Quality Committee, which shall consider
35 matters concerning habitat and water quality that may affect
36 coastal fisheries resources.

37 (c) Each standing advisory committee shall be composed of commercial and
38 recreational fishermen, scientists, and other persons who have expertise in the matters
39 to be considered by the advisory committee to which they are appointed. In making
40 appointments to advisory committees, the Chair of the Commission shall ensure that
41 both commercial and recreational fishing interests are fairly represented and shall
42 consider for appointment persons who are recommended by groups representing
43 commercial fishing interests, recreational fishing interests, environmental protection

1 and conservation interests, and other groups interested in coastal fisheries
2 management.

3 (d) Each standing advisory committee shall review all matters referred to the
4 committee by the Commission and shall make findings and recommendations on
5 these matters. A standing advisory committee may, on its own motion, make findings
6 and recommendations as to any matter related to its subject area. The Commission,
7 in the performance of its duties, shall consider all findings and recommendations
8 submitted by standing advisory committees.

9 (e) The Chair of the Commission shall appoint a regional advisory committee for
10 each of the three coastal regions designated in G.S. 143B-289.24(b) and shall appoint
11 a regional advisory committee for that part of the State that is not included in the
12 three coastal regions. In making appointments to regional advisory committees, the
13 Chair of the Commission shall ensure that both commercial and recreational fishing
14 interests are fairly represented.

15 **"§ 143B-289.28. Marine Fisheries Endowment Fund.**

16 (a) Recognizing the inestimable importance to the State and its people of
17 conserving the marine and estuarine resources of the State, and for the purpose of
18 providing the opportunity for citizens and residents of the State to invest in the future
19 of its marine and estuarine resources, there is created the North Carolina Marine
20 Fisheries Endowment Fund, the income and principal of which shall be used only for
21 the purpose of supporting marine and estuarine resource conservation programs of
22 the State in accordance with this section.

23 (b) There is created the Board of Trustees of the Marine Fisheries Endowment
24 Fund of the Marine Fisheries Commission, with full authority over the administration
25 of the Marine Fisheries Endowment Fund, whose ex officio Chair, Vice-Chair, and
26 members shall be the Chair, Vice-Chair, and members of the Marine Fisheries
27 Commission. The State Treasurer shall be the custodian of the Marine Fisheries
28 Endowment Fund and shall invest its assets in accordance with the provisions of G.S.
29 147-69.2 and G.S. 147-69.3.

30 (c) The assets of the Marine Fisheries Endowment Fund shall be derived from the
31 following:

32 (1) The proceeds of any gifts, grants, and contributions to the State
33 that are specifically designated for inclusion in the Fund.

34 (2) Any other sources specified by law.

35 (d) The Marine Fisheries Endowment Fund is declared to constitute a special
36 trust derived from a contractual relationship between the State and the members of
37 the public whose investments contribute to the Fund. In recognition of this special
38 trust, the following limitations and restrictions are placed on expenditures from the
39 Fund:

40 (1) Any limitations or restrictions specified by the donors on the uses
41 of the income derived from the gifts, grants, and voluntary
42 contributions shall be respected but shall not be binding.

1 (2) No expenditure or disbursement shall be made from the principal
2 of the Marine Fisheries Endowment Fund except as otherwise
3 provided by law.

4 (3) The income received and accruing from the investments of the
5 Marine Fisheries Endowment Fund must be spent only to further
6 the conservation of marine and estuarine resources.

7 (e) The Board of Trustees of the Marine Fisheries Endowment Fund may
8 accumulate the investment income of the Fund until the income, in the sole judgment
9 of the trustees, can provide a significant supplement to the budget for the
10 conservation and management of marine and estuarine resources. After that time the
11 trustees, in their sole discretion and authority, may direct expenditures from the
12 income of the Fund for the purposes set out in subdivision (3) of subsection (d)
13 above.

14 (f) Expenditure of the income derived from the Marine Fisheries Endowment
15 Fund shall be made through the State budget accounts of the Marine Fisheries
16 Commission in accordance with the provisions of the Executive Budget Act. The
17 Marine Fisheries Endowment Fund is subject to the oversight of the State Auditor
18 pursuant to Article 5A of Chapter 147 of the General Statutes.

19 (g) The Marine Fisheries Endowment Fund and the income therefrom shall not
20 take the place of State appropriations, but any portion of the income of the Marine
21 Fisheries Endowment Fund available for the purpose set out in subdivision (3) of
22 subsection (d) above shall be used to supplement other income of and appropriations
23 for the conservation and management of marine and estuarine resources to the end
24 that the Commission may improve and increase its services and become more useful
25 to a greater number of people.

26 **"§ 143B-289.29. Conservation Fund; Commission may accept gifts.**

27 (a) The Marine Fisheries Commission may accept gifts, donations, or
28 contributions from any sources. These funds shall be held in a separate account and
29 used solely for the purposes of marine and estuarine conservation and management.
30 These funds shall be administered by the Marine Fisheries Commission and shall be
31 used for marine and estuarine resources management, including education about the
32 importance of conservation, in a manner consistent with marine and estuarine
33 conservation management principles.

34 (b) The Marine Fisheries Commission is hereby authorized to issue and sell
35 appropriate emblems by which to identify recipients thereof as contributors to a
36 special marine and estuarine resources Conservation Fund that shall be made
37 available to the Marine Fisheries Commission for conservation, protection,
38 enhancement, preservation, and perpetuation of marine and estuarine species that
39 may be endangered or threatened with extinction and for education about these
40 issues. The special Conservation Fund is subject to oversight of the State Auditor
41 pursuant to Article 5A of Chapter 147 of the General Statutes. Emblems of different
42 sizes, shapes, types, or designs may be used to recognize contributions in different
43 amounts, but no emblem shall be issued for a contribution amounting in value to less
44 than five dollars (\$5.00).

1 "§ 143B-289.30. Article subject to Chapter 113.

2 Nothing in this Article shall be construed to affect the jurisdictional division
3 between the Marine Fisheries Commission and the Wildlife Resources Commission
4 contained in Subchapter IV of Chapter 113 of the General Statutes or in any way to
5 alter or abridge the powers and duties of the two agencies conferred in that
6 Subchapter.

7 "§ 143B-289.31. Jurisdictional questions.

8 In the event of any question arising between the Wildlife Resources Commission
9 and the Marine Fisheries Commission or between the Department of Environment,
10 Health, and Natural Resources and the Marine Fisheries Commission as to any duty,
11 responsibility, or authority imposed upon any of these bodies by law or with respect
12 to conflict involving rules or administrative practices, the question or conflict shall be
13 resolved by the Governor, whose decision shall be binding."

14
15 **PART III. COASTAL HABITAT PROTECTION PLANS; FISHERY**
16 **MANAGEMENT PLANS**
17

18 Section 3.1. Article 7 of Chapter 143B of the General Statutes is
19 amended by adding a new section to read:

20 "§ 143B-279.8. Coastal Habitat Protection Plans.

21 (a) The Department shall coordinate the preparation of draft Coastal Habitat
22 Protection Plans for critical fisheries habitats. The Department shall use the staff of
23 those divisions within the Department that have jurisdiction over marine fisheries,
24 water quality, and coastal area management in the preparation of the Coastal Habitat
25 Protection Plans and shall request assistance from other federal and State agencies as
26 necessary. The plans shall:

27 (1) Describe and classify biological systems in the habitats, including
28 wetlands, fish spawning grounds, estuarine or aquatic endangered
29 or threatened species, primary or secondary nursery areas, shellfish
30 beds, submerged aquatic vegetation (SAV) beds, and habitats in
31 outstanding resource waters.

32 (2) Evaluate the function, value to coastal fisheries, status, and trends
33 of the habitats.

34 (3) Identify existing and potential threats to the habitats and the
35 impact on coastal fishing.

36 (4) Recommend actions to protect and restore the habitats.

37 (b) Once a draft Coastal Habitat Protection Plan has been prepared, the chairs of
38 the Coastal Resources Commission, the Environmental Management Commission,
39 and the Marine Fisheries Commission shall each appoint two members of the
40 commission he or she chairs to a six-member review committee. The six-member
41 review committee, in consultation with the Department, shall review the draft Plan
42 and may revise the draft Plan on a consensus basis. The draft Plan, as revised by the
43 six-member review committee, shall then be submitted to the Coastal Resources
44 Commission, the Environmental Management Commission, and the Marine Fisheries

1 Commission, each of which shall independently consider the Plan for adoption. If
2 any of the three commissions is unable to agree to any aspect of a Plan, the chair of
3 each commission shall refer that aspect of the Plan to a six-member conference
4 committee to facilitate the resolution of any differences. The six-member conference
5 committee shall be appointed in the same manner as a six-member review committee
6 and may include members of the six-member review committee that reviewed the
7 Plan. Each final Coastal Habitat Protection Plan shall consist of those provisions
8 adopted by all three commissions. The three commissions shall review and revise
9 each Coastal Habitat Protection Plan at least once every five years.

10 (c) In carrying out their powers and duties, the Coastal Resources Commission,
11 the Environmental Management Commission, and the Marine Fisheries Commission
12 shall ensure, to the maximum extent practicable, that their actions are consistent with
13 the Coastal Habitat Protection Plans as adopted by the three commissions. The
14 obligation to act in a manner consistent with a Coastal Habitat Protection Plan is
15 prospective only and does not oblige any commission to modify any rule adopted,
16 permit decision made, or other action taken prior to the adoption or revision of the
17 Coastal Habitat Protection Plan by the three commissions. The Coastal Resources
18 Commission, the Environmental Management Commission, and the Marine Fisheries
19 Commission shall adopt rules to implement Coastal Habitat Protection Plans in
20 accordance with Chapter 150B of the General Statutes.

21 (d) If any of the three commissions concludes that another commission has taken
22 an action that is inconsistent with a Coastal Habitat Protection Plan, that commission
23 may request a written explanation of the action from the other commission. A
24 commission shall provide a written explanation: (i) upon the written request of one
25 of the other two commissions, or (ii) upon its own motion if the commission
26 determines that it must take an action that is inconsistent with a Coastal Habitat
27 Protection Plan.

28 (e) The Coastal Resources Commission, the Environmental Management
29 Commission, and the Marine Fisheries Commission shall report to the Joint
30 Legislative Commission on Seafood and Aquaculture and the Environmental Review
31 Commission on progress in developing and implementing the Coastal Habitat
32 Protection Plans, including the extent to which the actions of the three commissions
33 are consistent with the Plans, on or before 1 September of each year."

34 (f) The Secretary of Environment, Health, and Natural Resources shall report to
35 the Environmental Review Commission within 30 days of the completion or
36 substantial revision of each draft Coastal Habitat Protection Plan. The
37 Environmental Review Commission shall review each draft Coastal Habitat
38 Protection Plan within 30 days of the date the draft Plan is submitted to the
39 Environmental Review Commission. The Environmental Review Commission may
40 submit comments and recommendations on the draft Plan to the Secretary within 30
41 days of the date the draft Plan is submitted by the Secretary."

42 Section 3.2. G.S. 143B-282(a)(1) is amended by adding a new sub-
43 subdivision to read:

1 "v. To approve Coastal Habitat Protection Plans as provided in
2 G.S. 143B-279.8."

3 Section 3.3. Part 1 of Article 7 of Chapter 113A of the General Statutes
4 is amended by adding a new section to read:

5 **"§ 113A-106.1. Adoption of Coastal Habitat Protection Plans.**

6 The Commission shall approve Coastal Habitat Protection Plans as provided in
7 G.S. 143B-279.8."

8 Section 3.4. Article 15 of Chapter 113 of the General Statutes is
9 amended by adding a new section to read:

10 **"§ 113-182.1. Fishery Management Plans.**

11 (a) The Department shall prepare proposed Fishery Management Plans for
12 adoption by the Marine Fisheries Commission for all commercially or recreationally
13 significant species or fisheries that comprise State marine or estuarine resources.
14 Proposed Fishery Management Plans shall be developed in accordance with the
15 Priority List, Schedule, and guidance criteria established by the Marine Fisheries
16 Commission under G.S. 143B-289.22.

17 (b) The goal of the plans shall be to ensure the long-term viability of the State's
18 commercially and recreationally significant species or fisheries. Each plan shall be
19 designed to reflect fishing practices so that one plan may apply to a specific fishery,
20 while other plans may be based on gear or geographic areas. Each plan shall:

21 (1) Contain necessary information pertaining to the fishery or fisheries,
22 including management goals and objectives, status of relevant fish
23 stocks, stock assessments for multiyear species, fishery habitat and
24 water quality considerations consistent with Coastal Habitat
25 Protection Plans adopted pursuant to G.S. 143B-279.8, social and
26 economic impact of the fishery to the State, and user conflicts.

27 (2) Recommend management actions pertaining to the fishery or
28 fisheries.

29 (3) Include conservation and management measures that prevent
30 overfishing, while achieving, on a continuing basis, the optimal
31 yield from each fishery.

32 (c) To assist in the development of each Fishery Management Plan, the Chair of
33 the Marine Fisheries Commission shall appoint an Advisory Council. Each Advisory
34 Council shall be composed of commercial fishermen, recreational fishermen, and
35 scientists, all with expertise in the fishery for which the Fishery Management Plan is
36 being developed.

37 (d) Each Fishery Management Plan shall be revised at least once every three
38 years. The Marine Fisheries Commission may revise the Priority List and guidance
39 criteria whenever it determines that a revision of the Priority List or guidance criteria
40 will facilitate or improve the development of Fishery Management Plans or is
41 necessary to restore, conserve, or protect the marine and estuarine resources of the
42 State. The Marine Fisheries Commission may not revise the Schedule for the
43 development of a Fisheries Management Plan, once adopted, without the approval of
44 the Secretary of Environment, Health, and Natural Resources.

1 (e) The Secretary of Environment, Health, and Natural Resources shall monitor
2 progress in the development and adoption of Fishery Management Plans in relation
3 to the Schedule for development and adoption of the plans established by the Marine
4 Fisheries Commission. If the Secretary determines that the Division of Marine
5 Fisheries has failed to develop or the Marine Fisheries Commission has failed to
6 adopt a Fishery Management Plan in compliance with the Schedule, the Secretary
7 may issue a proclamation prohibiting the taking of species to which the Plan would
8 apply. The completion of any act within 30 days of the time specified by the
9 Schedule constitutes compliance with the Schedule. A proclamation issued pursuant
10 to this subsection is not subject to Article 2A of Chapter 150B of the General
11 Statutes.

12 (f) The Secretary of Environment, Health, and Natural Resources shall report to
13 the Joint Legislative Commission on Seafood and Aquaculture and the
14 Environmental Review Commission on progress in developing and implementing the
15 Fishery Management Plans on or before 1 September of each year. The Secretary of
16 Environment, Health, and Natural Resources shall report to the Joint Legislative
17 Commission on Seafood and Aquaculture and the Environmental Review
18 Commission within 30 days of the completion or substantial revision of each
19 proposed Fishery Management Plan. The Joint Legislative Commission on Seafood
20 and Aquaculture and the Environmental Review Commission shall review each
21 proposed Fishery Management Plan within 30 days of the date the proposed Plan is
22 submitted to the commission. The Joint Legislative Commission on Seafood and
23 Aquaculture and the Environmental Review Commission may submit comments and
24 recommendations on the proposed Plan to the Secretary within 30 days of the date
25 the proposed Plan is submitted by the Secretary.

26 (g) The Marine Fisheries Commission shall adopt rules to implement Fishery
27 Management Plans in accordance with Chapter 150B of the General Statutes."

28 Section 3.5. G.S. 113-129 is amended by adding two new subdivisions to
29 read:

30 "(12a) Optimal yield. -- The amount of fish that:
31 a. Will provide the greatest overall benefit to the State,
32 particularly with respect to food production and recreational
33 opportunities, and taking into account the protection of
34 marine ecosystems;
35 b. Is prescribed on the basis of the maximum sustainable yield
36 from the fishery, as reduced by any relevant economic,
37 social, or ecological factor; and
38 c. In the case of an overfished fishery, provides for rebuilding
39 to a level consistent with producing the maximum
40 sustainable yield in the fishery.

41 (12b) Overfishing or overfished. -- A rate or level of fishing mortality
42 that jeopardizes the capacity of a fishery to produce the maximum
43 sustainable yield on a continuing basis."
44

1 **PART IV. MARINE FISHERIES LAW ENFORCEMENT**

2

3 Section 4.1. G.S. 113-187 reads as rewritten:

4 **"§ 113-187. Penalties for violations of Subchapter and rules.**

5 (a) Any person who participates in a commercial fishing operation conducted in
6 violation of any provision of this Subchapter and its implementing rules or in an
7 operation in connection with which any vessel is used in violation of any provision of
8 this Subchapter and its implementing rules is guilty of a ~~Class 1~~ Class A1
9 misdemeanor.

10 (b) Any owner of a vessel who knowingly permits it to be used in violation of any
11 provision of this Subchapter and its implementing rules is guilty of a ~~Class 1~~ Class A1
12 misdemeanor.

13 (c) Any person in charge of a commercial fishing operation conducted in violation
14 of any provision of this Subchapter and its implementing rules or in charge of any
15 vessel used in violation of any provision of this Subchapter and its implementing
16 rules is guilty of a ~~Class 1~~ Class A1 misdemeanor.

17 (d) Any person in charge of a commercial fishing operation conducted in
18 violation of the following provisions of this Subchapter or the following rules of the
19 Marine Fisheries Commission; and any person in charge of any vessel used in
20 violation of the following provisions of the Subchapter or the following rules, shall be
21 guilty of a ~~Class 2~~ Class A1 misdemeanor. The violations of the statute or the rules
22 for which the penalty is mandatory are:

23 (1) Taking or attempting to take, possess, sell, or offer for sale any
24 oysters, mussels, or clams taken from areas closed by statute, rule,
25 or proclamation because of suspected pollution.

26 (2) Taking or attempting to take or have in possession aboard a vessel,
27 shrimp taken by the use of a trawl net, in areas not opened to
28 shrimping, pulled by a vessel not showing lights required by G.S.
29 75A-6 after sunset and before sunrise.

30 (3) Using a trawl net in any coastal fishing waters closed by
31 proclamation or rule to trawl nets.

32 (4) Violating the provisions of a special permit or gear license issued
33 by the Department.

34 (5) Using or attempting to use any trawl net, long haul seine, swipe
35 net, mechanical methods for oyster or clam harvest or dredge in
36 designated primary nursery areas."

37 Section 4.2. Article 15 of Chapter 113 of the General Statutes is
38 amended by adding a new section to read:

39 **"§ 113-190. Unlawful sale or purchase of fish; criminal and civil penalties.**

40 (a) Any person who sells fish in violation of G.S. 113-168.4 or a rule of the
41 Marine Fisheries Commission to implement that section is guilty of a Class A1
42 misdemeanor.

1 (b) Any person who purchases fish in violation of G.S. 113-169.3 or a rule of the
2 Marine Fisheries Commission to implement that section is guilty of a Class A1
3 misdemeanor.

4 (c) A civil penalty of not more than ten thousand dollars (\$10,000) may be
5 assessed by the Secretary against any person who sells fish in violation of G.S.
6 113-168.4 or purchases fish in violation of G.S. 113-169.3.

7 (d) In determining the amount of the penalty, the Secretary shall consider the
8 factors set out in G.S. 143B-289.23(b). The procedures set out in G.S. 143B-289.23
9 shall apply to civil penalty assessments that are presented to the Commission for final
10 agency decision.

11 (e) The Secretary shall notify any person assessed a civil penalty of the assessment
12 and the specific reasons therefor by registered or certified mail or by any means
13 authorized by G.S. 1A-1, Rule 4. Contested case petitions shall be filed pursuant to
14 G.S. 150B-23 within 30 days of receipt of the notice of assessment.

15 (f) Requests for remission of civil penalties shall be filed with the Secretary.
16 Remission requests shall not be considered unless filed within 30 days of receipt of
17 the notice of assessment. Remission requests must be accompanied by a waiver of the
18 right to a contested case hearing pursuant to Chapter 150B of the General Statutes
19 and a stipulation of the facts on which the assessment was based. Consistent with the
20 limitations in G.S. 143B-289.23(c), remission requests may be resolved by the
21 Secretary and the violator. If the Secretary and the violator are unable to resolve the
22 request, the Secretary shall deliver remission requests and his recommended action to
23 the Committee on Civil Penalty Remissions of the Marine Fisheries Commission
24 appointed pursuant to G.S. 143B-289.23(c).

25 (g) If any civil penalty has not been paid within 30 days after notice of assessment
26 has been served on the violator, the Secretary shall request the Attorney General to
27 institute a civil action in the superior court of any county in which the violator
28 resides or has his or its principal place of business to recover the amount of the
29 assessment, unless the violator contests the assessment as provided in subsection (e) of
30 this section, or requests remission of the assessment in whole or in part as provided in
31 subsection (f) of this section. If any civil penalty has not been paid within 30 days
32 after the final agency decision or court order has been served on the violator, the
33 Secretary shall request the Attorney General to institute a civil action in the superior
34 court of any county in which the violator resides or has his or its principal place of
35 business to recover the amount of the assessment. Civil actions must be filed within
36 three years of the date the final agency decision or court order was served on the
37 violator."

38 Section 4.3. G.S. 113-221(e) reads as rewritten:

39 "(e) The Marine Fisheries Commission may delegate to the Fisheries Director the
40 authority to issue proclamations suspending or implementing, in whole or in part,
41 particular rules of the Commission which may be affected by variable conditions.
42 Such proclamations are to be issued by the Fisheries Director or by a person
43 designated by the Fisheries Director. All proclamations must state the hour and date
44 upon which they become effective and must be issued at least 48 hours in advance of

1 the effective date and time. In those situations in which the proclamation prohibits
2 the taking of certain fisheries resources for reasons of public health, the proclamation
3 can be made effective immediately upon issuance. Notwithstanding any other
4 provisions of this subsection, a proclamation can be issued at least 12 hours in
5 advance of the effective date and time to reopen the taking of certain fisheries
6 resources closed for reason of public health through a prior proclamation made
7 effective immediately upon issuance. Persons violating any proclamation which is
8 made effective immediately shall not be charged with a criminal offense during the
9 time between the issuance and 48 hours after such issuance unless such person had
10 actual notice of the issuance of such proclamation. Fisheries resources taken or
11 possessed by any person in violation of any proclamation may be seized regardless of
12 whether such person had actual notice of the proclamation. A permanent file of the
13 text of all proclamations shall be maintained in the office of the Fisheries Director.
14 Certified copies of proclamations are entitled to judicial notice in any civil or
15 criminal proceeding.

16 The Fisheries Director must make every reasonable effort to give actual notice of
17 the terms of any proclamation to the persons who may be affected thereby. ~~Such~~
18 Reasonable effort includes press releases to communications media, posting of notices
19 at docks and other places where persons affected may gather, personal
20 communication by inspectors and other agents of the Fisheries Director, and such
21 other measures designed to reach the persons who may be affected. The Fisheries
22 Director may determine, on a case-by-case basis and at the Fisheries Director's sole
23 discretion, that a proclamation did not apply to an individual licensee when an act of
24 God occurred that prevented the licensee from receiving notice of the proclamation."

25 Section 4.4. The Marine Fisheries Commission shall develop a Violation
26 Points System applicable to the fishing licenses of all persons who violate marine
27 fisheries statutes or rules. In developing this system, the Marine Fisheries
28 Commission shall consider the recommendations made in the Final Report of the
29 Moratorium Steering Committee and the suspension, revocation, and reissuance
30 procedures under G.S. 113-166. The Marine Fisheries Commission shall also develop
31 an implementation schedule for the Violation Points System. The Marine Fisheries
32 Commission shall report to the Joint Legislative Commission on Seafood and
33 Aquaculture no later than 1 July 1999, on the development of the Violation Points
34 System and the implementation schedule.

35

36 PART V. COMMERCIAL FISHING LICENSES; TRANSITIONAL PROVISIONS

37

38 Section 5.1. Chapter 113 of the General Statutes is amended by adding a
39 new Article to read:

40

"ARTICLE 14A.

41

"Coastal and Estuarine Commercial Fishing Licenses.

42

"§ 113-168. Definitions.

43

As used in this Article:

- 1 (1) 'Commercial fishing operation' means any activity preparatory to,
2 during, or subsequent to the taking of any fish, the taking of which
3 is subject to regulation by the Commission, either with the use of
4 commercial fishing equipment or gear, or by any means if the
5 purpose of the taking is to obtain fish for sale. Commercial fishing
6 operation includes taking people fishing for hire.
- 7 (2) 'Commission' means the Marine Fisheries Commission.
- 8 (3) 'Division' means the Division of Marine Fisheries in the
9 Department of Environment, Health, and Natural Resources.
- 10 (4) 'License year' means the period beginning 1 July of a year and
11 ending on 30 June of the following year.
- 12 (5) 'North Carolina resident' means a person is a resident within the
13 meaning of G.S. 113-130(4) and who filed a State income tax
14 return as a resident of the State for the previous calendar or tax
15 year.
- 16 (6) 'RCGL' means Recreational Commercial Gear License.
- 17 (7) 'RSCFL' means Retired Standard Commercial Fishing License.
- 18 (8) 'SCFL' means Standard Commercial Fishing License.

19 **"§ 113-168.1. General provisions for commercial licenses and endorsements.**

20 (a) Duration, Fees. -- All licenses and endorsements issued under this Article
21 expire on the last day of the license year. An applicant for any license shall pay the
22 full annual license fee at the time the applicant applies for the license regardless of
23 when application is made.

24 (b) Licenses Required to Engage in Commercial Fishing. -- It is unlawful for any
25 person to engage in a commercial fishing operation without being licensed as
26 required by this Article. It is unlawful for anyone to command a vessel engaged in a
27 commercial fishing operation without complying with the provisions of this Article
28 and rules adopted by the Commission under this Article.

29 (c) Licenses and Endorsements Available for Inspection. -- It is unlawful for any
30 person to engage in a commercial fishing operation in the State without having ready
31 at hand for inspection all valid licenses and endorsements required under this Article.
32 To comply with this subsection, a person must have either a currently valid (i) license
33 issued in the person's true name and bearing the person's current address or (ii) an
34 assignment of a SCFL authorized under this Article. A licensee or assignee shall not
35 refuse to exhibit the licenses and endorsements upon the request of an inspector or
36 any other law enforcement officer authorized to enforce federal or State laws,
37 regulations, or rules relating to marine fisheries.

38 (d) No Dual Residency. -- It is unlawful for any person to hold any currently valid
39 license issued under this Article to the person as a North Carolina resident if that
40 person holds any currently valid commercial or recreational fishing license issued by
41 another state to the person as a resident of that state.

42 (e) License Format. -- Licenses issued under this Article shall be issued in the
43 name of the applicant. Each license shall show the type of license and any
44 endorsements; the name, address, and date of birth of the licensee; the date on which

1 the license is issued; the date on which the license expires; and any other information
2 that the Commission or the Division determines to be necessary to accomplish the
3 purposes of this Subchapter.

4 "§ 113-168.2. Standard Commercial Fishing License.

5 (a) Requirement. -- No person shall engage in a commercial fishing operation in
6 the coastal fishing waters without holding a Standard Commercial Fishing License
7 issued by the Division. A person who works as a member of the crew of a vessel
8 engaged in a commercial fishing operation under the direction of a person who holds
9 a valid SCFL or RSCFL is not required to hold a SCFL or RSCFL.

10 (b) Purchase; Renewal. -- A person may purchase a SCFL at any office of the
11 Division. The SCFL and endorsements may be renewed by mail by forwarding a
12 completed application, including applicable fees, to the Division's Morehead City
13 office. Any person who is issued a SCFL or a RSCFL is eligible to renew the SCFL
14 or RSCFL and any endorsements if the SCFL or RSCFL has not been suspended or
15 revoked.

16 (c) Replacement License. -- A licensee may obtain a replacement license for a lost
17 or destroyed license, including all endorsements, upon receipt of a proper application
18 in the offices of the Division together with a ten-dollar (\$10.00) fee. The Division
19 shall not accept an application for a replacement license unless the Division
20 determines that the applicant's current license has not been suspended or revoked. A
21 copy of an application duly filed with the Division shall serve as the license until the
22 replacement license has been received. The Commission may provide by rule for the
23 replacement of lost, obliterated, destroyed, or otherwise illegible license plates or
24 decals upon tender of the original license receipt or upon other evidence that the
25 Commission deems sufficient.

26 (d) Nonresident Certification Required. -- Persons obtaining licenses who are not
27 North Carolina residents shall certify that their conviction record in their state of
28 residence is such that they would not be denied a license under the standards in G.S.
29 113-171. When a license application is denied for violations of fisheries laws,
30 whether the violations occurred in North Carolina or another jurisdiction, the license
31 fees shall not be refunded and shall be applied to the costs of processing the
32 application.

33 (e) Fees. -- The annual SCFL fee for a North Carolina resident shall be two
34 hundred dollars (\$200.00). The annual SCFL fee for a person who is not a resident
35 of North Carolina shall be two thousand dollars (\$2,000) or the amount charged to a
36 North Carolina resident in the nonresident's state, whichever is lesser.

37 (f) Assignment. -- The holder of a SCFL may assign the SCFL to any individual,
38 provided that a SCFL or RSCFL issued to the individual is not suspended or
39 revoked. If the SCFL is endorsed for one or more vessels, each vessel endorsement
40 may be assigned, independently of the SCFL, to another holder of a SCFL. An
41 assignment of a SCFL vessel endorsement shall be valid only for use by a holder or
42 assignee of a SCFL in the operation of the vessel for which the SCFL is endorsed.
43 The assignment shall be in writing on a form provided by the Division and shall
44 include the name of the licensee, the license number, any endorsements, the

1 assignee's name and mailing address, and the duration of the assignment. A
2 notarized copy of the assignment shall be filed with the Division. The assignee shall
3 carry the assignment on the assignee's person and have the assignment available for
4 inspection at all times while using the vessel. The assignment may be revoked by: (i)
5 written notification by the assignor that the assignment has been terminated; or (ii) a
6 determination by the Division that the assignee is operating in violation of the terms
7 and conditions applicable to the assignment.

8 (g) Transfer. -- A SCFL may be transferred:

- 9 (1) By the license holder to a member of the license holder's
10 immediate family.
- 11 (2) By the State to the estate of the license holder upon the death of
12 the license holder.
- 13 (3) By a surviving family member to whom a license was transferred
14 pursuant to subdivision (2) of this subsection to a third-party
15 purchaser of the license holder's fishing vessel upon the death of
16 the license holder.
- 17 (4) By the license holder to a third-party purchaser of the license
18 holder's fishing vessel upon retirement of the license holder from
19 commercial fishing.
- 20 (5) Under any other circumstance authorized by rule of the
21 Commission.

22 (h) Identification as Commercial Fisherman. -- The receipt of a current and valid
23 SCFL, RSCFL, or shellfish license issued by the Division shall serve as proper
24 identification of the licensee as a commercial fisherman.

25 (i) Record-Keeping Requirements. -- The fish dealer shall record each transaction
26 at the time and place of landing on a form provided by the Division. The transaction
27 form shall include the information on the SCFL, RSCFL, or shellfish license, the
28 quantity of the fish, the identity of the fish dealer, and other information as the
29 Division deems necessary to accomplish the purposes of this Subchapter. The person
30 who records the transaction shall provide a completed copy of the transaction form to
31 the Division and to the other party of the transaction. The Division's copy of each
32 transaction form shall be transmitted to the Division by the fish dealer on or before
33 the tenth day of the month following the transaction.

34 **"§ 113-168.3. Retired Standard Commercial Fishing License.**

35 (a) SCFL Provisions Applicable. -- Except as provided in this section, the
36 provisions set forth in G.S. 113-168.2 concerning the SCFL shall apply to the RSCFL.

37 (b) Eligibility; Fee. -- Any person who is 65 years of age or older and who is
38 otherwise eligible for a SCFL under G.S. 113-168.2 may purchase a RSCFL for an
39 annual fee of one hundred dollars (\$100.00). Proof of age shall be supplied at the
40 time the application is made.

41 (c) Transfer. -- The holder of a RSCFL may transfer the RSCFL as provided in
42 G.S. 113-168.2 or, upon retirement from commercial fishing, to a third-party
43 purchaser of the RSCFL holder's fishing vessel. If the third-party purchaser is less

1 than 65 years of age, that purchaser shall pay the fee for the SCFL set forth in G.S.
2 113-168.2.

3 (d) Assignment. -- The RSCFL shall not be assignable.

4 **"§ 113-168.4. Regulations concerning the sale of fish.**

5 (a) Except as otherwise provided in this section, it is unlawful for any person who
6 takes or lands any species of fish under the authority of the Commission from coastal
7 fishing waters by any means whatever, including mariculture operations, to sell, offer
8 for sale, barter or exchange for merchandise these fish, without holding a current and
9 valid SCFL or RSCFL issued under G.S. 113-168.2 or G.S. 113-168.3, or a valid
10 shellfish license issued under G.S. 113-169.2. It is unlawful for fish dealers to buy fish
11 unless the seller presents a current and valid SCFL, RSCFL, or shellfish license at the
12 time of the transaction. Any subsequent sale of fish shall be subject to the licensing
13 requirements of fish dealers under G.S. 113-169.3.

14 (b) It is unlawful for any person licensed under this section to sell fish taken
15 outside the territorial waters of the State or to sell fish taken from coastal fishing
16 waters except to:

17 (1) Fish dealers licensed under G.S. 113-169.3; or

18 (2) The public, if the seller is also licensed as a fish dealer under G.S.
19 113-169.3.

20 (c) A person who organizes a nonprofit recreational fishing tournament may sell
21 fish taken in connection with the tournament pursuant to a recreational fishing
22 tournament license to sell fish. A person who organizes a nonprofit recreational
23 fishing tournament may obtain a recreational fishing tournament license to sell fish
24 upon application to the Division and payment of a fee of one hundred dollars
25 (\$100.00). A recreational fishing tournament is an organized fishing competition
26 occurring within a specified time period not to exceed one week and that is not a
27 commercial fishing operation. Proceeds derived from the sale of fish may be used
28 only for charitable purposes.

29 **"§ 113-168.5. License endorsements for Standard Commercial Fishing License and**
30 **Retired Standard Commercial Fishing License.**

31 (a) A SCFL or RSCFL may be endorsed to authorize the use of a vessel in a
32 commercial fishing operation.

33 (b) Vessel Endorsements. --

34 (1) As used in this subsection, a North Carolina vessel is a vessel that
35 has its primary situs in the State. A vessel has its primary situs in
36 the State if:

37 a. A certificate of number has been issued for the vessel under
38 Article 1 of Chapter 75A of the General Statutes;

39 b. A certificate of title has been issued for the vessel under
40 Article 4 of Chapter 75A of the General Statutes; or

41 c. A certification of documentation has been issued for the
42 vessel that lists a home port in the State under 42 U.S.C. §
43 12101, et seq., as amended.

- 1 (2) It is unlawful to use a vessel in a commercial fishing operation in
2 the coastal fishing waters of the State without a vessel endorsement
3 of the license required under this Article for that commercial
4 fishing operation. It is unlawful to use a North Carolina vessel to
5 land or sell fish in the State that are taken during a commercial
6 fishing operation outside the coastal fishing waters of the State
7 without a vessel endorsement of the license required under this
8 Article for that commercial fishing operation. No endorsement is
9 required, however, for a vessel of any length that does not have a
10 motor if the vessel is used only in connection with another vessel
11 for which the required license has been properly endorsed.
- 12 (3) The fee for a vessel endorsement shall be determined by the length
13 of the vessel and shall be in addition to the fee for a SCFL,
14 RSCFL, or shellfish license. The length of a vessel shall be
15 determined by measuring the distance between the ends of the
16 vessel along the deck and through the cabin, excluding the sheer.
17 The fee for a vessel endorsement is:
- 18 a. One dollar (\$1.00) per foot for a vessel not over 18 feet in
19 length.
- 20 b. One dollar and fifty cents (\$1.50) per foot for a vessel over
21 18 feet but not over 38 feet in length.
- 22 c. Three dollars (\$3.00) per foot for a vessel over 38 feet but
23 not over 50 feet in length.
- 24 d. Six dollars (\$6.00) per foot for a vessel over 50 feet in
25 length.
- 26 (4) A vessel endorsement may be assigned as provided in G.S.
27 113-168.2(f).
- 28 (5) When the owner of a vessel for which a SCFL, RSCFL, or shellfish
29 license has been endorsed transfers ownership of the vessel to a
30 holder of a SCFL, RSCFL, or shellfish license, the vessel
31 endorsement may be transferred from the former owner's SCFL,
32 RSCFL, or shellfish license to the new owner's SCFL, RSCFL, or
33 shellfish license upon the request of the new owner. The new
34 owner of the vessel shall notify the Division of the change in
35 ownership and request that the vessel endorsement be transferred
36 within 30 days of the date on which the transfer of ownership
37 occurred. The notification of a change in the ownership of a
38 vessel and request that the vessel endorsement be transferred shall
39 be made on a form provided by the Division and shall be
40 accompanied by satisfactory proof of the transfer of vessel
41 ownership. Transfer of vessel ownership may be proven by a
42 notarized copy of: (i) the bill of sale; (ii) a temporary vessel
43 registration; or (iii) a vessel documentation transfer.

1 (c) Menhaden Endorsements. -- Except as provided in G.S. 113-169, it is unlawful
2 to use a vessel to take menhaden by purse seine in the coastal fishing waters of the
3 State, to land menhaden in the State, or to sell menhaden from a vessel in the State
4 without obtaining a menhaden endorsement of a SCFL or RSCFL. The fee for a
5 menhaden endorsement shall be two dollars (\$2.00) per ton, based on gross tonnage
6 as determined by the custom house measurement for the mother ship. The
7 menhaden endorsement shall be required for the mother ship but no separate
8 endorsement shall be required for a purse boat carrying a purse seine. The
9 application for a menhaden endorsement must state the name of the person in
10 command of the vessel. Upon a change in command of a menhaden vessel, the
11 owner must notify the Division in writing within 30 days.

12 (d) Shellfish Endorsement for North Carolina Residents. -- The Division shall
13 issue a shellfish endorsement of a SCFL or RSCFL to a North Carolina resident at
14 no charge.

15 **"§ 113-169. Menhaden license for nonresidents not eligible for a SCFL.**

16 A person who is not a resident of North Carolina, who is not eligible for a SCFL
17 under this Article, and who only seeks to engage in menhaden fishing is eligible to
18 purchase a menhaden license for nonresidents. The fee for the menhaden license for
19 nonresidents shall be two dollars (\$2.00) per ton, gross tonnage, customhouse
20 measurements for the mother ship. The menhaden license for nonresidents shall be
21 required for the mother ship to take, land, or sell menhaden in North Carolina taken
22 by purse seine. No separate endorsement shall be required for a purse boat carrying
23 a purse seine. The application for a menhaden license for nonresidents must state the
24 name of the person in command of the vessel. Upon change in command of a
25 menhaden vessel, the owner must notify the Division within 30 days.

26 **"§ 113-169.1. Permits for gear, equipment, and other specialized activities authorized.**

27 The Commission may adopt rules to establish permits for gear, equipment, and
28 specialized activities, including commercial fishing operations that do not involve the
29 use of a vessel and transplanting oysters or clams. The Commission shall establish a
30 fee for each permit in an amount that compensates the Division for the actual
31 administrative costs associated with the permit but that does not exceed fifty dollars
32 (\$50.00) per permit.

33 **"§ 113-169.2. Shellfish license for North Carolina residents without a SCFL.**

34 (a) License or Endorsement Necessary to Take or Sell Shellfish. -- It is unlawful
35 for an individual to take shellfish from the public grounds of the State by mechanical
36 means or for commercial use by any means without holding either a shellfish license
37 or a shellfish endorsement of a SCFL or RSCFL. A North Carolina resident who
38 seeks only to take and sell shellfish shall be eligible to purchase a shellfish license
39 without holding a SCFL or RSCFL. The license includes the privilege to sell shellfish
40 to a licensed fish dealer.

41 (b) Purchase; Renewal. -- A person may purchase a shellfish license at any office
42 of the Division. The shellfish license and endorsements may be renewed by mail by
43 forwarding a completed application, including applicable fees, to the Division's
44 Morehead City Office. Any person who is issued a shellfish license is eligible to

1 renew the shellfish license and any endorsements if the shellfish license has not been
2 suspended or revoked.

3 (c) Fees. -- Shellfish licenses shall be issued annually upon payment of a fee of
4 twenty-five dollars (\$25.00) upon proof that the license applicant is a resident of
5 North Carolina.

6 (d) License Available for Inspection. -- It is unlawful for any individual to take
7 shellfish for commercial use from the public grounds of the State without having
8 ready at hand for inspection a current and valid shellfish license issued to the licensee
9 personally and bearing the licensee's correct name and address. It is unlawful for any
10 individual taking or possessing freshly taken shellfish to refuse to exhibit the
11 individual's license upon the request of an officer authorized to enforce the fishing
12 laws.

13 (e) Vessel Endorsement Required. -- A license holder under this section shall be
14 required to purchase a vessel endorsement under G.S. 113-168.5 if a vessel is used in
15 the take or sale of shellfish. A vessel endorsement of a shellfish license does not
16 authorize the use of the vessel for any commercial fishing operation other than the
17 taking or selling of shellfish.

18 (f) Name or Address Change. -- In the event of a change in name or address or
19 upon receipt of an erroneous shellfish license, the licensee shall, within 30 days, apply
20 for a replacement shellfish license bearing the correct name and address. Upon a
21 showing by the individual that the name or address change occurred within the past
22 30 days, the trial court or prosecutor shall dismiss any charges brought pursuant to
23 this subsection.

24 (g) Transfer Prohibited. -- It is unlawful for an individual issued a shellfish license
25 to transfer or offer to transfer the license, either temporarily or permanently, to
26 another. It is unlawful for an individual to secure or attempt to secure a shellfish
27 license from a source not authorized by the Commission.

28 (h) Taking and Selling Shellfish Without a License. -- Persons under the age of 18
29 years of age may take and sell shellfish from the public or private grounds of the
30 State during the period from May 15 through September 1 of each year without
31 holding a shellfish license under this section.

32 (i) Taking Shellfish Without a License for Personal Use. --

33 (1) A person may take shellfish for personal use without obtaining a
34 license under this section in quantities up to:

35 a. One bushel of oysters per day.

36 b. One-half bushel of scallops per day.

37 c. One hundred clams per day.

38 (2) Two or more persons who are using a vessel to take shellfish may
39 take shellfish for personal use without obtaining a license under
40 this section in quantities up to:

41 a. Two bushels of oysters per day.

42 b. One bushel of scallops per day.

43 c. Two hundred clams per day.

44 "§ 113-169.3. Licenses for fish dealers.

1 (a) Eligibility. -- A fish dealer license shall be issued to a North Carolina resident
2 upon receipt of a proper application in the Morehead City Office of the Division
3 together with all license fees including the total number of dealer categories set forth
4 in this section. The license shall be issued in the name of the applicant and shall
5 include all dealer categories on the license.

6 (b) Application for License. -- Applications shall not be accepted from persons
7 ineligible to hold a license issued by the Division, including any applicant whose
8 license is suspended or revoked on the date of the application. The applicant shall be
9 provided with a copy of the application marked received. The copy shall serve as the
10 fish dealer's license until the license issued by the Division is received, or the
11 Division determines that the applicant is ineligible to hold a license. Where an
12 applicant does not have an established location for transacting the fisheries business
13 within the State, the license application shall be denied unless the applicant satisfies
14 the Secretary that his residence, or some other office or address within the State, is a
15 suitable substitute for an established location and that records kept in connection
16 with licensing, sale, and purchase requirements will be available for inspection when
17 necessary. Fish dealers' licenses are issued on a fiscal year basis upon payment of a
18 fee as set forth herein upon proof, satisfactory to the Secretary, that the license
19 applicant is a North Carolina resident.

20 (c) License Requirement. -- Except as otherwise provided in this section, it is
21 unlawful for any person not licensed pursuant to this article:

22 (1) To buy fish for resale from any person involved in a commercial
23 fishing operation that takes any species of fish from coastal fishing
24 waters. For purposes of this subdivision, a retailer who purchases
25 fish from a fish dealer shall not be liable if the fish dealer has not
26 complied with the licensing requirements of this section;

27 (2) To sell fish to the public; or

28 (3) To sell to the public any species of fish under the authority of the
29 Commission taken from coastal fishing waters.

30 Any person subject to the licensing requirements of this section is a fish dealer.
31 Any person subject to the licensing requirements of this section shall obtain a
32 separate license for each physical location conducting activities required to be
33 licensed under this section.

34 (d) Exceptions to License Requirements. -- The Commission may adopt rules to
35 implement this subsection including rules to clarify the status of the listed classes of
36 exempted persons, require submission of statistical data, and require that records be
37 kept in order to establish compliance with this section. Any person not licensed
38 pursuant to this section is exempt from the licensing requirements of this section if all
39 fish handled within any particular licensing category meet one or more of the
40 following requirements:

41 (1) The fish are sold by persons whose dealings in fish are primarily
42 educational, scientific, or official, and who have been issued a
43 permit by the Division that authorizes the educational, scientific, or

- 1 official agency to sell fish taken or processed in connection with
2 research or demonstration projects;
- 3 (2) The fish are sold by individual employees of fish dealers when
4 transacting the business of their duly licensed employer;
- 5 (3) The fish are shipped to a person by a dealer from without the
6 State;
- 7 (4) The fish are of a kind the sale of which is regulated exclusively by
8 the Wildlife Resources Commission; or
- 9 (5) The fish are purchased from a licensed dealer.
- 10 (e) Application Fee for New Fish Dealers. -- An applicant for a new fish dealer
11 license shall pay a nonrefundable application fee of fifty dollars (\$50.00) in addition
12 to the license category fees set forth in this section.
- 13 (f) License Category Fees. -- Every fish dealer subject to licensing requirements
14 shall secure an annual license at each established location for each of the following
15 activities transacted there, upon payment of the fee set out:
- 16 (1) Dealing in oysters: \$50.00;
17 (2) Dealing in scallops: \$50.00;
18 (3) Dealing in clams: \$50.00;
19 (4) Dealing in hard or soft crabs: \$50.00;
20 (5) Dealing in shrimp, including bait: \$50.00;
21 (6) Dealing in finfish, including bait: \$50.00;
22 (7) Operating menhaden or other fish-dehydrating or oil-extracting
23 processing plants: \$50.00; or
24 (8) Consolidated license (all categories): \$300.00.
- 25 Any person subject to fish dealer licensing requirements who deals in fish not
26 included in the above categories shall secure a finfish dealer license. The Commission
27 may adopt rules implementing and clarifying the dealer categories of this subsection.
28 Bait operations shall be licensed under either the finfish or shrimp dealer license
29 categories.
- 30 (g) License Format. -- The format of the license shall include the name of the
31 licensee, date of birth, name and physical address of each business location,
32 expiration date of the license, and any other information the Division deems
33 necessary to accomplish the purposes of this Subchapter.
- 34 (h) Application for Replacement License. -- A replacement license shall only be
35 obtained from an office of the Division. The Division shall not accept an application
36 for a replacement license unless the Division determines that the applicant's current
37 license has not been suspended or revoked. A copy of an application duly filed with
38 the Division shall serve as the license until the replacement license has been received.
- 39 (i) Purchase and Sale of Fish. -- It is unlawful for a fish dealer to buy fish unless
40 the seller possesses a current and valid SCFL, RSCFL, shellfish license, menhaden
41 license for nonresidents, or a special fisheries sale permit issued under G.S.
42 113-168.4(c), and the dealer records the transaction consistent with the
43 record-keeping requirements of G.S. 113-168.2(i). It is unlawful for any person to

1 purchase, possess, or sell fish taken from coastal fishing waters in violation of this
2 Subchapter or the rules adopted by the Commission implementing this Subchapter.

3 (j) Transfer Prohibited. -- Any fish dealer license issued under this section is
4 nontransferable. It is unlawful to use a fish dealer license issued to another person in
5 the sale or attempted sale of fish or for a licensee to lend or transfer a fish dealer
6 license for the purpose of circumventing the requirements of this section.

7 **"§ 113-169.4. Licensing of ocean fishing piers; fees.**

8 (a) The owner or operator of an ocean fishing pier within the coastal fishing
9 waters who charges the public a fee to fish in any manner from the pier shall secure a
10 current and valid pier license from the Division. An application for a pier license
11 shall disclose the names of all parties involved in the pier operations, including the
12 owner of the property, owner of the pier if different, and all leasehold or other
13 corporate arrangements, and all persons with a substantial financial interest in the
14 pier.

15 (b) Within 30 days following a change of ownership of a pier, or a change as to
16 the manager, the manager or new manager shall secure a replacement pier license
17 from the Division. The replacement license is issued without charge.

18 (c) Pier licenses are issued upon payment of fifty cents (50¢) per linear foot, to
19 the nearest foot, that the pier extends into coastal fishing waters beyond the mean
20 high waterline. The length of the pier shall be measured to include all extensions of
21 the pier.

22 (d) The manager who secures the pier license shall be the individual with the duty
23 of executive-level supervision of pier operations.

24 **"§ 113-169.5. Land or sell license; vessels fishing beyond territorial waters.**

25 (a) Persons aboard vessels not having their primary situs in the State that are
26 carrying a cargo of fish taken outside the waters of the State may land or sell their
27 catch in the State by purchasing a land or sell license as set forth in this section with
28 respect to the vessel in question. The Commission may by rule modify the land or sell
29 licensing procedure in order to devise an efficient and convenient procedure for
30 licensing out-of-state vessels to only land, or after landing to permit sale of cargo.

31 (b) The fee for a land or sell license for a vessel not having its primary situs in
32 North Carolina is two hundred dollars (\$200.00), or an amount equal to the
33 nonresident fee charged by the nonresident's state, whichever is greater. Persons
34 aboard vessels having a primary situs in a jurisdiction that would allow North
35 Carolina vessels without restriction to land or sell their catch, taken outside the
36 jurisdiction, may land or sell their catch in the State without complying with this
37 section if the persons are in possession of a valid license from their state of residence.

38 **"§ 113-170. Exportation and importation of fish and equipment.**

39 The Commission may adopt rules governing the importation and exportation of
40 fish, and equipment that may be used in taking or processing fish, as necessary to
41 enhance the conservation of marine and estuarine resources of the State. These rules
42 may regulate, license, prohibit, or restrict importation into the State and exportation
43 from the State of any and all species of fish that are native to coastal fishing waters or
44 may thrive if introduced into these waters.

1 **"§ 113-170.1. Nonresidents reciprocal agreements.**

2 Persons who are not North Carolina residents are not entitled to obtain licenses
3 under the provisions of this Article except as provided in this section. Residents of
4 jurisdictions that sell commercial fishing licenses to North Carolina residents are
5 entitled to North Carolina commercial fishing licenses under the provisions of G.S.
6 113-168.2. Licenses may be restricted in terms of area, gear, and fishery by the
7 Commission so that the nonresidents are licensed to engage in North Carolina
8 fisheries on the same or similar terms that North Carolina residents can be licensed to
9 engage in the fisheries of other jurisdictions. The Secretary may enter into reciprocal
10 agreements with other jurisdictions as necessary to allow nonresidents to obtain
11 commercial fishing licenses in the State subject to the foregoing provisions.

12 **"§ 113-170.2. Fraud or deception as to licenses, permits, or records.**

13 (a) It is unlawful for any person to give any false information or willfully to omit
14 giving required information to the Division or any license agent when the information
15 is material to the securing of any license or permit under this Article. It is unlawful
16 to falsify, fraudulently alter, or counterfeit any license, permit, identification, or
17 record to which this Article applies or otherwise practice any fraud or deception
18 designed to evade the provisions of this Article or reasonable administrative
19 directives made under the authority of this Article.

20 (b) A violation of this section is punishable by a fine of not less than one hundred
21 dollars (\$100.00) nor more than five hundred dollars (\$500.00).

22 **"§ 113-170.3. Record-keeping requirements.**

23 (a) The Commission may require all licensees under this Article to keep and to
24 exhibit upon the request of an authorized agent of the Department records and
25 accounts as may be necessary to the equitable and efficient administration and
26 enforcement of this Article. In addition, licensees may be required to keep additional
27 information of a statistical nature or relating to location of catch as may be needed to
28 determine conservation policy. Records and accounts required to be kept must be
29 preserved for inspection for not less than three years.

30 (b) It is unlawful for any licensee to refuse or to neglect without justifiable excuse
31 to keep records and accounts as may be reasonably required. The Department may
32 distribute forms to licensees to aid in securing compliance with its requirements, or it
33 may inform licensees of requirements in other effective ways such as distributing
34 memoranda and sending agents of the Department to consult with licensees who have
35 been remiss. Detailed forms or descriptions of records, accounts, collection and
36 inspection procedures, and the like that reasonably implement the objectives of this
37 Article need not be embodied in rules of the Commission in order to be validly
38 required.

39 (c) The following records collected and compiled by the Department shall not be
40 considered public records within the meaning of Chapter 132 of the General Statutes,
41 but shall be confidential and shall be used only for the equitable and efficient
42 administration and enforcement of this Article or for determining conservation
43 policy, and shall not be disclosed except when required by the order of a court of
44 competent jurisdiction: all records, accounts, and reports that licensees are required

1 by the Commission to make, keep, and exhibit pursuant to the provisions of this
2 section, and all records, accounts, and memoranda compiled by the Department from
3 records, accounts, and reports of licensees and from investigations and inspections,
4 containing data and information concerning the business and operations of licensees
5 reflecting their assets, liabilities, inventories, revenues, and profits; the number,
6 capacity, capability, and type of fishing vessels owned and operated; the type and
7 quantity of fishing gear used; the catch of fish or other seafood by species in numbers,
8 size, weight, quality, and value; the areas in which fishing was engaged in; the
9 location of catch; the time of fishing, number of hauls, and the disposition of the fish
10 and other seafood. The Department may compile statistical information in any
11 aggregate or summary form that does not directly or indirectly disclose the identity of
12 any licensee who is a source of the information, and any compilation of statistical
13 information by the Department shall be a public record open to inspection and
14 examination by any person, and may be disseminated to the public by the
15 Department.

16 **§ 113-170.4. Rules as to possession, transportation, and disposition of fisheries**
17 **resources.**

18 The Commission may adopt rules governing possession, transportation, and
19 disposition of fisheries resources by all persons, including those not subject to fish
20 dealer licensing requirements, in order that inspectors may adequately distinguish
21 regulated coastal fisheries resources from those not so regulated and enforce the
22 provisions of this Article equitably and efficiently. These rules may include
23 requirements as to giving notice, filing declarations, securing permits, marking
24 packages, and the like.

25 **§ 113-170.5. Violations with respect to coastal fisheries resources.**

26 It is unlawful to take, possess, transport, process, sell, buy, or in any way deal in
27 coastal fisheries resources without conforming with the provisions of this Article or of
28 rules adopted under the authority of this Article.

29 **§ 113-171. Suspension, revocation, and reissuance of licenses.**

30 (a) Upon receipt of reliable notice that a person licensed under this Article has
31 had imposed against the person a conviction of a criminal offense within the
32 jurisdiction of the Department under the provisions of this Subchapter or of rules of
33 the Commission adopted under the authority of this Subchapter, the Secretary must
34 suspend or revoke all licenses held by the person in accordance with the terms of this
35 section. Reliable notice includes information furnished the Secretary in prosecution
36 or other reports from inspectors. As used in this section, a conviction includes a plea
37 of guilty or nolo contendere, any other termination of a criminal prosecution
38 unfavorably to the defendant after jeopardy has attached, or any substitute for
39 criminal prosecution whereby the defendant expressly or impliedly confesses the
40 defendant's guilt. In particular, procedures whereby bond forfeitures are accepted in
41 lieu of proceeding to trial and cases indefinitely continued upon arrest of judgment or
42 prayer for judgment continued are deemed convictions. The Secretary may act to
43 suspend or revoke licenses upon the basis of any conviction in which:

44 (1) No notice of appeal has been given;

1 (2) The time for appeal has expired without an appeal having been
2 perfected; or

3 (3) The conviction is sustained on appeal. Where there is a new trial,
4 finality of any subsequent conviction will be determined in the
5 manner set out above.

6 (b) The Secretary must initiate an administrative procedure designed to give the
7 Secretary systematic notice of all convictions of criminal offenses by licensees
8 covered by subsection (a) of this section above and keep a file of all convictions
9 reported. Upon receipt of notice of conviction, the Secretary must determine whether
10 it is a first, a second, a third, or a fourth or subsequent conviction of some offense
11 covered by subsection (a). In the case of second convictions, the Secretary must
12 suspend all licenses issued to the licensee for a period of 10 days. In the case of third
13 convictions, the Secretary must suspend all licenses issued to the licensee for a period
14 of 30 days. In the case of fourth or subsequent convictions, the Secretary must
15 revoke all licenses issued to the licensee. Where several convictions result from a
16 single transaction or occurrence, they are to be treated as a single conviction so far as
17 suspension or revocation of the licenses of any licensee is concerned. Anyone
18 convicted of taking or of knowingly possessing, transporting, buying, selling, or
19 offering to buy or sell oysters or clams from areas closed because of suspected
20 pollution will be deemed by the Secretary to have been convicted of two separate
21 offenses on different occasions for license suspension or revocation purposes.

22 (c) Where a license has been suspended or revoked, the former licensee is not
23 eligible to apply for reissuance of license or for any additional license authorized in
24 this Article during the suspension or revocation period. Licenses must be returned to
25 the licensee by the Secretary or the Secretary's agents at the end of a period of
26 suspension. Where there has been a revocation, application for reissuance of license
27 or for an additional license may not be made until six months following the date of
28 revocation. In such case of revocation, the eligible former licensee must satisfy the
29 Secretary that the licensee will strive in the future to conduct the operations for
30 which the license is sought in accord with all applicable laws and rules. Upon the
31 application of an eligible former licensee after revocation, the Secretary, in the
32 Secretary's discretion, may issue one license sought but not another, as deemed
33 necessary to prevent the hazard of recurring violations of the law.

34 (d) Upon receiving reliable information of a licensee's conviction of a second or
35 subsequent criminal offense covered by subsection (a) of this section, the Secretary
36 shall promptly cause the licensee to be personally served with written notice of
37 suspension or revocation, as the case may be. The written notice may be served upon
38 any responsible individual affiliated with the corporation, partnership, or association
39 where the licensee is not an individual. The notice of suspension or revocation may
40 be served by an inspector or other agent of the Department, must state the ground
41 upon which it is based, and takes effect immediately upon personal service. The
42 agent of the Secretary making service shall then or subsequently, as may be feasible
43 under the circumstances, collect all license certificates and plates and other forms or

1 records relating to the license as directed by the Secretary. It is unlawful for any
2 licensee willfully to evade the personal service prescribed in this subsection.

3 (e) A licensee served with a notice of suspension or revocation may obtain an
4 administrative review of the suspension or revocation by filing a petition for a
5 contested case under G.S. 150B-23 within 20 days after receiving the notice. The
6 only issue in the hearing shall be whether the licensee was convicted of a criminal
7 offense for which a license must be suspended or revoked. A license remains
8 suspended or revoked pending the final decision by the Secretary.

9 (f) If the Secretary refuses to reissue the license of or issue an additional license to
10 an applicant whose license was revoked, the applicant may contest the decision by
11 filing a petition for a contested case under G.S. 150B-23 within 20 days after the
12 Secretary makes the decision. The Commission shall make the final agency decision
13 in a contested case under this subsection. An applicant whose license is denied
14 under this subsection may not reapply for the same license for at least six months.

15 (g) The Commission may adopt rules to provide for the disclosure of the identity
16 of any individual or individuals in responsible positions of control respecting
17 operations of any licensee that is not an individual. For the purposes of this section,
18 individuals in responsible positions of control are deemed to be individual licensees
19 and subject to suspension and revocation requirements in regard to any applications
20 for license they may make -- either as individuals or as persons in responsible
21 positions of control in any corporation, partnership, or association. In the case of
22 individual licensees, the individual applying for a license or licensed under this
23 Article must be the real party in interest.

24 (h) In determining whether a conviction is a second or subsequent offense under
25 the provisions of this section, the Secretary may not consider convictions for:

- 26 (1) Offenses that occurred three years prior to the effective date of this
27 Article; or
28 (2) Offenses that occurred more than three years prior to the time of
29 the latest offense the conviction for which is in issue as a
30 subsequent conviction.

31 **"§ 113-171.1. Use of spotter planes in commercial fishing operations regulated.**

32 (a) Spotter Plane Defined. -- A 'spotter plane' is an aircraft used for aerial
33 identification of the location of fish in coastal fishing waters so that a vessel may be
34 directed to the fish.

35 (b) License. -- Before an aircraft is used as a spotter plane in a commercial fishing
36 operation, the owner or operator of the aircraft must obtain a license for the aircraft
37 from the Division. The fee for a license for a spotter plane is one hundred dollars
38 (\$100.00). An applicant for a license for a spotter plane shall include in the
39 application the identity, either by boat or by company, of the specific commercial
40 fishing operations in which the spotter plane will be used during the license year. If,
41 during the course of the license year, the aircraft is used as a spotter plane in a
42 commercial fishing operation that is not identified in the original license application,
43 the owner or operator of the aircraft shall amend the license application to add the
44 identity of the additional commercial fishing operation.

1 (c) Unlawful Activity. -- It shall be unlawful to:

- 2 (1) Use a spotter plane directed at food fish, except in connection with
3 a purse seine operation authorized by a rule of the Commission.
4 (2) Use or permit the use of an unlicensed spotter plane or a licensed
5 spotter plane whose license application does not identify the
6 specific commercial fishing operation involved.
7 (3) Participate knowingly in a commercial fishing operation that uses
8 an unlicensed spotter plane or a licensed spotter plane whose
9 license application does not identify the specific commercial fishing
10 operation involved.

11 (d) Violation a Misdemeanor. -- A violation of subsection (c) of this section is a
12 Class 1 misdemeanor.

13 "§ 113-172. License agents.

14 (a) The Secretary shall designate license agents for the Department. At least one
15 license agent shall be designated for each county that contains or borders on coastal
16 fishing waters. The Secretary may designate additional license agents in any county if
17 the Secretary determines that additional agents are needed to provide efficient service
18 to the public. The Division and license agents designated by the Secretary under this
19 section shall issue licenses authorized under this Article in accordance with this
20 Article and the rules of the Commission. The Secretary shall require license agents
21 to enter into a contract that provides for their duties and compensation, post a bond,
22 and submit to reasonable inspections and audits. If a license agent violates any
23 provision of this Article, the rules of the Commission, or the terms of the contract,
24 the Secretary may initiate proceedings for the forfeiture of the license agent's bond
25 and may summarily suspend, revoke, or refuse to renew a designation as a license
26 agent and may impound or require the return of all licenses, moneys, record books,
27 reports, license forms and other documents, ledgers, and materials pertinent or
28 apparently pertinent to the license agency. The Secretary shall report evidence or
29 misuse of State property, including license fees, by a license agent to the State Bureau
30 of Investigation as provided by G.S. 114-15.1.

31 (b) License agents shall be compensated by adding a surcharge of one dollar
32 (\$1.00) to each license sold and retaining the surcharge. If more than one license is
33 listed on a consolidated license form, the license agent shall be compensated as if a
34 single license were sold. It is unlawful for a license agent to add more than the
35 surcharge authorized by this section to the fee for each license sold.

36 "§ 113-173. Recreational Commercial Gear License.

37 (a) License Required. -- Except as provided in subsection (j) of this section, it is
38 unlawful for any person to take or attempt to take fish for recreational purposes by
39 means of commercial fishing equipment or gear in coastal fishing waters without
40 holding a RCGL. As used in this section, fish are taken for recreational purposes if
41 the fish are not taken for the purpose of sale. The RCGL entitles the licensee to use
42 authorized commercial gear to take fish for personal use subject to recreational
43 quotas or limits.

1 (b) Sale of Fish Prohibited. -- It is unlawful for the holder of a RCGL or for a
2 person who is exempt under subsection (k) of this section to sell fish taken under the
3 RCGL or pursuant to the exemption.

4 (c) Authorized Commercial Gear. -- The Commission shall adopt rules
5 authorizing the use of a limited amount of commercial fishing equipment or gear for
6 recreational fishing under a RCGL. The Commission may authorize the limited use
7 of commercial gear on a uniform basis in all coastal fishing waters or may vary the
8 limited use of commercial gear within specified areas of the coastal fishing waters.
9 The Commission shall periodically evaluate and revise the authorized use of
10 commercial gear for recreational fishing. Authorized commercial gear shall be
11 identified by visible colored tags or other means specified by the Commission in
12 order to distinguish between commercial gear used in a commercial operation and
13 commercial gear used for recreational purposes.

14 (d) Purchase; Renewal. -- A RCGL may be purchased at designated offices of the
15 Division and from a license agent authorized under G.S. 113-172. A RCGL may be
16 renewed by mail.

17 (e) Replacement RCGL. -- Upon receipt of a proper application and a two-dollar
18 (\$2.00) replacement fee, the Division may issue a duplicate RCGL to replace an
19 unexpired RCGL that has been lost or destroyed.

20 (f) Duration; Fees. -- The RCGL shall be valid for a one-year period from the
21 date of purchase. The fee for a RCGL for a North Carolina resident shall be
22 thirty-five dollars (\$35.00). The fee for a RCGL for an individual who is not a North
23 Carolina resident shall be two hundred fifty dollars (\$250.00).

24 (g) RCGL Available for Inspection. -- It is unlawful for any person to engage in
25 recreational fishing by means of restricted commercial gear in the State without
26 having ready at hand for inspection a valid RCGL. A holder of a RCGL shall not
27 refuse to exhibit the RCGL upon the request of an inspector or any other law
28 enforcement officer authorized to enforce federal or State laws, regulations, or rules
29 relating to marine fisheries.

30 (h) Assignment and Transfer Prohibited. -- A RCGL is not transferable. Except
31 as provided in subsection (j) of this section, it is unlawful to buy, sell, lend, borrow,
32 assign, or otherwise transfer a RCGL, or to attempt to buy, sell, lend, borrow, assign,
33 or otherwise transfer a RCGL.

34 (i) Reporting Requirements. -- The holder of a RCGL shall comply with the
35 biological data sampling and survey programs of the Commission and the Division.

36 (j) Exemptions. --

37 (1) A person who is under 16 years of age may take fish for
38 recreational purposes by means of authorized commercial gear
39 without holding a RCGL if the person is accompanied by a parent,
40 grandparent, or guardian who holds a valid RCGL or if the person
41 has in the person's possession a valid RCGL issued to the person's
42 parent, grandparent, or guardian.

43 (2) A person may take crabs for recreational purposes by means of one
44 or more crab pots attached to the shore along privately owned land

1 or to a privately owned pier without holding a RCGL provided
2 that the crab pots are attached with the permission of the owner of
3 the land or pier.

4 (3) A person who is on a vessel may take fish for recreational purposes
5 by means of authorized commercial gear without holding a RCGL
6 if there is another person on the vessel who holds a valid RCGL.
7 This exemption does not authorize the use of commercial gear in
8 excess of that authorized for use by the person who holds the valid
9 RCGL or, if more than one person on the vessel holds a RCGL, in
10 excess of that authorized for use by those persons."

11 Section 5.2. (a) Definitions; Citations. The definitions set out in G.S.
12 113-168 apply to this section. A citation to a provision of the General Statutes in this
13 section means that provision of the General Statutes as enacted by this act.

14 (b) Transitional Provisions. In order to effect an orderly implementation
15 of this act and the transition from the moratorium imposed by subsection (a) of
16 Section 3 of Chapter 576 of the 1993 Session Laws, Regular Session 1994, as
17 amended by Section 3 of Chapter 675 of the 1993 Session Laws, Regular Session
18 1994; subsection (a) of Section 26.5 of Chapter 507 of the 1995 Session Laws; Section
19 7 of Chapter 256 of the 1997 Session Laws; and subsection (a) of Section 6.1 of this
20 act, to the licensing provision of Article 14A of Chapter 113 of the General Statutes,
21 the provisions of this section shall apply to the issuance of licenses under Article 14A
22 of Chapter 113 of the General Statutes until all Fishery Management Plans have been
23 adopted as required by G.S. 113-182.1 and G.S. 143B-289.22.

24 (c) Temporary Cap. There is hereby imposed a temporary cap on the
25 total number of SCFLs that the Division may issue. The temporary cap equals the
26 total number of endorsements to sell fish that establish eligibility for a SCFL under
27 subsection (g) of this section plus 500 additional SCFLs, authorized by subsection (d)
28 of this section.

29 (d) 1999-2000 License Year. For the 1999-2000 license year, the
30 Commission is authorized to issue SCFLs as provided in subsection (g) of this section
31 plus an additional 500 SCFLs using the procedure set out in subsection (h) of this
32 section.

33 (e) Subsequent License Years. For license years beginning with the
34 2000-01 license year, the Commission is authorized to issue SCFLs from the pool of
35 available SCFLs as provided in subsection (f) of this section using the procedure set
36 out in subsection (h) of this section.

37 (f) Adjustment of Number of SCFLs. The number of SCFLs in the pool
38 of available SCFLs in license years beginning with the 2000-01 license year is the
39 temporary cap less the number of SCFLs that are renewed. The Commission may
40 increase or decrease the number of SCFLs that are issued from the pool of available
41 SCFLs. The Commission may increase the number of SCFLs that are issued from
42 the pool of available SCFLs up to the temporary cap. The Commission may decrease
43 the number of SCFLs that are issued from the pool of available SCFLs but may not
44 refuse to renew a SCFL that is issued during the previous license year and that has

1 not been suspended or revoked. The Commission shall increase or decrease the
2 number of SCFLs that are issued to reflect its determination as to the effort that the
3 fishery can support, based on the best available scientific evidence.

4 (g) Eligibility for SCFL. Any person who holds a valid endorsement to
5 sell fish of a vessel license on 1 July 1999 is eligible to receive a SCFL. The Division
6 shall issue a SCFL to any person who is eligible under this subsection upon receipt of
7 an application and required fees. If the person held more than one endorsement to
8 sell fish, the person is eligible to receive a SCFL for each endorsement to sell
9 previously held. Eligibility to receive a SCFL under this subsection shall expire 1
10 July 2000.

11 (h) Procedure for Issuing Additional SCFLs. The Commission shall
12 determine a procedure for issuing the 500 additional SCFLs authorized by subsection
13 (d) of this section for the 1999-2000 license year and for issuing SCFLs from the pool
14 of available SCFLs authorized by subsection (e) of this section. The procedure shall
15 set a date on which the Division will begin receiving applications and a date on
16 which the determination by lot of which applicants will receive a SCFL will be made.
17 The Commission shall develop criteria for determining eligibility for a SCFL under
18 this subsection. Criteria shall include the past involvement of the applicant and the
19 applicant's family in commercial fishing; the extent to which the applicant has relied
20 on commercial fishing for the applicant's livelihood; the extent to which the applicant
21 has complied with federal and State laws, regulations, and rules relating to coastal
22 fishing and protection of the environment; and any other factors the Commission
23 determines to be relevant. The Division shall review each application for a SCFL
24 that it receives during the application period to determine whether the applicant is
25 eligible under the eligibility criteria established by the Commission. The Division
26 shall issue SCFLs under this subsection by lot. All applicants who are determined to
27 be eligible shall have an equal chance of being issued a SCFL.

28 Section 5.3. The Marine Fisheries Commission shall adopt rules
29 authorizing the use of a limited amount commercial gear for recreational fishing
30 under a Recreational Commercial Gear License, as required by G.S. 113-173, as
31 enacted by Section 5.1 of this act, on or before 1 July 1999.

32 Section 5.4. (a) G.S. 113-153.1 is recodified as G.S. 113-168.9 in Article
33 14A of Chapter 113 of the General Statutes, as enacted by Section 5.1 of this act.

34 (b) G.S. 113-168.9(e), as recodified by subsection (a) of this section, reads
35 as rewritten:

36 "(e) The owner of a vessel ~~licensed under G.S. 113-152~~ shall be eligible to
37 purchase a vessel crab license for crabs as an alternative to the purchase of individual
38 licenses under this section. A vessel crab license authorizes the owner of the vessel
39 and up to two unlicensed persons serving as crew to fish for crabs from that vessel. It
40 is unlawful for the owner of a vessel to take crabs from the coastal fishing waters of
41 North Carolina for commercial use by any means, when unlicensed persons not
42 authorized by the vessel crab license are on the vessel. The Secretary shall revoke a
43 vessel crab license issued under this subsection ~~shall be revoked when~~ if the owner of
44 the vessel or any other person using the owner's vessel is convicted of a violation

1 under this section, ~~except for subsection (b)~~. section, other than conviction for a
2 violation under subsection (b) of this section."

3 (c) All sections of Article 14 of Chapter 113 of the General Statutes
4 other than G.S. 113-153.1 are repealed.

5 Section 5.5. The Marine Fisheries Commission shall adopt a Fishery
6 Management Plan for the blue crab fishery in accordance with G.S. 143B-289.22, as
7 enacted by Section 2.1 of this act, and G.S. 113-182.1, as enacted by Section 3.4 of
8 this act, no later than 1 January 2000.

9 Section 5.6. Notwithstanding the provisions of G.S. 113-168.2 and G.S.
10 113-168.3, as enacted by Section 5.1 of this act, it is unlawful for any person to take
11 crabs from the coastal fishing waters of the State for commercial use without being
12 licensed under G.S. 113-168.9.

13 Section 5.7. G.S. 113-168.9, as recodified from G.S. 113-153.1 by Section
14 5.4 of this act, is repealed.

15 Section 5.8. The Revisor of Statutes shall set out Section 5.2 of this act as
16 a note to G.S. 113-168.2, as enacted by Section 5.1 of this act.

17 Section 5.9. G.S. 113-203(a)(2) reads as rewritten:

18 "(2) When the transplanting is done by a dealer in accordance with the
19 provisions of G.S. ~~113-158~~ 113-169.1(2) and implementing rules;
20 or".

21 Section 5.10. G.S. 113-154.1 reads as rewritten:

22 "**§ 113-154.1. Endorsement to sell fish.**

23 (a) Requirements. -- Except as otherwise provided in this section, it is unlawful for
24 any person who takes or lands any species of fish under the authority of the Marine
25 Fisheries Commission from coastal fishing waters by any means whatever, including
26 aquaculture operations, to sell, offer for sale, barter or exchange for merchandise
27 such fish, without having first procured a current and valid endorsement to sell fish.
28 It is unlawful for fish dealers to buy fish unless the seller presents a current and valid
29 vessel license with an endorsement to sell, or a separate endorsement to sell if no
30 vessel is involved, at the time of the transaction. Any subsequent sale of fish shall be
31 subject to the licensing requirements of fish dealers under G.S. 113-156.

32 (b) Fees. -- The annual fee for an endorsement to sell fish on a vessel license for a
33 resident of this State is set forth in G.S. 113-152(h). The annual fee for an
34 endorsement to sell fish when no vessel is involved for a resident of this State is
35 fifteen dollars (\$15.00) and for a nonresident of this State is one hundred dollars
36 (\$100.00) or an amount equal to the nonresident fee charged by the nonresident's
37 state, whichever is greater. The license shall be valid for the period July 1 through
38 June 30 of a given year.

39 (c) Non-Vessel Endorsement Format. -- The format of an endorsement when the
40 applicant is not seeking a vessel license shall include the name of the applicant, date
41 of birth, expiration date of the endorsement, and any other information the Division
42 deems necessary to accomplish the purposes of this Subchapter. The endorsement
43 shall be issued on a card made of hard plastic or metal capable of being used to make

1 imprints of the sale or transaction. An applicant who is applying for an endorsement
2 on a vessel license shall comply with G.S. 113-152.

3 (d) Application for Non-Vessel Endorsement. -- An application for issuance or
4 renewal of an endorsement to sell shall be filed with the Morehead City offices of the
5 Division of Marine Fisheries or license agents authorized to sell licenses under this
6 Article. An application shall be accompanied by the fee established in subsection (b)
7 of this section. Applications shall not be accepted from persons ineligible to hold a
8 license issued by the Marine Fisheries Commission, including any applicant whose
9 endorsement is suspended or revoked on the date of the application. The applicant
10 shall be provided with a copy of the application marked received. The copy shall
11 serve as the endorsement to sell, until the endorsement issued by the Division is
12 received or the Division determines that the applicant is ineligible to hold an
13 endorsement. In addition to the information required in subsection (c) of this section,
14 the applicant shall disclose on the application a valid address, and such other
15 information as the Division may require.

16 (e) Application for Replacement Non-Vessel Endorsement to Sell. -- A
17 replacement endorsement shall only be obtained from the Morehead City offices of
18 the Division of Marine Fisheries. The Division shall not accept an application for a
19 replacement endorsement unless the Division determines that the applicant's current
20 license has not been suspended or revoked. A copy of an application duly filed with
21 the Division shall serve as the endorsement until the replacement license has been
22 received.

23 (f) Sale of Fish. -- It is unlawful for any person licensed under this section to sell
24 fish taken outside the territorial waters of North Carolina or to sell fish taken from
25 coastal fishing waters except to:

- 26 (1) Fish dealers licensed under G.S. 113-156; or
27 (2) The public, if the seller is also licensed as a fish dealer under G.S.
28 113-156.

29 (g) Recordkeeping Requirements. -- The fish dealer shall record each transaction
30 on a form provided by the Department. The transaction form shall include the
31 information on the endorsement to sell of the seller, the quantity of the fish, the
32 identity of the fish dealer, and such other information as the Division deems
33 necessary to accomplish the purposes of this Subchapter. The person who records the
34 transaction shall provide a completed copy of the transaction form to the
35 Department, and to the other party of the transaction. The Department copy of each
36 transaction from the preceding month shall be transmitted to the Department by the
37 fish dealer on or before the tenth day of the following month.

38 (h) Non-Vessel Endorsement to Sell Nontransferable. -- ~~An~~ A non-vessel
39 endorsement to sell fish issued under this section is nontransferable. It is unlawful to
40 use ~~an~~ a non-vessel endorsement to sell issued to another person in the sale or
41 attempted sale of fish or for a licensee to lend or transfer a license to sell with the
42 following two exceptions: (i) an individual under the age of 16 may sell fish under the
43 license of a relative or guardian; or (ii) a license may be transferred within a single
44 fishing operation if the person to whom it is transferred is a U.S. citizen. It is

1 unlawful for a licensee to lend or transfer a license to sell for the purpose of
2 circumventing the requirements of this section.

3 (h1) Endorsement to Sell Fish on a Vessel License Transferable. -- An
4 endorsement to sell fish on a vessel license may be transferred to the purchaser of the
5 vessel upon application to the Division of Marine Fisheries at the Morehead City
6 office of the Division if the purchaser of the vessel is otherwise qualified to hold an
7 endorsement to sell fish on a vessel license.

8 (i) (See note) Penalties. -- Any person who violates any provision of this section or
9 any rule by the Marine Fisheries Commission to implement this section is guilty of a
10 misdemeanor.

11 (1) A violation of subsections (a), (f), or (h) or a rule of the Marine
12 Fisheries Commission implementing any of those subsections is
13 punishable as follows:

14 a. For a first conviction or a subsequent conviction not
15 described in subdivision (1)b. or c., a violation is a Class 3
16 misdemeanor. A fine shall be imposed of not less than fifty
17 dollars (\$50.00) or double the value of the fish which are
18 the subject of the transaction, whichever is greater, not to
19 exceed two hundred fifty dollars (\$250.00).

20 b. For a second conviction within three years, a violation is a
21 Class 2 misdemeanor. A fine shall be imposed of not less
22 than two hundred fifty dollars (\$250.00) or double the value
23 of the fish which are the subject of the transaction,
24 whichever is greater, not to exceed five hundred dollars
25 (\$500.00).

26 c. For a third or subsequent conviction within three years, a
27 violation is a Class 2 misdemeanor. A fine shall be imposed
28 of not less than five hundred dollars (\$500.00) or double the
29 value of the fish which are the subject of the transaction,
30 whichever is greater.

31 (2) A violation of any other provision of this section other than
32 subsections (a), (f), or (h), or of any rule of the Marine Fisheries
33 Commission other than a rule implementing subsections (a), (f), or
34 (h) of this section, is punishable under G.S. 113-135(a).

35 (j) Use of Fees. -- Fees paid under G.S. 113-152(h) or G.S. 113-154.1 for an
36 endorsement to sell fish shall be applied to the cost of a fisheries data information
37 system that compiles fisheries data obtained from the endorsement program
38 established by G.S. 113-152 and this section or to marine fisheries programs or
39 research projects that enhance knowledge and use of marine and estuarine
40 resources."

41 Section 5.11. G.S. 113-154 reads as rewritten:

42 "§ 113-154. Shellfish license.

1 (a) It is unlawful for an individual to take shellfish from the public or private
2 grounds of North Carolina by mechanical means or for commercial use by any means
3 without having first procured an individual shellfish license.

4 (b) It is unlawful for any individual to take shellfish for commercial use from the
5 public or private grounds of North Carolina without having ready at hand for
6 inspection a current and valid shellfish license issued to him personally and bearing
7 his correct name and address. It is unlawful for any such individual taking or
8 possessing freshly taken shellfish to refuse to exhibit his license upon the request of
9 an officer authorized to enforce the fishing laws.

10 (c) Shellfish licenses are issued annually on a fiscal year basis upon payment of a
11 fee of seven dollars and fifty cents (\$7.50) upon proof that the license applicant is a
12 resident of North Carolina. ~~Carolina: Provided, that persons under 16 years of age are~~
13 ~~exempt from the license requirements of this section if they are accompanied by their~~
14 ~~parent or guardian who is in compliance with the requirements of this section or if~~
15 ~~they have in their possession their parent's or guardian's shellfish license.~~

16 (c1) A shellfish leaseholder under G.S. 113-202, or a water column leaseholder
17 under G.S. 113-202.1 or G.S. 113-202.2, or a franchise holder under G.S. 113-206
18 who purchases an individual shellfish license under this section, may employ persons
19 who do not possess individual shellfish licenses, provided that the employees have
20 written proof of employment on hand, if requested for inspection by a Marine
21 Fisheries officer to verify lawful activities on the lease. The written proof of
22 employment shall include: (i) the name and address of the leaseholder or franchise
23 holder; (ii) the lease or franchise number; (iii) the date of issuance and expiration of
24 the lease or franchise; and (iv) the employee's name and address. The proof of
25 employment shall be signed and dated by the leaseholder or franchise holder.

26 (d) In the event an individual possessing a shellfish license changes his name or
27 address or receives one erroneous in this respect, he must within 30 days surrender
28 the license for one bearing the correct name and address. Upon a showing by the
29 individual that the name or address change occurred within the past 30 days, the trial
30 court or prosecutor shall dismiss any charges brought pursuant to this subsection.

31 (e) It is unlawful for an individual issued a shellfish license to transfer or offer to
32 transfer his license, either temporarily or permanently, to another. It is unlawful for
33 an individual to secure or attempt to secure a shellfish license from a source not
34 authorized by the Marine Fisheries Commission.

35 (f) Persons under the age of 18 years of age may take and sell shellfish from the
36 public or private grounds of the State during the period from May 15 through
37 September 1 of each year without holding a shellfish license under this section or an
38 endorsement to sell fish under G.S. 113-154.1."

39

40 **PART VI. MORATORIUM EXTENSION; MISCELLANEOUS PROVISIONS;**
41 **EFFECTIVE DATES**

42

43 Section 6.1. (a) Subsection (a) of Section 3 of Chapter 576 of the 1993
44 Session Laws, Regular Session 1994, as amended by Section 3 of Chapter 675 of the

1 1993 Session Laws, Regular Session 1994; subsection (a) of Section 26.5 of Chapter
2 507 of the 1995 Session Laws; and Section 7 of Chapter 256 of the 1997 Session
3 Laws, reads as rewritten:

4 "(a) Except as provided in subsections (b), (c), (c1), or (c2) of this section, the
5 Department shall not issue any new licenses for a period beginning 1 July 1, 1994,
6 1994 and ending June 30, 1997, 1 July 1999 under the following statutes:

7 (1) G.S. 113-152. ~~Vessel licenses.~~ Consolidated license for vessels,
8 equipment, and operations; fees.

9 (2) G.S. 113-153.1. ~~Crab license.~~ License.

10 (3) G.S. 113-154. ~~Shellfish license license.~~

11 (4) G.S. 113-154.1. ~~Nonvessel endorsements to sell fish.~~ Endorsement
12 to sell fish."

13 (b) It is the intent of the General Assembly that the moratorium imposed
14 by the amendment made by subsection (a) of this section to subdivision (4) of
15 subsection (a) of Section 3 of Chapter 576 of the 1993 Session Laws, Regular Session
16 1994, as amended by Section 3 of Chapter 675 of the 1993 Session Laws, Regular
17 Session 1994; subsection (a) of Section 26.5 of Chapter 507 of the 1995 Session Laws;
18 and Section 7 of Chapter 256 of the 1997 Session Laws shall apply to both non-vessel
19 endorsements to sell fish and endorsements to sell fish of vessel licenses.

20 Section 6.2. Subsection (a) of Section 3 of Chapter 576 of the 1993
21 Session Laws, Regular Session 1994, as amended by Section 3 of Chapter 675 of the
22 1993 Session Laws, Regular Session 1994; subsection (a) of Section 26.5 of Chapter
23 507 of the 1995 Session Laws; Section 7 of Chapter 256 of the 1997 Session Laws;
24 and subsection (a) of Section 6.1 of this act, reads as rewritten:

25 "(a) Except as provided in subsections (b), (c), (c1), or (c2) of this section, the
26 Department shall not issue any new licenses for a period beginning 1 July 1994 and
27 ending 1 July 1999 2000 under the following statutes:

28 (1) ~~G.S. 113-152. Consolidated license for vessels, equipment, and~~
29 ~~operations; fees.~~

30 (2) ~~G.S. 113-153.1. 113-168.9, Crab license.~~

31 (3) ~~G.S. 113-154. Shellfish license.~~

32 (4) ~~G.S. 113-154.1. Endorsement to sell fish."~~

33 Section 6.3. (a) Part 5A of Article 7 of Chapter 143B of the General
34 Statutes is repealed, except that G.S. 143B-289.19 is not repealed but is recodified as
35 G.S. 143B-289.40 within Part 5C of Article 7 of Chapter 143B of the General Statutes
36 and reads as rewritten:

37 "~~§ 143B-289.19. 143B-289.40. Office of Marine Affairs -- creation.~~

38 ~~There~~ The Office of Marine Affairs is created in the Department of ~~Administration~~
39 ~~the Office of Marine Affairs.~~ Environment, Health, and Natural Resources."

40 (b) Part 5B of Article 7 of Chapter 143B of the General Statutes (G.S.
41 143B-289.20 through G.S. 143B-289.22) is recodified as Part 5C of Article 7 of
42 Chapter 143B of the General Statutes (G.S. 143B-289.41 through G.S. 143B-289.43).

43 (c) G.S. 143B-289.40(a)(1b)g., as recodified by subsection (a) of this
44 section, reads as rewritten:

1 "g. Create local advisory committees in accordance with the
2 provisions of G.S. ~~143B-289.22~~. 143B-289.42."

3 Section 6.4. The records, personnel, property, unexpended balances of
4 appropriations, allocations, and other funds, including the functions of budgeting and
5 purchasing, heretofore vested in the Marine Fisheries Commission created under Part
6 5A of Article 7 of Chapter 143B of the General Statutes, repealed by Section 6.3 of
7 this act, are transferred to the Marine Fisheries Commission created under Part 5B of
8 Article 7 of Chapter 143B of the General Statutes, as enacted by Section 2.1 of this
9 act. All rules, decisions, and actions, heretofore adopted, made, or taken by the
10 Marine Fisheries Commission created under Part 5 of Article 7 of Chapter 143B of
11 the General Statutes, repealed by Section 1 of Chapter 641 of the 1987 Session Laws,
12 and all rules, decisions, and actions, heretofore adopted, made, or taken by the
13 Marine Fisheries Commission created under Part 5A of Article 7 of Chapter 143B of
14 the General Statutes, repealed by Section 6.2 of this act, that have not been
15 heretofore repealed or rescinded shall continue in effect until repealed or rescinded
16 by the Marine Fisheries Commission created under Part 5B of Article 7 of Chapter
17 143B of the General Statutes, as enacted by Section 2.1 of this act.

18 Section 6.5. In order to establish a schedule of staggered terms of three
19 years for the Marine Fisheries Commission, the terms of members of the Commission
20 initially filling positions established by subdivisions (1), (2), and (3) of subsection (a)
21 of G.S. 143B-289.24, as enacted by Section 2.1 of this act, shall begin on the date the
22 member is appointed and duly qualified and shall expire on 30 June 2001; the terms
23 of members of the Commission initially filling positions established by subdivisions
24 (4), (5), and (6) of subsection (a) of G.S. 143B-289.24, as enacted by Section 2.1 of
25 this act, shall begin on the date the member is appointed and duly qualified and shall
26 expire on 30 June 2000; the terms of members of the Commission initially filling
27 positions established by subdivisions (7), (8), and (9) of subsection (a) of G.S.
28 143B-289.24, as enacted by Section 2.1 of this act, shall begin on the date the member
29 is appointed and duly qualified and shall expire on 30 June 1999.

30 Section 6.6. G.S. 113-182(b) reads as rewritten:

31 "(b) The Marine Fisheries Commission is authorized to authorize, regulate,
32 prohibit, prescribe, or restrict and the Department is authorized to license:

33 (1) The opening and closing of coastal fishing waters, except as to
34 inland game fish, whether entirely or only as to the taking of
35 particular classes of fish, use of particular equipment, or as to other
36 activities within the jurisdiction of the Department; and

37 (2) The possession, cultivation, transportation, importation,
38 exportation, sale, purchase, acquisition, and disposition of all
39 marine and estuarine resources and all related equipment,
40 implements, vessels, and conveyances as necessary to implement
41 the work of the Department in carrying out its duties.

42 (3) The possession, transportation, importation, exportation, sale,
43 purchase, acquisition, and disposition of all fish taken in the
44 Atlantic Ocean out to a distance of 200 miles from the State's

1 mean low watermark, consistent with the Magnuson Fishery
2 Conservation and Management Act, 16 U.S.C. § 1801, et seq., as
3 amended, when the harvest or landing of the fish is controlled by a
4 quota imposed on the State by a federal fisheries management
5 plan."

6 Section 6.7. G.S. 113-190, as enacted by Section 2 of Chapter 633 of the
7 1995 Session Laws (1996 Regular Session), is recodified as G.S. 113-200.

8 Section 6.8. All of the Coastal Habitat Protection Plans required by G.S.
9 143B-279.8, as enacted by Section 3.1 of this act, shall be adopted no later than 1 July
10 2003. The Coastal Resources Commission, the Environmental Management
11 Commission, and the Marine Fisheries Commission shall make the first report on
12 progress in developing and implementing Coastal Habitat Protection Plans, as
13 required by G.S. 143B-279.8(d), as enacted by Section 3.1 of this act, on or before 1
14 September 1999. The Secretary of Environment, Health, and Natural Resources shall
15 make the first report on progress in developing and implementing Fishery
16 Management Plans, as required by G.S. 113-182.1(f), as enacted by Section 3.4 of this
17 act, on or before 1 September 1999.

18 Section 6.9. The Joint Legislative Commission on Seafood and
19 Aquaculture shall study the establishment of a comprehensive State program to
20 acquire, preserve, and restore habitats critical to marine and estuarine fisheries. The
21 Joint Legislative Commission on Seafood and Aquaculture shall report its findings
22 and recommendations, if any, to the 1998 Regular Session of the 1997 General
23 Assembly.

24 Section 6.10. This act constitutes a recent act of the General Assembly
25 within the meaning of G.S. 150B-21.1. Every agency to which this act applies that is
26 authorized to adopt rules to implement the provisions of this act may adopt
27 temporary rules to implement the provisions of this act. This section shall continue
28 in effect until all rules necessary to implement the provisions of this act have become
29 effective as either temporary rules or permanent rules.

30 Section 6.11. The Marine Fisheries Commission may adopt temporary
31 rules to implement or comply with a fisheries management plan adopted by the
32 Atlantic States Marine Fisheries Commission or an interstate fisheries management
33 council.

34 Section 6.12. The headings to the Parts of this act are a convenience to
35 the reader and are for reference only. The headings do not expand, limit, or define
36 the text of this act.

37 Section 6.13. If any section or provision of this act is declared
38 unconstitutional or invalid by the courts, the unconstitutional or invalid section or
39 provision does not affect the validity of this act as a whole or any part of this act
40 other than the part declared to be unconstitutional or invalid.

41 Section 6.14. Section 3 of Chapter 547 of the 1995 Session Laws, Regular
42 Session 1996, as amended by subsection (b) of Section 1 of Chapter 633 of the 1995
43 Session Laws, Regular Session 1996, and Section 27.33 of Chapter 18 of the 1996

1 Session Laws, Second Extra Session, and Section 12 of Chapter 256 of the 1997
2 Session Laws, reads as rewritten:

3 "Sec. 3. Notwithstanding G.S. 113-202, a moratorium on new shellfish cultivation
4 leases shall be imposed in the remaining area of Core Sound not described in Section
5 1 of this act. During the moratorium, a comprehensive study of the shellfish lease
6 program shall be conducted. The moratorium established under this section covers
7 that part of Core Sound bounded by a line beginning at a point on Cedar Island at
8 35°00'39"N - 76°17'48"W, thence 109°(M) to a point in Core Sound 35°00'00"N -
9 76°12'42"W, thence 229°(M) to Marker No. 37 located 0.9 miles off Bells Point at
10 34°43'30"N - 76°29'00"W, thence 207°(M) to the Cape Lookout Lighthouse at
11 34°37'24"N - 76°31'30"W, thence 12°(M) to a point at Marshallberg at 34°43'07"N -
12 76°31'12"W, thence following the shoreline in a northerly direction to the point of
13 beginning except that the highway bridges at Salters Creek, Thorofare Bay, and the
14 Rumley Bay ditch shall be considered shoreline. The moratorium shall expire
15 ~~August 1, 1997.~~ 1 July 1998."

16 Section 6.15. Sections 1.1, 1.3, 1.4, 1.5, 5.8, 5.11, 6.7, 6.9, 6.10, 6.12, 6.13,
17 and 6.15 of this act are effective when this act becomes law. Sections 2.1, 4.4, 5.3,
18 6.3, 6.4, 6.5, 6.6, and 6.11 of this act become effective 1 September 1997. Sections 4.1
19 through 4.3 of this act become effective 1 September 1997 and apply to violations and
20 offenses on or after 1 September 1997. Section 1.2 of this act is effective retroactively
21 as of 1 March 1997. Sections 6.1 and 6.10 of this act become effective 31 July 1997.
22 Section 6.14 of this act becomes effective 1 August 1997. Sections 3.1, 3.2, 3.3, 3.4,
23 3.5, 5.5, and 6.8 of this act become effective 1 July 1998. Sections 5.1, 5.2, 5.4, 5.6,
24 5.9, and 6.2 of this act become effective 1 July 1999. Section 5.6 of this act expires 1
25 July 2000. Section 5.7 of this act becomes effective 1 July 2000. Sections 5.1 and 5.2
26 of this act expire 1 September 2003.



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1097

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

H1097-ARB-7/31

Date _____, 1997

Comm. Sub. [YES]
Amends Title []
H1097-PCS4143

Senator

as amended by Amendment Number 1,

1 moves to amend the bill on page 22, line 35 and 36, by rewriting the
2 lines to read:
3 "of North Carolina shall be eight hundred dollars (\$800.00) or the
4 amount charged to a North Carolina resident in the nonresident's
5 state, which is lesser; however, in no event may the fee be less
6 than two hundred dollars (\$200.00)."
7

SIGNED [Signature]
Amendment Sponsor

SIGNED [Signature]
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

whichever is less;



North Carolina General Assembly
Legislative Services Office

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

Elaine W. Robinson, Director
Administrative Division
Room 5, Legislative Building
16 W. Jones Street
Raleigh, NC 27603-5925
(919) 733-7500

Gerry F. Cohen, Director
Bill Drafting Division
Suite 401, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Donald W. Fulford, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

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

July 29, 1997

MEMORANDUM

To: Senate Finance Committee

From: Jeff Hudson, Committee Counsel
Mary Beach Shuping, Administrative Assistant

Re: **House Bill 1097, 6th edition - Fisheries Reform Act-2**

WHEREAS CLAUSES

The General Assembly recognizes

- The State of North Carolina has one of the most diverse fisheries in the United States;
- That commercial fishermen perform an essential function by providing wholesome food for the citizens of the State and thereby properly earn a livelihood;
- The economic contribution and important heritage of commercial fishing;
- That for many citizens, fishing is an important recreational activity and that recreational fishing is a source of great personal enjoyment and satisfaction;
- The importance of plentiful fisheries resources to maintain and enhance tourism in the State; and
- The need to protect our coastal fisheries resources and to balance commercial and recreational interests.

PART I. SHORT TITLE; PERFORMANCE AUDIT

Section 1.1 entitles this act the Fisheries Reform Act of 1997.

Section 1.2 directs the State Auditor to conduct a performance audit of the Division of Marine Fisheries (Division) and to assess the capacity of the Division of Marine Fisheries to effectively implement the licensing provisions (Part V) of this act. This section directs that the State Auditor report to the Joint Legislative Commission on Seafood and Aquaculture (Seafood and Aquaculture) by February 1, 1998, and directs Seafood and Aquaculture to review the performance audit and make a specific recommendation to the 1998 General Assembly as to whether or not the licensing provisions of this act should be implemented.

Effective Date: *Audit is effective retroactively to March 1, 1997*

PART II. MARINE FISHERIES COMMISSION

(Note: Current Marine Fisheries Commission (MFC) is repealed in Section 6.3(a) of this act.)

Section 2.1 amends Article 7 of Chapter 143B by adding a new Part entitled "Part 5B. Marine Fisheries Commission. This section:

- Reduces Marine Fisheries Commission (MFC) from 17 to 9 members comprised of:
 - two persons actively engaged in, or recently retired from, commercial fishing;
 - one person actively connected with, and experienced as, a licensed fish dealer or seafood processor;
 - two persons actively engaged in recreational sports fishing;
 - one person actively engaged in the sports fishing industry;
 - two persons having general knowledge of and experience related to subjects and persons regulated by the MFC; and,
 - one person who is a fisheries scientist.
- Provides that appointments are to be made by the Governor;
- Provides that at least 5 members must be residents of a coastal region of the State;
- Strengthens ethical standards;
- Establishes 4 standing advisory committees (Finfish Committee; Crustacean Committee; Shellfish Committee; Habitat & Water Quality Committee) comprised of commercial and recreational fishermen, scientists, and other experts. This section also establishes 4 regional advisory committees representing the different regions of the State; and
- Authorizes the MFC to act as an appellate body for civil penalty assessments and clarifies that unless otherwise provided, the MFC has the final decision making authority for contested cases within its jurisdiction.

Effective Date: Sept. 1, 1997

PART III. COASTAL HABITAT PROTECTION PLANS; FISHERY MANAGEMENT PLANS

Coastal Habitat Protection Plans (CHPPs)

Section 3.1 amends Chapter 143B by adding a new section, G.S. 143B-279.8 that directs DEHNR to coordinate the preparation of draft Coastal Habitat Protection Plans (CHPPs) for critical fisheries habitats. A CHPP shall: (i) describe and classify biological systems in habitats; (ii) evaluate the function, value to coastal fisheries, status, and trends of habitats; (iii) identify existing and potential threats to habitats and impacts on coastal fishing; and (iv) make recommendations to protect and restore critical fisheries habitats. Once a draft CHPP has been prepared, the MFC, Environmental Management Commission (EMC), and Coastal Resources Commission (CRC) must appoint a six-member review committee to review and revise the draft CHPP. The CHPP will then be submitted to each commission to consider for adoption. The commissions may appoint a six-member conference committee to facilitate the resolution of any aspect of a CHPP on which they cannot agree. The final CHPP will consist of the provisions concurrently agreed upon by all three commissions. Each CHPP must be reviewed and revised at least once every five years. Each commission must, to the maximum extent practicable, ensure that its actions are consistent with the CHPPs and must provide a written explanation of any action it takes that is inconsistent with a CHPP. Any rules adopted to implement the CHPPs must be done in accordance with the APA. The three commissions must report annually to the ERC and Seafood and Aquaculture on progress and implementation of CHPPs. The SEHNR must report to the ERC within 30 days of the completion, or substantial revision of the CHPPs, and the ERC has 30 days to review and comment.

Sections 2.1, 3.2, and 3.3 direct the MFC, EMC, and the CRC to adopt CHPPs.

Section 6.8 requires that the CHPPs be adopted by July 1, 2003.

Effective Date: July 1, 1998.

Fishery Management Plans

Section 3.4 amends Chapter 113 by adding a new section, G.S. 113-182.1 that directs DEHNR to prepare proposed Fishery Management Plans (FMPs) for all commercially or recreationally significant species or fisheries that comprise State marine or estuarine resources. The FMPs are to be developed in accordance with a Priority List, Schedule, and guidance criteria established by MFC. The FMPs must incorporate fishery habitat and water quality considerations consistent with CHPPs, recommend management actions, and conservation and management measures. Any rules adopted to implement a FMP must be done in accordance with the APA. This section provides that Advisory Councils composed of experts on each particular fishery will assist in the development of the FMPs, and that the Secretary of Environment, Health and Natural Resources (SEHNR) will monitor progress of development and adoption of FMPs and will report annually to the ERC and Seafood and Aquaculture on this progress. This section also requires that the SEHNR report to Seafood and Aquaculture and the ERC within 30 days of the completion or substantial revision of the FMPs and gives Seafood and Aquaculture and the ERC 30 days to review and comment. Finally, this section authorizes the SEHNR to issue a proclamation prohibiting the taking of certain fisheries resources if there is a failure to complete the FMP according to the Schedule.

Section 3.5 amends G.S. 113-129, Definitions relating to resources, to add definitions for "optimal yield" and "overfishing or overfished".

Section 2.1 directs the MFC to establish a Priority List, schedule, and guidance criteria for FMPs.

Effective Date: July 1, 1998.

PART IV. MARINE FISHERIES LAW ENFORCEMENT

Section 4.1 amends G.S. 113-187 to increase the penalties for violation of general fisheries laws.

Section 4.2 adds G.S. 113-190 to increase the penalties for the unlawful sale or purchase of fish. This section also authorizes the SEHNR to assess a civil penalty up to \$10,000 for illegal sale or purchase of fish.

Section 4.3 amends G.S. 113-221(e) to authorize the Fisheries Director to determine, on a case-by-case basis and in the Director's sole discretion, that a proclamation did not apply to a licensee who was without notice due to an act of God or unforeseeable circumstance.

Section 4.4 directs the MFC to develop a Violations Points System and implementation schedule and report to Seafood and Aquaculture by July 1, 1999 on the development of the Violation Points System and the implementation schedule.

Effective Date: Sept. 1, 1997; provisions apply to violations and offenses on or after September 1, 1997.

PART V. COMMERCIAL FISHING LICENSES; TRANSITIONAL PROVISIONS

Standard Commercial Fishing License (SCFL)

Section 5.1 establishes Article 14A of G.S. 113 to be entitled the Coastal and Estuarine Commercial Fishing Licenses which establishes SCFLs as follows:

- Entitles holder to sell fish;
- Fees: \$200 for residents; \$2,000 for nonresidents or the amount charged to a NC resident in the nonresident's state, whichever is less;
- Assignability - SCFL is assignable. Vessel endorsements may be assigned independently of SCFL to another SCFL holder;
- Transferability - SCFLs may be transferred under certain circumstances to a member of the SCFL holder's estate; a third-party purchaser of the SCFL holder's fishing vessel; or as authorized by MFC; and
- Vessel endorsement required for an additional fee based on length of vessel.

Other commercial fishing licenses

Section 5.1 also provides for the following:

- Retired SCFL available to persons 65 and older for an annual fee of \$100;
- Shellfish license for NC residents not holding a SCFL available for \$25; and
- Fish dealer license available for various fees.

Section 5.2 establishes provisions to implement Section 5.1. These transitional provisions apply to the issuance of fishing licenses until all FMPs have been adopted. These provisions provide for the following:

- Eligibility - SCFLs are available to any person who holds an endorsement to sell on July 1, 1999;
- Flexibility for new entrants - 500 SCFLs will be available for distribution by lot for persons not otherwise eligible for a SCFL;
- Establishment of a temporary cap on the total number of SCFLs the MFC may issue. The temporary cap is equal to the total number of endorsements to sell that establish eligibility for a SCFL plus an additional 500 SCFLs for new entrants;
- For the 1999-2000 license year, the MFC is authorized to:
 - issue an SCFL to any person who held a valid endorsement to sell fish prior to July 1, 1999;
 - issue an SCFL to any person who filed a petition with the Appeals Panel which was denied; and,
 - distribute an additional 500 SCFLs by lot.

For subsequent license years, the MFC is authorized to issue licenses from the pool of available SCFLs. (The pool of available SCFLs is the temporary cap less the number of SCFLs renewed from the previous license year.)

Effective Date: July 1, 1999.

Recreational Commercial Gear License (RCGL)

Section 5.1 also establishes a Recreational Commercial Gear License (RCGL) as follows:

- RCGL holder may use limited amounts of commercial gear;
- License holder is not entitled to sell fish; and
- Fees: \$35 for residents; \$250 for nonresidents.

Section 5.3 directs the MFC to adopt rules authorizing the use of a limited amount of commercial gear for recreational fishing by July 1, 1999.

Effective Date: July 1, 1999

Sections 5.4, 5.5, 5.6, 5.7 and 6.2 govern the taking of crabs by:

- Retaining the current crab license;
- Extending the moratorium on the issuance of crab licenses until July 1, 2000;
- Directing the MFC to adopt a blue crab FMP by January 1, 2000; and
- Providing that only those persons currently holding crab licenses may take crabs.

Section 5.10 makes the Endorsement to Sell transferable to the purchaser of a vessel.

**PART VI. MORATORIUM EXTENSION; MISCELLANEOUS PROVISIONS;
EFFECTIVE DATE.**

Section 6.1 extends moratorium on issuance of licenses from July 31, 1997, to July 1, 1999 and alters the moratorium on licenses to include all Endorsements to Sell (vessel and non-vessel); effective July 31, 1997.

Section 6.3 recodifies G.S. 143B-289.19 to G.S. 143B-289.40 and makes technical and clarifying changes.

Section 6.4 transfers all records personnel, property, unexpended funds and functions from the current Marine Fisheries Commission to the Marine Fisheries Commission established by this act.

Section 6.5 establishes staggered terms for members of the MFC.

Section 6.6 authorizes the MFC to regulate NC fisheries consistent with federal law.

Section 6.7 recodifies G.S. 113-190 to G.S. 113-200.

Section 6.8 requires that the CHPPs be adopted by July 1, 2003.

Section 6.9 directs Seafood and Aquaculture to study the establishment of a comprehensive State program to acquire, preserve, and restore habitats critical to marine and estuarine fisheries. Seafood and Aquaculture will report its findings and recommendations, if any, to the 1998 Regular Session of the General Assembly.

Section 6.10 clarifies that this act constitutes a recent act of the General Assembly pursuant the G.S. 150B (APA), and therefore, agencies are authorized to adopt temporary rules to implement the provisions of this act. This section will continue to be in effect until all rules necessary to implement this act have been adopted as temporary or permanent rules.

Section 6.11 authorizes the MFC to adopt temporary rules to comply with fisheries management plans adopted by an interstate fisheries management council.

Section 6.12 Part Headings as convenience for reader only.

Section 6.13 Severability Clause.

Section 6.14 extends the moratorium on new shellfish cultivation leases in a portion of Core Sound from August 1, 1997 to July 1, 1998; effective August 1, 1997.

Section 6.15 Effective Dates.

**PROPOSED SENATE FINANCE COMMITTEE
CHANGES TO
HB 1097, 6th EDITION -
FISHERIES REFORM ACT - 2**

July 29, 1997

The proposed Senate committee substitute:

- Requires the Joint Legislative Commission on Seafood and Aquaculture to determine if and how a recreational saltwater fishing license should be implemented and report to the 1998 Regular Session of the General Assembly.
- Crew Licenses
 - Removes the authority of the Marine Fisheries Commission to establish a crew license; and,
 - Requires the Joint Legislative Commission on Seafood and Aquaculture to study whether a crew license should be established and report to the 1998 Regular Session of the General Assembly.
- Requires the Joint Legislative Commission on Seafood and Aquaculture to develop a comprehensive approach for the enhancement and management of shellfish resources and report to the 1998 Regular Session of the General Assembly.
- Exempts persons under 18 years of age from shellfish license and endorsement to sell requirements during the period from May 15 to September 1 of each year and makes correcting changes for persons taking shellfish for personal use.

*Mary Beach Shuping
Research Division
07/28/97:9:23 PM*

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

July 29, 1997

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

JERRY SCHILL	NC Fisheries Assoc.
Paul Smith	Carteret City.
Janice M. Smith	Luther L. Smith Seafood
Sandra Astill	Carteret County / NC FA Commercial Fishermen
Barbara Jackson	HOLTSYORK, LP Raleigh, NC
Jack Hawke	NCLQA
Gary Radford	NCLQA
R. Paul White	NCHBA
Jack McCar	Member of DIME
Guy Radford	NC DOR
Paul Zepin	O SBM

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

July 29, 1997

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Amy Gillespie

N.C. Attorney General's Office

Allen Terrigen

||

Don M'London

||

Joe N. Hawkins Jr

N.C. Marine Fisheries

Luis Creed

NC DMV Veh Reg.

TANJA VUJIC

NC EDF

DOUGLAS N. ROSE

NC SOF

Ken Rana

WCSR/CCA

LEIGHTON POPPER

ZDA, PA

Alan Miles

Bales & Dixon LLP

John McNeill

Murray Feltner & Skene PA.

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

July 29, 1997

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Chris Barber	CAPP
Dan Whittle	ENR
John Power	ENR - Marine Fisheries
Jamie Treche	ENR - Marine Fisheries
Twyla Nelson	MFC
Molly Higgins	NC Sierra Club
Mike Street	NC Div. Mar Fisheries
John Haldy	MFC
Joe Olinga	Sierra Club / CCNC
Cam Crow	BPMHL
John Rustin	NCFPC

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT

John H. Kerr, III, Co-Chair

David W. Hoyle, Co-Chair

Tuesday, July 29, 1997

SENATOR JOHN KERR,

submits the following with recommendations as to passage:

FAVORABLE

H.B.(SCS)611 Increase Comp. for Err. Conviction.
 Sequential Referral: None
 Recommended Referral: None

H.B.(CS)844 Reidsville Annexation Restricted.
 Sequential Referral: None
 Recommended Referral: None

TOTAL REPORTED: 2

Committee Clerk Comment: H 844 and H 611

SENATE FINANCE COMMITTEE

WEDNESDAY, JULY 30, 1997

12:00 NOON - ROOM 544 LOB

The Senate Committee met. There were 26 members of the Committee present. Senator David W. Hoyle, Co-Chairman, called the meeting to order and introduced the Pages, they are Cristan Evans from Greenville, N. C., sponsored by Senator Warren, Nadia Stone from Clayton, N. C., sponsored by Senator Ballance and Matt Nanney from Raleigh, N. C., sponsored by Senator Reeves.

H. B. 418 - Mt. Airy/Avery Occup. Tax Alleghany/Norwood

Representative Thompson came to explain the bill. Senator Winner made a motion for adoption of a committee substitute, motion passed. Senator Kerr moved for a "favorable" report, motion passed.

H. B. 1110 - Landscape Architects

Representative McMahan came to explain the bill. Senator Larry Shaw made a motion for a "favorable" report, motion passed.

H. B. 1156 - March of Dimes License Plates

Representative Morris came to explain the bill. Senator Lee made a motion for adoption of a committee substitute to the bill which would add the School of Technology Plate, motion passed. Mr. Kirk Williams from the Governor's Office spoke on the bill. Ms. Ruth Sappie from Department of Transportation explained to the Committee how the design is done on these special plates. Senator Larry Shaw asked that Bill be withdrawn from the Agenda so that the members of the Committee could take a closer look at this bill. Senator Allran asked that an amendment be drawn to include in this bill a section for Veterans to receive a special plate. After much discussion and questions on this Bill, Senator Hoyle stated that he was displacing this Bill and that it would be brought back to Committee at a later meeting.

H. B. 866 - Carteret/Moore School Bd. Elections

Representative Preston came to explain the bill. Senator Purcell made a motion for adoption of a committee substitute, motion passed. Senator Ballantine made a motion to give the committee substitute bill a "favorable" report, motion passed.

Senator Kerr, Co-Chairman, came to preside so that Senator Hoyle could explain a bill.

S. B. 841 - Modify Corporate Dividend Taxation

Senator Hoyle came to explain the bill. After some questions on the bill, Senator Kerr stated that this bill would be pulled and placed on the Agenda for Thursday due to the time had expired for this meeting.

NOTE: S. B. 36, S. B. 39 that were on the Agenda were not discussed because of a lack of time.

Meeting adjourned.



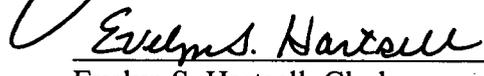
David W. Hoyle, Co-Chair



John H. Kerr, III Co-Chair



Penny N. Williams, Clerk



Evelyn S. Hartsell, Clerk

NOTE:

Agenda is Attachment # 1

Visitor's Registration is Attachment # 2

Committee Report dated July 31, 1997 is Attachment # 3

AGENDA

SENATE FINANCE COMMITTEE MEETING

WEDNESDAY, JULY 30, 1997

12:00 NOON, ROOM 544

- HB 418 - Mt. Airy/Avery Occup. Tax Alleghany/Norwood - Rep. Thompson
- HB 1110 - Landscape Architects - Rep. McMahan
- HB 1156 - March of Dimes License Plates - Rep. Morris
- SB 36 - Uniform Tax on Piped Natural Gas - Sen. Kerr
- SB 39 - Modify Setoff Debt Collection - Sen. Larry Shaw
- SB 841 - Modify Corporate Dividend Taxation - Sen. Hoyle
- HB 866 - Carteret/Moore School Bd Elections - Rep. Preston

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1997

H

2

HOUSE BILL 418
Committee Substitute Favorable 7/17/97

Short Title: Mt. Airy/Avery Occup. Tax Alleghany/Norwood.

(Local)

Sponsors:

Referred to:

March 6, 1997

- 1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE THE CITY OF MOUNT AIRY TO LEVY A ROOM
3 OCCUPANCY AND TOURISM DEVELOPMENT TAX, TO MODIFY THE
4 DISTRIBUTION OF THE AVERY COUNTY OCCUPANCY TAX, AND TO
5 REQUIRE PAYMENT OF DELINQUENT TAXES FOR THE TOWNS OF
6 NEWLAND AND SPRUCE PINE AND FOR THE COUNTY OF ALLEGHANY
7 BEFORE RECORDING DEEDS CONVEYING PROPERTY SUBJECT TO THE
8 DELINQUENT TAXES, AND TO VALIDATE BUDGET PROCEDURES OF
9 THE TOWN OF NORWOOD IN STANLY COUNTY.
10 The General Assembly of North Carolina enacts:
11 Section 1. Mount Airy Occupancy Tax. (a) Authorization and scope.
12 The Mount Airy Board of Commissioners may levy a room occupancy tax of up to
13 three percent (3%) of the gross receipts derived from the rental of any room, lodging,
14 or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place
15 within the city that is subject to sales tax imposed by the State under G.S.
16 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does
17 not apply to accommodations furnished by nonprofit charitable, educational, or
18 religious organizations or by nonprofit summer camps when the accommodations are
19 furnished in furtherance of their nonprofit purpose.
20 (b) Administration. A tax levied under this section shall be levied,
21 administered, collected, and repealed as provided in G.S. 160A-215. The penalties
22 provided in G.S. 160A-215 apply to a tax levied under this section.

1 (c) Distribution and use of tax revenue. The City of Mount Airy shall,
2 on a quarterly basis, remit the net proceeds of the occupancy tax to the Mount Airy
3 Tourism Development Authority. The Authority shall use the funds remitted to it
4 under this subsection only to promote travel and tourism in the Mount Airy area.
5 The following definitions apply in this section:

6 (1) Net proceeds. -- Gross proceeds less the cost to the city of
7 administering and collecting the tax, as determined by the finance
8 officer, not to exceed seven percent (7%) of the gross proceeds.

9 (2) Promote travel and tourism. -- Advertise and market activities,
10 develop and distribute promotional materials, conduct market
11 research, and engage in other similar promotional activities that
12 attract tourists or business travelers to the area. The term also
13 includes administration of the Mount Airy Tourism Development
14 Authority.

15 Section 2. Mount Airy Tourism Development Authority. (a)
16 Appointment and membership. When the board of commissioners adopts a
17 resolution levying a room occupancy tax under this act, it shall also adopt a
18 resolution creating a Mount Airy Tourism Development Authority, which shall be a
19 public authority under the Local Government Budget and Fiscal Control Act. The
20 board of commissioners shall appoint the following eight members to the Authority:

21 (1) Two individuals who are owners or operators of taxable tourist
22 accommodations in the city.

23 (2) Two residents of the city who have experience in the promotion of
24 travel and tourism.

25 (3) Two residents of the city who are members of the Mount Airy
26 Chamber of Commerce, selected by the Mount Airy Chamber of
27 Commerce.

28 (4) One member of the board of commissioners.

29 (5) The city finance officer, who shall serve as an ex officio, nonvoting
30 member.

31 Members of the Authority shall serve without compensation and shall
32 serve for a term of three years. Vacancies shall be filled in the same manner as the
33 original appointment. Members appointed to fill vacancies shall serve for the
34 remainder of the unexpired term. An individual may serve as a member for no more
35 than two consecutive terms. The members shall elect a chair from among the
36 membership, who shall serve for three years. The Authority shall meet at the call of
37 the chair and shall adopt rules of procedure to govern its meetings.

38 (b) Duties. The Authority shall expend the net proceeds of the tax
39 levied under this act for the purposes provided in Section 1 of this act. The
40 Authority shall promote travel and tourism in the Mount Airy area. In performing its
41 duties, the Authority may contract with any person, firm, or agency to advise and
42 assist it and may recommend to the board of commissioners that city staff be
43 employed for this advice and assistance. Any city staff employed upon a

1 recommendation of the Authority shall be hired and supervised by the Authority,
2 which shall pay the salaries and expenses of this staff.

3 (c) Reports. The Authority shall report quarterly and at the close of the
4 fiscal year to the board of commissioners on its receipts and expenditures for the
5 preceding quarter and for the year in such detail as the board may require.

6 Section 3. Municipal Administrative Provisions. (a) Article 9 of
7 Chapter 160A of the General Statutes is amended by adding a new section to read:

8 "§ 160A-215. Uniform provisions for room occupancy taxes.

9 (a) Scope. -- This section applies only to municipalities the General Assembly has
10 authorized to levy room occupancy taxes. For the purpose of this section, the term
11 'city' means a municipality.

12 (b) Levy. -- A room occupancy tax may be levied only by resolution after not less
13 than 10 days' public notice and after a public hearing held pursuant thereto. A room
14 occupancy tax shall become effective on the date specified in the resolution levying
15 the tax. That date must be the first day of a calendar month, however, and may not
16 be earlier than the first day of the second month after the date the resolution is
17 adopted.

18 (c) Collection. -- Every operator of a business subject to a room occupancy tax
19 shall, on and after the effective date of the levy of the tax, collect the tax. The tax
20 shall be collected as part of the charge for furnishing a taxable accommodation. The
21 tax shall be stated and charged separately from the sales records and shall be paid by
22 the purchaser to the operator of the business as trustee for and on account of the
23 taxing city. The tax shall be added to the sales price and shall be passed on to the
24 purchaser instead of being borne by the operator of the business. The taxing city
25 shall design, print, and furnish to all appropriate businesses and persons in the city
26 the necessary forms for filing returns and instructions to ensure the full collection of
27 the tax. An operator of a business who collects a room occupancy tax may deduct
28 from the amount remitted to the taxing city a discount equal to the discount the State
29 allows the operator for State sales and use tax.

30 (d) Administration. -- The taxing city shall administer a room occupancy tax it
31 levies. A room occupancy tax is due and payable to the city finance officer in
32 monthly installments on or before the 15th day of the month following the month in
33 which the tax accrues. Every person, firm, corporation, or association liable for the
34 tax shall, on or before the 15th day of each month, prepare and render a return on a
35 form prescribed by the taxing city. The return shall state the total gross receipts
36 derived in the preceding month from rentals upon which the tax is levied. A room
37 occupancy tax return filed with the city finance officer is not a public record and may
38 not be disclosed except in accordance with G.S. 153A-148.1 or G.S. 160A-208.1.

39 (e) Penalties. -- A person, firm, corporation, or association who fails or refuses to
40 file a room occupancy tax return or pay a room occupancy tax as required by law is
41 subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file
42 a return for State sales and use taxes. The governing board of the taxing city has the
43 same authority to waive the penalties for a room occupancy tax that the Secretary of
44 Revenue has to waive the penalties for State sales and use taxes.

1 (f) Repeal or Reduction. -- A room occupancy tax levied by a city may be
2 repealed or reduced by a resolution adopted by the governing body of the city.
3 Repeal or reduction of a room occupancy tax shall become effective on the first day
4 of a month and may not become effective until the end of the fiscal year in which the
5 resolution was adopted.. Repeal or reduction of a room occupancy tax does not affect
6 a liability for a tax that was attached before the effective date of the repeal or
7 reduction, nor does it affect a right to a refund of a tax that accrued before the
8 effective date of the repeal or reduction."

9 (b) This section applies only to the City of Mount Airy.

10 Section 4. Avery County Occupancy Tax. Section 1 of Chapter 472 of
11 the 1993 Session Laws reads as rewritten:

12 "Section 1. Avery County Occupancy tax.

13 (a) **Authorization and Scope.**

14 The Avery County Board of Commissioners may ~~by resolution, after not less than~~
15 ~~10 days' public notice and after a public hearing held pursuant thereto,~~ levy a room
16 occupancy tax of up to three percent (3%) of the gross receipts derived from the
17 rental of any room, lodging, or accommodation furnished by a hotel, motel, inn,
18 tourist camp, or similar place within the county that is subject to sales tax imposed by
19 the State under G.S. 105-164.4(a)(3) and is not subject to a room occupancy tax
20 levied by a municipality. This tax is in addition to any State or local sales tax. This
21 tax does not apply to accommodations furnished by nonprofit charitable, educational,
22 or religious organizations. The occupancy tax rate payable on accommodations
23 furnished within Avery County may not exceed six percent (6%).

24 (b) ~~Collection. Administration.~~

25 A tax levied under this section shall be levied, administered, collected, and
26 repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155
27 apply to a tax levied under this section.

28 ~~Every operator of a business subject to the tax levied under this section shall, on~~
29 ~~and after the effective date of the levy of the tax, collect the tax. This tax shall be~~
30 ~~collected as part of the charge for furnishing a taxable accommodation. The tax shall~~
31 ~~be stated and charged separately from the sales records, and shall be paid by the~~
32 ~~purchaser to the operator of the business as trustee for and on account of the county.~~
33 ~~The tax shall be added to the sales price and shall be passed on to the purchaser~~
34 ~~instead of being borne by the operator of the business. The county shall design,~~
35 ~~print, and furnish to all appropriate businesses and persons in the county the~~
36 ~~necessary forms for filing returns and instructions to ensure the full collection of the~~
37 ~~tax. An operator of a business who collects the occupancy tax levied under this~~
38 ~~section may deduct from the amount remitted to the county a discount equal to the~~
39 ~~discount the State allows the operator for collecting State sales and use taxes.~~

40 (c) ~~Administration.~~

41 ~~The county shall administer a tax levied under this section. A tax levied under~~
42 ~~this section is due and payable to the county finance officer in monthly installments~~
43 ~~on or before the 15th day of the month following the month in which the tax accrues.~~
44 ~~Every person, firm, corporation, or association liable for the tax shall, on or before~~

1 ~~the 15th day of each month, prepare and render a return on a form prescribed by the~~
2 ~~county. The return shall state the total gross receipts derived in the preceding month~~
3 ~~from rentals upon which the tax is levied.~~

4 ~~A return filed with the county finance officer under this section is not a public~~
5 ~~record as defined by G.S. 132-1 and may not be disclosed except as required by law.~~

6 ~~(d) Penalties:~~

7 ~~A person, firm, corporation, or association who fails or refuses to file the return~~
8 ~~required by this section is subject to the civil and criminal penalties set by G.S.~~
9 ~~105-236 for failure to pay or file a return for State sales and use taxes. The board of~~
10 ~~commissioners has the same authority to waive the penalties for a room occupancy~~
11 ~~tax that the Secretary of Revenue has to waive the penalties for State sales and use~~
12 ~~taxes.~~

13 ~~(e) Distribution and Use of Tax Revenue.~~

14 ~~Avery County shall use at least shall, on a quarterly basis, distribute two-thirds of~~
15 ~~the net proceeds of the occupancy tax revenue to the Avery Tourism Development~~
16 ~~Authority created pursuant to Section 1.1 of this act to be used only to promote~~
17 ~~travel and tourism in Avery County and shall spend distribute the remainder on to~~
18 ~~the Avery County Chamber of Commerce to be used only for tourism-related~~
19 ~~expenditures. The chamber of commerce shall report quarterly and at the close of~~
20 ~~the fiscal year to the board of commissioners on its receipts and expenditures for the~~
21 ~~preceding quarter and for the year in such detail as the board may require.~~

22 The following definitions apply in this subsection:

- 23 (1) Net proceeds. -- Gross proceeds less the cost to the county of
24 administering and collecting the tax, as determined by the finance
25 officer, not to exceed seven percent (7%) of the amount collected.
- 26 (2) Promote travel and tourism. -- To advertise or market an area or
27 activity, publish and distribute pamphlets and other materials,
28 conduct market research, or engage in similar promotional
29 activities that attract tourists or business travelers to the area; the
30 term includes administrative expenses incurred in engaging in the
31 listed activities.
- 32 (3) Tourism-related expenditures. -- ~~Expenditures that are designed to~~
33 ~~increase the use of lodging facilities in a county or to attract~~
34 ~~tourists or business travelers to the county and expenditures~~
35 ~~incurred by the county in collecting the tax. The term includes~~
36 ~~expenditures to construct, maintain, operate, or market a~~
37 ~~convention center and other expenditures that, in the judgment of~~
38 ~~the board of commissioners, will facilitate and support tourism.~~
39 Expenditures that, in the judgment of the entity making the
40 expenditures, are designed to increase the use of lodging facilities,
41 meeting facilities, and convention facilities in a county by attracting
42 tourists or business travelers to the county. The term includes
43 tourism-related capital expenditures.

44 ~~(f) Effective Date of Levy:~~

~~1 A tax levied under this section shall become effective on the date specified in the
2 resolution levying the tax. That date must be the first day of a calendar month,
3 however, and may not be earlier than the first day of the second month after the date
4 the resolution is adopted.~~

5 ~~(g) Repeal.~~

~~6 A tax levied under this section may be repealed by a resolution adopted by the
7 Avery County Board of Commissioners. Repeal of a tax levied under this section
8 shall become effective on the first day of a month and may not become effective until
9 the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax
10 levied under this section does not affect a liability for a tax that was attached before
11 the effective date of the repeal, nor does it affect a right to a refund of a tax that
12 accrued before the effective date of the repeal."~~

13 Section 5. Avery Tourism Development Authority. Chapter 472 of the
14 1993 Session Laws is amended by adding a new section to read:

15 "Sec. 1.1. Avery Tourism Development Authority. (a) Appointment and
16 membership. The board of commissioners of Avery County shall adopt a resolution
17 creating a county Tourism Development Authority, which shall be a public authority
18 under the Local Government Budget and Fiscal Control Act. The Authority shall
19 have nine voting members appointed by the board of commissioners as follows:

- 20 (1) Four individuals selected by the Avery County Lodging
21 Association.
- 22 (2) Two individuals selected by the Avery County Chamber of
23 Commerce.
- 24 (3) One member of the Avery County Board of Commissioners, to
25 serve ex officio.
- 26 (4) Two members of the public.

27 The resolution shall provide for four-year terms of office for the members other than
28 the county commissioner, except that the initial terms of four members shall be set at
29 three years to provide for staggered terms. The resolution shall also provide for the
30 filling of vacancies on the Authority. The board of commissioners shall designate one
31 member of the Authority as chair and shall determine the compensation, if any, to be
32 paid to members of the Authority.

33 The Authority shall meet at the call of the chair and shall adopt rules of procedure
34 to govern its meetings. The Finance Officer for Avery County shall be the ex officio
35 finance officer of the Authority and shall serve as an ex officio, nonvoting member of
36 the Authority.

37 (b) Duties. The Authority shall expend the net proceeds of the tax levied under
38 this act for the purposes provided in Section 1 of this act. The Authority shall
39 promote travel and tourism in the county.

40 (c) Reports. The Authority shall report quarterly and at the close of the fiscal
41 year to the board of commissioners on its receipts and expenditures for the preceding
42 quarter and for the year in such detail as the board may require."

43 Section 6. County Administrative Provisions. Section 3(b) of S.L. 1997-
44 102, as amended by Section 2 of S.L. 1997-255, reads as rewritten:

1 "(b) This section applies only to ~~Madison~~ Avery, Madison, and Nash Counties."
2 Section 7. Section 1 of Chapter 305 of the 1963 Session Laws is rewritten
3 to read:

4 "Section 1. The Register of Deeds of Avery County shall not receive for
5 recordation any deed unless the following conditions are met:

6 (1) The deed is accompanied by a certificate from the Avery County
7 Tax Collector to the effect that all delinquent county taxes and all
8 delinquent taxes for municipalities for which the county collects
9 taxes have been paid with respect to the property described in the
10 deed.

11 (2) If the property described in the deed is located in whole or in part
12 in the Town of Newland, the deed is accompanied by a certificate
13 from the tax collector for the town to the effect that all delinquent
14 municipal taxes have been paid with respect to the property."

15 Section 8. Section 1 of Chapter 537 of the 1987 Session Laws is rewritten
16 to read:

17 "Section 1. The Register of Deeds of Mitchell County shall not receive for
18 recordation any deed unless the following conditions are met:

19 (1) The deed is accompanied by a certificate from the Mitchell County
20 Tax Collector to the effect that all delinquent county taxes and all
21 delinquent taxes for municipalities for which the county collects
22 taxes have been paid with respect to the property described in the
23 deed.

24 (2) If the property described in the deed is located in whole or in part
25 in the Town of Spruce Pine, the deed is accompanied by a
26 certificate from the tax collector for the town to the effect that all
27 delinquent municipal taxes have been paid with respect to the
28 property."

29 Section 9. Section 1 of Chapter 657 of the 1993 Session Laws reads as
30 rewritten:

31 "Section 1. The ~~Register~~ Registers of Deeds of ~~Ashe County~~ Alleghany and Ashe
32 Counties shall not receive for recordation any deed unless the deed is accompanied
33 by a certificate from the ~~Ashe~~ County Tax Collector to the effect that all delinquent
34 taxes upon the property described in the deed offered for recordation have been
35 paid."

36 Section 10. For the 1986-87 through 1996-97 fiscal years, the Town of
37 Norwood, through the budgetary procedures it adopted and followed, is deemed to
38 have adopted a budget ordinance and to have complied with all the requirements of
39 the Local Government Budget and Fiscal Control Act, Article 3 of Chapter 159 of
40 the General Statutes. Taxes levied and collected by the Town of Norwood for those
41 fiscal years are in all respects validated and confirmed. Appropriations and
42 expenditures by the Town of Norwood for those fiscal years are in all respects
43 validated and confirmed.

1 Section 11. Sections 4, 5, and 6 of this act become effective August 1,
2 1997, and apply to taxes paid on or after that date. Sections 7, 8, and 9 of this act
3 become effective October 1, 1997, and apply to deeds recorded on or after that date.
4 The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1997

H

D

HOUSE BILL 418
Committee Substitute Favorable 7/17/97
Proposed Senate Committee Substitute H418-PCS6310

Short Title: Various Local Tax Changes.

(Local)

Sponsors:

Referred to:

March 6, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE THE CITY OF MOUNT AIRY TO LEVY A ROOM
3 OCCUPANCY AND TOURISM DEVELOPMENT TAX, TO MODIFY THE
4 DISTRIBUTION OF THE AVERY COUNTY OCCUPANCY TAX, TO
5 REQUIRE PAYMENT OF DELINQUENT TAXES FOR THE TOWNS OF
6 NEWLAND AND SPRUCE PINE AND FOR THE COUNTY OF ALLEGHANY
7 BEFORE RECORDING DEEDS CONVEYING PROPERTY SUBJECT TO THE
8 DELINQUENT TAXES, AND TO VALIDATE BUDGET PROCEDURES OF
9 THE TOWN OF NORWOOD IN STANLY COUNTY.
10 The General Assembly of North Carolina enacts:
11 Section 1. Mount Airy Occupancy Tax. (a) Authorization and scope.
12 The Mount Airy Board of Commissioners may levy a room occupancy tax of up to
13 three percent (3%) of the gross receipts derived from the rental of any room, lodging,
14 or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place
15 within the city that is subject to sales tax imposed by the State under G.S.
16 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does
17 not apply to accommodations furnished by nonprofit charitable, educational, or
18 religious organizations or by nonprofit summer camps when the accommodations are
19 furnished in furtherance of their nonprofit purpose.

1 (b) Administration. A tax levied under this section shall be levied,
2 administered, collected, and repealed as provided in G.S. 160A-215. The penalties
3 provided in G.S. 160A-215 apply to a tax levied under this section.

4 (c) Distribution and use of tax revenue. The City of Mount Airy shall,
5 on a quarterly basis, remit the net proceeds of the occupancy tax to the Mount Airy
6 Tourism Development Authority. The Authority shall use the funds remitted to it
7 under this subsection only to promote travel and tourism in the Mount Airy area.
8 The following definitions apply in this section:

9 (1) Net proceeds. -- Gross proceeds less the cost to the city of
10 administering and collecting the tax, as determined by the finance
11 officer, not to exceed seven percent (7%) of the gross proceeds.

12 (2) Promote travel and tourism. -- Advertise and market activities,
13 develop and distribute promotional materials, conduct market
14 research, and engage in other similar promotional activities that
15 attract tourists or business travelers to the area. The term also
16 includes administration of the Mount Airy Tourism Development
17 Authority.

18 Section 2. Mount Airy Tourism Development Authority. (a)
19 Appointment and membership. When the board of commissioners adopts a
20 resolution levying a room occupancy tax under this act, it shall also adopt a
21 resolution creating a Mount Airy Tourism Development Authority, which shall be a
22 public authority under the Local Government Budget and Fiscal Control Act. The
23 board of commissioners shall appoint the following eight members to the Authority:

24 (1) Two individuals who are owners or operators of taxable tourist
25 accommodations in the city.

26 (2) Two residents of the city who have experience in the promotion of
27 travel and tourism.

28 (3) Two residents of the city who are members of the Mount Airy
29 Chamber of Commerce, selected by the Mount Airy Chamber of
30 Commerce.

31 (4) One member of the board of commissioners.

32 (5) The city finance officer, who shall serve as an ex officio, nonvoting
33 member.

34 Members of the Authority shall serve without compensation and shall
35 serve for a term of three years. Vacancies shall be filled in the same manner as the
36 original appointment. Members appointed to fill vacancies shall serve for the
37 remainder of the unexpired term. An individual may serve as a member for no more
38 than two consecutive terms. The members shall elect a chair from among the
39 membership, who shall serve for three years. The Authority shall meet at the call of
40 the chair and shall adopt rules of procedure to govern its meetings.

41 (b) Duties. The Authority shall expend the net proceeds of the tax
42 levied under this act for the purposes provided in Section 1 of this act. The
43 Authority shall promote travel and tourism in the Mount Airy area. In performing its
44 duties, the Authority may contract with any person, firm, or agency to advise and

1 assist it and may recommend to the board of commissioners that city staff be
2 employed for this advice and assistance. Any city staff employed upon a
3 recommendation of the Authority shall be hired and supervised by the Authority,
4 which shall pay the salaries and expenses of this staff.

5 (c) Reports. The Authority shall report quarterly and at the close of the
6 fiscal year to the board of commissioners on its receipts and expenditures for the
7 preceding quarter and for the year in such detail as the board may require.

8 Section 3. Municipal Administrative Provisions. G.S. 160A-215, as
9 enacted by ratified House Bill 859 and ratified Senate Bill 585, 1997 General
10 Assembly, applies to the City of Mount Airy.

11 Section 4. Avery County Occupancy Tax. Section 1 of Chapter 472 of
12 the 1993 Session Laws reads as rewritten:

13 "Section 1. Avery County Occupancy tax.

14 (a) **Authorization and Scope.**

15 The Avery County Board of Commissioners may ~~by resolution, after not less than~~
16 ~~10 days' public notice and after a public hearing held pursuant thereto,~~ levy a room
17 occupancy tax of up to three percent (3%) of the gross receipts derived from the
18 rental of any room, lodging, or accommodation furnished by a hotel, motel, inn,
19 tourist camp, or similar place within the county that is subject to sales tax imposed by
20 the State under G.S. 105-164.4(a)(3) and is not subject to a room occupancy tax
21 levied by a municipality. This tax is in addition to any State or local sales tax. This
22 tax does not apply to accommodations furnished by nonprofit charitable, educational,
23 or religious organizations. The occupancy tax rate payable on accommodations
24 furnished within Avery County may not exceed six percent (6%).

25 (b) ~~Collection.~~ **Administration.**

26 A tax levied under this section shall be levied, administered, collected, and
27 repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155
28 apply to a tax levied under this section.

29 ~~Every operator of a business subject to the tax levied under this section shall, on~~
30 ~~and after the effective date of the levy of the tax, collect the tax. This tax shall be~~
31 ~~collected as part of the charge for furnishing a taxable accommodation. The tax shall~~
32 ~~be stated and charged separately from the sales records, and shall be paid by the~~
33 ~~purchaser to the operator of the business as trustee for and on account of the county.~~
34 ~~The tax shall be added to the sales price and shall be passed on to the purchaser~~
35 ~~instead of being borne by the operator of the business. The county shall design,~~
36 ~~print, and furnish to all appropriate businesses and persons in the county the~~
37 ~~necessary forms for filing returns and instructions to ensure the full collection of the~~
38 ~~tax. An operator of a business who collects the occupancy tax levied under this~~
39 ~~section may deduct from the amount remitted to the county a discount equal to the~~
40 ~~discount the State allows the operator for collecting State sales and use taxes.~~

41 (c) ~~Administration.~~

42 ~~The county shall administer a tax levied under this section. A tax levied under~~
43 ~~this section is due and payable to the county finance officer in monthly installments~~
44 ~~on or before the 15th day of the month following the month in which the tax accrues.~~

~~1 Every person, firm, corporation, or association liable for the tax shall, on or before
2 the 15th day of each month, prepare and render a return on a form prescribed by the
3 county. The return shall state the total gross receipts derived in the preceding month
4 from rentals upon which the tax is levied.~~

~~5 A return filed with the county finance officer under this section is not a public
6 record as defined by G.S. 132-1 and may not be disclosed except as required by law.~~

~~7 (d) Penalties:~~

~~8 A person, firm, corporation, or association who fails or refuses to file the return
9 required by this section is subject to the civil and criminal penalties set by G.S.
10 105-236 for failure to pay or file a return for State sales and use taxes. The board of
11 commissioners has the same authority to waive the penalties for a room occupancy
12 tax that the Secretary of Revenue has to waive the penalties for State sales and use
13 taxes.~~

14 (e) Distribution and Use of Tax Revenue.

15 Avery County ~~shall use at least~~ shall, on a quarterly basis, distribute the net
16 proceeds of the occupancy tax as follows: two-thirds to the Avery Tourism
17 Development Authority created pursuant to Section 1.1 of this act and one-third to
18 the Avery County Chamber of Commerce. The Tourism Development Authority
19 shall use at least one-half of the proceeds distributed to it to promote travel and
20 tourism and shall use the remainder for tourism-related expenditures. The chamber
21 of commerce shall use the proceeds distributed to it only to promote travel and
22 tourism. ~~two-thirds of the net proceeds of the occupancy tax revenue to promote~~
23 travel and tourism in Avery County and shall spend the remainder on tourism-related
24 expenditures. The chamber of commerce shall comply with the same requirements
25 for reporting and for submitting an annual budget for approval by the county
26 commissioners as are established for the Avery Tourism Development Authority in
27 Section 1.1 of this act. The Tourism Development Authority and the chamber of
28 commerce may not spend any of the proceeds distributed to them under this section
29 except in accordance with a proposed budget and work plan approved by the board
30 of county commissioners as provided in Section 1.1 of this act.

31 The following definitions apply in this subsection:

- 32 (1) Net proceeds. -- Gross proceeds less the cost to the county of
33 administering and collecting the tax, as determined by the finance
34 officer, not to exceed seven percent (7%) of the amount collected.
- 35 (2) Promote travel and tourism. -- To advertise or market an area or
36 activity, publish and distribute pamphlets and other materials,
37 conduct market research, or engage in similar promotional
38 activities that attract tourists or business travelers to the area; the
39 term includes administrative expenses incurred in engaging in the
40 listed activities.
- 41 (3) Tourism-related expenditures. -- Expenditures that are designed to
42 increase the use of lodging facilities in a county or to attract
43 tourists or business travelers to the ~~county and expenditures~~
44 ~~incurred by the county in collecting the tax.~~ county. The term

1 includes expenditures to construct, maintain, operate, or market a
2 convention center and other expenditures that, in the judgment of
3 the ~~board of commissioners,~~ entity making the expenditure, will
4 facilitate and support tourism.

5 ~~(f) Effective Date of Levy.~~

6 ~~A tax levied under this section shall become effective on the date specified in the~~
7 ~~resolution levying the tax. That date must be the first day of a calendar month,~~
8 ~~however, and may not be earlier than the first day of the second month after the date~~
9 ~~the resolution is adopted.~~

10 ~~(g) Repeal.~~

11 ~~A tax levied under this section may be repealed by a resolution adopted by the~~
12 ~~Avery County Board of Commissioners. Repeal of a tax levied under this section~~
13 ~~shall become effective on the first day of a month and may not become effective until~~
14 ~~the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax~~
15 ~~levied under this section does not affect a liability for a tax that was attached before~~
16 ~~the effective date of the repeal, nor does it affect a right to a refund of a tax that~~
17 ~~accrued before the effective date of the repeal."~~

18 Section 5. Avery Tourism Development Authority. Chapter 472 of the
19 1993 Session Laws is amended by adding a new section to read:

20 "Sec. 1.1. Avery Tourism Development Authority. (a) Appointment and
21 membership. The board of commissioners of Avery County shall adopt a resolution
22 creating a county Tourism Development Authority, which shall be a public authority
23 under the Local Government Budget and Fiscal Control Act. The Authority shall
24 have nine voting members appointed by the board of commissioners as follows:

- 25 (1) Four individuals selected by the Avery County Lodging
26 Association.
- 27 (2) Two individuals selected by the Avery County Chamber of
28 Commerce.
- 29 (3) One member of the Avery County Board of Commissioners, to
30 serve ex officio.
- 31 (4) Two members of the public.

32 The resolution shall provide for four-year terms of office for the members other than
33 the county commissioner, except that the initial terms of four members shall be set at
34 three years to provide for staggered terms. The resolution shall also provide for the
35 filling of vacancies on the Authority. The board of commissioners shall designate one
36 member of the Authority as chair and shall determine the compensation, if any, to be
37 paid to members of the Authority.

38 The Authority shall meet at the call of the chair and shall adopt rules of procedure
39 to govern its meetings. The Finance Officer for Avery County shall be the ex officio
40 finance officer of the Authority and shall serve as an ex officio, nonvoting member of
41 the Authority.

42 (b) Duties. The Authority shall expend the net proceeds of the tax levied under
43 this act for the purposes provided in Section 1 of this act. The Authority shall

1 promote travel and tourism in the county and make tourism-related expenditures, as
2 defined in Section 1 of this act.

3 (c) Annual Budget. On or before October 1, 1997, and by May 1 of each year
4 thereafter, the Authority shall submit for approval by the board of commissioners a
5 proposed budget and work plan for expenditure of the estimated tax revenues for the
6 ensuing fiscal period. If the proposed budget is not approved, the Authority shall
7 submit a revised proposed budget for approval. The Authority may not spend any of
8 the proceeds distributed to it under Section 1 of this act except in accordance with a
9 proposed budget and work plan approved by the board of county commissioners.

10 (d) Reports. The Authority shall report quarterly and at the close of the fiscal
11 year to the board of commissioners on its receipts and expenditures for the preceding
12 quarter and for the year in such detail as the board may require."

13 Section 6. County Administrative Provisions. Section 3(b) of S.L. 1997-
14 102, as amended by Section 2 of S.L. 1997-255, Section 2 of S.L. 1997-442, and
15 Section 3 of ratified House Bill 859, 1997 General Assembly, is further amended by
16 adding the phrase "Avery," in its proper alphabetical order.

17 Section 7. Section 1 of Chapter 305 of the 1963 Session Laws is rewritten
18 to read:

19 "Section 1. The Register of Deeds of Avery County shall not receive for
20 recordation any deed unless the following conditions are met:

21 (1) The deed is accompanied by a certificate from the Avery County
22 Tax Collector to the effect that all delinquent county taxes and all
23 delinquent taxes for municipalities for which the county collects
24 taxes have been paid with respect to the property described in the
25 deed.

26 (2) If the property described in the deed is located in whole or in part
27 in the Town of Newland, the deed is accompanied by a certificate
28 from the tax collector for the town to the effect that all delinquent
29 municipal taxes have been paid with respect to the property."

30 Section 8. Section 1 of Chapter 537 of the 1987 Session Laws is rewritten
31 to read:

32 "Section 1. The Register of Deeds of Mitchell County shall not receive for
33 recordation any deed unless the following conditions are met:

34 (1) The deed is accompanied by a certificate from the Mitchell County
35 Tax Collector to the effect that all delinquent county taxes and all
36 delinquent taxes for municipalities for which the county collects
37 taxes have been paid with respect to the property described in the
38 deed.

39 (2) If the property described in the deed is located in whole or in part
40 in the Town of Spruce Pine, the deed is accompanied by a
41 certificate from the tax collector for the town to the effect that all
42 delinquent municipal taxes have been paid with respect to the
43 property."

1 Section 9. Section 1 of Chapter 657 of the 1993 Session Laws reads as
2 rewritten:

3 "Section 1. The ~~Register~~ Registers of Deeds of ~~Ashe County~~ Alleghany and Ashe
4 Counties shall not receive for recordation any deed unless the deed is accompanied
5 by a certificate from the ~~Ashe County~~ Tax Collector to the effect that all delinquent
6 taxes upon the property described in the deed offered for recordation have been
7 paid."

8 Section 10. For the 1986-87 through 1996-97 fiscal years, the Town of
9 Norwood, through the budgetary procedures it adopted and followed, is deemed to
10 have adopted a budget ordinance and to have complied with all the requirements of
11 the Local Government Budget and Fiscal Control Act, Article 3 of Chapter 159 of
12 the General Statutes. Taxes levied and collected by the Town of Norwood for those
13 fiscal years are in all respects validated and confirmed. Appropriations and
14 expenditures by the Town of Norwood for those fiscal years are in all respects
15 validated and confirmed.

16 Section 11. Sections 4, 5, and 6 of this act become effective September 1,
17 1997, and apply to taxes paid on or after that date. Sections 7, 8, and 9 of this act
18 become effective October 1, 1997, and apply to deeds recorded on or after that date.
19 The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

4

HOUSE BILL 1110
Committee Substitute Favorable 5/28/97
Committee Substitute #2 Favorable 7/10/97
Fourth Edition Engrossed 7/15/97

Short Title: Landscape Architects.

(Public)

Sponsors:

Referred to:

April 21, 1997

1 A BILL TO BE ENTITLED
2 AN ACT AMENDING THE STATUTES RELATED TO LANDSCAPE
3 ARCHITECTS.
4 The General Assembly of North Carolina enacts:
5 Section 1. G.S. 89A-1 reads as rewritten:
6 "§ 89A-1. Definitions.
7 The following definitions apply in this Chapter:
8 (a) (1) ~~'Board' shall mean the Board.~~ -- The North Carolina Board of
9 Landscape Architects, established by G.S. 89A-3. Architects.
10 (b) (2) ~~'Landscape architect' shall mean a~~ Landscape architect. -- A
11 person who, on the basis of demonstrated knowledge acquired by
12 professional education or practical experience, or both, has been
13 granted, and holds a current certificate entitling him or her to
14 practice 'landscape architecture' and to use the title 'landscape
15 architect' in North Carolina under the authority of this Chapter.
16 (c) (3) ~~'Landscape architecture,' or the 'practice of landscape~~
17 ~~architecture' shall mean the~~ Landscape architecture or the practice
18 of landscape architecture. -- The preparation of plans and
19 specifications and supervising the execution of projects involving
20 the arranging of land and the elements used thereon for public and
21 private use and enjoyment, embracing drainage, soil conservation,

1 grading and planting plans and erosion control, in accordance with
2 the accepted professional standards of public health, safety and
3 welfare."

4 Section 2. G.S. 89A-2 reads as rewritten:

5 "§ 89A-2. Use Practice of landscape architecture or use of title 'landscape architect'
6 without registration prohibited; use of seal.

7 (a) ~~On and after January 1, 1970, no~~ No person shall use the designation
8 'landscape architect,' 'landscape architecture,' or 'landscape architectural,' or
9 advertise any title or description tending to convey the impression that he or she is a
10 landscape architect or shall engage in the practice of landscape architecture unless
11 ~~such~~ the person is registered ~~or has obtained a temporary permit~~ as a landscape
12 architect in the manner hereinafter provided and ~~shall thereafter comply thereafter~~
13 complies with the provisions of this Chapter. Every holder of a certificate shall
14 display it in a conspicuous place in his or her principal office, place of business or
15 employment.

16 (a1) No firm, partnership, or corporation shall engage in the practice of landscape
17 architecture unless the firm, partnership, or corporation registered with the Board
18 and has paid the fee required by G.S. 89A-6. All landscape architecture performed
19 by a firm, partnership, or corporation shall be under the direct supervision of an
20 individual who is registered under this Chapter.

21 (b) Nothing in this Chapter shall be construed ~~as authorizing (i) to authorize a~~
22 landscape architect to engage in the practice of architecture, ~~engineering engineering,~~
23 or land surveying, ~~nor (ii) to restrict from the practice of landscape architecture or~~
24 otherwise affect the rights of any person licensed to practice architecture under
25 Chapter 83A, or engineering or land surveying under Chapter 89C of the General
26 ~~Statutes; Statutes if the person does not use the title landscape architect, landscape~~
27 ~~architecture, or landscape architectural, or (iii) to restrict any person from engaging~~
28 in the occupation of grading lands whether by hand tools or machinery, ~~or (iv) to~~
29 ~~restrict the planting, maintaining maintaining,~~ or marketing of plants or plant
30 ~~materials: Provided, however, that no individual shall use the title 'landscape~~
31 ~~architect' unless he has complied with the provisions of this Chapter. materials or the~~
32 drafting of plans or specifications related to the location of plants on a site, (v) to
33 require a certificate for the preparation, sale, or furnishing of plans, specifications and
34 related data, or for the supervision of construction pursuant thereto, where the
35 project involved is a single family residential site, or a residential, institutional, or
36 commercial site of one acre or less, or the project involved is a site of more than one
37 acre where only planting and mulching is required, or (vi) to prevent any individual
38 from making plans or data for their own building site or for the supervision of
39 construction pursuant thereto.

40 (c) Each landscape architect shall, upon registration, obtain a seal of the design
41 authorized by the Board, bearing the name of the registrant, number of certificate
42 and the legend 'N.C. Registered Landscape Architect'. Such seal may be used only
43 while the registrant's certificate is in full force and effect.

1 Nothing in this Chapter shall be construed as authorizing the use or acceptance of
2 the seal of a landscape architect ~~in lieu~~ instead of or as a substitute for the seal of an
3 architect, ~~engineer~~ engineer, or land surveyor."

4 Section 3. G.S. 89A-3 reads as rewritten:

5 "**§ 89A-3. North Carolina Board of Landscape Architects; ~~appointments; powers.~~**
6 **appointments.**

7 (a) There is created the North Carolina Board of Landscape Architects, consisting
8 of seven members appointed by the Governor for four-year staggered terms. Five
9 members of the Board shall have been engaged in the practice of landscape
10 architecture in North Carolina at least five years at the time of their respective
11 appointments. Two members of the Board shall not be landscape architects and shall
12 represent the interest of the public at large. Each member shall hold office until the
13 appointment and qualification of his or her successor. Vacancies occurring prior to
14 the expiration of the term shall be filled by appointment for the unexpired term. No
15 member shall serve more than two complete consecutive terms.

16 ~~The Governor shall appoint the two public members not later than July 1, 1979, to~~
17 ~~serve four-year terms.~~

18 The Board shall be subject to the provisions of Chapter 93B of the General
19 Statutes.

20 (b) The Board shall elect annually from its members a ~~chairman~~ chair and a
21 ~~vice-chairman~~ vice-chair and shall hold such meetings during the year as it may
22 determine to be necessary, one of which shall consist of the annual meeting. A
23 quorum of the Board shall consist of not less than three members.

24 (b1) The members of the Board shall not be compensated. However, members
25 shall be entitled to be reimbursed from Board funds for all proper traveling and
26 incidental expenses incurred in carrying out the provisions of this Chapter.

27 ~~(c) The Board shall have power to compel the attendance of witnesses, to~~
28 ~~administer oaths, and to take testimony and proofs of all matters within its~~
29 ~~jurisdiction. The Board shall have the power to make such rules not inconsistent with~~
30 ~~law as may be necessary in the performance of its duties.~~

31 ~~(d) The Board shall elect a secretary, who may or may not be a member of the~~
32 ~~Board, and who shall hold office at the pleasure of the Board. The members of the~~
33 ~~Board shall not be compensated except that the secretary shall receive such salary as~~
34 ~~is fixed by the Board. The members of the Board shall, however, be entitled to be~~
35 ~~reimbursed from Board funds for all proper traveling and incidental expenses~~
36 ~~incurred in carrying out the provisions of this Chapter."~~

37 Section 4. Chapter 89A of the General Statutes is amended by adding a
38 new section to read:

39 "**§ 89A-3A. Board's powers and duties.**

40 The Board shall have the following powers and duties:

- 41 (1) Administer and enforce the provisions of this Chapter.
- 42 (2) Adopt rules to administer and enforce the provisions of this
43 Chapter.

- 1 (3) Examine and determine the qualifications and fitness of applicants
2 for registration and renewal of registration.
- 3 (4) Determine the qualifications of firms, partnerships, or corporations
4 applying for a certificate of registration.
- 5 (5) Issue, renew, deny, suspend, or revoke certificates of registration
6 and conduct any disciplinary actions authorized by this Chapter.
- 7 (6) Establish and approve continuing education requirements for
8 persons registered under this Chapter.
- 9 (7) Receive and investigate complaints from members of the public.
- 10 (8) Conduct investigations for the purpose of determining whether
11 violations of this Chapter or grounds for disciplining registrants
12 exist.
- 13 (9) Conduct administrative hearings in accordance with Article 3 of
14 Chapter 150B of the General Statutes.
- 15 (10) Maintain a record of all proceedings conducted by the Board and
16 make available to registrants and other concerned parties an
17 annual report of all Board action.
- 18 (11) Employ and fix the compensation of personnel that the Board
19 determines is necessary to carry out the provisions of this Chapter
20 and incur other expenses necessary to perform the duties of the
21 Board.
- 22 (12) Adopt and publish a code of professional conduct for all
23 registrants.
- 24 (13) Adopt a seal containing the name of the Board for use on all
25 certificates of registration and official reports issued by the Board."

26 Section 5. G.S. 89A-4 reads as rewritten:

27 "**§ 89A-4. Application, examination, certificate.**

28 (a) Any person hereafter desiring to be registered and licensed to use the title
29 'landscape architect' and to practice landscape architecture in the State, shall make a
30 written application for examination to the Board, on a form prescribed by the Board,
31 together with such evidence of his or her qualifications as may be prescribed by rules
32 ~~and regulations~~ of the Board. Minimum qualifications under such rules shall require
33 that the ~~applicant~~ applicant:

- 34 (1) Shall be at least 18 years of ~~age and~~ age.
- 35 (2) Shall be of good moral ~~character, and that the applicant shall~~
36 character.
- 37 (3) Shall be a graduate of ~~an~~ a Landscape Architect's Accreditation
38 Board (LAAB) accredited collegiate curriculum in landscape
39 architecture as approved by the ~~Board and~~ Board.
- 40 (4) Shall have at least ~~one year's experience,~~ four years' experience in
41 landscape architecture.

42 ~~(a1) in lieu of such graduation and experience~~ Notwithstanding the requirements
43 of subdivisions (a)(3) and (4) of this section, any person who has had a minimum of
44 ~~seven~~ 10 years of education and experience in landscape architecture, in any

1 combination deemed suitable by the Board, may make application to the Board for
2 examination.

3 (b) If ~~said~~ the application is satisfactory to the Board, and is accompanied by the
4 fees required by this Chapter, then the applicant shall be entitled to an examination
5 to determine his or her qualifications. If the result of the examination of any
6 applicant shall be satisfactory to the Board, then the Board shall issue to the applicant
7 a certificate to use the title 'landscape architect' and to practice landscape
8 architecture in North Carolina. Examinations shall be held at least once a year at a
9 time and place to be fixed by the Board which shall determine the subjects and scope
10 of the examination. The Board may adopt rules for administering the examination in
11 one or more parts at the same time or at different times.

12 (c) The Board, within its discretion, may issue ~~temporary permits pending~~
13 ~~examinations, or without examination may grant licenses, licenses without~~
14 examination and licenses by reciprocity, reciprocity or comity to persons holding a
15 license or certificate in landscape architecture from any legally constituted board of
16 examiners in another state or country whose registration requirements are deemed to
17 be equal or equivalent to those of this State.

18 ~~(d) Provided that his application and application fee be received by the Board~~
19 ~~prior to the first day of July, 1971, any applicant who presents evidence satisfactory to~~
20 ~~the Board that he was actively engaged in the practice of landscape architecture as~~
21 ~~herein defined, on or before July 1, 1968, shall be issued a certificate without the~~
22 ~~requirement for examination.~~

23 (e) The Board, within its discretion, may grant an honorific title license to persons
24 who have held for a minimum of 20 years a license or certificate in landscape
25 architecture issued by the Board or a legally constituted board of examiners in
26 another state or country whose registration requirements are equal or equivalent to
27 those of this State. The honorific title license shall allow the person to use the title
28 'landscape architect emeritus', but the person shall not practice landscape
29 architecture or provide expert testimony as a landscape architect in this State unless
30 the person complies with the provisions of this Chapter. There shall be no fee
31 charged for an honorific title license."

32 Section 6. G.S. 89A-5 reads as rewritten:

33 "§ 89A-5. Annual renewal of certificate.

34 Every registrant under this Chapter shall, on or before the first day of July in each
35 year, obtain a renewal of a certificate for the ensuing year, by application,
36 accompanied by the required fee, ~~and upon fee. Upon failure to renew, his the~~
37 certificate shall be automatically revoked, but such revoked. The certificate may be
38 renewed at any time within one year upon payment of the prescribed renewal fee and
39 penalty for late renewal, as provided by this Chapter, upon evidence satisfactory to
40 the Board after its expiration if the applicant pays the required renewal fee and late
41 renewal penalty, and the Board finds that the applicant has not used his or her
42 certificate or title or engaged in the practice of landscape architecture after notice of
43 revocation and is otherwise eligible for registration under the provisions of this
44 Chapter. When necessary to protect the public health, safety, or welfare, the Board

1 shall require such evidence as it deems necessary to establish the continuing
2 competency of licensees as a condition of license renewal."

3 Section 7. G.S. 89A-6 reads as rewritten:

4 "**§ 89A-6. Fees.**

5 Fees are to be determined by the Board, but shall not exceed the amounts
6 specified herein, however; fees must reflect actual expenses of the Board.

7	Application	\$100.00
8	Examination	450.00
9	License by reciprocity <u>or comity</u>	250.00
10	Annual license renewal.....	100.00
11	Late renewal penalty	50.00
12	Reissue of certificate.....	25.00
13	Temporary permit	150.00
14	Corporate certificate.....	250.00

15 Fees shall be paid to the Board at the times specified by the Board."

16 Section 8. G.S. 89A-7 reads as rewritten:

17 "**§ 89A-7. ~~Refusal, revocation or suspension of certificate.~~ Disciplinary actions.**

18 ~~The Board may, in accordance with the provisions of Chapter 150B of the General~~
19 ~~Statutes: (i) deny permission to take an examination duly applied for; (ii) deny~~
20 ~~license after examination for any cause other than failure to pass; (iii) withhold~~
21 ~~renewal of a license for cause; and (iv) suspend or revoke a license. Grounds for such~~
22 ~~action or actions shall be dishonest practice, unprofessional conduct, incompetence,~~
23 ~~conviction of a felony or addiction to habits of such character as to render him unfit~~
24 ~~to continue professional practice. The procedure for all such actions shall be in~~
25 ~~accordance with the provisions of Chapter 150B of the General Statutes.~~

26 (a) The Board may deny or refuse to renew a certificate of registration, suspend, or
27 revoke a certificate of registration if the registrant or applicant:

- 28 (1) Obtains a certificate of registration by fraudulent
- 29 misrepresentation.
- 30 (2) Uses or attempts to use another's certificate of registration to
- 31 practice landscape architecture.
- 32 (3) Uses or attempts to use another's name for purposes of obtaining a
- 33 certificate of registration or practicing landscape architecture.
- 34 (4) Has demonstrated gross malpractice or gross incompetency as
- 35 determined by the Board.
- 36 (5) Has been convicted of or pled guilty or no contest to a crime that
- 37 indicates that the person is unfit or incompetent to practice
- 38 landscape architecture or that indicates the person has deceived or
- 39 defrauded the public.
- 40 (6) Has been declared mentally incompetent by a court of competent
- 41 jurisdiction.
- 42 (7) Has willfully violated any of the provisions of this Chapter or the
- 43 Board's rules.

1 (b) The Board may require a registrant to take a written or oral examination if the
2 Board finds evidence that the person is not competent to practice landscape
3 architecture as defined in this Chapter.

4 (c) The Board may take any of the actions authorized in subsection (a) of this
5 section against any firm, partnership, or corporation registered with the Board.

6 (d) In addition to taking any of the actions authorized in subsection (a) of this
7 section, the Board may assess a civil penalty not in excess of two thousand dollars
8 (\$2,000) for the violation of any section of this Chapter or the violation of any rules
9 adopted by the Board. All civil penalties collected by the Board shall be remitted to
10 the school fund of the county in which the violation occurred. Before imposing and
11 assessing a civil penalty and fixing the amount thereof, the Board shall, as a part of its
12 deliberations, take into consideration the following factors:

- 13 (1) The nature, gravity, and persistence of the particular violation.
14 (2) The appropriateness of the imposition of a civil penalty when
15 considered alone or in combination with other punishment.
16 (3) Whether the violation was willful.
17 (4) Any other factors that would tend to mitigate or aggravate the
18 violations found to exist."

19 Section 9. G.S. 89A-8 reads as rewritten:

20 **"§ 89A-8. Violation a misdemeanor; injunction to prevent violation.**

21 (a) It shall be a ~~Class 1~~ Class 2 misdemeanor for any person to use, or to hold
22 himself or herself out as entitled to practice ~~under~~, under the title of landscape
23 architect or landscape architecture or to practice landscape architecture unless he or
24 she is duly registered under the provisions of this Chapter.

25 (b) The Board may appear in its own name in the courts of the State and apply
26 for injunctions to prevent violations of this Chapter."

27 Section 10. Article 1 of Chapter 114 of the General Statutes is amended
28 by adding a new section to read:

29 **"§ 114-4.2G. Employment of attorney for the North Carolina Board of Landscape**
30 **Architects.**

31 The Attorney General shall assign an attorney on the Attorney General's staff to
32 serve as advisor to the North Carolina Board of Landscape Architects. The attorney
33 shall be subject to all provisions of Chapter 126 of the General Statutes relating to
34 the State Personnel System. The attorney shall also perform additional duties that
35 may be assigned by the Attorney General."

36 Section 11. This act becomes effective October 1, 1997.

EXPLANATION OF HOUSE BILL 1110:
Landscape Architects (4th Edition)

TO: Senate Finance Committee
FROM: Committee Staff
DATE: July 28, 1997
SPONSOR: Rep. Ed McMahan

Under current law, a person may not use the title "landscape architect" unless the person is registered with the North Carolina Board of Landscape Architects. House Bill 1110 provides that effective October 1, 1997, no person may engage in the practice of landscape architect without first being registered with the Board. To be registered with the Board, the person must meet all of the following conditions:

- Be at least 18 years of age.
- Be of good moral character.
- Be a graduate of a college curriculum in landscape architecture accredited by the Landscape Architect's Accreditation Board and approved by the North Carolina Board of Landscape Architects.
- Have at least four year's experience in landscape architecture.
- Pass an examination given by the Board.
- Pay the \$450 examination fee and the \$100 application fee.

A person who practices landscape architecture without first being registered with the Board is guilty of a Class 2 misdemeanor and is subject to a civil penalty assessed by the Board. The penalty may not exceed \$2,000.

The practice of landscape architecture means "the preparation of plans and specifications and supervising the execution of projects involving the arranging of land and the elements used thereon for public or private use and enjoyment, embracing drainage, soil conservation, grading and planting plans and erosion control, in accordance with the accepted professional standards of public health, safety and welfare."

The bill makes several other changes to the law concerning landscape architects:

- Requires a firm, partnership, or corporation that engages in the practice of landscape architect to be registered with the Board and to pay the \$100 annual registration fee. Any landscape architecture performed by the firm, partnership, or corporation must be done under the direct supervision of an individual registered with the Board.

- Provides that people licensed to practice architecture, engineering, or land surveying do not need to be registered with the Board so long as they do not use the title "landscape architect", "landscape architecture", "landscape architectural".
- Expands the exemptions to the registration requirements to include the following: (1) the drafting of plans related to the location of plants on a site; (2) the preparation, sale, or furnishing of plans, and the supervision of the construction of the plans, if the project is a single family residential site, a site of one acre or less, a site of more than one acre where only planting and mulching is required; (3) the preparation of plans, and the supervision of construction of the plans, for a person's own building site.
- Gives the Board a specified list of powers and duties that include (1) the power to examine applicants for registration and registration renewal; (2) the power to determine the qualifications of businesses applying for registration; (3) the power to establish and approve continuing education requirements; (4) and conduct administrative hearings.
- Specifies that an acceptable college curriculum is one accredited by the Landscape Architect's Accreditation Board.
- Increases the years of experience a person must have to be registered as a landscape architect from one year to four years.
- Increases the minimum number of years of education and experience a person must have to be a landscape architect from 7 years to 10 years.
- Gives the Board the authority to grant an "honorific title" to persons who have been registered in landscape architect for a minimum of 20 years. A person with this title may use the title "landscape architect" but the person may not practice landscape architecture.
- Removes the Board's authority to issue temporary permits pending examination.
- Reduces the criminal offense for violating the registration requirements from a Class 1 misdemeanor to a Class 2 misdemeanor.
- Authorizes the Board to assess civil penalties.
- Provides that the Attorney General must assign an attorney on his staff to serve as advisor to the Board.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

2

HOUSE BILL 866*
Committee Substitute Favorable 4/10/97

Short Title: Carteret and Moore School Board Election.

(Local)

Sponsors:

Referred to:

April 7, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO EXPAND THE CARTERET COUNTY BOARD OF EDUCATION
3 FROM FIVE TO SEVEN MEMBERS AND TO PROVIDE THAT THEIR
4 DISTRICTS ARE THE SAME AS FOR THE BOARD OF COMMISSIONERS,
5 SUBJECT TO A REFERENDUM, AND TO PROVIDE FOR PARTISAN
6 ELECTIONS, SUBJECT TO A REFERENDUM; AND TO PROVIDE THAT
7 FIVE MEMBERS OF THE MOORE COUNTY BOARD OF EDUCATION BE
8 ELECTED FROM THE SAME DISTRICTS AS ARE THE MEMBERS OF THE
9 BOARD OF COMMISSIONERS AND THE REMAINING THREE MEMBERS
10 OF THE MOORE COUNTY BOARD OF EDUCATION BE ELECTED AT
11 LARGE, SUBJECT TO A REFERENDUM, AND TO PROVIDE FOR
12 PARTISAN ELECTIONS, SUBJECT TO A REFERENDUM.
13 The General Assembly of North Carolina enacts:
14 PART I. CARTERET COUNTY BOARD OF EDUCATION
15 Section 1. (a) Effective July 1, 1998, the Board of Education of Carteret
16 County consists of seven members.
17 (b) One member of the Carteret County Board of Education shall be
18 elected each from Districts 1, 2, 4, 5, and 6 as established for the Carteret County
19 Board of Commissioners by Chapter 113 of the Session Laws of 1993, and two
20 members of the Carteret County Board of Education shall be elected from District 3
21 as established for the Carteret County Board of Commissioners by Chapter 113 of the
22 Session Laws of 1993.

1 (c) Of the existing members, Roger Newby is assigned to District 2,
2 Rodney Kemp and Kim Willis are assigned to District 3, Ellen Piner is assigned to
3 District 5, and June Fulcher is assigned to District 6. In 1998, one member shall be
4 elected from each of Districts 1, 3, 5, and 6 for a four-year term, and one member
5 from District 4 for a two-year term. In 2000 and quadrennially thereafter, one
6 member shall be elected from Districts 2, 3, and 4 for a four-year term. In 2002 and
7 quadrennially thereafter, one member shall be elected from Districts 1, 3, 5, and 6 for
8 a four-year term.

9 (d) Members shall reside in and represent the districts, but all members
10 are elected by the voters of the county at large in nonpartisan plurality elections at
11 the time of the primary election and take office on July 1 of the year of election, all
12 as previously provided by law.

13 Section 2. The Carteret County Board of Elections shall conduct an
14 election on November 4, 1997, on the question of approval of Section 1 this act. The
15 question on the ballot shall be:

16 "[] FOR [] AGAINST

17 Expansion of the Carteret County Board of Education to seven members and election
18 from the same districts as the Carteret County Board of Commissioners."

19 If a majority of the votes cast are FOR the question, then Section 1 of this
20 act becomes effective. If less than a majority of the votes cast are FOR the question,
21 then Section 1 of this act does not become effective.

22 Section 3. Notwithstanding any provision of Section 1(d) of this act or
23 Chapter 774 of the 1991 Session Laws, the members of the Carteret County Board of
24 Education shall be elected on a partisan basis at the same time as county officers. To
25 the extent that they do not conflict with this act and that act, the elections shall be
26 conducted in accordance with Chapters 115C and 163 of the General Statutes.
27 Vacancies on the Board of Education for positions elected on a nonpartisan basis in
28 1994 and 1996 shall be filled in accordance with G.S. 115C-37(f). Vacancies on the
29 Board of Education for positions elected on a partisan basis shall be filled in
30 accordance with G.S. 115C-37.1. Beginning in 1998 members elected shall take office
31 and qualify on the first Monday in December of the year of their election, and the
32 terms of their predecessors shall expire at that same time.

33 Section 4. The Carteret County Board of Elections shall conduct an
34 election on November 4, 1997, on the question of approval of Section 3 of this act.
35 The question on the ballot shall be:

36 "[] FOR [] AGAINST

37 Election of the Carteret County Board of Education on a partisan basis."

38 If a majority of the votes cast are FOR the question, then Section 3 of this
39 act becomes effective. If less than a majority of the votes cast are FOR the question,
40 then Section 3 of this act does not become effective.

41 PART II. MOORE COUNTY BOARD OF EDUCATION

42 Section 5. (a) The Board of Education of Moore County consists of
43 eight members.

1 (b) One member of the Moore County Board of Education shall be
2 elected each from Electoral Districts 1, 2, 3, 4, and 5 for members of the Moore
3 County Board of Commissioners as those districts existed on January 1, 1997 and
4 three members of the Moore County Board of Education shall be elected from the
5 County at large.

6 (c) Of the existing Moore County Board of Education members, Mike
7 Ritter is assigned to District 1, Ken Baer is assigned to District 2, Bill Garner is
8 assigned to District 3, and Linda McCaskill is assigned to District 4, and Dianne
9 Lawrence is assigned to District 5. In 1998 and quadrennially thereafter, a member
10 shall be elected from District 3 and three members shall be elected from the county
11 at large for four year terms. In 2000 and quadrennially thereafter, members shall be
12 elected from Districts 1, 2, 4, and 5 for four year terms.

13 (d) Members shall reside in and represent the districts, but all members
14 are elected by the voters of the county at large by the nonpartisan primary and
15 election method, all as previously provided by law.

16 Section 6. The Moore County Board of Elections shall conduct an
17 election on November 4, 1997, on the question of approval of Section 5 of this act.
18 The question on the ballot shall be:

19 "[] FOR [] AGAINST
20 Providing that five of the Moore County Board of Education members have the same
21 districts as the Moore County Board of County Commissioners and that three of the
22 Moore County Board of Education members be elected at large."

23 If a majority of the votes cast are FOR the question, then Section 5 of this
24 act becomes effective. If less than a majority of the votes cast are FOR the question,
25 then Section 5 of this act does not become effective.

26 Section 7. Notwithstanding any provision of Section 5(d) of this act,
27 Chapter 882 of the 1967 Session Laws, or Chapter 442 of the 1977 Session Laws, the
28 members of the Moore County Board of Education shall be elected on a partisan
29 basis at the same time as county officers. To the extent that they do not conflict with
30 this act, Chapter 882 of the 1967 Session Laws, or Chapter 442 of the 1977 Session
31 Laws, the elections shall be conducted in accordance with Chapters 115C and 163 of
32 the General Statutes. Vacancies on the Board of Education for positions elected on a
33 nonpartisan basis in 1994 and 1996 shall be filled in accordance with G.S. 115C-37(f).
34 Vacancies on the Board of Education for positions elected on a partisan basis shall be
35 filled in accordance with G.S. 115C-37.1.

36 Section 8. Moore County Board of Elections shall conduct an election on
37 November 4, 1997, on the question of approval of Section 7 of this act. The question
38 on the ballot shall be:

39 "[] FOR [] AGAINST
40 Election of the Moore County Board of Education on a partisan basis."

41 If a majority of the votes cast are FOR the question, then Section 7 of this
42 act becomes effective. If less than a majority of the votes cast are FOR the question,
43 then Section 7 of this act does not become effective.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

HOUSE BILL 866*
Committee Substitute Favorable 4/10/97
Proposed Senate Committee Substitute H866-PCS4144

Short Title: Moore/Carteret School Board Election.

(Local)

Sponsors:

Referred to:

April 7, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE THAT FIVE MEMBERS OF THE MOORE COUNTY
3 BOARD OF EDUCATION BE ELECTED FROM THE SAME DISTRICTS AS
4 ARE THE MEMBERS OF THE BOARD OF COMMISSIONERS AND THE
5 REMAINING THREE MEMBERS OF THE MOORE COUNTY BOARD OF
6 EDUCATION BE ELECTED AT LARGE, SUBJECT TO A REFERENDUM,
7 AND TO PROVIDE FOR PARTISAN ELECTIONS, SUBJECT TO A
8 REFERENDUM, AND TO EXPAND THE CARTERET COUNTY BOARD OF
9 EDUCATION FROM FIVE TO SEVEN MEMBERS, AND TO PROVIDE THAT
10 THEIR DISTRICTS ARE THE SAME AS FOR THE BOARD OF
11 COMMISSIONERS.
12 The General Assembly of North Carolina enacts:
13 Section 1. (a) The Board of Education of Moore County consists of
14 eight members.
15 (b) One member of the Moore County Board of Education shall be
16 elected each from Electoral Districts 1, 2, 3, 4, and 5 for members of the Moore
17 County Board of Commissioners as those districts existed on January 1, 1997, and
18 three members of the Moore County Board of Education shall be elected from the
19 County at large.
20 (c) Of the existing Moore County Board of Education members, Mike
21 Ritter is assigned to District 1; Ken Baer is assigned to District 2; Bill Garner is
22 assigned to District 3; Linda McCaskill is assigned to District 4; and Dianne Lawrence

1 is assigned to District 5. In 1998 and quadrennially thereafter, a member shall be
2 elected from District 3 and three members shall be elected from the county at large
3 for four-year terms. In 2000 and quadrennially thereafter, members shall be elected
4 from Districts 1, 2, 4, and 5 for four-year terms.

5 (d) Members shall reside in and represent the districts, but all members
6 are elected by the voters of the county at large by the nonpartisan primary and
7 election method, all as previously provided by law.

8 Section 2. The Moore County Board of Elections shall conduct an
9 election on November 4, 1997, on the question of approval of Section 1 of this act.
10 The question on the ballot shall be:

11 "[] FOR [] AGAINST
12 Providing that five of the Moore County Board of Education members have the same
13 districts as the Moore County Board of County Commissioners and that three of the
14 Moore County Board of Education members be elected at large."

15 If a majority of the votes cast are FOR the question, then Section 1 of this
16 act becomes effective. If less than a majority of the votes cast are FOR the question,
17 then Section 1 of this act does not become effective.

18 Section 3. Notwithstanding any provision of Section 1(d) of this act,
19 Chapter 882 of the 1967 Session Laws, or Chapter 442 of the 1977 Session Laws, the
20 members of the Moore County Board of Education shall be elected on a partisan
21 basis at the same time as county officers. To the extent that they do not conflict with
22 this act, Chapter 882 of the 1967 Session Laws, or Chapter 442 of the 1977 Session
23 Laws, the elections shall be conducted in accordance with Chapters 115C and 163 of
24 the General Statutes. Vacancies on the Board of Education for positions elected on a
25 nonpartisan basis in 1994 and 1996 shall be filled in accordance with G.S. 115C-37(f).
26 Vacancies on the Board of Education for positions elected on a partisan basis shall be
27 filled in accordance with G.S. 115C-37.1.

28 Section 4. Moore County Board of Elections shall conduct an election on
29 November 4, 1997, on the question of approval of Section 3 of this act. The question
30 on the ballot shall be:

31 "[] FOR [] AGAINST
32 Election of the Moore County Board of Education on a partisan basis."

33 If a majority of the votes cast are FOR the question, then Section 3 of this
34 act becomes effective. If less than a majority of the votes cast are FOR the question,
35 then Section 3 of this act does not become effective.

36 Section 5. (a) Effective July 1, 1998, the Board of Education of Carteret
37 County consists of seven members.

38 (b) One member of the Carteret County Board of Education shall be
39 elected each from Districts 1, 2, 4, 5, and 6 as established for the Carteret County
40 Board of Commissioners by Chapter 113 of the Session Laws of 1993, and two
41 members of the Carteret County Board of Education shall be elected from District 3
42 as established for the Carteret County Board of Commissioners by Chapter 113 of the
43 Session Laws of 1993.

1 (c) Of the existing members, Roger Newby is assigned to District 2,
2 Rodney Kemp and Kim Willis are assigned to District 3, Ellen Piner is assigned to
3 District 5, and June Fulcher is assigned to District 6. In 1998, one member shall be
4 elected from each of Districts 1, 3, 5, and 6 for a four-year term, and one member
5 from District 4 for a two-year term. In 2000 and quadrennially thereafter, one
6 member shall be elected from Districts 2, 3, and 4 for a four-year term. In 2002 and
7 quadrennially thereafter, one member shall be elected from Districts 1, 3, 5, and 6 for
8 a four-year term.

9 (d) Members shall reside in and represent the districts, but all members
10 are elected by the voters of the county at large in nonpartisan plurality elections at
11 the time of the primary election and take office on July 1 of the year of election, all
12 as previously provided by law.

13 Section 6. This act is effective when it becomes law.

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

7/30/97

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

J. J. Wynn	DOR
Kevin Quinn	DETRUR
DICK MEESE	MARCK OF TIMES
Jimmy Roberts	C. U. C. A.
Kevin O'Donnell	Nash Utility Svc. Inc
Charles Francis	Woods & Francis
Gray Styers	Kilpatrick Stockton
Anne Wynn	NCBA
R. Paul Wilson	NCHBA
Mick Garland	EC
Ron Azcock	NCACC

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

4/30/97
Date

Name of Committee

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
David Huskins	Citizen
Nancy Rayford	NCCORA
Jim Hoard	Public Staff
Tony Wike	Public Staff
Stuart Dixon	NCNG
George Long	NC DOR
Patti Seawell	"
Dei Underwood	"
Carrie Hartley	office of Leon
Greg Rufford	NC DOR
Alia Manning	NC DOR

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

7/30/97

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Ed Regan	N.C.A.C.C.
Leslie Beracqua	NCCBI
Claus Von Bulow	Cherry Hill, N.J.
Tim KENT	American Institute of Architects
Ed Adams	Δ Transit Authority, + C&E/NE
Estherine Davis	Electricities of NC
Jay at Pocus	JP Assoc -

SENATE FINANCE COMMITTEE

THURSDAY, JULY 31, 1997

8:30 A.M. - ROOM 544 LOB

The Senate Finance Committee met on July 31, 1997, with Senator Kerr presiding. There were 27 committee members present.

S.B. 39 - Modify Setoff Debt Collection

This bill had previously been discussed in Finance and was given a favorable report, was re-referred to Appropriations and sent back to Finance. A committee substitute on this bill was explained by Martha Harris, Staff Attorney, and on motion by Senator Ballantine, the committee substitute was adopted by the committee. Senator Hoyle moved for a "favorable" report for the committee substitute and the motion carried. Copy of bill, committee substitute, explanation and fiscal note included in the minutes.

S.B. 841 - Modify Corporate Dividend Taxation

Senator Hoyle was recognized to explain this bill which had been discussed in the Wednesday, July 30th meeting. Senator Winner moved for a "favorable" report for the committee substitute and the motion carried. Copy of committee substitute included in the minutes.

H.B. 1097 - Fisheries Reform Act-2

Representative Preston and Representative Redwine were recognized as sponsors of the bill and spoke briefly on the bill. Senator Kerr announced that there were several amendments that would be offered in addition to the amendment that was adopted on Tuesday. Senator McDaniel sent forth Amendment # 2 and moved for its adoption. The motion carried and the amendment was adopted. Senator Cochran sent forth an amendment (#3) and on her motion the amendment was adopted by the committee. Senator Cochran sent forth another amendment (#4) and on her motion, this amendment was adopted by the committee. Senator Phillips sent forth an amendment (#5) and moved for its adoption. The motion carried and the amendment was adopted by the committee. Senator Perdue sent forth an amendment (#6) and moved for its adoption. The motion carried. After explanation and discussion on this amendment, Senator Perdue pulled this amendment and it was not voted on by the committee. Senator Lee was recognized to offer an amendment (#7) and on his motion the amendment was adopted by the committee. After further discussion by the committee members, on motion by Senator Gulley the bill, as amended, was given a "favorable" report by the committee and will be re-referred to Appropriations. Copy of bill, committee substitute, amendments, information and fiscal note included in the minutes.

H.B. 1231 - Local Transit Revenue Options

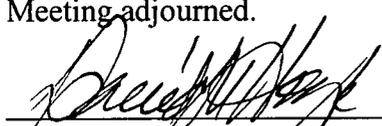
Representative Minor was recognized as the bill sponsor and Representative McMahan was recognized to explain this bill. At the conclusion of Representative McMahan's explanation, Senator Gulley was recognized and spoke in favor of the bill. There was a general discussion on this bill with questions from the committee members to the bill sponsor and to staff.

Senator Kerr introduced Glenn Jernigan, representing the car rental industry and specifically Dollar Rent A Car, who spoke in opposition to the increasing of taxing of car rentals in the bill.

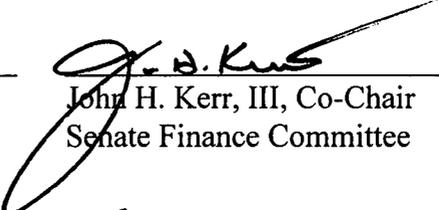
Paul Cox, General Manager of the Wyndom Garden Hotel in the Research Triangle Park and also the President of the Triangle Motel Hotel Association spoke on the bill and expressed opposition to a targeted tax on car rentals.

Senator Kerr announced that this meeting would recess for session and would reconvene 15 minutes after session.

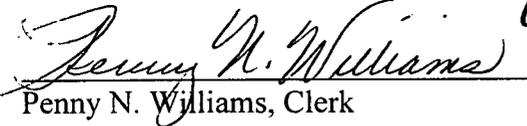
Meeting adjourned.



David W. Hoyle, Co-Chair
Senate Finance Committee



John H. Kerr, III, Co-Chair
Senate Finance Committee



Penny N. Williams, Clerk



Evelyn S. Hartsell, Clerk

NOTE:

Agenda is Attachment # 1
Visitors Sign Up Sheet is Attachment # 2
Committee Report is Attachment # 3

AGENDA

SENATE FINANCE COMMITTEE

THURSDAY, JULY 31, 1997

Room 544 - 8:30 A.M.

S.B. 39 - Modify Setoff Debt Collection - Sen. L. Shaw

S.B. 841 - Modify Corporate Dividend Taxation - Sen. Hoyle

H.B. 1097 - Fisheries Reform Act-2 - Rep. Preston

H.B. 1231 - Local Transit Revenue Options - Rep. Minor

TIME PERMITTING:

H.B. 1156 - March of Dimes/School Tech. Plates - Rep. Morris

S.B. 886 - Trucking Adjustment Act of 1997 - Sen. Jordan

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1997

S

2

SENATE BILL 39
Finance Committee Substitute Adopted 4/9/97

Short Title: Modify Setoff Debt Collection.

(Public)

Sponsors:

Referred to: Appropriations.

February 3, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO REVISE THE SETOFF DEBT COLLECTION ACT.

3 The General Assembly of North Carolina enacts:

4 Section 1. Chapter 105A of the General Statutes reads as rewritten:

5 "Chapter 105A.

6 "Setoff Debt Collection Act.

7 "ARTICLE 1.

8 "In General.

9 "§ 105A-1. Purposes.

10 The purpose of this ~~Article~~ Chapter is to establish as policy that all claimant
11 agencies and the Department of Revenue shall cooperate in identifying debtors who
12 owe money to the State or to a local government through ~~its~~ their various ~~claimant~~
13 agencies and who qualify for refunds from the Department of Revenue. It is also the
14 intent of this ~~Article~~ Chapter that procedures be established for setting off against any
15 ~~such~~ refund the sum of any debt owed to the ~~State.~~ State or to a local government.
16 Furthermore, it is the legislative intent that this ~~Article~~ Chapter be liberally construed
17 so as to effectuate these purposes as far as legally and practically possible.

18 "§ 105A-2. Definitions.

19 The following definitions apply in this Chapter:

20 (1) Claimant agency. -- Either of the following:

21 a. A State agency.

22 b. A local agency acting through a clearinghouse or an
23 organization pursuant to G.S. 105A-3(b1).

- 1 (2) Debt. -- Any of the following:
2 a. A sum owed to a claimant agency that has accrued through
3 contract, subrogation, tort, operation of law, or any other
4 legal theory regardless of whether there is an outstanding
5 judgment for the sum.
6 b. A sum a claimant agency is authorized or required by law to
7 collect, such as child support payments collectible under
8 Title IV, Part D of the Social Security Act.
9 c. A sum owed as a result of an intentional program violation
10 or a violation due to inadvertent household error under the
11 Food Stamp Program enabled by Chapter 108A, Article 2,
12 Part 5 of the General Statutes.
13 d. A sum owed as a result of having obtained public assistance
14 payments under any of the following programs through an
15 intentional false statement, intentional misrepresentation,
16 intentional failure to disclose a material fact, or inadvertent
17 household error:
18 1. The Aid to Families with Dependent Children
19 Program or the Aid to Families with Dependent
20 Children. -- Emergency Assistance Program, enabled
21 by Chapter 108A, Article 2, Part 2 of the General
22 Statutes.
23 2. The Work First Cash Assistance Program established
24 pursuant to federal waivers received by the
25 Department of Human Resources on February 5,
26 1996.
27 3. The State-County Special Assistance for Adults
28 Program, enabled by Chapter 108A, Article 2, Part 3
29 of the General Statutes.
30 (3) Debtor. -- An individual who owes a debt.
31 (4) Department. -- The Department of Revenue.
32 (5) Reserved.
33 (6) Local agency. -- A county, to the extent it is not considered a State
34 agency, or a municipality.
35 (7) Net proceeds collected. -- Gross proceeds collected through setoff
36 against a debtor's refund minus the collection assistance fee
37 retained by the Department.
38 (8) Refund. -- An individual's North Carolina income tax refund.
39 (9) State agency. -- Any of the following:
40 a. A unit of the executive, legislative, or judicial branch of
41 State government.
42 b. A county, to the extent it administers a program supervised
43 by the Department of Human Resources, or it operates a
44 Child Support Enforcement Program, enabled by Chapter

110, Article 9, and Title IV, Part D of the Social Security Act.

As used in this Article:

(1) "Claimant agency" means and includes:

- a. ~~The State Education Assistance Authority as enabled by Article 23 of Chapter 116 of the General Statutes;~~
- b. ~~The North Carolina Department of Human Resources when in the exercise of its authority to collect health profession student loans made pursuant to G.S. 131-121;~~
- e. ~~The North Carolina Department of Human Resources when in the performance of its duties under the Medical Assistance Program enabled by Chapter 108A, Article 2, Part 6, and any county operating the same Program at the local level, when and only to the extent such a county is in the performance of Medical Assistance Program collection functions;~~
- d. ~~The North Carolina Department of Human Resources when in the performance of its duties, under the Child Support Enforcement Program as enabled by Chapter 110, Article 9 and Title IV, Part D of the Social Security Act to obtain indemnification for past paid public assistance or to collect child support arrearages owed to an individual receiving program services and any county operating the program at the local level, when and only to the extent that the county is engaged in the performance of those same duties;~~
- e. ~~The University of North Carolina, including its constituent institutions as specified by G.S. 116-2(4);~~
- f. ~~The University of North Carolina Hospitals at Chapel Hill in the conduct of its financial affairs and operations pursuant to G.S. 116-37;~~
- g. ~~The Board of Governors of the University of North Carolina and the State Board of Education through the College Scholarship Loan Committee when in the performance of its duties of administering the Scholarship Loan Fund for Prospective College Teachers enabled by Chapter 116, Article 5;~~
- h. ~~The Office of the North Carolina Attorney General on behalf of any State agency when the claim has been reduced to a judgment;~~
- i. ~~The State Board of Community Colleges through community colleges as enabled by Chapter 115D in the conduct of their financial affairs and operations;~~
- j. ~~State facilities as listed in G.S. 122C-181(a), School for the Deaf at Morganton, North Carolina Sanatorium at McCain;~~

- 1 ~~Western Carolina Sanatorium at Black Mountain, Eastern~~
2 ~~North Carolina Sanatorium at Wilson, and Gravelly~~
3 ~~Sanatorium at Chapel Hill under Chapter 143, Article 7;~~
4 ~~Governor Morehead School under Chapter 115, Article 40;~~
5 ~~Central North Carolina School for the Deaf under Chapter~~
6 ~~115, Article 41; Wright School for Treatment and Education~~
7 ~~of Emotionally Disturbed Children under Chapter 122C;~~
8 ~~and these same institutions by any other names by which~~
9 ~~they may be known in the future;~~
- 10 k. ~~The North Carolina Department of Revenue;~~
11 l. ~~The Administrative Office of the Courts;~~
12 m. ~~The Division of Forest Resources of the Department of~~
13 ~~Environment, Health, and Natural Resources;~~
- 14 n. ~~The Administrator of the Teachers' and State Employees'~~
15 ~~Comprehensive Major Medical Plan, established in Article 3~~
16 ~~of General Statutes Chapter 135;~~
- 17 e. ~~The State Board of Education through the Superintendent~~
18 ~~of Public Instruction when in the performance of his duties~~
19 ~~of administering the Scholarship Loan Fund for Prospective~~
20 ~~Teachers enabled by Chapter 115C, Article 32A and the~~
21 ~~scholarship loan and grant programs enabled by Chapter~~
22 ~~115C, Article 24C, Part 1;~~
- 23 p. ~~The Board of Trustees of the Teachers' and State~~
24 ~~Employees' Retirement System and the Board of Trustees of~~
25 ~~the Local Governmental Employees' Retirement System in~~
26 ~~the performance of their duties pursuant to Chapters 120,~~
27 ~~128, 135 and 143 of the General Statutes;~~
- 28 q. ~~The North Carolina Teaching Fellows Commission in the~~
29 ~~performance of its duties pursuant to Chapter 115C, Article~~
30 ~~24C, Part 2;~~
- 31 r. ~~The North Carolina Department of Human Resources when~~
32 ~~in the performance of its collection duties for intentional~~
33 ~~program violations and violations due to inadvertent~~
34 ~~household error under the Food Stamp Program enabled by~~
35 ~~Chapter 108A, Article 2, Part 5, and any county operating~~
36 ~~the same Program at the local level, when and only to the~~
37 ~~extent such a county is in the performance of Food Stamp~~
38 ~~Program collection functions.~~
- 39 ~~The North Carolina Department of Human Resources when,~~
40 ~~in the performance of its duties under the Aid to Families~~
41 ~~with Dependent Children Program or the Aid to Families~~
42 ~~with Dependent Children Emergency Assistance Program~~
43 ~~provided in Part 2 of Article 2 of Chapter 108A or the~~
44 ~~Work First Cash Assistance Program established pursuant to~~

1 the federal waivers received by the Department on February
 2 5, 1996, or under the State County Special Assistance for
 3 Adults Program provided in Part 3 of Article 2 of Chapter
 4 108A, it seeks to collect public assistance payments obtained
 5 through an intentional false statement, intentional
 6 misrepresentation, intentional failure to disclose a material
 7 fact, or inadvertent household error;

8 s. The Employment Security Commission of North Carolina.

9 t. Any State agency in the collection of salary overpayments
 10 from former employees.

11 u. The State Board of Education through the Superintendent
 12 of Public Instruction when in the performance of his duties
 13 of administering the program under which the State
 14 encourages participation in the National Board for
 15 Professional Teaching Standards (NBPTS) Program, enabled
 16 by Section 19.28 of Chapter 769 of the 1993 Session Laws.

17 (2) "Debtor" means any individual owing money to or having a
 18 delinquent account with any claimant agency which obligation has
 19 not been adjudicated satisfied by court order, set aside by court
 20 order, or discharged in bankruptcy.

21 (3) "Debt" means any liquidated sum due and owing any claimant
 22 agency which has accrued through contract, subrogation, tort,
 23 operation of law, or any other legal theory regardless of whether
 24 there is an outstanding judgment for that sum.

25 (4) "Department" means the North Carolina Department of Revenue.

26 (5) "Refund" means any individual's North Carolina income tax
 27 refund.

28 (6) "Net proceeds collected" means gross proceeds collected through
 29 final setoff against a debtor's refund minus any collection
 30 assistance fee charged by the Department.

31 **"§ 105A-3. Remedy additional; mandatory State usage; optional local usage; obtaining**
 32 **identifying information; information; registration.**

33 (a) Remedy Additional. -- The collection remedy under this Article Chapter is in
 34 addition to and not in substitution for any other remedy available by law.

35 (b) Mandatory State Usage. -- All claimant agencies shall submit, for collection
 36 under the procedure established by this Article, all debts which they are owed, except
 37 debts that they are advised by A State agency must submit a debt owed to it for
 38 collection under this Chapter unless the State Controller has waived this requirement
 39 or the Attorney General has advised the State agency not to submit the debt because
 40 the validity of the debt is legitimately in dispute, because an alternative means of
 41 collection is pending and believed to be adequate, or because such a collection
 42 attempt would result in a loss of federal funds. The State Controller may waive the
 43 requirement for a State agency, other than the Department of Human Resources or a
 44 county acting on behalf of that Department, to submit a debt owed to it for collection

1 under this Chapter if the State Controller finds that collection by this means would
2 not be practical or cost-effective. A waiver may apply to all debts owed a State
3 agency or a type of debt owed a State agency.

4 (b1) Optional Local Usage. -- A local agency may submit a debt owed to it for
5 collection under this Chapter. A local agency that decides to submit a debt owed to
6 it for collection under this Chapter must establish the debt by following the
7 procedure set in G.S. 105A-5 and must submit the debt through one of the following:

8 (1) A clearinghouse that is established pursuant to an interlocal
9 agreement adopted under Article 20 of Chapter 160A of the
10 General Statutes and has agreed to submit debts on behalf of any
11 requesting local agency.

12 (2) The North Carolina League of Municipalities.

13 (3) The North Carolina Association of County Commissioners.

14 (c) Identifying Information. -- All claimant agencies shall whenever possible
15 obtain the full name, social security number, address, and any other identifying
16 information required by ~~rules promulgated by the Department pursuant to G.S.~~
17 ~~105A-16~~ from any person for whom the agencies provide any service or transact any
18 business and who the claimant agencies can foresee may become a debtor under this
19 Article. Chapter.

20 (d) Registration and Reports. -- A ~~claimant~~ State agency must register with the
21 Department and with the State Controller. Every State agency must report annually
22 to the ~~Department~~ State Controller the amount of debts owed to the agency for
23 which the agency did not submit a claim for setoff and the reason for not submitting
24 the claim.

25 A clearinghouse or an organization that submits debts on behalf of a local agency
26 must register with the Department. Once a clearinghouse registers with the
27 Department under this subsection, no other clearinghouse may register to submit
28 debts for collection under this Chapter.

29 **"§ 105A-4. Minimum ~~sum collectible~~ debt and refund.**

30 ~~A claimant agency shall not be allowed to effect final setoff and collect debts~~
31 ~~through use of the remedy established under this Article unless both the debt and the~~
32 ~~refund, if any, are~~ This Chapter applies only to a debt that is at least fifty dollars
33 ~~(\$50.00).~~ (\$50.00) and to a refund that is at least this same amount.

34 **"§ 105A-5. Local agency notice, hearing, and decision.**

35 (a) Prerequisite. -- A local agency may not submit a debt for collection under this
36 Chapter until it has given the notice required by this section, and the claim has been
37 finally determined as provided in this section.

38 (b) Notice. -- A local agency must send written notice to a debtor that the agency
39 intends to submit the debt owed by the debtor for collection by setoff. The notice
40 must explain the basis for the agency's claim to the debt and that the agency intends
41 to apply the debtor's refund against the debt. The notice must also inform the debtor
42 that the debtor has the right to contest the matter by filing a request for a hearing
43 with the local agency, must state the time limits and procedure for requesting the

1 hearing, and must state that failure to request a hearing within the required time will
2 result in setoff of the debt.

3 (c) Administrative Review. -- A debtor who decides to contest a proposed setoff
4 must file a written request for a hearing with the local agency within 30 days after the
5 date the local agency mails a notice of the proposed action to the debtor. A request
6 for a hearing is considered to be filed when it is delivered for mailing with postage
7 prepaid and properly addressed. The governing body of the local agency or a person
8 designated by the governing body must hold the hearing.

9 If the debtor disagrees with the decision of the governing body or the person
10 designated by the governing body, the debtor may file a petition for a contested case
11 under Article 3 of Chapter 150B of the General Statutes. The petition must be filed
12 within 30 days after the debtor receives a copy of the local decision. Notwithstanding
13 the provisions of G.S. 150B-2, a local agency is considered an agency for purposes of
14 contested cases and appeals under this Chapter.

15 In a hearing under this section, an issue that has previously been litigated in a
16 court proceeding cannot be considered.

17 (d) Decision. -- A decision made after a hearing under this section must determine
18 whether a debt is owed to the local agency and the amount of the debt.

19 (e) Return of Amount Setoff. -- If a local agency submits a debt for collection
20 under this Chapter without sending the notice required by subsection (b) of this
21 section, the agency must send the taxpayer the entire amount set off plus the
22 collection assistance fee retained by the Department. Similarly, if a local agency
23 submits a debt for collection under this Chapter after sending the required notice but
24 before final determination of the debt, and a decision finds that the local agency is
25 not entitled to any part of the amount set off, the agency must send the taxpayer the
26 entire amount set off plus the collection assistance fee retained by the Department.
27 That portion of the amount returned that reflects the collection assistance fee must be
28 paid from the local agency's funds.

29 If a local agency submits a debt for collection under this Chapter after sending the
30 required notice and the net proceeds collected that are credited to the local agency
31 for the debt exceed the amount of the debt, the local agency must send the balance to
32 the debtor. No part of the collection assistance fee retained by the Department may
33 be returned when a notice was sent and a debt is owed but the debt is less than the
34 amount set off.

35 Interest accrues on the amount of a refund returned to a taxpayer under this
36 subsection in accordance with G.S. 105-266. A local agency that returns a refund to a
37 taxpayer under this subsection must pay from the local agency's funds any interest
38 that has accrued since the fifth day after the Department mailed the notice of setoff
39 to the taxpayer.

40 ~~Collection of sums due claimant agencies through setoff.~~

41 ~~Subject to the limitations contained in this Article, the Department of Revenue~~
42 ~~shall upon request render assistance in the collection of any delinquent account or~~
43 ~~debt owing to any claimant agency. This assistance shall be provided by setting off~~

1 ~~any refunds due the debtor from the Department by the sum certified by claimant~~
2 ~~agency as due and owing.~~

3 **"§ 105A-6. Procedure for Department to follow in making setoff.**

4 (a) Notice to Department. -- A claimant agency seeking to attempt collection of a
5 debt through setoff ~~shall~~ must notify the Department in writing and supply (i)
6 information necessary to identify the debtor whose refund is sought to be set off ~~and~~
7 (ii) off. The claimant agency may include with the notification the date, if any, that
8 the debt is expected to expire. ~~Notification to the Department and the furnishing of~~
9 ~~identifying information must occur on or before a date specified by the Department~~
10 ~~in the first year preceding the calendar year during which the refund would be paid.~~
11 ~~The notice is effective to initiate setoff against refunds that would be made in~~
12 ~~calendar years following the year in which the notice was first made until the date~~
13 ~~specified in the notice that the debt is expected to expire. The agency shall~~ must
14 notify the Department in writing when a debt has been paid or is no longer owed the
15 agency.

16 (b) Setoff by Department. -- The Department, upon receipt of notification, ~~shall~~
17 must determine each year whether the debtor to the claimant agency is entitled to a
18 refund of at least fifty dollars (\$50.00) from the Department. Upon determination by
19 the Department that a debtor specified by a claimant agency qualifies for such a
20 refund, the Department ~~shall notify in writing the claimant agency that a refund is~~
21 ~~pending, specify its sum, and indicate the debtor's address as listed on the tax return.~~

22 (c) ~~Unless stayed by court order, the Department shall, upon certification as~~
23 ~~provided in this Article, must set off the certified debt against the refund to which the~~
24 ~~debtor would otherwise be entitled. entitled and must refund any remaining balance~~
25 to the debtor. The Department must mail the debtor written notice that the setoff
26 has occurred and must credit the net proceeds collected to the claimant agency. If
27 the claimant agency is a State agency, that agency must credit the amount received to
28 a nonreverting trust account and must follow the procedure set in G.S. 105A-8.

29 **~~"§ 105A-7. Notification of intention to set off and right to hearing.~~**

30 (a) ~~The claimant agency, upon receipt of notification from the Department that a~~
31 ~~debtor is entitled to a refund, shall within 10 days send a written notification to the~~
32 ~~debtor and a copy of same to the Department of its assertion of rights to the refund~~
33 ~~or any part thereof. Such notification shall inform the debtor of the claimant agency's~~
34 ~~intention to direct the Department to apply the refund or any portion thereof against~~
35 ~~the debt certified as due and owing. For the Department to be obligated to continue~~
36 ~~holding refunds until receipt of certification of the debt, if any, pursuant to G.S.~~
37 ~~105A-10, the copy of the notification to the debtor by the claimant agency of its~~
38 ~~intention to set off must be received by the Department within 15 days of the date of~~
39 ~~the Department's mailing to the respective claimant agency the notification of the~~
40 ~~debtor's entitlement to a refund.~~

41 (b) ~~The contents of the written notification to the debtor (and the Department's~~
42 ~~copy) of the setoff claim shall clearly set forth the basis for the claim to the refund,~~
43 ~~the intention to apply the refund against the debt to the claimant agency, the debtor's~~
44 ~~opportunity to give written notice of intent to contest the validity of the claim within~~

1 ~~30 days of the date of the mailing of the notice, the mailing address to which the~~
2 ~~application for a hearing must be sent, and the fact that failure to apply for a hearing~~
3 ~~in writing within the 30 day period will be deemed a waiver of the opportunity to~~
4 ~~contest the claim causing final setoff by default.~~

5 ~~(e) The written application by the debtor for a hearing shall be effective upon~~
6 ~~mailing the application postage prepaid and properly addressed to the claimant~~
7 ~~agency.~~

8 **"§ 105A-8. Hearing procedure. State agency notice, hearing, decision, and refund of**
9 **setoff.**

10 (a) Notice. -- Within 10 days after a State agency receives a refund of a debtor, the
11 agency must send the debtor written notice that the agency has received the debtor's
12 refund. The notice must explain the debt that is the basis for the agency's claim to
13 the debtor's refund and that the agency intends to apply the refund against the debt.
14 The notice must also inform the debtor that the debtor has the right to contest the
15 matter by filing a request for a hearing, must state the time limits and procedure for
16 requesting the hearing, and must state that failure to request a hearing within the
17 required time will result in setoff of the debt. A State agency that does not send a
18 debtor a notice within the time required by this subsection must refund the amount
19 set off plus the collection assistance fee, in accordance with subsection (e) of this
20 section.

21 (c) Hearing. -- A hearing on a contested claim of a State agency, except a
22 constituent institution of The University of North Carolina or the Employment
23 Security Commission, must be conducted in accordance with Article 3 of Chapter
24 150B of the General Statutes. A hearing on a contested claim of a constituent
25 institution of The University of North Carolina must be conducted in accordance
26 with administrative procedures approved by the Attorney General. A hearing on a
27 contested claim of the Employment Security Commission must be conducted in
28 accordance with rules adopted by that Commission. A request for a hearing on a
29 contested claim of any State agency must be filed within 30 days after the State
30 agency mails the debtor notice of the proposed setoff. A request for a hearing is
31 considered to be filed when it is delivered for mailing with postage prepaid and
32 properly addressed. In a hearing under this section, an issue that has previously been
33 litigated in a court proceeding cannot be considered.

34 (d) Decision. -- A decision made after a hearing under this section must determine
35 whether a debt is owed to the State agency and the amount of the debt.

36 (e) Return of Amount Set Off. -- If a State agency fails to send the notice required
37 by subsection (a) of this section within the required time or a decision finds that a
38 State agency is not entitled to any part of an amount set off, the agency must send the
39 taxpayer the entire amount set off plus the collection assistance fee retained by the
40 Department. That portion of the amount returned that reflects the collection
41 assistance fee must be paid from the State agency's funds.

42 If a debtor owes a debt to a State agency and the net proceeds credited to the
43 State agency for the debt exceed the amount of the debt, the State agency must send
44 the balance to the debtor. No part of the collection assistance fee retained by the

1 Department may be returned when a debt is owed but it is less than the amount set
2 off.

3 Interest accrues on the amount of a refund returned to a taxpayer under this
4 subsection in accordance with G.S. 105-266. A State agency that returns a refund to a
5 taxpayer under this subsection must pay from the State agency's funds any interest
6 that has accrued since the fifth day after the Department mailed the notice of setoff
7 to the taxpayer.

8 ~~(a) A hearing on a contested claim, other than a claim of a constituent institution~~
9 ~~of The University of North Carolina, or a claim of the Employment Security~~
10 ~~Commission of North Carolina, shall be conducted in accordance with Article 3 of~~
11 ~~Chapter 150B of the General Statutes. A hearing on a contested claim of a~~
12 ~~constituent institution of The University of North Carolina shall be conducted in~~
13 ~~accordance with administrative procedures approved by the Attorney General. A~~
14 ~~hearing on a contested claim of the Employment Security Commission of North~~
15 ~~Carolina shall be conducted in accordance with regulations adopted by the~~
16 ~~Employment Security Commission of North Carolina. Additionally, it shall be~~
17 ~~determined at the hearing whether the claimed sum asserted as due and owing is~~
18 ~~correct, and if not, an adjustment to the claim shall be made.~~

19 ~~(b) Pending final determination at hearing of the validity of the debt asserted by~~
20 ~~the claimant agency, no action shall be taken in furtherance of collection through the~~
21 ~~setoff procedure allowed under this Article.~~

22 ~~(c) No issues may be considered at the hearing which have been previously~~
23 ~~litigated.~~

24 **"§ 105A-9. Appeals from hearings.**

25 Appeals from ~~action taken at~~ hearings allowed under this Article Chapter, other
26 than those conducted by the Employment Security Commission, shall be in
27 accordance with the provisions of Chapter 150B of the General Statutes, the
28 Administrative Procedure Act, except that the place of initial judicial review shall be
29 the superior court for the county in which the debtor resides. Appeals from ~~actions~~
30 hearings allowed under this Article Chapter that are conducted by the Employment
31 Security Commission of North Carolina shall be in accordance with the provisions of
32 Chapter 96 of the General Statutes.

33 ~~"§ 105A-10. Certification of debt by claimant agency; finalization of setoff.~~

34 ~~(a) Upon final determination through hearing provided by G.S. 105A-8 of the debt~~
35 ~~due and owing the claimant agency or upon the debtor's default for failure to~~
36 ~~comply with G.S. 105A-7 mandating timely request for review of the asserted basis~~
37 ~~for setoff, the claimant agency shall within 20 days certify the debt to the Department~~
38 ~~and in default thereof, the Department shall no longer be obligated to hold the~~
39 ~~refund for setoff.~~

40 ~~(b) Upon receipt by the Department of a certified debt from the claimant agency,~~
41 ~~the Department shall finalize the setoff by transferring the net proceeds collected for~~
42 ~~credit or payment in accordance with the provisions of G.S. 105A-14 and by~~
43 ~~refunding any remaining balance to the debtor as if setoff had not occurred.~~

44 ~~"§ 105A-11. Notice of final setoff.~~

1 ~~Upon the finalization of setoff under the provisions of this Article, the Department~~
2 ~~shall notify the debtor in writing of the action taken along with an accounting of the~~
3 ~~action taken on any refund. If there is an outstanding balance after setoff, the notice~~
4 ~~under this section shall accompany the balance when disbursed.~~

5 **"§ 105A-12. Priorities in claims to setoff.**

6 ~~Priority in multiple claims to refunds allowed to be set off under the provisions of~~
7 ~~this Article shall be in the order in time which a claimant agency has filed a written~~
8 ~~notice with the Department of its intention to effect collection through setoff under~~
9 ~~this Article. Notwithstanding the priority set forth above according to time of filing,~~
10 ~~the~~ The Department has priority over all other claimant agencies for collection by
11 setoff whenever it is a competing agency for a refund. The Department of Human
12 Resources and the counties that are acting on behalf of that Department and are
13 therefore considered to be State agencies have priority over all other State agencies
14 except the Department of Revenue. State agencies have priority over local agencies
15 for collection by setoff. When there are multiple claims by State agencies that do not
16 have priority over other State agencies, the claims have priority based on the date
17 each agency registered with the Department under G.S. 105A-3. When there are
18 multiple claims by two or more organizations submitting debts on behalf of local
19 agencies, the claims have priority based on the date each organization registered with
20 the Department under G.S. 105A-3. When there are multiple claims among local
21 agencies whose debts are submitted by the same organization, the claims have priority
22 based on the date each local agency requested the organization to submit debts on its
23 behalf.

24 **"§ 105A-13. ~~Disposition of proceeds collected; collection~~ Collection assistance fees.**

25 ~~(a) Upon effecting final setoffs, the Department shall periodically write checks to~~
26 ~~the respective claimant agencies for the net proceeds collected on their behalf.~~

27 ~~(b) Each year the Department shall determine its actual cost of collection under~~
28 ~~the Setoff Debt Collection Act for the immediately preceding year and shall calculate~~
29 ~~the percentage that cost represents of the preceding year's collections, excluding~~
30 ~~collections of child support arrearages under G.S. 105A-2(1)d. The Department shall~~
31 ~~retain that percentage from the gross proceeds collected by the Department through~~
32 ~~setoff for the current year, other than the gross proceeds collected of child support~~
33 ~~arrearages under G.S. 105A-2(1)d. To recover the costs incurred by the Department~~
34 in collecting debts under this Chapter, a collection assistance fee of no more than
35 fifteen dollars (\$15.00) is imposed on each debt collected through setoff. The
36 Department must collect this fee as part of the debt and retain it. The Department
37 must set the amount of the collection assistance fee based on its actual cost of
38 collection under this Chapter for the immediately preceding year. If the Department
39 is able to collect only part of a debt through setoff, the collection assistance fee has
40 priority over the remainder of the debt. The collection assistance fee shall not be
41 added to child support debts or collected as part of child support debts. Instead, the
42 Department shall retain from collections under Division II of Article 4 of Chapter
43 105 of the General Statutes the cost of collecting child support debts under this
44 Chapter.

1 "§ 105A-14. Accounting to the claimant agency; credit to debtor's obligation.

2 (a) Simultaneously with the transmittal of ~~a check for~~ the net proceeds collected
3 to a claimant agency, the Department ~~shall~~ must provide the agency with an
4 accounting of the setoffs ~~finalized~~ for which payment is being made. The accounting
5 ~~shall, must,~~ whenever possible, include the full names of the debtors, the debtors'
6 social security numbers, the gross proceeds collected per ~~individual~~ setoff, the net
7 proceeds collected per setoff, and the collection assistance fee added to the debt and
8 collected charged per setoff.

9 (b) Upon receipt by a claimant agency of ~~a check representing~~ net proceeds
10 collected on ~~a~~ the claimant agency's behalf by the ~~Department~~ Department, a final
11 determination of the claim if it is a State agency claim, and an accounting of the
12 proceeds as specified under this section, the claimant agency ~~shall~~ must credit the
13 debtor's obligation with the ~~gross~~ net proceeds collected.

14 "§ 105A-15. Confidentiality exemption; nondisclosure.

15 (a) Notwithstanding G.S. 105-259 or any other provision of law prohibiting
16 disclosure by the Department of the contents of taxpayer records or information and
17 notwithstanding any confidentiality statute of any claimant agency, ~~at~~ the exchange of
18 any information exchanged among the Department, the claimant agency, the
19 organization submitting debts on behalf of a local agency, and the debtor necessary to
20 ~~accomplish and effectuate the intent of this Article~~ implement this Chapter is lawful.

21 (b) The information ~~obtained by~~ a claimant agency or an organization submitting
22 debts on behalf of a local agency obtains from the Department in accordance with the
23 exemption allowed by subsection (a) ~~shall only~~ may be used by ~~a claimant~~ the agency
24 or organization only in the pursuit of its debt collection duties and ~~practices and any~~
25 ~~person employed by, or formerly employed by, a claimant agency who discloses any~~
26 ~~such information for any other purpose, except as otherwise allowed by G.S. 105-259,~~
27 ~~shall be penalized in accordance with the terms of that statute.~~ practices and may not
28 be disclosed except as provided in G.S. 105-259, 153A-148.1, or 160A-208.1.

29 "§ 105A-16. ~~Rules and regulations:~~ Rules.

30 The Secretary of Revenue ~~is authorized to prescribe forms and make all rules~~
31 ~~which he deems necessary in order to effectuate the intent of this Article.~~ may adopt
32 rules to implement this Chapter. The State Controller may adopt rules to implement
33 this Chapter."

34 Section 2. G.S. 105-266(b) reads as rewritten:

35 "(b) Interest. -- An overpayment of tax bears interest at the rate established in
36 G.S. 105-241.1(i) from the date that interest begins to accrue until a refund is paid. A
37 refund sent to a taxpayer is considered paid on a date determined by the Secretary
38 that is no sooner than five days after a refund check is mailed.

39 A refund set off against a debt pursuant to Chapter 105A of the General Statutes is
40 considered paid five days after the Department mails the taxpayer a notice of the
41 setoff, unless G.S. 105A-5 or G.S. 105A-8 requires the agency that requested the
42 setoff to return the refund to the taxpayer. In this circumstance, the refund that was
43 set off is not considered paid until five days after the agency that requested the
44 refund mails the taxpayer a check for the refund.

1 Interest on an overpayment of a tax, other than a tax levied under Article 4 or
2 Article 8B of this Chapter, accrues from a date 90 days after the date the tax was
3 originally paid by the taxpayer until the refund is paid. Interest on an overpayment of
4 a tax levied under Article 4 or Article 8B of this Chapter accrues from a date 45 days
5 after the latest of the following dates until the refund is paid:

- 6 (1) The date the final return was filed.
- 7 (2) The date the final return was due to be filed.
- 8 (3) The date of the overpayment.

9 The date of an overpayment of a tax levied under Article 4 or Article 8B of this
10 Chapter is determined in accordance with section 6611(d), (f), (g), and (h) of the
11 Code."

12 Section 3. The General Assembly finds that the Department of Human
13 Resources will incur extraordinary one-time costs for automation in administering the
14 requirements of this act because the various divisions of the Department of Human
15 Resources and the county agencies through which they administer their programs
16 have an extraordinary number of debts that they are required by law to collect
17 through setoff. Accordingly, there is appropriated from the General Fund to the
18 Department of Human Resources the sum of \$X for the 1998-99 fiscal year for
19 one-time automation costs and related costs of administering the requirements of this
20 act. These funds shall not revert but shall remain available to the Department of
21 Human Resources until used for this purpose.

22 Section 4. The General Assembly finds that the Department of Human
23 Resources will incur extraordinary recurring costs for personnel in administering the
24 requirements of this act because the various divisions of the Department of Human
25 Resources and the county agencies through which they administer their programs
26 have an extraordinary number of debts that they are required by law to collect
27 through setoff. Accordingly, it is the intent of the General Assembly to appropriate
28 to the Department of Human Resources the sum of \$X in recurring funds beginning
29 in the 1999-2000 fiscal year for recurring costs of administering the requirements of
30 this act.

31 Section 5. The changes to G.S. 105A-3(d) and G.S. 105A-16 made by
32 this act are effective when this act becomes law. The changes to G.S. 105A-5 made
33 by this act become effective January 1, 1999. Section 3 of this act becomes effective
34 July 1, 1998. The remainder of this act becomes effective January 1, 2000, and
35 applies to income tax refunds determined on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

D

SENATE BILL 39.

Finance Committee Substitute Adopted 4/9/97
Proposed Committee Substitute S39-PCSX1854

Short Title: Modify Setoff Debt Collection.

(Public)

Sponsors:

Referred to:

February 3, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO REVISE THE SETOFF DEBT COLLECTION ACT.

3 The General Assembly of North Carolina enacts:

4 Section 1. Chapter 105A of the General Statutes reads as rewritten:

5 "Chapter 105A.

6 "Setoff Debt Collection Act.

7 "~~ARTICLE 1.~~

8 "~~In General.~~

9 "§ 105A-1. Purposes.

10 The purpose of this ~~Article~~ Chapter is to establish as policy that all claimant
11 agencies and the Department of Revenue shall cooperate in identifying debtors who
12 owe money to the State or to a local government through ~~its~~ their various ~~claimant~~
13 agencies and who qualify for refunds from the Department of Revenue. It is also the
14 intent of this ~~Article~~ Chapter that procedures be established for setting off against any
15 ~~such~~ refund the sum of any debt owed to the ~~State.~~ State or to a local government.
16 Furthermore, it is the legislative intent that this ~~Article~~ Chapter be liberally construed
17 so as to effectuate these purposes as far as legally and practically possible.

18 "§ 105A-2. Definitions.

19 The following definitions apply in this Chapter:

20 (1) Claimant agency. -- Either of the following:

21 a. A State agency.

- 1 b. A local agency acting through a clearinghouse or an
2 organization pursuant to G.S. 105A-3(b1).
- 3 (2) Debt. -- Any of the following:
- 4 a. A sum owed to a claimant agency that has accrued through
5 contract, subrogation, tort, operation of law, or any other
6 legal theory regardless of whether there is an outstanding
7 judgment for the sum.
- 8 b. A sum a claimant agency is authorized or required by law to
9 collect, such as child support payments collectible under
10 Title IV, Part D of the Social Security Act.
- 11 c. A sum owed as a result of an intentional program violation
12 or a violation due to inadvertent household error under the
13 Food Stamp Program enabled by Chapter 108A, Article 2,
14 Part 5.
- 15 e. A sum owed as a result of having obtained public assistance
16 payments under any of the following programs through an
17 intentional false statement, intentional misrepresentation,
18 intentional failure to disclose a material fact, or inadvertent
19 household error:
- 20 1. The Aid to Families with Dependent Children
21 Program or the Aid to Families with Dependent
22 Children -- Emergency Assistance Program, enabled
23 by Chapter 108A, Article 2, Part 2.
- 24 2. The Work First Cash Assistance Program established
25 pursuant to federal waivers received by the
26 Department of Human Resources on February 5,
27 1996.
- 28 3. The State-County Special Assistance for Adults
29 Program, enabled by Chapter 108A, Article 2, Part 3.
- 30 4. A successor program of one of these programs.
- 31 (3) Debtor. -- An individual who owes a debt.
- 32 (4) Department. -- The Department of Revenue.
- 33 (5) Reserved.
- 34 (6) Local agency. -- A county, to the extent it is not considered a State
35 agency, or a municipality.
- 36 (7) Net proceeds collected. -- Gross proceeds collected through setoff
37 against a debtor's refund minus the collection assistance fee
38 retained by the Department.
- 39 (8) Refund. -- An individual's North Carolina income tax refund.
- 40 (9) State agency. -- Any of the following:
- 41 a. A unit of the executive, legislative, or judicial branch of
42 State government.
- 43 b. A county, to the extent it administers a program supervised
44 by the Department of Human Resources or it operates a

Child Support Enforcement Program, enabled by Chapter 110, Article 9, and Title IV, Part D of the Social Security Act.

As used in this Article:

(1) "Claimant agency" means and includes:

- a. ~~The State Education Assistance Authority as enabled by Article 23 of Chapter 116 of the General Statutes;~~
- b. ~~The North Carolina Department of Human Resources when in the exercise of its authority to collect health profession student loans made pursuant to G.S. 131-121;~~
- e. ~~The North Carolina Department of Human Resources when in the performance of its duties under the Medical Assistance Program enabled by Chapter 108A, Article 2, Part 6, and any county operating the same Program at the local level, when and only to the extent such a county is in the performance of Medical Assistance Program collection functions;~~
- d. ~~The North Carolina Department of Human Resources when in the performance of its duties, under the Child Support Enforcement Program as enabled by Chapter 110, Article 9 and Title IV, Part D of the Social Security Act to obtain indemnification for past paid public assistance or to collect child support arrearages owed to an individual receiving program services and any county operating the program at the local level, when and only to the extent that the county is engaged in the performance of those same duties;~~
- e. ~~The University of North Carolina, including its constituent institutions as specified by G.S. 116-2(4);~~
- f. ~~The University of North Carolina Hospitals at Chapel Hill in the conduct of its financial affairs and operations pursuant to G.S. 116-37;~~
- g. ~~The Board of Governors of the University of North Carolina and the State Board of Education through the College Scholarship Loan Committee when in the performance of its duties of administering the Scholarship Loan Fund for Prospective College Teachers enabled by Chapter 116, Article 5;~~
- h. ~~The Office of the North Carolina Attorney General on behalf of any State agency when the claim has been reduced to a judgment;~~
- i. ~~The State Board of Community Colleges through community colleges as enabled by Chapter 115D in the conduct of their financial affairs and operations;~~

- 1 j. ~~State facilities as listed in G.S. 122C-181(a), School for the~~
2 ~~Deaf at Morganton, North Carolina Sanatorium at McCain,~~
3 ~~Western Carolina Sanatorium at Black Mountain, Eastern~~
4 ~~North Carolina Sanatorium at Wilson, and Gravelly~~
5 ~~Sanatorium at Chapel Hill under Chapter 143, Article 7;~~
6 ~~Governor Morehead School under Chapter 115, Article 40;~~
7 ~~Central North Carolina School for the Deaf under Chapter~~
8 ~~115, Article 41; Wright School for Treatment and Education~~
9 ~~of Emotionally Disturbed Children under Chapter 122C;~~
10 ~~and these same institutions by any other names by which~~
11 ~~they may be known in the future;~~
12 k. ~~The North Carolina Department of Revenue;~~
13 l. ~~The Administrative Office of the Courts;~~
14 m. ~~The Division of Forest Resources of the Department of~~
15 ~~Environment, Health, and Natural Resources;~~
16 n. ~~The Administrator of the Teachers' and State Employees'~~
17 ~~Comprehensive Major Medical Plan, established in Article 3~~
18 ~~of General Statutes Chapter 135;~~
19 o. ~~The State Board of Education through the Superintendent~~
20 ~~of Public Instruction when in the performance of his duties~~
21 ~~of administering the Scholarship Loan Fund for Prospective~~
22 ~~Teachers enabled by Chapter 115C, Article 32A and the~~
23 ~~scholarship loan and grant programs enabled by Chapter~~
24 ~~115C, Article 24C, Part 1;~~
25 p. ~~The Board of Trustees of the Teachers' and State~~
26 ~~Employees' Retirement System and the Board of Trustees of~~
27 ~~the Local Governmental Employees' Retirement System in~~
28 ~~the performance of their duties pursuant to Chapters 120,~~
29 ~~128, 135 and 143 of the General Statutes;~~
30 q. ~~The North Carolina Teaching Fellows Commission in the~~
31 ~~performance of its duties pursuant to Chapter 115C, Article~~
32 ~~24C, Part 2;~~
33 r. ~~The North Carolina Department of Human Resources when~~
34 ~~in the performance of its collection duties for intentional~~
35 ~~program violations and violations due to inadvertent~~
36 ~~household error under the Food Stamp Program enabled by~~
37 ~~Chapter 108A, Article 2, Part 5, and any county operating~~
38 ~~the same Program at the local level, when and only to the~~
39 ~~extent such a county is in the performance of Food Stamp~~
40 ~~Program collection functions.~~
41 ~~The North Carolina Department of Human Resources when,~~
42 ~~in the performance of its duties under the Aid to Families~~
43 ~~with Dependent Children Program or the Aid to Families~~
44 ~~with Dependent Children Emergency Assistance Program~~

- 1 provided in Part 2 of Article 2 of Chapter 108A or the
 2 Work First Cash Assistance Program established pursuant to
 3 the federal waivers received by the Department on February
 4 5, 1996, or under the State-County Special Assistance for
 5 Adults Program provided in Part 3 of Article 2 of Chapter
 6 108A, it seeks to collect public assistance payments obtained
 7 through an intentional false statement, intentional
 8 misrepresentation, intentional failure to disclose a material
 9 fact, or inadvertent household error;
- 10 s. ~~The Employment Security Commission of North Carolina.~~
 11 t. ~~Any State agency in the collection of salary overpayments~~
 12 ~~from former employees.~~
 13 u. ~~The State Board of Education through the Superintendent~~
 14 ~~of Public Instruction when in the performance of his duties~~
 15 ~~of administering the program under which the State~~
 16 ~~encourages participation in the National Board for~~
 17 ~~Professional Teaching Standards (NBPTS) Program, enabled~~
 18 ~~by Section 19.28 of Chapter 769 of the 1993 Session Laws.~~
- 19 (2) ~~"Debtor" means any individual owing money to or having a~~
 20 ~~delinquent account with any claimant agency which obligation has~~
 21 ~~not been adjudicated satisfied by court order, set aside by court~~
 22 ~~order, or discharged in bankruptcy.~~
- 23 (3) ~~"Debt" means any liquidated sum due and owing any claimant~~
 24 ~~agency which has accrued through contract, subrogation, tort,~~
 25 ~~operation of law, or any other legal theory regardless of whether~~
 26 ~~there is an outstanding judgment for that sum.~~
- 27 (4) ~~"Department" means the North Carolina Department of Revenue.~~
- 28 (5) ~~"Refund" means any individual's North Carolina income tax~~
 29 ~~refund.~~
- 30 (6) ~~"Net proceeds collected" means gross proceeds collected through~~
 31 ~~final setoff against a debtor's refund minus any collection~~
 32 ~~assistance fee charged by the Department.~~
- 33 **§ 105A-3. Remedy additional; mandatory State usage; optional local usage; obtaining**
 34 **identifying information; information; registration.**
- 35 (a) **Remedy Additional.** -- The collection remedy under this ~~Article~~ Chapter is in
 36 addition to and not in substitution for any other remedy available by law.
- 37 (b) **Mandatory State Usage.** -- ~~All claimant agencies shall submit, for collection~~
 38 ~~under the procedure established by this Article, all debts which they are owed,~~
 39 ~~except debts that they are advised by A State agency must submit a debt owed to it~~
 40 ~~for collection under this Chapter unless the State Controller has waived this~~
 41 ~~requirement or the Attorney General has advised the State agency not to submit the~~
 42 ~~debt because the validity of the debt is legitimately in dispute, because an alternative~~
 43 means of collection is pending and believed to be adequate, or because such a
 44 collection attempt would result in a loss of federal funds. The State Controller may

1 waive the requirement for a State agency, other than the Department of Human
2 Resources or a county acting on behalf of that Department, to submit a debt owed to
3 it for collection under this Chapter if the State Controller finds that collection by this
4 means would not be practical or cost effective. A waiver may apply to all debts owed
5 a State agency or a type of debt owed a State agency.

6 (b1) Optional Local Usage. -- A local agency may submit a debt owed to it for
7 collection under this Chapter. A local agency that decides to submit a debt owed to
8 it for collection under this Chapter must establish the debt by following the
9 procedure set in G.S. 105A-5 and must submit the debt through one of the following:

10 (1) A clearinghouse that is established pursuant to an interlocal
11 agreement adopted under Article 20 of Chapter 160A of the
12 General Statutes and has agreed to submit debts on behalf of any
13 requesting local agency.

14 (2) The North Carolina League of Municipalities.

15 (3) The North Carolina Association of County Commissioners.

16 (c) Identifying Information. -- All claimant agencies shall whenever possible
17 obtain the full name, social security number, address, and any other identifying
18 information required by ~~rules promulgated by the Department pursuant to G.S.~~
19 ~~105A-16~~ from any person for whom the agencies provide any service or transact any
20 business and who the claimant agencies can foresee may become a debtor under this
21 Article. Chapter.

22 (d) Registration and Reports. -- A claimant State agency must register with the
23 Department and with the State Controller. Every State agency must report annually
24 to the ~~Department~~ State Controller the amount of debts owed to the agency for
25 which the agency did not submit a claim for setoff and the reason for not submitting
26 the claim.

27 A clearinghouse or an organization that submits debts on behalf of a local agency
28 must register with the Department. Once a clearinghouse registers with the
29 Department under this subsection, no other clearinghouse may register to submit
30 debts for collection under this Chapter.

31 "§ 105A-4. Minimum ~~sum collectible: debt and refund.~~

32 ~~A claimant agency shall not be allowed to effect final setoff and collect debts~~
33 ~~through use of the remedy established under this Article unless both the debt and the~~
34 ~~refund, if any, are~~ This Chapter applies only to a debt that is at least fifty dollars
35 ~~(\$50.00). (\$50.00) and to a refund that is at least this same amount.~~

36 "§ 105A-5. Local agency notice, hearing, and decision.

37 (a) Prerequisite. -- A local agency may not submit a debt for collection under this
38 Chapter until it has given the notice required by this section and the claim has been
39 finally determined as provided in this section.

40 (b) Notice. -- A local agency must send written notice to a debtor that the agency
41 intends to submit the debt owed by the debtor for collection by setoff. The notice
42 must explain the basis for the agency's claim to the debt and that the agency intends
43 to apply the debtor's refund against the debt. The notice must also inform the debtor
44 that the debtor has the right to contest the matter by filing a request for a hearing

1 with the local agency, must state the time limits and procedure for requesting the
2 hearing, and must state that failure to request a hearing within the required time will
3 result in setoff of the debt.

4 (c) Administrative Review. -- A debtor who decides to contest a proposed setoff
5 must file a written request for a hearing with the local agency within 30 days after the
6 date the local agency mails a notice of the proposed action to the debtor. A request
7 for a hearing is considered to be filed when it is delivered for mailing with postage
8 prepaid and properly addressed. The governing body of the local agency or a person
9 designated by the governing body must hold the hearing.

10 If the debtor disagrees with the decision of the governing body or the person
11 designated by the governing body, the debtor may file a petition for a contested case
12 under Article 3 of Chapter 150B of the General Statutes. The petition must be filed
13 within 30 days after the debtor receives a copy of the local decision. Notwithstanding
14 the provisions of G.S. 150B-2, a local agency is considered an agency for purposes of
15 contested cases and appeals under this Chapter.

16 In a hearing under this section, an issue that has previously been litigated in a
17 court proceeding cannot be considered.

18 (d) Decision. -- A decision made after a hearing under this section must determine
19 whether a debt is owed to the local agency and the amount of the debt.

20 (e) Return of Amount Set Off. -- If a local agency submits a debt for collection
21 under this Chapter without sending the notice required by subsection (b) of this
22 section, the agency must send the taxpayer the entire amount set off plus the
23 collection assistance fee retained by the Department. Similarly, if a local agency
24 submits a debt for collection under this Chapter after sending the required notice but
25 before final determination of the debt and a decision finds that the local agency is not
26 entitled to any part of the amount set off, the agency must send the taxpayer the
27 entire amount set off plus the collection assistance fee retained by the Department.
28 That portion of the amount returned that reflects the collection assistance fee must be
29 paid from the local agency's funds.

30 If a local agency submits a debt for collection under this Chapter after sending the
31 required notice and the net proceeds collected that are credited to the local agency
32 for the debt exceed the amount of the debt, the local agency must send the balance to
33 the debtor. No part of the collection assistance fee retained by the Department may
34 be returned when a notice was sent and a debt is owed but the debt is less than the
35 amount set off.

36 Interest accrues on the amount of a refund returned to a taxpayer under this
37 subsection in accordance with G.S. 105-266. A local agency that returns a refund to a
38 taxpayer under this subsection must pay from the local agency's funds any interest
39 that has accrued since the fifth day after the Department mailed the notice of setoff
40 to the taxpayer.

41 ~~**Collection of sums due claimant agencies through setoff.**~~

42 ~~Subject to the limitations contained in this Article, the Department of Revenue~~
43 ~~shall upon request render assistance in the collection of any delinquent account or~~
44 ~~debt owing to any claimant agency. This assistance shall be provided by setting off~~

1 ~~any refunds due the debtor from the Department by the sum certified by claimant~~
2 ~~agency as due and owing.~~

3 **"§ 105A-6. Procedure for Department to follow in making setoff.**

4 (a) Notice to Department. -- A claimant agency seeking to attempt collection of a
5 debt through setoff shall must notify the Department in writing and supply (i)
6 information necessary to identify the debtor whose refund is sought to be set off and
7 (ii) off. The claimant agency may include with the notification the date, if any, that
8 the debt is expected to expire. ~~Notification to the Department and the furnishing of~~
9 ~~identifying information must occur on or before a date specified by the Department~~
10 ~~in the first year preceding the calendar year during which the refund would be paid.~~
11 ~~The notice is effective to initiate setoff against refunds that would be made in~~
12 ~~calendar years following the year in which the notice was first made until the date~~
13 ~~specified in the notice that the debt is expected to expire.~~ The agency shall must
14 notify the Department in writing when a debt has been paid or is no longer owed the
15 agency.

16 (b) Setoff by Department. -- The Department, upon receipt of notification, shall
17 must determine each year whether the debtor to the claimant agency is entitled to a
18 refund of at least fifty dollars (\$50.00) from the Department. Upon determination by
19 the Department that a debtor specified by a claimant agency qualifies for such a
20 refund, the Department shall ~~notify in writing the claimant agency that a refund is~~
21 ~~pending, specify its sum, and indicate the debtor's address as listed on the tax return.~~

22 (c) ~~Unless stayed by court order, the Department shall, upon certification as~~
23 ~~provided in this Article, must set off the certified debt against the refund to which the~~
24 ~~debtor would otherwise be entitled.~~ entitled and must refund any remaining balance
25 to the debtor. The Department must mail the debtor written notice that the setoff
26 has occurred and must credit the net proceeds collected to the claimant agency. If
27 the claimant agency is a State agency, that agency must credit the amount received to
28 a nonreverting trust account and must follow the procedure set in G.S. 105A-8.

29 **"§ 105A-7. Notification of intention to set off and right to hearing.**

30 (a) ~~The claimant agency, upon receipt of notification from the Department that a~~
31 ~~debtor is entitled to a refund, shall within 10 days send a written notification to the~~
32 ~~debtor and a copy of same to the Department of its assertion of rights to the refund~~
33 ~~or any part thereof. Such notification shall inform the debtor of the claimant agency's~~
34 ~~intention to direct the Department to apply the refund or any portion thereof against~~
35 ~~the debt certified as due and owing. For the Department to be obligated to continue~~
36 ~~holding refunds until receipt of certification of the debt, if any, pursuant to G.S.~~
37 ~~105A-10, the copy of the notification to the debtor by the claimant agency of its~~
38 ~~intention to set off must be received by the Department within 15 days of the date of~~
39 ~~the Department's mailing to the respective claimant agency the notification of the~~
40 ~~debtor's entitlement to a refund.~~

41 (b) ~~The contents of the written notification to the debtor (and the Department's~~
42 ~~copy) of the setoff claim shall clearly set forth the basis for the claim to the refund,~~
43 ~~the intention to apply the refund against the debt to the claimant agency, the debtor's~~
44 ~~opportunity to give written notice of intent to contest the validity of the claim within~~

1 ~~30 days of the date of the mailing of the notice, the mailing address to which the~~
2 ~~application for a hearing must be sent, and the fact that failure to apply for a hearing~~
3 ~~in writing within the 30-day period will be deemed a waiver of the opportunity to~~
4 ~~contest the claim causing final setoff by default.~~

5 ~~(e) The written application by the debtor for a hearing shall be effective upon~~
6 ~~mailing the application postage prepaid and properly addressed to the claimant~~
7 ~~agency.~~

8 "§ 105A-8. Hearing procedure: State agency notice, hearing, decision, and refund of
9 setoff.

10 (a) Notice. -- Within 10 days after a State agency receives a refund of a debtor, the
11 agency must send the debtor written notice that the agency has received the debtor's
12 refund. The notice must explain the debt that is the basis for the agency's claim to
13 the debtor's refund and that the agency intends to apply the refund against the debt.
14 The notice must also inform the debtor that the debtor has the right to contest the
15 matter by filing a request for a hearing, must state the time limits and procedure for
16 requesting the hearing, and must state that failure to request a hearing within the
17 required time will result in setoff of the debt. A State agency that does not send a
18 debtor a notice within the time required by this subsection must refund the amount
19 set off plus the collection assistance fee, in accordance with subsection (e) of this
20 section.

21 (b) Hearing. -- A hearing on a contested claim of a State agency, except a
22 constituent institution of The University of North Carolina or the Employment
23 Security Commission, must be conducted in accordance with Article 3 of Chapter
24 150B of the General Statutes. A hearing on a contested claim of a constituent
25 institution of The University of North Carolina must be conducted in accordance
26 with administrative procedures approved by the Attorney General. A hearing on a
27 contested claim of the Employment Security Commission must be conducted in
28 accordance with rules adopted by that Commission. A request for a hearing on a
29 contested claim of any State agency must be filed within 30 days after the State
30 agency mails the debtor notice of the proposed setoff. A request for a hearing is
31 considered to be filed when it is delivered for mailing with postage prepaid and
32 properly addressed. In a hearing under this section, an issue that has previously been
33 litigated in a court proceeding cannot be considered.

34 (c) Decision. -- A decision made after a hearing under this section must determine
35 whether a debt is owed to the State agency and the amount of the debt.

36 (d) Return of Amount Set Off. -- If a State agency fails to send the notice
37 required by subsection (a) of this section within the required time or a decision finds
38 that a State agency is not entitled to any part of an amount set off, the agency must
39 send the taxpayer the entire amount set off plus the collection assistance fee retained
40 by the Department. That portion of the amount returned that reflects the collection
41 assistance fee must be paid from the State agency's funds.

42 If a debtor owes a debt to a State agency and the net proceeds credited to the
43 State agency for the debt exceed the amount of the debt, the State agency must send
44 the balance to the debtor. No part of the collection assistance fee retained by the

1 Department may be returned when a debt is owed but it is less than the amount set
2 off.

3 Interest accrues on the amount of a refund returned to a taxpayer under this
4 subsection in accordance with G.S. 105-266. A State agency that returns a refund to a
5 taxpayer under this subsection must pay from the State agency's funds any interest
6 that has accrued since the fifth day after the Department mailed the notice of setoff
7 to the taxpayer.

8 ~~(a) A hearing on a contested claim, other than a claim of a constituent institution~~
9 ~~of The University of North Carolina, or a claim of the Employment Security~~
10 ~~Commission of North Carolina, shall be conducted in accordance with Article 3 of~~
11 ~~Chapter 150B of the General Statutes. A hearing on a contested claim of a~~
12 ~~constituent institution of The University of North Carolina shall be conducted in~~
13 ~~accordance with administrative procedures approved by the Attorney General. A~~
14 ~~hearing on a contested claim of the Employment Security Commission of North~~
15 ~~Carolina shall be conducted in accordance with regulations adopted by the~~
16 ~~Employment Security Commission of North Carolina. Additionally, it shall be~~
17 ~~determined at the hearing whether the claimed sum asserted as due and owing is~~
18 ~~correct, and if not, an adjustment to the claim shall be made.~~

19 ~~(b) Pending final determination at hearing of the validity of the debt asserted by~~
20 ~~the claimant agency, no action shall be taken in furtherance of collection through the~~
21 ~~setoff procedure allowed under this Article.~~

22 ~~(c) No issues may be considered at the hearing which have been previously~~
23 ~~litigated.~~

24 **"§ 105A-9. Appeals from hearings.**

25 Appeals from ~~action taken at~~ hearings allowed under this Article Chapter, other
26 than those conducted by the Employment Security Commission, shall be in
27 accordance with the provisions of Chapter 150B of the General Statutes, the
28 Administrative Procedure Act, except that the place of initial judicial review shall be
29 the superior court for the county in which the debtor resides. Appeals from ~~actions~~
30 hearings allowed under this Article Chapter that are conducted by the Employment
31 Security Commission of North Carolina shall be in accordance with the provisions of
32 Chapter 96 of the General Statutes.

33 ~~"§ 105A-10. Certification of debt by claimant agency; finalization of setoff.~~

34 ~~(a) Upon final determination through hearing provided by G.S. 105A-8 of the debt~~
35 ~~due and owing the claimant agency or upon the debtor's default for failure to~~
36 ~~comply with G.S. 105A-7 mandating timely request for review of the asserted basis~~
37 ~~for setoff, the claimant agency shall within 20 days certify the debt to the Department~~
38 ~~and in default thereof, the Department shall no longer be obligated to hold the~~
39 ~~refund for setoff.~~

40 ~~(b) Upon receipt by the Department of a certified debt from the claimant agency,~~
41 ~~the Department shall finalize the setoff by transferring the net proceeds collected for~~
42 ~~credit or payment in accordance with the provisions of G.S. 105A-14 and by~~
43 ~~refunding any remaining balance to the debtor as if setoff had not occurred.~~

44 ~~"§ 105A-11. Notice of final setoff.~~

1 ~~Upon the finalization of setoff under the provisions of this Article, the Department~~
2 ~~shall notify the debtor in writing of the action taken along with an accounting of the~~
3 ~~action taken on any refund. If there is an outstanding balance after setoff, the notice~~
4 ~~under this section shall accompany the balance when disbursed.~~

5 **"§ 105A-12. Priorities in claims to setoff.**

6 ~~Priority in multiple claims to refunds allowed to be set off under the provisions of~~
7 ~~this Article shall be in the order in time which a claimant agency has filed a written~~
8 ~~notice with the Department of its intention to effect collection through setoff under~~
9 ~~this Article. Notwithstanding the priority set forth above according to time of filing,~~
10 ~~the The Department has priority over all other claimant agencies for collection by~~
11 ~~setoff whenever it is a competing agency for a refund. State agencies have priority~~
12 ~~over local agencies for collection by setoff. When there are multiple claims by State~~
13 ~~agencies other than the Department, the claims have priority based on the date each~~
14 ~~agency registered with the Department under G.S. 105A-3. When there are multiple~~
15 ~~claims by two or more organizations submitting debts on behalf of local agencies, the~~
16 ~~claims have priority based on the date each organization registered with the~~
17 ~~Department under G.S. 105A-3. When there are multiple claims among local~~
18 ~~agencies whose debts are submitted by the same organization, the claims have priority~~
19 ~~based on the date each local agency requested the organization to submit debts on its~~
20 ~~behalf.~~

21 **"§ 105A-13. ~~Disposition of proceeds collected; collection~~ Collection assistance fees.**

22 ~~(a) Upon effecting final setoffs, the Department shall periodically write checks to~~
23 ~~the respective claimant agencies for the net proceeds collected on their behalf.~~

24 ~~(b) Each year the Department shall determine its actual cost of collection under~~
25 ~~the Setoff Debt Collection Act for the immediately preceding year and shall calculate~~
26 ~~the percentage that cost represents of the preceding year's collections, excluding~~
27 ~~collections of child support arrearages under G.S. 105A-2(1)d. The Department shall~~
28 ~~retain that percentage from the gross proceeds collected by the Department through~~
29 ~~setoff for the current year, other than the gross proceeds collected of child support~~
30 ~~arrearages under G.S. 105A-2(1)d. To recover the costs incurred by the Department~~
31 ~~in collecting debts under this Chapter, a collection assistance fee of no more than~~
32 ~~fifteen dollars (\$15.00) is imposed on each debt collected through setoff. The~~
33 ~~Department must collect this fee as part of the debt and retain it. The Department~~
34 ~~must set the amount of the collection assistance fee based on its actual cost of~~
35 ~~collection under this Chapter for the immediately preceding year. If the Department~~
36 ~~is able to collect only part of a debt through setoff, the collection assistance fee has~~
37 ~~priority over the remainder of the debt. The collection assistance fee shall not be~~
38 ~~added to child support debts or collected as part of child support debts. Instead, the~~
39 ~~Department shall retain from collections under Division II of Article 4 of Chapter~~
40 ~~105 of the General Statutes the cost of collecting child support debts under this~~
41 ~~Chapter.~~

42 **"§ 105A-14. Accounting to the claimant agency; credit to debtor's obligation.**

43 ~~(a) Simultaneously with the transmittal of a check for the net proceeds collected~~
44 ~~to a claimant agency, the Department shall must provide the agency with an~~

1 accounting of the setoffs ~~finalized~~ for which payment is being made. The accounting
2 ~~shall, must~~ whenever possible, include the full names of the debtors, the debtors'
3 social security numbers, the gross proceeds collected per ~~individual~~ setoff, the net
4 proceeds collected per setoff, and the collection assistance fee added to the debt and
5 collected charged per setoff.

6 (b) Upon receipt by a claimant agency of a ~~check representing~~ net proceeds
7 collected on a ~~the~~ claimant agency's behalf by the ~~Department~~ Department, a final
8 determination of the claim if it is a State agency claim, and an accounting of the
9 proceeds as specified under this section, the claimant agency ~~shall~~ must credit the
10 debtor's obligation with the gross net proceeds collected.

11 "**§ 105A-15. Confidentiality exemption; nondisclosure.**

12 (a) Notwithstanding G.S. 105-259 or any other provision of law prohibiting
13 disclosure by the Department of the contents of taxpayer records or information and
14 notwithstanding any confidentiality statute of any claimant agency, ~~at~~ the exchange of
15 any information exchanged among the Department, the claimant agency, the
16 organization submitting debts on behalf of a local agency, and the debtor necessary to
17 ~~accomplish and effectuate the intent of this Article~~ implement this Chapter is lawful.

18 (b) The information ~~obtained by~~ a claimant agency or an organization submitting
19 debts on behalf of a local agency obtains from the Department in accordance with the
20 exemption allowed by subsection (a) ~~shall only~~ may be used by ~~a claimant~~ the agency
21 or organization only in the pursuit of its debt collection duties and ~~practices and any~~
22 ~~person employed by, or formerly employed by, a claimant agency who discloses any~~
23 ~~such information for any other purpose, except as otherwise allowed by G.S. 105-259,~~
24 ~~shall be penalized in accordance with the terms of that statute.~~ practices and may not
25 be disclosed except as provided in G.S. 105-259, 153A-148.1, or 160A-208.1.

26 "**§ 105A-16. Rules and regulations. Rules.**

27 The Secretary of Revenue ~~is authorized to prescribe forms and make all rules~~
28 ~~which he deems necessary in order to effectuate the intent of this Article.~~ may adopt
29 rules to implement this Chapter. The State Controller may adopt rules to implement
30 this Chapter."

31 Section 2. G.S. 105-266(b) reads as rewritten:

32 "(b) Interest. -- An overpayment of tax bears interest at the rate established in
33 G.S. 105-241.1(i) from the date that interest begins to accrue until a refund is paid. A
34 refund sent to a taxpayer is considered paid on a date determined by the Secretary
35 that is no sooner than five days after a refund check is mailed.

36 A refund set off against a debt pursuant to Chapter 105A of the General Statutes is
37 considered paid five days after the Department mails the taxpayer a notice of the
38 setoff, unless G.S. 105A-5 or G.S. 105A-8 requires the agency that requested the
39 setoff to return the refund to the taxpayer. In this circumstance, the refund that was
40 set off is not considered paid until five days after the agency that requested the
41 refund mails the taxpayer a check for the refund.

42 Interest on an overpayment of a tax, other than a tax levied under Article 4 or
43 Article 8B of this Chapter, accrues from a date 90 days after the date the tax was
44 originally paid by the taxpayer until the refund is paid. Interest on an overpayment of

1 a tax levied under Article 4 or Article 8B of this Chapter accrues from a date 45 days
2 after the latest of the following dates until the refund is paid:

- 3 (1) The date the final return was filed.
- 4 (2) The date the final return was due to be filed.
- 5 (3) The date of the overpayment.

6 The date of an overpayment of a tax levied under Article 4 or Article 8B of this
7 Chapter is determined in accordance with section 6611(d), (f), (g), and (h) of the
8 Code."

9 Section 3. The State Controller is directed to study whether it is
10 desirable and feasible for the State to establish a central clearinghouse for compiling
11 debt set-off information required by the Department of Revenue to comply with
12 Chapter 105A of the General Statutes. In conducting the study, the State Controller
13 shall consider which State agency is the most appropriate agency to serve as a
14 clearinghouse and the costs and benefits of developing a clearinghouse, including the
15 extent to which separate agencies must establish duplicative functions in the absence
16 of a central clearinghouse.

17 The State Controller shall report the findings of this study to the Revenue
18 Laws Study Committee by February 16, 1998. The Revenue Laws Study Committee
19 shall report any recommendations on this issue to the 1998 Regular Session of the
20 General Assembly.

21 Section 4. Section 3 of this act and the changes to G.S. 105A-3(d) and
22 G.S. 105A-16 made by this act are effective when this act becomes law. The changes
23 to G.S. 105A-5 made by this act become effective January 1, 1999. The remainder of
24 this act becomes effective January 1, 2000, and applies to income tax refunds
25 determined on or after that date.

**NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL ESTIMATE**

BILL NUMBER: Senate Bill 39 (Proposed Senate Committee Substitute)
SHORT TITLE: Modify Setoff Debt Collection

FISCAL IMPACT

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

REVENUES (See "Assumptions and Methodology")

EXPENDITURES (See "Assumptions and Methodology")

POSITIONS:

PRINCIPAL DEPARTMENT(S) &

PROGRAM(S) AFFECTED: The program is administered by the Department of Revenue.

EFFECTIVE DATE: The major changes under the bill apply to tax refunds determined on or after January 1, 2000.

BILL SUMMARY: The 1979 General Assembly approved legislation to allow selected State agencies to request the Department of Revenue to offset income tax refunds (if refund at least \$50) as a means of collecting debts owed agencies by taxpayers (in addition to other remedies). The Department of Revenue's cost of collecting the debt is earmarked from refunds offset, with the earmarking based on the prior year's experience.

The program has been modified over the years as other agencies have asked to be included. The bill modifies the program as follows:

- (1) Authorizes local government agencies to submit debts for setoff, but only through a local government clearinghouse for all units participating and only after the local government provides the debtor with notice and rights to a hearing and appeal.
- (2) Streamlines the program by eliminating unnecessary notices between the Department of Revenue and the claimant agencies and by allowing the Department to place refunds of debtors in escrow while the State agency finalizes the debt setoff.

(over)

(3) Requires State agencies not currently allowed to use the program to submit debts for setoff unless the State Controller waives the requirement.

(4) Provides that the Department of Revenue's costs of administering the program be charged to the debtor instead of the state agency, limits collection assistance fee to \$15 per debt collected, and shifts the cost of collecting child support debts from all State agencies to an earmarking of state income tax collections.

(5) Sets up a procedure for a state or local agency to mail a refund to a taxpayer in cases where the actual debt is less than the setoff amount or where the agency does not comply with the taxpayer notification requirements of the bill. In addition, if a taxpayer protests the setoff and the decision finds that the agency is not entitled to the setoff, the agency must send the taxpayer the full setoff amount plus the collection assistance fee. The return of the collection assistance fee is financed from the agency's budget. When the setoff amount exceeds the actual debt, the agency must refund the excess but is not required to refund the collection assistance fee. The payment of interest applies to refunds sent out by agencies.

(6) Directs the State Controller to study the merits of establishing a central clearinghouse for compiling debt setoff information required by the Department of Revenue. The Controller shall report the findings to the Revenue Laws Study Committee by February 16, 1998.

ASSUMPTIONS AND METHODOLOGY:

(1) Authorizing local government units to participate in the program will increase revenue for the cities and counties that participate. There is no data available at this time to calculate the gains. However, if the change allowed local units to collect 1/3 of their delinquent property tax bills, the additional receipts would be over \$37 million.

This provision will substantially increase the number of claims processed by the Department of Revenue. However, the proposal to shift more of the administrative burden to claimant agencies and the use of a clearinghouse to submit claims for local units should help offset the additional workload. In addition, the new claims will be eligible for collection assistance fees.

(2) Requiring State agencies currently not eligible for the program to participate will increase agency receipts by a maximum of \$1 million per year. In theory, the additional receipts should reduce General Fund budget requirements for the recipient agencies. At this time, the State Controller estimates that as much as 90% of the potential claim volume in State government is covered by the program.

(3) Requiring the Department of Revenue's costs to be paid by the debtor instead of being earmarked out of the refunds offset would increase agency receipts by a maximum of \$300,000 per year based on the 1996 experience. This would reduce General Fund budget requirements. In cases where the tax refund is greater than the debt, more of the taxpayer's refund will be

offset. If the debt is greater than the refund, the collection cost will be added to the debt amount to be carried over to the following year.

(4) The shift in the funding of child support collection costs to a General Fund earmarking from an earmarking of refunds offset will change how the General Fund pays for the costs, but there will be no change in overall budget requirements.

(5) Limiting the collection assistance fee to \$15 will not have a fiscal effect since the average fee now is far less than \$15.

(6) Shifting the administrative burden on state agency debts will increase the workload and costs of state agencies. The Department of Human Resources is developing data on the impact of their operations.

For information purposes, the graph on the back of this page shows the recent yield from the setoff program.

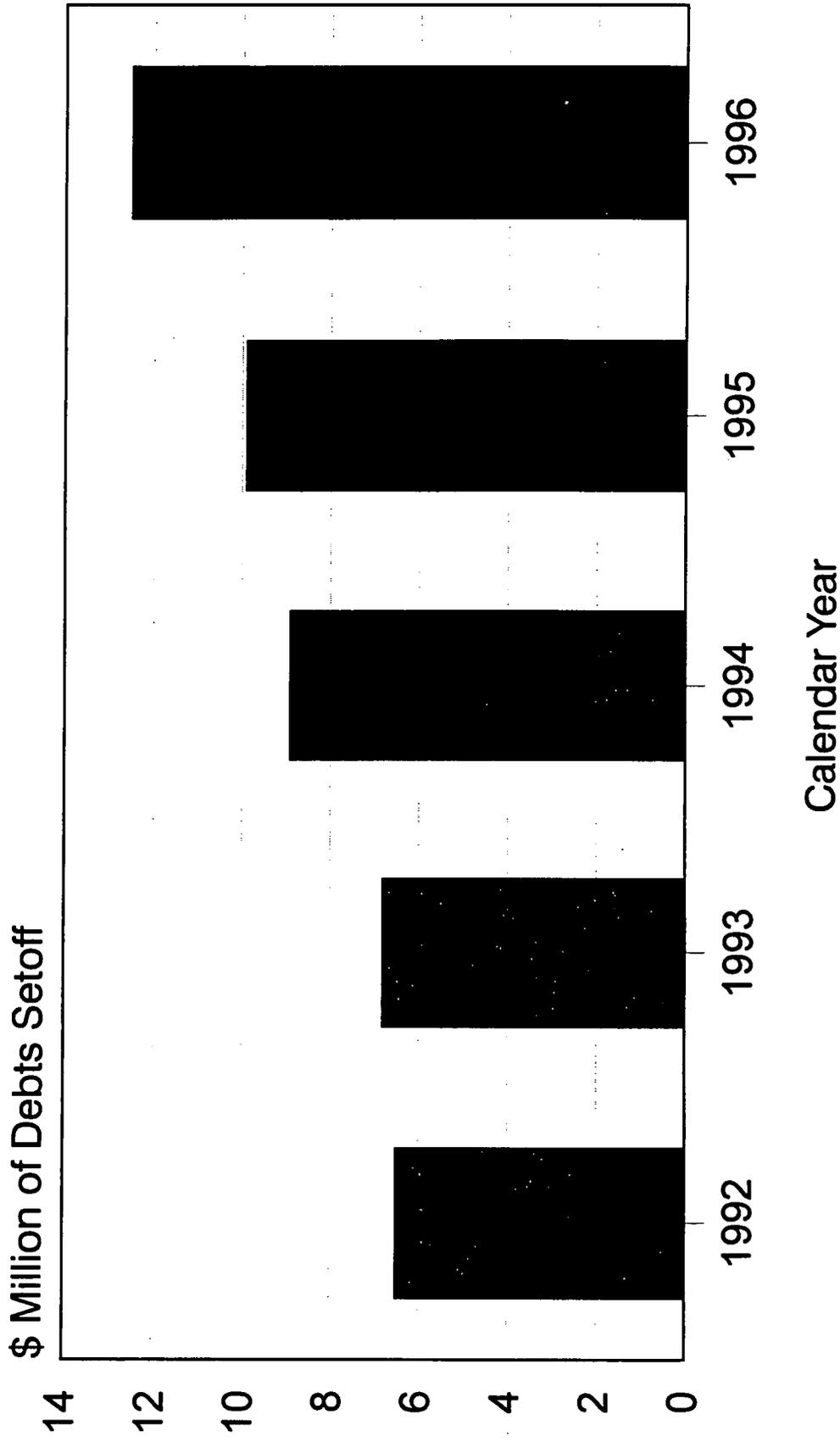
FISCAL RESEARCH DIVISION (733-4910)

PREPARED BY: Dave Crotts

DATE: July 29, 1997

(Over)

SETOFF DEBT COLLECTION ACT RESULTS



EXPLANATION OF SENATE BILL 39
Proposed Committee Substitute PCSX1854
Modify Setoff Debt Collection

TO: Senate Finance Committee
FROM: Martha H. Harris, Staff Attorney
DATE: July 29, 1997
SPONSOR: Senator Larry Shaw

Senate Bill 39 is one of the bills recommended to the 1997 General Assembly by the Revenue Laws Study Committee. It modifies the Setoff Debt Collection Act, Chapter 105A of the General Statutes. Under that act, the Department of Revenue sends the income tax refund of an individual who owes money to a State agency to that agency in payment of the debt rather than to the individual. The individual's income tax refund is therefore set off against the debt the individual owes the State agency.

In April, the Senate Finance Committee adopted a committee substitute that contained an appropriation to the Department of Human Resources; the bill was re-referred to Appropriations. This proposed committee substitute represents a compromise between the Department of Revenue, local governments, and the other affected State agencies. It removes the appropriation to the Department of Human Resources, requires the State Controller to study setting up a State clearinghouse for compiling State debt setoff information, and removes a proposed change in agency priorities for debt setoff.

Senate Bill 39 expands and streamlines the setoff program as follows:

1. It requires all State agencies not given a waiver by the State Controller to use the setoff program to collect debts owed the agency. Under current law, the State agencies that are included in a list in the statute must use the setoff program to collect debts and those that are not listed cannot use the setoff program.
2. It extends the setoff program to local units of government and their agencies and establishes the procedures local units and their agencies must follow to use the setoff program. The bill allows, but does not require, local entities to use the setoff program.
3. It streamlines the setoff program by eliminating several unnecessary notices between the Department of Revenue and the claimant agencies. It accomplishes this by allowing the Department to place refunds of debtors of State agencies in escrow while the State agency finalizes the setoff.
4. It shifts the cost of the program from the agencies whose debts are collected to the debtors who owe the debts, sets a \$15.00 cap on the fee imposed for collection through setoff, and shifts the cost of collecting

child support debts from all the State agencies that use the setoff program to an earmarking of income tax collections.

5. It clarifies and reorganizes some of the provisions in the Setoff Debt Collection Act.

Expansion to All State Agencies

The Setoff Debt Collection Act currently requires certain named State agencies to participate. Other State agencies may not participate, even on a voluntary basis. The bill would extend the mandatory State program to all State agencies, as recommended by the State Controller's Office, which administers the Statewide accounts receivable program pursuant to G.S. 147-86.22. If a State agency's use of the program would not be practical or cost effective in certain cases, the State Controller could waive the requirement.

Expansion to Local Governments

The idea to expand the setoff program to local entities originated with Senate Bill 761 of the 1995 Session, introduced by Senator Conder. Senate Bill 39 authorizes local governments to submit their debts for collection by setoff only after providing the debtor with notice, an opportunity to be heard before the local government, and an appeal process pursuant to the Administrative Procedure Act. After completing this process, the agency can submit the debt through the League of Municipalities, the Association of County Commissioners, or another clearinghouse. Funneling the debts through a clearinghouse rather than having each local government submit its own debts will avoid placing an undue administrative burden on the Department of Revenue.

Streamlining of Program

Under current law, the setoff process requires three notices to the Department by the claimant agency, two notices by the Department to the agency, and two notices to the taxpayer. The bill eliminates two of the notices to the Department by claimant agencies and one of the notices by the Department to claimant agencies.

Currently, a State agency notifies the Department of a debt. The Department checks to see if the debtor will be receiving a tax refund. If so, the Department notifies the agency that the debtor is entitled to a refund. The agency then sends the Department and the debtor a notice of intent to apply the refund to the debt. After any hearing requested by the debtor, the agency sends the Department a notice of certification of the debt. The Department then applies the tax refund to the debt and notifies the taxpayer and the agency of the setoff. If the debt is less than the refund, the Department sends the balance of the refund at the same time.

Under the bill, a claimant agency sends the Department notice of the debt and the Department immediately sets off the debt against the refund and notifies the taxpayer and the claimant agency. A local agency cannot notify the Department of a debt until after the debt has been established through notice to the debtor and a hearing, if requested. A State agency can notify the Department of a debt, have the

refund placed in an escrow for the agency, notify the debtor and hold any hearing requested, and then disburse the escrowed amount accordingly.

The bill gives a debtor the same procedural and substantive rights as under current law, including the right to interest on any part of the refund found not to be a valid debt. Under current law, a debtor is notified of a potential setoff and the right to contest the setoff. The debtor receives the same notifications under the bill. Also, under the bill, if an agency fails to give the debtor the required notice, the agency must return all the refund even though a debt is owed.

Collection Assistance Fee Changes

The cost of administering the setoff debt collection program is paid by the State agencies whose debts are collected by setoff. Each year, the Department of Revenue determines its costs of running the program and recovers these costs by charging a collection assistance fee as a percentage of each debt collected. The bill caps this fee at no more than \$15.00 per debt. The actual fee is expected to be less.

The bill shifts the burden of paying the administrative costs of most setoffs from participating State agencies to the debtors. Under current law, except in the case of child support debts, the Department of Revenue retains the collection assistance fee from each setoff. The retention of the fee reduces the amount paid to the agency. The agency therefore absorbs the cost of collecting the debt by receiving less than the full amount of the debt. Under the bill, the Department of Revenue will still retain the collection assistance fee but the fee will be added to the debt and paid by the debtor from the refund rather than subtracted from the amount payable to the agency. As a result, the debtor will pay the fee out of the tax refund that was set off. This change will shift approximately \$270,000, which is the cost of collecting about 39,000 debts, from State agencies' budgets to debtors.

Under current law, the Department of Human Resources and their county counterparts use the debt setoff program to collect child support arrearages pursuant to the federal Child Support Enforcement Program. Since January 1, 1996, rather than deducting its administrative costs from amounts collected for child support arrearages, the Department of Revenue has been required to spread among other State agencies the portion of the Department's administrative costs attributable to child support collections. That change shifted child support setoff administrative costs from child support collections to other setoff collections, resulting in an increase in the percentage deducted from those other collections. The bill directs the administrative costs of collecting child support arrearages to be drawn from income tax collections rather than deducted from the amounts collected on behalf of other State agencies. The General Fund bears the cost in either case, but under the bill the cost will not come from amounts appropriated to State agencies for other purposes.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

D

SENATE BILL 841
Proposed Committee Substitute S841-PCSX7847

Short Title: Modify Corporate Dividend Taxation.

(Public)

Sponsors:

Referred to:

April 15, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW FOREIGN CORPORATIONS TO DEDUCT EXPENSES
3 RELATED TO DEDUCTIBLE SUBSIDIARY DIVIDENDS TO THE SAME
4 EXTENT AS NORTH CAROLINA CORPORATIONS AND TO CLARIFY THE
5 TREATMENT OF DIVIDENDS AS BUSINESS OR NONBUSINESS INCOME.
6 The General Assembly of North Carolina enacts:
7 Section 1. G.S. 105-130.7(4) reads as rewritten:
8 "(4) A corporation that, ~~at the close of its taxable year, has its~~
9 ~~commercial domicile within North Carolina shall be allowed to~~
10 may deduct all dividends received from corporations in which it
11 owns more than fifty percent (50%) of the outstanding voting
12 stock."
13 Section 2. G.S. 105-130.4(a)(1) reads as rewritten:
14 "(1) 'Business income' means income arising from transactions and
15 activity in the regular course of the corporation's trade or business
16 and includes income from tangible and intangible property if the
17 acquisition, management, ~~and/or~~ or disposition of the property
18 ~~constitute integral parts~~ constitutes an integral part of the
19 corporation's regular trade or business operations. Dividend
20 income, like other income from intangible property, is business
21 income if it meets the requirements of this definition."
22 Section 3. This act is effective for taxable years beginning on or after
23 January 1, 1997.

1 Whereas, the General Assembly recognizes the need to protect our
2 coastal fishery resources and to balance the commercial and recreational interests
3 through better management of these resources; Now, therefore,
4 The General Assembly of North Carolina enacts:

5

6 **PART I. SHORT TITLE; PERFORMANCE AUDIT**

7

8 Section 1.1. This act shall be known as the "Fisheries Reform Act of
9 1997".

10 Section 1.2. The State Auditor shall conduct a performance audit,
11 including a detailed operational review, of the Division of Marine Fisheries of the
12 Department of Environment, Health, and Natural Resources. The performance audit
13 shall include an assessment of the capacity of the Division of Marine Fisheries to
14 effectively implement the provisions of Part V of this act. The performance audit
15 report shall be delivered to the Joint Legislative Commission on Seafood and
16 Aquaculture no later than 1 February 1998. The Joint Legislative Commission on
17 Seafood and Aquaculture shall review the performance audit and make a specific
18 recommendation to the 1998 Session of the 1997 General Assembly as to whether the
19 provisions of Part V of this act should be implemented.

20

21 **PART II. MARINE FISHERIES COMMISSION**

22

23 Section 2.1. Article 7 of Chapter 143B is amended by adding a new Part
24 to read:

25

"Part 5B. Marine Fisheries Commission.

26 "§ 143B-289.20. Definitions.

27 (a) As used in this Part:

28

(1) 'Commission' means the Marine Fisheries Commission.

29

(2) 'Department' means the Department of Environment, Health, and
30 Natural Resources.

31

(3) 'Fisheries Director' means the Director of the Division of Marine
32 Fisheries of the Department of Environment, Health, and Natural
33 Resources.

32

33

34

(4) 'Secretary' means the Secretary of Environment, Health, and
35 Natural Resources.

35

36

37

(b) The definitions set out in G.S. 113-129 and G.S. 113-130 shall apply
37 throughout this Part.

38

"§ 143B-289.21. Marine Fisheries Commission -- creation; purposes.

39

(a) There is hereby created the Marine Fisheries Commission in the Department
40 of Environment, Health, and Natural Resources.

40

41

(b) The functions, purposes, and duties of the Marine Fisheries Commission are

42

to:

43

(1) Manage, restore, develop, cultivate, conserve, protect, and regulate
44 the marine and estuarine resources of the State.

44

- 1 (2) Implement the laws relating to coastal fisheries, coastal fishing,
2 shellfish, crustaceans, and other marine and estuarine resources
3 enacted by the General Assembly by the adoption of rules and
4 policies, to provide a sound, constructive, comprehensive,
5 continuing, and economical coastal fisheries program directed by
6 citizens who are knowledgeable in the protection, restoration,
7 proper use, and management of marine and estuarine resources.
- 8 (3) Advise the State regarding ocean and marine fisheries within the
9 jurisdiction of the Atlantic States Marine Fisheries Compact, the
10 South Atlantic Fishery Management Council, the Mid-Atlantic
11 Fishery Management Council, and other similar organizations
12 established to manage or regulate fishing in the Atlantic Ocean.
- 13 **§ 143B-289.22. Marine Fisheries Commission -- powers and duties.**
- 14 (a) The Marine Fisheries Commission shall adopt rules to be followed in the
15 management, protection, preservation, and enhancement of the marine and estuarine
16 resources of the State including commercial and sports fisheries resources. The
17 Marine Fisheries Commission shall have the power and duty:
- 18 (1) To authorize, license, regulate, prohibit, prescribe, or restrict all
19 forms of marine and estuarine resources in coastal fishing waters
20 with respect to:
- 21 a. Time, place, character, or dimensions of any methods or
22 equipment that may be employed in taking fish.
- 23 b. Seasons for taking fish.
- 24 c. Size limits on and maximum quantities of fish that may be
25 taken, possessed, bailed to another, transported, bought,
26 sold, or given away.
- 27 (2) To provide fair regulation of commercial and recreational fishing
28 groups in the interest of the public.
- 29 (3) To adopt rules and take all steps necessary to develop and improve
30 mariculture, including the cultivation, harvesting, and marketing of
31 shellfish and other marine resources in the State, involving the use
32 of public grounds and private beds as provided in G.S. 113-201.
- 33 (4) To close areas of public bottoms under coastal fishing waters for
34 such time as may be necessary in any program of propagation of
35 shellfish as provided in G.S. 113-204.
- 36 (5) In the interest of conservation of the marine and estuarine
37 resources of the State, to institute an action in the superior court to
38 contest the claim of title or claimed right of fishery in any
39 navigable waters of the State registered with the Department as
40 provided in G.S. 113-206(d).
- 41 (6) To make reciprocal agreements with other jurisdictions respecting
42 any of the matters governed in this Subchapter as provided by G.S.
43 113-223.

- 1 (7) To adopt relevant provisions of federal laws and regulations as
2 State rules pursuant to G.S. 113-228.
- 3 (8) To delegate to the Fisheries Director the authority by proclamation
4 to suspend or implement, in whole or in part, a particular rule of
5 the Commission that may be affected by variable conditions as
6 provided in G.S. 113-221(e).
- 7 (9) To comment on and otherwise participate in the determination of
8 permit applications received by State agencies that may have an
9 effect on the marine and estuarine resources of the State.
- 10 (10) To adopt Fishery Management Plans as provided in G.S. 113-182.1,
11 to establish a Priority List to determine the order in which Fishery
12 Management Plans are developed, to establish a Schedule for the
13 development and adoption of each Fishery Management Plan, and
14 to establish guidance criteria as to the contents of Fishery
15 Management Plans.
- 16 (11) To approve Coastal Habitat Protection Plans as provided in G.S.
17 143B-279.8.
- 18 (12) Except as may otherwise be provided, to make the final agency
19 decision in all contested cases involving matters within the
20 jurisdiction of the Commission.

21 (b) The Marine Fisheries Commission shall have the power and duty to establish
22 standards and adopt rules:

- 23 (1) To implement the provisions of Subchapter IV of Chapter 113 as
24 provided in G.S. 113-134.
- 25 (2) To manage the disposition of confiscated property as set forth in
26 G.S. 113-137.
- 27 (3) To govern all license requirements and taxes prescribed in Article
28 14A of Chapter 113 of the General Statutes.
- 29 (4) To regulate the importation and exportation of fish, and equipment
30 that may be used in taking or processing fish, as necessary to
31 enhance the conservation of marine and estuarine resources of the
32 State as provided in G.S. 113-170.
- 33 (5) To regulate the possession, transportation, and disposition of
34 seafood, as provided in G.S. 113-170.4.
- 35 (6) To regulate the disposition of the young of edible fish, as provided
36 by G.S. 113-185.
- 37 (7) To manage the leasing of public grounds for mariculture, including
38 oysters and clam production, as provided in G.S. 113-202.
- 39 (8) To govern the utilization of private fisheries, as provided in G.S.
40 113-205.
- 41 (9) To impose further restrictions upon the throwing of fish offal in
42 any coastal fishing waters, as provided in G.S. 113-265.
- 43 (10) To regulate the location and utilization of artificial reefs in coastal
44 waters.

1 (11) To regulate the placement of nets and other sports or commercial
2 fishing apparatus in coastal fishing waters with regard to
3 navigational or recreational safety as well as from a conservation
4 standpoint.

5 (c) The Commission is authorized to authorize, license, prohibit, prescribe, or
6 restrict:

7 (1) The opening and closing of coastal fishing waters, except as to
8 inland game fish, whether entirely or only as to the taking of
9 particular classes of fish, use of particular equipment, or as to other
10 activities.

11 (2) The possession, cultivation, transportation, importation,
12 exportation, sale, purchase, acquisition, and disposition of all
13 marine and estuarine resources and all related equipment,
14 implements, vessels, and conveyances as necessary to carry out its
15 duties.

16 (d) The Commission may adopt rules required by the federal government for
17 grants-in-aid for coastal resource purposes that may be made available to the State by
18 the federal government. This section is to be liberally construed in order that the
19 State and its citizens may benefit from federal grants-in-aid.

20 (e) The Commission shall adopt rules as provided in this Chapter. All rules
21 adopted by the Commission shall be enforced by the Department of Environment,
22 Health, and Natural Resources.

23 (f) As a quasi-judicial agency, the Commission, in accordance with Article IV,
24 Section 3 of the Constitution of North Carolina, has those judicial powers reasonably
25 necessary to accomplish the purposes for which it was created.

26 "§ 143B-289.23. Marine Fisheries Commission -- quasi-judicial powers; procedures.

27 (a) With respect to those matters within its jurisdiction, the Marine Fisheries
28 Commission shall exercise quasi-judicial powers in accordance with the provisions of
29 Chapter 150B of the General Statutes. This section and any rules adopted by the
30 Marine Fisheries Commission shall govern the following proceedings:

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

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

38 (3) Deliberations of the Commission shall be conducted in its public
39 meeting unless the Commission determines that consultation with
40 its counsel should be held in a closed session pursuant to G.S.
41 143-318.11.

42 (b) The final agency decision in contested cases that arise from civil penalty
43 assessments shall be made by the Commission. In the evaluation of each violation, the
44 Commission shall recognize that harm to the marine and estuarine resources of the

1 State arising from the violation of a statute or rule enacted or adopted to protect
2 those resources may be immediately observed through damaged resources or may be
3 incremental or cumulative with no damage that can be immediately observed or
4 documented. Penalties up to the maximum authorized may be based on any one or
5 combination of the following factors:

6 (1) The degree and extent of harm to the marine and estuarine
7 resources of the State, to the public health, or to private property
8 resulting from the violation.

9 (2) The frequency and gravity of the violation.

10 (3) The cost of rectifying the damage.

11 (4) Whether the violation was committed willfully or intentionally.

12 (5) The prior record of the violator in complying or failing to comply
13 with programs over which the Marine Fisheries Commission has
14 regulatory authority.

15 (6) The cost to the State of the enforcement procedures.

16 (c) The Chair shall appoint a Committee on Civil Penalty Remissions from the
17 members of the Commission. No member of the Committee on Civil Penalty
18 Remissions may hear or vote on any matter in which the member has an economic
19 interest. The Committee on Civil Penalty Remissions shall make the final agency
20 decision on remission requests. In determining whether a remission request will be
21 approved, the Committee shall consider the recommendation of the Secretary and the
22 following factors:

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

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

28 (3) Whether the violation was inadvertent.

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

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

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

37 (e) If any civil penalty has not been paid within 30 days after the final agency
38 decision or court order has been served on the violator, the Secretary of
39 Environment, Health, and Natural Resources shall request the Attorney General to
40 institute a civil action in the superior court of any county in which the violator
41 resides or has his or its principal place of business to recover the amount of the
42 assessment.

43 (f) The Secretary may delegate his powers and duties under this section to the
44 Fisheries Director.

1 "§ 143B-289.24. Marine Fisheries Commission -- members; appointment; term; oath;
2 ethical standards; removal; compensation; staff.

3 (a) Members, Selection. -- The Marine Fisheries Commission shall consist of nine
4 members appointed by the Governor as follows:

5 (1) One person actively engaged in, or recently retired from,
6 commercial fishing as demonstrated by currently or recently
7 deriving at least fifty percent (50%) of annual earned income from
8 taking and selling fishery resources in coastal fishing waters of the
9 State. The spouse of a commercial fisherman who meets the
10 criteria of this subdivision may be appointed under this
11 subdivision.

12 (2) One person actively engaged in, or recently retired from,
13 commercial fishing as demonstrated by currently or recently
14 deriving at least fifty percent (50%) of annual earned income from
15 taking and selling fishery resources in coastal fishing waters of the
16 State. The spouse of a commercial fisherman who meets the
17 criteria of this subdivision may be appointed under this
18 subdivision.

19 (3) One person actively connected with, and experienced as, a licensed
20 fish dealer or in seafood processing or distribution as demonstrated
21 by deriving at least fifty percent (50%) of annual earned income
22 from activities involving the buying, selling, processing, or
23 distribution of seafood landed in this State. The spouse of a
24 person qualified under this subdivision may be appointed provided
25 that the spouse is actively involved in the qualifying business.

26 (4) One person actively engaged in recreational sports fishing in
27 coastal waters in this State. An appointee under this subdivision
28 may not derive more than ten percent (10%) of annual earned
29 income from sports fishing activities.

30 (5) One person actively engaged in recreational sports fishing in
31 coastal waters in this State. An appointee under this subdivision
32 may not derive more than ten percent (10%) of annual earned
33 income from sports fishing activities.

34 (6) One person actively engaged in the sports fishing industry as
35 demonstrated by deriving at least fifty percent (50%) of annual
36 earned income from selling goods or services in this State. The
37 spouse of a person qualified under this subdivision may be
38 appointed provided that the spouse is actively involved in the
39 qualifying business.

40 (7) One person having general knowledge of and experience related to
41 subjects and persons regulated by the Commission.

42 (8) One person having general knowledge of and experience related to
43 subjects and persons regulated by the Commission.

1 (9) One person who is a fisheries scientist having special training and
2 expertise in marine and estuarine fisheries biology, ecology,
3 population dynamics, water quality, habitat protection, or similar
4 knowledge. A person appointed under this subdivision may not
5 receive more than ten percent (10%) of annual earned income
6 from either the commercial or sports fishing industries, including
7 the processing and distribution of seafood.

8 (b) Residential Qualifications. -- For purposes of providing regional representation
9 on the Commission, the following three coastal regions of the State are designated: (i)
10 Northeast Coastal Region comprised of Bertie, Camden, Chowan, Currituck, Dare,
11 Gates, Halifax, Hertford, Martin, Northampton, Pasquotank, Perquimans, Tyrrell, and
12 Washington Counties, (ii) Central Coastal Region comprised of Beaufort, Carteret,
13 Craven, Hyde, Jones, and Pamlico Counties; and (iii) Southeast Coastal Region
14 comprised of Bladen, Brunswick, Columbus, New Hanover, Onslow, and Pender
15 Counties. Persons appointed under subdivisions (1), (2), (3), (4), and (8) of
16 subsection (a) of this section shall be residents of one of the coastal regions of the
17 State. The membership of the Commission shall include at least one person who is a
18 resident of each of the three coastal regions of the State.

19 (c) Additional Considerations. -- In making appointments to the Commission, the
20 Governor shall provide for appropriate representation of women and minorities on
21 the Commission.

22 (d) Terms. -- The term of office of members of the Commission is three years. A
23 member may be reappointed to any number of successive three-year terms. Upon the
24 expiration of a three-year term, a member shall continue to serve until a successor is
25 appointed and duly qualified as provided by G.S. 128-7. The term of members
26 appointed under subdivisions (1), (2), and (3) of subsection (a) of this section shall
27 expire on 30 June of years evenly divisible by three. The term of members appointed
28 under subdivisions (4), (5), and (6) of subsection (a) of this section shall expire on 30
29 June of years that precede by one year those years that are evenly divisible by three.
30 The term of members appointed under subdivisions (7), (8), and (9) of subsection (a)
31 of this section shall expire on 30 June of years that follow by one year those years
32 that are evenly divisible by three.

33 (e) Vacancies. -- An appointment to fill a vacancy shall be for the unexpired
34 balance of the term.

35 (f) Oath of Office. -- Each member of the Commission, before assuming the duties
36 of office, shall take an oath of office as provided in Chapter 11 of the General
37 Statutes.

38 (g) Ethical Standards. --

39 (1) Disclosure statements. -- Any person under consideration for
40 appointment to the Commission shall provide both a financial
41 disclosure statement and a potential bias disclosure statement to
42 the Governor. A financial disclosure statement shall include
43 statements of the nominee's financial interests in and related to
44 State fishery resources use, licenses issued by the Division of

1 Marine Fisheries held by the nominee or any business in which the
2 nominee has a financial interest, and uses made by the nominee or
3 by any business in which the nominee has a financial interest of
4 the regulated resources. A potential bias disclosure statement shall
5 include a statement of the nominee's membership or other
6 affiliation with, including offices held, in societies, organizations, or
7 advocacy groups pertaining to the management and use of the
8 State's coastal fishery resources. Disclosure statements shall be
9 treated as public records under Chapter 132 of the General
10 Statutes and shall be updated on an annual basis.

11 (2) Voting/conflict of interest. -- A member of the Commission shall
12 not vote on any issue before the Commission that would have a
13 'significant and predictable effect' on the member's financial
14 interest. For purposes of this subdivision, 'significant and
15 predictable effect' means there is or may be a close causal link
16 between the decision of the Commission and an expected
17 disproportionate financial benefit to the member that is shared
18 only by a minority of persons within the same industry sector or
19 gear group. A member of the Commission shall also abstain from
20 voting on any petition submitted by an advocacy group of which
21 the member is an officer or sits as a member of the advocacy
22 group's board of directors. A member of the Commission shall not
23 use the member's official position as a member of the Commission
24 to secure any special privilege or exemption of substantial value for
25 any person. No member of the Commission shall, by the member's
26 conduct, create an appearance that any person could improperly
27 influence the member in the performance of the member's official
28 duties.

29 (3) Regular attendance. -- It shall be the duty of each member of the
30 Commission to regularly attend meetings of the Commission.

31 (h) Removal. -- The Governor may remove, as provided in G.S. 143-13, any
32 member of the Commission for misfeasance, malfeasance, or nonfeasance.

33 (i) Office May Be Held Concurrently With Others. -- The office of member of the
34 Marine Fisheries Commission may be held concurrently with any other elected or
35 appointed office, as authorized by Article VI, Section 9, of the Constitution of North
36 Carolina.

37 (j) Compensation. -- Members of the Commission who are State officers or
38 employees shall receive no per diem compensation for serving on the Commission,
39 but shall be reimbursed for their expenses in accordance with G.S. 138-6. Members
40 of the Commission who are full-time salaried public officers or employees other than
41 State officers or employees shall receive no per diem compensation for serving on the
42 Commission, but shall be reimbursed for their expenses in accordance with G.S.
43 138-6 in the same manner as State officers or employees. All other Commission

1 members shall receive per diem compensation and reimbursement in accordance with
2 the compensation rate established in G.S. 93B-5.

3 (k) Staff. -- All clerical and other services required by the Commission shall be
4 supplied by the Fisheries Director and the Department.

5 (l) Legal Services. -- The Attorney General shall: (i) act as attorney for the
6 Commission; (ii) at the request of the Commission, initiate actions in the name of the
7 Commission; and (iii) represent the Commission in any appeal or other review of any
8 order of the Commission.

9 **"§ 143B-289.25. Marine Fisheries Commission -- officers; organization; seal.**

10 (a) The Governor shall appoint a member of the Commission to serve as Chair.
11 The Chair shall serve at the pleasure of the Governor. The Commission shall elect
12 one of its members to serve as Vice-Chair. The Vice-Chair shall serve a one-year
13 term beginning 1 July and ending 30 June of the following year. The Vice-Chair may
14 serve any number of consecutive terms.

15 (b) The Chair shall guide and coordinate the activities of the Commission in
16 fulfilling its duties as set out in this Article. The Chair shall report to and advise the
17 Governor and the Secretary on the activities of the Commission, on marine and
18 estuarine conservation matters, and on all marine fisheries matters.

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

23 (d) The Commission may adopt a common seal and may alter it as necessary.

24 **"§ 143B-289.26. Marine Fisheries Commission -- meetings; quorum.**

25 (a) The Commission shall meet at least once each calendar quarter and may hold
26 additional meetings at any time and place within the State at the call of the Chair or
27 upon the written request of at least four members. At least three of the four
28 quarterly meetings of the Commission shall be held in one of the coastal regions
29 designated in G.S. 143B-289.24.

30 (b) Five members of the Commission shall constitute a quorum for the transaction
31 of business.

32 **"§ 143B-289.27. Marine Fisheries Commission Advisory Committees established;**
33 **members; selection; duties.**

34 (a) The Commission shall be assisted in the performance of its duties by four
35 standing advisory committees and four regional advisory committees. Each standing
36 and regional advisory committee shall consist of no more than 11 members. The
37 Chair of the Commission shall designate one member of each advisory committee to
38 serve as Chair of the committee. Members shall serve staggered three-year terms as
39 determined by the Commission. The Commission shall establish other policies and
40 procedures for standing and regional advisory committees that are consistent with
41 those governing the Commission as set out in this Part.

42 (b) The Chair of the Commission shall appoint the following standing advisory
43 committees:

- 1 (1) The Finfish Committee, which shall consider matters concerning
2 finfish.
- 3 (2) The Crustacean Committee, which shall consider matters
4 concerning shrimp and crabs.
- 5 (3) The Shellfish Committee, which shall consider matters concerning
6 oysters, clams, scallops, and other molluscan shellfish.
- 7 (4) The Habitat and Water Quality Committee, which shall consider
8 matters concerning habitat and water quality that may affect
9 coastal fisheries resources.
- 10 (c) Each standing advisory committee shall be composed of commercial and
11 recreational fishermen, scientists, and other persons who have expertise in the matters
12 to be considered by the advisory committee to which they are appointed. In making
13 appointments to advisory committees, the Chair of the Commission shall ensure that
14 both commercial and recreational fishing interests are fairly represented and shall
15 consider for appointment persons who are recommended by groups representing
16 commercial fishing interests, recreational fishing interests, environmental protection
17 and conservation interests, and other groups interested in coastal fisheries
18 management.
- 19 (d) Each standing advisory committee shall review all matters referred to the
20 committee by the Commission and shall make findings and recommendations on
21 these matters. A standing advisory committee may, on its own motion, make findings
22 and recommendations as to any matter related to its subject area. The Commission,
23 in the performance of its duties, shall consider all findings and recommendations
24 submitted by standing advisory committees.
- 25 (e) The Chair of the Commission shall appoint a regional advisory committee for
26 each of the three coastal regions designated in G.S. 143B-289.24(b) and shall appoint
27 a regional advisory committee for that part of the State that is not included in the
28 three coastal regions. In making appointments to regional advisory committees, the
29 Chair of the Commission shall ensure that both commercial and recreational fishing
30 interests are fairly represented.
- 31 **"§ 143B-289.28. Marine Fisheries Endowment Fund.**
- 32 (a) Recognizing the inestimable importance to the State and its people of
33 conserving the marine and estuarine resources of the State, and for the purpose of
34 providing the opportunity for citizens and residents of the State to invest in the future
35 of its marine and estuarine resources, there is created the North Carolina Marine
36 Fisheries Endowment Fund, the income and principal of which shall be used only for
37 the purpose of supporting marine and estuarine resource conservation programs of
38 the State in accordance with this section.
- 39 (b) There is created the Board of Trustees of the Marine Fisheries Endowment
40 Fund of the Marine Fisheries Commission, with full authority over the administration
41 of the Marine Fisheries Endowment Fund, whose ex officio Chair, Vice-Chair, and
42 members shall be the Chair, Vice-Chair, and members of the Marine Fisheries
43 Commission. The State Treasurer shall be the custodian of the Marine Fisheries

1 Endowment Fund and shall invest its assets in accordance with the provisions of G.S.
2 147-69.2 and G.S. 147-69.3.

3 (c) The assets of the Marine Fisheries Endowment Fund shall be derived from the
4 following:

5 (1) The proceeds of any gifts, grants, and contributions to the State
6 that are specifically designated for inclusion in the Fund.

7 (2) Any other sources specified by law.

8 (d) The Marine Fisheries Endowment Fund is declared to constitute a special
9 trust derived from a contractual relationship between the State and the members of
10 the public whose investments contribute to the Fund. In recognition of this special
11 trust, the following limitations and restrictions are placed on expenditures from the
12 Fund:

13 (1) Any limitations or restrictions specified by the donors on the uses
14 of the income derived from the gifts, grants, and voluntary
15 contributions shall be respected but shall not be binding.

16 (2) No expenditure or disbursement shall be made from the principal
17 of the Marine Fisheries Endowment Fund except as otherwise
18 provided by law.

19 (3) The income received and accruing from the investments of the
20 Marine Fisheries Endowment Fund must be spent only to further
21 the conservation of marine and estuarine resources.

22 (e) The Board of Trustees of the Marine Fisheries Endowment Fund may
23 accumulate the investment income of the Fund until the income, in the sole judgment
24 of the trustees, can provide a significant supplement to the budget for the
25 conservation and management of marine and estuarine resources. After that time the
26 trustees, in their sole discretion and authority, may direct expenditures from the
27 income of the Fund for the purposes set out in subdivision (3) of subsection (d)
28 above.

29 (f) Expenditure of the income derived from the Marine Fisheries Endowment
30 Fund shall be made through the State budget accounts of the Marine Fisheries
31 Commission in accordance with the provisions of the Executive Budget Act. The
32 Marine Fisheries Endowment Fund is subject to the oversight of the State Auditor
33 pursuant to Article 5A of Chapter 147 of the General Statutes.

34 (g) The Marine Fisheries Endowment Fund and the income therefrom shall not
35 take the place of State appropriations, but any portion of the income of the Marine
36 Fisheries Endowment Fund available for the purpose set out in subdivision (3) of
37 subsection (d) above shall be used to supplement other income of and appropriations
38 for the conservation and management of marine and estuarine resources to the end
39 that the Commission may improve and increase its services and become more useful
40 to a greater number of people.

41 **"§ 143B-289.29. Conservation Fund; Commission may accept gifts.**

42 (a) The Marine Fisheries Commission may accept gifts, donations, or
43 contributions from any sources. These funds shall be held in a separate account and
44 used solely for the purposes of marine and estuarine conservation and management.

1 These funds shall be administered by the Marine Fisheries Commission and shall be
2 used for marine and estuarine resources management, including education about the
3 importance of conservation, in a manner consistent with marine and estuarine
4 conservation management principles.

5 (b) The Marine Fisheries Commission is hereby authorized to issue and sell
6 appropriate emblems by which to identify recipients thereof as contributors to a
7 special marine and estuarine resources Conservation Fund that shall be made
8 available to the Marine Fisheries Commission for conservation, protection,
9 enhancement, preservation, and perpetuation of marine and estuarine species that
10 may be endangered or threatened with extinction and for education about these
11 issues. The special Conservation Fund is subject to oversight of the State Auditor
12 pursuant to Article 5A of Chapter 147 of the General Statutes. Emblems of different
13 sizes, shapes, types, or designs may be used to recognize contributions in different
14 amounts, but no emblem shall be issued for a contribution amounting in value to less
15 than five dollars (\$5.00).

16 "§ 143B-289.30. Article subject to Chapter 113.

17 Nothing in this Article shall be construed to affect the jurisdictional division
18 between the Marine Fisheries Commission and the Wildlife Resources Commission
19 contained in Subchapter IV of Chapter 113 of the General Statutes or in any way to
20 alter or abridge the powers and duties of the two agencies conferred in that
21 Subchapter.

22 "§ 143B-289.31. Jurisdictional questions.

23 In the event of any question arising between the Wildlife Resources Commission
24 and the Marine Fisheries Commission or between the Department of Environment,
25 Health, and Natural Resources and the Marine Fisheries Commission as to any duty,
26 responsibility, or authority imposed upon any of these bodies by law or with respect
27 to conflict involving rules or administrative practices, the question or conflict shall be
28 resolved by the Governor, whose decision shall be binding."

29
30 **PART III. COASTAL HABITAT PROTECTION PLANS; FISHERY**
31 **MANAGEMENT PLANS**
32

33 Section 3.1. Article 7 of Chapter 143B of the General Statutes is
34 amended by adding a new section to read:

35 "§ 143B-279.8. Coastal Habitat Protection Plans.

36 (a) The Department shall coordinate the preparation of draft Coastal Habitat
37 Protection Plans for critical fisheries habitats. The Department shall use the staff of
38 those divisions within the Department that have jurisdiction over marine fisheries,
39 water quality, and coastal area management in the preparation of the Coastal Habitat
40 Protection Plans and shall request assistance from other federal and State agencies as
41 necessary. The plans shall:

42 (1) Describe and classify biological systems in the habitats, including
43 wetlands, fish spawning grounds, estuarine or aquatic endangered
44 or threatened species, primary or secondary nursery areas, shellfish

1 beds, submerged aquatic vegetation (SAV) beds, and habitats in
2 outstanding resource waters.

3 (2) Evaluate the function, value to coastal fisheries, status, and trends
4 of the habitats.

5 (3) Identify existing and potential threats to the habitats and the
6 impact on coastal fishing.

7 (4) Recommend actions to protect and restore the habitats.

8 (b) Once a draft Coastal Habitat Protection Plan has been prepared, the chairs of
9 the Coastal Resources Commission, the Environmental Management Commission,
10 and the Marine Fisheries Commission shall each appoint two members of the
11 commission he or she chairs to a six-member review committee. The six-member
12 review committee, in consultation with the Department, shall review the draft Plan
13 and may revise the draft Plan on a consensus basis. The draft Plan, as revised by the
14 six-member review committee, shall then be submitted to the Coastal Resources
15 Commission, the Environmental Management Commission, and the Marine Fisheries
16 Commission, each of which shall independently consider the Plan for adoption. If
17 any of the three commissions is unable to agree to any aspect of a Plan, the chair of
18 each commission shall refer that aspect of the Plan to a six-member conference
19 committee to facilitate the resolution of any differences. The six-member conference
20 committee shall be appointed in the same manner as a six-member review committee
21 and may include members of the six-member review committee that reviewed the
22 Plan. Each final Coastal Habitat Protection Plan shall consist of those provisions
23 adopted by all three commissions. The three commissions shall review and revise
24 each Coastal Habitat Protection Plan at least once every five years.

25 (c) In carrying out their powers and duties, the Coastal Resources Commission,
26 the Environmental Management Commission, and the Marine Fisheries Commission
27 shall ensure, to the maximum extent practicable, that their actions are consistent with
28 the Coastal Habitat Protection Plans as adopted by the three commissions. The
29 obligation to act in a manner consistent with a Coastal Habitat Protection Plan is
30 prospective only and does not oblige any commission to modify any rule adopted,
31 permit decision made, or other action taken prior to the adoption or revision of the
32 Coastal Habitat Protection Plan by the three commissions. The Coastal Resources
33 Commission, the Environmental Management Commission, and the Marine Fisheries
34 Commission shall adopt rules to implement Coastal Habitat Protection Plans in
35 accordance with Chapter 150B of the General Statutes.

36 (d) If any of the three commissions concludes that another commission has taken
37 an action that is inconsistent with a Coastal Habitat Protection Plan, that commission
38 may request a written explanation of the action from the other commission. A
39 commission shall provide a written explanation: (i) upon the written request of one
40 of the other two commissions, or (ii) upon its own motion if the commission
41 determines that it must take an action that is inconsistent with a Coastal Habitat
42 Protection Plan.

43 (e) The Coastal Resources Commission, the Environmental Management
44 Commission, and the Marine Fisheries Commission shall report to the Joint

1 Legislative Commission on Seafood and Aquaculture and the Environmental Review
2 Commission on progress in developing and implementing the Coastal Habitat
3 Protection Plans, including the extent to which the actions of the three commissions
4 are consistent with the Plans, on or before 1 September of each year."

5 (f) The Secretary of Environment, Health, and Natural Resources shall report to
6 the Environmental Review Commission within 30 days of the completion or
7 substantial revision of each draft Coastal Habitat Protection Plan. The
8 Environmental Review Commission shall review each draft Coastal Habitat
9 Protection Plan within 30 days of the date the draft Plan is submitted to the
10 Environmental Review Commission. The Environmental Review Commission may
11 submit comments and recommendations on the draft Plan to the Secretary within 30
12 days of the date the draft Plan is submitted by the Secretary."

13 Section 3.2. G.S. 143B-282(a)(1) is amended by adding a new sub-
14 subdivision to read:

15 "v. To approve Coastal Habitat Protection Plans as provided in
16 G.S. 143B-279.8."

17 Section 3.3. Part 1 of Article 7 of Chapter 113A of the General Statutes
18 is amended by adding a new section to read:

19 "**§ 113A-106.1. Adoption of Coastal Habitat Protection Plans.**

20 The Commission shall approve Coastal Habitat Protection Plans as provided in
21 G.S. 143B-279.8."

22 Section 3.4. Article 15 of Chapter 113 of the General Statutes is
23 amended by adding a new section to read:

24 "**§ 113-182.1. Fishery Management Plans.**

25 (a) The Department shall prepare proposed Fishery Management Plans for
26 adoption by the Marine Fisheries Commission for all commercially or recreationally
27 significant species or fisheries that comprise State marine or estuarine resources.
28 Proposed Fishery Management Plans shall be developed in accordance with the
29 Priority List, Schedule, and guidance criteria established by the Marine Fisheries
30 Commission under G.S. 143B-289.22.

31 (b) The goal of the plans shall be to ensure the long-term viability of the State's
32 commercially and recreationally significant species or fisheries. Each plan shall be
33 designed to reflect fishing practices so that one plan may apply to a specific fishery,
34 while other plans may be based on gear or geographic areas. Each plan shall:

35 (1) Contain necessary information pertaining to the fishery or fisheries,
36 including management goals and objectives, status of relevant fish
37 stocks, stock assessments for multiyear species, fishery habitat and
38 water quality considerations consistent with Coastal Habitat
39 Protection Plans adopted pursuant to G.S. 143B-279.8, social and
40 economic impact of the fishery to the State, and user conflicts.
41 (2) Recommend management actions pertaining to the fishery or
42 fisheries.

1 (3) Include conservation and management measures that prevent
2 overfishing, while achieving, on a continuing basis, the optimal
3 yield from each fishery.

4 (c) To assist in the development of each Fishery Management Plan, the Chair of
5 the Marine Fisheries Commission shall appoint an Advisory Council. Each Advisory
6 Council shall be composed of commercial fishermen, recreational fishermen, and
7 scientists, all with expertise in the fishery for which the Fishery Management Plan is
8 being developed.

9 (d) Each Fishery Management Plan shall be revised at least once every three
10 years. The Marine Fisheries Commission may revise the Priority List and guidance
11 criteria whenever it determines that a revision of the Priority List or guidance criteria
12 will facilitate or improve the development of Fishery Management Plans or is
13 necessary to restore, conserve, or protect the marine and estuarine resources of the
14 State. The Marine Fisheries Commission may not revise the Schedule for the
15 development of a Fisheries Management Plan, once adopted, without the approval of
16 the Secretary of Environment, Health, and Natural Resources.

17 (e) The Secretary of Environment, Health, and Natural Resources shall monitor
18 progress in the development and adoption of Fishery Management Plans in relation
19 to the Schedule for development and adoption of the plans established by the Marine
20 Fisheries Commission. If the Secretary determines that the Division of Marine
21 Fisheries has failed to develop or the Marine Fisheries Commission has failed to
22 adopt a Fishery Management Plan in compliance with the Schedule, the Secretary
23 may issue a proclamation prohibiting the taking of species to which the Plan would
24 apply. The completion of any act within 30 days of the time specified by the
25 Schedule constitutes compliance with the Schedule. A proclamation issued pursuant
26 to this subsection is not subject to Article 2A of Chapter 150B of the General
27 Statutes.

28 (f) The Secretary of Environment, Health, and Natural Resources shall report to
29 the Joint Legislative Commission on Seafood and Aquaculture and the
30 Environmental Review Commission on progress in developing and implementing the
31 Fishery Management Plans on or before 1 September of each year. The Secretary of
32 Environment, Health, and Natural Resources shall report to the Joint Legislative
33 Commission on Seafood and Aquaculture and the Environmental Review
34 Commission within 30 days of the completion or substantial revision of each
35 proposed Fishery Management Plan. The Joint Legislative Commission on Seafood
36 and Aquaculture and the Environmental Review Commission shall review each
37 proposed Fishery Management Plan within 30 days of the date the proposed Plan is
38 submitted to the commission. The Joint Legislative Commission on Seafood and
39 Aquaculture and the Environmental Review Commission may submit comments and
40 recommendations on the proposed Plan to the Secretary within 30 days of the date
41 the proposed Plan is submitted by the Secretary.

42 (g) The Marine Fisheries Commission shall adopt rules to implement Fishery
43 Management Plans in accordance with Chapter 150B of the General Statutes."

1 Section 3.5. G.S. 113-129 is amended by adding two new subdivisions to
2 read:

3 "(12a) Optimal yield. -- The amount of fish that:

- 4 a. Will provide the greatest overall benefit to the State,
5 particularly with respect to food production and recreational
6 opportunities, and taking into account the protection of
7 marine ecosystems;
8 b. Is prescribed on the basis of the maximum sustainable yield
9 from the fishery, as reduced by any relevant economic,
10 social, or ecological factor; and
11 c. In the case of an overfished fishery, provides for rebuilding
12 to a level consistent with producing the maximum
13 sustainable yield in the fishery.

14 (12b) Overfishing or overfished. -- A rate or level of fishing mortality
15 that jeopardizes the capacity of a fishery to produce the maximum
16 sustainable yield on a continuing basis."

17
18 **PART IV. MARINE FISHERIES LAW ENFORCEMENT**

19
20 Section 4.1. G.S. 113-187 reads as rewritten:

21 **"§ 113-187. Penalties for violations of Subchapter and rules.**

22 (a) Any person who participates in a commercial fishing operation conducted in
23 violation of any provision of this Subchapter and its implementing rules or in an
24 operation in connection with which any vessel is used in violation of any provision of
25 this Subchapter and its implementing rules is guilty of a ~~Class 1~~ Class A1
26 misdemeanor.

27 (b) Any owner of a vessel who knowingly permits it to be used in violation of any
28 provision of this Subchapter and its implementing rules is guilty of a ~~Class 1~~ Class A1
29 misdemeanor.

30 (c) Any person in charge of a commercial fishing operation conducted in violation
31 of any provision of this Subchapter and its implementing rules or in charge of any
32 vessel used in violation of any provision of this Subchapter and its implementing
33 rules is guilty of a ~~Class 1~~ Class A1 misdemeanor.

34 (d) Any person in charge of a commercial fishing operation conducted in
35 violation of the following provisions of this Subchapter or the following rules of the
36 Marine Fisheries Commission; and any person in charge of any vessel used in
37 violation of the following provisions of the Subchapter or the following rules, shall be
38 guilty of a ~~Class 2~~ Class A1 misdemeanor. The violations of the statute or the rules
39 for which the penalty is mandatory are:

- 40 (1) Taking or attempting to take, possess, sell, or offer for sale any
41 oysters, mussels, or clams taken from areas closed by statute, rule,
42 or proclamation because of suspected pollution.
43 (2) Taking or attempting to take or have in possession aboard a vessel,
44 shrimp taken by the use of a trawl net, in areas not opened to

1 shrimping, pulled by a vessel not showing lights required by G.S.
2 75A-6 after sunset and before sunrise.

3 (3) Using a trawl net in any coastal fishing waters closed by
4 proclamation or rule to trawl nets.

5 (4) Violating the provisions of a special permit or gear license issued
6 by the Department.

7 (5) Using or attempting to use any trawl net, long haul seine, swipe
8 net, mechanical methods for oyster or clam harvest or dredge in
9 designated primary nursery areas."

10 Section 4.2. Article 15 of Chapter 113 of the General Statutes is
11 amended by adding a new section to read:

12 "**§ 113-190. Unlawful sale or purchase of fish; criminal and civil penalties.**

13 (a) Any person who sells fish in violation of G.S. 113-168.4 or a rule of the
14 Marine Fisheries Commission to implement that section is guilty of a Class A1
15 misdemeanor.

16 (b) Any person who purchases fish in violation of G.S. 113-169.3 or a rule of the
17 Marine Fisheries Commission to implement that section is guilty of a Class A1
18 misdemeanor.

19 (c) A civil penalty of not more than ten thousand dollars (\$10,000) may be
20 assessed by the Secretary against any person who sells fish in violation of G.S.
21 113-168.4 or purchases fish in violation of G.S. 113-169.3.

22 (d) In determining the amount of the penalty, the Secretary shall consider the
23 factors set out in G.S. 143B-289.23(b). The procedures set out in G.S. 143B-289.23
24 shall apply to civil penalty assessments that are presented to the Commission for final
25 agency decision.

26 (e) The Secretary shall notify any person assessed a civil penalty of the assessment
27 and the specific reasons therefor by registered or certified mail or by any means
28 authorized by G.S. 1A-1, Rule 4. Contested case petitions shall be filed pursuant to
29 G.S. 150B-23 within 30 days of receipt of the notice of assessment.

30 (f) Requests for remission of civil penalties shall be filed with the Secretary.
31 Remission requests shall not be considered unless filed within 30 days of receipt of
32 the notice of assessment. Remission requests must be accompanied by a waiver of the
33 right to a contested case hearing pursuant to Chapter 150B of the General Statutes
34 and a stipulation of the facts on which the assessment was based. Consistent with the
35 limitations in G.S. 143B-289.23(c), remission requests may be resolved by the
36 Secretary and the violator. If the Secretary and the violator are unable to resolve the
37 request, the Secretary shall deliver remission requests and his recommended action to
38 the Committee on Civil Penalty Remissions of the Marine Fisheries Commission
39 appointed pursuant to G.S. 143B-289.23(c).

40 (g) If any civil penalty has not been paid within 30 days after notice of assessment
41 has been served on the violator, the Secretary shall request the Attorney General to
42 institute a civil action in the superior court of any county in which the violator
43 resides or has his or its principal place of business to recover the amount of the
44 assessment, unless the violator contests the assessment as provided in subsection (e) of

1 this section, or requests remission of the assessment in whole or in part as provided in
2 subsection (f) of this section. If any civil penalty has not been paid within 30 days
3 after the final agency decision or court order has been served on the violator, the
4 Secretary shall request the Attorney General to institute a civil action in the superior
5 court of any county in which the violator resides or has his or its principal place of
6 business to recover the amount of the assessment. Civil actions must be filed within
7 three years of the date the final agency decision or court order was served on the
8 violator."

9 Section 4.3. G.S. 113-221(e) reads as rewritten:

10 "(e) The Marine Fisheries Commission may delegate to the Fisheries Director the
11 authority to issue proclamations suspending or implementing, in whole or in part,
12 particular rules of the Commission which may be affected by variable conditions.
13 Such proclamations are to be issued by the Fisheries Director or by a person
14 designated by the Fisheries Director. All proclamations must state the hour and date
15 upon which they become effective and must be issued at least 48 hours in advance of
16 the effective date and time. In those situations in which the proclamation prohibits
17 the taking of certain fisheries resources for reasons of public health, the proclamation
18 can be made effective immediately upon issuance. Notwithstanding any other
19 provisions of this subsection, a proclamation can be issued at least 12 hours in
20 advance of the effective date and time to reopen the taking of certain fisheries
21 resources closed for reason of public health through a prior proclamation made
22 effective immediately upon issuance. Persons violating any proclamation which is
23 made effective immediately shall not be charged with a criminal offense during the
24 time between the issuance and 48 hours after such issuance unless such person had
25 actual notice of the issuance of such proclamation. Fisheries resources taken or
26 possessed by any person in violation of any proclamation may be seized regardless of
27 whether such person had actual notice of the proclamation. A permanent file of the
28 text of all proclamations shall be maintained in the office of the Fisheries Director.
29 Certified copies of proclamations are entitled to judicial notice in any civil or
30 criminal proceeding.

31 The Fisheries Director must make every reasonable effort to give actual notice of
32 the terms of any proclamation to the persons who may be affected thereby. ~~Such~~
33 Reasonable effort includes press releases to communications media, posting of notices
34 at docks and other places where persons affected may gather, personal
35 communication by inspectors and other agents of the Fisheries Director, and such
36 other measures designed to reach the persons who may be affected. The Fisheries
37 Director may determine, on a case-by-case basis and at the Fisheries Director's sole
38 discretion, that a proclamation did not apply to an individual licensee when an act of
39 God occurred that prevented the licensee from receiving notice of the proclamation."

40 Section 4.4. The Marine Fisheries Commission shall develop a Violation
41 Points System applicable to the fishing licenses of all persons who violate marine
42 fisheries statutes or rules. In developing this system, the Marine Fisheries
43 Commission shall consider the recommendations made in the Final Report of the
44 Moratorium Steering Committee and the suspension, revocation, and reissuance

1 procedures under G.S. 113-166. The Marine Fisheries Commission shall also develop
2 an implementation schedule for the Violation Points System. The Marine Fisheries
3 Commission shall report to the Joint Legislative Commission on Seafood and
4 Aquaculture no later than 1 July 1999, on the development of the Violation Points
5 System and the implementation schedule.

6

7 **PART V. COMMERCIAL FISHING LICENSES; TRANSITIONAL PROVISIONS**

8

9 Section 5.1. Chapter 113 of the General Statutes is amended by adding a
10 new Article to read:

11

"ARTICLE 14A.

12

"Coastal and Estuarine Commercial Fishing Licenses.

13

"§ 113-168. Definitions.

14

As used in this Article:

15

(1) 'Commercial fishing operation' means any activity preparatory to,
16 during, or subsequent to the taking of any fish, the taking of which
17 is subject to regulation by the Commission, either with the use of
18 commercial fishing equipment or gear, or by any means if the
19 purpose of the taking is to obtain fish for sale. Commercial fishing
20 operation includes taking people fishing for hire.

21

(2) 'Commission' means the Marine Fisheries Commission.

22

(3) 'Division' means the Division of Marine Fisheries in the
23 Department of Environment, Health, and Natural Resources.

24

(4) 'License year' means the period beginning 1 July of a year and
25 ending on 30 June of the following year.

26

(5) 'North Carolina resident' means a person is a resident within the
27 meaning of G.S. 113-130(4) and who filed a State income tax
28 return as a resident of the State for the previous calendar or tax
29 year.

30

(6) 'RCGL' means Recreational Commercial Gear License.

31

(7) 'RSCFL' means Retired Standard Commercial Fishing License.

32

(8) 'SCFL' means Standard Commercial Fishing License.

33

"§ 113-168.1. General provisions for commercial licenses and endorsements.

34

(a) Duration, Fees. -- All licenses and endorsements issued under this Article
35 expire on the last day of the license year. An applicant for any license shall pay the
36 full annual license fee at the time the applicant applies for the license regardless of
37 when application is made.

38

(b) Licenses Required to Engage in Commercial Fishing. -- It is unlawful for any
39 person to engage in a commercial fishing operation without being licensed as
40 required by this Article. It is unlawful for anyone to command a vessel engaged in a
41 commercial fishing operation without complying with the provisions of this Article
42 and rules adopted by the Commission under this Article.

43

(c) Licenses and Endorsements Available for Inspection. -- It is unlawful for any
44 person to engage in a commercial fishing operation in the State without having ready

1 at hand for inspection all currently valid licenses and endorsements required under
2 this Article. To comply with this subsection, a person must have either a currently
3 valid (i) license issued in the person's true name and bearing the person's current
4 address or (ii) an assignment of a SCFL authorized under this Article. A licensee or
5 assignee shall not refuse to exhibit the licenses and endorsements upon the request of
6 an inspector or any other law enforcement officer authorized to enforce federal or
7 State laws, regulations, or rules relating to marine fisheries.

8 (d) No Dual Residency. -- It is unlawful for any person to hold any currently valid
9 license issued under this Article to the person as a North Carolina resident if that
10 person holds any currently valid commercial or recreational fishing license issued by
11 another state to the person as a resident of that state.

12 (e) License Format. -- Licenses issued under this Article shall be issued in the
13 name of the applicant. Each license shall show the type of license and any
14 endorsements; the name, address, and date of birth of the licensee; the date on which
15 the license is issued; the date on which the license expires; and any other information
16 that the Commission or the Division determines to be necessary to accomplish the
17 purposes of this Subchapter.

18 **§ 113-168.2. Standard Commercial Fishing License.**

19 (a) Requirement. -- No person shall engage in a commercial fishing operation in
20 the coastal fishing waters without holding a Standard Commercial Fishing License
21 issued by the Division. A person who works as a member of the crew of a vessel
22 engaged in a commercial fishing operation under the direction of a person who holds
23 a valid SCFL or RSCFL is not required to hold a SCFL or RSCFL.

24 (b) Purchase; Renewal. -- A person may purchase a SCFL at any office of the
25 Division. The SCFL and endorsements may be renewed by mail by forwarding a
26 completed application, including applicable fees, to the Division's Morehead City
27 office. Any person who is issued a SCFL or a RSCFL is eligible to renew the SCFL
28 or RSCFL and any endorsements if the SCFL or RSCFL has not been suspended or
29 revoked.

30 (c) Replacement License. -- A licensee may obtain a replacement license for a lost
31 or destroyed license, including all endorsements, upon receipt of a proper application
32 in the offices of the Division together with a ten-dollar (\$10.00) fee. The Division
33 shall not accept an application for a replacement license unless the Division
34 determines that the applicant's current license has not been suspended or revoked. A
35 copy of an application duly filed with the Division shall serve as the license until the
36 replacement license has been received. The Commission may provide by rule for the
37 replacement of lost, obliterated, destroyed, or otherwise illegible license plates or
38 decals upon tender of the original license receipt or upon other evidence that the
39 Commission deems sufficient.

40 (d) Nonresident Certification Required. -- Persons obtaining licenses who are not
41 North Carolina residents shall certify that their conviction record in their state of
42 residence is such that they would not be denied a license under the standards in G.S.
43 113-171. When a license application is denied for violations of fisheries laws,
44 whether the violations occurred in North Carolina or another jurisdiction, the license

1 fees shall not be refunded and shall be applied to the costs of processing the
2 application.

3 (e) Fees. -- The annual SCFL fee for a North Carolina resident shall be two
4 hundred dollars (\$200.00). The annual SCFL fee for a person who is not a resident
5 of North Carolina shall be two thousand dollars (\$2,000) or the amount charged to a
6 North Carolina resident in the nonresident's state, whichever is lesser.

7 (f) Assignment. -- The holder of a SCFL may assign the SCFL to any individual,
8 provided that a SCFL or RSCFL issued to the individual is not suspended or
9 revoked. If the SCFL is endorsed for one or more vessels, each vessel endorsement
10 may be assigned, independently of the SCFL, to another holder of a SCFL. An
11 assignment of a SCFL vessel endorsement shall be valid only for use by a holder or
12 assignee of a SCFL in the operation of the vessel for which the SCFL is endorsed.
13 The assignment shall be in writing on a form provided by the Division and shall
14 include the name of the licensee, the license number, any endorsements, the
15 assignee's name and mailing address, and the duration of the assignment. A
16 notarized copy of the assignment shall be filed with the Division. The assignee shall
17 carry the assignment on the assignee's person and have the assignment available for
18 inspection at all times while using the vessel. The assignment may be revoked by: (i)
19 written notification by the assignor that the assignment has been terminated; or (ii) a
20 determination by the Division that the assignee is operating in violation of the terms
21 and conditions applicable to the assignment.

22 (g) Transfer. -- A SCFL may be transferred:

- 23 (1) By the license holder to a member of the license holder's
24 immediate family.
- 25 (2) By the State to the estate of the license holder upon the death of
26 the license holder.
- 27 (3) By a surviving family member to whom a license was transferred
28 pursuant to subdivision (2) of this subsection to a third-party
29 purchaser of the license holder's fishing vessel upon the death of
30 the license holder.
- 31 (4) By the license holder to a third-party purchaser of the license
32 holder's fishing vessel upon retirement of the license holder from
33 commercial fishing.
- 34 (5) Under any other circumstance authorized by rule of the
35 Commission.

36 (h) Identification as Commercial Fisherman. -- The receipt of a current and valid
37 SCFL, RSCFL, or shellfish license issued by the Division shall serve as proper
38 identification of the licensee as a commercial fisherman.

39 (i) Record-Keeping Requirements. -- The fish dealer shall record each transaction
40 at the time and place of landing on a form provided by the Division. The transaction
41 form shall include the information on the SCFL, RSCFL, or shellfish license, the
42 quantity of the fish, the identity of the fish dealer, and other information as the
43 Division deems necessary to accomplish the purposes of this Subchapter. The person
44 who records the transaction shall provide a completed copy of the transaction form to

1 the Division and to the other party of the transaction. The Division's copy of each
2 transaction form shall be transmitted to the Division by the fish dealer on or before
3 the tenth day of the month following the transaction.

4 **"§ 113-168.3. Retired Standard Commercial Fishing License.**

5 (a) SCFL Provisions Applicable. -- Except as provided in this section, the
6 provisions set forth in G.S. 113-168.2 concerning the SCFL shall apply to the RSCFL.

7 (b) Eligibility; Fee. -- Any person who is 65 years of age or older and who is
8 otherwise eligible for a SCFL under G.S. 113-168.2 may purchase a RSCFL for an
9 annual fee of one hundred dollars (\$100.00). Proof of age shall be supplied at the
10 time the application is made.

11 (c) Transfer. -- The holder of a RSCFL may transfer the RSCFL as provided in
12 G.S. 113-168.2 or, upon retirement from commercial fishing, to a third-party
13 purchaser of the RSCFL holder's fishing vessel. If the third-party purchaser is less
14 than 65 years of age, that purchaser shall pay the fee for the SCFL set forth in G.S.
15 113-168.2.

16 (d) Assignment. -- The RSCFL shall not be assignable.

17 **"§ 113-168.4. Regulations concerning the sale of fish.**

18 (a) Except as otherwise provided in this section, it is unlawful for any person who
19 takes or lands any species of fish under the authority of the Commission from coastal
20 fishing waters by any means whatever, including mariculture operations, to sell, offer
21 for sale, barter or exchange for merchandise these fish, without holding a current and
22 valid SCFL or RSCFL issued under G.S. 113-168.2 or G.S. 113-168.3, or a valid
23 shellfish license issued under G.S. 113-169.2. It is unlawful for fish dealers to buy fish
24 unless the seller presents a current and valid SCFL, RSCFL, or shellfish license at the
25 time of the transaction. Any subsequent sale of fish shall be subject to the licensing
26 requirements of fish dealers under G.S. 113-169.3.

27 (b) It is unlawful for any person licensed under this section to sell fish taken
28 outside the territorial waters of the State or to sell fish taken from coastal fishing
29 waters except to:

30 (1) Fish dealers licensed under G.S. 113-169.3; or

31 (2) The public, if the seller is also licensed as a fish dealer under G.S.
32 113-169.3.

33 (c) A person who organizes a nonprofit recreational fishing tournament may sell
34 fish taken in connection with the tournament pursuant to a recreational fishing
35 tournament license to sell fish. A person who organizes a nonprofit recreational
36 fishing tournament may obtain a recreational fishing tournament license to sell fish
37 upon application to the Division and payment of a fee of one hundred dollars
38 (\$100.00). A recreational fishing tournament is an organized fishing competition
39 occurring within a specified time period not to exceed one week and that is not a
40 commercial fishing operation. Proceeds derived from the sale of fish may be used
41 only for charitable purposes.

42 **"§ 113-168.5. License endorsements for Standard Commercial Fishing License and**
43 **Retired Standard Commercial Fishing License.**

1 (a) A SCFL or RSCFL may be endorsed to authorize the use of a vessel in a
2 commercial fishing operation.

3 (b) Vessel Endorsements. --

4 (1) As used in this subsection, a North Carolina vessel is a vessel that
5 has its primary situs in the State. A vessel has its primary situs in
6 the State if:

7 a. A certificate of number has been issued for the vessel under
8 Article 1 of Chapter 75A of the General Statutes;

9 b. A certificate of title has been issued for the vessel under
10 Article 4 of Chapter 75A of the General Statutes; or

11 c. A certification of documentation has been issued for the
12 vessel that lists a home port in the State under 42 U.S.C. §
13 12101, et seq., as amended.

14 (2) It is unlawful to use a vessel in a commercial fishing operation in
15 the coastal fishing waters of the State without a vessel endorsement
16 of the license required under this Article for that commercial
17 fishing operation. It is unlawful to use a North Carolina vessel to
18 land or sell fish in the State that are taken during a commercial
19 fishing operation outside the coastal fishing waters of the State
20 without a vessel endorsement of the license required under this
21 Article for that commercial fishing operation. No endorsement is
22 required, however, for a vessel of any length that does not have a
23 motor if the vessel is used only in connection with another vessel
24 for which the required license has been properly endorsed.

25 (3) The fee for a vessel endorsement shall be determined by the length
26 of the vessel and shall be in addition to the fee for a SCFL,
27 RSCFL, or shellfish license. The length of a vessel shall be
28 determined by measuring the distance between the ends of the
29 vessel along the deck and through the cabin, excluding the sheer.
30 The fee for a vessel endorsement is:

31 a. One dollar (\$1.00) per foot for a vessel not over 18 feet in
32 length.

33 b. One dollar and fifty cents (\$1.50) per foot for a vessel over
34 18 feet but not over 38 feet in length.

35 c. Three dollars (\$3.00) per foot for a vessel over 38 feet but
36 not over 50 feet in length.

37 d. Six dollars (\$6.00) per foot for a vessel over 50 feet in
38 length.

39 (4) A vessel endorsement may be assigned as provided in G.S.
40 113-168.2(f).

41 (5) When the owner of a vessel for which a SCFL, RSCFL, or shellfish
42 license has been endorsed transfers ownership of the vessel to a
43 holder of a SCFL, RSCFL, or shellfish license, the vessel
44 endorsement may be transferred from the former owner's SCFL,

1 RSCFL, or shellfish license to the new owner's SCFL, RSCFL, or
2 shellfish license upon the request of the new owner. The new
3 owner of the vessel shall notify the Division of the change in
4 ownership and request that the vessel endorsement be transferred
5 within 30 days of the date on which the transfer of ownership
6 occurred. The notification of a change in the ownership of a
7 vessel and request that the vessel endorsement be transferred shall
8 be made on a form provided by the Division and shall be
9 accompanied by satisfactory proof of the transfer of vessel
10 ownership. Transfer of vessel ownership may be proven by a
11 notarized copy of: (i) the bill of sale; (ii) a temporary vessel
12 registration; or (iii) a vessel documentation transfer.

13 (c) Menhaden Endorsements. -- Except as provided in G.S. 113-169, it is unlawful
14 to use a vessel to take menhaden by purse seine in the coastal fishing waters of the
15 State, to land menhaden in the State, or to sell menhaden from a vessel in the State
16 without obtaining a menhaden endorsement of a SCFL or RSCFL. The fee for a
17 menhaden endorsement shall be two dollars (\$2.00) per ton, based on gross tonnage
18 as determined by the custom house measurement for the mother ship. The
19 menhaden endorsement shall be required for the mother ship but no separate
20 endorsement shall be required for a purse boat carrying a purse seine. The
21 application for a menhaden endorsement must state the name of the person in
22 command of the vessel. Upon a change in command of a menhaden vessel, the
23 owner must notify the Division in writing within 30 days.

24 (d) Shellfish Endorsement for North Carolina Residents. -- The Division shall
25 issue a shellfish endorsement of a SCFL or RSCFL to a North Carolina resident at
26 no charge.

27 **"§ 113-169. Menhaden license for nonresidents not eligible for a SCFL.**

28 A person who is not a resident of North Carolina, who is not eligible for a SCFL
29 under this Article, and who only seeks to engage in menhaden fishing is eligible to
30 purchase a menhaden license for nonresidents. The fee for the menhaden license for
31 nonresidents shall be two dollars (\$2.00) per ton, gross tonnage, customhouse
32 measurements for the mother ship. The menhaden license for nonresidents shall be
33 required for the mother ship to take, land, or sell menhaden in North Carolina taken
34 by purse seine. No separate endorsement shall be required for a purse boat carrying
35 a purse seine. The application for a menhaden license for nonresidents must state the
36 name of the person in command of the vessel. Upon change in command of a
37 menhaden vessel, the owner must notify the Division within 30 days.

38 **"§ 113-169.1. Other commercial licenses and permits authorized by the Commission.**

39 The Commission may adopt rules to establish licenses or permits as set forth in this
40 section. Licenses or permits shall be issued upon the payment of fees as prescribed
41 by the Commission in its duly adopted rules at a rate to be established by the
42 Commission. The fee rate for licenses or permits authorized under this section shall,
43 at a minimum, be adequate to compensate the Division for the actual and
44 administrative cost associated with the conservation and management of the fishery.

1 (1) Crew licenses. -- The Commission may adopt rules to establish an
2 individual crew license for persons working aboard a vessel
3 engaged in a commercial fishing operation at a rate not to exceed
4 one hundred dollars (\$100.00) per license.

5 (2) Permits. -- The Commission may adopt rules to establish permits
6 for gear, equipment, and specialized activities at a rate not to
7 exceed fifty dollars (\$50.00) per permit. The Commission may
8 require permits for commercial fishing operations that do not
9 involve the use of a vessel. The Commission may require that a
10 person obtain a special permit prior to transplanting oysters or
11 clams.

12 **"§ 113-169.2. Shellfish license for North Carolina residents without a SCFL.**

13 (a) License or Endorsement Necessary to Take or Sell Shellfish. -- It is unlawful
14 for an individual to take shellfish from the public grounds of the State by mechanical
15 means or for commercial use by any means without holding either a shellfish license
16 or a shellfish endorsement of a SCFL or RSCFL. A North Carolina resident who
17 seeks only to take and sell shellfish shall be eligible to purchase a shellfish license
18 without holding a SCFL or RSCFL. The license includes the privilege to sell shellfish
19 to a licensed fish dealer.

20 (b) Purchase; Renewal. -- A person may purchase a shellfish license at any office
21 of the Division. The shellfish license and endorsements may be renewed by mail by
22 forwarding a completed application, including applicable fees, to the Division's
23 Morehead City Office. Any person who is issued a shellfish license is eligible to
24 renew the shellfish license and any endorsements if the shellfish license has not been
25 suspended or revoked.

26 (c) Fees. -- Shellfish licenses shall be issued annually upon payment of a fee of
27 twenty-five dollars (\$25.00) upon proof that the license applicant is a North Carolina
28 resident: Provided, that persons under 16 years of age are exempt from the license
29 requirements of this section if accompanied by a parent, grandparent, or guardian
30 who is in compliance with the requirements of this section or if in possession of a
31 parent's, grandparent's, or guardian's shellfish license.

32 (d) License Available for Inspection. -- It is unlawful for any individual to take
33 shellfish for commercial use from the public grounds of the State without having
34 ready at hand for inspection a current and valid shellfish license issued to the licensee
35 personally and bearing the licensee's correct name and address. It is unlawful for any
36 individual taking or possessing freshly taken shellfish to refuse to exhibit the
37 individual's license upon the request of an officer authorized to enforce the fishing
38 laws.

39 (e) Vessel Endorsement Required. -- A license holder under this section shall be
40 required to purchase a vessel endorsement under G.S. 113-168.5 if a vessel is used in
41 the take or sale of shellfish. A vessel endorsement of a shellfish license does not
42 authorize the use of the vessel for any commercial fishing operation other than the
43 taking or selling of shellfish.

1 (f) Name or Address Change. -- In the event of a change in name or address or
2 upon receipt of an erroneous shellfish license, the licensee shall, within 30 days, apply
3 for a replacement shellfish license bearing the correct name and address. Upon a
4 showing by the individual that the name or address change occurred within the past
5 30 days, the trial court or prosecutor shall dismiss any charges brought pursuant to
6 this subsection.

7 (g) Transfer Prohibited. -- It is unlawful for an individual issued a shellfish license
8 to transfer or offer to transfer the license, either temporarily or permanently, to
9 another. It is unlawful for an individual to secure or attempt to secure a shellfish
10 license from a source not authorized by the Commission.

11 (h) Limitation on Taking Shellfish Without a License. --

12 (1) A person who is not required to obtain a shellfish license under
13 subsection (a) of this section shall not take more than:

14 a. One bushel of oysters per day.

15 b. One-half bushel of scallops per day.

16 c. One hundred clams per day.

17 (2) Two or more persons who are not required to obtain a shellfish
18 license under subsection (a) of this section and who are using a
19 vessel to take shellfish shall not take more than:

20 a. Two bushels of oysters per day.

21 b. One bushel of scallops per day.

22 c. Two hundred clams per day.

23 **§ 113-169.3. Licenses for fish dealers.**

24 (a) Eligibility. -- A fish dealer license shall be issued to a North Carolina resident
25 upon receipt of a proper application in the Morehead City Office of the Division
26 together with all license fees including the total number of dealer categories set forth
27 in this section. The license shall be issued in the name of the applicant and shall
28 include all dealer categories on the license.

29 (b) Application for License. -- Applications shall not be accepted from persons
30 ineligible to hold a license issued by the Division, including any applicant whose
31 license is suspended or revoked on the date of the application. The applicant shall be
32 provided with a copy of the application marked received. The copy shall serve as the
33 fish dealer's license until the license issued by the Division is received, or the
34 Division determines that the applicant is ineligible to hold a license. Where an
35 applicant does not have an established location for transacting the fisheries business
36 within the State, the license application shall be denied unless the applicant satisfies
37 the Secretary that his residence, or some other office or address within the State, is a
38 suitable substitute for an established location and that records kept in connection
39 with licensing, sale, and purchase requirements will be available for inspection when
40 necessary. Fish dealers' licenses are issued on a fiscal year basis upon payment of a
41 fee as set forth herein upon proof, satisfactory to the Secretary, that the license
42 applicant is a North Carolina resident.

43 (c) License Requirement. -- Except as otherwise provided in this section, it is
44 unlawful for any person not licensed pursuant to this article:

1 (1) To buy fish for resale from any person involved in a commercial
2 fishing operation that takes any species of fish from coastal fishing
3 waters. For purposes of this subdivision, a retailer who purchases
4 fish from a fish dealer shall not be liable if the fish dealer has not
5 complied with the licensing requirements of this section;

6 (2) To sell fish to the public; or

7 (3) To sell to the public any species of fish under the authority of the
8 Commission taken from coastal fishing waters.

9 Any person subject to the licensing requirements of this section is a fish dealer.
10 Any person subject to the licensing requirements of this section shall obtain a
11 separate license for each physical location conducting activities required to be
12 licensed under this section.

13 (d) Exceptions to License Requirements. -- The Commission may adopt rules to
14 implement this subsection including rules to clarify the status of the listed classes of
15 exempted persons, require submission of statistical data, and require that records be
16 kept in order to establish compliance with this section. Any person not licensed
17 pursuant to this section is exempt from the licensing requirements of this section if all
18 fish handled within any particular licensing category meet one or more of the
19 following requirements:

20 (1) The fish are sold by persons whose dealings in fish are primarily
21 educational, scientific, or official, and who have been issued a
22 permit by the Division that authorizes the educational, scientific, or
23 official agency to sell fish taken or processed in connection with
24 research or demonstration projects;

25 (2) The fish are sold by individual employees of fish dealers when
26 transacting the business of their duly licensed employer;

27 (3) The fish are shipped to a person by a dealer from without the
28 State;

29 (4) The fish are of a kind the sale of which is regulated exclusively by
30 the Wildlife Resources Commission; or

31 (5) The fish are purchased from a licensed dealer.

32 (e) Application Fee for New Fish Dealers. -- An applicant for a new fish dealer
33 license shall pay a nonrefundable application fee of fifty dollars (\$50.00) in addition
34 to the license category fees set forth in this section.

35 (f) License Category Fees. -- Every fish dealer subject to licensing requirements
36 shall secure an annual license at each established location for each of the following
37 activities transacted there, upon payment of the fee set out:

38 (1) Dealing in oysters: \$50.00;

39 (2) Dealing in scallops: \$50.00;

40 (3) Dealing in clams: \$50.00;

41 (4) Dealing in hard or soft crabs: \$50.00;

42 (5) Dealing in shrimp, including bait: \$50.00;

43 (6) Dealing in finfish, including bait: \$50.00;

1 (7) Operating menhaden or other fish-dehydrating or oil-extracting
2 processing plants: \$50.00; or

3 (8) Consolidated license (all categories): \$300.00.

4 Any person subject to fish dealer licensing requirements who deals in fish not
5 included in the above categories shall secure a finfish dealer license. The Commission
6 may adopt rules implementing and clarifying the dealer categories of this subsection.
7 Bait operations shall be licensed under either the finfish or shrimp dealer license
8 categories.

9 (g) License Format. -- The format of the license shall include the name of the
10 licensee, date of birth, name and physical address of each business location,
11 expiration date of the license, and any other information the Division deems
12 necessary to accomplish the purposes of this Subchapter.

13 (h) Application for Replacement License. -- A replacement license shall only be
14 obtained from an office of the Division. The Division shall not accept an application
15 for a replacement license unless the Division determines that the applicant's current
16 license has not been suspended or revoked. A copy of an application duly filed with
17 the Division shall serve as the license until the replacement license has been received.

18 (i) Purchase and Sale of Fish. -- It is unlawful for a fish dealer to buy fish unless
19 the seller possesses a current and valid SCFL, RSCFL, shellfish license, menhaden
20 license for nonresidents, or a special fisheries sale permit issued under G.S.
21 113-168.4(c), and the dealer records the transaction consistent with the
22 record-keeping requirements of G.S. 113-168.2(i). It is unlawful for any person to
23 purchase, possess, or sell fish taken from coastal fishing waters in violation of this
24 Subchapter or the rules adopted by the Commission implementing this Subchapter.

25 (j) Transfer Prohibited. -- Any fish dealer license issued under this section is
26 nontransferable. It is unlawful to use a fish dealer license issued to another person in
27 the sale or attempted sale of fish or for a licensee to lend or transfer a fish dealer
28 license for the purpose of circumventing the requirements of this section.

29 **"§ 113-169.4. Licensing of ocean fishing piers; fees.**

30 (a) Every manager of an ocean fishing pier within the coastal fishing waters who
31 charges the public a fee to fish in any manner from the pier shall secure a current
32 and valid pier license from the Division. An application for a pier license shall
33 disclose the names of all parties involved in the pier operations, including the owner
34 of the property, owner of the pier if different, and all leasehold or other corporate
35 arrangements, and all persons with a substantial financial interest in the pier.

36 (b) Within 30 days following a change of ownership of a pier, or a change as to
37 the manager, the manager or new manager shall secure a replacement pier license
38 from the Division. The replacement license is issued without charge.

39 (c) Pier licenses are issued upon payment of fifty cents (50¢) per linear foot, to
40 the nearest foot, that the pier extends into coastal fishing waters beyond the mean
41 high waterline. The length of the pier shall be measured to include all extensions of
42 the pier.

43 (d) The manager who secures the pier license shall be the individual with the duty
44 of executive-level supervision of pier operations.

1 **"§ 113-169.5. Land or sell license; vessels fishing beyond territorial waters.**

2 (a) Persons aboard vessels not having their primary situs in the State that are
3 carrying a cargo of fish taken outside the waters of the State may land or sell their
4 catch in the State by purchasing a land or sell license as set forth in this section with
5 respect to the vessel in question. The Commission may by rule modify the land or sell
6 licensing procedure in order to devise an efficient and convenient procedure for
7 licensing out-of-state vessels to only land, or after landing to permit sale of cargo.

8 (b) The fee for a land or sell license for a vessel not having its primary situs in
9 North Carolina is two hundred dollars (\$200.00), or an amount equal to the
10 nonresident fee charged by the nonresident's state, whichever is greater. Persons
11 aboard vessels having a primary situs in a jurisdiction that would allow North
12 Carolina vessels without restriction to land or sell their catch, taken outside the
13 jurisdiction, may land or sell their catch in the State without complying with this
14 section if the persons are in possession of a valid license from their state of residence.

15 **"§ 113-170. Exportation and importation of fish and equipment.**

16 The Commission may adopt rules governing the importation and exportation of
17 fish, and equipment that may be used in taking or processing fish, as necessary to
18 enhance the conservation of marine and estuarine resources of the State. These rules
19 may regulate, license, prohibit, or restrict importation into the State and exportation
20 from the State of any and all species of fish that are native to coastal fishing waters or
21 may thrive if introduced into these waters.

22 **"§ 113-170.1. Nonresidents reciprocal agreements.**

23 Persons who are not North Carolina residents are not entitled to obtain licenses
24 under the provisions of this Article except as provided in this section. Residents of
25 jurisdictions that sell commercial fishing licenses to North Carolina residents are
26 entitled to North Carolina commercial fishing licenses under the provisions of G.S.
27 113-168.2. Licenses may be restricted in terms of area, gear, and fishery by the
28 Commission so that the nonresidents are licensed to engage in North Carolina
29 fisheries on the same or similar terms that North Carolina residents can be licensed to
30 engage in the fisheries of other jurisdictions. The Secretary may enter into reciprocal
31 agreements with other jurisdictions as necessary to allow nonresidents to obtain
32 commercial fishing licenses in the State subject to the foregoing provisions.

33 **"§ 113-170.2. Fraud or deception as to licenses, permits, or records.**

34 (a) It is unlawful for any person to give any false information or willfully to omit
35 giving required information to the Division or any license agent when the information
36 is material to the securing of any license or permit under this Article. It is unlawful
37 to falsify, fraudulently alter, or counterfeit any license, permit, identification, or
38 record to which this Article applies or otherwise practice any fraud or deception
39 designed to evade the provisions of this Article or reasonable administrative
40 directives made under the authority of this Article.

41 (b) A violation of this section is punishable by a fine of not less than one hundred
42 dollars (\$100.00) nor more than five hundred dollars (\$500.00).

43 **"§ 113-170.3. Record-keeping requirements.**

1 (a) The Commission may require all licensees under this Article to keep and to
2 exhibit upon the request of an authorized agent of the Department records and
3 accounts as may be necessary to the equitable and efficient administration and
4 enforcement of this Article. In addition, licensees may be required to keep additional
5 information of a statistical nature or relating to location of catch as may be needed to
6 determine conservation policy. Records and accounts required to be kept must be
7 preserved for inspection for not less than three years.

8 (b) It is unlawful for any licensee to refuse or to neglect without justifiable excuse
9 to keep records and accounts as may be reasonably required. The Department may
10 distribute forms to licensees to aid in securing compliance with its requirements, or it
11 may inform licensees of requirements in other effective ways such as distributing
12 memoranda and sending agents of the Department to consult with licensees who have
13 been remiss. Detailed forms or descriptions of records, accounts, collection and
14 inspection procedures, and the like that reasonably implement the objectives of this
15 Article need not be embodied in rules of the Commission in order to be validly
16 required.

17 (c) The following records collected and compiled by the Department shall not be
18 considered public records within the meaning of Chapter 132 of the General Statutes,
19 but shall be confidential and shall be used only for the equitable and efficient
20 administration and enforcement of this Article or for determining conservation
21 policy, and shall not be disclosed except when required by the order of a court of
22 competent jurisdiction: all records, accounts, and reports that licensees are required
23 by the Commission to make, keep, and exhibit pursuant to the provisions of this
24 section, and all records, accounts, and memoranda compiled by the Department from
25 records, accounts, and reports of licensees and from investigations and inspections,
26 containing data and information concerning the business and operations of licensees
27 reflecting their assets, liabilities, inventories, revenues, and profits; the number,
28 capacity, capability, and type of fishing vessels owned and operated; the type and
29 quantity of fishing gear used; the catch of fish or other seafood by species in numbers,
30 size, weight, quality, and value; the areas in which fishing was engaged in; the
31 location of catch; the time of fishing, number of hauls, and the disposition of the fish
32 and other seafood. The Department may compile statistical information in any
33 aggregate or summary form that does not directly or indirectly disclose the identity of
34 any licensee who is a source of the information, and any compilation of statistical
35 information by the Department shall be a public record open to inspection and
36 examination by any person, and may be disseminated to the public by the
37 Department.

38 **"§ 113-170.4. Rules as to possession, transportation, and disposition of fisheries**
39 **resources.**

40 The Commission may adopt rules governing possession, transportation, and
41 disposition of fisheries resources by all persons, including those not subject to fish
42 dealer licensing requirements, in order that inspectors may adequately distinguish
43 regulated coastal fisheries resources from those not so regulated and enforce the
44 provisions of this Article equitably and efficiently. These rules may include

1 requirements as to giving notice, filing declarations, securing permits, marking
2 packages, and the like.

3 "§ 113-170.5. Violations with respect to coastal fisheries resources.

4 It is unlawful to take, possess, transport, process, sell, buy, or in any way deal in
5 coastal fisheries resources without conforming with the provisions of this Article or of
6 rules adopted under the authority of this Article.

7 "§ 113-171. Suspension, revocation, and reissuance of licenses.

8 (a) Upon receipt of reliable notice that a person licensed under this Article has
9 had imposed against the person a conviction of a criminal offense within the
10 jurisdiction of the Department under the provisions of this Subchapter or of rules of
11 the Commission adopted under the authority of this Subchapter, the Secretary must
12 suspend or revoke all licenses held by the person in accordance with the terms of this
13 section. Reliable notice includes information furnished the Secretary in prosecution
14 or other reports from inspectors. As used in this section, a conviction includes a plea
15 of guilty or nolo contendere, any other termination of a criminal prosecution
16 unfavorably to the defendant after jeopardy has attached, or any substitute for
17 criminal prosecution whereby the defendant expressly or impliedly confesses the
18 defendant's guilt. In particular, procedures whereby bond forfeitures are accepted in
19 lieu of proceeding to trial and cases indefinitely continued upon arrest of judgment or
20 prayer for judgment continued are deemed convictions. The Secretary may act to
21 suspend or revoke licenses upon the basis of any conviction in which:

22 (1) No notice of appeal has been given;

23 (2) The time for appeal has expired without an appeal having been
24 perfected; or

25 (3) The conviction is sustained on appeal. Where there is a new trial,
26 finality of any subsequent conviction will be determined in the
27 manner set out above.

28 (b) The Secretary must initiate an administrative procedure designed to give the
29 Secretary systematic notice of all convictions of criminal offenses by licensees
30 covered by subsection (a) of this section above and keep a file of all convictions
31 reported. Upon receipt of notice of conviction, the Secretary must determine whether
32 it is a first, a second, a third, or a fourth or subsequent conviction of some offense
33 covered by subsection (a). In the case of second convictions, the Secretary must
34 suspend all licenses issued to the licensee for a period of 10 days. In the case of third
35 convictions, the Secretary must suspend all licenses issued to the licensee for a period
36 of 30 days. In the case of fourth or subsequent convictions, the Secretary must
37 revoke all licenses issued to the licensee. Where several convictions result from a
38 single transaction or occurrence, they are to be treated as a single conviction so far as
39 suspension or revocation of the licenses of any licensee is concerned. Anyone
40 convicted of taking or of knowingly possessing, transporting, buying, selling, or
41 offering to buy or sell oysters or clams from areas closed because of suspected
42 pollution will be deemed by the Secretary to have been convicted of two separate
43 offenses on different occasions for license suspension or revocation purposes.

1 (c) Where a license has been suspended or revoked, the former licensee is not
2 eligible to apply for reissuance of license or for any additional license authorized in
3 this Article during the suspension or revocation period. Licenses must be returned to
4 the licensee by the Secretary or the Secretary's agents at the end of a period of
5 suspension. Where there has been a revocation, application for reissuance of license
6 or for an additional license may not be made until six months following the date of
7 revocation. In such case of revocation, the eligible former licensee must satisfy the
8 Secretary that the licensee will strive in the future to conduct the operations for
9 which the license is sought in accord with all applicable laws and rules. Upon the
10 application of an eligible former licensee after revocation, the Secretary, in the
11 Secretary's discretion, may issue one license sought but not another, as deemed
12 necessary to prevent the hazard of recurring violations of the law.

13 (d) Upon receiving reliable information of a licensee's conviction of a second or
14 subsequent criminal offense covered by subsection (a) of this section, the Secretary
15 shall promptly cause the licensee to be personally served with written notice of
16 suspension or revocation, as the case may be. The written notice may be served upon
17 any responsible individual affiliated with the corporation, partnership, or association
18 where the licensee is not an individual. The notice of suspension or revocation may
19 be served by an inspector or other agent of the Department, must state the ground
20 upon which it is based, and takes effect immediately upon personal service. The
21 agent of the Secretary making service shall then or subsequently, as may be feasible
22 under the circumstances, collect all license certificates and plates and other forms or
23 records relating to the license as directed by the Secretary. It is unlawful for any
24 licensee willfully to evade the personal service prescribed in this subsection.

25 (e) A licensee served with a notice of suspension or revocation may obtain an
26 administrative review of the suspension or revocation by filing a petition for a
27 contested case under G.S. 150B-23 within 20 days after receiving the notice. The
28 only issue in the hearing shall be whether the licensee was convicted of a criminal
29 offense for which a license must be suspended or revoked. A license remains
30 suspended or revoked pending the final decision by the Secretary.

31 (f) If the Secretary refuses to reissue the license or issue an additional license to
32 an applicant whose license was revoked, the applicant may contest the decision by
33 filing a petition for a contested case under G.S. 150B-23 within 20 days after the
34 Secretary makes the decision. The Commission shall make the final agency decision
35 in a contested case under this subsection. An applicant whose license is denied
36 under this subsection may not reapply for the same license for at least six months.

37 (g) The Commission may adopt rules to provide for the disclosure of the identity
38 of any individual or individuals in responsible positions of control respecting
39 operations of any licensee that is not an individual. For the purposes of this section,
40 individuals in responsible positions of control are deemed to be individual licensees
41 and subject to suspension and revocation requirements in regard to any applications
42 for license they may make -- either as individuals or as persons in responsible
43 positions of control in any corporation, partnership, or association. In the case of

1 individual licensees, the individual applying for a license or licensed under this
2 Article must be the real party in interest.

3 (h) In determining whether a conviction is a second or subsequent offense under
4 the provisions of this section, the Secretary may not consider convictions for:

5 (1) Offenses that occurred three years prior to the effective date of this
6 Article; or

7 (2) Offenses that occurred more than three years prior to the time of
8 the latest offense the conviction for which is in issue as a
9 subsequent conviction.

10 **"§ 113-171.1. Use of spotter planes in commercial fishing operations regulated.**

11 (a) Spotter Plane Defined. -- A 'spotter plane' is an aircraft used for aerial
12 identification of the location of fish in coastal fishing waters so that a vessel may be
13 directed to the fish.

14 (b) License. -- Before an aircraft is used as a spotter plane in a commercial fishing
15 operation, the owner or operator of the aircraft must obtain a license for the aircraft
16 from the Division. The fee for a license for a spotter plane is one hundred dollars
17 (\$100.00). An applicant for a license for a spotter plane shall include in the
18 application the identity, either by boat or by company, of the specific commercial
19 fishing operations in which the spotter plane will be used during the license year. If,
20 during the course of the license year, the aircraft is used as a spotter plane in a
21 commercial fishing operation that is not identified in the original license application,
22 the owner or operator of the aircraft shall amend the license application to add the
23 identity of the additional commercial fishing operation.

24 (c) Unlawful Activity. -- It shall be unlawful to:

25 (1) Use a spotter plane directed at food fish, except in connection with
26 a purse seine operation authorized by a rule of the Commission.

27 (2) Use or permit the use of an unlicensed spotter plane or a licensed
28 spotter plane whose license application does not identify the
29 specific commercial fishing operation involved.

30 (3) Participate knowingly in a commercial fishing operation that uses
31 an unlicensed spotter plane or a licensed spotter plane whose
32 license application does not identify the specific commercial fishing
33 operation involved.

34 (d) Violation a Misdemeanor. -- A violation of subsection (c) of this section is a
35 Class 1 misdemeanor.

36 **"§ 113-172. License agents.**

37 (a) The Secretary shall designate license agents for the Department. At least one
38 license agent shall be designated for each county that contains or borders on coastal
39 fishing waters. The Secretary may designate additional license agents in any county if
40 the Secretary determines that additional agents are needed to provide efficient service
41 to the public. The Division and license agents designated by the Secretary under this
42 section shall issue all licenses authorized under this Article in accordance with this
43 Article and the rules of the Commission. The Secretary shall require license agents
44 to enter into a contract that provides for their duties and compensation, post a bond,

1 and submit to reasonable inspections and audits. If a license agent violates any
2 provision of this Article, the rules of the Commission, or the terms of the contract,
3 the Secretary may initiate proceedings for the forfeiture of the license agent's bond
4 and may summarily suspend, revoke, or refuse to renew a designation as a license
5 agent and may impound or require the return of all licenses, moneys, record books,
6 reports, license forms and other documents, ledgers, and materials pertinent or
7 apparently pertinent to the license agency. The Secretary shall report evidence or
8 misuse of State property, including license fees, by a license agent to the State Bureau
9 of Investigation as provided by G.S. 114-15.1.

10 (b) License agents shall be compensated by adding a surcharge of one dollar
11 (\$1.00) to each license sold and retaining the surcharge. If more than one license is
12 listed on a consolidated license form, the license agent shall be compensated as if a
13 single license were sold. It is unlawful for a license agent to add more than the
14 surcharge authorized by this section to the fee for each license sold.

15 **"§ 113-173. Recreational Commercial Gear License.**

16 (a) License Required. -- Except as provided in subsection (j) of this section, it is
17 unlawful for any person to take or attempt to take fish for recreational purposes by
18 means of commercial fishing equipment or gear in coastal fishing waters without
19 holding a RCGL. As used in this section, fish are taken for recreational purposes if
20 the fish are not taken for the purpose of sale. The RCGL entitles the licensee to use
21 authorized commercial gear to take fish for personal use subject to recreational
22 quotas or limits.

23 (b) Sale of Fish Prohibited. -- It is unlawful for the holder of a RCGL or for a
24 person who is exempt under subsection (k) of this section to sell fish taken under the
25 RCGL or pursuant to the exemption.

26 (c) Authorized Commercial Gear. -- The Commission shall adopt rules
27 authorizing the use of a limited amount of commercial fishing equipment or gear for
28 recreational fishing under a RCGL. The Commission may authorize the limited use
29 of commercial gear on a uniform basis in all coastal fishing waters or may vary the
30 limited use of commercial gear within specified areas of the coastal fishing waters.
31 The Commission shall periodically evaluate and revise the authorized use of
32 commercial gear for recreational fishing. Authorized commercial gear shall be
33 identified by visible colored tags or other means specified by the Commission in
34 order to distinguish between commercial gear used in a commercial operation and
35 commercial gear used for recreational purposes.

36 (d) Purchase; Renewal. -- A RCGL may be purchased at designated offices of the
37 Division and from a license agent authorized under G.S. 113-172. A RCGL may be
38 renewed by mail.

39 (e) Replacement RCGL. -- Upon receipt of a proper application and a two-dollar
40 (\$2.00) replacement fee, the Division may issue a duplicate RCGL to replace an
41 unexpired RCGL that has been lost or destroyed.

42 (f) Duration; Fees. -- The RCGL shall be valid for a one-year period from the
43 date of purchase. The fee for a RCGL for a North Carolina resident shall be

1 thirty-five dollars (\$35.00). The fee for a RCGL for an individual who is not a North
2 Carolina resident shall be two hundred fifty dollars (\$250.00).

3 (g) RCGL Available for Inspection. -- It is unlawful for any person to engage in
4 recreational fishing by means of restricted commercial gear in the State without
5 having ready at hand for inspection a valid RCGL. A holder of a RCGL shall not
6 refuse to exhibit the RCGL upon the request of an inspector or any other law
7 enforcement officer authorized to enforce federal or State laws, regulations, or rules
8 relating to marine fisheries.

9 (h) Assignment and Transfer Prohibited. -- A RCGL is not transferable. It is
10 unlawful to buy, sell, lend, borrow, assign, or otherwise transfer a RCGL, or to
11 attempt to buy, sell, lend, borrow, assign, or otherwise transfer a RCGL.

12 (i) Reporting Requirements. -- The holder of a RCGL shall comply with the
13 biological data sampling and survey programs of the Commission and the Division.

14 (j) Exemptions. --

15 (1) A person who is under 16 years of age may take fish for
16 recreational purposes by means of authorized commercial gear
17 without holding a RCGL if the person is accompanied by a parent,
18 grandparent, or guardian who holds a valid RCGL or if the person
19 has in the person's possession a valid RCGL issued to the person's
20 parent, grandparent, or guardian.

21 (2) A person may take crabs for recreational purposes by means of one
22 or more crab pots attached to the shore along privately owned land
23 or to a privately owned pier without holding a RCGL provided
24 that the crab pots are attached with the permission of the owner of
25 the land or pier.

26 (3) A person who is on a vessel may take fish for recreational purposes
27 by means of authorized commercial gear without holding a RCGL
28 if there is another person on the vessel who holds a valid RCGL.
29 This exemption does not authorize the use of commercial gear in
30 excess of that authorized for use by the person who holds the valid
31 RCGL or, if more than one person on the vessel holds a RCGL, in
32 excess of that authorized for use by those persons."

33 Section 5.2. (a) Definitions; Citations. The definitions set out in G.S.
34 113-168 apply to this section. A citation to a provision of the General Statutes in this
35 section means that provision of the General Statutes as enacted by this act.

36 (b) Transitional Provisions. In order to effect an orderly implementation
37 of this act and the transition from the moratorium imposed by subsection (a) of
38 Section 3 of Chapter 576 of the 1993 Session Laws, Regular Session 1994, as
39 amended by Section 3 of Chapter 675 of the 1993 Session Laws, Regular Session
40 1994; subsection (a) of Section 26.5 of Chapter 507 of the 1995 Session Laws; Section
41 7 of Chapter 256 of the 1997 Session Laws; and subsection (a) of Section 6.1 of this
42 act, to the licensing provision of Article 14A of Chapter 113 of the General Statutes,
43 the provisions of this section shall apply to the issuance of licenses under Article 14A

1 of Chapter 113 of the General Statutes until all Fishery Management Plans have been
2 adopted as required by G.S. 113-182.1 and G.S. 143B-289.22.

3 (c) Temporary Cap. There is hereby imposed a temporary cap on the
4 total number of SCFLs that the Division may issue. The temporary cap equals the
5 total number of endorsements to sell fish that establish eligibility for a SCFL under
6 subsection (g) of this section plus 500 additional SCFLs, authorized by subsection (d)
7 of this section.

8 (d) 1999-2000 License Year. For the 1999-2000 license year, the
9 Commission is authorized to issue SCFLs as provided in subsection (g) of this section
10 plus an additional 500 SCFLs using the procedure set out in subsection (h) of this
11 section.

12 (e) Subsequent License Years. For license years beginning with the
13 2000-01 license year, the Commission is authorized to issue SCFLs from the pool of
14 available SCFLs as provided in subsection (f) of this section using the procedure set
15 out in subsection (h) of this section.

16 (f) Adjustment of Number of SCFLs. The number of SCFLs in the pool
17 of available SCFLs in license years beginning with the 2000-01 license year is the
18 temporary cap less the number of SCFLs that are renewed. The Commission may
19 increase or decrease the number of SCFLs that are issued from the pool of available
20 SCFLs. The Commission may increase the number of SCFLs that are issued from
21 the pool of available SCFLs up to the temporary cap. The Commission may decrease
22 the number of SCFLs that are issued from the pool of available SCFLs but may not
23 refuse to renew a SCFL that is issued during the previous license year and that has
24 not been suspended or revoked. The Commission shall increase or decrease the
25 number of SCFLs that are issued to reflect its determination as to the effort that the
26 fishery can support, based on the best available scientific evidence.

27 (g) Eligibility for SCFL. Any person who holds a valid endorsement to
28 sell fish of a vessel license on 1 July 1999 is eligible to receive a SCFL. The Division
29 shall issue a SCFL to any person who is eligible under this subsection upon receipt of
30 an application and required fees. If the person held more than one endorsement to
31 sell fish, the person is eligible to receive a SCFL for each endorsement to sell
32 previously held. Eligibility to receive a SCFL under this subsection shall expire 1
33 July 2000.

34 (h) Procedure for Issuing Additional SCFLs. The Commission shall
35 determine a procedure for issuing the 500 additional SCFLs authorized by subsection
36 (d) of this section for the 1999-2000 license year and for issuing SCFLs from the pool
37 of available SCFLs authorized by subsection (e) of this section. The procedure shall
38 set a date on which the Division will begin receiving applications and a date on
39 which the determination by lot of which applicants will receive a SCFL will be made.
40 The Commission shall develop criteria for determining eligibility for a SCFL under
41 this subsection. Criteria shall include the past involvement of the applicant and the
42 applicant's family in commercial fishing; the extent to which the applicant has relied
43 on commercial fishing for the applicant's livelihood; the extent to which the applicant
44 has complied with federal and State laws, regulations, and rules relating to coastal

1 fishing and protection of the environment; and any other factors the Commission
2 determines to be relevant. The Division shall review each application for a SCFL
3 that it receives during the application period to determine whether the applicant is
4 eligible under the eligibility criteria established by the Commission. The Division
5 shall issue SCFLs under this subsection by lot. All applicants who are determined to
6 be eligible shall have an equal chance of being issued a SCFL.

7 Section 5.3. The Marine Fisheries Commission shall adopt rules
8 authorizing the use of a limited amount commercial gear for recreational fishing
9 under a Recreational Commercial Gear License, as required by G.S. 113-173, as
10 enacted by Section 5.1 of this act, on or before 1 July 1999.

11 Section 5.4. (a) G.S. 113-153.1 is recodified as G.S. 113-168.9 in Article
12 14A of Chapter 113 of the General Statutes, as enacted by Section 5.1 of this act.

13 (b) G.S. 113-168.9(e), as recodified by subsection (a) of this section, reads
14 as rewritten:

15 "(e) The owner of a vessel ~~licensed under G.S. 113-152~~ shall be eligible to
16 purchase a vessel crab license for crabs as an alternative to the purchase of individual
17 licenses under this section. A vessel crab license authorizes the owner of the vessel
18 and up to two unlicensed persons serving as crew to fish for crabs from that vessel. It
19 is unlawful for the owner of a vessel to take crabs from the coastal fishing waters of
20 North Carolina for commercial use by any means, when unlicensed persons not
21 authorized by the vessel crab license are on the vessel. The Secretary shall revoke a
22 vessel crab license issued under this subsection ~~shall be revoked when~~ if the owner of
23 the vessel or any other person using the owner's vessel is convicted of a violation
24 under this section, except for subsection (b). section, other than conviction for a
25 violation under subsection (b) of this section."

26 (c) All sections of Article 14 of Chapter 113 of the General Statutes
27 other than G.S. 113-153.1 are repealed.

28 Section 5.5. The Marine Fisheries Commission shall adopt a Fishery
29 Management Plan for the blue crab fishery in accordance with G.S. 143B-289.22, as
30 enacted by Section 2.1 of this act, and G.S. 113-182.1, as enacted by Section 3.4 of
31 this act, no later than 1 January 2000.

32 Section 5.6. Notwithstanding the provisions of G.S. 113-168.2 and G.S.
33 113-168.3, as enacted by Section 5.1 of this act, it is unlawful for any person to take
34 crabs from the coastal fishing waters of the State for commercial use without being
35 licensed under G.S. 113-168.9.

36 Section 5.7. G.S. 113-168.9, as recodified from G.S. 113-153.1 by Section
37 5.4 of this act, is repealed.

38 Section 5.8. The Revisor of Statutes shall set out Section 5.2 of this act as
39 a note to G.S. 113-168.2, as enacted by Section 5.1 of this act.

40 Section 5.9. G.S. 113-203(a)(2) reads as rewritten:

41 "(2) When the transplanting is done by a dealer in accordance with the
42 provisions of G.S. ~~113-158~~ 113-169.1(2) and implementing rules;
43 or".

44 Section 5.10. G.S. 113-154.1 reads as rewritten:

1 **"§ 113-154.1. Endorsement to sell fish.**

2 (a) Requirements. -- Except as otherwise provided in this section, it is unlawful for
3 any person who takes or lands any species of fish under the authority of the Marine
4 Fisheries Commission from coastal fishing waters by any means whatever, including
5 aquaculture operations, to sell, offer for sale, barter or exchange for merchandise
6 such fish, without having first procured a current and valid endorsement to sell fish.
7 It is unlawful for fish dealers to buy fish unless the seller presents a current and valid
8 vessel license with an endorsement to sell, or a separate endorsement to sell if no
9 vessel is involved, at the time of the transaction. Any subsequent sale of fish shall be
10 subject to the licensing requirements of fish dealers under G.S. 113-156.

11 (b) Fees. -- The annual fee for an endorsement to sell fish on a vessel license for a
12 resident of this State is set forth in G.S. 113-152(h). The annual fee for an
13 endorsement to sell fish when no vessel is involved for a resident of this State is
14 fifteen dollars (\$15.00) and for a nonresident of this State is one hundred dollars
15 (\$100.00) or an amount equal to the nonresident fee charged by the nonresident's
16 state, whichever is greater. The license shall be valid for the period July 1 through
17 June 30 of a given year.

18 (c) Non-Vessel Endorsement Format. -- The format of an endorsement when the
19 applicant is not seeking a vessel license shall include the name of the applicant, date
20 of birth, expiration date of the endorsement, and any other information the Division
21 deems necessary to accomplish the purposes of this Subchapter. The endorsement
22 shall be issued on a card made of hard plastic or metal capable of being used to make
23 imprints of the sale or transaction. An applicant who is applying for an endorsement
24 on a vessel license shall comply with G.S. 113-152.

25 (d) Application for Non-Vessel Endorsement. -- An application for issuance or
26 renewal of an endorsement to sell shall be filed with the Morehead City offices of the
27 Division of Marine Fisheries or license agents authorized to sell licenses under this
28 Article. An application shall be accompanied by the fee established in subsection (b)
29 of this section. Applications shall not be accepted from persons ineligible to hold a
30 license issued by the Marine Fisheries Commission, including any applicant whose
31 endorsement is suspended or revoked on the date of the application. The applicant
32 shall be provided with a copy of the application marked received. The copy shall
33 serve as the endorsement to sell, until the endorsement issued by the Division is
34 received or the Division determines that the applicant is ineligible to hold an
35 endorsement. In addition to the information required in subsection (c) of this section,
36 the applicant shall disclose on the application a valid address, and such other
37 information as the Division may require.

38 (e) Application for Replacement Non-Vessel Endorsement to Sell. -- A
39 replacement endorsement shall only be obtained from the Morehead City offices of
40 the Division of Marine Fisheries. The Division shall not accept an application for a
41 replacement endorsement unless the Division determines that the applicant's current
42 license has not been suspended or revoked. A copy of an application duly filed with
43 the Division shall serve as the endorsement until the replacement license has been
44 received.

1 (f) Sale of Fish. -- It is unlawful for any person licensed under this section to sell
2 fish taken outside the territorial waters of North Carolina or to sell fish taken from
3 coastal fishing waters except to:

4 (1) Fish dealers licensed under G.S. 113-156; or

5 (2) The public, if the seller is also licensed as a fish dealer under G.S.
6 113-156.

7 (g) Recordkeeping Requirements. -- The fish dealer shall record each transaction
8 on a form provided by the Department. The transaction form shall include the
9 information on the endorsement to sell of the seller, the quantity of the fish, the
10 identity of the fish dealer, and such other information as the Division deems
11 necessary to accomplish the purposes of this Subchapter. The person who records the
12 transaction shall provide a completed copy of the transaction form to the
13 Department, and to the other party of the transaction. The Department copy of each
14 transaction from the preceding month shall be transmitted to the Department by the
15 fish dealer on or before the tenth day of the following month.

16 (h) Non-Vessel Endorsement to Sell Nontransferable. -- ~~An~~ A non-vessel
17 endorsement to sell fish issued under this section is nontransferable. It is unlawful to
18 use ~~an~~ a non-vessel endorsement to sell issued to another person in the sale or
19 attempted sale of fish or for a licensee to lend or transfer a license to sell with the
20 following two exceptions: (i) an individual under the age of 16 may sell fish under the
21 license of a relative or guardian; or (ii) a license may be transferred within a single
22 fishing operation if the person to whom it is transferred is a U.S. citizen. It is
23 unlawful for a licensee to lend or transfer a license to sell for the purpose of
24 circumventing the requirements of this section.

25 (h1) Endorsement to Sell Fish of a Vessel License Transferable. -- An
26 endorsement to sell fish of a vessel license may be transferred to the purchaser of the
27 vessel upon application to the Division of Marine Fisheries at the Morehead City
28 office of the Division if the purchaser of the vessel is otherwise qualified to hold an
29 endorsement to sell fish of a vessel license.

30 (i) (See note) Penalties. -- Any person who violates any provision of this section or
31 any rule by the Marine Fisheries Commission to implement this section is guilty of a
32 misdemeanor.

33 (1) A violation of subsections (a), (f), or (h) or a rule of the Marine
34 Fisheries Commission implementing any of those subsections is
35 punishable as follows:

36 a. For a first conviction or a subsequent conviction not
37 described in subdivision (1)b. or c., a violation is a Class 3
38 misdemeanor. A fine shall be imposed of not less than fifty
39 dollars (\$50.00) or double the value of the fish which are
40 the subject of the transaction, whichever is greater, not to
41 exceed two hundred fifty dollars (\$250.00).

42 b. For a second conviction within three years, a violation is a
43 Class 2 misdemeanor. A fine shall be imposed of not less
44 than two hundred fifty dollars (\$250.00) or double the value

1 of the fish which are the subject of the transaction,
2 whichever is greater, not to exceed five hundred dollars
3 (\$500.00).

4 c. For a third or subsequent conviction within three years, a
5 violation is a Class 2 misdemeanor. A fine shall be imposed
6 of not less than five hundred dollars (\$500.00) or double the
7 value of the fish which are the subject of the transaction,
8 whichever is greater.

9 (2) A violation of any other provision of this section other than
10 subsections (a), (f), or (h), or of any rule of the Marine Fisheries
11 Commission other than a rule implementing subsections (a), (f), or
12 (h) of this section, is punishable under G.S. 113-135(a).

13 (j) Use of Fees. -- Fees paid under G.S. 113-152(h) or G.S. 113-154.1 for an
14 endorsement to sell fish shall be applied to the cost of a fisheries data information
15 system that compiles fisheries data obtained from the endorsement program
16 established by G.S. 113-152 and this section or to marine fisheries programs or
17 research projects that enhance knowledge and use of marine and estuarine
18 resources."

19

20 **PART VI. MORATORIUM EXTENSION; MISCELLANEOUS PROVISIONS;**
21 **EFFECTIVE DATES**

22

23 Section 6.1. (a) Subsection (a) of Section 3 of Chapter 576 of the 1993
24 Session Laws, Regular Session 1994, as amended by Section 3 of Chapter 675 of the
25 1993 Session Laws, Regular Session 1994; subsection (a) of Section 26.5 of Chapter
26 507 of the 1995 Session Laws; and Section 7 of Chapter 256 of the 1997 Session
27 Laws, reads as rewritten:

28 "(a) Except as provided in subsections (b), (c), (c1), or (c2) of this section, the
29 Department shall not issue any new licenses for a period beginning 1 July 1, 1994,
30 1994 and ending ~~June 30, 1997,~~ 1 July 1999 under the following statutes:

31 (1) G.S. 113-152. ~~Vessel licenses.~~ Consolidated license for vessels,
32 equipment, and operations; fees.

33 (2) G.S. 113-153.1. ~~Crab license.~~ License.

34 (3) G.S. 113-154. ~~Shellfish license license.~~

35 (4) G.S. 113-154.1. ~~Nonvessel endorsements to sell fish.~~ Endorsement
36 to sell fish."

37 (b) It is the intent of the General Assembly that the moratorium imposed
38 by the amendment made by subsection (a) of this section to subdivision (4) of
39 subsection (a) of Section 3 of Chapter 576 of the 1993 Session Laws, Regular Session
40 1994, as amended by Section 3 of Chapter 675 of the 1993 Session Laws, Regular
41 Session 1994; subsection (a) of Section 26.5 of Chapter 507 of the 1995 Session Laws;
42 and Section 7 of Chapter 256 of the 1997 Session Laws shall apply to both non-vessel
43 endorsements to sell fish and endorsements to sell fish of vessel licenses.

1 Section 6.2. Subsection (a) of Section 3 of Chapter 576 of the 1993
2 Session Laws, Regular Session 1994, as amended by Section 3 of Chapter 675 of the
3 1993 Session Laws, Regular Session 1994; subsection (a) of Section 26.5 of Chapter
4 507 of the 1995 Session Laws; Section 7 of Chapter 256 of the 1997 Session Laws;
5 and subsection (a) of Section 6.1 of this act, reads as rewritten:

6 "(a) Except as provided in subsections (b), (c), (c1), or (c2) of this section, the
7 Department shall not issue any new licenses for a period beginning 1 July 1994 and
8 ending 1 July ~~1999~~ 2000 under ~~the following statutes:~~

- 9 (1) ~~G.S. 113-152. Consolidated license for vessels, equipment, and~~
10 ~~operations; fees.~~
- 11 (2) ~~G.S. 113-153.1. 113-168.9, Crab license.~~
- 12 (3) ~~G.S. 113-154. Shellfish license.~~
- 13 (4) ~~G.S. 113-154.1. Endorsement to sell fish."~~

14 Section 6.3. (a) Part 5A of Article 7 of Chapter 143B of the General
15 Statutes is repealed, except that G.S. 143B-289.19 is not repealed but is recodified as
16 G.S. 143B-289.40 within Part 5C of Article 7 of Chapter 143B of the General Statutes
17 and reads as rewritten:

18 "~~§ 143B-289.19. 143B-289.40. Office of Marine Affairs -- creation.~~

19 ~~There~~ The Office of Marine Affairs is created in the Department of ~~Administration~~
20 ~~the Office of Marine Affairs. Environment, Health, and Natural Resources."~~

21 (b) Part 5B of Article 7 of Chapter 143B of the General Statutes (G.S.
22 143B-289.20 through G.S. 143B-289.22) is recodified as Part 5C of Article 7 of
23 Chapter 143B of the General Statutes (G.S. 143B-289.41 through G.S. 143B-289.43).

24 (c) G.S. 143B-289.40(a)(1b)g., as recodified by subsection (a) of this
25 section, reads as rewritten:

26 "g. Create local advisory committees in accordance with the
27 provisions of G.S. ~~143B-289.22. 143B-289.42."~~

28 Section 6.4. The records, personnel, property, unexpended balances of
29 appropriations, allocations, and other funds, including the functions of budgeting and
30 purchasing, heretofore vested in the Marine Fisheries Commission created under Part
31 5A of Article 7 of Chapter 143B of the General Statutes, repealed by Section 6.3 of
32 this act, are transferred to the Marine Fisheries Commission created under Part 5B of
33 Article 7 of Chapter 143B of the General Statutes, as enacted by Section 2.1 of this
34 act. All rules, decisions, and actions, heretofore adopted, made, or taken by the
35 Marine Fisheries Commission created under Part 5 of Article 7 of Chapter 143B of
36 the General Statutes, repealed by Section 1 of Chapter 641 of the 1987 Session Laws,
37 and all rules, decisions, and actions, heretofore adopted, made, or taken by the
38 Marine Fisheries Commission created under Part 5A of Article 7 of Chapter 143B of
39 the General Statutes, repealed by Section 6.2 of this act, that have not been
40 heretofore repealed or rescinded shall continue in effect until repealed or rescinded
41 by the Marine Fisheries Commission created under Part 5B of Article 7 of Chapter
42 143B of the General Statutes, as enacted by Section 2.1 of this act.

43 Section 6.5. In order to establish a schedule of staggered terms of three
44 years for the Marine Fisheries Commission, the terms of members of the Commission

1 initially filling positions established by subdivisions (1), (2), and (3) of subsection (a)
2 of G.S. 143B-289.24, as enacted by Section 2.1 of this act, shall begin on the date the
3 member is appointed and duly qualified and shall expire on 30 June 2001; the terms
4 of members of the Commission initially filling positions established by subdivisions
5 (4), (5), and (6) of subsection (a) of G.S. 143B-289.24, as enacted by Section 2.1 of
6 this act, shall begin on the date the member is appointed and duly qualified and shall
7 expire on 30 June 2000; the terms of members of the Commission initially filling
8 positions established by subdivisions (7), (8), and (9) of subsection (a) of G.S.
9 143B-289.24, as enacted by Section 2.1 of this act, shall begin on the date the member
10 is appointed and duly qualified and shall expire on 30 June 1999.

11 Section 6.6. G.S. 113-182(b) reads as rewritten:

12 "(b) The Marine Fisheries Commission is authorized to authorize, regulate,
13 prohibit, prescribe, or restrict and the Department is authorized to license:

14 (1) The opening and closing of coastal fishing waters, except as to
15 inland game fish, whether entirely or only as to the taking of
16 particular classes of fish, use of particular equipment, or as to other
17 activities within the jurisdiction of the Department; and

18 (2) The possession, cultivation, transportation, importation,
19 exportation, sale, purchase, acquisition, and disposition of all
20 marine and estuarine resources and all related equipment,
21 implements, vessels, and conveyances as necessary to implement
22 the work of the Department in carrying out its duties.

23 (3) The possession, transportation, importation, exportation, sale,
24 purchase, acquisition, and disposition of all fish taken in the
25 Atlantic Ocean out to a distance of 200 miles from the State's
26 mean low watermark, consistent with the Magnuson Fishery
27 Conservation and Management Act, 16 U.S.C. § 1801, et seq., as
28 amended, when the harvest or landing of the fish is controlled by a
29 quota imposed on the State by a federal fisheries management
30 plan."

31 Section 6.7. G.S. 113-190, as enacted by Section 2 of Chapter 633 of the
32 1995 Session Laws (1996 Regular Session), is recodified as G.S. 113-200.

33 Section 6.8. All of the Coastal Habitat Protection Plans required by G.S.
34 143B-279.8, as enacted by Section 3.1 of this act, shall be adopted no later than 1 July
35 2003. The Coastal Resources Commission, the Environmental Management
36 Commission, and the Marine Fisheries Commission shall make the first report on
37 progress in developing and implementing Coastal Habitat Protection Plans, as
38 required by G.S. 143B-279.8(d), as enacted by Section 3.1 of this act, on or before 1
39 September 1999. The Secretary of Environment, Health, and Natural Resources shall
40 make the first report on progress in developing and implementing Fishery
41 Management Plans, as required by G.S. 113-182.1(f), as enacted by Section 3.4 of this
42 act, on or before 1 September 1999.

43 Section 6.9. The Joint Legislative Commission on Seafood and
44 Aquaculture shall study the establishment of a comprehensive State program to

1 acquire, preserve, and restore habitats critical to marine and estuarine fisheries. The
2 Joint Legislative Commission on Seafood and Aquaculture shall report its findings
3 and recommendations, if any, to the 1998 Regular Session of the 1997 General
4 Assembly.

5 Section 6.10. This act constitutes a recent act of the General Assembly
6 within the meaning of G.S. 150B-21.1. Every agency to which this act applies that is
7 authorized to adopt rules to implement the provisions of this act may adopt
8 temporary rules to implement the provisions of this act. This section shall continue
9 in effect until all rules necessary to implement the provisions of this act have become
10 effective as either temporary rules or permanent rules.

11 Section 6.11. The Marine Fisheries Commission may adopt temporary
12 rules to implement or comply with a fisheries management plan adopted by the
13 Atlantic States Marine Fisheries Commission or an interstate fisheries management
14 council.

15 Section 6.12. The headings to the Parts of this act are a convenience to
16 the reader and are for reference only. The headings do not expand, limit, or define
17 the text of this act.

18 Section 6.13. If any section or provision of this act is declared
19 unconstitutional or invalid by the courts, the unconstitutional or invalid section or
20 provision does not affect the validity of this act as a whole or any part of this act
21 other than the part declared to be unconstitutional or invalid.

22 Section 6.14. Section 3 of Chapter 547 of the 1995 Session Laws, Regular
23 Session 1996, as amended by subsection (b) of Section 1 of Chapter 633 of the 1995
24 Session Laws, Regular Session 1996, and Section 27.33 of Chapter 18 of the 1996
25 Session Laws, Second Extra Session, and Section 12 of Chapter 256 of the 1997
26 Session Laws, reads as rewritten:

27 "Sec. 3. Notwithstanding G.S. 113-202, a moratorium on new shellfish cultivation
28 leases shall be imposed in the remaining area of Core Sound not described in Section
29 1 of this act. During the moratorium, a comprehensive study of the shellfish lease
30 program shall be conducted. The moratorium established under this section covers
31 that part of Core Sound bounded by a line beginning at a point on Cedar Island at
32 35°00'39"N - 76°17'48"W, thence 109°(M) to a point in Core Sound 35°00'00"N -
33 76°12'42"W, thence 229°(M) to Marker No. 37 located 0.9 miles off Bells Point at
34 34°43'30"N - 76°29'00"W, thence 207°(M) to the Cape Lookout Lighthouse at
35 34°37'24"N - 76°31'30"W, thence 12°(M) to a point at Marshallberg at 34°43'07"N -
36 76°31'12"W, thence following the shoreline in a northerly direction to the point of
37 beginning except that the highway bridges at Salters Creek, Thorofare Bay, and the
38 Rumley Bay ditch shall be considered shoreline. The moratorium shall expire
39 ~~August 1, 1997.~~ 1 July 1998."

40 Section 6.15. Sections 1.1, 5.8, 6.7, 6.9, 6.10, 6.12, 6.13, and 6.15 of this
41 act are effective when this act becomes law. Sections 2.1, 4.4, 5.3, 6.3, 6.4, 6.5, 6.6,
42 and 6.11 of this act become effective 1 September 1997. Sections 4.1 through 4.3 of
43 this act become effective 1 September 1997 and apply to violations and offenses on or
44 after 1 September 1997. Section 1.2 of this act is effective retroactively as of 1 March

1 1997. Sections 6.1 and 6.10 of this act become effective 31 July 1997. Section 6.14 of
2 this act becomes effective 1 August 1997. Sections 3.1, 3.2, 3.3, 3.4, 3.5, 5.5, and 6.8
3 of this act become effective 1 July 1998. Sections 5.1, 5.2, 5.4, 5.6, 5.9, and 6.2 of this
4 act become effective 1 July 1999. Section 5.6 of this act expires 1 July 2000. Section
5 5.7 of this act becomes effective 1 July 2000. Sections 5.1 and 5.2 of this act expire 1
6 September 2003.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

HOUSE BILL 1097

Committee Substitute Favorable 4/23/97

Committee Substitute #2 Favorable 5/15/97

Committee Substitute #3 Favorable 5/28/97

Fifth Edition Engrossed 6/10/97

Senate Agriculture/Environment/Natural Resources Committee Substitute Adopted
7/23/97

Proposed Senate Committee Substitute H1097-PCS4143

Short Title: Fisheries Reform Act-2.

(Public)

Sponsors:

Referred to:

April 21, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT THE FISHERIES REFORM ACT OF 1997 TO PROTECT,
3 ENHANCE, AND BETTER MANAGE COASTAL FISHERIES IN NORTH
4 CAROLINA.

5 Whereas, the State of North Carolina has one of the most diverse fisheries
6 in the United States; and

7 Whereas, the General Assembly recognizes that commercial fishermen
8 perform an essential function by providing wholesome food for the citizens of the
9 State and thereby properly earn a livelihood; and

10 Whereas, the General Assembly recognizes the economic contribution
11 and important heritage of traditional full-time and part-time commercial fishing; and

12 Whereas, the General Assembly recognizes that for many citizens fishing
13 is an important recreational activity and that recreational fishing is a source of great
14 personal enjoyment and satisfaction; and

15 Whereas, the General Assembly recognizes the importance of providing
16 plentiful fishery resources to maintain and enhance tourism as a major contributor to
17 the economy of the State; and

1 Whereas, the General Assembly recognizes the need to protect our
2 coastal fishery resources and to balance the commercial and recreational interests
3 through better management of these resources; Now, therefore,
4 The General Assembly of North Carolina enacts:

5
6 **PART I. SHORT TITLE; PERFORMANCE AUDIT; STUDIES**

7
8 Section 1.1. This act shall be known as the "Fisheries Reform Act of
9 1997".

10 Section 1.2. The State Auditor shall conduct a performance audit,
11 including a detailed operational review, of the Division of Marine Fisheries of the
12 Department of Environment, Health, and Natural Resources. The performance audit
13 shall include an assessment of the capacity of the Division of Marine Fisheries to
14 effectively implement the provisions of Part V of this act. The performance audit
15 report shall be delivered to the Joint Legislative Commission on Seafood and
16 Aquaculture no later than 1 February 1998. The Joint Legislative Commission on
17 Seafood and Aquaculture shall review the performance audit and make a specific
18 recommendation to the 1998 Session of the 1997 General Assembly as to whether the
19 provisions of Part V of this act should be implemented.

20 Section 1.3. The Joint Legislative Commission on Seafood and
21 Aquaculture shall study issues relating to licensing coastal recreational fishing. The
22 Joint Legislative Commission on Seafood and Aquaculture shall make specific
23 findings as to whether a licensing system should be adopted for coastal recreational
24 fishing and, if so, what that system should be and how it should be implemented. In
25 conducting the study required by this section, the Joint Legislative Commission on
26 Seafood and Aquaculture shall consider the findings and recommendations of the
27 final report of the Fisheries Moratorium Steering Committee and the final report of
28 the State Auditor on the performance audit of the Division of Marine Fisheries
29 required by Section 1.2 of this act. The Joint Legislative Commission on Seafood
30 and Aquaculture shall present its findings and recommendations to the 1998 Regular
31 Session of the General Assembly.

32 Section 1.4. The Joint Legislative Commission on Seafood and
33 Aquaculture shall study issues related to the establishment of a crew license for
34 persons working aboard a vessel engaged in the taking of fish for sale. The Joint
35 Legislative Commission on Seafood and Aquaculture shall make a specific
36 determination as to whether a crew license should be established. The Joint
37 Legislative Commission on Seafood and Aquaculture shall present its findings and
38 recommendations to the 1998 Regular Session of the General Assembly.

39 Section 1.5. The Joint Legislative Commission on Seafood and
40 Aquaculture shall study issues relating to the enhancement and management of
41 shellfish resources and shall develop a set of comprehensive recommendations for the
42 enhancement and management of the shellfish resources of the State. The Joint
43 Legislative Commission on Seafood and Aquaculture shall present its findings and
44 recommendations to the 1998 Regular Session of the General Assembly.

1
2 **PART II. MARINE FISHERIES COMMISSION**

3
4 Section 2.1. Article 7 of Chapter 143B is amended by adding a new Part
5 to read:

6 "Part 5B. Marine Fisheries Commission.

7 "§ 143B-289.20. Definitions.

8 (a) As used in this Part:

- 9 (1) 'Commission' means the Marine Fisheries Commission.
10 (2) 'Department' means the Department of Environment, Health, and
11 Natural Resources.
12 (3) 'Fisheries Director' means the Director of the Division of Marine
13 Fisheries of the Department of Environment, Health, and Natural
14 Resources.
15 (4) 'Secretary' means the Secretary of Environment, Health, and
16 Natural Resources.

17 (b) The definitions set out in G.S. 113-129 and G.S. 113-130 shall apply
18 throughout this Part.

19 "§ 143B-289.21. Marine Fisheries Commission -- creation; purposes.

20 (a) There is hereby created the Marine Fisheries Commission in the Department
21 of Environment, Health, and Natural Resources.

22 (b) The functions, purposes, and duties of the Marine Fisheries Commission are
23 to:

- 24 (1) Manage, restore, develop, cultivate, conserve, protect, and regulate
25 the marine and estuarine resources of the State.
26 (2) Implement the laws relating to coastal fisheries, coastal fishing,
27 shellfish, crustaceans, and other marine and estuarine resources
28 enacted by the General Assembly by the adoption of rules and
29 policies, to provide a sound, constructive, comprehensive,
30 continuing, and economical coastal fisheries program directed by
31 citizens who are knowledgeable in the protection, restoration,
32 proper use, and management of marine and estuarine resources.
33 (3) Advise the State regarding ocean and marine fisheries within the
34 jurisdiction of the Atlantic States Marine Fisheries Compact, the
35 South Atlantic Fishery Management Council, the Mid-Atlantic
36 Fishery Management Council, and other similar organizations
37 established to manage or regulate fishing in the Atlantic Ocean.

38 "§ 143B-289.22. Marine Fisheries Commission -- powers and duties.

39 (a) The Marine Fisheries Commission shall adopt rules to be followed in the
40 management, protection, preservation, and enhancement of the marine and estuarine
41 resources of the State including commercial and sports fisheries resources. The
42 Marine Fisheries Commission shall have the power and duty:

- 1 (1) To authorize, license, regulate, prohibit, prescribe, or restrict all
2 forms of marine and estuarine resources in coastal fishing waters
3 with respect to:
4 a. Time, place, character, or dimensions of any methods or
5 equipment that may be employed in taking fish.
6 b. Seasons for taking fish.
7 c. Size limits on and maximum quantities of fish that may be
8 taken, possessed, bailed to another, transported, bought,
9 sold, or given away.
10 (2) To provide fair regulation of commercial and recreational fishing
11 groups in the interest of the public.
12 (3) To adopt rules and take all steps necessary to develop and improve
13 mariculture, including the cultivation, harvesting, and marketing of
14 shellfish and other marine resources in the State, involving the use
15 of public grounds and private beds as provided in G.S. 113-201.
16 (4) To close areas of public bottoms under coastal fishing waters for
17 such time as may be necessary in any program of propagation of
18 shellfish as provided in G.S. 113-204.
19 (5) In the interest of conservation of the marine and estuarine
20 resources of the State, to institute an action in the superior court to
21 contest the claim of title or claimed right of fishery in any
22 navigable waters of the State registered with the Department as
23 provided in G.S. 113-206(d).
24 (6) To make reciprocal agreements with other jurisdictions respecting
25 any of the matters governed in this Subchapter as provided by G.S.
26 113-223.
27 (7) To adopt relevant provisions of federal laws and regulations as
28 State rules pursuant to G.S. 113-228.
29 (8) To delegate to the Fisheries Director the authority by proclamation
30 to suspend or implement, in whole or in part, a particular rule of
31 the Commission that may be affected by variable conditions as
32 provided in G.S. 113-221(e).
33 (9) To comment on and otherwise participate in the determination of
34 permit applications received by State agencies that may have an
35 effect on the marine and estuarine resources of the State.
36 (10) To adopt Fishery Management Plans as provided in G.S. 113-182.1,
37 to establish a Priority List to determine the order in which Fishery
38 Management Plans are developed, to establish a Schedule for the
39 development and adoption of each Fishery Management Plan, and
40 to establish guidance criteria as to the contents of Fishery
41 Management Plans.
42 (11) To approve Coastal Habitat Protection Plans as provided in G.S.
43 143B-279.8.

1 (12) Except as may otherwise be provided, to make the final agency
2 decision in all contested cases involving matters within the
3 jurisdiction of the Commission.

4 (b) The Marine Fisheries Commission shall have the power and duty to establish
5 standards and adopt rules:

6 (1) To implement the provisions of Subchapter IV of Chapter 113 as
7 provided in G.S. 113-134.

8 (2) To manage the disposition of confiscated property as set forth in
9 G.S. 113-137.

10 (3) To govern all license requirements and taxes prescribed in Article
11 14A of Chapter 113 of the General Statutes.

12 (4) To regulate the importation and exportation of fish, and equipment
13 that may be used in taking or processing fish, as necessary to
14 enhance the conservation of marine and estuarine resources of the
15 State as provided in G.S. 113-170.

16 (5) To regulate the possession, transportation, and disposition of
17 seafood, as provided in G.S. 113-170.4.

18 (6) To regulate the disposition of the young of edible fish, as provided
19 by G.S. 113-185.

20 (7) To manage the leasing of public grounds for mariculture, including
21 oysters and clam production, as provided in G.S. 113-202.

22 (8) To govern the utilization of private fisheries, as provided in G.S.
23 113-205.

24 (9) To impose further restrictions upon the throwing of fish offal in
25 any coastal fishing waters, as provided in G.S. 113-265.

26 (10) To regulate the location and utilization of artificial reefs in coastal
27 waters.

28 (11) To regulate the placement of nets and other sports or commercial
29 fishing apparatus in coastal fishing waters with regard to
30 navigational or recreational safety as well as from a conservation
31 standpoint.

32 (c) The Commission is authorized to authorize, license, prohibit, prescribe, or
33 restrict:

34 (1) The opening and closing of coastal fishing waters, except as to
35 inland game fish, whether entirely or only as to the taking of
36 particular classes of fish, use of particular equipment, or as to other
37 activities.

38 (2) The possession, cultivation, transportation, importation,
39 exportation, sale, purchase, acquisition, and disposition of all
40 marine and estuarine resources and all related equipment,
41 implements, vessels, and conveyances as necessary to carry out its
42 duties.

43 (d) The Commission may adopt rules required by the federal government for
44 grants-in-aid for coastal resource purposes that may be made available to the State by

1 the federal government. This section is to be liberally construed in order that the
2 State and its citizens may benefit from federal grants-in-aid.

3 (e) The Commission shall adopt rules as provided in this Chapter. All rules
4 adopted by the Commission shall be enforced by the Department of Environment,
5 Health, and Natural Resources.

6 (f) As a quasi-judicial agency, the Commission, in accordance with Article IV,
7 Section 3 of the Constitution of North Carolina, has those judicial powers reasonably
8 necessary to accomplish the purposes for which it was created.

9 **"§ 143B-289.23. Marine Fisheries Commission -- quasi-judicial powers; procedures.**

10 (a) With respect to those matters within its jurisdiction, the Marine Fisheries
11 Commission shall exercise quasi-judicial powers in accordance with the provisions of
12 Chapter 150B of the General Statutes. This section and any rules adopted by the
13 Marine Fisheries Commission shall govern the following proceedings:

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

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

21 (3) Deliberations of the Commission shall be conducted in its public
22 meeting unless the Commission determines that consultation with
23 its counsel should be held in a closed session pursuant to G.S.
24 143-318.11.

25 (b) The final agency decision in contested cases that arise from civil penalty
26 assessments shall be made by the Commission. In the evaluation of each violation, the
27 Commission shall recognize that harm to the marine and estuarine resources of the
28 State arising from the violation of a statute or rule enacted or adopted to protect
29 those resources may be immediately observed through damaged resources or may be
30 incremental or cumulative with no damage that can be immediately observed or
31 documented. Penalties up to the maximum authorized may be based on any one or
32 combination of the following factors:

33 (1) The degree and extent of harm to the marine and estuarine
34 resources of the State, to the public health, or to private property
35 resulting from the violation.

36 (2) The frequency and gravity of the violation.

37 (3) The cost of rectifying the damage.

38 (4) Whether the violation was committed willfully or intentionally.

39 (5) The prior record of the violator in complying or failing to comply
40 with programs over which the Marine Fisheries Commission has
41 regulatory authority.

42 (6) The cost to the State of the enforcement procedures.

43 (c) The Chair shall appoint a Committee on Civil Penalty Remissions from the
44 members of the Commission. No member of the Committee on Civil Penalty

1 Remissions may hear or vote on any matter in which the member has an economic
2 interest. The Committee on Civil Penalty Remissions shall make the final agency
3 decision on remission requests. In determining whether a remission request will be
4 approved, the Committee shall consider the recommendation of the Secretary and the
5 following factors:

- 6 (1) Whether one or more of the civil penalty assessment factors in
7 subsection (b) of this section were wrongly applied to the
8 detriment of the petitioner.
- 9 (2) Whether the violator promptly abated continuing environmental
10 damage resulting from the violation.
- 11 (3) Whether the violation was inadvertent.
- 12 (4) Whether the violator had been assessed civil penalties for any
13 previous violations.
- 14 (5) Whether payment of the civil penalty will prevent payment for the
15 remaining necessary remedial actions.

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

20 (e) If any civil penalty has not been paid within 30 days after the final agency
21 decision or court order has been served on the violator, the Secretary of
22 Environment, Health, and Natural Resources shall request the Attorney General to
23 institute a civil action in the superior court of any county in which the violator
24 resides or has his or its principal place of business to recover the amount of the
25 assessment.

26 (f) The Secretary may delegate his powers and duties under this section to the
27 Fisheries Director.

28 **"§ 143B-289.24. Marine Fisheries Commission -- members; appointment; term; oath;**
29 **ethical standards; removal; compensation; staff.**

30 (a) Members, Selection. -- The Marine Fisheries Commission shall consist of nine
31 members appointed by the Governor as follows:

- 32 (1) One person actively engaged in, or recently retired from,
33 commercial fishing as demonstrated by currently or recently
34 deriving at least fifty percent (50%) of annual earned income from
35 taking and selling fishery resources in coastal fishing waters of the
36 State. The spouse of a commercial fisherman who meets the
37 criteria of this subdivision may be appointed under this
38 subdivision.
- 39 (2) One person actively engaged in, or recently retired from,
40 commercial fishing as demonstrated by currently or recently
41 deriving at least fifty percent (50%) of annual earned income from
42 taking and selling fishery resources in coastal fishing waters of the
43 State. The spouse of a commercial fisherman who meets the

1 criteria of this subdivision may be appointed under this
2 subdivision.

3 (3) One person actively connected with, and experienced as, a licensed
4 fish dealer or in seafood processing or distribution as demonstrated
5 by deriving at least fifty percent (50%) of annual earned income
6 from activities involving the buying, selling, processing, or
7 distribution of seafood landed in this State. The spouse of a
8 person qualified under this subdivision may be appointed provided
9 that the spouse is actively involved in the qualifying business.

10 (4) One person actively engaged in recreational sports fishing in
11 coastal waters in this State. An appointee under this subdivision
12 may not derive more than ten percent (10%) of annual earned
13 income from sports fishing activities.

14 (5) One person actively engaged in recreational sports fishing in
15 coastal waters in this State. An appointee under this subdivision
16 may not derive more than ten percent (10%) of annual earned
17 income from sports fishing activities.

18 (6) One person actively engaged in the sports fishing industry as
19 demonstrated by deriving at least fifty percent (50%) of annual
20 earned income from selling goods or services in this State. The
21 spouse of a person qualified under this subdivision may be
22 appointed provided that the spouse is actively involved in the
23 qualifying business.

24 (7) One person having general knowledge of and experience related to
25 subjects and persons regulated by the Commission.

26 (8) One person having general knowledge of and experience related to
27 subjects and persons regulated by the Commission.

28 (9) One person who is a fisheries scientist having special training and
29 expertise in marine and estuarine fisheries biology, ecology,
30 population dynamics, water quality, habitat protection, or similar
31 knowledge. A person appointed under this subdivision may not
32 receive more than ten percent (10%) of annual earned income
33 from either the commercial or sports fishing industries, including
34 the processing and distribution of seafood.

35 (b) Residential Qualifications. -- For purposes of providing regional representation
36 on the Commission, the following three coastal regions of the State are designated: (i)
37 Northeast Coastal Region comprised of Bertie, Camden, Chowan, Currituck, Dare,
38 Gates, Halifax, Hertford, Martin, Northampton, Pasquotank, Perquimans, Tyrrell, and
39 Washington Counties, (ii) Central Coastal Region comprised of Beaufort, Carteret,
40 Craven, Hyde, Jones, and Pamlico Counties; and (iii) Southeast Coastal Region
41 comprised of Bladen, Brunswick, Columbus, New Hanover, Onslow, and Pender
42 Counties. Persons appointed under subdivisions (1), (2), (3), (4), and (8) of
43 subsection (a) of this section shall be residents of one of the coastal regions of the

1 State. The membership of the Commission shall include at least one person who is a
2 resident of each of the three coastal regions of the State.

3 (c) Additional Considerations. -- In making appointments to the Commission, the
4 Governor shall provide for appropriate representation of women and minorities on
5 the Commission.

6 (d) Terms. -- The term of office of members of the Commission is three years. A
7 member may be reappointed to any number of successive three-year terms. Upon the
8 expiration of a three-year term, a member shall continue to serve until a successor is
9 appointed and duly qualified as provided by G.S. 128-7. The term of members
10 appointed under subdivisions (1), (2), and (3) of subsection (a) of this section shall
11 expire on 30 June of years evenly divisible by three. The term of members appointed
12 under subdivisions (4), (5), and (6) of subsection (a) of this section shall expire on 30
13 June of years that precede by one year those years that are evenly divisible by three.
14 The term of members appointed under subdivisions (7), (8), and (9) of subsection (a)
15 of this section shall expire on 30 June of years that follow by one year those years
16 that are evenly divisible by three.

17 (e) Vacancies. -- An appointment to fill a vacancy shall be for the unexpired
18 balance of the term.

19 (f) Oath of Office. -- Each member of the Commission, before assuming the duties
20 of office, shall take an oath of office as provided in Chapter 11 of the General
21 Statutes.

22 (g) Ethical Standards. --

23 (1) Disclosure statements. -- Any person under consideration for
24 appointment to the Commission shall provide both a financial
25 disclosure statement and a potential bias disclosure statement to
26 the Governor. A financial disclosure statement shall include
27 statements of the nominee's financial interests in and related to
28 State fishery resources use, licenses issued by the Division of
29 Marine Fisheries held by the nominee or any business in which the
30 nominee has a financial interest, and uses made by the nominee or
31 by any business in which the nominee has a financial interest of
32 the regulated resources. A potential bias disclosure statement shall
33 include a statement of the nominee's membership or other
34 affiliation with, including offices held, in societies, organizations, or
35 advocacy groups pertaining to the management and use of the
36 State's coastal fishery resources. Disclosure statements shall be
37 treated as public records under Chapter 132 of the General
38 Statutes and shall be updated on an annual basis.

39 (2) Voting/conflict of interest. -- A member of the Commission shall
40 not vote on any issue before the Commission that would have a
41 'significant and predictable effect' on the member's financial
42 interest. For purposes of this subdivision, 'significant and
43 predictable effect' means there is or may be a close causal link
44 between the decision of the Commission and an expected

1 disproportionate financial benefit to the member that is shared
2 only by a minority of persons within the same industry sector or
3 gear group. A member of the Commission shall also abstain from
4 voting on any petition submitted by an advocacy group of which
5 the member is an officer or sits as a member of the advocacy
6 group's board of directors. A member of the Commission shall not
7 use the member's official position as a member of the Commission
8 to secure any special privilege or exemption of substantial value for
9 any person. No member of the Commission shall, by the member's
10 conduct, create an appearance that any person could improperly
11 influence the member in the performance of the member's official
12 duties.

13 (3) Regular attendance. -- It shall be the duty of each member of the
14 Commission to regularly attend meetings of the Commission.

15 (h) Removal. -- The Governor may remove, as provided in G.S. 143-13, any
16 member of the Commission for misfeasance, malfeasance, or nonfeasance.

17 (i) Office May Be Held Concurrently With Others. -- The office of member of the
18 Marine Fisheries Commission may be held concurrently with any other elected or
19 appointed office, as authorized by Article VI, Section 9, of the Constitution of North
20 Carolina.

21 (j) Compensation. -- Members of the Commission who are State officers or
22 employees shall receive no per diem compensation for serving on the Commission,
23 but shall be reimbursed for their expenses in accordance with G.S. 138-6. Members
24 of the Commission who are full-time salaried public officers or employees other than
25 State officers or employees shall receive no per diem compensation for serving on the
26 Commission, but shall be reimbursed for their expenses in accordance with G.S.
27 138-6 in the same manner as State officers or employees. All other Commission
28 members shall receive per diem compensation and reimbursement in accordance with
29 the compensation rate established in G.S. 93B-5.

30 (k) Staff. -- All clerical and other services required by the Commission shall be
31 supplied by the Fisheries Director and the Department.

32 (l) Legal Services. -- The Attorney General shall: (i) act as attorney for the
33 Commission; (ii) at the request of the Commission, initiate actions in the name of the
34 Commission; and (iii) represent the Commission in any appeal or other review of any
35 order of the Commission.

36 **"§ 143B-289.25. Marine Fisheries Commission -- officers; organization; seal.**

37 (a) The Governor shall appoint a member of the Commission to serve as Chair.
38 The Chair shall serve at the pleasure of the Governor. The Commission shall elect
39 one of its members to serve as Vice-Chair. The Vice-Chair shall serve a one-year
40 term beginning 1 July and ending 30 June of the following year. The Vice-Chair may
41 serve any number of consecutive terms.

42 (b) The Chair shall guide and coordinate the activities of the Commission in
43 fulfilling its duties as set out in this Article. The Chair shall report to and advise the

1 Governor and the Secretary on the activities of the Commission, on marine and
2 estuarine conservation matters, and on all marine fisheries matters.

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

7 (d) The Commission may adopt a common seal and may alter it as necessary.

8 **§ 143B-289.26. Marine Fisheries Commission -- meetings; quorum.**

9 (a) The Commission shall meet at least once each calendar quarter and may hold
10 additional meetings at any time and place within the State at the call of the Chair or
11 upon the written request of at least four members. At least three of the four
12 quarterly meetings of the Commission shall be held in one of the coastal regions
13 designated in G.S. 143B-289.24.

14 (b) Five members of the Commission shall constitute a quorum for the transaction
15 of business.

16 **§ 143B-289.27. Marine Fisheries Commission Advisory Committees established;**
17 **members; selection; duties.**

18 (a) The Commission shall be assisted in the performance of its duties by four
19 standing advisory committees and four regional advisory committees. Each standing
20 and regional advisory committee shall consist of no more than 11 members. The
21 Chair of the Commission shall designate one member of each advisory committee to
22 serve as Chair of the committee. Members shall serve staggered three-year terms as
23 determined by the Commission. The Commission shall establish other policies and
24 procedures for standing and regional advisory committees that are consistent with
25 those governing the Commission as set out in this Part.

26 (b) The Chair of the Commission shall appoint the following standing advisory
27 committees:

28 (1) The Finfish Committee, which shall consider matters concerning
29 finfish.

30 (2) The Crustacean Committee, which shall consider matters
31 concerning shrimp and crabs.

32 (3) The Shellfish Committee, which shall consider matters concerning
33 oysters, clams, scallops, and other molluscan shellfish.

34 (4) The Habitat and Water Quality Committee, which shall consider
35 matters concerning habitat and water quality that may affect
36 coastal fisheries resources.

37 (c) Each standing advisory committee shall be composed of commercial and
38 recreational fishermen, scientists, and other persons who have expertise in the matters
39 to be considered by the advisory committee to which they are appointed. In making
40 appointments to advisory committees, the Chair of the Commission shall ensure that
41 both commercial and recreational fishing interests are fairly represented and shall
42 consider for appointment persons who are recommended by groups representing
43 commercial fishing interests, recreational fishing interests, environmental protection

1 and conservation interests, and other groups interested in coastal fisheries
2 management.

3 (d) Each standing advisory committee shall review all matters referred to the
4 committee by the Commission and shall make findings and recommendations on
5 these matters. A standing advisory committee may, on its own motion, make findings
6 and recommendations as to any matter related to its subject area. The Commission,
7 in the performance of its duties, shall consider all findings and recommendations
8 submitted by standing advisory committees.

9 (e) The Chair of the Commission shall appoint a regional advisory committee for
10 each of the three coastal regions designated in G.S. 143B-289.24(b) and shall appoint
11 a regional advisory committee for that part of the State that is not included in the
12 three coastal regions. In making appointments to regional advisory committees, the
13 Chair of the Commission shall ensure that both commercial and recreational fishing
14 interests are fairly represented.

15 **"§ 143B-289.28. Marine Fisheries Endowment Fund.**

16 (a) Recognizing the inestimable importance to the State and its people of
17 conserving the marine and estuarine resources of the State, and for the purpose of
18 providing the opportunity for citizens and residents of the State to invest in the future
19 of its marine and estuarine resources, there is created the North Carolina Marine
20 Fisheries Endowment Fund, the income and principal of which shall be used only for
21 the purpose of supporting marine and estuarine resource conservation programs of
22 the State in accordance with this section.

23 (b) There is created the Board of Trustees of the Marine Fisheries Endowment
24 Fund of the Marine Fisheries Commission, with full authority over the administration
25 of the Marine Fisheries Endowment Fund, whose ex officio Chair, Vice-Chair, and
26 members shall be the Chair, Vice-Chair, and members of the Marine Fisheries
27 Commission. The State Treasurer shall be the custodian of the Marine Fisheries
28 Endowment Fund and shall invest its assets in accordance with the provisions of G.S.
29 147-69.2 and G.S. 147-69.3.

30 (c) The assets of the Marine Fisheries Endowment Fund shall be derived from the
31 following:

32 (1) The proceeds of any gifts, grants, and contributions to the State
33 that are specifically designated for inclusion in the Fund.

34 (2) Any other sources specified by law.

35 (d) The Marine Fisheries Endowment Fund is declared to constitute a special
36 trust derived from a contractual relationship between the State and the members of
37 the public whose investments contribute to the Fund. In recognition of this special
38 trust, the following limitations and restrictions are placed on expenditures from the
39 Fund:

40 (1) Any limitations or restrictions specified by the donors on the uses
41 of the income derived from the gifts, grants, and voluntary
42 contributions shall be respected but shall not be binding.

1 (2) No expenditure or disbursement shall be made from the principal
2 of the Marine Fisheries Endowment Fund except as otherwise
3 provided by law.

4 (3) The income received and accruing from the investments of the
5 Marine Fisheries Endowment Fund must be spent only to further
6 the conservation of marine and estuarine resources.

7 (e) The Board of Trustees of the Marine Fisheries Endowment Fund may
8 accumulate the investment income of the Fund until the income, in the sole judgment
9 of the trustees, can provide a significant supplement to the budget for the
10 conservation and management of marine and estuarine resources. After that time the
11 trustees, in their sole discretion and authority, may direct expenditures from the
12 income of the Fund for the purposes set out in subdivision (3) of subsection (d)
13 above.

14 (f) Expenditure of the income derived from the Marine Fisheries Endowment
15 Fund shall be made through the State budget accounts of the Marine Fisheries
16 Commission in accordance with the provisions of the Executive Budget Act. The
17 Marine Fisheries Endowment Fund is subject to the oversight of the State Auditor
18 pursuant to Article 5A of Chapter 147 of the General Statutes.

19 (g) The Marine Fisheries Endowment Fund and the income therefrom shall not
20 take the place of State appropriations, but any portion of the income of the Marine
21 Fisheries Endowment Fund available for the purpose set out in subdivision (3) of
22 subsection (d) above shall be used to supplement other income of and appropriations
23 for the conservation and management of marine and estuarine resources to the end
24 that the Commission may improve and increase its services and become more useful
25 to a greater number of people.

26 **"§ 143B-289.29. Conservation Fund; Commission may accept gifts.**

27 (a) The Marine Fisheries Commission may accept gifts, donations, or
28 contributions from any sources. These funds shall be held in a separate account and
29 used solely for the purposes of marine and estuarine conservation and management.
30 These funds shall be administered by the Marine Fisheries Commission and shall be
31 used for marine and estuarine resources management, including education about the
32 importance of conservation, in a manner consistent with marine and estuarine
33 conservation management principles.

34 (b) The Marine Fisheries Commission is hereby authorized to issue and sell
35 appropriate emblems by which to identify recipients thereof as contributors to a
36 special marine and estuarine resources Conservation Fund that shall be made
37 available to the Marine Fisheries Commission for conservation, protection,
38 enhancement, preservation, and perpetuation of marine and estuarine species that
39 may be endangered or threatened with extinction and for education about these
40 issues. The special Conservation Fund is subject to oversight of the State Auditor
41 pursuant to Article 5A of Chapter 147 of the General Statutes. Emblems of different
42 sizes, shapes, types, or designs may be used to recognize contributions in different
43 amounts, but no emblem shall be issued for a contribution amounting in value to less
44 than five dollars (\$5.00).

1 "§ 143B-289.30. Article subject to Chapter 113.

2 Nothing in this Article shall be construed to affect the jurisdictional division
3 between the Marine Fisheries Commission and the Wildlife Resources Commission
4 contained in Subchapter IV of Chapter 113 of the General Statutes or in any way to
5 alter or abridge the powers and duties of the two agencies conferred in that
6 Subchapter.

7 "§ 143B-289.31. Jurisdictional questions.

8 In the event of any question arising between the Wildlife Resources Commission
9 and the Marine Fisheries Commission or between the Department of Environment,
10 Health, and Natural Resources and the Marine Fisheries Commission as to any duty,
11 responsibility, or authority imposed upon any of these bodies by law or with respect
12 to conflict involving rules or administrative practices, the question or conflict shall be
13 resolved by the Governor, whose decision shall be binding."

14
15 **PART III. COASTAL HABITAT PROTECTION PLANS; FISHERY**
16 **MANAGEMENT PLANS**
17

18 Section 3.1. Article 7 of Chapter 143B of the General Statutes is
19 amended by adding a new section to read:

20 "§ 143B-279.8. Coastal Habitat Protection Plans.

21 (a) The Department shall coordinate the preparation of draft Coastal Habitat
22 Protection Plans for critical fisheries habitats. The Department shall use the staff of
23 those divisions within the Department that have jurisdiction over marine fisheries,
24 water quality, and coastal area management in the preparation of the Coastal Habitat
25 Protection Plans and shall request assistance from other federal and State agencies as
26 necessary. The plans shall:

- 27 (1) Describe and classify biological systems in the habitats, including
28 wetlands, fish spawning grounds, estuarine or aquatic endangered
29 or threatened species, primary or secondary nursery areas, shellfish
30 beds, submerged aquatic vegetation (SAV) beds, and habitats in
31 outstanding resource waters.
- 32 (2) Evaluate the function, value to coastal fisheries, status, and trends
33 of the habitats.
- 34 (3) Identify existing and potential threats to the habitats and the
35 impact on coastal fishing.
- 36 (4) Recommend actions to protect and restore the habitats.

37 (b) Once a draft Coastal Habitat Protection Plan has been prepared, the chairs of
38 the Coastal Resources Commission, the Environmental Management Commission,
39 and the Marine Fisheries Commission shall each appoint two members of the
40 commission he or she chairs to a six-member review committee. The six-member
41 review committee, in consultation with the Department, shall review the draft Plan
42 and may revise the draft Plan on a consensus basis. The draft Plan, as revised by the
43 six-member review committee, shall then be submitted to the Coastal Resources
44 Commission, the Environmental Management Commission, and the Marine Fisheries

1 Commission, each of which shall independently consider the Plan for adoption. If
2 any of the three commissions is unable to agree to any aspect of a Plan, the chair of
3 each commission shall refer that aspect of the Plan to a six-member conference
4 committee to facilitate the resolution of any differences. The six-member conference
5 committee shall be appointed in the same manner as a six-member review committee
6 and may include members of the six-member review committee that reviewed the
7 Plan. Each final Coastal Habitat Protection Plan shall consist of those provisions
8 adopted by all three commissions. The three commissions shall review and revise
9 each Coastal Habitat Protection Plan at least once every five years.

10 (c) In carrying out their powers and duties, the Coastal Resources Commission,
11 the Environmental Management Commission, and the Marine Fisheries Commission
12 shall ensure, to the maximum extent practicable, that their actions are consistent with
13 the Coastal Habitat Protection Plans as adopted by the three commissions. The
14 obligation to act in a manner consistent with a Coastal Habitat Protection Plan is
15 prospective only and does not obligè any commission to modify any rule adopted,
16 permit decision made, or other action taken prior to the adoption or revision of the
17 Coastal Habitat Protection Plan by the three commissions. The Coastal Resources
18 Commission, the Environmental Management Commission, and the Marine Fisheries
19 Commission shall adopt rules to implement Coastal Habitat Protection Plans in
20 accordance with Chapter 150B of the General Statutes.

21 (d) If any of the three commissions concludes that another commission has taken
22 an action that is inconsistent with a Coastal Habitat Protection Plan, that commission
23 may request a written explanation of the action from the other commission. A
24 commission shall provide a written explanation: (i) upon the written request of one
25 of the other two commissions, or (ii) upon its own motion if the commission
26 determines that it must take an action that is inconsistent with a Coastal Habitat
27 Protection Plan.

28 (e) The Coastal Resources Commission, the Environmental Management
29 Commission, and the Marine Fisheries Commission shall report to the Joint
30 Legislative Commission on Seafood and Aquaculture and the Environmental Review
31 Commission on progress in developing and implementing the Coastal Habitat
32 Protection Plans, including the extent to which the actions of the three commissions
33 are consistent with the Plans, on or before 1 September of each year."

34 (f) The Secretary of Environment, Health, and Natural Resources shall report to
35 the Environmental Review Commission within 30 days of the completion or
36 substantial revision of each draft Coastal Habitat Protection Plan. The
37 Environmental Review Commission shall review each draft Coastal Habitat
38 Protection Plan within 30 days of the date the draft Plan is submitted to the
39 Environmental Review Commission. The Environmental Review Commission may
40 submit comments and recommendations on the draft Plan to the Secretary within 30
41 days of the date the draft Plan is submitted by the Secretary."

42 Section 3.2. G.S. 143B-282(a)(1) is amended by adding a new sub-
43 subdivision to read:

1 "v. To approve Coastal Habitat Protection Plans as provided in
2 G.S. 143B-279.8."

3 Section 3.3. Part 1 of Article 7 of Chapter 113A of the General Statutes
4 is amended by adding a new section to read:

5 **"§ 113A-106.1. Adoption of Coastal Habitat Protection Plans.**

6 The Commission shall approve Coastal Habitat Protection Plans as provided in
7 G.S. 143B-279.8."

8 Section 3.4. Article 15 of Chapter 113 of the General Statutes is
9 amended by adding a new section to read:

10 **"§ 113-182.1. Fishery Management Plans.**

11 (a) The Department shall prepare proposed Fishery Management Plans for
12 adoption by the Marine Fisheries Commission for all commercially or recreationally
13 significant species or fisheries that comprise State marine or estuarine resources.
14 Proposed Fishery Management Plans shall be developed in accordance with the
15 Priority List, Schedule, and guidance criteria established by the Marine Fisheries
16 Commission under G.S. 143B-289.22.

17 (b) The goal of the plans shall be to ensure the long-term viability of the State's
18 commercially and recreationally significant species or fisheries. Each plan shall be
19 designed to reflect fishing practices so that one plan may apply to a specific fishery,
20 while other plans may be based on gear or geographic areas. Each plan shall:

21 (1) Contain necessary information pertaining to the fishery or fisheries,
22 including management goals and objectives, status of relevant fish
23 stocks, stock assessments for multiyear species, fishery habitat and
24 water quality considerations consistent with Coastal Habitat
25 Protection Plans adopted pursuant to G.S. 143B-279.8, social and
26 economic impact of the fishery to the State, and user conflicts.

27 (2) Recommend management actions pertaining to the fishery or
28 fisheries.

29 (3) Include conservation and management measures that prevent
30 overfishing, while achieving, on a continuing basis, the optimal
31 yield from each fishery.

32 (c) To assist in the development of each Fishery Management Plan, the Chair of
33 the Marine Fisheries Commission shall appoint an Advisory Council. Each Advisory
34 Council shall be composed of commercial fishermen, recreational fishermen, and
35 scientists, all with expertise in the fishery for which the Fishery Management Plan is
36 being developed.

37 (d) Each Fishery Management Plan shall be revised at least once every three
38 years. The Marine Fisheries Commission may revise the Priority List and guidance
39 criteria whenever it determines that a revision of the Priority List or guidance criteria
40 will facilitate or improve the development of Fishery Management Plans or is
41 necessary to restore, conserve, or protect the marine and estuarine resources of the
42 State. The Marine Fisheries Commission may not revise the Schedule for the
43 development of a Fisheries Management Plan, once adopted, without the approval of
44 the Secretary of Environment, Health, and Natural Resources.

1 (e) The Secretary of Environment, Health, and Natural Resources shall monitor
2 progress in the development and adoption of Fishery Management Plans in relation
3 to the Schedule for development and adoption of the plans established by the Marine
4 Fisheries Commission. If the Secretary determines that the Division of Marine
5 Fisheries has failed to develop or the Marine Fisheries Commission has failed to
6 adopt a Fishery Management Plan in compliance with the Schedule, the Secretary
7 may issue a proclamation prohibiting the taking of species to which the Plan would
8 apply. The completion of any act within 30 days of the time specified by the
9 Schedule constitutes compliance with the Schedule. A proclamation issued pursuant
10 to this subsection is not subject to Article 2A of Chapter 150B of the General
11 Statutes.

12 (f) The Secretary of Environment, Health, and Natural Resources shall report to
13 the Joint Legislative Commission on Seafood and Aquaculture and the
14 Environmental Review Commission on progress in developing and implementing the
15 Fishery Management Plans on or before 1 September of each year. The Secretary of
16 Environment, Health, and Natural Resources shall report to the Joint Legislative
17 Commission on Seafood and Aquaculture and the Environmental Review
18 Commission within 30 days of the completion or substantial revision of each
19 proposed Fishery Management Plan. The Joint Legislative Commission on Seafood
20 and Aquaculture and the Environmental Review Commission shall review each
21 proposed Fishery Management Plan within 30 days of the date the proposed Plan is
22 submitted to the commission. The Joint Legislative Commission on Seafood and
23 Aquaculture and the Environmental Review Commission may submit comments and
24 recommendations on the proposed Plan to the Secretary within 30 days of the date
25 the proposed Plan is submitted by the Secretary.

26 (g) The Marine Fisheries Commission shall adopt rules to implement Fishery
27 Management Plans in accordance with Chapter 150B of the General Statutes."

28 Section 3.5. G.S. 113-129 is amended by adding two new subdivisions to
29 read:

30 "(12a) Optimal yield. -- The amount of fish that:
31 a. Will provide the greatest overall benefit to the State,
32 particularly with respect to food production and recreational
33 opportunities, and taking into account the protection of
34 marine ecosystems;
35 b. Is prescribed on the basis of the maximum sustainable yield
36 from the fishery, as reduced by any relevant economic,
37 social, or ecological factor; and
38 c. In the case of an overfished fishery, provides for rebuilding
39 to a level consistent with producing the maximum
40 sustainable yield in the fishery.

41 (12b) Overfishing or overfished. -- A rate or level of fishing mortality
42 that jeopardizes the capacity of a fishery to produce the maximum
43 sustainable yield on a continuing basis."
44

1 PART IV. MARINE FISHERIES LAW ENFORCEMENT

2

3 Section 4.1. G.S. 113-187 reads as rewritten:

4 "**§ 113-187. Penalties for violations of Subchapter and rules.**5 (a) Any person who participates in a commercial fishing operation conducted in
6 violation of any provision of this Subchapter and its implementing rules or in an
7 operation in connection with which any vessel is used in violation of any provision of
8 this Subchapter and its implementing rules is guilty of a ~~Class 4~~ Class A1
9 misdemeanor.10 (b) Any owner of a vessel who knowingly permits it to be used in violation of any
11 provision of this Subchapter and its implementing rules is guilty of a ~~Class 4~~ Class A1
12 misdemeanor.13 (c) Any person in charge of a commercial fishing operation conducted in violation
14 of any provision of this Subchapter and its implementing rules or in charge of any
15 vessel used in violation of any provision of this Subchapter and its implementing
16 rules is guilty of a ~~Class 4~~ Class A1 misdemeanor.17 (d) Any person in charge of a commercial fishing operation conducted in
18 violation of the following provisions of this Subchapter or the following rules of the
19 Marine Fisheries Commission; and any person in charge of any vessel used in
20 violation of the following provisions of the Subchapter or the following rules, shall be
21 guilty of a ~~Class 2~~ Class A1 misdemeanor. The violations of the statute or the rules
22 for which the penalty is mandatory are:23 (1) Taking or attempting to take, possess, sell, or offer for sale any
24 oysters, mussels, or clams taken from areas closed by statute, rule,
25 or proclamation because of suspected pollution.26 (2) Taking or attempting to take or have in possession aboard a vessel,
27 shrimp taken by the use of a trawl net, in areas not opened to
28 shrimping, pulled by a vessel not showing lights required by G.S.
29 75A-6 after sunset and before sunrise.30 (3) Using a trawl net in any coastal fishing waters closed by
31 proclamation or rule to trawl nets.32 (4) Violating the provisions of a special permit or gear license issued
33 by the Department.34 (5) Using or attempting to use any trawl net, long haul seine, swipe
35 net, mechanical methods for oyster or clam harvest or dredge in
36 designated primary nursery areas."37 Section 4.2. Article 15 of Chapter 113 of the General Statutes is
38 amended by adding a new section to read:39 "**§ 113-190. Unlawful sale or purchase of fish; criminal and civil penalties.**40 (a) Any person who sells fish in violation of G.S. 113-168.4 or a rule of the
41 Marine Fisheries Commission to implement that section is guilty of a Class A1
42 misdemeanor.

1 (b) Any person who purchases fish in violation of G.S. 113-169.3 or a rule of the
2 Marine Fisheries Commission to implement that section is guilty of a Class A1
3 misdemeanor.

4 (c) A civil penalty of not more than ten thousand dollars (\$10,000) may be
5 assessed by the Secretary against any person who sells fish in violation of G.S.
6 113-168.4 or purchases fish in violation of G.S. 113-169.3.

7 (d) In determining the amount of the penalty, the Secretary shall consider the
8 factors set out in G.S. 143B-289.23(b). The procedures set out in G.S. 143B-289.23
9 shall apply to civil penalty assessments that are presented to the Commission for final
10 agency decision.

11 (e) The Secretary shall notify any person assessed a civil penalty of the assessment
12 and the specific reasons therefor by registered or certified mail or by any means
13 authorized by G.S. 1A-1, Rule 4. Contested case petitions shall be filed pursuant to
14 G.S. 150B-23 within 30 days of receipt of the notice of assessment.

15 (f) Requests for remission of civil penalties shall be filed with the Secretary.
16 Remission requests shall not be considered unless filed within 30 days of receipt of
17 the notice of assessment. Remission requests must be accompanied by a waiver of the
18 right to a contested case hearing pursuant to Chapter 150B of the General Statutes
19 and a stipulation of the facts on which the assessment was based. Consistent with the
20 limitations in G.S. 143B-289.23(c), remission requests may be resolved by the
21 Secretary and the violator. If the Secretary and the violator are unable to resolve the
22 request, the Secretary shall deliver remission requests and his recommended action to
23 the Committee on Civil Penalty Remissions of the Marine Fisheries Commission
24 appointed pursuant to G.S. 143B-289.23(c).

25 (g) If any civil penalty has not been paid within 30 days after notice of assessment
26 has been served on the violator, the Secretary shall request the Attorney General to
27 institute a civil action in the superior court of any county in which the violator
28 resides or has his or its principal place of business to recover the amount of the
29 assessment, unless the violator contests the assessment as provided in subsection (e) of
30 this section, or requests remission of the assessment in whole or in part as provided in
31 subsection (f) of this section. If any civil penalty has not been paid within 30 days
32 after the final agency decision or court order has been served on the violator, the
33 Secretary shall request the Attorney General to institute a civil action in the superior
34 court of any county in which the violator resides or has his or its principal place of
35 business to recover the amount of the assessment. Civil actions must be filed within
36 three years of the date the final agency decision or court order was served on the
37 violator."

38 Section 4.3. G.S. 113-221(e) reads as rewritten:

39 "(e) The Marine Fisheries Commission may delegate to the Fisheries Director the
40 authority to issue proclamations suspending or implementing, in whole or in part,
41 particular rules of the Commission which may be affected by variable conditions.
42 Such proclamations are to be issued by the Fisheries Director or by a person
43 designated by the Fisheries Director. All proclamations must state the hour and date
44 upon which they become effective and must be issued at least 48 hours in advance of

1 the effective date and time. In those situations in which the proclamation prohibits
2 the taking of certain fisheries resources for reasons of public health, the proclamation
3 can be made effective immediately upon issuance. Notwithstanding any other
4 provisions of this subsection, a proclamation can be issued at least 12 hours in
5 advance of the effective date and time to reopen the taking of certain fisheries
6 resources closed for reason of public health through a prior proclamation made
7 effective immediately upon issuance. Persons violating any proclamation which is
8 made effective immediately shall not be charged with a criminal offense during the
9 time between the issuance and 48 hours after such issuance unless such person had
10 actual notice of the issuance of such proclamation. Fisheries resources taken or
11 possessed by any person in violation of any proclamation may be seized regardless of
12 whether such person had actual notice of the proclamation. A permanent file of the
13 text of all proclamations shall be maintained in the office of the Fisheries Director.
14 Certified copies of proclamations are entitled to judicial notice in any civil or
15 criminal proceeding.

16 The Fisheries Director must make every reasonable effort to give actual notice of
17 the terms of any proclamation to the persons who may be affected thereby. ~~Such~~
18 Reasonable effort includes press releases to communications media, posting of notices
19 at docks and other places where persons affected may gather, personal
20 communication by inspectors and other agents of the Fisheries Director, and such
21 other measures designed to reach the persons who may be affected. The Fisheries
22 Director may determine, on a case-by-case basis and at the Fisheries Director's sole
23 discretion, that a proclamation did not apply to an individual licensee when an act of
24 God occurred that prevented the licensee from receiving notice of the proclamation."

25 Section 4.4. The Marine Fisheries Commission shall develop a Violation
26 Points System applicable to the fishing licenses of all persons who violate marine
27 fisheries statutes or rules. In developing this system, the Marine Fisheries
28 Commission shall consider the recommendations made in the Final Report of the
29 Moratorium Steering Committee and the suspension, revocation, and reissuance
30 procedures under G.S. 113-166. The Marine Fisheries Commission shall also develop
31 an implementation schedule for the Violation Points System. The Marine Fisheries
32 Commission shall report to the Joint Legislative Commission on Seafood and
33 Aquaculture no later than 1 July 1999, on the development of the Violation Points
34 System and the implementation schedule.

35
36 **PART V. COMMERCIAL FISHING LICENSES; TRANSITIONAL PROVISIONS**

37
38 Section 5.1. Chapter 113 of the General Statutes is amended by adding a
39 new Article to read:

40 "ARTICLE 14A.

41 "Coastal and Estuarine Commercial Fishing Licenses.

42 "§ 113-168. Definitions.

43 As used in this Article:

- 1 (1) 'Commercial fishing operation' means any activity preparatory to,
2 during, or subsequent to the taking of any fish, the taking of which
3 is subject to regulation by the Commission, either with the use of
4 commercial fishing equipment or gear, or by any means if the
5 purpose of the taking is to obtain fish for sale. Commercial fishing
6 operation includes taking people fishing for hire.
7 (2) 'Commission' means the Marine Fisheries Commission.
8 (3) 'Division' means the Division of Marine Fisheries in the
9 Department of Environment, Health, and Natural Resources.
10 (4) 'License year' means the period beginning 1 July of a year and
11 ending on 30 June of the following year.
12 (5) 'North Carolina resident' means a person is a resident within the
13 meaning of G.S. 113-130(4) and who filed a State income tax
14 return as a resident of the State for the previous calendar or tax
15 year.
16 (6) 'RCGL' means Recreational Commercial Gear License.
17 (7) 'RSCFL' means Retired Standard Commercial Fishing License.
18 (8) 'SCFL' means Standard Commercial Fishing License.

19 **"§ 113-168.1. General provisions for commercial licenses and endorsements.**

20 (a) Duration, Fees. -- All licenses and endorsements issued under this Article
21 expire on the last day of the license year. An applicant for any license shall pay the
22 full annual license fee at the time the applicant applies for the license regardless of
23 when application is made.

24 (b) Licenses Required to Engage in Commercial Fishing. -- It is unlawful for any
25 person to engage in a commercial fishing operation without being licensed as
26 required by this Article. It is unlawful for anyone to command a vessel engaged in a
27 commercial fishing operation without complying with the provisions of this Article
28 and rules adopted by the Commission under this Article.

29 (c) Licenses and Endorsements Available for Inspection. -- It is unlawful for any
30 person to engage in a commercial fishing operation in the State without having ready
31 at hand for inspection all valid licenses and endorsements required under this Article.
32 To comply with this subsection, a person must have either a currently valid (i) license
33 issued in the person's true name and bearing the person's current address or (ii) an
34 assignment of a SCFL authorized under this Article. A licensee or assignee shall not
35 refuse to exhibit the licenses and endorsements upon the request of an inspector or
36 any other law enforcement officer authorized to enforce federal or State laws,
37 regulations, or rules relating to marine fisheries.

38 (d) No Dual Residency. -- It is unlawful for any person to hold any currently valid
39 license issued under this Article to the person as a North Carolina resident if that
40 person holds any currently valid commercial or recreational fishing license issued by
41 another state to the person as a resident of that state.

42 (e) License Format. -- Licenses issued under this Article shall be issued in the
43 name of the applicant. Each license shall show the type of license and any
44 endorsements; the name, address, and date of birth of the licensee; the date on which

1 the license is issued; the date on which the license expires; and any other information
2 that the Commission or the Division determines to be necessary to accomplish the
3 purposes of this Subchapter.

4 **"§ 113-168.2. Standard Commercial Fishing License.**

5 (a) Requirement. -- No person shall engage in a commercial fishing operation in
6 the coastal fishing waters without holding a Standard Commercial Fishing License
7 issued by the Division. A person who works as a member of the crew of a vessel
8 engaged in a commercial fishing operation under the direction of a person who holds
9 a valid SCFL or RSCFL is not required to hold a SCFL or RSCFL.

10 (b) Purchase; Renewal. -- A person may purchase a SCFL at any office of the
11 Division. The SCFL and endorsements may be renewed by mail by forwarding a
12 completed application, including applicable fees, to the Division's Morehead City
13 office. Any person who is issued a SCFL or a RSCFL is eligible to renew the SCFL
14 or RSCFL and any endorsements if the SCFL or RSCFL has not been suspended or
15 revoked.

16 (c) Replacement License. -- A licensee may obtain a replacement license for a lost
17 or destroyed license, including all endorsements, upon receipt of a proper application
18 in the offices of the Division together with a ten-dollar (\$10.00) fee. The Division
19 shall not accept an application for a replacement license unless the Division
20 determines that the applicant's current license has not been suspended or revoked. A
21 copy of an application duly filed with the Division shall serve as the license until the
22 replacement license has been received. The Commission may provide by rule for the
23 replacement of lost, obliterated, destroyed, or otherwise illegible license plates or
24 decals upon tender of the original license receipt or upon other evidence that the
25 Commission deems sufficient.

26 (d) Nonresident Certification Required. -- Persons obtaining licenses who are not
27 North Carolina residents shall certify that their conviction record in their state of
28 residence is such that they would not be denied a license under the standards in G.S.
29 113-171. When a license application is denied for violations of fisheries laws,
30 whether the violations occurred in North Carolina or another jurisdiction, the license
31 fees shall not be refunded and shall be applied to the costs of processing the
32 application.

33 (e) Fees. -- The annual SCFL fee for a North Carolina resident shall be two
34 hundred dollars (\$200.00). The annual SCFL fee for a person who is not a resident
35 of North Carolina shall be two thousand dollars (\$2,000) or the amount charged to a
36 North Carolina resident in the nonresident's state, whichever is lesser.

37 (f) Assignment. -- The holder of a SCFL may assign the SCFL to any individual,
38 provided that a SCFL or RSCFL issued to the individual is not suspended or
39 revoked. If the SCFL is endorsed for one or more vessels, each vessel endorsement
40 may be assigned, independently of the SCFL, to another holder of a SCFL. An
41 assignment of a SCFL vessel endorsement shall be valid only for use by a holder or
42 assignee of a SCFL in the operation of the vessel for which the SCFL is endorsed.
43 The assignment shall be in writing on a form provided by the Division and shall
44 include the name of the licensee, the license number, any endorsements, the

1 assignee's name and mailing address, and the duration of the assignment. A
2 notarized copy of the assignment shall be filed with the Division. The assignee shall
3 carry the assignment on the assignee's person and have the assignment available for
4 inspection at all times while using the vessel. The assignment may be revoked by: (i)
5 written notification by the assignor that the assignment has been terminated; or (ii) a
6 determination by the Division that the assignee is operating in violation of the terms
7 and conditions applicable to the assignment.

8 (g) Transfer. -- A SCFL may be transferred:

- 9 (1) By the license holder to a member of the license holder's
10 immediate family.
- 11 (2) By the State to the estate of the license holder upon the death of
12 the license holder.
- 13 (3) By a surviving family member to whom a license was transferred
14 pursuant to subdivision (2) of this subsection to a third-party
15 purchaser of the license holder's fishing vessel upon the death of
16 the license holder.
- 17 (4) By the license holder to a third-party purchaser of the license
18 holder's fishing vessel upon retirement of the license holder from
19 commercial fishing.
- 20 (5) Under any other circumstance authorized by rule of the
21 Commission.

22 (h) Identification as Commercial Fisherman. -- The receipt of a current and valid
23 SCFL, RSCFL, or shellfish license issued by the Division shall serve as proper
24 identification of the licensee as a commercial fisherman.

25 (i) Record-Keeping Requirements. -- The fish dealer shall record each transaction
26 at the time and place of landing on a form provided by the Division. The transaction
27 form shall include the information on the SCFL, RSCFL, or shellfish license, the
28 quantity of the fish, the identity of the fish dealer, and other information as the
29 Division deems necessary to accomplish the purposes of this Subchapter. The person
30 who records the transaction shall provide a completed copy of the transaction form to
31 the Division and to the other party of the transaction. The Division's copy of each
32 transaction form shall be transmitted to the Division by the fish dealer on or before
33 the tenth day of the month following the transaction.

34 "§ 113-168.3. Retired Standard Commercial Fishing License.

35 (a) SCFL Provisions Applicable. -- Except as provided in this section, the
36 provisions set forth in G.S. 113-168.2 concerning the SCFL shall apply to the RSCFL.

37 (b) Eligibility; Fee. -- Any person who is 65 years of age or older and who is
38 otherwise eligible for a SCFL under G.S. 113-168.2 may purchase a RSCFL for an
39 annual fee of one hundred dollars (\$100.00). Proof of age shall be supplied at the
40 time the application is made.

41 (c) Transfer. -- The holder of a RSCFL may transfer the RSCFL as provided in
42 G.S. 113-168.2 or, upon retirement from commercial fishing, to a third-party
43 purchaser of the RSCFL holder's fishing vessel. If the third-party purchaser is less

1 than 65 years of age, that purchaser shall pay the fee for the SCFL set forth in G.S.
2 113-168.2.

3 (d) Assignment. -- The RSCFL shall not be assignable.

4 **"§ 113-168.4. Regulations concerning the sale of fish.**

5 (a) Except as otherwise provided in this section, it is unlawful for any person who
6 takes or lands any species of fish under the authority of the Commission from coastal
7 fishing waters by any means whatever, including mariculture operations, to sell, offer
8 for sale, barter or exchange for merchandise these fish, without holding a current and
9 valid SCFL or RSCFL issued under G.S. 113-168.2 or G.S. 113-168.3, or a valid
10 shellfish license issued under G.S. 113-169.2. It is unlawful for fish dealers to buy fish
11 unless the seller presents a current and valid SCFL, RSCFL, or shellfish license at the
12 time of the transaction. Any subsequent sale of fish shall be subject to the licensing
13 requirements of fish dealers under G.S. 113-169.3.

14 (b) It is unlawful for any person licensed under this section to sell fish taken
15 outside the territorial waters of the State or to sell fish taken from coastal fishing
16 waters except to:

17 (1) Fish dealers licensed under G.S. 113-169.3; or

18 (2) The public, if the seller is also licensed as a fish dealer under G.S.
19 113-169.3.

20 (c) A person who organizes a nonprofit recreational fishing tournament may sell
21 fish taken in connection with the tournament pursuant to a recreational fishing
22 tournament license to sell fish. A person who organizes a nonprofit recreational
23 fishing tournament may obtain a recreational fishing tournament license to sell fish
24 upon application to the Division and payment of a fee of one hundred dollars
25 (\$100.00). A recreational fishing tournament is an organized fishing competition
26 occurring within a specified time period not to exceed one week and that is not a
27 commercial fishing operation. Proceeds derived from the sale of fish may be used
28 only for charitable purposes.

29 **"§ 113-168.5. License endorsements for Standard Commercial Fishing License and**
30 **Retired Standard Commercial Fishing License.**

31 (a) A SCFL or RSCFL may be endorsed to authorize the use of a vessel in a
32 commercial fishing operation.

33 (b) Vessel Endorsements. --

34 (1) As used in this subsection, a North Carolina vessel is a vessel that
35 has its primary situs in the State. A vessel has its primary situs in
36 the State if:

37 a. A certificate of number has been issued for the vessel under
38 Article 1 of Chapter 75A of the General Statutes;

39 b. A certificate of title has been issued for the vessel under
40 Article 4 of Chapter 75A of the General Statutes; or

41 c. A certification of documentation has been issued for the
42 vessel that lists a home port in the State under 42 U.S.C. §
43 12101, et seq., as amended.

- 1 (2) It is unlawful to use a vessel in a commercial fishing operation in
2 the coastal fishing waters of the State without a vessel endorsement
3 of the license required under this Article for that commercial
4 fishing operation. It is unlawful to use a North Carolina vessel to
5 land or sell fish in the State that are taken during a commercial
6 fishing operation outside the coastal fishing waters of the State
7 without a vessel endorsement of the license required under this
8 Article for that commercial fishing operation. No endorsement is
9 required, however, for a vessel of any length that does not have a
10 motor if the vessel is used only in connection with another vessel
11 for which the required license has been properly endorsed.
- 12 (3) The fee for a vessel endorsement shall be determined by the length
13 of the vessel and shall be in addition to the fee for a SCFL,
14 RSCFL, or shellfish license. The length of a vessel shall be
15 determined by measuring the distance between the ends of the
16 vessel along the deck and through the cabin, excluding the sheer.
17 The fee for a vessel endorsement is:
- 18 a. One dollar (\$1.00) per foot for a vessel not over 18 feet in
19 length.
- 20 b. One dollar and fifty cents (\$1.50) per foot for a vessel over
21 18 feet but not over 38 feet in length.
- 22 c. Three dollars (\$3.00) per foot for a vessel over 38 feet but
23 not over 50 feet in length.
- 24 d. Six dollars (\$6.00) per foot for a vessel over 50 feet in
25 length.
- 26 (4) A vessel endorsement may be assigned as provided in G.S.
27 113-168.2(f).
- 28 (5) When the owner of a vessel for which a SCFL, RSCFL, or shellfish
29 license has been endorsed transfers ownership of the vessel to a
30 holder of a SCFL, RSCFL, or shellfish license, the vessel
31 endorsement may be transferred from the former owner's SCFL,
32 RSCFL, or shellfish license to the new owner's SCFL, RSCFL, or
33 shellfish license upon the request of the new owner. The new
34 owner of the vessel shall notify the Division of the change in
35 ownership and request that the vessel endorsement be transferred
36 within 30 days of the date on which the transfer of ownership
37 occurred. The notification of a change in the ownership of a
38 vessel and request that the vessel endorsement be transferred shall
39 be made on a form provided by the Division and shall be
40 accompanied by satisfactory proof of the transfer of vessel
41 ownership. Transfer of vessel ownership may be proven by a
42 notarized copy of: (i) the bill of sale; (ii) a temporary vessel
43 registration; or (iii) a vessel documentation transfer.

1 (c) Menhaden Endorsements. -- Except as provided in G.S. 113-169, it is unlawful
2 to use a vessel to take menhaden by purse seine in the coastal fishing waters of the
3 State, to land menhaden in the State, or to sell menhaden from a vessel in the State
4 without obtaining a menhaden endorsement of a SCFL or RSCFL. The fee for a
5 menhaden endorsement shall be two dollars (\$2.00) per ton, based on gross tonnage
6 as determined by the custom house measurement for the mother ship. The
7 menhaden endorsement shall be required for the mother ship but no separate
8 endorsement shall be required for a purse boat carrying a purse seine. The
9 application for a menhaden endorsement must state the name of the person in
10 command of the vessel. Upon a change in command of a menhaden vessel, the
11 owner must notify the Division in writing within 30 days.

12 (d) Shellfish Endorsement for North Carolina Residents. -- The Division shall
13 issue a shellfish endorsement of a SCFL or RSCFL to a North Carolina resident at
14 no charge.

15 **"§ 113-169. Menhaden license for nonresidents not eligible for a SCFL.**

16 A person who is not a resident of North Carolina, who is not eligible for a SCFL
17 under this Article, and who only seeks to engage in menhaden fishing is eligible to
18 purchase a menhaden license for nonresidents. The fee for the menhaden license for
19 nonresidents shall be two dollars (\$2.00) per ton, gross tonnage, customhouse
20 measurements for the mother ship. The menhaden license for nonresidents shall be
21 required for the mother ship to take, land, or sell menhaden in North Carolina taken
22 by purse seine. No separate endorsement shall be required for a purse boat carrying
23 a purse seine. The application for a menhaden license for nonresidents must state the
24 name of the person in command of the vessel. Upon change in command of a
25 menhaden vessel, the owner must notify the Division within 30 days.

26 **"§ 113-169.1. Permits for gear, equipment, and other specialized activities authorized.**

27 The Commission may adopt rules to establish permits for gear, equipment, and
28 specialized activities, including commercial fishing operations that do not involve the
29 use of a vessel and transplanting oysters or clams. The Commission shall establish a
30 fee for each permit in an amount that compensates the Division for the actual
31 administrative costs associated with the permit but that does not exceed fifty dollars
32 (\$50.00) per permit.

33 **"§ 113-169.2. Shellfish license for North Carolina residents without a SCFL.**

34 (a) License or Endorsement Necessary to Take or Sell Shellfish. -- It is unlawful
35 for an individual to take shellfish from the public grounds of the State by mechanical
36 means or for commercial use by any means without holding either a shellfish license
37 or a shellfish endorsement of a SCFL or RSCFL. A North Carolina resident who
38 seeks only to take and sell shellfish shall be eligible to purchase a shellfish license
39 without holding a SCFL or RSCFL. The license includes the privilege to sell shellfish
40 to a licensed fish dealer.

41 (b) Purchase; Renewal. -- A person may purchase a shellfish license at any office
42 of the Division. The shellfish license and endorsements may be renewed by mail by
43 forwarding a completed application, including applicable fees, to the Division's
44 Morehead City Office. Any person who is issued a shellfish license is eligible to

1 renew the shellfish license and any endorsements if the shellfish license has not been
2 suspended or revoked.

3 (c) Fees. -- Shellfish licenses shall be issued annually upon payment of a fee of
4 twenty-five dollars (\$25.00) upon proof that the license applicant is a resident of
5 North Carolina.

6 (d) License Available for Inspection. -- It is unlawful for any individual to take
7 shellfish for commercial use from the public grounds of the State without having
8 ready at hand for inspection a current and valid shellfish license issued to the licensee
9 personally and bearing the licensee's correct name and address. It is unlawful for any
10 individual taking or possessing freshly taken shellfish to refuse to exhibit the
11 individual's license upon the request of an officer authorized to enforce the fishing
12 laws.

13 (e) Vessel Endorsement Required. -- A license holder under this section shall be
14 required to purchase a vessel endorsement under G.S. 113-168.5 if a vessel is used in
15 the take or sale of shellfish. A vessel endorsement of a shellfish license does not
16 authorize the use of the vessel for any commercial fishing operation other than the
17 taking or selling of shellfish.

18 (f) Name or Address Change. -- In the event of a change in name or address or
19 upon receipt of an erroneous shellfish license, the licensee shall, within 30 days, apply
20 for a replacement shellfish license bearing the correct name and address. Upon a
21 showing by the individual that the name or address change occurred within the past
22 30 days, the trial court or prosecutor shall dismiss any charges brought pursuant to
23 this subsection.

24 (g) Transfer Prohibited. -- It is unlawful for an individual issued a shellfish license
25 to transfer or offer to transfer the license, either temporarily or permanently, to
26 another. It is unlawful for an individual to secure or attempt to secure a shellfish
27 license from a source not authorized by the Commission.

28 (h) Taking and Selling Shellfish Without a License. -- Persons under the age of 18
29 years of age may take and sell shellfish from the public or private grounds of the
30 State during the period from May 15 through September 1 of each year without
31 holding a shellfish license under this section.

32 (i) Taking Shellfish Without a License for Personal Use. --

33 (1) A person may take shellfish for personal use without obtaining a
34 license under this section in quantities up to:

35 a. One bushel of oysters per day.

36 b. One-half bushel of scallops per day.

37 c. One hundred clams per day.

38 (2) Two or more persons who are using a vessel to take shellfish may
39 take shellfish for personal use without obtaining a license under
40 this section in quantities up to:

41 a. Two bushels of oysters per day.

42 b. One bushel of scallops per day.

43 c. Two hundred clams per day.

44 "§ 113-169.3. Licenses for fish dealers.

1 (a) Eligibility. -- A fish dealer license shall be issued to a North Carolina resident
2 upon receipt of a proper application in the Morehead City Office of the Division
3 together with all license fees including the total number of dealer categories set forth
4 in this section. The license shall be issued in the name of the applicant and shall
5 include all dealer categories on the license.

6 (b) Application for License. -- Applications shall not be accepted from persons
7 ineligible to hold a license issued by the Division, including any applicant whose
8 license is suspended or revoked on the date of the application. The applicant shall be
9 provided with a copy of the application marked received. The copy shall serve as the
10 fish dealer's license until the license issued by the Division is received, or the
11 Division determines that the applicant is ineligible to hold a license. Where an
12 applicant does not have an established location for transacting the fisheries business
13 within the State, the license application shall be denied unless the applicant satisfies
14 the Secretary that his residence, or some other office or address within the State, is a
15 suitable substitute for an established location and that records kept in connection
16 with licensing, sale, and purchase requirements will be available for inspection when
17 necessary. Fish dealers' licenses are issued on a fiscal year basis upon payment of a
18 fee as set forth herein upon proof, satisfactory to the Secretary, that the license
19 applicant is a North Carolina resident.

20 (c) License Requirement. -- Except as otherwise provided in this section, it is
21 unlawful for any person not licensed pursuant to this article:

22 (1) To buy fish for resale from any person involved in a commercial
23 fishing operation that takes any species of fish from coastal fishing
24 waters. For purposes of this subdivision, a retailer who purchases
25 fish from a fish dealer shall not be liable if the fish dealer has not
26 complied with the licensing requirements of this section;

27 (2) To sell fish to the public; or

28 (3) To sell to the public any species of fish under the authority of the
29 Commission taken from coastal fishing waters.

30 Any person subject to the licensing requirements of this section is a fish dealer.
31 Any person subject to the licensing requirements of this section shall obtain a
32 separate license for each physical location conducting activities required to be
33 licensed under this section.

34 (d) Exceptions to License Requirements. -- The Commission may adopt rules to
35 implement this subsection including rules to clarify the status of the listed classes of
36 exempted persons, require submission of statistical data, and require that records be
37 kept in order to establish compliance with this section. Any person not licensed
38 pursuant to this section is exempt from the licensing requirements of this section if all
39 fish handled within any particular licensing category meet one or more of the
40 following requirements:

41 (1) The fish are sold by persons whose dealings in fish are primarily
42 educational, scientific, or official, and who have been issued a
43 permit by the Division that authorizes the educational, scientific, or

- 1 official agency to sell fish taken or processed in connection with
2 research or demonstration projects;
- 3 (2) The fish are sold by individual employees of fish dealers when
4 transacting the business of their duly licensed employer;
- 5 (3) The fish are shipped to a person by a dealer from without the
6 State;
- 7 (4) The fish are of a kind the sale of which is regulated exclusively by
8 the Wildlife Resources Commission; or
- 9 (5) The fish are purchased from a licensed dealer.
- 10 (e) Application Fee for New Fish Dealers. -- An applicant for a new fish dealer
11 license shall pay a nonrefundable application fee of fifty dollars (\$50.00) in addition
12 to the license category fees set forth in this section.
- 13 (f) License Category Fees. -- Every fish dealer subject to licensing requirements
14 shall secure an annual license at each established location for each of the following
15 activities transacted there, upon payment of the fee set out:
- 16 (1) Dealing in oysters: \$50.00;
17 (2) Dealing in scallops: \$50.00;
18 (3) Dealing in clams: \$50.00;
19 (4) Dealing in hard or soft crabs: \$50.00;
20 (5) Dealing in shrimp, including bait: \$50.00;
21 (6) Dealing in finfish, including bait: \$50.00;
22 (7) Operating menhaden or other fish-dehydrating or oil-extracting
23 processing plants: \$50.00; or
24 (8) Consolidated license (all categories): \$300.00.
- 25 Any person subject to fish dealer licensing requirements who deals in fish not
26 included in the above categories shall secure a finfish dealer license. The Commission
27 may adopt rules implementing and clarifying the dealer categories of this subsection.
28 Bait operations shall be licensed under either the finfish or shrimp dealer license
29 categories.
- 30 (g) License Format. -- The format of the license shall include the name of the
31 licensee, date of birth, name and physical address of each business location,
32 expiration date of the license, and any other information the Division deems
33 necessary to accomplish the purposes of this Subchapter.
- 34 (h) Application for Replacement License. -- A replacement license shall only be
35 obtained from an office of the Division. The Division shall not accept an application
36 for a replacement license unless the Division determines that the applicant's current
37 license has not been suspended or revoked. A copy of an application duly filed with
38 the Division shall serve as the license until the replacement license has been received.
- 39 (i) Purchase and Sale of Fish. -- It is unlawful for a fish dealer to buy fish unless
40 the seller possesses a current and valid SCFL, RSCFL, shellfish license, menhaden
41 license for nonresidents, or a special fisheries sale permit issued under G.S.
42 113-168.4(c), and the dealer records the transaction consistent with the
43 record-keeping requirements of G.S. 113-168.2(i). It is unlawful for any person to

1 purchase, possess, or sell fish taken from coastal fishing waters in violation of this
2 Subchapter or the rules adopted by the Commission implementing this Subchapter.

3 (j) Transfer Prohibited. -- Any fish dealer license issued under this section is
4 nontransferable. It is unlawful to use a fish dealer license issued to another person in
5 the sale or attempted sale of fish or for a licensee to lend or transfer a fish dealer
6 license for the purpose of circumventing the requirements of this section.

7 **"§ 113-169.4. Licensing of ocean fishing piers; fees.**

8 (a) The owner or operator of an ocean fishing pier within the coastal fishing
9 waters who charges the public a fee to fish in any manner from the pier shall secure a
10 current and valid pier license from the Division. An application for a pier license
11 shall disclose the names of all parties involved in the pier operations, including the
12 owner of the property, owner of the pier if different, and all leasehold or other
13 corporate arrangements, and all persons with a substantial financial interest in the
14 pier.

15 (b) Within 30 days following a change of ownership of a pier, or a change as to
16 the manager, the manager or new manager shall secure a replacement pier license
17 from the Division. The replacement license is issued without charge.

18 (c) Pier licenses are issued upon payment of fifty cents (50¢) per linear foot, to
19 the nearest foot, that the pier extends into coastal fishing waters beyond the mean
20 high waterline. The length of the pier shall be measured to include all extensions of
21 the pier.

22 (d) The manager who secures the pier license shall be the individual with the duty
23 of executive-level supervision of pier operations.

24 **"§ 113-169.5. Land or sell license; vessels fishing beyond territorial waters.**

25 (a) Persons aboard vessels not having their primary situs in the State that are
26 carrying a cargo of fish taken outside the waters of the State may land or sell their
27 catch in the State by purchasing a land or sell license as set forth in this section with
28 respect to the vessel in question. The Commission may by rule modify the land or sell
29 licensing procedure in order to devise an efficient and convenient procedure for
30 licensing out-of-state vessels to only land, or after landing to permit sale of cargo.

31 (b) The fee for a land or sell license for a vessel not having its primary situs in
32 North Carolina is two hundred dollars (\$200.00), or an amount equal to the
33 nonresident fee charged by the nonresident's state, whichever is greater. Persons
34 aboard vessels having a primary situs in a jurisdiction that would allow North
35 Carolina vessels without restriction to land or sell their catch, taken outside the
36 jurisdiction, may land or sell their catch in the State without complying with this
37 section if the persons are in possession of a valid license from their state of residence.

38 **"§ 113-170. Exportation and importation of fish and equipment.**

39 The Commission may adopt rules governing the importation and exportation of
40 fish, and equipment that may be used in taking or processing fish, as necessary to
41 enhance the conservation of marine and estuarine resources of the State. These rules
42 may regulate, license, prohibit, or restrict importation into the State and exportation
43 from the State of any and all species of fish that are native to coastal fishing waters or
44 may thrive if introduced into these waters.

1 "§ 113-170.1. Nonresidents reciprocal agreements.

2 Persons who are not North Carolina residents are not entitled to obtain licenses
3 under the provisions of this Article except as provided in this section. Residents of
4 jurisdictions that sell commercial fishing licenses to North Carolina residents are
5 entitled to North Carolina commercial fishing licenses under the provisions of G.S.
6 113-168.2. Licenses may be restricted in terms of area, gear, and fishery by the
7 Commission so that the nonresidents are licensed to engage in North Carolina
8 fisheries on the same or similar terms that North Carolina residents can be licensed to
9 engage in the fisheries of other jurisdictions. The Secretary may enter into reciprocal
10 agreements with other jurisdictions as necessary to allow nonresidents to obtain
11 commercial fishing licenses in the State subject to the foregoing provisions.

12 "§ 113-170.2. Fraud or deception as to licenses, permits, or records.

13 (a) It is unlawful for any person to give any false information or willfully to omit
14 giving required information to the Division or any license agent when the information
15 is material to the securing of any license or permit under this Article. It is unlawful
16 to falsify, fraudulently alter, or counterfeit any license, permit, identification, or
17 record to which this Article applies or otherwise practice any fraud or deception
18 designed to evade the provisions of this Article or reasonable administrative
19 directives made under the authority of this Article.

20 (b) A violation of this section is punishable by a fine of not less than one hundred
21 dollars (\$100.00) nor more than five hundred dollars (\$500.00).

22 "§ 113-170.3. Record-keeping requirements.

23 (a) The Commission may require all licensees under this Article to keep and to
24 exhibit upon the request of an authorized agent of the Department records and
25 accounts as may be necessary to the equitable and efficient administration and
26 enforcement of this Article. In addition, licensees may be required to keep additional
27 information of a statistical nature or relating to location of catch as may be needed to
28 determine conservation policy. Records and accounts required to be kept must be
29 preserved for inspection for not less than three years.

30 (b) It is unlawful for any licensee to refuse or to neglect without justifiable excuse
31 to keep records and accounts as may be reasonably required. The Department may
32 distribute forms to licensees to aid in securing compliance with its requirements, or it
33 may inform licensees of requirements in other effective ways such as distributing
34 memoranda and sending agents of the Department to consult with licensees who have
35 been remiss. Detailed forms or descriptions of records, accounts, collection and
36 inspection procedures, and the like that reasonably implement the objectives of this
37 Article need not be embodied in rules of the Commission in order to be validly
38 required.

39 (c) The following records collected and compiled by the Department shall not be
40 considered public records within the meaning of Chapter 132 of the General Statutes,
41 but shall be confidential and shall be used only for the equitable and efficient
42 administration and enforcement of this Article or for determining conservation
43 policy, and shall not be disclosed except when required by the order of a court of
44 competent jurisdiction: all records, accounts, and reports that licensees are required

1 by the Commission to make, keep, and exhibit pursuant to the provisions of this
2 section, and all records, accounts, and memoranda compiled by the Department from
3 records, accounts, and reports of licensees and from investigations and inspections,
4 containing data and information concerning the business and operations of licensees
5 reflecting their assets, liabilities, inventories, revenues, and profits; the number,
6 capacity, capability, and type of fishing vessels owned and operated; the type and
7 quantity of fishing gear used; the catch of fish or other seafood by species in numbers,
8 size, weight, quality, and value; the areas in which fishing was engaged in; the
9 location of catch; the time of fishing, number of hauls, and the disposition of the fish
10 and other seafood. The Department may compile statistical information in any
11 aggregate or summary form that does not directly or indirectly disclose the identity of
12 any licensee who is a source of the information, and any compilation of statistical
13 information by the Department shall be a public record open to inspection and
14 examination by any person, and may be disseminated to the public by the
15 Department.

16 **"§ 113-170.4. Rules as to possession, transportation, and disposition of fisheries**
17 **resources.**

18 The Commission may adopt rules governing possession, transportation, and
19 disposition of fisheries resources by all persons, including those not subject to fish
20 dealer licensing requirements, in order that inspectors may adequately distinguish
21 regulated coastal fisheries resources from those not so regulated and enforce the
22 provisions of this Article equitably and efficiently. These rules may include
23 requirements as to giving notice, filing declarations, securing permits, marking
24 packages, and the like.

25 **"§ 113-170.5. Violations with respect to coastal fisheries resources.**

26 It is unlawful to take, possess, transport, process, sell, buy, or in any way deal in
27 coastal fisheries resources without conforming with the provisions of this Article or of
28 rules adopted under the authority of this Article.

29 **"§ 113-171. Suspension, revocation, and reissuance of licenses.**

30 (a) Upon receipt of reliable notice that a person licensed under this Article has
31 had imposed against the person a conviction of a criminal offense within the
32 jurisdiction of the Department under the provisions of this Subchapter or of rules of
33 the Commission adopted under the authority of this Subchapter, the Secretary must
34 suspend or revoke all licenses held by the person in accordance with the terms of this
35 section. Reliable notice includes information furnished the Secretary in prosecution
36 or other reports from inspectors. As used in this section, a conviction includes a plea
37 of guilty or nolo contendere, any other termination of a criminal prosecution
38 unfavorably to the defendant after jeopardy has attached, or any substitute for
39 criminal prosecution whereby the defendant expressly or impliedly confesses the
40 defendant's guilt. In particular, procedures whereby bond forfeitures are accepted in
41 lieu of proceeding to trial and cases indefinitely continued upon arrest of judgment or
42 prayer for judgment continued are deemed convictions. The Secretary may act to
43 suspend or revoke licenses upon the basis of any conviction in which:

44 (1) No notice of appeal has been given;

1 (2) The time for appeal has expired without an appeal having been
2 perfected; or

3 (3) The conviction is sustained on appeal. Where there is a new trial,
4 finality of any subsequent conviction will be determined in the
5 manner set out above.

6 (b) The Secretary must initiate an administrative procedure designed to give the
7 Secretary systematic notice of all convictions of criminal offenses by licensees
8 covered by subsection (a) of this section above and keep a file of all convictions
9 reported. Upon receipt of notice of conviction, the Secretary must determine whether
10 it is a first, a second, a third, or a fourth or subsequent conviction of some offense
11 covered by subsection (a). In the case of second convictions, the Secretary must
12 suspend all licenses issued to the licensee for a period of 10 days. In the case of third
13 convictions, the Secretary must suspend all licenses issued to the licensee for a period
14 of 30 days. In the case of fourth or subsequent convictions, the Secretary must
15 revoke all licenses issued to the licensee. Where several convictions result from a
16 single transaction or occurrence, they are to be treated as a single conviction so far as
17 suspension or revocation of the licenses of any licensee is concerned. Anyone
18 convicted of taking or of knowingly possessing, transporting, buying, selling, or
19 offering to buy or sell oysters or clams from areas closed because of suspected
20 pollution will be deemed by the Secretary to have been convicted of two separate
21 offenses on different occasions for license suspension or revocation purposes.

22 (c) Where a license has been suspended or revoked, the former licensee is not
23 eligible to apply for reissuance of license or for any additional license authorized in
24 this Article during the suspension or revocation period. Licenses must be returned to
25 the licensee by the Secretary or the Secretary's agents at the end of a period of
26 suspension. Where there has been a revocation, application for reissuance of license
27 or for an additional license may not be made until six months following the date of
28 revocation. In such case of revocation, the eligible former licensee must satisfy the
29 Secretary that the licensee will strive in the future to conduct the operations for
30 which the license is sought in accord with all applicable laws and rules. Upon the
31 application of an eligible former licensee after revocation, the Secretary, in the
32 Secretary's discretion, may issue one license sought but not another, as deemed
33 necessary to prevent the hazard of recurring violations of the law.

34 (d) Upon receiving reliable information of a licensee's conviction of a second or
35 subsequent criminal offense covered by subsection (a) of this section, the Secretary
36 shall promptly cause the licensee to be personally served with written notice of
37 suspension or revocation, as the case may be. The written notice may be served upon
38 any responsible individual affiliated with the corporation, partnership, or association
39 where the licensee is not an individual. The notice of suspension or revocation may
40 be served by an inspector or other agent of the Department, must state the ground
41 upon which it is based, and takes effect immediately upon personal service. The
42 agent of the Secretary making service shall then or subsequently, as may be feasible
43 under the circumstances, collect all license certificates and plates and other forms or

1 records relating to the license as directed by the Secretary. It is unlawful for any
2 licensee willfully to evade the personal service prescribed in this subsection.

3 (e) A licensee served with a notice of suspension or revocation may obtain an
4 administrative review of the suspension or revocation by filing a petition for a
5 contested case under G.S. 150B-23 within 20 days after receiving the notice. The
6 only issue in the hearing shall be whether the licensee was convicted of a criminal
7 offense for which a license must be suspended or revoked. A license remains
8 suspended or revoked pending the final decision by the Secretary.

9 (f) If the Secretary refuses to reissue the license of or issue an additional license to
10 an applicant whose license was revoked, the applicant may contest the decision by
11 filing a petition for a contested case under G.S. 150B-23 within 20 days after the
12 Secretary makes the decision. The Commission shall make the final agency decision
13 in a contested case under this subsection. An applicant whose license is denied
14 under this subsection may not reapply for the same license for at least six months.

15 (g) The Commission may adopt rules to provide for the disclosure of the identity
16 of any individual or individuals in responsible positions of control respecting
17 operations of any licensee that is not an individual. For the purposes of this section,
18 individuals in responsible positions of control are deemed to be individual licensees
19 and subject to suspension and revocation requirements in regard to any applications
20 for license they may make -- either as individuals or as persons in responsible
21 positions of control in any corporation, partnership, or association. In the case of
22 individual licensees, the individual applying for a license or licensed under this
23 Article must be the real party in interest.

24 (h) In determining whether a conviction is a second or subsequent offense under
25 the provisions of this section, the Secretary may not consider convictions for:

26 (1) Offenses that occurred three years prior to the effective date of this
27 Article; or

28 (2) Offenses that occurred more than three years prior to the time of
29 the latest offense the conviction for which is in issue as a
30 subsequent conviction.

31 **"§ 113-171.1. Use of spotter planes in commercial fishing operations regulated.**

32 (a) Spotter Plane Defined. -- A 'spotter plane' is an aircraft used for aerial
33 identification of the location of fish in coastal fishing waters so that a vessel may be
34 directed to the fish.

35 (b) License. -- Before an aircraft is used as a spotter plane in a commercial fishing
36 operation, the owner or operator of the aircraft must obtain a license for the aircraft
37 from the Division. The fee for a license for a spotter plane is one hundred dollars
38 (\$100.00). An applicant for a license for a spotter plane shall include in the
39 application the identity, either by boat or by company, of the specific commercial
40 fishing operations in which the spotter plane will be used during the license year. If,
41 during the course of the license year, the aircraft is used as a spotter plane in a
42 commercial fishing operation that is not identified in the original license application,
43 the owner or operator of the aircraft shall amend the license application to add the
44 identity of the additional commercial fishing operation.

1 (c) Unlawful Activity. -- It shall be unlawful to:

- 2 (1) Use a spotter plane directed at food fish, except in connection with
3 a purse seine operation authorized by a rule of the Commission.
4 (2) Use or permit the use of an unlicensed spotter plane or a licensed
5 spotter plane whose license application does not identify the
6 specific commercial fishing operation involved.
7 (3) Participate knowingly in a commercial fishing operation that uses
8 an unlicensed spotter plane or a licensed spotter plane whose
9 license application does not identify the specific commercial fishing
10 operation involved.

11 (d) Violation a Misdemeanor. -- A violation of subsection (c) of this section is a
12 Class 1 misdemeanor.

13 "§ 113-172. License agents.

14 (a) The Secretary shall designate license agents for the Department. At least one
15 license agent shall be designated for each county that contains or borders on coastal
16 fishing waters. The Secretary may designate additional license agents in any county if
17 the Secretary determines that additional agents are needed to provide efficient service
18 to the public. The Division and license agents designated by the Secretary under this
19 section shall issue licenses authorized under this Article in accordance with this
20 Article and the rules of the Commission. The Secretary shall require license agents
21 to enter into a contract that provides for their duties and compensation, post a bond,
22 and submit to reasonable inspections and audits. If a license agent violates any
23 provision of this Article, the rules of the Commission, or the terms of the contract,
24 the Secretary may initiate proceedings for the forfeiture of the license agent's bond
25 and may summarily suspend, revoke, or refuse to renew a designation as a license
26 agent and may impound or require the return of all licenses, moneys, record books,
27 reports, license forms and other documents, ledgers, and materials pertinent or
28 apparently pertinent to the license agency. The Secretary shall report evidence or
29 misuse of State property, including license fees, by a license agent to the State Bureau
30 of Investigation as provided by G.S. 114-15.1.

31 (b) License agents shall be compensated by adding a surcharge of one dollar
32 (\$1.00) to each license sold and retaining the surcharge. If more than one license is
33 listed on a consolidated license form, the license agent shall be compensated as if a
34 single license were sold. It is unlawful for a license agent to add more than the
35 surcharge authorized by this section to the fee for each license sold.

36 "§ 113-173. Recreational Commercial Gear License.

37 (a) License Required. -- Except as provided in subsection (j) of this section, it is
38 unlawful for any person to take or attempt to take fish for recreational purposes by
39 means of commercial fishing equipment or gear in coastal fishing waters without
40 holding a RCGL. As used in this section, fish are taken for recreational purposes if
41 the fish are not taken for the purpose of sale. The RCGL entitles the licensee to use
42 authorized commercial gear to take fish for personal use subject to recreational
43 quotas or limits.

1 (b) Sale of Fish Prohibited. -- It is unlawful for the holder of a RCGL or for a
2 person who is exempt under subsection (k) of this section to sell fish taken under the
3 RCGL or pursuant to the exemption.

4 (c) Authorized Commercial Gear. -- The Commission shall adopt rules
5 authorizing the use of a limited amount of commercial fishing equipment or gear for
6 recreational fishing under a RCGL. The Commission may authorize the limited use
7 of commercial gear on a uniform basis in all coastal fishing waters or may vary the
8 limited use of commercial gear within specified areas of the coastal fishing waters.
9 The Commission shall periodically evaluate and revise the authorized use of
10 commercial gear for recreational fishing. Authorized commercial gear shall be
11 identified by visible colored tags or other means specified by the Commission in
12 order to distinguish between commercial gear used in a commercial operation and
13 commercial gear used for recreational purposes.

14 (d) Purchase; Renewal. -- A RCGL may be purchased at designated offices of the
15 Division and from a license agent authorized under G.S. 113-172. A RCGL may be
16 renewed by mail.

17 (e) Replacement RCGL. -- Upon receipt of a proper application and a two-dollar
18 (\$2.00) replacement fee, the Division may issue a duplicate RCGL to replace an
19 unexpired RCGL that has been lost or destroyed.

20 (f) Duration; Fees. -- The RCGL shall be valid for a one-year period from the
21 date of purchase. The fee for a RCGL for a North Carolina resident shall be
22 thirty-five dollars (\$35.00). The fee for a RCGL for an individual who is not a North
23 Carolina resident shall be two hundred fifty dollars (\$250.00).

24 (g) RCGL Available for Inspection. -- It is unlawful for any person to engage in
25 recreational fishing by means of restricted commercial gear in the State without
26 having ready at hand for inspection a valid RCGL. A holder of a RCGL shall not
27 refuse to exhibit the RCGL upon the request of an inspector or any other law
28 enforcement officer authorized to enforce federal or State laws, regulations, or rules
29 relating to marine fisheries.

30 (h) Assignment and Transfer Prohibited. -- A RCGL is not transferable. Except
31 as provided in subsection (j) of this section, it is unlawful to buy, sell, lend, borrow,
32 assign, or otherwise transfer a RCGL, or to attempt to buy, sell, lend, borrow, assign,
33 or otherwise transfer a RCGL.

34 (i) Reporting Requirements. -- The holder of a RCGL shall comply with the
35 biological data sampling and survey programs of the Commission and the Division.

36 (j) Exemptions. --

37 (1) A person who is under 16 years of age may take fish for
38 recreational purposes by means of authorized commercial gear
39 without holding a RCGL if the person is accompanied by a parent,
40 grandparent, or guardian who holds a valid RCGL or if the person
41 has in the person's possession a valid RCGL issued to the person's
42 parent, grandparent, or guardian.

43 (2) A person may take crabs for recreational purposes by means of one
44 or more crab pots attached to the shore along privately owned land

1 or to a privately owned pier without holding a RCGL provided
2 that the crab pots are attached with the permission of the owner of
3 the land or pier.

4 (3) A person who is on a vessel may take fish for recreational purposes
5 by means of authorized commercial gear without holding a RCGL
6 if there is another person on the vessel who holds a valid RCGL.
7 This exemption does not authorize the use of commercial gear in
8 excess of that authorized for use by the person who holds the valid
9 RCGL or, if more than one person on the vessel holds a RCGL, in
10 excess of that authorized for use by those persons."

11 Section 5.2. (a) Definitions; Citations. The definitions set out in G.S.
12 113-168 apply to this section. A citation to a provision of the General Statutes in this
13 section means that provision of the General Statutes as enacted by this act.

14 (b) Transitional Provisions. In order to effect an orderly implementation
15 of this act and the transition from the moratorium imposed by subsection (a) of
16 Section 3 of Chapter 576 of the 1993 Session Laws, Regular Session 1994, as
17 amended by Section 3 of Chapter 675 of the 1993 Session Laws, Regular Session
18 1994; subsection (a) of Section 26.5 of Chapter 507 of the 1995 Session Laws; Section
19 7 of Chapter 256 of the 1997 Session Laws; and subsection (a) of Section 6.1 of this
20 act, to the licensing provision of Article 14A of Chapter 113 of the General Statutes,
21 the provisions of this section shall apply to the issuance of licenses under Article 14A
22 of Chapter 113 of the General Statutes until all Fishery Management Plans have been
23 adopted as required by G.S. 113-182.1 and G.S. 143B-289.22.

24 (c) Temporary Cap. There is hereby imposed a temporary cap on the
25 total number of SCFLs that the Division may issue. The temporary cap equals the
26 total number of endorsements to sell fish that establish eligibility for a SCFL under
27 subsection (g) of this section plus 500 additional SCFLs, authorized by subsection (d)
28 of this section.

29 (d) 1999-2000 License Year. For the 1999-2000 license year, the
30 Commission is authorized to issue SCFLs as provided in subsection (g) of this section
31 plus an additional 500 SCFLs using the procedure set out in subsection (h) of this
32 section.

33 (e) Subsequent License Years. For license years beginning with the
34 2000-01 license year, the Commission is authorized to issue SCFLs from the pool of
35 available SCFLs as provided in subsection (f) of this section using the procedure set
36 out in subsection (h) of this section.

37 (f) Adjustment of Number of SCFLs. The number of SCFLs in the pool
38 of available SCFLs in license years beginning with the 2000-01 license year is the
39 temporary cap less the number of SCFLs that are renewed. The Commission may
40 increase or decrease the number of SCFLs that are issued from the pool of available
41 SCFLs. The Commission may increase the number of SCFLs that are issued from
42 the pool of available SCFLs up to the temporary cap. The Commission may decrease
43 the number of SCFLs that are issued from the pool of available SCFLs but may not
44 refuse to renew a SCFL that is issued during the previous license year and that has

1 not been suspended or revoked. The Commission shall increase or decrease the
2 number of SCFLs that are issued to reflect its determination as to the effort that the
3 fishery can support, based on the best available scientific evidence.

4 (g) Eligibility for SCFL. Any person who holds a valid endorsement to
5 sell fish of a vessel license on 1 July 1999 is eligible to receive a SCFL. The Division
6 shall issue a SCFL to any person who is eligible under this subsection upon receipt of
7 an application and required fees. If the person held more than one endorsement to
8 sell fish, the person is eligible to receive a SCFL for each endorsement to sell
9 previously held. Eligibility to receive a SCFL under this subsection shall expire 1
10 July 2000.

11 (h) Procedure for Issuing Additional SCFLs. The Commission shall
12 determine a procedure for issuing the 500 additional SCFLs authorized by subsection
13 (d) of this section for the 1999-2000 license year and for issuing SCFLs from the pool
14 of available SCFLs authorized by subsection (e) of this section. The procedure shall
15 set a date on which the Division will begin receiving applications and a date on
16 which the determination by lot of which applicants will receive a SCFL will be made.
17 The Commission shall develop criteria for determining eligibility for a SCFL under
18 this subsection. Criteria shall include the past involvement of the applicant and the
19 applicant's family in commercial fishing; the extent to which the applicant has relied
20 on commercial fishing for the applicant's livelihood; the extent to which the applicant
21 has complied with federal and State laws, regulations, and rules relating to coastal
22 fishing and protection of the environment; and any other factors the Commission
23 determines to be relevant. The Division shall review each application for a SCFL
24 that it receives during the application period to determine whether the applicant is
25 eligible under the eligibility criteria established by the Commission. The Division
26 shall issue SCFLs under this subsection by lot. All applicants who are determined to
27 be eligible shall have an equal chance of being issued a SCFL.

28 Section 5.3. The Marine Fisheries Commission shall adopt rules
29 authorizing the use of a limited amount commercial gear for recreational fishing
30 under a Recreational Commercial Gear License, as required by G.S. 113-173, as
31 enacted by Section 5.1 of this act, on or before 1 July 1999.

32 Section 5.4. (a) G.S. 113-153.1 is recodified as G.S. 113-168.9 in Article
33 14A of Chapter 113 of the General Statutes, as enacted by Section 5.1 of this act.

34 (b) G.S. 113-168.9(e), as recodified by subsection (a) of this section, reads
35 as rewritten:

36 "(e) The owner of a vessel ~~licensed under G.S. 113-152~~ shall be eligible to
37 purchase a vessel crab license for crabs as an alternative to the purchase of individual
38 licenses under this section. A vessel crab license authorizes the owner of the vessel
39 and up to two unlicensed persons serving as crew to fish for crabs from that vessel. It
40 is unlawful for the owner of a vessel to take crabs from the coastal fishing waters of
41 North Carolina for commercial use by any means, when unlicensed persons not
42 authorized by the vessel crab license are on the vessel. The Secretary shall revoke a
43 vessel crab license issued under this subsection ~~shall be revoked when~~ if the owner of
44 the vessel or any other person using the owner's vessel is convicted of a violation

1 under this section, ~~except for subsection (b).~~ section, other than conviction for a
2 violation under subsection (b) of this section."

3 (c) All sections of Article 14 of Chapter 113 of the General Statutes
4 other than G.S. 113-153.1 are repealed.

5 Section 5.5. The Marine Fisheries Commission shall adopt a Fishery
6 Management Plan for the blue crab fishery in accordance with G.S. 143B-289.22, as
7 enacted by Section 2.1 of this act, and G.S. 113-182.1, as enacted by Section 3.4 of
8 this act, no later than 1 January 2000.

9 Section 5.6. Notwithstanding the provisions of G.S. 113-168.2 and G.S.
10 113-168.3, as enacted by Section 5.1 of this act, it is unlawful for any person to take
11 crabs from the coastal fishing waters of the State for commercial use without being
12 licensed under G.S. 113-168.9.

13 Section 5.7. G.S. 113-168.9, as recodified from G.S. 113-153.1 by Section
14 5.4 of this act, is repealed.

15 Section 5.8. The Revisor of Statutes shall set out Section 5.2 of this act as
16 a note to G.S. 113-168.2, as enacted by Section 5.1 of this act.

17 Section 5.9. G.S. 113-203(a)(2) reads as rewritten:

18 "(2) When the transplanting is done by a dealer in accordance with the
19 provisions of G.S. ~~113-158~~ 113-169.1(2) and implementing rules;
20 or".

21 Section 5.10. G.S. 113-154.1 reads as rewritten:

22 "**§ 113-154.1. Endorsement to sell fish.**

23 (a) Requirements. -- Except as otherwise provided in this section, it is unlawful for
24 any person who takes or lands any species of fish under the authority of the Marine
25 Fisheries Commission from coastal fishing waters by any means whatever, including
26 aquaculture operations, to sell, offer for sale, barter or exchange for merchandise
27 such fish, without having first procured a current and valid endorsement to sell fish.
28 It is unlawful for fish dealers to buy fish unless the seller presents a current and valid
29 vessel license with an endorsement to sell, or a separate endorsement to sell if no
30 vessel is involved, at the time of the transaction. Any subsequent sale of fish shall be
31 subject to the licensing requirements of fish dealers under G.S. 113-156.

32 (b) Fees. -- The annual fee for an endorsement to sell fish on a vessel license for a
33 resident of this State is set forth in G.S. 113-152(h). The annual fee for an
34 endorsement to sell fish when no vessel is involved for a resident of this State is
35 fifteen dollars (\$15.00) and for a nonresident of this State is one hundred dollars
36 (\$100.00) or an amount equal to the nonresident fee charged by the nonresident's
37 state, whichever is greater. The license shall be valid for the period July 1 through
38 June 30 of a given year.

39 (c) Non-Vessel Endorsement Format. -- The format of an endorsement when the
40 applicant is not seeking a vessel license shall include the name of the applicant, date
41 of birth, expiration date of the endorsement, and any other information the Division
42 deems necessary to accomplish the purposes of this Subchapter. The endorsement
43 shall be issued on a card made of hard plastic or metal capable of being used to make

1 imprints of the sale or transaction. An applicant who is applying for an endorsement
2 on a vessel license shall comply with G.S. 113-152.

3 (d) Application for Non-Vessel Endorsement. -- An application for issuance or
4 renewal of an endorsement to sell shall be filed with the Morehead City offices of the
5 Division of Marine Fisheries or license agents authorized to sell licenses under this
6 Article. An application shall be accompanied by the fee established in subsection (b)
7 of this section. Applications shall not be accepted from persons ineligible to hold a
8 license issued by the Marine Fisheries Commission, including any applicant whose
9 endorsement is suspended or revoked on the date of the application. The applicant
10 shall be provided with a copy of the application marked received. The copy shall
11 serve as the endorsement to sell, until the endorsement issued by the Division is
12 received or the Division determines that the applicant is ineligible to hold an
13 endorsement. In addition to the information required in subsection (c) of this section,
14 the applicant shall disclose on the application a valid address, and such other
15 information as the Division may require.

16 (e) Application for Replacement Non-Vessel Endorsement to Sell. -- A
17 replacement endorsement shall only be obtained from the Morehead City offices of
18 the Division of Marine Fisheries. The Division shall not accept an application for a
19 replacement endorsement unless the Division determines that the applicant's current
20 license has not been suspended or revoked. A copy of an application duly filed with
21 the Division shall serve as the endorsement until the replacement license has been
22 received.

23 (f) Sale of Fish. -- It is unlawful for any person licensed under this section to sell
24 fish taken outside the territorial waters of North Carolina or to sell fish taken from
25 coastal fishing waters except to:

- 26 (1) Fish dealers licensed under G.S. 113-156; or
27 (2) The public, if the seller is also licensed as a fish dealer under G.S.
28 113-156.

29 (g) Recordkeeping Requirements. -- The fish dealer shall record each transaction
30 on a form provided by the Department. The transaction form shall include the
31 information on the endorsement to sell of the seller, the quantity of the fish, the
32 identity of the fish dealer, and such other information as the Division deems
33 necessary to accomplish the purposes of this Subchapter. The person who records the
34 transaction shall provide a completed copy of the transaction form to the
35 Department, and to the other party of the transaction. The Department copy of each
36 transaction from the preceding month shall be transmitted to the Department by the
37 fish dealer on or before the tenth day of the following month.

38 (h) Non-Vessel Endorsement to Sell Nontransferable. -- ~~An~~ A non-vessel
39 endorsement to sell fish issued under this section is nontransferable. It is unlawful to
40 use ~~an~~ a non-vessel endorsement to sell issued to another person in the sale or
41 attempted sale of fish or for a licensee to lend or transfer a license to sell with the
42 following two exceptions: (i) an individual under the age of 16 may sell fish under the
43 license of a relative or guardian; or (ii) a license may be transferred within a single
44 fishing operation if the person to whom it is transferred is a U.S. citizen. It is

1 unlawful for a licensee to lend or transfer a license to sell for the purpose of
2 circumventing the requirements of this section.

3 (h1) Endorsement to Sell Fish on a Vessel License Transferable. -- An
4 endorsement to sell fish on a vessel license may be transferred to the purchaser of the
5 vessel upon application to the Division of Marine Fisheries at the Morehead City
6 office of the Division if the purchaser of the vessel is otherwise qualified to hold an
7 endorsement to sell fish on a vessel license.

8 (i) (See note) Penalties. -- Any person who violates any provision of this section or
9 any rule by the Marine Fisheries Commission to implement this section is guilty of a
10 misdemeanor.

11 (1) A violation of subsections (a), (f), or (h) or a rule of the Marine
12 Fisheries Commission implementing any of those subsections is
13 punishable as follows:

14 a. For a first conviction or a subsequent conviction not
15 described in subdivision (1)b. or c., a violation is a Class 3
16 misdemeanor. A fine shall be imposed of not less than fifty
17 dollars (\$50.00) or double the value of the fish which are
18 the subject of the transaction, whichever is greater, not to
19 exceed two hundred fifty dollars (\$250.00).

20 b. For a second conviction within three years, a violation is a
21 Class 2 misdemeanor. A fine shall be imposed of not less
22 than two hundred fifty dollars (\$250.00) or double the value
23 of the fish which are the subject of the transaction,
24 whichever is greater, not to exceed five hundred dollars
25 (\$500.00).

26 c. For a third or subsequent conviction within three years, a
27 violation is a Class 2 misdemeanor. A fine shall be imposed
28 of not less than five hundred dollars (\$500.00) or double the
29 value of the fish which are the subject of the transaction,
30 whichever is greater.

31 (2) A violation of any other provision of this section other than
32 subsections (a), (f), or (h), or of any rule of the Marine Fisheries
33 Commission other than a rule implementing subsections (a), (f), or
34 (h) of this section, is punishable under G.S. 113-135(a).

35 (j) Use of Fees. -- Fees paid under G.S. 113-152(h) or G.S. 113-154.1 for an
36 endorsement to sell fish shall be applied to the cost of a fisheries data information
37 system that compiles fisheries data obtained from the endorsement program
38 established by G.S. 113-152 and this section or to marine fisheries programs or
39 research projects that enhance knowledge and use of marine and estuarine
40 resources."

41 Section 5.11. G.S. 113-154 reads as rewritten:

42 "§ 113-154. Shellfish license.

1 (a) It is unlawful for an individual to take shellfish from the public or private
2 grounds of North Carolina by mechanical means or for commercial use by any means
3 without having first procured an individual shellfish license.

4 (b) It is unlawful for any individual to take shellfish for commercial use from the
5 public or private grounds of North Carolina without having ready at hand for
6 inspection a current and valid shellfish license issued to him personally and bearing
7 his correct name and address. It is unlawful for any such individual taking or
8 possessing freshly taken shellfish to refuse to exhibit his license upon the request of
9 an officer authorized to enforce the fishing laws.

10 (c) Shellfish licenses are issued annually on a fiscal year basis upon payment of a
11 fee of seven dollars and fifty cents (\$7.50) upon proof that the license applicant is a
12 resident of North Carolina. ~~Carolina: Provided, that persons under 16 years of age are~~
13 ~~exempt from the license requirements of this section if they are accompanied by their~~
14 ~~parent or guardian who is in compliance with the requirements of this section or if~~
15 ~~they have in their possession their parent's or guardian's shellfish license.~~

16 (c1) A shellfish leaseholder under G.S. 113-202, or a water column leaseholder
17 under G.S. 113-202.1 or G.S. 113-202.2, or a franchise holder under G.S. 113-206
18 who purchases an individual shellfish license under this section, may employ persons
19 who do not possess individual shellfish licenses, provided that the employees have
20 written proof of employment on hand, if requested for inspection by a Marine
21 Fisheries officer to verify lawful activities on the lease. The written proof of
22 employment shall include: (i) the name and address of the leaseholder or franchise
23 holder; (ii) the lease or franchise number; (iii) the date of issuance and expiration of
24 the lease or franchise; and (iv) the employee's name and address. The proof of
25 employment shall be signed and dated by the leaseholder or franchise holder.

26 (d) In the event an individual possessing a shellfish license changes his name or
27 address or receives one erroneous in this respect, he must within 30 days surrender
28 the license for one bearing the correct name and address. Upon a showing by the
29 individual that the name or address change occurred within the past 30 days, the trial
30 court or prosecutor shall dismiss any charges brought pursuant to this subsection.

31 (e) It is unlawful for an individual issued a shellfish license to transfer or offer to
32 transfer his license, either temporarily or permanently, to another. It is unlawful for
33 an individual to secure or attempt to secure a shellfish license from a source not
34 authorized by the Marine Fisheries Commission.

35 (f) Persons under the age of 18 years of age may take and sell shellfish from the
36 public or private grounds of the State during the period from May 15 through
37 September 1 of each year without holding a shellfish license under this section or an
38 endorsement to sell fish under G.S. 113-154.1."

39

40 **PART VI. MORATORIUM EXTENSION; MISCELLANEOUS PROVISIONS;**
41 **EFFECTIVE DATES**

42

43

44

Section 6.1. (a) Subsection (a) of Section 3 of Chapter 576 of the 1993
Session Laws, Regular Session 1994, as amended by Section 3 of Chapter 675 of the

1 1993 Session Laws, Regular Session 1994; subsection (a) of Section 26.5 of Chapter
2 507 of the 1995 Session Laws; and Section 7 of Chapter 256 of the 1997 Session
3 Laws, reads as rewritten:

4 "(a) Except as provided in subsections (b), (c), (c1), or (c2) of this section, the
5 Department shall not issue any new licenses for a period beginning 1 July 1, 1994,
6 1994 and ending ~~June 30, 1997,~~ 1 July 1999 under the following statutes:

7 (1) G.S. 113-152. ~~Vessel licenses.~~ Consolidated license for vessels,
8 equipment, and operations; fees.

9 (2) G.S. 113-153.1. ~~Crab license.~~ License.

10 (3) G.S. 113-154. ~~Shellfish license license.~~

11 (4) G.S. 113-154.1. ~~Nonvessel endorsements to sell fish.~~ Endorsement
12 to sell fish."

13 (b) It is the intent of the General Assembly that the moratorium imposed
14 by the amendment made by subsection (a) of this section to subdivision (4) of
15 subsection (a) of Section 3 of Chapter 576 of the 1993 Session Laws, Regular Session
16 1994, as amended by Section 3 of Chapter 675 of the 1993 Session Laws, Regular
17 Session 1994; subsection (a) of Section 26.5 of Chapter 507 of the 1995 Session Laws;
18 and Section 7 of Chapter 256 of the 1997 Session Laws shall apply to both non-vessel
19 endorsements to sell fish and endorsements to sell fish of vessel licenses.

20 Section 6.2. Subsection (a) of Section 3 of Chapter 576 of the 1993
21 Session Laws, Regular Session 1994, as amended by Section 3 of Chapter 675 of the
22 1993 Session Laws, Regular Session 1994; subsection (a) of Section 26.5 of Chapter
23 507 of the 1995 Session Laws; Section 7 of Chapter 256 of the 1997 Session Laws;
24 and subsection (a) of Section 6.1 of this act, reads as rewritten:

25 "(a) Except as provided in subsections (b), (c), (c1), or (c2) of this section, the
26 Department shall not issue any new licenses for a period beginning 1 July 1994 and
27 ending 1 July ~~1999~~ 2000 under the following statutes:

28 (1) ~~G.S. 113-152. Consolidated license for vessels, equipment, and~~
29 ~~operations; fees.~~

30 (2) ~~G.S. 113-153.1. 113-168.9, Crab license.~~

31 (3) ~~G.S. 113-154. Shellfish license.~~

32 (4) ~~G.S. 113-154.1. Endorsement to sell fish."~~

33 Section 6.3. (a) Part 5A of Article 7 of Chapter 143B of the General
34 Statutes is repealed, except that G.S. 143B-289.19 is not repealed but is recodified as
35 G.S. 143B-289.40 within Part 5C of Article 7 of Chapter 143B of the General Statutes
36 and reads as rewritten:

37 "~~§ 143B-289.19. 143B-289.40. Office of Marine Affairs -- creation.~~

38 ~~There~~ The Office of Marine Affairs is created in the Department of ~~Administration~~
39 ~~the Office of Marine Affairs.~~ Environment, Health, and Natural Resources."

40 (b) Part 5B of Article 7 of Chapter 143B of the General Statutes (G.S.
41 143B-289.20 through G.S. 143B-289.22) is recodified as Part 5C of Article 7 of
42 Chapter 143B of the General Statutes (G.S. 143B-289.41 through G.S. 143B-289.43).

43 (c) G.S. 143B-289.40(a)(1b)g., as recodified by subsection (a) of this
44 section, reads as rewritten:

1 "g. Create local advisory committees in accordance with the
2 provisions of G.S. ~~143B-289.22~~. 143B-289.42."

3 Section 6.4. The records, personnel, property, unexpended balances of
4 appropriations, allocations, and other funds, including the functions of budgeting and
5 purchasing, heretofore vested in the Marine Fisheries Commission created under Part
6 5A of Article 7 of Chapter 143B of the General Statutes, repealed by Section 6.3 of
7 this act, are transferred to the Marine Fisheries Commission created under Part 5B of
8 Article 7 of Chapter 143B of the General Statutes, as enacted by Section 2.1 of this
9 act. All rules, decisions, and actions, heretofore adopted, made, or taken by the
10 Marine Fisheries Commission created under Part 5 of Article 7 of Chapter 143B of
11 the General Statutes, repealed by Section 1 of Chapter 641 of the 1987 Session Laws,
12 and all rules, decisions, and actions, heretofore adopted, made, or taken by the
13 Marine Fisheries Commission created under Part 5A of Article 7 of Chapter 143B of
14 the General Statutes, repealed by Section 6.2 of this act, that have not been
15 heretofore repealed or rescinded shall continue in effect until repealed or rescinded
16 by the Marine Fisheries Commission created under Part 5B of Article 7 of Chapter
17 143B of the General Statutes, as enacted by Section 2.1 of this act.

18 Section 6.5. In order to establish a schedule of staggered terms of three
19 years for the Marine Fisheries Commission, the terms of members of the Commission
20 initially filling positions established by subdivisions (1), (2), and (3) of subsection (a)
21 of G.S. 143B-289.24, as enacted by Section 2.1 of this act, shall begin on the date the
22 member is appointed and duly qualified and shall expire on 30 June 2001; the terms
23 of members of the Commission initially filling positions established by subdivisions
24 (4), (5), and (6) of subsection (a) of G.S. 143B-289.24, as enacted by Section 2.1 of
25 this act, shall begin on the date the member is appointed and duly qualified and shall
26 expire on 30 June 2000; the terms of members of the Commission initially filling
27 positions established by subdivisions (7), (8), and (9) of subsection (a) of G.S.
28 143B-289.24, as enacted by Section 2.1 of this act, shall begin on the date the member
29 is appointed and duly qualified and shall expire on 30 June 1999.

30 Section 6.6. G.S. 113-182(b) reads as rewritten:

31 "(b) The Marine Fisheries Commission is authorized to authorize, regulate,
32 prohibit, prescribe, or restrict and the Department is authorized to license:

- 33 (1) The opening and closing of coastal fishing waters, except as to
34 inland game fish, whether entirely or only as to the taking of
35 particular classes of fish, use of particular equipment, or as to other
36 activities within the jurisdiction of the Department; and
37 (2) The possession, cultivation, transportation, importation,
38 exportation, sale, purchase, acquisition, and disposition of all
39 marine and estuarine resources and all related equipment,
40 implements, vessels, and conveyances as necessary to implement
41 the work of the Department in carrying out its duties.
42 (3) The possession, transportation, importation, exportation, sale,
43 purchase, acquisition, and disposition of all fish taken in the
44 Atlantic Ocean out to a distance of 200 miles from the State's

1 mean low watermark, consistent with the Magnuson Fishery
2 Conservation and Management Act, 16 U.S.C. § 1801, et seq., as
3 amended, when the harvest or landing of the fish is controlled by a
4 quota imposed on the State by a federal fisheries management
5 plan."

6 Section 6.7. G.S. 113-190, as enacted by Section 2 of Chapter 633 of the
7 1995 Session Laws (1996 Regular Session), is recodified as G.S. 113-200.

8 Section 6.8. All of the Coastal Habitat Protection Plans required by G.S.
9 143B-279.8, as enacted by Section 3.1 of this act, shall be adopted no later than 1 July
10 2003. The Coastal Resources Commission, the Environmental Management
11 Commission, and the Marine Fisheries Commission shall make the first report on
12 progress in developing and implementing Coastal Habitat Protection Plans, as
13 required by G.S. 143B-279.8(d), as enacted by Section 3.1 of this act, on or before 1
14 September 1999. The Secretary of Environment, Health, and Natural Resources shall
15 make the first report on progress in developing and implementing Fishery
16 Management Plans, as required by G.S. 113-182.1(f), as enacted by Section 3.4 of this
17 act, on or before 1 September 1999.

18 Section 6.9. The Joint Legislative Commission on Seafood and
19 Aquaculture shall study the establishment of a comprehensive State program to
20 acquire, preserve, and restore habitats critical to marine and estuarine fisheries. The
21 Joint Legislative Commission on Seafood and Aquaculture shall report its findings
22 and recommendations, if any, to the 1998 Regular Session of the 1997 General
23 Assembly.

24 Section 6.10. This act constitutes a recent act of the General Assembly
25 within the meaning of G.S. 150B-21.1. Every agency to which this act applies that is
26 authorized to adopt rules to implement the provisions of this act may adopt
27 temporary rules to implement the provisions of this act. This section shall continue
28 in effect until all rules necessary to implement the provisions of this act have become
29 effective as either temporary rules or permanent rules.

30 Section 6.11. The Marine Fisheries Commission may adopt temporary
31 rules to implement or comply with a fisheries management plan adopted by the
32 Atlantic States Marine Fisheries Commission or an interstate fisheries management
33 council.

34 Section 6.12. The headings to the Parts of this act are a convenience to
35 the reader and are for reference only. The headings do not expand, limit, or define
36 the text of this act.

37 Section 6.13. If any section or provision of this act is declared
38 unconstitutional or invalid by the courts, the unconstitutional or invalid section or
39 provision does not affect the validity of this act as a whole or any part of this act
40 other than the part declared to be unconstitutional or invalid.

41 Section 6.14. Section 3 of Chapter 547 of the 1995 Session Laws, Regular
42 Session 1996, as amended by subsection (b) of Section 1 of Chapter 633 of the 1995
43 Session Laws, Regular Session 1996, and Section 27.33 of Chapter 18 of the 1996

1 Session Laws, Second Extra Session, and Section 12 of Chapter 256 of the 1997
2 Session Laws, reads as rewritten:

3 "Sec. 3. Notwithstanding G.S. 113-202, a moratorium on new shellfish cultivation
4 leases shall be imposed in the remaining area of Core Sound not described in Section
5 1 of this act. During the moratorium, a comprehensive study of the shellfish lease
6 program shall be conducted. The moratorium established under this section covers
7 that part of Core Sound bounded by a line beginning at a point on Cedar Island at
8 35°00'39"N - 76°17'48"W, thence 109°(M) to a point in Core Sound 35°00'00"N -
9 76°12'42"W, thence 229°(M) to Marker No. 37 located 0.9 miles off Bells Point at
10 34°43'30"N - 76°29'00"W, thence 207°(M) to the Cape Lookout Lighthouse at
11 34°37'24"N - 76°31'30"W, thence 12°(M) to a point at Marshallberg at 34°43'07"N -
12 76°31'12"W, thence following the shoreline in a northerly direction to the point of
13 beginning except that the highway bridges at Salters Creek, Thorofare Bay, and the
14 Rumley Bay ditch shall be considered shoreline. The moratorium shall expire
15 ~~August 1, 1997.~~ 1 July 1998."

16 Section 6.15. Sections 1.1, 1.3, 1.4, 1.5, 5.8, 5.11, 6.7, 6.9, 6.10, 6.12, 6.13,
17 and 6.15 of this act are effective when this act becomes law. Sections 2.1, 4.4, 5.3,
18 6.3, 6.4, 6.5, 6.6, and 6.11 of this act become effective 1 September 1997. Sections 4.1
19 through 4.3 of this act become effective 1 September 1997 and apply to violations and
20 offenses on or after 1 September 1997. Section 1.2 of this act is effective retroactively
21 as of 1 March 1997. Sections 6.1 and 6.10 of this act become effective 31 July 1997.
22 Section 6.14 of this act becomes effective 1 August 1997. Sections 3.1, 3.2, 3.3, 3.4,
23 3.5, 5.5, and 6.8 of this act become effective 1 July 1998. Sections 5.1, 5.2, 5.4, 5.6,
24 5.9, and 6.2 of this act become effective 1 July 1999. Section 5.6 of this act expires 1
25 July 2000. Section 5.7 of this act becomes effective 1 July 2000. Sections 5.1 and 5.2
26 of this act expire 1 September 2003.



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1097

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

H1097V6-ART/SB-051.02 PCS4143

Date _____, 1997

Comm. Sub. [YES]
Amends Title [NO]
Sixth Edition PCS4143

Senator Hoyle

1 moves to amend the bill on page 22, lines 33 through 36,
2 by rewriting those lines to read:

3
4 "(e) Fees. -- The annual SCFL fee for a North Carolina resident
5 shall be two hundred dollars (\$200.00). The annual SCFL fee for a
6 person who is not a resident of North Carolina shall be the greater
7 of: (i) two hundred dollars (\$200.00) plus any actual cost incurred
8 by the Division in processing the license application that exceeds
9 the cost of processing a license application from a North Carolina
10 resident, or (ii) the amount charged to a North Carolina resident in
11 the nonresident's state for an equivalent commercial fishing license
12 or licenses."

SIGNED Rep Hoyle
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____



Amendment # 1
Amendment # 2

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1097

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

H1097-ARB-7/31

Date _____, 1997

Comm. Sub. [YES]
Amends Title []
H1097-PCS4143

Senator

as amended by Amendment Number 1,

1 moves to amend the bill, on page 22, line 35 and 36, by rewriting the
2 lines to read:
3 "of North Carolina shall be eight hundred dollars (\$800.00) or the
4 amount charged to a North Carolina resident in the nonresident's
5 state, which is lesser; however, in no event may the fee be less
6 than two hundred dollars (\$200.00)."
7

SIGNED [Signature]
Amendment Sponsor

SIGNED [Signature]
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

whichever is less;



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1097

AMENDMENT NO. 3
(to be filled in by
Principal Clerk)
Page 1 of 1

H1097V6-ART/SB-057.01 PCS4143

Date _____, 1997

Comm. Sub. [YES]
Amends Title [NO]
Sixth Edition PCS4143

Senator Cochrane

- 1 moves to amend the bill on page 17, line 20,
- 2 by inserting, after the word "shall", the word "concurrently"; and
- 3
- 4 on page 17, line 22,
- 5 by deleting the words "to the commission." and substituting the
- 6 words "by the Secretary.".

SIGNED Betsy Cochrane
Amendment Sponsor

SIGNED J. Ken
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1097

AMENDMENT NO. 4
(to be filled in by
Principal Clerk)
Page 1 of 1

H1097V6-ART/SB-055.01 PCS4143

Date _____, 1997

Comm. Sub. [YES]
Amends Title [NO]
Sixth Edition PCS4143

Senator Cochrane

1 moves to amend the bill on page 15, lines 34 through 41,
2 by rewriting those lines to read:

3
4 "(f) The Secretary of Environment, Health, and Natural Resources
5 shall report to the Environmental Review Commission and the Joint
6 Legislative Commission on Seafood and Aquaculture within 30 days of
7 the completion or substantial revision of each draft Coastal Habitat
8 Protection Plan. The Environmental Review Commission and the Joint
9 Legislative Commission on Seafood and Aquaculture shall concurrently
10 review each draft Coastal Habitat Protection Plan within 30 days of
11 the date the draft Plan is submitted by the Secretary. The
12 Environmental Review Commission and the Joint Legislative Commission
13 on Seafood and Aquaculture may submit comments and recommendations
14 on the draft Plan to the Secretary within 30 days of the date the
15 draft Plan is submitted by the Secretary."

SIGNED Betsy Cochrane
Amendment Sponsor

SIGNED J. Ken
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1097

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

H1097V6-ART/SB-052.02 PCS4143

Date 5, 1997

Comm. Sub. [YES]
Amends Title [NO]
Sixth Edition PCS4143

Senator Phillips

- 1 moves to amend the bill on page 14, line 22,
- 2 by inserting, after the period on that line:
- 3
- 4 "The goal of the Plans shall be the long-term enhancement of coastal
- 5 fisheries associated with each coastal habitat identified in
- 6 subdivision (1) of this subsection."

SIGNED [Signature]
Amendment Sponsor

SIGNED [Signature]
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____



*Amendment
pulled
By Sen. Perdue*

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1097

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

H1097V6-ART/SB-059.05 PCS4143

Date 6, 1997

Comm. Sub. [YES]
Amends Title [NO]
Sixth Edition PCS4143

Senator Perdue

1 moves to amend the bill on page 27, line 5,
2 by inserting, at the end of that line:

3
4 "Persons under 16 years of age are exempt from the license
5 requirements of this section if accompanied by a parent,
6 grandparent, or guardian who is in compliance with the requirements
7 of this section or if in possession of a parent's, grandparent's, or
8 guardian's shellfish license."

9
10 on page 27, lines 28 through 31,
11 by rewriting those lines to read:

12
13 "(h) Limited Shellfish License for Persons Under the Age of 18.
14 -- A resident of North Carolina who is under the age of 18 years may
15 apply for a limited shellfish license at any office of the Division.
16 A limited shellfish license issued under this subsection entitles
17 the holder to take and sell shellfish from the public grounds of the
18 State by mechanical means or for commercial use by any means only
19 during the period from 15 May through 1 September of the year for
20 which the license is issued. The holder of this license may sell
21 shellfish only to a fish dealer licensed under G.S. 113-169.3 and is
22 subject to the requirements of G.S. 113-170.3. The Division shall
23 issue a limited shellfish license under this subsection at no charge
24 upon proof that the applicant is a resident of North Carolina."

25
26 on page 42, line 12,
27 by rewriting that line to read:

28
29 "resident of North Carolina. ~~Carolina: Provided, that persons~~
30 Persons under 16 years of age are";



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1097

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

H1097V6-ART/SB-059.05 PCS4143

Page 2 of 2

1 on page 42, lines 13 through 15 by removing the strike through of
2 those lines;

3

4 on page 42, lines 35 through 38,
5 by rewriting those lines to read:

6

7 "(f) A resident of North Carolina who is under the age of 18
8 years may apply for a limited shellfish license at any office of the
9 Division. A limited shellfish license issued under this subsection
10 entitles the holder to take and sell shellfish from the public
11 grounds of the State by mechanical means or for commercial use by
12 any means only during the period from 15 May through 1 September of
13 the year for which the license is issued. The holder of this
14 license may sell shellfish only to a fish dealer licensed under G.S.
15 113-156 and shall comply with the requirements of G.S. 113-163. The
16 Division shall issue a limited shellfish license under this
17 subsection at no charge upon proof that the applicant is a resident
18 of North Carolina."; and

19

20 on page 43, line 13,
21 by inserting, after "(b)":

22

23 "It is the intent of the General Assembly that the moratorium
24 imposed by subdivision (3) of subsection (a) of Section 3 of Chapter
25 576 of the 1993 Session Laws, Regular Session 1994, as amended by
26 Section 3 of Chapter 675 of the 1993 Session Laws, Regular Session
27 1994; subsection (a) of Section 26.5 of Chapter 507 of the 1995
28 Session Laws; and Section 7 of Chapter 256 of the 1997 Session Laws
29 not apply to the issuance of a limited shellfish license under G.S.
30 113-154(f), as enacted by Section 5.11 of this act."

SIGNED 
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1097

AMENDMENT NO. 7
(to be filled in by
Principal Clerk)
Page 1 of 1

H1097V6-ART/SB-060.02 PCS4143

Date _____, 1997

Comm. Sub. [YES]
Amends Title [NO]
Sixth Edition PCS4143

Senator Lee

1 moves to amend the bill on page 23, lines 37 through 40,
2 by rewriting those lines to read:

3
4 "(b) Eligibility; Fees. -- Any person who is 65 years of age or
5 older and who is otherwise eligible for a SCFL under G.S. 113-168.2
6 may purchase a RSCFL. Proof of age shall be supplied at the time
7 the application is made. The annual fee for a RSCFL for a North
8 Carolina resident shall be one hundred dollars (\$100.00). The
9 annual fee for a RSCFL for a person who is not a resident of North
10 Carolina shall be eight hundred dollars (\$800.00) or the amount
11 charged to a North Carolina resident in the nonresident's state,
12 whichever is less, however, in no event shall the fee be less than
13 one hundred dollars (\$100.00)."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1097-PCS4143

DATE _____

S. B. No. _____

Amendment No. _____

(to be filled in by
Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Lell
Sen.) _____

1 moves to amend the bill on page 23, line 37-40

2 () WHICH CHANGES THE TITLE

3 by rewriting the lines to read:

4 " (b) Eligibility; Fee. -- Any person who is 65 years
5 of age or older, and who is otherwise eligible for a
6 SCFL under G.S. 113-168.2, and who is a

7
8

9 (b) Eligibility; Fee. -- Any person who is 65 years
10 of age or older and who is otherwise eligible for a
11 SCFL under G.S. 113-168.2 may purchase a

12 RSCFL. Proof of age shall be supplied at the
13 time the application is made. The annual ~~for a~~ ^{RSCFL fee} fee

14 ~~RSCFL fee for a~~ North Carolina resident
15 shall be one hundred dollars (\$100.00). The

16 annual ~~RSCFL~~ ^{for a RSCFL} fee for a person who is not a
17 resident of this ~~state~~ ^{North Carolina} shall be eight hundred dollars

18 (\$800.00) or the amount charged to a North Carolina
19 resident in the nonresident's state, whichever is ^{greater};

however, in no event ^{shall} ~~signify~~ the fee be less
than one hundred (\$100.00).

ADOPTED _____ FAILED _____ TABLED _____



**North Carolina General Assembly
Legislative Services Office**

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

Ernest W. Robinson, Director
Administrative Division
Room 5, Legislative Building
16 W. Jones Street
Raleigh, NC 27603-5925
(919) 733-7500

Gerry F. Cohen, Director
Bill Drafting Division
Suite 401, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Donald W. Fulford, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

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

July 29, 1997

MEMORANDUM

To: Senate Finance Committee

From: Jeff Hudson, Committee Counsel
Mary Beach Shuping, Administrative Assistant

Re: House Bill 1097, 6th edition - Fisheries Reform Act-2

WHEREAS CLAUSES

The General Assembly recognizes

- The State of North Carolina has one of the most diverse fisheries in the United States;
- That commercial fishermen perform an essential function by providing wholesome food for the citizens of the State and thereby properly earn a livelihood;
- The economic contribution and important heritage of commercial fishing;
- That for many citizens, fishing is an important recreational activity and that recreational fishing is a source of great personal enjoyment and satisfaction;
- The importance of plentiful fisheries resources to maintain and enhance tourism in the State; and
- The need to protect our coastal fisheries resources and to balance commercial and recreational interests.

PART I. SHORT TITLE; PERFORMANCE AUDIT

Section 1.1 entitles this act the Fisheries Reform Act of 1997.

Section 1.2 directs the State Auditor to conduct a performance audit of the Division of Marine Fisheries (Division) and to assess the capacity of the Division of Marine Fisheries to effectively implement the licensing provisions (Part V) of this act. This section directs that the State Auditor report to the Joint Legislative Commission on Seafood and Aquaculture (Seafood and Aquaculture) by February 1, 1998, and directs Seafood and Aquaculture to review the performance audit and make a specific recommendation to the 1998 General Assembly as to whether or not the licensing provisions of this act should be implemented.

Effective Date: *Audit is effective retroactively to March 1, 1997*

PART II. MARINE FISHERIES COMMISSION

(Note: Current Marine Fisheries Commission (MFC) is repealed in Section 6.3(a) of this act.)

Section 2.1 amends Article 7 of Chapter 143B by adding a new Part entitled "Part 5B. Marine Fisheries Commission. This section:

- Reduces Marine Fisheries Commission (MFC) from 17 to 9 members comprised of:
 - two persons actively engaged in, or recently retired from, commercial fishing;
 - one person actively connected with, and experienced as, a licensed fish dealer or seafood processor;
 - two persons actively engaged in recreational sports fishing;
 - one person actively engaged in the sports fishing industry;
 - two persons having general knowledge of and experience related to subjects and persons regulated by the MFC; and,
 - one person who is a fisheries scientist.
- Provides that appointments are to be made by the Governor;
- Provides that at least 5 members must be residents of a coastal region of the State;
- Strengthens ethical standards;
- Establishes 4 standing advisory committees (Finfish Committee; Crustacean Committee; Shellfish Committee; Habitat & Water Quality Committee) comprised of commercial and recreational fishermen, scientists, and other experts. This section also establishes 4 regional advisory committees representing the different regions of the State; and
- Authorizes the MFC to act as an appellate body for civil penalty assessments and clarifies that unless otherwise provided, the MFC has the final decision making authority for contested cases within its jurisdiction.

Effective Date: Sept. 1, 1997

PART III. COASTAL HABITAT PROTECTION PLANS; FISHERY MANAGEMENT PLANS

Coastal Habitat Protection Plans (CHPPs)

Section 3.1 amends Chapter 143B by adding a new section, G.S. 143B-279.8 that directs DEHNR to coordinate the preparation of draft Coastal Habitat Protection Plans (CHPPs) for critical fisheries habitats. A CHPP shall: (i) describe and classify biological systems in habitats; (ii) evaluate the function, value to coastal fisheries, status, and trends of habitats; (iii) identify existing and potential threats to habitats and impacts on coastal fishing; and (iv) make recommendations to protect and restore critical fisheries habitats. Once a draft CHPP has been prepared, the MFC, Environmental Management Commission (EMC), and Coastal Resources Commission (CRC) must appoint a six-member review committee to review and revise the draft CHPP. The CHPP will then be submitted to each commission to consider for adoption. The commissions may appoint a six-member conference committee to facilitate the resolution of any aspect of a CHPP on which they cannot agree. The final CHPP will consist of the provisions concurrently agreed upon by all three commissions. Each CHPP must be reviewed and revised at least once every five years. Each commission must, to the maximum extent practicable, ensure that its actions are consistent with the CHPPs and must provide a written explanation of any action it takes that is inconsistent with a CHPP. Any rules adopted to implement the CHPPs must be done in accordance with the APA. The three commissions must report annually to the ERC and Seafood and Aquaculture on progress and implementation of CHPPs. The SEHNR must report to the ERC within 30 days of the completion, or substantial revision of the CHPPs, and the ERC has 30 days to review and comment.

Sections 2.1, 3.2, and 3.3 direct the MFC, EMC, and the CRC to adopt CHPPs.

Section 6.8 requires that the CHPPs be adopted by July 1, 2003.

Effective Date: July 1, 1998.

Fishery Management Plans

Section 3.4 amends Chapter 113 by adding a new section, G.S. 113-182.1 that directs DEHNR to prepare proposed Fishery Management Plans (FMPs) for all commercially or recreationally significant species or fisheries that comprise State marine or estuarine resources. The FMPs are to be developed in accordance with a Priority List, Schedule, and guidance criteria established by MFC. The FMPs must incorporate fishery habitat and water quality considerations consistent with CHPPs, recommend management actions, and conservation and management measures. Any rules adopted to implement a FMP must be done in accordance with the APA. This section provides that Advisory Councils composed of experts on each particular fishery will assist in the development of the FMPs, and that the Secretary of Environment, Health and Natural Resources (SEHNR) will monitor progress of development and adoption of FMPs and will report annually to the ERC and Seafood and Aquaculture on this progress. This section also requires that the SEHNR report to Seafood and Aquaculture and the ERC within 30 days of the completion or substantial revision of the FMPs and gives Seafood and Aquaculture and the ERC 30 days to review and comment. Finally, this section authorizes the SEHNR to issue a proclamation prohibiting the taking of certain fisheries resources if there is a failure to complete the FMP according to the Schedule.

Section 3.5 amends G.S. 113-129, Definitions relating to resources, to add definitions for "optimal yield" and "overfishing or overfished".

Section 2.1 directs the MFC to establish a Priority List, schedule, and guidance criteria for FMPs.

Effective Date: July 1, 1998.

PART IV. MARINE FISHERIES LAW ENFORCEMENT

Section 4.1 amends G.S. 113-187 to increase the penalties for violation of general fisheries laws.

Section 4.2 adds G.S. 113-190 to increase the penalties for the unlawful sale or purchase of fish. This section also authorizes the SEHNR to assess a civil penalty up to \$10,000 for illegal sale or purchase of fish.

Section 4.3 amends G.S. 113-221(e) to authorize the Fisheries Director to determine, on a case-by-case basis and in the Director's sole discretion, that a proclamation did not apply to a licensee who was without notice due to an act of God or unforeseeable circumstance.

Section 4.4 directs the MFC to develop a Violations Points System and implementation schedule and report to Seafood and Aquaculture by July 1, 1999 on the development of the Violation Points System and the implementation schedule.

Effective Date: Sept. 1, 1997; provisions apply to violations and offenses on or after September 1, 1997.

PART V. COMMERCIAL FISHING LICENSES; TRANSITIONAL PROVISIONS

Standard Commercial Fishing License (SCFL)

Section 5.1 establishes Article 14A of G.S. 113 to be entitled the Coastal and Estuarine Commercial Fishing Licenses which establishes SCFLs as follows:

- Entitles holder to sell fish;
- Fees: \$200 for residents; \$2,000 for nonresidents or the amount charged to a NC resident in the nonresident's state, whichever is less;
- Assignability - SCFL is assignable. Vessel endorsements may be assigned independently of SCFL to another SCFL holder;
- Transferability - SCFLs may be transferred under certain circumstances to a member of the SCFL holder's estate; a third-party purchaser of the SCFL holder's fishing vessel; or as authorized by MFC; and
- Vessel endorsement required for an additional fee based on length of vessel.

Other commercial fishing licenses

Section 5.1 also provides for the following:

- Retired SCFL available to persons 65 and older for an annual fee of \$100;
- Shellfish license for NC residents not holding a SCFL available for \$25; and
- Fish dealer license available for various fees.

Section 5.2 establishes provisions to implement Section 5.1. These transitional provisions apply to the issuance of fishing licenses until all FMPs have been adopted. These provisions provide for the following:

- Eligibility - SCFLs are available to any person who holds an endorsement to sell on July 1, 1999;
- Flexibility for new entrants - 500 SCFLs will be available for distribution by lot for persons not otherwise eligible for a SCFL;
- Establishment of a temporary cap on the total number of SCFLs the MFC may issue. The temporary cap is equal to the total number of endorsements to sell that establish eligibility for a SCFL plus an additional 500 SCFLs for new entrants;
- For the 1999-2000 license year, the MFC is authorized to:
 - issue an SCFL to any person who held a valid endorsement to sell fish prior to July 1, 1999;
 - issue an SCFL to any person who filed a petition with the Appeals Panel which was denied; and,
 - distribute an additional 500 SCFLs by lot.

For subsequent license years, the MFC is authorized to issue licenses from the pool of available SCFLs. (The pool of available SCFLs is the temporary cap less the number of SCFLs renewed from the previous license year.)

Effective Date: July 1, 1999.

Recreational Commercial Gear License (RCGL)

Section 5.1 also establishes a Recreational Commercial Gear License (RCGL) as follows:

- RCGL holder may use limited amounts of commercial gear;
- License holder is not entitled to sell fish; and
- Fees: \$35 for residents; \$250 for nonresidents.

Section 5.3 directs the MFC to adopt rules authorizing the use of a limited amount of commercial gear for recreational fishing by July 1, 1999.

Effective Date: July 1, 1999

Sections 5.4, 5.5, 5.6, 5.7 and 6.2 govern the taking of crabs by:

- Retaining the current crab license;
- Extending the moratorium on the issuance of crab licenses until July 1, 2000;
- Directing the MFC to adopt a blue crab FMP by January 1, 2000; and
- Providing that only those persons currently holding crab licenses may take crabs.

Section 5.10 makes the Endorsement to Sell transferable to the purchaser of a vessel.

**PART VI. MORATORIUM EXTENSION; MISCELLANEOUS PROVISIONS;
EFFECTIVE DATE.**

Section 6.1 extends moratorium on issuance of licenses from July 31, 1997, to July 1, 1999 and alters the moratorium on licenses to include all Endorsements to Sell (vessel and non-vessel); effective July 31, 1997.

Section 6.3 recodifies G.S. 143B-289.19 to G.S. 143B-289.40 and makes technical and clarifying changes.

Section 6.4 transfers all records personnel, property, unexpended funds and functions from the current Marine Fisheries Commission to the Marine Fisheries Commission established by this act.

Section 6.5 establishes staggered terms for members of the MFC.

Section 6.6 authorizes the MFC to regulate NC fisheries consistent with federal law.

Section 6.7 recodifies G.S. 113-190 to G.S. 113-200.

Section 6.8 requires that the CHPPs be adopted by July 1, 2003.

Section 6.9 directs Seafood and Aquaculture to study the establishment of a comprehensive State program to acquire, preserve, and restore habitats critical to marine and estuarine fisheries. Seafood and Aquaculture will report its findings and recommendations, if any, to the 1998 Regular Session of the General Assembly.

Section 6.10 clarifies that this act constitutes a recent act of the General Assembly pursuant the G.S. 150B (APA), and therefore, agencies are authorized to adopt temporary rules to implement the provisions of this act. This section will continue to be in effect until all rules necessary to implement this act have been adopted as temporary or permanent rules.

Section 6.11 authorizes the MFC to adopt temporary rules to comply with fisheries management plans adopted by an interstate fisheries management council.

Section 6.12 Part Headings as convenience for reader only.

Section 6.13 Severability Clause.

Section 6.14 extends the moratorium on new shellfish cultivation leases in a portion of Core Sound from August 1, 1997 to July 1, 1998; effective August 1, 1997.

Section 6.15 Effective Dates.

Use of Marine Fisheries License Revenues

Receipts generated from the sale of marine fisheries licenses and endorsements are not credited to the General Fund, but are treated as departmental receipts and therefore retained by the Department of Environment, Health, Natural Resources. License revenue is used by the Division of Marine Fisheries to offset the cost of various marine fisheries programs, including licensing administration, data collection efforts for commercial landings and law enforcement. The provisions of House Bill 1097 do not propose to change the treatment of license receipts. The following table identifies the amount of revenue generated by license type and the distribution of license receipts by program for the 1996-97 fiscal year:

License Revenues and Expenditures 1996-97 Fiscal Year (Authorized)	
Revenue by License/Endorsement Type	
Endorsements to Sell	\$301,475
Vessel License	\$581,672
Dealer License	\$80,483
Spotter Plane License	\$2,000
Shellfish/Crab License	\$72,157
Ocean Pier License	\$9,271
Oyster Bottom Rental Fee	\$14,318
	<hr/>
	\$1,061,376
Distribution of License Revenue	
License Administration Section	\$120,590
Statistics and Information Section	\$180,885
Marine Patrol Section	\$759,901
	<hr/>
	\$1,061,376

**PROPOSED SENATE FINANCE COMMITTEE
CHANGES TO
HB 1097, 6th EDITION -
FISHERIES REFORM ACT - 2**

July 29, 1997

The proposed Senate committee substitute:

- Requires the Joint Legislative Commission on Seafood and Aquaculture to determine if and how a recreational saltwater fishing license should be implemented and report to the 1998 Regular Session of the General Assembly.
- Crew Licenses
 - Removes the authority of the Marine Fisheries Commission to establish a crew license; and,
 - Requires the Joint Legislative Commission on Seafood and Aquaculture to study whether a crew license should be established and report to the 1998 Regular Session of the General Assembly.
- Requires the Joint Legislative Commission on Seafood and Aquaculture to develop a comprehensive approach for the enhancement and management of shellfish resources and report to the 1998 Regular Session of the General Assembly.
- Exempts persons under 18 years of age from shellfish license and endorsement to sell requirements during the period from May 15 to September 1 of each year and makes correcting changes for persons taking shellfish for personal use.

*Mary Beach Shuping
Research Division
07/28/97/9:23 PM*

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 1097 (Sixth Edition)
SHORT TITLE: Fisheries Reform Act - 2
SPONSOR(S): Representatives Preston & Redwine

FISCAL IMPACT

	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 1997-98</u>	<u>FY 1998-99</u>	<u>FY 1999-00</u>	<u>FY 2000-01</u>	<u>FY 2001-02</u>
REVENUES					
Departmental Receipts from Licensing Revenue			\$355,151	\$490,306	\$623,927
EXPENDITURES					
Performance Audit	\$25,000				
Marine Fisheries Commission	\$114,384	\$114,384	\$114,384	\$114,384	\$114,384
Coastal Habitat Protection Plans		\$294,847	\$283,489	\$290,028	\$296,988
Fisheries Management Plans		\$1,256,483	\$1,082,770	\$1,100,498	\$1,116,298
Licensing Program Administration *		\$542,491	\$511,191	\$521,632	\$532,747
TOTAL EXPENDITURES	\$139,384	\$2,208,205	\$1,991,834	\$2,026,542	\$2,060,417
NET GENERAL FUND COST	\$139,384	\$2,208,205	\$1,636,683	\$1,536,236	\$1,436,490
POSITIONS:		34.25	34.25	34.25	34.25

*Licensing administration to be phased in during the 1998-99 fiscal year to have necessary equipment and personnel in place July 1, 1999.

PRINCIPAL DEPARTMENT(S) &

PROGRAM(S) AFFECTED: Department of Environment, Health, and Natural Resources - Marine Fisheries Commission, Division of Marine Fisheries; Department of Correction; Judicial Department; Office of the State Auditor

EFFECTIVE DATE: Part I (performance audit) is effective retroactively to March 1, 1997. Part II (Marine Fisheries Commission), Part IV (Marine Fisheries Law Enforcement) and sections 5.3, 6.3, 6.4, 6.5, 6.6, and 6.11 are effective September 1, 1997. Part III (Coastal Habitat Protection Plans and Fishery Management Plans) is effective July 1, 1998. Part V (Commercial Fishing Licenses) is effective July 1, 1999. Part VI, section 6.1 (extend moratorium on licenses) is effective July 31, 1997. Sections 5.1 and 5.2 expire September 1, 2003. Section 5.6 (crab license) will expire July 1, 2000 and section 5.7 will become effective July 1, 2000. Sections 1.1, 5.8, 6.7, 6.9, 6.10, 6.12, 6.13, and 6.15 are effective when the act becomes law.

BILL SUMMARY: Part I of the bill directs the State Auditor to conduct a performance audit of the Division of Marine Fisheries and to present the audit to the General Assembly by February 1, 1998. Part II of the bill reduces the membership of the Marine Fisheries Commission from 17 to 9 and changes the type of appointments to the Commission. Part III directs the Department of Environment, Health, and Natural Resources (DEHNR) to coordinate the preparation of draft Coastal Habitat Protection Plans and to prepare Fishery Management Plans for all commercially and recreationally significant fish species. Part IV increases the penalties for violating general fisheries laws. Part V creates a Standard Commercial Fishing License (SCFL) priced at \$200 for residents and \$2000 for nonresidents. Owners of a SCFL must have a vessel endorsement whose price is based on vessel length. This Part also creates a \$35 Recreational Commercial Gear License (RCGL) for recreational fishermen who want to use commercial gear such as shrimp nets and crab pots. This Part also makes changes in dealer licenses and other minor licenses. Part VI has miscellaneous provisions dealing with the moratorium on fishing licenses, the staggered terms of Marine Fisheries Commission members, and further legislative study of marine and estuarine fisheries habitats.

ASSUMPTIONS AND METHODOLOGY:

REVENUE

The differences in the current fishing licenses and the licenses proposed by HB 1097 are shown in the chart below and on page 3. The major change is the creation of the Standard Commercial Fishing License (SCFL) and the Recreational Commercial Gear License (RCGL), and the deletion of Endorsements to Sell.

LICENSE TYPE	CURRENT LAW	HB 1097
<u>Standard Commercial Fishing Lic. (SCFL)</u>		
Resident		\$200
Nonresident		\$2,000
Retired		\$100
Replacement		\$10
<u>Vessel Endorsements</u>		
	0-18 ft @ \$1.00/ft	0-18 ft @ \$1.00/ft
	18-38 ft @ \$1.50/ft	18-38 ft @ \$1.50/ft
	>38 ft @ \$3.00/ft	38-50 ft @ \$3.00/ft
		>50 ft @ \$6.00/ft
	nonresident = \$200	
<u>Endorsement to Sell</u>		
	0-18 ft @ \$25	
	18-38 ft @ \$35	
	>38 ft @ \$45	
<u>Fish Dealers</u>		
Oysters	\$50 stock shipper/\$100 shucker	\$50
Scallops	\$50 stock shipper/\$100 shucker	\$50

LICENSE TYPE	CURRENT LAW	HB 1097
<u>Fish Dealers (continued)</u>		
Clams	\$50 stock shipper/\$100 shucker	\$50
Crabs	\$50 unprocessed/\$100 processed	\$50
Shrimp (incl. bait)	\$50 unprocessed/\$100 processed	\$50
Finfish (incl. bait)	\$50 unprocessed/\$100 processed	\$50
Dehydrating or oil-extracting plant	\$50 fish dehydrating/\$100 menhaden	\$50
Consolidated		\$300
<u>Other</u>		
Shellfish	\$7.50	\$25
Crab	\$7.50	\$7.50
Shellfish and crab	\$15.00	
Vessel Crab	\$22.50	
Menhaden	\$2 per gross ton	\$2 per gross ton
Spotter airplane	\$100	\$100
Tournament		\$100
Ocean Fishing Pier	\$0.50 per ft	\$0.50 per ft
Crew Licenses	MFC authority to adopt	not to exceed \$100
Permit for gear, equipment, special activity	MFC authority to adopt	not to exceed \$50
Land or Sell License	\$200	\$200
Recreational Commercial Gear Lic. (RCGL)		Resident \$35

The change in fishing licenses will increase revenue to the Division of Marine Fisheries beginning in FY 1999-00. In FY 1995-96, the primary revenue from fishing license receipts came from vessel endorsements (\$700,137), endorsements to sell (\$243,365), and dealers (\$86,050). The revenue lost from reducing the number of ships needing vessel endorsements, abolishing the endorsement to sell; and reducing the dealer fees is replaced by the \$200 SCFL and the \$35 RCGL. When the new licenses become effective in FY 1999-00, the SCFL will yield \$780,000 in revenue and the RCGL will earn \$455,000 as shown below.

License Type	License Cost	Estimated	FY 1999-00	FY 2000-01	FY 2001-02
		Licenses			
<u>Standard Comm. Fishing Lic. (SCFL)</u>					
Resident	\$200	3900 (initial)	\$780,000	\$880,000	\$980,000
Retired/Nonresident	\$100/\$2000	NA			
<u>Vessel Endorsements</u>					
0-18 ft @ \$1.00/ft		1,825	\$29,383	\$33,295	\$37,078
18-38 ft @ \$1.50/ft		1,759	\$64,643	\$72,765	\$81,034
38-50 ft @ \$3.00/ft		168	\$22,025	\$23,074	\$25,696
>50 ft @ \$6.00/ft		148	\$61,627	\$73,286	\$81,614
<u>Fish Dealers</u>					
Oysters	\$50	57	\$2,850	\$2,936	\$3,024
Scallops	\$50	17	\$850	\$876	\$902
Clams	\$50	34	\$1,700	\$1,751	\$1,804
Crabs	\$50	114	\$5,700	\$5,871	\$6,047

License Type	License Cost	Estimated		FY 1999-00	FY 2000-01	FY 2001-02
		Licenses	Revenue			
Fish Dealers (continued)						
Shrimp (incl. bait)	\$50	143		\$7,150	\$7,365	\$7,585
Finfish (incl. bait)	\$50	177		\$8,850	\$9,116	\$9,389
Dehydrating or oil-extracting plant	\$50	3		\$150	\$150	\$150
Consolidated	\$300	0		\$0	\$0	\$0
Other						
Shellfish	\$25	300		\$7,500	\$7,500	\$7,500
Menhaden	\$2 per gross ton	20		\$25,000	\$25,000	\$25,000
Spotter airplane	\$100	20		\$2,000	\$2,000	\$2,000
Crab	\$7.50	4,500		\$33,750	\$33,750	\$33,750
Tournament	\$100	20 (initial)		\$2,000	\$2,500	\$3,000
Ocean Fishing Pier	\$0.50 per ft	20		\$6,000	\$6,000	\$6,000
Crew Licenses	\$100	0				
Permit for gear, equipment, special activity	\$50	0				
Recreational Comm. Gear Lic. (RCGL)	Resident \$35 Non-Resident \$250	13,000 NA		\$455,000	\$464,100	\$473,382
Revenue from HB 1097				\$1,516,178	\$1,651,333	\$1,784,954
FY 95-96 Revenue from Existing Fees				\$1,161,027	\$1,161,027	\$1,161,027
Net revenue gain to Marine Fish. Div.				\$355,151	\$490,306	\$623,927

The Division of Marine Fisheries estimates that 3,900 SCFLs will be purchased in FY1999-00. It assumes that only a portion of the fishermen now holding Endorsements-to-Sell (ETS) will buy the new license. In FY 1994-95 there were 6,539 individuals with ETS licenses. Of this number, 45% or 2,943 sold less than \$1,000 worth of seafood. The Division assumes that the \$200 license will discourage most of these low volume fishermen from obtaining a SCFL. The Division projects 3,780 individuals with a ETS license will apply for the SCFL. In addition, the Division assumes that the owners of 120 vessels that were granted vessel licenses through the appeals process in the last few years will also apply for a license. This brings the total to 3,900. This number will grow to 4,400 in FY 2000-01 and to 4,900 in FY 2001-02 when additional licenses are made available to new entrants into the market.

The owners of a SCFL must also buy a vessel endorsement. The cost of the endorsement is based on vessel length. The average length of the vessel and the percent of vessels in each category are shown below.

0-18 ft @ \$1.00/ft	16.1 ft.	47%
18-38 ft @ \$1.50/ft	24.5 ft	45%
38-50 ft @ \$3.00/ft	43.7 ft.	4%
>50 ft @ \$6.00/ft	69.4 ft.	4%

Of the 22,000 vessels that can now obtain vessel licenses and use commercial fishing gear in North Carolina, the Division estimates that 14,500 are owned by recreational fishermen. The Division believes 13,000 recreational fishermen will opt to buy the RCGL instead of the SCFL.

The number of dealers and other licenses shown in the chart are also estimates of the Division. The dealers licenses are grown by 3% a year.

EXPENDITURES

The Division of Marine Fisheries is currently authorized to use the proceeds from the sale of licenses and vessel endorsements to offset the operating costs of the License Administration Section, the Statistics and Information Management Section and the Marine Patrol Section. Although this legislation will increase license revenues beginning with the 1999-2000 fiscal year, the increased receipts will not be enough to offset the costs associated with implementing all the provisions of this act. Therefore, General Fund support will be required. However, revenues are projected to be sufficient to cover the increased costs associated with administering the licensing provisions by the 2001-2002 fiscal year.

◆ Marine Fisheries Commission *Effective September 1, 1997*

The bill reduces the membership of the Marine Fisheries Commission from seventeen to nine and establishes four technical advisory committees and four regional advisory committees.

The Division of Marine Fisheries estimates the annual operating costs of the reformed commission, exclusive of the advisory committees, to be \$85,680. This estimate is based on a total travel (\$178) and per diem (\$100) rate of \$278 per day for commission members in accordance with G.S. 138-6 and assumes the commission will meet up to eight times per year, for up to three days (9 members x \$278/day x 8 meetings x 3 days/meeting = \$60,048). In addition, the estimate includes allowed subsistence of \$178 per day for two representatives from the Office of the Attorney General (2 representatives x \$178/day x 8 meetings x 3 days/meeting = \$8,544). Subsistence expenses for an ad hoc committee of twelve members are also included in the estimate, as the chair of the commission may appoint ad hoc committees to address special issues, (12 members x \$178/day x 4 meetings x 2 days/meeting = \$17,088).

The total annual cost of the eight technical and regional advisory committees is estimated to be \$136,704, assuming there are twelve members on each committee, and the committees meet four times per year for two days (12 members x \$178/day x 4 meetings x 2 days/meeting x 8 committees = \$136,704).

The continuation budget for the Division of Marine Fisheries includes \$108,000 to fund expenses incurred by the commission and should be used to offset any costs associated with modifying the present structure of the commission. Therefore, the net increase in expenditures for the Marine Fisheries Commission is \$114,384 each year (\$85,680 + \$136,704 - \$108,000).

◆ Coastal Habitat Protection Plans *Effective July 1, 1998*

According to the division, four marine biologists and an office assistant will be required to develop habitat protection plans as required by the bill. The additional staff will be primarily

responsible for preparing protection plans for critical fisheries habitats in cooperation with the Division of Water Quality and the Division of Coastal Management. The staff will also participate in the preparation of fisheries management plans with respect to habitat issues.

The total estimated budget requirements to implement the section on coastal habitat protection plans is outlined in the following table:

	FY 1997-98	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
Personnel					
(4) Marine Biologist II		165,380	170,767	176,501	182,605
Office Assistant IV		23,966	24,722	25,527	26,383
Total Salaries & Benefits *	-	189,347	195,489	202,028	208,988
Positions		5.0	5.0	5.0	5.0
Operating Expenses		105,500	88,000	88,000	88,000
Total Requirements	\$0	\$294,847	\$283,489	\$290,028	\$296,988

*Salaries are adjusted to reflect the projected growth estimated for average hourly earnings in manufacturing. The inflation rates are based on forecasts by Data Resources, Inc.

◆ Fisheries Management Plans *Effective July 1, 1998*

As written, the bill requires the Marine Fisheries Commission to establish a priority order and schedule for developing fisheries management plans (FMPs) for each of the state's commercially or recreationally significant coastal fisheries species or species groups. The division and the Moratorium Steering Committee, established by the General Assembly in 1994, have identified 31 species and species groups for which management plans are needed.

Staff for FMP Development

The estimated staff required to prepare and periodically update fisheries management plans for all 31 species or species groups, is based on the following assumptions (*italicized*) and information on the division's current workload capabilities:

1. *One full-time biologist is required to supervise on-going field data collection and analysis efforts to support the development of management plans for 4 species. A total of 8 full-time biologists is required to prepare FMPs for 31 species and groups. Currently, the division has 7 full-time equivalent biologists assigned to the development of management plans; therefore, the division needs 1 additional biologist.*
2. *Three full-time technicians are required to collect data to support 1 biologist. A total of 24 technicians is needed to support 8 biologists. Currently, the division has 15 full-time equivalent technicians assigned to collect data for FMPs; therefore, the division needs 9 additional technicians.*
3. *On average, at least three years of field data is necessary to develop a management plan for a single species or fisheries group.*

4. The division currently has sufficient data on 12 species groups to begin analyzing the information and writing management plans. The division also has sufficient baseline data on an additional 3 species groups to complete data collection, and begin data analysis and plan writing within two years. The division does not have any data on the remaining 16 significant species.
5. *The division will complete an average of 5 initial FMPs per year during the first 3 years of the program and an average of 3 initial FMPs per year over the next five years of the program.* Based on this time line, initial management plans for all 31 species will be completed within 8 years (see table below for estimated plan development schedule).
6. *The division will revise each FMP every three years* (see table below for estimated revision schedule).
7. *The initial preparation of a fisheries management plan will take approximately six to seven months to complete. Revision of an existing plan will take approximately three months to complete.* Plans involving several species or multiple fisheries are expected to take longer.
8. *One full-time biologist is capable of performing statistical analyses and writing plans for 2 species groups.* Therefore, it will take 3 full-time biologists to write and periodically revise management plans for 31 species.
9. Two full-time population dynamicists are required to conduct modeling of fishery stocks to determine the status of the stocks to support the development of 31 FMPs. The division currently employs 1 full-time population dynamicist; therefore, 1 additional dynamicist will be required.

Advisory Councils

The bill requires the Chair of the Marine Fisheries Commission to appoint an advisory council for each FMP being developed. The division expects input from each council to be required only during the period of time when the plan is actually being written or revised. Each council will comprise up to twelve members, and will likely need to hold six meetings during the initial development of a plan and three meetings to revise an existing plan.

The table below indicates the **anticipated schedule** (the Marine Fisheries Commission is responsible for adopting a formal schedule) for the initial development and revision of fisheries management plans over the next ten years, as well as the cost of the required advisory councils.

FMP Development Schedule and Advisory Councils										
	FY 98-99	FY 99-00	FY 00-01	FY 01-02	FY 02-03	FY 03-04	FY 04-05	FY 05-06	FY 06-07	FY 07-08
New FMP	5	5	5	3	3	3	3	4		
FMP Revision				5	5	5	8	8	8	11
Total Plans	5	5	5	8	8	8	11	12	8	11
Advisory Council Cost	\$ 46,080	\$ 46,080	\$ 46,080	\$ 43,008	\$ 43,008	\$ 43,008	\$ 52,224	\$ 61,440	\$ 24,576	\$ 33,792
Cost per Advisory Council										
New FMP (initial development)							9,216			
Revised FMP (3 year update)							3,072			

The total estimated budget requirements to implement the section on fisheries management plans is outlined in the following table:

	FY 1997-98	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
Personnel					
Population Dynamicist		47,026	48,566	50,205	51,950
Marine Fisheries Biologist I		36,585	37,769	39,031	40,373
(3) Marine Fisheries Biologist II		124,035	128,075	132,376	136,954
(3) Marine Fisheries Technician II		80,355	82,910	85,630	88,525
(6) Marine Fisheries Technician III		179,826	185,586	191,717	198,244
Data Clerk Supervisor		25,830	26,649	27,521	28,450
Office Assistant IV		23,966	24,722	25,527	26,383
Total Salaries & Benefits *	-	517,623	534,278	552,006	570,878
Positions		16.0	16.0	16.0	16.0
Operating Expenses		692,780	502,412	502,412	502,412
Advisory Councils		46,080	46,080	46,080	43,008
Total Requirements	\$0	\$1,256,483	\$1,082,770	\$1,100,498	\$1,116,298

*Salaries are adjusted to reflect the projected growth estimated for average hourly earnings in manufacturing. The inflation rates are based on forecasts by Data Resources, Inc.

◆ **Licensing Administration Effective July 1, 1999**

The bill provides for the purchase and renewal of Standard Commercial Fishing Licenses, Recreational Commercial Gear Licenses, vessel endorsements, dealer and other licenses at the central and district offices of the Division of Marine Fisheries, by mail (applies to renewals only) or through designated license agents. Currently licenses are available only at the central office, located in Morehead City, and through authorized license agents. In addition to the office in Morehead City, the division maintains district offices in Wilmington, Washington, Columbia, Wanchese and Elizabeth City.

The division currently employs five full-time permanent and two part-time temporary staff persons to handle administration of the commercial licensing program. The current authorized

budget of the Licensing Section is \$208,649, of which \$88,059 is from General Fund appropriations, and \$120,590 is from license receipts.

According to the Division of Marine Fisheries, an additional 13.25 full-time equivalent positions are required to implement the licensing provisions of this act. The new positions include a processing unit supervisor to oversee the day-to-day operations of the new licensing program, and to investigate and resolve problems or questions concerning licenses. An office assistant position is needed to provide clerical support to the unit supervisor and licensing staff in the district offices. The division also anticipates the need for 10.25 full-time equivalent processing assistants to handle licensing transactions. This number includes seven full-time and two part-time (1.25 full-time equivalents) positions to manage sales in the division's five district offices along the coast, one full-time position to process and track requests for renewals by mail, and one full-time position to oversee the newly created Recreational Commercial Gear License. The division plans to implement a more sophisticated licensing system by automating the current system, which relies heavily on hard copy paper flow and file maintenance, consolidating several existing data bases, and providing on-line access to historical license data and violation statistics. A computer services analyst position is proposed to maintain the new computer based licensing system.

Since the licensing requirements of this act are effective July 1, 1999, the division needs to complete the computer system and technology upgrades during the 1998-99 fiscal year to ensure the automated licensing system is in place and operational on July 1, 1999. The division also needs to phase in new staff during the 1998-99 fiscal year in order to have adequate time to hire and train personnel to be in place on July 1, 1999. The budget requirements reflected for licensing administration for the 1998-99 fiscal year assume funding for the positions will be effective January 1, 1998.

The total estimated budget requirements to implement the licensing section is outlined in the following table:

	FY 1997-98	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
Personnel					
Processing Unit Supervisor V		25,244	26,043	26,894	27,799
Office Assistant IV		23,966	24,722	25,527	26,383
(7.25) Processing Assistant III		159,068	164,048	169,349	174,993
(3) Processing Assistant IV		70,271	72,483	74,838	77,345
Computer Services Analyst		32,965	34,027	35,157	36,360
Total Salaries & Benefits *	-	155,757	321,324	331,765	342,880
Positions		13.25	13.25	13.25	13.25
Operating Expenses		386,734	189,867	189,867	189,867
Total Requirements	\$0	\$542,491	\$511,191	\$521,632	\$532,747

*Salaries are adjusted to reflect the projected growth estimated for average hourly earnings in manufacturing. The inflation rates are based on forecasts by Data Resources, Inc.

◆ Department of Correction and Judicial Department (Criminal and Civil Penalties)

Currently, the Judicial Department does not have an offense code relating to offenses outlined in G.S. 113-187 and G.S. 113-190. This indicates a small number of offenses since "offense codes" are established only when the number of offenses is significant. Based on this finding, the Sentencing Commission does not expect the proposed changes to have any significant impact on prison populations. The Sentencing Commission estimates, for example, that if 10 individuals are convicted of these offenses per year, approximately 1 or 2 additional inmates will be added to the prison population. If there are as many as 30 convictions, no more than 3 to 6 additional inmates will be added to the prison system. These few potential additional inmates can be absorbed within existing Department of Correction resources.

Likewise, there will not be a significant fiscal impact on the Judicial Branch, as no major changes are expected in the time required to process or dispose of these cases. The Judicial Department can absorb these potential few new cases within existing resources.

◆ Office of the State Auditor

The State Auditor estimates the cost of conducting a detailed operational review and performance audit of the Division of Marine Fisheries by February 1, 1998 will be \$25,000.

FISCAL RESEARCH DIVISION 733-4910

PREPARED BY: Mona Moon, Richard Bostic and Charles Perusse

APPROVED BY: Tom Covington

DATE: July 28, 1997

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

Name of Committee

July 31, 1997

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

NAME	FIRM OR AGENCY AND ADDRESS
Johnny Gray	OSBM
BORDON S. MYERS	NC DOT - BOARD MEMBER
SUANITA STEARNS-SUNIC	NC DOT BOARD MEMBER
JERRY SCHILL	NC Fisheries Association
Myron Smith	Family & Friend of Commercial Fishermen 1724 Blairforest Pl 27615
Paul F. Cox	Triangle Area Hotel Motel Association
FRANC COLONNA	TRIANGLE RENT A CAR
Hancy Workman	Thrifty Car Rental
DENN JENNISON	Dollar - Rent A Car
Don M'Lawhorn	Atty General's Office
Bruce [Signature]	Attorney General's Office

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

July 31, 1997

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Allen Jernigan

Attorney General's Office

Amy Gillespie

Attorney General's office

Matthew J. Morse

Office of Lt. Gov.

DAVID D. KING

DOT

DAVID HERLONG

State Planning

Mac Boxley

N.C. Aggregates Assoc.

Boyd Cumble

City of Charlotte

Frank Freeman

Gov.'s office

Heather Fuld

OSA

Patti Sewell

NC DOR

George Long

"

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

July 31, 1997
Date

Name of Committee

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

VL McBride	MCA
Wally Diggins	NC Sierra Club
Jim N. Nankoff	NC Marine Fisheries
Turla Nelson	MFC
Janice Fulcher	MFC
Jennie Fulcher	Stacy, NC
Dan Whittle	ELNR
Robert Paschal	Young, Adams & Henderson, P.A.
Cam Cove	BPMHL
Jim Lofth	NC AFI
Granger	Morrison & Van Allen

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

July 31, 1997
Date

Name of Committee

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

SAM JOHNSON	ATSL
BILL SCOBIN	NCSA
Orville Powell	City of Durham, 101 City Hall Plaza 27701
Jan Duncan	NCSR/CCA
DICK BRAME	CCA-NC
DOUG RADOR	EDF
TOM BEAN	NC Wildlife Federation
BOB LUCAS	MFC
Fred Allen	NC Aggregates Assn
TANJA VUJIC	EDF
Sanjol Crow	NC DOT

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

July 31, 1997
Date

Name of Committee

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Keslie Swager

NCCBT

J. H. Kelly

M. F. Comm.

R. Paul Williams

NCHBA

Susan Valauri

Nationwide

**UNFAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 1,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 2**

H.B.(SCS #1)	1097	Fisheries Reform Act-2.	
		Draft Number:	PCSA410
		Sequential Referral:	Appropriations
		Recommended Referral:	None
		Long Title Amended:	No

TOTAL REPORTED: 6

Committee Clerk Comment: S 39 841 886 H 1097 1156 1231

SENATE FINANCE COMMITTEE

THURSDAY, JULY 31, 1997

15 MINUTES AFTER SESSION - ROOM 544 LOB

The Senate Finance Committee met after session on July 31st to continue the agenda from the 8:30 meeting. Senator Kerr presided and all 28 committee members were present.

H.B. 1231 - Local Transit Revenue Options

Allen Miles, representing the American Insurance Association and speaking for the other insurance industry representatives, spoke in opposition to the increase in rental car taxes in the bill.

Leslie Bevacqua, representing North Carolina Citizens for Business and Industry, spoke in opposition to the car rental tax, but supports other parts of the bill.

Frank Colonna, owner of Triangle Rent A Car, spoke in opposition to the increase in car rental tax but not opposed to a mass transit tax that is fair and equitable.

Franklin Freeman, representing Governor Hunt, spoke in support of this bill.

Carolyn Grant, representing the Raleigh Chamber of Commerce, spoke in support of this bill.

Senator Kerr recognized Tom Darden, CEO of Cherokee Sanford, from Goldsboro, and also Margaret Klutz from Salisbury and member of DOT Board.

Christie Barbee, Asphalt Pavement Association, spoke in support of this bill.

There was a general discussion on this bill with the committee members asking questions of the speakers and the bill sponsors and voicing their concerns.

Garland Garrett, Secretary of Transportation, was recognized and spoke in support of this bill and stated DOT would work closely with federal government to make sure North Carolina received all available federal funds.

Senator Gulley sent forth an amendment and moved for its adoption. The motion carried and the amendment was adopted by the committee. After more discussion on this bill, on motions by Senator Albertson, Senator Shaw and Senator Winner, the bill, as amended, was given a "favorable" report. Copy of bill, amendment, explanation, fiscal note and letter from City Attorney in Fayetteville included in the minutes.

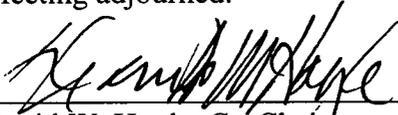
H.B. 1156 - March of Dimes License Plates

This bill had previously been discussed in Senate Finance on July 30th and on motion by Senator Lee a committee substitute had been adopted. Senator Allran sent forth an amendment and on motion by Senator Perdue, the amendment was adopted by the committee. Senator Lee moved for a "favorable" report and the motion carried. Copy of bill, committee substitute, amendment, explanation and fiscal note included in the minutes.

S.B. 886 - Trucking Adjustment Act of 1997

Senator Larry Jordan was recognized to explain S.B. 886. A committee substitute had been adopted at a previous meeting. Senator Webster sent forth an amendment which was adopted by the committee on his motion. Ruth Sappie, DOT, was recognized to speak on the bill and said that DMV would enforce this law if it were passed. Virgil McBride, representing the North Carolina Trucking Association, spoke on the bill and stated they had some concerns regarding this bill. On motion by Senator Ballantine, this bill, as amended, was given a "favorable" report and will be rolled into a new committee substitute. Copy of bill, committee substitute, amendment and explanation included in the minutes.

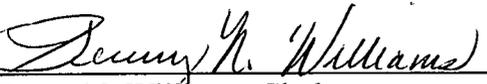
Meeting adjourned.



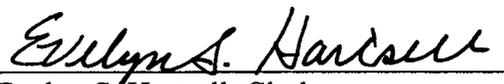
David W. Hoyle, Co-Chair
Senate Finance Committee



John H. Kerr, III, Co-Chair
Senate Finance Committee



Penny N. Williams, Clerk



Evelyn S. Hartsell, Clerk

NOTE:

- Agenda is Attachment # 1
- Visitors' Sign Up Sheet is Attachment # 2
- Committee Report is Attachment # 3

AGENDA

SENATE FINANCE COMMITTEE

THURSDAY, JULY 31, 1997

Room 544 - 8:30 A.M.

S.B. 39 - Modify Setoff Debt Collection - Sen. L. Shaw

S.B. 841 - Modify Corporate Dividend Taxation - Sen. Hoyle

H.B. 1097 - Fisheries Reform Act-2 - Rep. Preston

H.B. 1231 - Local Transit Revenue Options - Rep. Minor

TIME PERMITTING:

H.B. 1156 - March of Dimes/School Tech. Plates - Rep. Morris

S.B. 886 - Trucking Adjustment Act of 1997 - Sen. Jordan

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

3

HOUSE BILL 1231
Committee Substitute Favorable 6/23/97
Committee Substitute #2 Favorable 7/16/97

Short Title: Local Transit Revenue Options.

(Public)

Sponsors:

Referred to:

May 19, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE SUPPLEMENTAL SOURCES OF REVENUE FOR
3 LOCAL GOVERNMENT TRANSIT FINANCING.

4 The General Assembly of North Carolina enacts:

5

6 PART I. MECKLENBURG COUNTY SALES TAX

7 Section 1. (a) This section applies only to Mecklenburg County.

8 (b) Subchapter VIII of Chapter 105 of the General Statutes is amended
9 by adding a new Article to read:

10 "ARTICLE 43.

11 "Local Government Sales and Use Taxes for Public Transportation.

12 "§ 105-505. Short title; purpose.

13 This Article is the Local Government Public Transportation Sales Tax Act and
14 may be cited by that name. This Article gives the counties of this State an
15 opportunity to obtain an additional source of revenue with which to meet their needs
16 for financing local public transportation systems. It provides counties with authority
17 to levy one-half percent (1/2%) sales and use taxes.

18 "§ 105-506. Definitions.

19 The definitions in G.S. 105-164.3 and the following definitions apply in this
20 Article:

21 (1) Net proceeds. -- Gross proceeds less the cost of administering and
22 collecting the tax.

1 (2) Public transportation system. -- Any combination of real and
2 personal property established for purposes of public transportation.
3 The systems may include one or more of the following: structures,
4 improvements, buildings, equipment, vehicle parking or passenger
5 transfer facilities, railroads and railroad rights-of-way,
6 rights-of-way, bus services, shared-ride services, high-occupancy
7 vehicle facilities, car-pool and vanpool programs, voucher
8 programs, telecommunications and information systems, integrated
9 fare systems, bus lanes, and busways. The term does not include,
10 however, streets, roads, or highways except to the extent they are
11 dedicated to public transportation vehicles or to the extent they are
12 necessary for access to vehicle parking or passenger transfer
13 facilities.

14 **"§ 105-507. Limitations.**

15 A county may not levy a tax under this Article unless the county or at least one
16 unit of local government in the county operates a public transportation system. In
17 addition, a county may not levy a tax under this Article unless it has developed a
18 financial plan and distributed it to each unit of local government in the county that
19 operates a local public transportation system. The financial plan must provide for
20 equitable allocation of the net proceeds distributed to the county in consideration of
21 the identified needs of local public transportation systems in the county, countywide
22 human service transportation systems, and expansion of public transportation service
23 to unserved areas in the county.

24 **"§ 105-508. Local election on adoption of sales and use tax.**

25 (a) Resolution. -- The board of commissioners of a county may direct the county
26 board of elections to conduct an advisory referendum within the county on the
27 question of whether a local sales and use tax at the rate of one-half percent (1/2%)
28 may be levied in accordance with this Article. The election shall be held on a date
29 jointly agreed upon by the boards and shall be held in accordance with the
30 procedures of G.S. 163-287. The board of commissioners shall hold a public hearing
31 on the question at least 30 days before the date the election is to be held.

32 (b) Ballot Question. -- The form of the question to be presented on a ballot for a
33 special election concerning the levy of a tax authorized by this Article shall be:

34 '[] FOR [] AGAINST

35 One-half percent (1/2%) local sales and use taxes, in addition to the current two
36 percent (2%) local sales and use taxes, to be used only for public transportation
37 systems.'

38 **"§ 105-509. Levy and collection of sales and use tax.**

39 If the majority of those voting in a referendum held pursuant to this Article vote
40 for the levy of the tax, the board of commissioners of the county may, by resolution,
41 levy one-half percent (1/2%) local sales and use taxes in addition to any other State
42 and local sales and use taxes levied pursuant to law. Except as provided in this
43 Article, the adoption, levy, collection, administration, and repeal of these additional
44 taxes shall be in accordance with Article 39 of this Chapter. In applying the

1 provisions of Article 39 of this Chapter to this Article, references to 'this Article'
2 mean 'Article 43 of Chapter 105 of the General Statutes'.

3 A tax levied under this Article does not apply to the sales price of food that is not
4 otherwise exempt from tax pursuant to G.S. 105-164.13 but would be exempt from
5 the State sales and use tax pursuant to G.S. 105-164.13 if it were purchased with
6 coupons issued under the Food Stamp Program, 7 U.S.C. § 51.

7 **"§ 105-510. Distribution and use of taxes.**

8 (a) Distribution. -- The Secretary shall, on a quarterly basis, allocate to each taxing
9 county the net proceeds of the tax levied under this Article by that county. If the
10 Secretary collects taxes under this Article in a month and the taxes cannot be
11 identified as being attributable to a particular taxing county, the Secretary shall
12 allocate these taxes among the taxing counties, in proportion to the amount of taxes
13 collected in each county under this Article in that month and shall include them in
14 the quarterly distribution.

15 The Secretary shall distribute the net proceeds of the tax levied by a county on a
16 per capita basis among the county and the units of local government in the county
17 that operate public transportation systems. No proceeds shall be distributed to a
18 county that does not operate a public transportation system or to a unit of local
19 government that does not operate a public transportation system.

20 (b) Use. -- A county must allocate the net proceeds distributed to it in accordance
21 with its financial plan adopted pursuant to G.S. 105-507 and use the net proceeds
22 only for financing, constructing, operating, and maintaining local public
23 transportation systems. Any other unit of local government may use the net proceeds
24 distributed to it under this Article only for financing, constructing, operating, and
25 maintaining local public transportation systems. Every unit of government shall use
26 the net proceeds to supplement and not to supplant or replace existing funds or other
27 resources for public transportation systems."

28

29 PART II. MUNICIPAL VEHICLE REGISTRATION TAX

30 Section 2. G.S. 20-97 reads as rewritten:

31 **"§ 20-97. Taxes ~~compensatory; no additional tax; credited to Highway Fund;~~**
32 **municipal vehicle taxes.**

33 (a) ~~State Taxes to Highway Fund. -- All taxes levied under the provisions of this~~
34 Article are ~~intended as~~ compensatory taxes for the use and privileges of the public
35 highways of this State, and shall be paid by the Commissioner to the State Treasurer,
36 ~~to State. The taxes collected shall be credited by him to the State Highway Fund,~~
37 and ~~no~~ to the State Highway Fund. Except as provided in this section, no county or
38 municipality shall levy any license or privilege tax upon any motor vehicle licensed
39 by the State of North Carolina, except that cities ~~State.~~

40 (b) General Municipal Vehicle Tax. -- Cities and towns may levy a tax of not more
41 than five dollars (\$5.00) per year upon any vehicle resident therein. ~~Provided,~~
42 further, that cities and towns may levy, in addition to the amounts hereinabove
43 provided for, a sum not to exceed in the city or town. The proceeds of the tax may
44 be used for any lawful purpose.

1 (c) Municipal Vehicle Tax for Public Transportation. -- A city or town that
2 operates a public transportation system as defined in G.S. 105-506 may levy a tax of
3 not more than five dollars (\$5.00) per year upon any vehicle resident in the city or
4 town. The tax authorized by this subsection is in addition to the tax authorized by
5 subsection (b) of this section. A city or town may not levy a tax under this section,
6 however, to the extent the rate of tax, when added to the general motor vehicle taxes
7 levied by the city or town under subsection (b) of this section and under any local
8 legislation, would exceed thirty dollars (\$30.00) per year. The proceeds of the tax
9 may be used only for financing, constructing, operating, and maintaining local public
10 transportation systems. Cities and towns shall use the proceeds of the tax to
11 supplement and not to supplant or replace existing funds or other resources for
12 public transportation systems. This subsection does not apply to the City of Durham.

13 (d) Municipal Taxi Tax. -- Cities and towns may levy a tax of not more than
14 fifteen dollars (\$15.00) per year upon each vehicle operated in ~~such~~ the city or town
15 as a taxicab. The proceeds of the tax may be used for any lawful purpose.

16 ~~(a1) to (a5). Repealed by Session Laws 1983, e. 188, s. 2.~~

17 ~~(b) (e) No Additional Local Tax. -- No additional franchise tax, license tax, or~~
18 ~~other fee shall be imposed by the State against any franchise motor vehicle carrier~~
19 ~~taxed under this Article nor shall any county, city or town may impose a franchise~~
20 ~~tax, license tax, or other fee upon them, except that cities and towns may levy a~~
21 ~~license tax not in excess of fifteen dollars (\$15.00) per year on each vehicle operated~~
22 ~~in such city as a taxicab as provided in subsection (a) hereof. a motor carrier unless~~
23 ~~the tax is authorized by this section.~~

24 ~~(e) Repealed by Session Laws 1993, e. 321, s. 146."~~

25

26 PART III. REGIONAL TRANSIT AUTHORITY VEHICLE RENTAL TAX

27 Section 3. Chapter 105 of the General Statutes is amended by adding a
28 new Subchapter to read:

29 "SUBCHAPTER IX. MULTICOUNTY TAXES.

30 "ARTICLE 50.

31 "Regional Transit Authority Vehicle Rental Tax.

32 "§ 105-550. Definitions.

33 The definitions in G.S. 105-164.3 and the following definitions apply in this
34 Article:

35 (1) Authority. -- A regional public transportation authority or a
36 regional transportation authority created pursuant to Article 26 or
37 Article 27 of Chapter 160A of the General Statutes.

38 (2) Long-term lease or rental. -- Defined in G.S. 105-187.1.

39 (3) Motorcycle. -- Defined in G.S. 20-4.01.

40 (4) Private passenger vehicle. -- Defined in G.S. 20-4.01.

41 (5) Public transportation system. -- Any combination of real and
42 personal property established for purposes of public transportation.
43 The systems may include one or more of the following: structures,
44 improvements, buildings, equipment, vehicle parking or passenger

1 transfer facilities, railroads and railroad rights-of-way,
2 rights-of-way, bus services, shared-ride services, high-occupancy
3 vehicle facilities, car-pool and vanpool programs, voucher
4 programs, telecommunications and information systems, integrated
5 fare systems, bus lanes, and busways. The term does not include,
6 however, streets, roads, or highways except to the extent they are
7 dedicated to public transportation vehicles or to the extent they are
8 necessary for access to vehicle parking or passenger transfer
9 facilities.

10 (6) Short-term lease or rental. -- A lease or rental that is not a long-
11 term lease or rental.

12 **"§ 105-551. Tax on gross receipts authorized.**

13 (a) Tax. -- The board of trustees of an Authority may levy a privilege tax on a
14 retailer who is engaged in the business of leasing or renting private passenger vehicles
15 or motorcycles based on the gross receipts derived by the retailer from the short-term
16 lease or rental of these vehicles. The tax rate must be a percentage and may not
17 exceed five percent (5%). A tax levied under this section applies to short-term leases
18 or rentals made by a retailer whose place of business or inventory is located within
19 the territorial jurisdiction of the Authority. This tax is in addition to all other taxes.

20 (b) Restrictions. -- The board of trustees of an Authority may not levy a tax under
21 this section or increase the tax rate of a tax levied under this section until all of the
22 following requirements have been met:

23 (1) The board of trustees has held a public hearing on the tax or the
24 increase in the tax rate after giving at least 10 days' notice of the
25 hearing.

26 (2) If the Authority has a special tax board, the special tax board has
27 adopted a resolution approving the levy of the tax or the increase
28 in the tax rate.

29 (3) The board of commissioners of each county included in the
30 territorial jurisdiction of the Authority has adopted a resolution
31 approving the levy of the tax or the increase in the tax rate.

32 **"§ 105-552. Collection and administration of gross receipts tax.**

33 (a) Effective Date. -- A tax or a tax increase levied under this Article becomes
34 effective on the date set by the board of trustees in the resolution levying the tax or
35 the tax increase. The effective date must be the first day of a month and may not be
36 earlier than the first day of the second month after the board of trustees adopts the
37 resolution.

38 (b) Collection. -- A tax levied by an Authority under this Article shall be
39 collected by the Authority but shall otherwise be administered in the same manner as
40 the optional gross receipts tax levied by G.S. 105-187.5. Like the optional gross
41 receipts tax, a tax levied under this Article is to be added to the lease or rental price
42 of a private passenger vehicle or motorcycle and thereby be paid by the person to
43 whom it is leased or rented.

1 A tax levied under this Article applies regardless of whether the retailer who leases
2 or rents the private passenger vehicle or motorcycle has elected to pay the optional
3 gross receipts tax on the lease or rental receipts from the vehicle. A tax levied under
4 this Article must be paid to the Authority that levied the tax by the date an optional
5 gross receipts tax would be payable to the Secretary of Revenue under G.S. 105-187.5
6 if the retailer who leases or rents the private passenger vehicle or motorcycle had
7 elected to pay the optional gross receipts tax.

8 (c) Penalties and Remedies. -- The penalties and remedies that apply to local sales
9 and use taxes levied under Subchapter VIII of this Chapter apply to a tax levied
10 under this Article. The board of trustees of an Authority may exercise any power the
11 Secretary of Revenue or a board of county commissioners may exercise in collecting
12 local sales and use taxes.

13 **"§ 105-553. Exemptions and refunds.**

14 No exemptions are allowed from a tax levied under this Article. No refunds are
15 allowed for a tax lawfully levied under this Article.

16 **"§ 105-554. Use of tax proceeds.**

17 An Authority that levies a tax under this Article may use the proceeds of the tax
18 for any purpose for which the Authority is authorized to use funds. An Authority
19 shall use the tax proceeds to supplement and not to supplant or replace existing funds
20 or other resources for public transportation systems. Authorized purposes for which
21 an Authority may use funds include the following:

- 22 (1) Pledging funds in connection with the financing of a public
23 transportation system or any part of a public transportation system.
24 (2) Paying a note, bond, or other obligation entered into by the
25 Authority pursuant to Article 26 or Article 27 of Chapter 160A of
26 the General Statutes.

27 **"§ 105-555. Repeal of tax or decrease in tax rate.**

28 The board of trustees of an Authority may repeal a tax levied under this Article or
29 decrease the tax rate of a tax levied under this Article. The same restrictions that
30 apply to the levy of a tax or an increase in a tax rate under this Article apply to the
31 repeal of the tax or a decrease in the tax rate.

32 A tax repeal or a tax decrease becomes effective on the date set by the board of
33 trustees in the resolution repealing or decreasing the tax. The effective date must be
34 on the first day of a month and may not be earlier than the first day of the second
35 month after the board of trustees adopts the resolution. Repeal or decrease of a tax
36 levied under this Article does not affect the rights or liabilities of an Authority, a
37 taxpayer, or another person arising before the repeal or decrease."

38

39 **PART IV. REGIONAL TRANSPORTATION AUTHORITY REGISTRATION TAX**

40 Section 4. Subchapter IX of Chapter 105 of the General Statutes, as
41 enacted by this act, is amended by adding a new Article to read:

42

"ARTICLE 51.

43

"Regional Transit Authority Registration Tax.

44

"§ 105-560. Definitions.

- 1 (1) Authority. -- Any of the following:
2 a. A public transportation authority created pursuant to Article
3 25 of Chapter 160A of the General Statutes that includes
4 two or more counties.
5 b. A regional public transportation authority created pursuant
6 to Article 26 of Chapter 160A of the General Statutes.
7 c. A regional transportation authority created pursuant to
8 Article 27 of Chapter 160A of the General Statutes.
9 (2) Board of trustees. -- The governing body of an Authority.
10 (3) Public transportation system. -- Defined in G.S. 105-550.

11 **"§ 105-561. Authority registration tax authorized.**

12 (a) Tax Authorized. -- The board of trustees of an Authority may, by resolution,
13 levy an annual license tax in accordance with this Article upon any motor vehicle
14 with a tax situs within its territorial jurisdiction. The purpose of the tax levied under
15 this Article is to raise revenue for capital and operating expenses of an Authority in
16 providing public transportation systems. The rate of tax levied under this Article
17 must be a full dollar amount, but may not exceed five dollars (\$5.00) a year.

18 (b) Restrictions. -- The board of trustees of an Authority may not levy a tax
19 under this Article or increase the tax rate until all of the following requirements have
20 been met:

- 21 (1) The board of trustees has held a public hearing on the tax or the
22 increase in the tax rate after giving at least 10 days' notice of the
23 hearing.
24 (2) If the Authority has a special tax board, the special tax board has
25 adopted a resolution approving the levy of the tax or the increase
26 in the tax rate.
27 (3) Except where the levy or increase in tax is necessary for debt
28 service on bonds or notes that each of the boards of county
29 commissioners had previously approved under G.S. 159-51, the
30 board of commissioners of each county included in the territorial
31 jurisdiction of the Authority has adopted a resolution approving
32 the levy of the tax or the increase in the tax rate.

33 (c) Resolutions. -- The board of trustees and the board of county commissioners,
34 upon adoption of a resolution pursuant to this section, shall cause a certified copy of
35 the resolution to be delivered immediately to the Authority and to the Division of
36 Motor Vehicles.

37 **"§ 105-562. Collection and scope.**

38 (a) Collection. -- A tax or a tax increase levied under this Article becomes
39 effective on the date set by the board of trustees in the resolution levying the tax or
40 the tax increase. The effective date must be the first day of a month and may not be
41 earlier than the first day of the third calendar month after the board of trustees
42 adopts the resolution. To the extent the tax applies to vehicles whose tax situs is in a
43 county the entire area of which is within the jurisdiction of the Authority, the
44 Division of Motor Vehicles shall collect and administer the tax. To the extent the tax

1 applies to vehicles whose tax situs is in a county that is only partially within the
2 jurisdiction of the county, the Authority shall collect and administer the tax. The
3 Authority may contract with one or more local governments in its jurisdiction to
4 collect the tax on its behalf.

5 Upon receipt of the resolutions under G.S. 105-561, the Division of Motor Vehicles
6 shall proceed to collect and administer the tax as provided in this Article. The tax is
7 due at the same time and subject to the same restrictions as in G.S. 20-87(1), (2), (4),
8 (5), (6), and (7) and G.S. 20-88. The Division of Motor Vehicles may adopt rules to
9 carry out its responsibilities under this Article.

10 (b) Scope. -- Only vehicles required to pay a tax under G.S. 20-87(1), (2), (4), (5),
11 (6), and (7) and G.S. 20-88 shall be subject to the tax provided by this Article. Taxes
12 shall be prorated in accordance with G.S. 20-95.

13 (c) Tax Situs. -- The tax situs of a motor vehicle for the purpose of this Article is
14 its ad valorem tax situs. If the vehicle is exempt from ad valorem tax, its tax situs for
15 the purpose of this Article is the ad valorem tax situs it would have if it were not
16 exempt from ad valorem tax.

17 **"§ 105-563. Modification or repeal of tax.**

18 The Board of Trustees may, by resolution, repeal the levy of the tax under this
19 Article or decrease the amount of the tax, under the same procedures and subject to
20 the same limitations as provided in G.S. 105-561. A tax repeal or a tax decrease
21 becomes effective on the date set by the board of trustees in the resolution repealing
22 or decreasing the tax. The effective date must be on the first day of a month and
23 may not be earlier than the first day of the third calendar month after the board of
24 trustees adopts the resolution. Repeal or decrease of a tax levied under this Article
25 does not affect the rights or liabilities of an Authority, a taxpayer, or another person
26 arising before the repeal or decrease.

27 **"§ 105-564. Distribution and use of proceeds.**

28 The Authority shall retain the net proceeds of taxes it collects under this Article.
29 Taxes collected by the Division of Motor Vehicles under this Article shall be credited
30 to a special fund and the net proceeds disbursed quarterly to the appropriate
31 Authority. Interest credited to the fund shall be disbursed quarterly to the Highway
32 Fund to reimburse the Division of Motor Vehicles for the cost of collecting and
33 administering the tax.

34 An Authority that levies a tax under this Article may use the proceeds of the tax
35 for any purpose for which the Authority is authorized to use funds. An Authority
36 shall use the tax proceeds to supplement and not to supplant or replace existing funds
37 or other resources for public transportation systems."

38 Section 6. G.S. 160A-623 reads as rewritten:

39 **"§ 160A-623. Regional Transportation Authority registration tax.**

40 ~~(a) Tax Authorized.~~ In accordance with this section, Article 51 of Chapter 105 of
41 the General Statutes, an Authority organized under this Article may levy an annual
42 license tax upon any motor vehicle with a tax situs within its territorial jurisdiction as
43 defined by G.S. 160A-602. A tax levied under this section before the enactment of

1 Article 51 of Chapter 105 of the General Statutes is considered a tax levied under
2 Article 51 of Chapter 105 of the General Statutes.

3 ~~(b) Purpose. The purpose of the tax levied under this section is to raise revenue~~
4 ~~for capital and operating expenses of an Authority in providing a public~~
5 ~~transportation system.~~

6 ~~(c) Amount of Tax. The annual levy under this section must be a full dollar~~
7 ~~amount, but may not exceed five dollars (\$5.00) per year.~~

8 ~~(d) Procedure for Levy. The Board of Trustees of an Authority may levy the tax~~
9 ~~provided by this section by passage of a resolution, after not less than 10 days' public~~
10 ~~notice and after a public hearing. Collection of the tax, and liability therefor, shall~~
11 ~~begin and continue only on and after the first day of a calendar month set by the~~
12 ~~Board of Trustees in the resolution levying the tax, which shall in no case be earlier~~
13 ~~than the first day of the third calendar month after the adoption of the resolution.~~
14 ~~The Board of Trustees, upon adoption of the resolution, shall cause a certified copy~~
15 ~~of the resolution to be delivered immediately to the Division of Motor Vehicles.~~

16 ~~(e) Collection of Tax. Upon receipt of the resolutions under subsections (d) and~~
17 ~~(j), the Division of Motor Vehicles shall proceed to collect and administer the tax.~~
18 ~~The tax is due at the same time and subject to the same restrictions as in G.S. 20-87~~
19 ~~(1), (2), (4), (5), (6), and (7) and G.S. 20-88. The Commissioner of Motor Vehicles~~
20 ~~may adopt such rules as are necessary and proper to implement this section.~~

21 ~~(f) Modification or Repeal of Tax. The Board of Trustees may, by resolution,~~
22 ~~terminate the levy of the tax under this section, or increase or decrease the amount of~~
23 ~~the tax, under the same procedures as provided in subsection (d) of this section, and~~
24 ~~subject to the limitations provided in subsections (e) and (j) of this section. Collection~~
25 ~~of the increased or decreased tax, and liability therefor, shall begin and continue only~~
26 ~~on and after the first day of a calendar month set by the Board of Trustees in the~~
27 ~~resolution increasing or reducing the tax, which shall in no case be earlier than the~~
28 ~~first day of the third calendar month after the adoption of the resolution. The~~
29 ~~effective date of the termination of the tax shall be only on and after the first day of a~~
30 ~~calendar month set by the Board of Trustees in the resolution terminating the tax,~~
31 ~~which shall in no case be earlier than the first day of the third calendar month after~~
32 ~~the adoption of the resolution. No liability for any tax levied under this section which~~
33 ~~shall have attached prior to the effective date on which a levy is terminated or~~
34 ~~reduced shall be discharged as a result of such termination or reduction, and no right~~
35 ~~to a refund of tax or otherwise, which shall have accrued prior to the effective date~~
36 ~~on which a levy is terminated or reduced shall be denied as a result of such~~
37 ~~termination.~~

38 ~~(g) Vehicles Subject to Tax. Only vehicles required to pay a tax under G.S.~~
39 ~~20-87(1), (2), (4), (5), (6), and (7) and G.S. 20-88 shall be subject to the tax provided~~
40 ~~by this section. Taxes shall be prorated in accordance with G.S. 20-95.~~

41 ~~(h) Tax Situs. The tax situs of a motor vehicle for the purpose of this section is~~
42 ~~its ad valorem tax situs. If the vehicle is exempt from ad valorem tax, its tax situs for~~
43 ~~the purpose of this section is the ad valorem tax situs it would have if it were not~~
44 ~~exempt from ad valorem tax.~~

1 ~~(i) Distribution of Proceeds. Taxes paid under this section shall be credited to a~~
2 ~~special fund, and the net proceeds disbursed quarterly to the appropriate Authority.~~
3 ~~Interest credited to the fund shall be disbursed quarterly to the Highway Fund to~~
4 ~~reimburse the Division of Motor Vehicles for the cost of collecting and administering~~
5 ~~the tax.~~

6 ~~(i1) Repealed by Session Laws 1993, c. 382, s. 1.~~

7 ~~(j) When Special Tax Board and Board of County Commissioners Authorization~~
8 ~~Necessary. No Authority may adopt a resolution to levy any tax under this section,~~
9 ~~or to increase the amount of the levy, unless the special tax board of that Authority~~
10 ~~and the board of county commissioners of each county organizing the Authority have~~
11 ~~first passed a resolution approving the levy or increase, except where the levy or~~
12 ~~increase in tax is necessary for debt service on bonds or notes that special tax board~~
13 ~~and each of the boards of county commissioners had previously approved under G.S.~~
14 ~~159-51. The Special Tax Board and Board of County Commissioners, upon adoption~~
15 ~~of the resolution, shall cause a certified copy of the resolution to be delivered~~
16 ~~immediately to the Authority and to the Division of Motor Vehicles."~~

17

18 PART V. EFFECTIVE DATES

19 Section 6. This act is effective when it becomes law.

20 Section 7. A tax levied under Article 43 of Chapter 105 of the General
21 Statutes, as enacted by this act, does not apply to construction materials purchased to
22 fulfill a lump sum or unit price contract entered into or awarded before the effective
23 date of the levy or entered into or awarded pursuant to a bid made before the
24 effective date of the levy when the construction materials would otherwise be subject
25 to the tax levied under Article 43 of Chapter 105 of the General Statutes.



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1231

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

H1231-ALCX-7/30

Date July 31, 1997

Comm. Sub. [YES]
Amends Title []
Third Edition

Senator Gulley

- 1 moves to amend the bill on page 4, line 12,
- 2 by rewriting the line to read:
- 3 "public transportation systems.";
- 4
- 5 and on page 4, line 2,
- 6 by deleting the phrase "105-506" and substituting "105-550";
- 7
- 8 and on page 8, line 38,
- 9 by renumbering Section 6 as Section 5.
- 10

SIGNED Wil Gulley
Amendment Sponsor

SIGNED [Signature]
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

EXPLANATION OF HOUSE BILL 1231:
Local Transit Revenue Options (3rd Edition)

TO: Senate Finance Committee
FROM: Martha H. Harris, Staff Attorney
DATE: July 30, 1997
SPONSOR: Representative Miner

This bill provides local governments with revenue options to finance local public transportation systems, as follows:

1. It authorizes Mecklenburg county to levy a ½ cent local sales tax if approved by the voters of the county.
2. It authorizes cities that have public transportation systems, other than the city of Durham, to levy an additional \$5 motor vehicle tax.
3. It authorizes regional public transportation authorities to levy a gross receipts tax of up to 5% on short-term motor vehicle rentals.
4. It authorizes the proposed Triad regional transportation authority to levy the same \$5 vehicle registration tax that the existing Triangle regional public transportation authority levies. It also authorizes public transportation authorities organized under existing law and comprised of two or more counties to levy this same \$5 vehicle registration tax.

A regional public transportation authority is an entity created by three counties under Article 26 of Chapter 160A of the General Statutes to provide a public transportation system for the region. The authority is governed by a board of trustees appointed by the counties creating the authority and larger cities within the counties. Currently, there is only one regional transportation authority, the Triangle Transit Authority for Wake, Durham, and Orange Counties. A second regional transportation authority is proposed in House Bill 993, which has passed the House and is in Senate Finance. This authority would be created under Article 27 of Chapter 160A of the General Statutes by the four largest cities of the five counties served by the authority, in order to promote the development of sound transportation systems in the area served by the authority. The authority would be governed by a board of trustees consisting of the mayors of the four largest cities and the chair of each Metropolitan Planning Organization in the area.

A public transportation authority is an entity created by one or more local government entities under Article 25 of Chapter 160A to provide public transportation. There are three multi-county public transportation authorities.

A public transportation system is defined broadly in the bill to include any combination of real and personal property established for purposes of public transportation. It does not include, however, streets, roads, and highways not dedicated to public transportation or related parking.

Section 1 of the bill authorizes Mecklenburg County to levy a ½ cent sales tax only if the tax is approved by the voters of the county. The proceeds of the tax must be used to finance, construct, operate, and maintain local public transportation systems. The tax does not apply to food. In other respects, it will be administered in the same way as the existing local sales and use taxes.

The county may not levy the sales tax unless it has developed a financial plan for equitable allocation of the proceeds it receives based on the identified needs of local public transportation systems in the county and planned expansion of public transportation to unserved areas. The sales tax authorized for Mecklenburg County will be distributed between the county and other local government units in the county that operate local public transportation systems, on a per capita basis. The county must allocate the tax proceeds it receives based on its financial plan.

Section 2 of the bill authorizes municipalities that operate public transportation systems, other than the City of Durham, to levy an additional \$5 motor vehicle tax, to be used only to finance, construct, operate, and maintain local public transportation systems. Current law already authorizes municipalities to levy a \$5 annual motor vehicle tax. Many municipalities already have local legislation authorizing them to levy an increased amount. Section 2 adds an extra authorization for \$5 more. If that \$5 would cause the municipality's total local motor vehicle tax to exceed \$30, however, the additional \$5 tax may not be levied. The City of Charlotte and the Town of Matthews are authorized by local act to levy annual motor vehicle taxes of \$30. These local units are the only ones that would currently be affected by this limitation.

Section 3 of the bill authorizes a regional public transportation authority to levy a gross receipts tax of up to 5% on retailers within the region engaged in the business of renting private passenger motor vehicles and motorcycles. The tax applies to short-term rentals only. The tax will be collected by the authority but is otherwise administered in the same way as the optional highway use tax on gross receipts from vehicle rentals. This optional highway use tax is 8% on short-term rentals, so the combined tax within the jurisdiction of the authority

would be 13%. Each authority may use the proceeds of the tax for its public transportation purposes. Before levying or increasing the tax, the authority must obtain approval from each county in the region.

Sections 4 and 5 of the bill authorize the proposed Triad regional transportation authority and any multi-county public transportation authorities organized under current law to levy a \$5 vehicle registration tax identical to the tax already authorized for, and levied by, the existing Triangle Transit Authority. The authority must obtain the approval of each county within its jurisdiction before it can levy the tax. The Division of Motor Vehicles will collect the tax in counties that are entirely located within the authority's jurisdiction. If the authority's jurisdiction includes just a part of one or more county, the authority will collect the registration tax in those parts of counties. The authority may contract with local governments to collect this tax. Authorization for authorities to levy this tax is organized into a new Article in Chapter 105 of the General Statutes; accordingly, the Triangle Transit Authority's tax is recodified from Chapter 160A to the new Article in Chapter 105.

**NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE**

BILL NUMBER: House Bill 1231
SHORT TITLE: Local Transit Revenue Options
SPONSOR(S): Proposed Committee Substitute

	FISCAL IMPACT				
	Yes (x)	No ()	No Estimate Available ()		
	<u>FY 1997-98</u>	<u>FY 1998-99</u>	<u>FY 1999-00</u>	<u>FY 2000-01</u>	<u>FY 2001-02</u>
LOCAL REVENUES					
½ Sales Tax	\$21.8	\$46.2	\$48.9	\$51.8	\$54.9
Registration \$5.00					
Triad TA	\$ 2.30	\$ 4.70	\$ 4.80	\$ 4.9	\$ 5.0
Choanoke TA	.24	.49	.50	.51	.52
Kerr TA	.38	.79	.80	.81	.82
Inter-Co. TA	.17	.36	.37	.38	.39
License \$5.00					
Triangle TA Cities	\$ 1.3	\$ 2.6	\$ 2.7	\$ 2.7	\$ 2.8
Triad TA Cities	1.5	3.3	3.4	3.5	3.6
Gross Receipts 5%					
Triangle TA	3.3	6.6	6.7	6.8	7.0
Triad TA	1.3	2.6	2.7	2.8	2.9
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:					
Charlotte Transportation System, Triangle Transportation Authority, Regional Transportation Authority, Choanoke Public Transportation Authority, Kerr Area Transportation Authority, Inter-County Public Transportation Authority; Any municipality having a public transportation system.					
EFFECTIVE DATE: When it becomes law					

BILL SUMMARY: The proposed act allows for the implementation of several revenue sources for the funding of public transportation services in qualified counties and cities of the State. Each local funding option authorized by this act is subject to the approval of the county board of commissioners or the city council except for the local option sales tax which is subject to a vote of the qualified voters of the county.

Funding option: ½ cent sales tax

Mecklenburg County is authorized to levy a one half cent sales and use tax. The proceeds are to be used for financing the construction and maintenance of a public transportation system as defined in G.S. 105-506(2) of the act.

Funding option: municipal vehicle tax

The act authorizes any municipality in the State, that has a public transportation system, to levy a \$5.00 municipal vehicle tax for public transportation. The tax is levied on motor vehicles sited in the municipality for property tax purposes. This tax is in addition to the general municipal vehicle tax authorized under G.S. 20-97.

Funding option: gross receipts

Counties that form a transportation authority under Article 26 or 27 of Chapter 160A of the General Statutes are authorized to impose a 5% vehicle rental tax on the short term lease of motor vehicles leased in the region. The Triangle Transit Authority would be eligible to levy this tax. The Triad Transit Authority will be eligible if it is organized under Article 27 of Chapter 160A, which is created in House Bill 993. (HB 993 has passed the House and is in Senate Finance.) See addendum I for a list of the counties that make-up the authorities.

This bill does not limit other counties from organizing a transit authority under either of these articles and imposing this tax. The revenue from the tax is to be used by an authority for any authorized purpose.

Funding option: vehicle registration

Transit authorities organized under Article 25, Article 26, and Article 27 of Chapter 160A of the General Statutes, are allowed to charge a \$5.00 registration fee on motor vehicles sited in each member county for property taxation. This is the same authorization given to the Triangle Transit Authority.

ASSUMPTIONS AND METHODOLOGY:

The increase in the sales tax for Mecklenburg County is based on the most recent prediction of the General Fund financial model for a statewide increase in the local sales and use tax by county. The expected growth in sales tax collections for Mecklenburg County is 6% a year for fiscal years 1997-98 through 1999-00 and 5.9% for each additional year.

The revenue estimates from a \$5.00 increase in the registration fee are based on vehicle registrations by county as of July 25, 1997. The estimates on the \$5.00 local vehicle license are based on vehicle registrations by municipality as of July 25, 1997. Both the registration and municipal license revenues are expected to grow at the same rate as the statewide population. The expected statewide growth in population is 1.5% a year over the next five years.

The revenue associated with the 5% vehicle rental tax is based on a percentage of the 8% gross receipts tax on short term rentals. The percentages are based on the value of vehicles in counties having a major airport. Of the \$374.7 million in value identified throughout the State, it is estimated that Wake has 37% of the revenue, Guilford has 11%, and Forsyth has 2%. If an 8% tax on the gross receipts of the short term lease of motor vehicles produces \$29 million in revenue, a 5% tax on the same revenue would produce \$18.0 million statewide. To derive the tax receipts by individual county, the percentages for Wake, Guilford, and Forsyth Counties were applied to the \$18 million. The expected growth is 1.5% on average over the next five years.

In the first fiscal year the expected revenues are based on a six month collection period.

Sources:

General Fund Financial Model
N.C. Department of Motor Vehicles
Property Tax Administrators for Select Counties

FISCAL RESEARCH DIVISION

733-4910

PREPARED BY: Warren Plonk

APPROVED BY:

DATE: July 28, 1997

Addendum I

PUBLIC TRANSPORTATION AUTHORITIES BY ARTICLE

Article 25, Chapter 160A

CHOANOKE PUBLIC TRANSPORTATION AUTHORITY

Bertie County
Halifax County
Hertford County
Northampton County

KERR AREA TRANSPORTATION AUTHORITY

Franklin County
Granville County
Person County
Vance County
Warren County

INTER-COUNTY PUBLIC TRANSPORTATION AUTHORITY

Camden County
Chowan County
Currituck County
Pasquotank County
Perquimans County

Article 26, Chapter 160A

RESEARCH TRIANGLE REGIONAL PUBLIC TRANSPORTATION AUTHORITY

Durham County
Orange County
Wake County

Article 27, Chapter 160A - House Bill 993

TRIAD TRANSIT AUTHORITY

Alamance County
Davidson County
Forsyth County
Guilford County
Randolph County



CITY ATTORNEY

F A X T R A N S M I T T A L

DATE: July 31, 1997

TO: Senator Larry Shaw
Rep. Mary McAllister

FAX # _____

FROM: Robert C. Cogswell, Jr.
City Attorney

PHONE #: (910) 433-1985
FAX #: (910) 433-1980

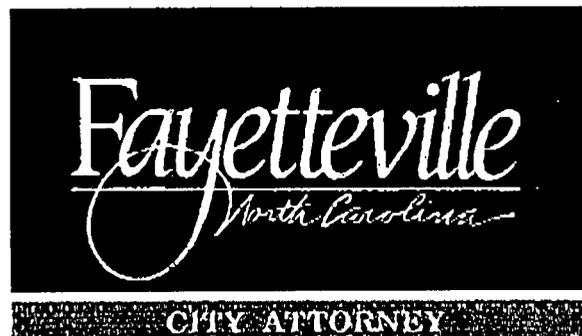
RE: Transit Funding-HB 1231

NUMBER OF PAGES TO BE TRANSMITTED: 2
(Including Transmittal Sheet)

MESSAGE:

THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS ATTORNEY PRIVILEGED, CONFIDENTIAL, OR PROPRIETARY INFORMATION INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT OR THE EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERING IT TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY TELEPHONE AT (919) 433-1985, AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA THE U.S. POSTAL SERVICE. THANK YOU.

P.O. BOX 1513
433 HAY STREET
FAYETTEVILLE, NC 28402-1513
(910) 433-1985
FAX (910) 433-1980



July 31, 1997

FACSIMILE TRANSMISSION

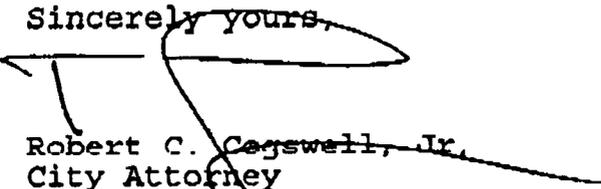
Senator Anthony E. Rand
North Carolina Senate
Legislative Office Building, Room 300-C
Raleigh, N.C. 27601-2808

Re: HB 1231-Local Transit Revenue Options

Dear Senator Rand:

As you know, alternative sources of revenue are key to the continued vitality of public transportation in the Fayetteville and Cumberland County environs. Accordingly, your support for HB 1231 is very important. I understand it may be considered by the Senate Finance Committee today. Please call me if you have any questions.

Sincerely yours,


Robert C. Cogswell, Jr.
City Attorney

cc: Members, Cumberland County Delegation
Mayor & Members, Fayetteville City Council
Interim City Manager
Transit Director
Andy Romanet, NCLM

P.O. BOX 1513
433 HAY STREET
FAYETTEVILLE, NC 28302-1513
(910) 433-1945
FAX (910) 433-1926

An Equal Opportunity Affirmative Action Employer



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

2

HOUSE BILL 1156
Committee Substitute Favorable 5/21/97

Short Title: March of Dimes License Plates.

(Public)

Sponsors:

Referred to:

April 24, 1997

A BILL TO BE ENTITLED

1
2 AN ACT TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO
3 DEVELOP A SPECIAL REGISTRATION PLATE FOR SUPPORTERS OF THE
4 MARCH OF DIMES AND TO PROVIDE THAT A PORTION OF THE
5 MONEY GENERATED FROM THE SPECIAL PLATES WILL BE GIVEN TO
6 THE MARCH OF DIMES BIRTH DEFECTS FOUNDATION.

7 The General Assembly of North Carolina enacts:

8 Section 1. G.S. 20-79.4(b) is amended by adding a new subdivision to
9 read:

10 "(14a) March of Dimes. -- Issuable to the registered owner of a motor
11 vehicle in accordance with G.S. 20-81.12. The plate may bear a
12 phrase or an insignia representing the March of Dimes
13 Foundation."

14 Section 2. G.S. 20-79.7(a) reads as rewritten:

15 "(a) Fees. -- Upon request, the Division shall provide and issue free of charge one
16 registration plate to a recipient of the Congressional Medal of Honor, a 100%
17 disabled veteran, and an ex-prisoner of war. All other special registration plates are
18 subject to the regular motor vehicle registration fee in G.S. 20-87 or G.S. 20-88 plus
19 an additional fee in the following amount:

20 <u>Special Plate</u>	<u>Additional Fee Amount</u>
21 Historical Attraction	\$30.00
22 State Attraction	\$30.00
23 Collegiate Insignia	\$25.00

1	Olympic Games	\$25.00
2	Special Olympics	\$25.00
3	<u>March of Dimes</u>	<u>\$20.00</u>
4	Wildlife Resources	\$20.00
5	Personalized	\$20.00
6	Active Member of the National Guard	None
7	All Other Special Plates	\$10.00."

8 Section 3. G.S. 20-79.7(b) reads as rewritten:

9 "(b) Distribution of Fees. -- The Special Registration Plate Account and the
 10 Collegiate and Cultural Attraction Plate Account are established within the Highway
 11 Fund. The Division must credit the additional fee imposed for the special
 12 registration plates listed in subsection (a) among the Special Registration Plate
 13 Account (SRPA), the Collegiate and Cultural Attraction Plate Account (CCAPA),
 14 and the Natural Heritage Trust Fund (NHTF), which is established under G.S. 113-
 15 77.7, as follows:

16	<u>Special Plate</u>	<u>SRPA</u>	<u>CCAPA</u>	<u>NHTF</u>
17	Historical Attraction	\$10	\$20	0
18	In-State Collegiate Insignia	\$10	\$15	0
19	Out-of-state Collegiate Insignia	\$10	0	\$15
20	Personalized	\$10	0	\$10
21	Special Olympics	\$10	\$15	0
22	Olympic Games	\$10	\$15	0
23	State Attraction	\$10	\$20	0
24	<u>March of Dimes</u>	<u>\$10</u>	<u>\$10</u>	<u>0</u>
25	Wildlife Resources	\$10	\$10	0
26	All other Special Plates	\$10	0	0."

27 Section 4. G.S. 20-81.12 is amended by adding a new subsection to read:

28 "(b5) March of Dimes Plates. -- The Division must receive 300 or more
 29 applications for a March of Dimes plate before the plate may be developed. The
 30 Division shall transfer quarterly the money in the Collegiate and Cultural Attraction
 31 Plate Account derived from the sale of March of Dimes plates to the March of Dimes
 32 Birth Defects Foundation for use in programs in North Carolina."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

HOUSE BILL 1156
Committee Substitute Favorable 5/21/97
Proposed Senate Committee Substitute H1156-PCSX7363

Short Title: March of Dimes/School Tech. Plates.

(Public)

Sponsors:

Referred to:

April 24, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE THE DEVELOPMENT OF A SPECIAL
3 REGISTRATION PLATE FOR SUPPORTERS OF THE MARCH OF DIMES
4 AND TO PROVIDE THAT A PORTION OF THE MONEY GENERATED
5 FROM THE SPECIAL PLATE WILL BE DISTRIBUTED TO THE EASTERN
6 CAROLINA CHAPTER OF THE MARCH OF DIMES BIRTH DEFECTS
7 FOUNDATION AND TO AUTHORIZE THE DEVELOPMENT OF A SPECIAL
8 PLATE FOR SUPPORTERS OF SCHOOL TECHNOLOGY AND TO
9 PROVIDE THAT A PORTION OF THE MONEY GENERATED FROM THE
10 SPECIAL PLATE WILL BE CREDITED TO THE STATE SCHOOL
11 TECHNOLOGY FUND.

12 The General Assembly of North Carolina enacts:

13 Section 1. G.S. 20-79.4(b) is amended by adding a new subdivision to
14 read:

15 "(14a) March of Dimes. -- Issuable to the registered owner of a motor
16 vehicle in accordance with G.S. 20-81.12. The plate may bear a
17 phrase or an insignia representing the March of Dimes
18 Foundation."

19 Section 2. G.S. 20-79.4(b) is amended by adding a new subdivision, to be
20 inserted by the Revisor of Statutes in the appropriate alphabetical place, to read:

21 "() School Technology. -- Issuable to the registered owner of a
22 motor vehicle in accordance with G.S. 20-81.12. The plate may

1 bear a phrase or an insignia representing the public school
 2 system in North Carolina."

3 Section 3. G.S. 20-79.7(a) reads as rewritten:

4 "(a) Fees. -- Upon request, the Division shall provide and issue free of charge one
 5 registration plate to a recipient of the Congressional Medal of Honor, a 100%
 6 disabled veteran, and an ex-prisoner of war. All other special registration plates are
 7 subject to the regular motor vehicle registration fee in G.S. 20-87 or G.S. 20-88 plus
 8 an additional fee in the following amount:

<u>Special Plate</u>	<u>Additional Fee Amount</u>
10 Historical Attraction	\$30.00
11 State Attraction	\$30.00
12 Collegiate Insignia	\$25.00
13 Olympic Games	\$25.00
14 Special Olympics	\$25.00
15 <u>March of Dimes</u>	<u>\$20.00</u>
16 <u>School Technology</u>	<u>\$20.00</u>
17 Wildlife Resources	\$20.00
18 Personalized	\$20.00
19 Active Member of the National Guard	None
20 All Other Special Plates	\$10.00."

21 Section 4. G.S. 20-79.7(b) reads as rewritten:

22 "(b) Distribution of Fees. -- The Special Registration Plate Account and the
 23 Collegiate and Cultural Attraction Plate Account are established within the Highway
 24 Fund. The Division must credit the additional fee imposed for the special
 25 registration plates listed in subsection (a) among the Special Registration Plate
 26 Account (SRPA), the Collegiate and Cultural Attraction Plate Account (CCAPA),
 27 and the Natural Heritage Trust Fund (NHTF), which is established under G.S. 113-
 28 77.7, as follows:

<u>Special Plate</u>	<u>SRPA</u>	<u>CCAPA</u>	<u>NHTF</u>
30 Historical Attraction	\$10	\$20	0
31 In-State Collegiate Insignia	\$10	\$15	0
32 Out-of-state Collegiate Insignia	\$10	0	\$15
33 Personalized	\$10	0	\$10
34 Special Olympics	\$10	\$15	0
35 Olympic Games	\$10	\$15	0
36 State Attraction	\$10	\$20	0
37 <u>March of Dimes</u>	<u>\$10</u>	<u>\$10</u>	<u>0</u>
38 <u>School Technology</u>	<u>\$10</u>	<u>\$10</u>	<u>0</u>
39 Wildlife Resources	\$10	\$10	0
40 All other Special Plates	\$10	0	0."

41 Section 5. G.S. 20-81.12 is amended by adding two new subsections to
 42 read:

43 "(b5) March of Dimes Plates. -- The Division must receive 300 or more
 44 applications for a March of Dimes plate before the plate may be developed. The

1 Division shall transfer quarterly the money in the Collegiate and Cultural Attraction
2 Plate Account derived from the sale of March of Dimes plates to the Eastern
3 Carolina Chapter of the March of Dimes Birth Defects Foundation. The Eastern
4 Carolina Chapter shall disperse the revenue proportionately among the Eastern
5 Carolina Chapter, the Western Carolina Chapter, the Greater Triad Chapter, and the
6 Greater Piedmont Chapter of the March of Dimes Birth Defects Foundation based
7 upon the population of the area each Chapter represents. The money must be used
8 for the prevention of birth defects through local community services and educational
9 programs and through research and development.

10 (b6) School Technology Plates. -- The Division must receive 300 or more
11 applications for a School Technology plate before the plate may be developed. The
12 Division shall transfer quarterly the money in the Collegiate and Cultural Attraction
13 Plate Account derived from the sale of School Technology plates to the State School
14 Technology Fund, which is established under G.S. 115C-102.6D."

15 Section 6. G.S. 115C-102.6D(a) reads as rewritten:

16 "(a) There is established under the control and direction of the State Board of
17 Education the State School Technology Fund. This fund shall be a nonreverting
18 special revenue fund consisting of any monies appropriated to it by the General
19 ~~Assembly.~~ Assembly and any monies credited to it under G.S. 20-81.12 from the sale
20 of School Technology special license plates."

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



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1156

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

H1156-ARB-7/30

Date _____, 1995

Comm. Sub. [YES]
Amends Title [YES]
H1156-PCSX7363

Senator _____

- 1 moves to amend the bill on page 1, line 7, by deleting the word
- 2 "FOUNDATION AND" and substituting "FOUNDATION,";
- 3
- 4 and on page 1, line 11, by deleting "FUND." and substituting "FUND,
- 5 AND TO AUTHORIZE THE DEVELOPMENT OF A SPECIAL REGISTRATION PLATE FOR
- 6 WAR VETERANS.";
- 7
- 8 and on page 2, lines 2 and 3, by inserting a new section between
- 9 those lines to read:
- 10 "Section 3. G.S. 20-79.4(b) is amended by adding a new
- 11 subdivision to read:
- 12 ' (28a) War Veteran. -- Issuable to a veteran of the
- 13 armed forces of the United States who served in
- 14 active federal service during a period of war and
- 15 who was separated from the armed forces under
- 16 conditions other than dishonorable. The Division
- 17 may not issue the plate authorized by this
- 18 subdivision for a period of war unless it
- 19 receives at least 300 applications for a plate
- 20 for that period. A 'period of war' is any of the
- 21 following:
- 22 a. World War I, which began April 16, 1917, and
- 23 ended November 11, 1918.
- 24 b. World War II, which began December 7, 1941,
- 25 and ended December 31, 1946.
- 26 c. The Korean Conflict, which began June 27,
- 27 1950, and ended January 31, 1955.
- 28 d. The Vietnam Era, which began August 5, 1964,
- 29 and ended May 7, 1975.
- 30 e. The Persian Gulf War.
- 31 f. Any other campaign, expedition, or
- 32 engagement for which the United States



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1156

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

H1156-ARB-7/30

1 Department of Defense authorizes a campaign
2 badge or medal.'";
3
4 and by renumbering the remaining sections accordingly;
5
6 and on page 3, line 21, by rewriting the line to read:
7 "Section 8. S.L. 1997-339 is repealed.
8 Section 9. This act is effective when it becomes law.";
9
10

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

HOUSE BILL 1156
Committee Substitute Favorable 5/21/97
Proposed Senate Committee Substitute H1156-PCSX6313

Short Title: March of Dimes/School Tech. Plates.

(Public)

Sponsors:

Referred to:

April 24, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE THE DEVELOPMENT OF A SPECIAL
3 REGISTRATION PLATE FOR SUPPORTERS OF THE MARCH OF DIMES
4 AND TO PROVIDE THAT A PORTION OF THE MONEY GENERATED
5 FROM THE SPECIAL PLATE WILL BE DISTRIBUTED TO THE EASTERN
6 CAROLINA CHAPTER OF THE MARCH OF DIMES BIRTH DEFECTS
7 FOUNDATION, TO AUTHORIZE THE DEVELOPMENT OF A SPECIAL
8 PLATE FOR SUPPORTERS OF SCHOOL TECHNOLOGY AND TO
9 PROVIDE THAT A PORTION OF THE MONEY GENERATED FROM THE
10 SPECIAL PLATE WILL BE CREDITED TO THE STATE SCHOOL
11 TECHNOLOGY FUND, AND TO AUTHORIZE THE DEVELOPMENT OF A
12 SPECIAL REGISTRATION PLATE FOR WAR VETERANS.

13 The General Assembly of North Carolina enacts:

14 Section 1. G.S. 20-79.4(b) is amended by adding a new subdivision to
15 read:

16 "(14a) March of Dimes. -- Issuable to the registered owner of a motor
17 vehicle in accordance with G.S. 20-81.12. The plate may bear a
18 phrase or an insignia representing the March of Dimes
19 Foundation."

20 Section 2. G.S. 20-79.4(b) is amended by adding a new subdivision, to be
21 inserted by the Revisor of Statutes in the appropriate alphabetical place, to read:

"() School Technology. -- Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate may bear a phrase or an insignia representing the public school system in North Carolina."

Section 3. G.S. 20-79.4(b) is amended by adding a new subdivision to read:

"(28a) War Veteran. -- Issuable to a veteran of the armed forces of the United States who served in active federal service during a period of war and who was separated from the armed forces under conditions other than dishonorable. The Division may not issue the plate authorized by this subdivision for a period of war unless it receives at least 300 applications for a plate for that period. A 'period of war' is any of the following:

- a. World War I, which began April 16, 1917, and ended November 11, 1918.
- b. World War II, which began December 7, 1941, and ended December 31, 1946.
- c. The Korean Conflict, which began June 27, 1950, and ended January 31, 1955.
- d. The Vietnam Era, which began August 5, 1964, and ended May 7, 1975.
- e. The Persian Gulf War.
- f. Any other campaign, expedition, or engagement for which the United States Department of Defense authorizes a campaign badge or medal."

Section 4. G.S. 20-79.7(a) reads as rewritten:

"(a) Fees. -- Upon request, the Division shall provide and issue free of charge one registration plate to a recipient of the Congressional Medal of Honor, a 100% disabled veteran, and an ex-prisoner of war. All other special registration plates are subject to the regular motor vehicle registration fee in G.S. 20-87 or G.S. 20-88 plus an additional fee in the following amount:

<u>Special Plate</u>	<u>Additional Fee Amount</u>
Historical Attraction	\$30.00
State Attraction	\$30.00
Collegiate Insignia	\$25.00
Olympic Games	\$25.00
Special Olympics	\$25.00
<u>March of Dimes</u>	<u>\$20.00</u>
<u>School Technology</u>	<u>\$20.00</u>
Wildlife Resources	\$20.00
Personalized	\$20.00
Active Member of the National Guard	None
All Other Special Plates	\$10.00."

Section 5. G.S. 20-79.7(b) reads as rewritten:

1 "(b) Distribution of Fees. -- The Special Registration Plate Account and the
2 Collegiate and Cultural Attraction Plate Account are established within the Highway
3 Fund. The Division must credit the additional fee imposed for the special
4 registration plates listed in subsection (a) among the Special Registration Plate
5 Account (SRPA), the Collegiate and Cultural Attraction Plate Account (CCAPA),
6 and the Natural Heritage Trust Fund (NHTF), which is established under G.S. 113-
7 77.7, as follows:

8 <u>Special Plate</u>	<u>SRPA</u>	<u>CCAPA</u>	<u>NHTF</u>
9 Historical Attraction	\$10	\$20	0
10 In-State Collegiate Insignia	\$10	\$15	0
11 Out-of-state Collegiate Insignia	\$10	0	\$15
12 Personalized	\$10	0	\$10
13 Special Olympics	\$10	\$15	0
14 Olympic Games	\$10	\$15	0
15 State Attraction	\$10	\$20	0
16 <u>March of Dimes</u>	<u>\$10</u>	<u>\$10</u>	<u>0</u>
17 <u>School Technology</u>	<u>\$10</u>	<u>\$10</u>	<u>0</u>
18 Wildlife Resources	\$10	\$10	0
19 All other Special Plates	\$10	0	0."

20 Section 6. G.S. 20-81.12 is amended by adding two new subsections to
21 read:

22 "(b5) March of Dimes Plates. -- The Division must receive 300 or more
23 applications for a March of Dimes plate before the plate may be developed. The
24 Division shall transfer quarterly the money in the Collegiate and Cultural Attraction
25 Plate Account derived from the sale of March of Dimes plates to the Eastern
26 Carolina Chapter of the March of Dimes Birth Defects Foundation. The Eastern
27 Carolina Chapter shall disperse the revenue proportionately among the Eastern
28 Carolina Chapter, the Western Carolina Chapter, the Greater Triad Chapter, and the
29 Greater Piedmont Chapter of the March of Dimes Birth Defects Foundation based
30 upon the population of the area each Chapter represents. The money must be used
31 for the prevention of birth defects through local community services and educational
32 programs and through research and development.

33 (b6) School Technology Plates. -- The Division must receive 300 or more
34 applications for a School Technology plate before the plate may be developed. The
35 Division shall transfer quarterly the money in the Collegiate and Cultural Attraction
36 Plate Account derived from the sale of School Technology plates to the State School
37 Technology Fund, which is established under G.S. 115C-102.6D."

38 Section 7. G.S. 115C-102.6D(a) reads as rewritten:

39 "(a) There is established under the control and direction of the State Board of
40 Education the State School Technology Fund. This fund shall be a nonreverting
41 special revenue fund consisting of any monies appropriated to it by the General
42 ~~Assembly.~~ Assembly and any monies credited to it under G.S. 20-81.12 from the sale
43 of School Technology special license plates."

44 Section 8. S.L. 1997-339 is repealed.

1

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

EXPLANATION OF HOUSE BILL 1156:
March of Dimes/School Technology Plates (PCS)

TO: Senate Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: July 30, 1997
SPONSOR: Representative Morris

The proposed committee substitute for **House Bill 1156** would authorize the Division of Motor Vehicles to develop two new special license plates: a March of Dimes special registration plate and a School Technology special registration plate. The Division would have to receive at least 300 applications for a special plate before it could be issued. The cost of the plates would be the regular registration fee plus an additional \$20. The first \$10 of the additional fee would be credited to the Special Registration Plate Fund. The remaining \$10 of the additional fee would be credited to the Collegiate and Cultural Attraction Plate Account and transferred quarterly to the March of Dimes Birth Defects Foundation and the State School Technology Fund respectively.

The March of Dimes Birth Defects Foundation is incorporated in New York. There is a registered agent for the Foundation in North Carolina and four local chapters: the Eastern Carolina Chapter, the Western Carolina Chapter, the Greater Triad Chapter, and the Greater Piedmont Chapter. The chapters have decided that the Eastern Carolina Chapter will be the local group to receive the quarterly disbursement of revenue generated from the sale of the March of Dimes special license plate. The Eastern Carolina Chapter will distribute the funds proportionately among the four chapters located in North Carolina based upon the population of the area each chapter represents. The chapters use the money they receive to fight birth defects through educational programs and through research and development.

The General Assembly created the State School Technology Fund in 1994 to help local school administrative units implement their technology plans. The Commission on School Technology develops a State school technology plan and each local board of education develops a local school system technology plan that meets the requirements of the State plan. After a local school's plan is approved by the State Board of Education, it may use funds in the State School Technology Fund that are allocated to the local school administrative unit to implement its plan. The purpose of the technology plan is to improve student performance through the use of learning and instructional management technologies. The money generated from the sale of the School Technology special license plates will help increase the money available to local school administrative units for their technology needs.

**NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE**

BILL NUMBER: HB 1156 (Second Edition)

SHORT TITLE: March of Dimes License Plates

SPONSOR(S): Representative Morris

FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 1997-98</u>	<u>FY 1998-99</u>	<u>FY 1999-00</u>	<u>FY 2000-01</u>	<u>FY 2001-02</u>
REVENUES					
Highway Fund - Special Registration Plate Acct.	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000
Collegiate and Cultural Attraction Plate Acct.	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000
EXPENDITURES					
Highway Fund - Special Registration Plate Acct.	\$835	-	-	-	-
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Transportation - Division of Motor Vehicles					
EFFECTIVE DATE: The act is effective when it becomes law.					

BILL SUMMARY: The bill authorizes the Division of Motor Vehicles (DMV) to issue a special registration plate to supporters of the March of Dimes if at least 300 applications for such plate are received.

ASSUMPTIONS AND METHODOLOGY:

This fiscal note assumes the issuance of the minimum 300 license plates in FY 1997-98 and renewal of those plates in the following years. There is a one-time cost of \$100 to design the new plate and a one-time production cost of \$2.45 per plate. For 300 plates, the total production cost of \$835 is paid from the Special Registration Plate Account. In addition to the normal \$20 registration fee every license holder pays, there is an additional \$20 annual fee for each March of

Dimes plate. \$10 of the fee will be deposited into the Collegiate and Cultural Attractions Plate Account to be transferred quarterly to the March of Dimes Birth Defects Foundation for use in programs in North Carolina. The other \$10 will go into the Special Registration Plate Account. It is assumed that all persons applying for the March of Dimes plate currently have a regular plate that will be turned in to DMV upon receipt of the new plate.

FISCAL RESEARCH DIVISION

733-4910

PREPARED BY: Richard Bostic

APPROVED BY:

DATE: July 25, 1997

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

2

SENATE BILL 886*
Transportation Committee Substitute Adopted 7/14/97

Short Title: Trucking Adjustment Act of 1997.

(Public)

Sponsors:

Referred to: Finance.

April 16, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO ADJUST CERTAIN STATUTES AFFECTING THE TRUCKING
3 INDUSTRY TO ENCOURAGE THE GROWTH OF THAT INDUSTRY
4 THROUGH INCREASED TRUCK REGISTRATIONS IN THIS STATE; TO
5 PROVIDE CONSUMER PROTECTION PROVISIONS; AND TO PROVIDE
6 FOR A STUDY OF CERTAIN TRUCKING RELATED PROVISIONS BY THE
7 LEGISLATIVE RESEARCH COMMISSION.

8 The General Assembly of North Carolina enacts:

9 Section 1. G.S. 20-88 is amended by adding a new subsection to read:

10 "(1) The Division shall issue permanent truck and truck-tractor plates and shall
11 include the word 'permanent' on the plate."

12 Section 2. G.S. 20-118(c)(5) reads as rewritten:

13 "(5) The light-traffic road limitations provided for pursuant to
14 subdivision (b)(4) of this section do not apply to a vehicle while
15 that vehicle is transporting only the following from its point of
16 origin on a light-traffic road to the nearest highway that is not a
17 light-traffic road:

18 a. Processed or unprocessed seafood from boats or any other
19 point of origin to a processing plant or a point of further
20 distribution.

21 b. Meats or agricultural crop products originating from a farm
22 to first market.

- 1 c. ~~Unprocessed forest~~ Forest products originating from a farm
- 2 or from woodlands to first market.
- 3 d. Livestock or poultry from their point of origin to first
- 4 market.
- 5 e. Livestock by-products or poultry by-products from their
- 6 point of origin to a rendering plant.
- 7 f. Recyclable material from its point of origin to a scrap-
- 8 processing facility for processing. As used in this subpart,
- 9 the terms 'recyclable' and 'processing' have the same
- 10 meaning as in G.S. 130A-290(a).
- 11 g. Garbage collected by the vehicle from residences or garbage
- 12 dumpsters if the vehicle is fully enclosed and is designed
- 13 specifically for collecting, compacting, and hauling garbage
- 14 from residences or from garbage dumpsters. As used in this
- 15 subpart, the term 'garbage' does not include hazardous
- 16 waste as defined in G.S. 130A-290(a), spent nuclear fuel
- 17 regulated under G.S. 20-167.1, low-level radioactive waste as
- 18 defined in G.S. 104E-5, or radioactive material as defined in
- 19 G.S. 104E-5."

20 Section 3. G.S. 20-116(d) reads as rewritten:

21 "(d) A single vehicle having two or more axles shall not exceed ~~35 feet in length~~
 22 the following lengths of extreme overall dimensions inclusive of front and rear
 23 ~~bumpers:~~ bumpers:

<u>Axles</u>	<u>Length</u>
<u>2</u>	<u>35 feet</u>
<u>3</u>	<u>40 feet</u>
<u>4 or more</u>	<u>45 feet</u>

28 Provided, however, a bus or motor home with two axles shall not exceed 40 feet in
 29 length overall of dimensions inclusive of front and rear bumpers. ~~A single vehicle~~
 30 ~~having three axles shall not exceed 40 feet in length overall of dimensions inclusive of~~
 31 ~~front and rear bumpers.~~ Provided, further, trucks transporting unprocessed cotton
 32 from farm to gin shall not exceed 48 feet in length overall of dimensions inclusive of
 33 front and rear bumpers. A truck-tractor and semitrailer shall be regarded as two
 34 vehicles for the purpose of determining lawful length and license taxes."

35 Section 4. G.S. 20-382.2 reads as rewritten:

36 "**§ 20-382.2. Penalty for failure to comply with registration or insurance verification**
 37 **requirements.**

38 (a) Acts. -- A motor carrier who does any of the following is subject to a civil
 39 penalty of ~~seventy-five dollars (\$75.00):~~ one thousand dollars (\$1,000):

- 40 (1) Operates a for-hire motor vehicle in this State without registering
- 41 its operations, as required by this Part.
- 42 (2) Operates a for-hire motor vehicle in interstate commerce in this
- 43 State that does not carry a copy of either an insurance registration
- 44 receipt issued to the motor carrier or a cab card with an

1 identification stamp issued for the vehicle, as required by G.S. 20-
2 382.

3 (3) Operates a for-hire motor vehicle in intrastate commerce in this
4 State for which it has not verified it has insurance, as required by
5 G.S. 20-382.1.

6 (b) Payment. -- When the Division finds that a for-hire motor vehicle is operated
7 in this State in violation of the registration and insurance verification requirements of
8 this Part, the motor vehicle may not be driven for a purpose other than to park the
9 motor vehicle until the penalty imposed under this section is paid unless the officer
10 that imposes the penalty determines that operation of the motor vehicle will not
11 jeopardize collection of the penalty. A motor carrier that denies liability for a penalty
12 imposed under this section may pay the penalty under protest and apply to the
13 Division for a hearing.

14 (c) Hearing. -- Upon receiving a request for a hearing, the Commissioner ~~must~~
15 shall schedule a hearing within 30 days after receipt of the request. If after the
16 hearing the Commissioner determines that the motor carrier was not liable for the
17 penalty, the amount collected ~~must~~ shall be refunded. If after the hearing the
18 Commissioner determines that the motor carrier was liable for the penalty, the motor
19 carrier may bring an action in the Superior Court of Wake County against the
20 Division for refund of the penalty. A court of this State may not issue a restraining
21 order or an injunction to restrain or enjoin the collection of the penalty or to permit
22 the operation of the vehicle without payment of the penalty.

23 (d) Proceeds. -- A penalty imposed under this section is payable to the Division.
24 Penalties collected under this section shall be credited to the Highway Fund as
25 nontax revenue."

26 Section 5. The Division of Motor Vehicles shall study the feasibility of
27 establishing a staggered registration system for commercial motor vehicles under the
28 International Registration Plan (IRP). The registration plan shall be coordinated with
29 other states which currently stagger IRP registrations to eliminate, insofar as possible,
30 multiple application dates for the same carrier. The registration plan shall provide
31 for a smooth transition to the staggered system providing for credits and partial fees,
32 as needed. The Division shall report the results of this study along with any
33 legislation to implement the staggered registration system to the Joint Legislative
34 Transportation Oversight Committee and the Fiscal Research Division by April 1,
35 1998.

36 Section 6. The Legislative Research Commission may study the following
37 issues encouraging the growth of the trucking industry in North Carolina through
38 increased truck registrations:

39 (1) The feasibility of removing the highway use tax on vehicles with a
40 gross weight rating of more than 26,000 pounds;

41 (2) The replacement of the revenue from the removal of the highway
42 use tax studied in subdivision (1) of this section by an increase in
43 registration fees for the same vehicles by ten cents (10¢) per one
44 hundred pounds of registered weight; and

1 (3) Eliminate the stacking of overweight penalties by restricting the
2 penalties so that they do not exceed the highest axle-group weight
3 that exceeds the allowable limits rather than assessing separate
4 penalties for each axle-group and stacking those penalties for the
5 same weight violations.

6 The Legislative Research Commission may make an interim report of the
7 study authorized by this section to the 1998 Session of the General Assembly and
8 may make a final report to the 1999 Session of the General Assembly.

9 Section 7. Sections 5, 6, and 7 of this act are effective when this act
10 becomes law. Sections 1 through 4 of this act become effective October 1, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

D

SENATE BILL 886*
Transportation Committee Substitute Adopted 7/14/97
Proposed Committee Substitute S886-PCS2788

Short Title: Trucking Adjustment Act of 1997.

(Public)

Sponsors:

Referred to:

April 16, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO ADJUST CERTAIN STATUTES AFFECTING THE TRUCKING
3 INDUSTRY TO ENCOURAGE THE GROWTH OF THAT INDUSTRY
4 THROUGH INCREASED TRUCK REGISTRATIONS IN THIS STATE; TO
5 PROVIDE CONSUMER PROTECTION PROVISIONS; AND TO PROVIDE
6 FOR A STUDY OF CERTAIN TRUCKING RELATED PROVISIONS BY THE
7 JOINT LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE.
8 The General Assembly of North Carolina enacts:
9 Section 1. G.S. 20-88 is amended by adding a new subsection to read:
10 "(1) The Division shall issue permanent truck and truck-tractor plates to Class A
11 and Class B Motor Vehicles and shall include the word 'permanent' on the plate.
12 The permanent registration plates issued pursuant to this section shall be subject to
13 annual registration fees set in this section. The Division shall issue the necessary
14 rules providing for the recall, transfer, exchange, or cancellation of permanent plates
15 issued pursuant to this section."
16 Section 2. G.S. 20-118(c)(5) reads as rewritten:
17 "(5) The light-traffic road limitations provided for pursuant to
18 subdivision (b)(4) of this section do not apply to a vehicle while
19 that vehicle is transporting only the following from its point of
20 origin on a light-traffic road to the nearest highway that is not a
21 light-traffic road:

- 1 a. Processed or unprocessed seafood from boats or any other
2 point of origin to a processing plant or a point of further
3 distribution.
- 4 b. Meats or agricultural crop products originating from a farm
5 to first market.
- 6 c. ~~Unprocessed forest~~ Forest products originating from a farm
7 or from woodlands to first market.
- 8 d. Livestock or poultry from their point of origin to first
9 market.
- 10 e. Livestock by-products or poultry by-products from their
11 point of origin to a rendering plant.
- 12 f. Recyclable material from its point of origin to a scrap-
13 processing facility for processing. As used in this subpart,
14 the terms 'recyclable' and 'processing' have the same
15 meaning as in G.S. 130A-290(a).
- 16 g. Garbage collected by the vehicle from residences or garbage
17 dumpsters if the vehicle is fully enclosed and is designed
18 specifically for collecting, compacting, and hauling garbage
19 from residences or from garbage dumpsters. As used in this
20 subpart, the term 'garbage' does not include hazardous
21 waste as defined in G.S. 130A-290(a), spent nuclear fuel
22 regulated under G.S. 20-167.1, low-level radioactive waste as
23 defined in G.S. 104E-5, or radioactive material as defined in
24 G.S. 104E-5."

25 Section 3. G.S. 20-382.2 reads as rewritten:

26 "**§ 20-382.2. Penalty for failure to comply with registration or insurance verification**
27 **requirements.**

28 (a) Acts. -- A motor carrier who does any of the following is subject to a civil
29 penalty of ~~seventy-five dollars (\$75.00)~~ one thousand dollars (\$1,000):

- 30 (1) Operates a for-hire motor vehicle in this State without registering
31 its operations, as required by this Part.
- 32 (2) Operates a for-hire motor vehicle in interstate commerce in this
33 State that does not carry a copy of either an insurance registration
34 receipt issued to the motor carrier or a cab card with an
35 identification stamp issued for the vehicle, as required by G.S. 20-
36 382.
- 37 (3) Operates a for-hire motor vehicle in intrastate commerce in this
38 State for which it has not verified it has insurance, as required by
39 G.S. 20-382.1.

40 (b) Payment. -- When the Division finds that a for-hire motor vehicle is operated
41 in this State in violation of the registration and insurance verification requirements of
42 this Part, the motor vehicle may not be driven for a purpose other than to park the
43 motor vehicle until the penalty imposed under this section is paid unless the officer
44 that imposes the penalty determines that operation of the motor vehicle will not

1 jeopardize collection of the penalty. A motor carrier that denies liability for a penalty
2 imposed under this section may pay the penalty under protest and apply to the
3 Division for a hearing.

4 (c) Hearing. -- Upon receiving a request for a hearing, the Commissioner ~~must~~
5 shall schedule a hearing within 30 days after receipt of the request. If after the
6 hearing the Commissioner determines that the motor carrier was not liable for the
7 penalty, the amount collected ~~must~~ shall be refunded. If after the hearing the
8 Commissioner determines that the motor carrier was liable for the penalty, the motor
9 carrier may bring an action in the Superior Court of Wake County against the
10 Division for refund of the penalty. A court of this State may not issue a restraining
11 order or an injunction to restrain or enjoin the collection of the penalty or to permit
12 the operation of the vehicle without payment of the penalty.

13 (d) Proceeds. -- A penalty imposed under this section is payable to the Division.
14 Penalties collected under this section shall be credited to the Highway Fund as
15 nontax revenue."

16 Section 4. The Division of Motor Vehicles shall study the feasibility of
17 establishing a staggered registration system for commercial motor vehicles under the
18 International Registration Plan (IRP). The registration plan shall be coordinated with
19 other states which currently stagger IRP registrations to eliminate, insofar as possible,
20 multiple application dates for the same carrier. The registration plan shall provide
21 for a smooth transition to the staggered system providing for credits and partial fees,
22 as needed. The Division shall report the results of this study along with any
23 legislation to implement the staggered registration system to the Joint Legislative
24 Transportation Oversight Committee and the Fiscal Research Division by April 1,
25 1998.

26 Section 5. The Joint Legislative Transportation Oversight Committee
27 and the Revenue Laws Study Committee shall study the following issues encouraging
28 the growth of the trucking industry in North Carolina through increased truck
29 registrations:

- 30 (1) The feasibility of removing the highway use tax on vehicles with a
31 gross weight rating of more than 26,000 pounds;
- 32 (2) The replacement of the revenue from the removal of the highway
33 use tax studied in subdivision (1) of this section by an increase in
34 registration fees for the same vehicles by ten cents (10¢) per 100
35 pounds of registered weight; and
- 36 (3) Eliminate the stacking of overweight penalties by restricting the
37 penalties so that they do not exceed the highest axle-group weight
38 that exceeds the allowable limits rather than assessing separate
39 penalties for each axle-group and stacking those penalties for the
40 same weight violations.

41 The Joint Legislative Transportation Oversight Committee may make an
42 interim report of the study authorized by this section to the 1998 Session of the
43 General Assembly and shall make a final report to the 1999 Session of the General
44 Assembly.

1 Section 6. Sections 4 and 5 of this act are effective when this act becomes
2 law. Sections 2 and 3 of this act become effective October 1, 1997. Section 1 of this
3 act becomes effective January 1, 1999.



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 886

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

S886-ARB-7/30

Page 1 of ____

Date 7-31, 1997

Comm. Sub. [YES]
Amends Title []
S886-PCS2788

Senator Webster

- 1 moves to amend the bill on page 1, line 13, by deleting the word
- 2 "issue" and substituting the word "adopt";
- 3
- 4 and on page 2, lines 1,⁸10, and 12 by inserting the word
- 5 "transported" before the word "from";
- 6
- 7 and on page 2, lines 4 and 6, by deleting "originating" and
- 8 substituting "~~originating~~ transported";
- 9
- 10 and on page 2, line 7, by striking through the word "from";
- 11
- 12 and on page 4, line 1, by deleting the phrase "Sections 4 and 5" and
- 13 substituting "Sections 4, 5, and 6".

SIGNED Webster
Amendment Sponsor

SIGNED [Signature]
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

D

SENATE BILL 886*

Transportation Committee Substitute Adopted 7/14/97
Proposed Committee Substitute S886-PCS2798

Short Title: Trucking Adjustment Act of 1997.

(Public)

Sponsors:

Referred to:

April 16, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO ADJUST CERTAIN STATUTES AFFECTING THE TRUCKING
3 INDUSTRY TO ENCOURAGE THE GROWTH OF THAT INDUSTRY
4 THROUGH INCREASED TRUCK REGISTRATIONS IN THIS STATE; TO
5 PROVIDE CONSUMER PROTECTION PROVISIONS; AND TO PROVIDE
6 FOR A STUDY OF CERTAIN TRUCKING-RELATED PROVISIONS BY THE
7 JOINT LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE.
8 The General Assembly of North Carolina enacts:
9 Section 1. G.S. 20-88 is amended by adding a new subsection to read:
10 "(1) The Division shall issue permanent truck and truck-tractor plates to Class A
11 and Class B Motor Vehicles and shall include the word 'permanent' on the plate.
12 The permanent registration plates issued pursuant to this section shall be subject to
13 annual registration fees set in this section. The Division shall adopt the necessary
14 rules providing for the recall, transfer, exchange, or cancellation of permanent plates
15 issued pursuant to this subsection."
16 Section 2. G.S. 20-118(c)(5) reads as rewritten:
17 "(5) The light-traffic road limitations provided for pursuant to
18 subdivision (b)(4) of this section do not apply to a vehicle while
19 that vehicle is transporting only the following from its point of
20 origin on a light-traffic road to the nearest highway that is not a
21 light-traffic road:

- 1 a. Processed or unprocessed seafood transported from boats or
2 any other point of origin to a processing plant or a point of
3 further distribution.
- 4 b. Meats or agricultural crop products ~~originating~~ transported
5 from a farm to first market.
- 6 c. ~~Unprocessed forest~~ Forest products ~~originating~~ transported
7 from a farm or ~~from~~ woodlands to first market.
- 8 d. Livestock or poultry transported from their point of origin
9 to first market.
- 10 e. Livestock by-products or poultry by-products transported
11 from their point of origin to a rendering plant.
- 12 f. Recyclable material transported from its point of origin to a
13 scrap-processing facility for processing. As used in this
14 subpart, the terms 'recyclable' and 'processing' have the
15 same meaning as in G.S. 130A-290(a).
- 16 g. Garbage collected by the vehicle from residences or garbage
17 dumpsters if the vehicle is fully enclosed and is designed
18 specifically for collecting, compacting, and hauling garbage
19 from residences or from garbage dumpsters. As used in this
20 subpart, the term 'garbage' does not include hazardous
21 waste as defined in G.S. 130A-290(a), spent nuclear fuel
22 regulated under G.S. 20-167.1, low-level radioactive waste as
23 defined in G.S. 104E-5, or radioactive material as defined in
24 G.S. 104E-5."

25 Section 3. G.S. 20-382.2 reads as rewritten:

26 "**§ 20-382.2. Penalty for failure to comply with registration or insurance verification**
27 **requirements.**

28 (a) Acts. -- A motor carrier who does any of the following is subject to a civil
29 penalty of ~~seventy-five dollars (\$75.00)~~ one thousand dollars (\$1,000):

- 30 (1) Operates a for-hire motor vehicle in this State without registering
31 its operations, as required by this Part.
- 32 (2) Operates a for-hire motor vehicle in interstate commerce in this
33 State that does not carry a copy of either an insurance registration
34 receipt issued to the motor carrier or a cab card with an
35 identification stamp issued for the vehicle, as required by G.S. 20-
36 382.
- 37 (3) Operates a for-hire motor vehicle in intrastate commerce in this
38 State for which it has not verified it has insurance, as required by
39 G.S. 20-382.1.

40 (b) Payment. -- When the Division finds that a for-hire motor vehicle is operated
41 in this State in violation of the registration and insurance verification requirements of
42 this Part, the motor vehicle may not be driven for a purpose other than to park the
43 motor vehicle until the penalty imposed under this section is paid unless the officer
44 that imposes the penalty determines that operation of the motor vehicle will not

1 jeopardize collection of the penalty. A motor carrier that denies liability for a penalty
2 imposed under this section may pay the penalty under protest and apply to the
3 Division for a hearing.

4 (c) Hearing. -- Upon receiving a request for a hearing, the Commissioner ~~must~~
5 shall schedule a hearing within 30 days after receipt of the request. If after the
6 hearing the Commissioner determines that the motor carrier was not liable for the
7 penalty, the amount collected ~~must~~ shall be refunded. If after the hearing the
8 Commissioner determines that the motor carrier was liable for the penalty, the motor
9 carrier may bring an action in the Superior Court of Wake County against the
10 Division for refund of the penalty. A court of this State may not issue a restraining
11 order or an injunction to restrain or enjoin the collection of the penalty or to permit
12 the operation of the vehicle without payment of the penalty.

13 (d) Proceeds. -- A penalty imposed under this section is payable to the Division.
14 Penalties collected under this section shall be credited to the Highway Fund as
15 nontax revenue."

16 Section 4. The Division of Motor Vehicles shall study the feasibility of
17 establishing a staggered registration system for commercial motor vehicles under the
18 International Registration Plan (IRP). The registration plan shall be coordinated with
19 other states which currently stagger IRP registrations to eliminate, insofar as possible,
20 multiple application dates for the same carrier. The registration plan shall provide
21 for a smooth transition to the staggered system providing for credits and partial fees,
22 as needed. The Division shall report the results of this study along with any
23 legislation to implement the staggered registration system to the Joint Legislative
24 Transportation Oversight Committee and the Fiscal Research Division by April 1,
25 1998.

26 Section 5. The Joint Legislative Transportation Oversight Committee
27 and the Revenue Laws Study Committee shall study the following issues encouraging
28 the growth of the trucking industry in North Carolina through increased truck
29 registrations:

- 30 (1) The feasibility of removing the highway use tax on vehicles with a
31 gross weight rating of more than 26,000 pounds;
- 32 (2) The replacement of the revenue from the removal of the highway
33 use tax studied in subdivision (1) of this section by an increase in
34 registration fees for the same vehicles by ten cents (10¢) per 100
35 pounds of registered weight; and
- 36 (3) Eliminate the stacking of overweight penalties by restricting the
37 penalties so that they do not exceed the highest axle-group weight
38 that exceeds the allowable limits rather than assessing separate
39 penalties for each axle-group and stacking those penalties for the
40 same weight violations.

41 The Joint Legislative Transportation Oversight Committee may make an
42 interim report of the study authorized by this section to the 1998 Session of the
43 General Assembly and shall make a final report to the 1999 Session of the General
44 Assembly.

1 Section 6. Sections 4, 5, and 6 of this act are effective when this act
2 becomes law. Sections 2 and 3 of this act become effective October 1, 1997. Section
3 1 of this act becomes effective January 1, 1999.

EXPLANATION OF SENATE 886:
Proposed Committee Substitute
Trucking Adjustment Act of 1997

TO: Senate Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: July 31, 1997
SPONSOR: Senator Jordan

The proposed committee substitute for **Senate Bill 886** makes the following changes to the motor vehicle laws that affect the trucking industry and provides for the following studies:

- Allows Class A and B Commercial vehicles to be issued permanent license plates.
- Allows wood chips and other processed forest products to be transported on a light-traffic road from the woodlands to the first market.
- Lowers the penalty for violating the weight limit on any highway for a vehicle transporting wood chips and processed lumber.
- Substantially increases the civil penalty for operating a for-hire vehicle in violation of the registration and insurance verification requirements.
- Directs the Division of Motor Vehicles to study the feasibility of establishing a staggered registration system for commercial vehicles.
- Directs the Joint Legislative Transportation Oversight Committee and the Revenue Laws Study Committee to study the feasibility of removing the highway use tax on vehicles with a gross weight rating of more than 26,000 pounds and replacing the revenue with an increase in the vehicles' registration fees.

Section 1 would authorize DMV to issue permanent registration plates to Class A and B commercial vehicles. These vehicles are primarily those that have a gross vehicle weight of more than 26,000 pounds. Under current law, these vehicles are registered on a calendar year basis and they receive a new license plate each year. Class C vehicles must also be renewed annually. However, the registrations may be on a staggered basis and the renewal of most of these vehicles is evidenced by a renewal sticker. The only vehicles that currently enjoy a permanent plate are publicly owned vehicles and semitrailers and trailers. Semitrailers and trailers may be issued a multiyear plate that is valid until the owner transfers the vehicle or surrenders the plate. The one-time fee for this plate is \$75.00.

Effective January 1, 1999, Class A and B commercial vehicles would be issued one plate that would need to be renewed annually. However, the plate would bear the word "PERMANENT" and there would be no renewal sticker attached to the plate that would inform law enforcement of the validity of the vehicle's registration. The Division is authorized to issue the necessary rules providing for the recall, transfer, exchange, or cancellation of these permanent plates.

Section 2 does two things. It allows processed forest products to be transported from the farm or woodlands to first market without regard to the weight limits for light-traffic roads. It also provides that the penalty imposed on a vehicle transporting these products for violating the weight limit on other roads is one-half of what it would otherwise be.

Under current law, unprocessed forest products, primarily trees, can be transported from the place they are cut to the first market on light-traffic roads without regard to the weight limit restrictions. This bill expands the exception to include processed forest products, such as wood chips and lumber. A light-traffic road is one on which the Department of Transportation has limited the axle weight of the vehicles that may travel on it below the statutory limits. The Department may post a road as a light-traffic road when it determines that the road is inadequate to carry and will be injuriously affected by vehicles carrying the maximum axle weight. Vehicles excepted from the light-traffic road limitations are also assessed a lesser penalty for violating the single-axle and tandem-axle weight limits on other roads.

Section 3 increases the civil penalty for operating a for-hire vehicle in violation of the registration and insurance requirements from \$75 to \$1,000. **Sections 4 and 5** direct DMV, the Transportation Oversight Committee, and the Revenue Laws Study Committee to study the feasibility of several issues relating to the trucking industry:

- The feasibility of a staggered registration system for commercial motor vehicles.
- The feasibility of removing the highway use tax on vehicles with a gross weight of more than 26,000 pounds.
- The feasibility of increasing the registration fees on vehicles with a gross weight of more than 26,000 pounds.
- The feasibility of eliminating the stacking of overweight penalties.

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

July 31, 1997

Name of Committee

Date After session

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Bob WASSON

N.C. Chapter - Sierra Club
5013 Edington Lane, Raleigh 27604

JUANITA SHERRER-SWINE

NC BOARD OF TRANSPORTATION

Margaret Klutzy

Mayor of City of Salisbury
NC BOT

Mavis Partee

Partee Steel

Sandra Long

Maria Mariana Martins

Mac Boxley

N.C. Aggregates Assoc.

Fred Allen

NC Aggregates Assn.

Jan Doherty

NC DOT

DAVID KING

NC DOT

Jim Ritchey

TTA.

Boyd Causler

City of Charlotte

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

July 31, 1997

Name of Committee

Date After Session

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Robert S. Cud

NC coalition For Public Transportation

~~Franklin Droomp~~

Governor's office

George Long

NC DOT

TOM Darden

NC DOT Board/TTA

Tommy Harrison

Enterprise

Nancy Wickham

Thrifty Car Rental

Frank Colonna

TRIANGLE Rent A CAR

~~David Jennings~~
D. Holman

Dallas - Rent - A - Car
NCRTA / NCCPT

Susan Valauri

Nationwide

Rishi Bhowmik

NCCPT

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

July 31, 1997
Date After Session

Name of Committee

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

NAME	FIRM OR AGENCY AND ADDRESS
Carolyn Grant	Greater Raleigh Chamber of Commerce
Sam Sanders	WCSR
Mellicie Hastings	Charlotte Chambers
Bill Scoggin	NCBA
Doug	SAB DMF
Chip Kilian	Moore & Van Allen
Tom Coyne	"
Alper Mendelblat	Boyer & Smith
Carl Williams	Governor's Office
Charles Francis	WODA & Francis / Alcoa
Bryce Worth	Senator Reeves

**UNFAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 1,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 2**

H.B.(SCS #1)	1097	Fisheries Reform Act-2.	
		Draft Number:	PCSA410
		Sequential Referral:	Appropriations
		Recommended Referral:	None
		Long Title Amended:	No

TOTAL REPORTED: 6

Committee Clerk Comment: S 39 841 886 H 1097 1156 1231

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

3

HOUSE BILL 485
Committee Substitute Favorable 4/14/97
Committee Substitute #2 Favorable 4/23/97

Short Title: Funeral Establishments/AB.

(Public)

Sponsors:

Referred to:

March 10, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND VARIOUS STATUTES RELATING TO THE PRACTICE
3 OF FUNERAL SERVICE, CREMATIONS, AND FUNERAL AND BURIAL
4 TRUST FUNDS.
5 The General Assembly of North Carolina enacts:
6 Section 1. G.S. 90-210.20(e1) reads as rewritten:
7 "(e1) 'Funeral chapel' means a chapel or other facility separate from the funeral
8 establishment premises for the reposing of dead human bodies, visitation or funeral
9 ceremony, which is owned, operated, or maintained by a funeral establishment,
10 establishment or other licensee under this Article, and which does not use the word
11 'funeral' in its name, on a sign, in a directory, in advertising or in any other manner;
12 in which or on the premises of which there is not displayed or offered for sale any
13 caskets or other funeral merchandise; in which or on the premises of which there is
14 not located any funeral business office or a preparation room; in which or on the
15 premises of which no funeral sales, financing, or arrangements are made; and which
16 no owner, operator, employee, or agent thereof represents the chapel to be a funeral
17 establishment."
18 Section 2. G.S. 90-210.23(d) reads as rewritten:
19 "(d) Every person licensed by the Board and every resident trainee shall furnish
20 all information required by the Board reasonably relevant to the practice of the
21 profession or business for which ~~he~~ the person is a licensee or resident trainee, ~~and~~
22 ~~every~~ trainee. Every funeral service establishment and its records and every place of

1 business where the practice of funeral service or embalming is carried on and its
2 records thereof shall be subject to inspection by the Board during normal hours of
3 operation and periods shortly before or after normal hours of operation and shall
4 furnish all information required by the Board reasonably relevant to the business
5 therein conducted. Every licensee, resident ~~trainee~~ trainee, embalming facility, and
6 funeral service establishment shall provide the Board with ~~his or its~~ a current
7 post-office address which shall be placed on the appropriate register and all notices
8 required by law or by any rule or regulation of the Board to be mailed to any
9 licensee, resident ~~trainee~~ trainee, embalming facility, or funeral service establishment
10 shall be validly given when mailed to the address so provided.

11 The Board is empowered to hold hearings in accordance with the provisions of
12 this Article and of Chapter 150B to subpoena witnesses and to administer oaths to or
13 receive the affirmation of witnesses before the Board."

14 Section 3. G.S. 90-210.23(e) reads as rewritten:

15 "(e) The Board is empowered to regulate and inspect, according to law, funeral
16 service establishments, establishments and embalming facilities, their operation
17 operation, and the licenses under which they are operated, and to enforce as
18 provided by law the rules, ~~regulations~~ regulations, and requirements of the Division
19 of Health Services and of the city, ~~town~~ town, or county ~~wherein any such~~ in which
20 the funeral service establishment or embalming facility is maintained and operated.
21 Any funeral establishment or embalming facility which, that, upon inspection, is
22 found not to meet all of the requirements of this Article shall pay a reinspection fee
23 to the Board for each additional inspection that is made to ascertain that the
24 deficiency or other violation has been corrected. The Board is also empowered to
25 enforce compliance with the standards set forth in Funeral Industry Practices, 16
26 C.F.R. 453 (1984), as amended from time to time."

27 Section 4. G.S. 90-210.24(b)(1) reads as rewritten:

28 "(1) Enter the office, establishment or place of business of any funeral
29 service licensee, funeral director or embalmer in North Carolina,
30 and any office, establishment or place in North Carolina where the
31 practice of funeral service or embalming is carried on, or where
32 that practice is advertised as being carried on, or where a funeral is
33 being ~~conducted,~~ conducted or a body is being embalmed, to
34 inspect the records, office, ~~or establishment,~~ establishment, or
35 facility, or to inspect the practice being carried on or license or
36 registration of any licensee and any resident trainee operating
37 therein;"

38 Section 5. G.S. 90-210.25(a)(1) reads as rewritten:

39 "(1) To be licensed for the practice of funeral directing under this
40 Article, a person must:
41 a. Be at least 18 years of ~~age,~~ age.
42 b. Be of good moral ~~character,~~ character.
43 c. Have completed a minimum of 32 semester hours or 48
44 quarter hours of instruction in a course of study including

- 1 the subjects set out in ~~items~~ item e.1. ~~and 2.~~ of this
2 subsection in a mortuary science college approved by the
3 Board, or be a graduate of a mortuary science college
4 approved by the Board.
- 5 d. Have completed 12 months of resident traineeship as funeral
6 director, pursuant to the procedures and conditions set out
7 in G.S. 90-210.25(a)(4), either before or after satisfying the
8 educational requirement under item c. of this ~~subsection,~~
9 ~~and subsection.~~
- 10 e. Have passed an oral or written funeral director examination
11 on the following subjects:
- 12 1. ~~Basic health sciences, including microbiology,~~
13 ~~hygiene, and public health, Psychology, sociology,~~
14 funeral directing, business law, funeral law, funeral
15 management, and accounting.
 - 16 2. ~~Funeral service administration, including accounting,~~
17 ~~psychology, funeral principles and directing, and~~
 - 18 3. Laws of North Carolina and rules of the Board of
19 Mortuary Science and other agencies dealing with the
20 care, transportation and disposition of dead human
21 bodies."

22 Section 6. G.S. 90-210.25(a)(2) reads as rewritten:

- 23 "(2) To be licensed for the practice of embalming under this Article, a
24 person must:
- 25 a. Be at least 18 years of ~~age,~~ age.
 - 26 b. Be of good moral ~~character,~~ character.
 - 27 c. Be a graduate of a mortuary science college approved by the
28 ~~Board,~~ Board.
 - 29 d. Have completed 12 months of resident traineeship as an
30 embalmer pursuant to the procedures and conditions set out
31 in G.S. 90-210.25(a)(4), either before or after satisfying the
32 educational requirement under item c. of this ~~subsection,~~
33 ~~and subsection.~~
 - 34 e. Have passed an oral or written embalmer examination on
35 the following subjects:
- 36 1. ~~Basic health sciences, including anatomy, chemistry,~~
37 ~~microbiology, pathology and forensic pathology,~~
38 Embalming, restorative arts, chemistry, pathology,
39 microbiology, and anatomy.
 - 40 2. ~~Funeral service sciences, including embalming and~~
41 ~~restorative art, and~~
 - 42 3. Laws of North Carolina and rules of the Board of
43 Mortuary Science and other agencies dealing with the

1 care, transportation and disposition of dead human
2 bodies."

3 Section 7. G.S. 90-210.25(a)(3) reads as rewritten:

4 "(3) To be licensed for the practice of funeral service under this
5 Article, a person must:

- 6 a. Be at least 18 years of ~~age~~, age.
7 b. Be of good moral ~~character~~, character.
8 c. Be a graduate of a mortuary science college approved by the
9 ~~Board~~, Board.
10 d. Have completed 12 months of resident traineeship as a
11 funeral service licensee, pursuant to the procedures and
12 conditions set out in G.S. 90-210.25(a)(4), either before or
13 after satisfying the educational requirement under item c. of
14 this ~~subsection~~, and subsection.
15 e. Have passed an oral or written funeral service examination
16 on the following subjects:
17 1. ~~Basic health sciences, including anatomy, chemistry,~~
18 ~~microbiology, pathology, forensic pathology hygiene~~
19 ~~and public health; Psychology, sociology, funeral~~
20 ~~directing, business law, funeral law, funeral~~
21 ~~management, and accounting.~~
22 2. ~~Funeral service sciences, including embalming and~~
23 ~~restorative art; Embalming, restorative arts, chemistry,~~
24 ~~pathology, microbiology, and anatomy.~~
25 3. ~~Funeral service administration, including accounting,~~
26 ~~psychology, funeral principles and directing, and~~
27 4. Laws of North Carolina and rules of the Board of
28 Mortuary Science and other agencies dealing with the
29 care, transportation and disposition of dead human
30 bodies."

31 Section 8. G.S. 90-210.25(a)(5) reads as rewritten:

32 "(5) The Board by regulation may recognize other examinations that
33 the Board deems equivalent to its own.

34 All licenses shall be signed by the president and secretary of
35 the Board and the seal of the Board affixed thereto. All licenses
36 shall be issued, renewed or duplicated for a period not exceeding
37 one year upon payment of the renewal fee, and all licenses,
38 renewals or duplicates thereof shall expire and terminate the
39 thirty-first day of December following the date of their issue unless
40 sooner revoked and canceled; provided, that the date of expiration
41 may be changed by unanimous consent of the Board and upon 90
42 days' written notice of such change to all persons licensed for the
43 practice of funeral directing, embalming and funeral service in this
44 State.

1 The holder of any license issued by the Board who shall fail to
2 renew the same on or before January 31 of the calendar year for
3 which the license is to be renewed shall have forfeited and
4 surrendered the license as of that date. No license forfeited or
5 surrendered pursuant to the preceding sentence shall be reinstated
6 by the Board unless it is shown to the Board that the applicant has,
7 throughout the period of forfeiture, engaged full time in another
8 state of the United States or the District of Columbia in the
9 practice to which his North Carolina license applies and has
10 completed for each such year continuing education substantially
11 equivalent in the opinion of the Board to that required of North
12 Carolina licensees; or has completed in North Carolina a total
13 number of hours of accredited continuing education computed by
14 multiplying five times the number of years of forfeiture; or has
15 passed the North Carolina examination for the forfeited license.
16 No additional resident traineeship shall be required. The applicant
17 shall be required to pay all delinquent annual renewal fees and a
18 reinstatement fee. The Board may waive the provisions of this
19 section for an applicant for a forfeiture which occurred during his
20 service in the armed forces of the United States provided he
21 applies within six months following severance therefrom.

22 All licensees now or hereafter licensed in North Carolina shall
23 take courses of study in subjects relating to the practice of the
24 profession for which they are licensed, to the end that new
25 techniques, scientific and clinical advances, the achievements of
26 research and the benefits of learning and reviewing skills will be
27 utilized and applied to assure proper service to the public.

28 As a prerequisite to the annual renewal of a license, the
29 licensee must complete, during the year immediately preceding
30 renewal, at least five hours of continuing education courses,
31 approved by the Board prior to enrollment; ~~except that for~~
32 ~~renewals for calendar year 1980 the required length of study shall~~
33 ~~be a total of 15 hours in the three years immediately preceding~~
34 ~~January 1, 1980.~~ enrollment. A licensee who completes more than
35 five hours in a year may carry over a maximum of five hours as a
36 credit to the following year's requirement. A licensee who is
37 issued an initial license on or after July 1 does not have to satisfy
38 the continuing education requirement for that year.

39 The Board shall not renew a license unless fulfillment of the
40 continuing education requirement has been certified to it on a
41 form provided by the Board, but the Board may waive this
42 requirement for renewal in cases of certified illness or undue
43 hardship or where the licensee lives outside of North Carolina and
44 does not practice in North Carolina, and the Board shall waive the

1 requirement for all licensees who have been licensed in North
2 Carolina for a continuous period of 25 years or more, and for all
3 licensees who are, at the time of renewal, members of the General
4 Assembly. The waiver for 25-year licensees shall apply only to
5 those licensees who, before January 1, 1998, are licensed, begin a
6 course of study in a mortuary science college or a trainee program,
7 or make an application for a license.

8 The Board shall cause to be established and offered to the
9 licensees, each calendar year, at least five hours of continuing
10 education courses in subjects encompassing the license categories
11 of embalming, funeral directing and funeral service. The Board
12 may charge licensees attending these courses a reasonable
13 registration fee in order to meet the expenses thereof and may also
14 meet those expenses from other funds received under the
15 provisions of this Article.

16 Any person who having been previously licensed by the Board
17 as a funeral director or embalmer prior to July 1, 1975, shall not be
18 required to satisfy the requirements herein for licensure as a
19 funeral service licensee, but shall be entitled to have such license
20 renewed upon making proper application therefor and upon
21 payment of the renewal fee provided by the provisions of this
22 Article. Persons previously licensed by the Board as a funeral
23 director may engage in funeral directing, and persons previously
24 licensed by the Board as an embalmer may engage in embalming.
25 Any person having been previously licensed by the Board as both a
26 funeral director and an embalmer may upon application therefor
27 receive a license as a funeral service licensee."

28 Section 9. G.S. 90-210.25 is amended by adding a new subsection to
29 read:

30 "(a1) Inactive Licenses. -- Any person holding a license issued by the Board for
31 funeral directing, for embalming, or for the practice of funeral service may apply for
32 an inactive license in the same category as the active license held. The inactive
33 license is renewable annually. Continuing education is not required for the renewal
34 of an inactive license. The only activity that a holder of an inactive license may
35 engage in is to vote pursuant to G.S. 90-210.18(c)(2). The holder of an inactive
36 license may apply for an active license in the same category, and the Board shall
37 issue an active license if the applicant has completed in North Carolina a total
38 number of hours of accredited continuing education equal to five times the number
39 of years the applicant held the inactive license. No application fee is required for the
40 reinstatement of an active license pursuant to this subsection. The holder of an
41 inactive license who returns to active status shall surrender the inactive license to the
42 Board."

43 Section 10. G.S. 90-210.25(b)(3) reads as rewritten:

1 "(3) The Board may issue special permits, to be known as courtesy
2 cards, permitting nonresident funeral directors, embalmers and
3 funeral service licensees to remove bodies from and to arrange and
4 direct funerals and embalm bodies in this State, but these
5 privileges shall not include the right to establish a place of business
6 in or engage generally in the business of funeral directing and
7 embalming in this State. Provided, Except for special permits
8 issued by the Board for teaching continuing education programs
9 and for work in connection with disasters, no special permits may
10 be issued to nonresident funeral directors, embalmers, and funeral
11 service licensees from states that do not issue similar courtesy cards
12 to persons licensed in North Carolina pursuant to this Article."

13 Section 11. G.S. 90-210.25(d) reads as rewritten:

14 "(d) Establishment Permit. --

15 (1) No person, firm or corporation shall conduct, maintain, manage or
16 operate a funeral establishment unless a permit for that
17 establishment has been issued by the Board and is conspicuously
18 displayed in the establishment. Each funeral establishment at a
19 specific location shall be deemed to be a separate entity and shall
20 require a separate permit and compliance with the requirements of
21 this Article.

22 (2) A permit shall be issued when:

23 a. It is shown that the funeral establishment has in charge a
24 person, known as a manager, licensed for the practice of
25 funeral directing or funeral service, who shall not be
26 permitted to manage more than one funeral ~~establishment,~~
27 establishment.

28 b. The Board receives a list of the names of all part-time and
29 full-time licensees employed by the ~~establishment,~~
30 establishment.

31 c. It is shown that the funeral establishment satisfies the
32 requirements of ~~G.S. 90-210.27A,~~ and G.S. 90-210.27A.

33 d. The Board receives payment of the permit fee.

34 (3) Applications for funeral establishment permits shall be made on
35 forms provided by the Board and filed with the Board by the
36 owner, a ~~partner~~ partner, a member of the limited liability
37 company, or an officer of the corporation by January 1 of each
38 year, and shall be accompanied by the application fee or renewal
39 fee, as the case may be. All permits shall expire on December 31
40 of each year.

41 A penalty for late renewal, in addition to the regular renewal
42 fee, shall be charged for renewal of registration coming after the
43 first day of February.

- 1 (4) The Board may suspend or revoke a permit when an owner,
2 ~~partner~~ partner, manager, member, operator, or officer of the
3 funeral establishment violates any provision of this Article or any
4 regulations of the Board, or when any agent or employee of the
5 funeral establishment, with the consent of any person, firm or
6 corporation operating the funeral establishment, violates any of
7 those provisions, rules or regulations.
- 8 (5) Funeral establishment permits are not transferable. A new
9 application for a permit shall be made to the Board within 30 days
10 of a change of ownership of a funeral establishment."

11 Section 12. G.S. 90-210.25 is amended by adding a new subsection to
12 read:

13 "(d1) Embalming Outside Establishment. -- An embalmer who engages in
14 embalming in a facility other than a funeral establishment or in the residence of the
15 deceased person shall, no later than January 1 of each year, register the facility with
16 the Board on forms provided by the Board."

17 Section 13. G.S. 90-210.25(e) reads as rewritten:

18 "(e) Revocation; Suspension; Compromise; Disclosure. --

- 19 (1) Whenever the Board finds that an applicant for a license or a
20 person to whom a license has been issued by the Board is guilty of
21 any of the following acts or omissions and the Board also finds that
22 the person has thereby become unfit to practice, the Board may
23 suspend or revoke the license or refuse to issue or renew the
24 license, in accordance with the procedures set out in Chapter
25 150B:
- 26 a. Conviction of a felony or a crime involving fraud or moral
27 ~~turpitude; turpitude.~~
 - 28 b. Fraud or misrepresentation in obtaining or renewing a
29 license or in the practice of funeral ~~service; service.~~
 - 30 c. False or misleading advertising as the holder of a ~~license;~~
31 license.
 - 32 d. Solicitation of dead human bodies by the licensee, his
33 agents, assistants, or employees; but this paragraph shall not
34 be construed to prohibit general advertising by the ~~licensee;~~
35 licensee.
 - 36 e. Employment directly or indirectly of any resident trainee
37 agent, assistant or other person, on a part-time or full-time
38 basis, or on commission, for the purpose of calling upon
39 individuals or institutions by whose influence dead human
40 bodies may be turned over to a particular ~~licensee; licensee.~~
 - 41 f. The direct or indirect giving of certificates of credit or the
42 payment or offer of payment of a commission by the
43 licensee, his agents, assistants or employees for the purpose
44 of securing ~~business; business.~~

- 1 g. Gross immorality, including being under the influence of
2 alcohol or drugs while practicing funeral ~~service~~; service.
- 3 h. Aiding or abetting an unlicensed person to perform services
4 under this Article, including the use of a picture or name in
5 connection with advertisements or other written material
6 published or caused to be published by the ~~licensee~~;
7 licensee.
- 8 i. Using profane, indecent or obscene language in the presence
9 of a dead human body, and within the immediate hearing of
10 the family or relatives of a deceased, whose body has not yet
11 been interred or otherwise disposed ~~of~~; of.
- 12 j. Violating or cooperating with others to violate any of the
13 provisions of this ~~Article or of~~ Article, the rules and
14 regulations of the ~~Board~~; Board, or the standards set forth in
15 Funeral Industry Practices, 16 C.F.R. 453 (1984), as
16 amended from time to time.
- 17 k. Violation of any State law or municipal or county ordinance
18 or regulation affecting the handling, custody, care or
19 transportation of dead human ~~bodies~~; bodies.
- 20 l. Refusing to surrender promptly the custody of a dead
21 human body upon the express order of the person lawfully
22 entitled to the custody ~~thereof~~; thereof.
- 23 m. Knowingly making any false statement on a certificate of
24 ~~death~~; death.
- 25 n. Indecent exposure or exhibition of a dead human body
26 while in the custody or control of a licensee.

27 In any case in which the Board is entitled to suspend, revoke
28 or refuse to renew a license, the Board may accept from the
29 licensee an offer in compromise to pay a penalty of not more than
30 one thousand dollars (\$1,000). The Board may either accept a
31 compromise or revoke or refuse to renew a license, but not both.

- 32 (2) Where the Board finds that a licensee is guilty of one or more of
33 the acts or omissions listed in subsection (e)(1) of this section but it
34 is determined by the Board that the licensee has not thereby
35 become unfit to practice, the Board may place the licensee on a
36 term of probation in accordance with the procedures set out in
37 Chapter 150B.

38 No person licensed under this Article shall remove or cause to be embalmed a
39 dead human body when he has information indicating crime or violence of any sort
40 in connection with the cause of death, nor shall a dead human body be cremated,
41 until permission of the State or county medical examiner has first been obtained.
42 However, nothing in this Article shall be construed to alter the duties and authority
43 now vested in the office of the coroner.

1 No funeral service establishment shall accept a dead human body from any public
2 officer (excluding the State or county medical examiner or his agent), or employee or
3 from the official of any institution, hospital or nursing home, or from a physician or
4 any person having a professional relationship with a decedent, without having first
5 made due inquiry as to the desires of the ~~next of kin and of the persons who may be~~
6 ~~chargeable with the funeral expenses of such decedent.~~ persons who have the legal
7 authority to direct the disposition of the decedent's body. If any ~~such kin be persons~~
8 are found, his or her their authority and directions shall govern the disposal of the
9 remains of ~~such the~~ decedent. Any funeral service establishment receiving ~~such the~~
10 remains in violation ~~hereof~~ of this subsection shall make no charge for any service in
11 connection with ~~such the~~ remains prior to delivery of ~~same the remains~~ as stipulated
12 by ~~such kin; the persons having legal authority to direct the disposition of the body.~~
13 ~~provided, however, this~~ This section shall not prevent any funeral service
14 establishment from charging and being reimbursed for services rendered in
15 connection with the removal of the remains of any deceased person in case of
16 accidental or violent death, and rendering necessary professional services required
17 until the ~~next of kin or the persons chargeable with the expenses~~ persons having legal
18 authority to direct the disposition of the body have been notified.

19 When and where a licensee presents a selection of funeral merchandise to the
20 public to be used in connection with the service to be provided by the licensee or an
21 establishment as licensed under this Article, a card or brochure shall be directly
22 associated with each item of merchandise setting forth the price of the service using
23 said merchandise and listing the services and other merchandise included in the
24 price, if any. When there are separate prices for the merchandise and services, such
25 cards or brochures shall indicate the price of the merchandise and of the items
26 separately priced.

27 At the time funeral arrangements are made and prior to the time of rendering the
28 service and providing the merchandise, a funeral director or funeral service licensee
29 shall give or cause to be given to the person or persons making such arrangements a
30 written statement duly signed by a licensee of said funeral establishment showing the
31 price of the service as selected and what services are included therein, the price of
32 each of the supplemental items of services or merchandise requested, and the
33 amounts involved for each of the items for which the funeral establishment will
34 advance moneys as an accommodation to the person making arrangements, insofar as
35 any of the above items can be specified at that time. The statement shall have
36 printed, typed or stamped on the face thereof: "This statement of disclosure is
37 provided pursuant to the requirements of North Carolina G.S. 90-210.25(e)."

38 Section 14. G.S. 90-210.27A reads as rewritten:

39 "**§ 90-210.27A. Funeral establishments.**

40 (a) Every funeral establishment shall contain a preparation room which is strictly
41 private, of suitable size for the embalming of dead bodies. Each preparation room
42 shall:

- 43 (1) Contain one standard type operating ~~table;~~ table.
44 (2) Contain facilities for adequate ~~drainage;~~ drainage.

- 1 (3) Contain a sanitary waste ~~receptacle~~; receptacle.
- 2 (4) Contain an instrument ~~sterilizer~~; sterilizer.
- 3 (5) Have wall-to-wall floor covering of tile, concrete, or other material
- 4 which can be easily ~~cleaned~~; cleaned.
- 5 (6) Be kept in sanitary condition and subject to inspection by the
- 6 Board or its agents at all ~~times~~; times.
- 7 (7) Have a placard or sign on the door indicating that the preparation
- 8 room is ~~private~~; and private.
- 9 (8) Have a proper ventilation or purification system to maintain a
- 10 nonhazardous level of airborne contamination.

11 (b) No one is allowed in the preparation room while a dead human body is being
 12 prepared except licensees, resident trainees, public officials in the discharge of their
 13 duties, members of the medical profession, officials of the funeral home, next of kin,
 14 or other legally authorized persons.

15 (c) Every funeral establishment shall contain a reposing room for dead human
 16 bodies, of suitable size to accommodate a casket and visitors.

- 17 ~~(d) No person who has been convicted of a felony shall:~~
- 18 ~~(1) Own a funeral establishment if it is owned by a sole proprietorship;~~
 - 19 ~~(2) Be a partner in a funeral establishment if it is owned by a~~
 - 20 ~~partnership;~~
 - 21 ~~(3) Be an officer, member of the board of directors or owner of~~
 - 22 ~~twenty five percent (25%) or more of the stock if it is owned by a~~
 - 23 ~~corporation.~~

24 (e) If a funeral establishment is solely owned by a natural person, that person
 25 must be licensed by the Board as a funeral director or a funeral service licensee. If it
 26 is owned by a partnership, at least one partner must be licensed by the Board as a
 27 funeral director or a funeral service licensee. If it is owned by a corporation, the
 28 president, vice-president, or the chairman of the board of directors must be licensed
 29 by the Board as a funeral director or a funeral service licensee. If it is owned by a
 30 limited liability company, at least one member must be licensed by the Board as a
 31 funeral director or a funeral service licensee. The licensee required by this
 32 subsection must be actively ~~engaged, on a day-to-day basis~~; engaged in the operation
 33 of the funeral establishment.

34 (f) If a funeral establishment uses the name of a living person in the name under
 35 which it does business, that person must be licensed by the Board as a funeral
 36 director or a funeral service licensee.

37 (g) No funeral establishment or other licensee under this Article shall own,
 38 operate, or maintain a funeral chapel without first having registered the name,
 39 location, and ownership thereof with the Board."

40 Section 15. G.S. 90-210.28 reads as rewritten:

41 "**§ 90-210.28. Fees.**

42 The Board may set and collect fees, not to exceed the following amounts:

43 Establishment permit	
44 Application	\$250.00

1	Annual renewal	175.00
2	Late renewal penalty	100.00
3	Establishment reinspection <u>Reinspection</u> fee	100.00
4	Courtesy card	
5	Application	75.00
6	Annual renewal	50.00
7	Out-of-state licensee	
8	Application	200.00
9	Embalmer, funeral director,	
10	funeral service	
11	Application--North	
12	Carolina-Resident	150.00
13	-Non-Resident	200.00
14	Annual Renewal-embalmer or	
15	funeral director	50.00
16	-funeral service	100.00
17	Reinstatement fee	50.00
18	Resident trainee permit	
19	Application	50.00
20	Annual renewal	35.00
21	Late renewal penalty	25.00
22	Duplicate license certificate	25.00
23	Chapel registration	
24	Application	150.00
25	Annual renewal	100.00

26 The Board shall provide, without charge, one copy of the current statutes and
 27 regulations relating to Mortuary Science to every person applying for and paying the
 28 appropriate fees for licensing pursuant to this Article. The Board may charge all
 29 others requesting copies of the current statutes and regulations, and the licensees or
 30 applicants requesting additional copies, a fee equal to the costs of production and
 31 distribution of the requested documents."

32 Section 16. G.S. 90-210.41 reads as rewritten:

33 "§ 90-210.41. Definitions.

34 As used in this Article, unless the context requires otherwise:

- 35 (1) 'Authorizing agent' means a person legally entitled to ~~order~~ order,
 36 or carry out the legal order for, the cremation of human remains.
 37 ~~An authorizing agent shall be, in order of priority, a spouse, an~~
 38 ~~adult child, a parent, any adult sibling, guardian or close relation~~
 39 ~~of the deceased.~~ In the case of indigents or any other individuals
 40 whose final disposition is the responsibility of the State, a public
 41 official charged with arranging the final disposition of the
 42 deceased, if legally authorized, may serve as the authorizing agent.
 43 In the case of individuals whose death occurred in a nursing home
 44 or other private institution, and in which the institution is charged

- 1 with making arrangements for the final disposition of the deceased,
2 a representative of the institution, if legally authorized, may serve
3 as the authorizing agent.
- 4 (2) 'Board' means the North Carolina State Board of Mortuary
5 Science.
- 6 ~~(3) 'Casket' means a rigid container which is designed for the~~
7 ~~encasement of human remains and which is usually constructed of~~
8 ~~wood, metal or other rigid material and ornamented and lined with~~
9 ~~fabrie.~~
- 10 (4) 'Closed container' means any container in which cremated remains
11 can be placed and closed in a manner so as to prevent leakage or
12 spillage of cremated remains or the entrance of foreign material.
- 13 (5) 'Cremated remains' means all human remains recovered after the
14 completion of the cremation process, including pulverization which
15 leaves only bone fragments reduced to unidentifiable dimensions.
- 16 (6) 'Cremation' means the technical process, using heat, that reduces
17 human remains to bone fragments.
- 18 (7) 'Cremation chamber' means the enclosed space within which the
19 cremation process takes place. Cremation chambers covered by
20 this Article shall be used exclusively for the cremation of human
21 remains.
- 22 (8) 'Cremation container' means the container in which the human
23 remains are placed in the cremation chamber for a cremation. A
24 cremation container must meet all of the standards established by
25 the rules adopted by the Board.
- 26 (9) 'Crematory' means the building or portion of a building that
27 houses the cremation chamber and that may house the holding
28 facility, business office or other part of the crematory business. A
29 crematory must comply with any applicable public health laws and
30 rules and must contain the equipment and meet all of the
31 standards established by the rules adopted by the Board.
- 32 (10) 'Crematory authority' means the North Carolina Crematory
33 Authority.
- 34 (11) 'Crematory operator' means the legal entity which is licensed by
35 the Board to operate a crematory and perform cremations.
- 36 ~~(12) 'Holding facility' means an area within or adjacent to the~~
37 ~~crematory, designated for the retention of human remains prior to~~
38 ~~cremation. A holding facility must comply with any applicable~~
39 ~~public health laws and rules and must meet all of the standards~~
40 ~~established by the rules adopted by the Board.~~
- 41 (13) 'Human remains' means the body of a deceased person, including
42 a human fetus, regardless of the length of gestation, or part of a
43 body ~~or limb~~ that has been removed from a living or deceased
44 person.

- 1 (14) 'Niche' means a compartment or cubicle for the memorialization
2 or permanent placement of an urn containing cremated remains.
3 (15) ~~'Scattering area' means a designated area for the scattering of~~
4 ~~cremated remains.~~
5 (16) ~~'Temporary container' means a temporary receptacle for cremated~~
6 ~~remains, usually made of cardboard, plastic film or similar material~~
7 ~~designed to hold the cremated remains until an urn or other~~
8 ~~permanent container is acquired.~~
9 (17) ~~'Urn' means a receptacle designed to permanently encase the~~
10 ~~cremated remains."~~

11 Section 17. G.S. 90-210.43 reads as rewritten:

12 "§ 90-210.43. Licensing and inspection.

13 (a) Any person doing business in this State, or any cemetery, funeral
14 establishment, corporation, partnership, joint venture, voluntary organization or any
15 other entity may erect, maintain and conduct a crematory in this State and may
16 provide the necessary appliances and facilities for the cremation of human remains,
17 provided that such person has secured a license as a crematory operator in
18 accordance with the provisions of this Article.

19 (b) A crematory may be constructed on or adjacent to any cemetery, on or
20 adjacent to any funeral establishment that is zoned commercial or industrial, or at
21 any other location consistent with local zoning regulations.

22 (c) Application for a license as a crematory operator shall be made on forms
23 furnished and prescribed by the Board. The Board shall examine the premises and
24 structure to be used as a crematory and shall issue a renewable license to the
25 crematory operator if the applicant meets all the requirements and standards of the
26 Board and the requirements of this Article. ~~In the event of a change of ownership of~~
27 ~~a crematory, at least 30 days prior to the change the new owners shall provide the~~
28 ~~Board with the name and address of the new owners.~~

29 (d) Every application for licensure shall identify the individual who is responsible
30 for overseeing the management and operation of the crematory. The crematory
31 operator shall keep the Board informed at all times of the name and address of the
32 manager.

33 (d1) All licenses shall expire on the last day of December of each year. A license
34 may be renewed without paying a late fee on or before the first day of February
35 immediately following expiration. After that date, a license may be renewed by
36 paying a late fee as provided in G.S. 90-210.48 in addition to the annual renewal fee.
37 Licenses that remain expired six months or more require a new application for
38 renewal. Licenses are not transferable. A new application for a license shall be
39 made to the Board within 30 days following a change of ownership of more than fifty
40 percent (50%) of the business.

41 (e) No person, cemetery, funeral establishment, corporation, partnership, joint
42 venture, voluntary organization or any other entity shall cremate any human remains,
43 except in a crematory licensed for this express purpose and under the limitations
44 provided in this ~~Article.~~ Article, or unless otherwise permitted by statute.

1 (f) Whenever the Board finds that an owner, ~~partner~~ partner, manager, member, or
2 officer of a crematory operator or an applicant to become a crematory operator, or
3 that any agent or employee of a crematory operator or an applicant to become a
4 crematory operator, with the direct or implied permission of such owner, ~~partner~~
5 partner, manager, member, or officer, has violated any provision of this Article, or is
6 guilty of any of the following acts, and when the Board also finds that the crematory
7 operator or applicant has thereby become unfit to practice, the Board may suspend,
8 revoke, or refuse to issue or renew the license, in accordance with the procedures of
9 Chapter 150B:

- 10 (1) Conviction of a felony or a crime involving fraud or moral
11 ~~turpitude;~~ turpitude.
- 12 (2) Fraud or misrepresentation in obtaining or renewing a license or in
13 the practice of ~~cremation;~~ cremation.
- 14 (3) False or misleading ~~advertising;~~ advertising.
- 15 (4) Gross immorality, including being under the influence of alcohol
16 or drugs while performing cremation ~~services;~~ services.
- 17 (5) Using profane, indecent or obscene language in the presence of a
18 dead human body, and within the immediate hearing of the family
19 or relatives of a deceased, whose body has not yet been cremated
20 or otherwise disposed ~~of;~~ of.
- 21 (6) Violating or cooperating with others to violate any of the
22 provisions of this Article or of the rules of the ~~Board;~~ Board.
- 23 (7) Violation of any State law or municipal or county ordinance or
24 regulation affecting the handling, custody, care or transportation of
25 dead human ~~bodies;~~ bodies.
- 26 (8) Refusing to surrender promptly the custody of a dead human body
27 or cremated remains upon the express order of the person lawfully
28 entitled to the custody thereof, except as provided in ~~G.S.~~
29 ~~90-210.47(e);~~ G.S. 90-210.47(e).
- 30 (9) Indecent exposure or exhibition of a dead human body while in
31 the custody or control of a licensee.

32 In any case in which the Board is authorized to take any of the actions permitted
33 under this subsection, the Board may instead accept an offer in compromise of the
34 charges whereby the accused shall pay to the Board a penalty of not more than one
35 thousand dollars (\$1,000).

36 (g) The Board and Crematory Authority may hold hearings in accordance with
37 the provisions of this Article and Chapter 150B. Any such hearing shall be
38 conducted jointly by the Board and the Crematory Authority. The Board and the
39 Crematory Authority shall jointly constitute an 'agency' under Article 3A of Chapter
40 150B of the General Statutes with respect to proceedings initiated pursuant to this
41 Article. The Board is empowered to regulate and inspect crematories and crematory
42 operators and to enforce as provided by law the provisions of this Article and the
43 rules adopted hereunder. Any crematory that, upon inspection, is found not to meet
44 any of the requirements of this Article shall pay a reinspection fee to the Board for

1 each additional inspection that is made to ascertain whether the deficiency or other
2 violation has been corrected.

3 In addition to the powers enumerated in Chapter 150B of the General Statutes, the
4 Board shall have the power to administer oaths and issue subpoenas requiring the
5 attendance of persons and the production of papers and records before the Board in
6 any hearing, investigation or proceeding conducted by it or conducted jointly with
7 the Crematory Authority. Members of the Board's staff or the sheriff or other
8 appropriate official of any county of this State shall serve all notices, subpoenas and
9 other papers given to them by the President of the Board for service in the same
10 manner as process issued by any court of record. Any person who neglects or refuses
11 to obey a subpoena issued by the Board shall be guilty of a Class 1 misdemeanor."

12 Section 18. G.S. 90-210.44 reads as rewritten:

13 "**§ 90-210.44. Authorization and record keeping.**

14 The Board shall establish requirements for record ~~keeping and~~ keeping,
15 authorizations, and cremation reports. ~~It~~ It shall be a violation of this Article for any
16 crematory operator to fail to comply with the requirements."

17 Section 19. G.S. 90-210.45 reads as rewritten:

18 "**§ 90-210.45. Cremation procedures.**

19 (a) No human body shall be cremated before the crematory operator receives a
20 death certificate signed by the attending physician or an authorization for cremation
21 signed by a medical examiner.

22 (b) Human remains shall not be cremated within 24 hours after the time of death,
23 unless such death was a result of an infectious, contagious or communicable and
24 dangerous disease as listed by the Commission of Health Services pursuant to G.S.
25 130A-134, and unless such time requirement is waived in writing by the medical
26 examiner, county health director, or attending physician where the death occurred.
27 In the event such death comes under the jurisdiction of the medical examiner, the
28 human remains shall not be received by the crematory operator until authorization to
29 cremate has been received in writing from the medical examiner of the county in
30 which the death occurred. In the event the crematory operator is authorized to
31 perform funerals as well as cremation, this restriction on the receipt of human
32 remains shall not be applicable.

33 (c) No unauthorized person shall be permitted in the crematory area while any
34 human remains are in the crematory area awaiting cremation, being cremated, or
35 being removed from the cremation chamber. Relatives of the deceased, the
36 authorizing agent, medical examiners and law enforcement officers in the execution
37 of their duties shall be authorized to have access to the holding facility and crematory
38 facility.

39 (c1) Human remains shall be cremated only while enclosed in a cremation
40 container.

41 (d) The simultaneous cremation of the human remains of more than one person
42 within the same cremation chamber is forbidden.

43 (d1) Every crematory shall have a holding facility, within or adjacent to the
44 crematory, designated for the retention of human remains prior to cremation. The

1 holding facility must comply with any applicable public health laws and rules and
 2 must meet all of the standards established pursuant to rules adopted by the Board.

3 (e) Crematory operators shall comply with standards established by the Board for
 4 the reduction and pulverization of human remains by the cremation process."

5 Section 20. G.S. 90-210.46(a) reads as rewritten:

6 "(a) The authorizing agent shall provide the person with whom cremation
 7 arrangements are made with a signed statement specifying the ultimate disposition of
 8 the cremated remains, if known. ~~A copy of this statement shall be retained by the~~
 9 ~~crematory operator.~~ The crematory operator may store or retain cremated remains as
 10 directed by the authorizing agent. Records of retention and disposition of cremated
 11 remains shall be kept by the crematory operator pursuant to G.S. 90-210.44."

12 Section 21. G.S. 90-210.47(b) reads as rewritten:

13 "(b) A crematory operator shall have authority to cremate human remains only
 14 upon the receipt of a cremation authorization form signed by an authorizing agent.
 15 There shall be no liability of a crematory operator that cremates human remains
 16 pursuant to such authorization, or that releases or disposes of the cremated remains
 17 pursuant to such authorization."

18 Section 22. G.S. 90-210.48(a) reads as rewritten:

19 "§ 90-210.48. Fees.

20 (a) The Board may set and collect fees not to exceed the following amounts from
 21 licensed crematory operators and applicants:

22	(1)	Licensee application fee.	\$400.00
23	(2)	Annual renewal fee.	150.00
24	(3)	Late renewal penalty.	75.00
25	(4)	Re-inspection fee.	100.00
26	(5)	Per cremation fee.	10.00
27	(6)	<u>Late fee, per cremation.</u>	<u>10.00</u>
28	(7)	<u>Late fee, cremation report.</u>	<u>75.00 per month."</u>

29 Section 23. G.S. 90-210.60(3) reads as rewritten:

30 "(3) 'Insurance company' means any corporation, limited liability
 31 company, association, partnership, society, order, individual or
 32 aggregation of individuals engaging in or proposing or attempting
 33 to engage as principals in any kind of insurance business, including
 34 the exchanging of reciprocal or interinsurance contracts between
 35 individuals, partnerships, and corporations;"

36 Section 24. G.S. 90-210.63(a)(2) reads as rewritten:

37 "(2) The original contracting preneed licensee shall immediately pay all
 38 ~~such~~ funds received to the successor funeral establishment ~~so~~
 39 ~~designated;~~ designated. ~~provided, however, regardless~~ Regardless
 40 of whether the substitution is made before or after the death of the
 41 preneed funeral contract beneficiary, the original contracting
 42 preneed licensee shall not be required to give credit for the
 43 amount retained pursuant to G.S. 90-210.61(a)(2), except when
 44 there was a substitution under G.S. 90-210.68(d1) and (e), and

1 ~~provided further, if~~ Except when there was a substitution under
2 G.S. 90-210.68(d1) and (e), if the original contracting preneed
3 licensee did not retain any portion of payments made ~~to it~~ as is
4 permitted by G.S. 90-210.61(a)(2) then ~~such~~ the preneed licensee
5 may retain up to ten percent (10%) of ~~said~~ the funds received from
6 the financial institution. Upon making payments pursuant to this
7 subsection, the financial institution and the original contracting
8 preneed licensee shall be relieved from all further contractual
9 liability thereon."

10 Section 25. G.S. 90-210.64(a) reads as rewritten:

11 "(a) After the death of a preneed funeral contract beneficiary and full
12 performance of the preneed funeral contract by the preneed licensee, the preneed
13 licensee shall promptly complete a certificate of performance or similar claim form
14 and present it to the financial institution that holds funds in trust under G.S. 90-
15 210.61(a)(1) or to the insurance company that issued a preneed insurance policy
16 pursuant to G.S. 90-210.61(a)(3). Upon receipt of the certificate of performance or
17 similar claim form, the financial institution shall pay the trust funds to the contracting
18 preneed licensee and the insurance company shall pay the insurance proceeds
19 according to the terms of the policy. Within 10 days after receiving payment, the
20 preneed licensee shall mail a copy of the certificate of performance or other claim
21 form to the Board."

22 Section 26. G.S. 90-210.66(b) reads as rewritten:

23 "(b) From the fee of ~~fifteen dollars (\$15.00)~~ for each preneed funeral contract as
24 required by G.S. 90-210.67(d), the Board shall deposit two dollars (\$2.00) into the
25 Fund. The Board may suspend the deposits into the Fund at any time and for any
26 period for which the Board determines that a sufficient amount is available to meet
27 likely disbursements and to maintain an adequate reserve."

28 Section 27. G.S. 90-210.67 reads as rewritten:

29 "**§ 90-210.67. Application for license.**

30 (a) No person may offer or sell preneed funeral contracts or offer to make or
31 make any funded funeral prearrangements without first securing a license from the
32 Board. There shall be two types of licenses: a preneed funeral establishment license
33 and a preneed sales license. Only funeral establishments holding a valid establishment
34 permit pursuant to G.S. 90-210.25(d) shall be eligible for a preneed funeral
35 establishment license. Employees and agents of such entities, upon meeting the
36 qualifications to engage in preneed funeral planning as established by the Board, shall
37 be eligible for a preneed sales license. The Board shall establish the preneed funeral
38 planning activities that are permitted under a preneed sales license. The Board shall
39 adopt rules establishing such qualifications and activities no later than 12 months
40 following the ratification of this act. Preneed sales licensees may sell preneed funeral
41 contracts, prearrangement insurance policies, and make funded funeral
42 prearrangements only on behalf of one preneed funeral establishment licensee;
43 provided, however, they may sell preneed funeral contracts, prearrangement
44 insurance policies, and make funeral prearrangements for any number of licensed

1 preneed funeral establishments that are wholly owned by or affiliated with, through
2 common ownership or contract, the same entity; provided further, in the event they
3 engage in selling prearrangement insurance policies, they shall meet the licensing
4 requirements of the Commissioner of Insurance. Every preneed funeral contract shall
5 be signed by a person licensed as a funeral director or funeral service licensee
6 pursuant to Article 13A of Chapter 90 of the General Statutes.

7 Application for a license shall be in writing, signed by the applicant and duly
8 verified on forms furnished by the Board. Each application shall contain at least the
9 following: the full names and addresses (both residence and place of business) of the
10 applicant, and every partner, member, officer and director thereof if the applicant is a
11 partnership, limited liability company, association, or corporation and any other
12 information as the Board shall deem necessary. A preneed funeral establishment
13 license shall be valid only at the address stated in the application or at a new address
14 approved by the Board.

15 (b) An application for a preneed funeral establishment license shall be
16 accompanied by a nonrefundable application fee of not more than one hundred fifty
17 dollars (\$150.00). The Board shall set the amounts of the application fees and
18 renewal fees by rule, but the fees shall not exceed one hundred fifty dollars (\$150.00).
19 If the license is granted, the application fee shall be applied to the annual license fee
20 for the first year or part thereof. Upon receipt of the application and payment of the
21 application fee, the Board shall issue a renewable preneed funeral establishment
22 license unless it determines that the applicant has violated any provision of G.S. 90-
23 210.69(c) or has made false statements or representations in the application, or is
24 insolvent, or has conducted or is about to conduct, its business in a fraudulent
25 manner, or is not duly authorized to transact business in this State. The license shall
26 expire on December 31 and ~~Each each~~ preneed funeral establishment licensee shall
27 pay annually to the Board on or before June 30 of each year that date a license
28 renewal fee of not more than one hundred fifty dollars (\$150.00). On or before the
29 first day of February immediately following expiration, a license may be renewed
30 without paying a late fee. After that date, a license may be renewed by paying a late
31 fee of not more than one hundred dollars (\$100.00) in addition to the annual renewal
32 fee.

33 (c) An application for a preneed sales license shall be accompanied by a
34 nonrefundable application fee of not more than fifty dollars (\$50.00). The Board shall
35 set the amounts of the application fees and renewal fees by rule, but the fees shall not
36 exceed fifty dollars (\$50.00). If the license is granted, the application fee shall be
37 applied to the annual license fee for the first year or part thereof. Upon receipt of the
38 application and payment of the application fee, the Board shall issue a renewable
39 preneed sales license provided the applicant has met the qualifications to engage in
40 preneed funeral planning as established by the Board unless it determines that the
41 applicant has violated any provision of G.S. 90-210.69(c). The license shall expire on
42 December 31 and ~~Each each~~ preneed sales licensee shall pay annually to the Board
43 on or before June 30 of each year, that date a license renewal fee of not more than
44 fifty dollars (\$50.00). On or before the first day of February, a license may be

1 renewed without paying a late fee. After that date, a license may be renewed by
2 paying a late fee of not more than twenty-five dollars (\$25.00) in addition to the
3 annual renewal fee.

4 (d) Any person selling a preneed funeral contract, whether funded by a trust
5 deposit or a prearrangement insurance policy, shall remit to the Board, within 10
6 days of the sale, a fee ~~of fifteen dollars (\$15.00)~~ not to exceed twenty dollars (\$20.00)
7 for each sale and a copy of each contract. The person shall pay a late fee of not
8 more than twenty-five dollars (\$25.00) for each late filing and payment. The fee fees
9 shall not be remitted in cash.

10 (d1) The Board may also set and collect a fee of not more than twenty-five dollars
11 (\$25.00) for the late filing of a certificate of performance and a fee of not more than
12 one hundred and fifty dollars (\$150.00) for the late filing of an annual report.

13 (e) The fees collected under this Article, except for monies used pursuant to G.S.
14 90-210.66, shall be used for the expenses of the Board in carrying out the provisions
15 of this Article. Any funds collected under this Article and remaining with the Board
16 after all expenses under this Article for the current fiscal year have been fully
17 provided for shall be paid over to the General Fund of the State of North Carolina.
18 Provided, however, the Board shall have the right to maintain an amount, the
19 cumulative total of which shall not exceed twenty percent (20%) of gross receipts
20 under this Article for the previous fiscal year of its operations, as a maximum
21 contingency or emergency fund.

22 (f) Any entity licensed by the Commissioner of Banks under Article 13B of
23 Chapter 90 of the General Statutes before July 9, 1992 shall be entitled to have its
24 license renewed notwithstanding that it is not a funeral establishment, provided it
25 otherwise satisfies the requirements of this Article."

26 Section 28. G.S. 90-210.68 reads as rewritten:

27 "**§ 90-210.68. Licensee's books and records; notice of transfers, assignments and**
28 **terminations.**

29 (a) Every preneed licensee shall keep for examination by the Board accurate
30 accounts, books, and records in this State of all preneed funeral contract and
31 prearrangement insurance policy transactions, copies of all agreements, insurance
32 policies, instruments of assignment, the dates and amounts of payments made and
33 accepted thereon, the names and addresses of the contracting parties, the persons for
34 whose benefit funds are accepted, and the names of the financial institutions holding
35 preneed funeral trust funds and insurance companies issuing prearrangement
36 insurance policies. The Board, its inspectors appointed pursuant to G.S. 90-210.24
37 and its examiners, which the Board may appoint to assist in the enforcement of this
38 Article, may during normal hours of operation and periods shortly before or after
39 normal hours of operation, investigate the books, records, and accounts of any
40 licensee under this Article with respect to trust funds, preneed funeral contracts, and
41 prearrangement insurance policies. Any preneed licensee who, upon inspection, fails
42 to meet the requirements of this subsection or who fails to keep an appointment for
43 an inspection shall pay a reinspection fee to the Board in an amount not to exceed
44 one hundred dollars (\$100.00). The Board may require the attendance of and

1 examine under oath all persons whose testimony it may require. Every preneed
2 licensee shall submit a written report to the Board, at least annually, in a manner and
3 with such content as established by the Board, of its preneed funeral contract sales
4 and performance of such contracts. The Board may also require other reports.

5 (b) A preneed licensee may transfer preneed funds held by it as trustee from the
6 financial institution which is a party to a preneed funeral contract to a substitute
7 financial institution that is not a party to the contract. Within 10 days after the
8 transfer, the preneed licensee shall notify the Board, in writing, of the name and
9 address of the transferee financial institution. Before the transfer may be made, the
10 transferee financial institution shall agree to make disclosures required under the
11 preneed funeral contract to the Board or its inspectors or examiners. If the contract is
12 revocable, the licensee shall notify the contracting party of the intended transfer.

13 (c) If any preneed licensee transfers or assigns its assets or stock to a successor
14 funeral establishment or terminates its business as a funeral establishment, the
15 preneed licensee and assignee shall notify the Board at least 15 days prior to the
16 effective date of the transfer, assignment or termination: provided, however, the
17 successor funeral establishment must be a preneed licensee or shall be required to
18 apply for and be granted such license by the Board before accepting any preneed
19 funeral contracts, whether funded by trust deposits or preneed insurance policies.
20 Provided further, a successor funeral establishment shall be liable to the preneed
21 funeral contract purchasers for the amount of contract payments retained by the
22 assigning or transferring funeral home pursuant to G.S. 90-210.61(a)(2).

23 (d) Financial institutions that accept preneed funeral trust funds and insurance
24 companies that issue prearrangement insurance policies shall, upon request by the
25 Board or its inspectors or examiners, disclose any information regarding preneed
26 funeral trust accounts held or prearrangement insurance policies issued by it for a
27 preneed licensee.

28 (d1) When a preneed funeral establishment license lapses or is terminated for any
29 reason, the preneed licensee shall immediately divest of all the unperformed preneed
30 funeral contracts and shall transfer them and any amounts retained under G.S. 90-
31 210.61(a)(2) to another preneed funeral establishment licensee pursuant to the
32 procedures of subsection (e) of this section.

33 (e) In the event that any preneed licensee is unable or unwilling or is for any
34 reason relieved of its responsibility to perform as trustee or to perform any preneed
35 funeral contract, the Board, with the written consent of the purchaser of the preneed
36 funeral contract, or after the purchaser's death or incapacity, the preneed funeral
37 contract beneficiary ~~may~~ shall order the contract and any amounts retained pursuant
38 to G.S. 90-210.61(a)(2) to be assigned to a substitute preneed licensee provided that
39 the substitute licensee agrees to accept such assignment.

40 (f) The substitute preneed licensee under subsections (d1) and (e) of this section
41 shall be liable to the preneed funeral contract purchasers for the amount of contract
42 payments that had been retained by, and that the substitute preneed licensee has
43 received from, the assigning preneed licensee."

44 Section 29. G.S. 90-210.69(c) reads as rewritten:

1 "(c) In accordance with the provisions of Chapter 150B of the General Statutes, if
2 if the Board finds that a licensee, an applicant for a license or an applicant for license
3 renewal is guilty of one or more of the following, the Board may refuse to issue or
4 renew a license or may suspend or revoke a license or place the holder thereof on
5 probation upon conditions set by the Board, with revocation upon failure to comply
6 with the conditions:

- 7 (1) Offering to engage or engaging in activities for which a license is
8 required under this Article but without having obtained such a
9 ~~license;~~ license.
10 (2) Aiding or abetting an unlicensed person, firm, partnership,
11 association, corporation or other entity to offer to engage or engage
12 in such ~~activities;~~ activities.
13 (3) A crime involving fraud or moral turpitude by conviction ~~thereof;~~
14 thereof.
15 (4) Fraud or misrepresentation in obtaining or receiving a license or in
16 preneed funeral ~~planning;~~ planning.
17 (5) False or misleading ~~advertising;~~ or advertising.
18 (6) Violating or cooperating with others to violate any provision of this
19 ~~Article or Article,~~ the rules and regulations of the Board, pursuant
20 ~~thereto. or the standards set forth in Funeral Industry Practices, 16~~
21 C.F.R. 453 (1984), as amended from time to time.

22 In any case in which the Board is authorized to take any of the actions permitted
23 under this subsection, the Board may instead accept an offer in compromise of the
24 charges whereby the accused shall pay to the Board a penalty of not more than one
25 thousand dollars (\$1,000)."

26 Section 30. G.S. 90-210.69(e) reads as rewritten:

27 "~~(e) All hearings under this Article shall be conducted pursuant to G.S.~~
28 ~~150B-40(e).~~ Judicial review shall be pursuant to Article 4 of Chapter 150B of the
29 General Statutes."

30 Section 31. G.S. 90-210.70(c) reads as rewritten:

31 "(c) If a corporation or limited liability company embezzles or fraudulently or
32 knowingly and willfully misapplies or converts preneed funeral funds as provided in
33 subsection (a) hereof or otherwise violates any provision of this Article, the officers,
34 directors, members, agents, or employees responsible for committing the offense shall
35 be fined or imprisoned as herein provided."

36 Section 32. G.S. 90-210.70(d) reads as rewritten:

37 "(d) The Board shall have the power to investigate violations of this section and
38 shall deliver all evidence of violations of subsection (a) of this section to the district
39 attorney in the county where the offense occurred. The Board shall, with the fees
40 collected under this Article, employ legal counsel and other staff to monitor preneed
41 trusts, investigate complaints, audit preneed trusts, and be responsible for delivering
42 evidences to the district attorney when there is evidence ~~of criminal violation. that a~~
43 felony has been committed by a licensee. The record of complaints, auditing, and

1 enforcement shall be presented in an annual report from the Board to the General
2 Assembly."

3 Section 33. Article 13D of Chapter 90 of the General Statutes is
4 amended by adding a new section to read:

5 "§ 90-210.73. Not public record.

6 The names and addresses of the purchasers and beneficiaries of preneed funeral
7 contracts filed with the Board shall not be subject to Chapter 132 of the General
8 Statutes."

9 Section 34. Article 16 of Chapter 130A of the General Statutes is
10 amended by adding a new Part to read:

11 "Part 7. Disposition of Body or Body Parts.

12 "§ 130A-422. Authority to dispose of body or body parts.

13 (a) An individual at least 18 years of age may authorize the disposition of the
14 individual's own dead body in a written will, pursuant to a health care power of
15 attorney to the extent provided in Article 3 of Chapter 32A of the General Statutes,
16 pursuant to a preneed funeral contract executed pursuant to Article 13D of Chapter
17 90 of the General Statutes, pursuant to a cremation authorization form executed
18 pursuant to Article 13C of Chapter 90 of the General Statutes, or in a written
19 statement signed by the individual and witnessed by two persons who are at least 18
20 years old.

21 (b) If a decedent has left no written authorization for the disposal of the decedent's
22 body as permitted under subsection (a) of this section, the following competent
23 persons in the order listed may authorize the type, method, place, and disposition of
24 the decedent's body:

- 25 (1) The surviving spouse.
26 (2) A majority of the surviving children.
27 (3) The surviving parents.
28 (4) A majority of the surviving siblings.
29 (5) A majority of the persons in the classes of the next degrees of
30 kinship, in descending order, who, under State law, would inherit
31 the decedent's estate if the decedent died intestate.
32 (6) A person who has exhibited special care and concern for the
33 decedent and is willing and able to make decisions about the
34 disposition.

35 This subsection does not grant to any person the right to cancel a preneed funeral
36 contract executed pursuant to Article 13D of Chapter 90 of the General Statutes or to
37 prohibit the substitution of a preneed licensee as authorized under G.S. 90-210.63.

38 (c) An individual at least 18 years of age may, in a writing signed by the
39 individual, authorize the disposition of one or more of the individual's body parts
40 that has been or will be removed. If the individual does not authorize the
41 disposition, a person listed in subsection (b) of this section may authorize the
42 disposition as if the individual was deceased.

43 (d) This section does not apply to the disposition of dead human bodies as
44 anatomical gifts under Part 3 of Article 16 of Chapter 130A of the General Statutes

1 or the right to perform autopsies under Part 2 of Article 16 of Chapter 130A of the
2 General Statutes."

3 Section 35. The Board shall adopt temporary rules to implement the
4 provisions of this act.

5 Section 36. This act becomes effective October 1, 1997.

SENATE FINANCE COMMITTEE

WEDNESDAY, AUGUST 6, 1997

3:00 P.M. - ROOM 544 LOB

The Senate Finance Committee met. There were 15 members of the Committee present. Senator David W. Hoyle, Co-Chairman, called the meeting to order.

H. B. 99 - Camden School Acquisition

Representative Owens explained the bill. Senator Kerr sent forth an amendment to add Burke County to this bill and made a motion to that effect, motion passed. Senator Kerr moved to roll this amendment into a committee substitute and give the bill a "favorable" report, motion passed.

H. B. 1114 - Bad Check Collections Pilot

Representative Sexton came to explain the bill. Fran Preston of the N. C. Retail Merchants spoke on this bill. Colon Willoughby, District Attorney of Wake County, spoke on the bill. Senator McDaniel moved to give the bill a "favorable" report, motion passed.

NOTE: Senator Hoyle announced that the following two bills would be discussed but would not be voted on by the Committee at this meeting.

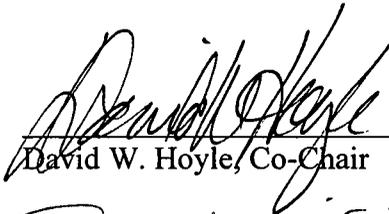
H. B. 1027 - State Treasurer Venture Capital

Representative Owens came to explain the bill. Senator Soles moved for adoption of committee substitute to the bill for the purpose of explanation, motion passed. Secretary Norris Tolson, Department of Commerce, spoke on the bill. Mr. Doug Chappell with the State Treasurer's Office came to speak on the bill. Mr. Rick Carlisle with the Department of Commerce explained the intent of the bill as to investments.

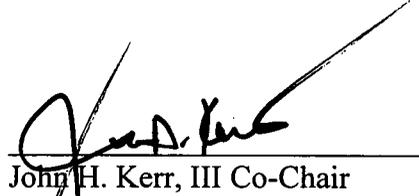
S. B. 96 - Venture Capital Investment Incentive

Representative Wilkins came to explain the bill. Senator Hoyle stated that we have a proposed committee substitute that was adopted at a previous meeting before us at this time for discussion. Senator Hoyle spoke on the bill. Mr. John Coleman with Advantage Capital in New Orleans, Louisiana spoke on the bill. Mr. Sam Poole, Attorney and Lobbyist representing the interest in this bill, spoke on the Bill.

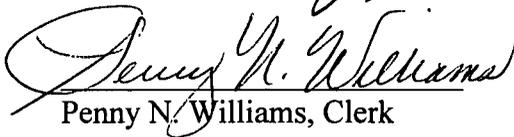
Meeting was adjourned.



David W. Hoyle, Co-Chair



John H. Kerr, III Co-Chair



Penny N. Williams, Clerk



Evelyn S. Hartsell, Clerk

NOTE:

Agenda is Attachment # 1
Visitor's Registration is Attachment # 2
Committee Report dated 8-07-97 is Attachment # 3

AGENDA

FOR

SENATE FINANCE COMMITTEE MEETING

WEDNESDAY, AUGUST 6, 1997

AT 3:00 P.M., ROOM 544

H. B. 99 - CAMDEN SCHOOL ACQUISITION - REP. H. HUNTER

H. B. 1114 - BAD CHECK COLLECTIONS PILOT - REP. EDDINS

H. B. 1027 - STATE TREASURER VENTURE CAPITAL - REP. OWENS

S. B. 956 - VENTURE CAPITAL INVESTMENT INCENTIVE - SEN. HOYLE

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

3

HOUSE BILL 99*
Committee Substitute Favorable 7/17/97
Third Edition Engrossed 7/23/97

Short Title: Camden School Acquisition.

(Local)

Sponsors:

Referred to:

February 11, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW CAMDEN COUNTY TO ACQUIRE PROPERTY FOR USE
3 BY ITS COUNTY BOARD OF EDUCATION.
4 The General Assembly of North Carolina enacts:
5 Section 1. G.S. 153A-158.1, as amended by S.L. 1997-24, S.L. 1997-162,
6 S.L. 1997-190, and S.L. 1997-236, reads as rewritten:
7 "**§ 153A-158.1. Acquisition and improvement of school property in certain counties.**
8 (a) Acquisition by County. -- A county may acquire, by any lawful method, any
9 interest in real or personal property for use by a school administrative unit within the
10 county. In exercising the power of eminent domain a county shall use the procedures
11 of Chapter 40A. The county shall use its authority under this subsection to acquire
12 property for use by a school administrative unit within the county only upon the
13 request of the board of education of that school administrative unit and after a public
14 hearing.
15 (b) Construction or Improvement by County. -- A county may construct, equip,
16 expand, improve, renovate, or otherwise make available property for use by a school
17 administrative unit within the county. The local board of education shall be involved
18 in the design, construction, equipping, expansion, improvement, or renovation of the
19 property to the same extent as if the local board owned the property.
20 (c) Lease or Sale by Board of Education. -- Notwithstanding the provisions of G.S.
21 115C-518 and G.S. 160A-274, a local board of education may, in connection with
22 additions, improvements, renovations, or repairs to all or part of any of its property,

1 lease or sell the property to the board of commissioners of the county in which the
2 property is located for any price negotiated between the two boards.

3 (d) Board of Education May Contract for Construction. -- Notwithstanding the
4 provisions of G.S. 115C-40 and G.S. 115C-521, a local board of education may enter
5 into contracts for the erection of school buildings upon sites owned in fee simple by
6 one or more counties in which the local school administrative unit is located.

7 (e) Scope. -- This section applies to Alleghany, Ashe, Avery, Bladen, Brunswick,
8 Cabarrus, Camden, Carteret, Cherokee, Chowan, Columbus, Currituck, Dare,
9 Duplin, Edgecombe, Forsyth, Franklin, Gates, Graham, Greene, Guilford, Halifax,
10 Harnett, Haywood, Hyde, Iredell, Jackson, Johnston, Jones, Lee, Macon, Madison,
11 Martin, Moore, Nash, New Hanover, Onslow, Orange, Pasquotank, Pender,
12 Perquimans, Person, Pitt, Randolph, Richmond, Rockingham, Rowan, Sampson,
13 Scotland, Stanly, Stokes, Surry, Union, Vance, Wake, Wilson, and Watauga
14 Counties."

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

EXPLANATION OF HOUSE BILL 99:
Camden School Acquisition (3rd Edition)

TO: Senate Finance Committee
FROM: Martha H. Harris, Staff Attorney
DATE: August 4, 1997
SPONSOR: Representative Howard Hunter

House Bill 99 is a local bill that applies only to Camden County and the local boards of education for school administrative units in that county. The substance of the bill is that same as that already enacted for 56 other counties.

The bill makes the following changes concerning the acquisition and financing of public school facilities:

- (1) It authorizes Camden County to acquire real or personal property for use by a school administrative unit located in the county when requested to do so by the unit. Under current law, only those counties listed in G.S. 153A-158.1(e) have this authority. Under general law, a county is authorized to acquire real or personal property only on behalf of the county or an agency of the county and a school administrative unit is not an agency of the county.
- (2) It authorizes the local boards of education to contract with Camden county for the erection of a public school building that is located on a site owned by the county. Under current general law, local boards of education are required to hold title to all school property and therefore have no authority to make contracts concerning the construction of school buildings located on sites not owned by them.
- (3) It authorizes the local boards of education to transfer to the county property on which a school building in need of renovation or repair is located for any price agreed to by the board of education and the county. Current law requires transfers from a local board of education to a county to be at fair market value and allows a local board of education to transfer property to a county only if the board does not believe the property is necessary or desirable for a school.

The effect of these changes is to allow certain installment financing to be used for public school construction or renovation. The installment financing that can be used is an installment contract secured by a security interest in the building constructed or renovated. This type of financing is available to counties but is not generally available to school administrative units. Under G.S. 160A-20, only a school administrative unit located in a county whose population exceeds

90,000 and whose local board of education can levy a school tax is authorized to use this type of financing.

One type of installment financing is the issuance of certificates of participation. A certificate of participation is a document setting out the share of a local unit's debt that is owed to that person. In practice, the holder of the certificate receives interest and principal payments in a manner similar to interest and principal payments on a bond issued by the borrowing unit. Unlike the issuance of a bond, however, the issuance of a certificate of participation is not subject to a vote of the people.

If a county builds and equips a school on behalf of a local school administrative unit, the county can receive a refund of sales and use taxes paid on the project. In contrast, the local school administrative unit could not receive a refund of these taxes if it built and equipped the school itself. This is because a local school administrative unit is not one of the governmental entities that are allowed refunds of sales and use taxes under G.S. 105-164.14(c).



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 99

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

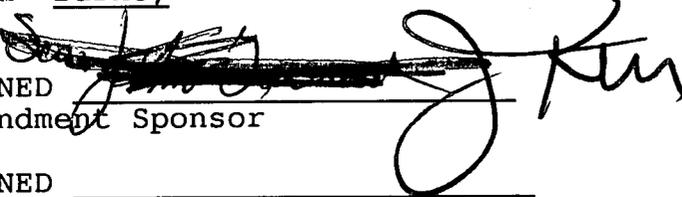
H99-ARBX-8/4

Date _____, 1997

Comm. Sub. [YES]
Amends Title [YES]
Third Edition

Senator

1 moves to amend the bill on page 1, line 2, by deleting "CAMDEN
2 COUNTY" and substituting "BURKE AND CAMDEN COUNTIES";
3
4 and on page 1, line 3, by rewriting the line to read:
5 "BY THEIR COUNTY BOARDS OF EDUCATION.";
6
7 and on page 2, line 8, by inserting before the word "Cabarrus," the
8 word "Burke".
9

SIGNED 
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

1 additions, improvements, renovations, or repairs to all or part of any of its property,
2 lease or sell the property to the board of commissioners of the county in which the
3 property is located for any price negotiated between the two boards.

4 (d) Board of Education May Contract for Construction. -- Notwithstanding the
5 provisions of G.S. 115C-40 and G.S. 115C-521, a local board of education may enter
6 into contracts for the erection of school buildings upon sites owned in fee simple by
7 one or more counties in which the local school administrative unit is located.

8 (e) Scope. -- This section applies to Alleghany, Ashe, Avery, Bladen, Brunswick,
9 Burke, Cabarrus, Camden, Carteret, Cherokee, Chowan, Columbus, Currituck, Dare,
10 Duplin, Edgecombe, Forsyth, Franklin, Gates, Graham, Greene, Guilford, Halifax,
11 Harnett, Haywood, Hyde, Iredell, Jackson, Johnston, Jones, Lee, Macon, Madison,
12 Martin, Moore, Nash, New Hanover, Onslow, Orange, Pasquotank, Pender,
13 Perquimans, Person, Pitt, Randolph, Richmond, Rockingham, Rowan, Sampson,
14 Scotland, Stanly, Stokes, Surry, Union, Vance, Wake, Wilson, and Watauga
15 Counties."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

3

HOUSE BILL 1114
Committee Substitute Favorable 7/16/97
Third Edition Engrossed 7/24/97

Short Title: Bad Check Collections Pilot.

(Public)

Sponsors:

Referred to:

April 21, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO ASSESS A FEE OF FIFTY DOLLARS FOR WORTHLESS CHECKS
3 COLLECTED THROUGH THE BAD CHECK COLLECTION PROGRAM.
4 The General Assembly of North Carolina enacts:
5 Section 1. G.S. 7A-308 is amended by adding a new section to read:
6 "(c) A person who participates in a program for the collection of worthless checks
7 under G.S. 14-107.2 must pay a fee of fifty dollars (\$50.00). The fee collected under
8 this subsection must be remitted to the State by the clerk of court in the county in
9 which the program is established and credited to the Collection of Worthless Checks
10 Fund. The Collection of Worthless Checks Fund is created as a special revenue fund.
11 Revenue in the Fund does not revert at the end of the fiscal year, and interest and
12 other investment income earned by the Fund accrues to the Fund. The money in the
13 Fund is subject to appropriation by the General Assembly and may be used solely for
14 the expenses of the programs established under G.S. 14-107.2 for the collection of
15 worthless checks."
16 Section 2. Chapter 14 of the General Statutes is amended by adding a
17 new section to read:
18 "§ 14-107.2. Program for the collection of worthless check cases.
19 A district attorney may establish a program for the collection of worthless check
20 cases that would, if prosecuted under G.S. 14-107, be punishable as a Class 2
21 misdemeanor. The purpose of the program is to collect worthless checks in a more
22 timely manner, to alleviate the need to prosecute each worthless check case, and to

1 provide an opportunity for the check passer to avoid criminal prosecution. In
2 creating the program, the district attorney must establish criteria for the types of
3 worthless check cases that will be eligible for collection under the program. If the
4 check passer participates in the program by paying the fee under G.S. 7A-308(c) and
5 providing restitution to the check taker for (i) the amount of the check or draft, (ii)
6 any service charges imposed on the check taker by a bank or depository for
7 processing the dishonored check, and (iii) any processing fees imposed by the check
8 taker pursuant to G.S. 25-3-512, then the district attorney will not prosecute the
9 worthless check case under G.S. 14-107. The Administrative Office of the Court
10 must establish procedures for remitting the fee and providing restitution to the check
11 taker. For the purposes of this section, the terms 'check passer' and 'check taker'
12 have the same meanings as defined in G.S. 14-107.1."

13 Section 3. This act applies only to Rockingham and Wake Counties.

14 Section 4. This act becomes effective October 1, 1997, if Senate Bill 352
15 is enacted and provides funds to establish a bad check collection pilot program in
16 Rockingham and Wake Counties. This act shall sunset June 30, 1998.

EXPLANATION OF HOUSE BILL 1114:
Bad Check Collection Pilot (3rd Edition)

TO: Senate Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: August 4, 1997
SPONSOR: Representatives Sexton and Eddins

House Bill 1114 corresponds with a provision in the House Budget bill, Senate Bill 352 (5th Edition), that allocates \$120,000 of the funds appropriated to the Judicial Department to establish a bad check collection pilot program in Wake and Rockingham Counties. The special provision directs the Administrative Office of the Courts to add two administrative positions to the district attorney's office in each county to assist the district attorney in collecting worthless checks in a more timely manner. The AOC will report on the effectiveness of the pilot programs by May 1, 1998. The special provision allocates enough money to cover the additional administrative positions for one year.

The bill repeats and expands upon the provision in the House budget bill. It makes it clear that a person may avoid criminal prosecution under G.S. 14-107 by participating in the program. To participate in the program, a check passer must agree to pay the \$50 fee and to provide restitution to the check taker. The district attorney's office is responsible for developing the details of its program. The details may vary from district to district, depending on the needs of the district. A rural county and an urban county were chosen for the pilot program so that its effectiveness could be viewed in both settings.

The bill becomes effective October 1, 1997, and expires on June 30, 1998. The program will last less than a year. Under the special provision, the AOC will report on the effectiveness of the pilot programs to the General Assembly by May 1, 1998.

The bill establishes a \$50 fee to be paid by people who participate in the program. The \$50 fee would be payable in lieu of the higher district court costs. The court cost generally associated with a worthless check is \$60: part of this money goes to the county for its judicial facilities, part of it goes to the sheriff's retirement fund, and part of it goes to the General Fund. Senate Bill 727 proposes to increase the court cost \$15 so that the court cost associated with a worthless check would be \$75. The \$50 fee proposed to be charged under the worthless check collection program would be credited to a nonreverting,

interest-bearing special revenue fund, the receipts of which may only be appropriated by the General Assembly for costs incurred in establishing and maintaining bad check collection programs. The bill would become effective only if the special provision contained in the House budget bill is enacted.

Under current law, after a check is dishonored, the check taker may send a letter by certified mail to the address recorded on the check, identifying the check, explaining the circumstances of dishonor, and requesting rectification of the situation. The check taker may advise the check passer in the letter that legal action may be taken if payment is not made within 10 days. If the check passer does not remedy the situation, the check taker may file an affidavit with a judicial official before issuance of the first process or pleading in the prosecution of the worthless check.

The judicial process of recovering a worthless check is often long and tedious. This bill attempts to expedite the check collection process by adding a step to the process. Before filing a criminal action under G.S. 14-107 for a worthless check, a check taker may solicit the help of the district attorney's office through the bad check collection program. It is the belief and experience in other states that a letter from the district attorney's office results in prompter payment of worthless checks. If this program is successful, the check taker will receive the payment upon the worthless check sooner. The check passer may avoid prosecution under G.S. 14-107 and the more expensive court costs. It is a type of deferred prosecution, which may perhaps be possible under G.S. 143B-475.1. However, without the appropriation in the special provision and the fee established by this bill, the district attorney's offices do not have the financial resources to undertake this type of labor intensive program.

By its Constitution, North Carolina has a court system that is uniform across the State. The Constitution specifically provides that court fees and costs must be uniform throughout the State and that the operating expenses of the judicial department must be paid from State funds. This bill creates a program that is only available in two counties, and it establishes a fee to be paid to support the program by those who use it.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: House Bill 1114 (House Finance Committee Substitute)

SHORT TITLE: Bad Check Collections Pilot

SPONSOR(S): Representatives Eddins and Sexton

FISCAL IMPACT

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

FY 1997-98 FY 1998-99 FY 1999-00 FY 2000-01 FY 2001-02

REVENUES

See Assumptions and Methodology

EXPENDITURES

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Judicial Department

EFFECTIVE DATE: October 1, 1997

BILL SUMMARY: *TO ESTABLISH PILOT PROGRAMS IN WAKE AND ROCKINGHAM COUNTIES IN THE OFFICE OF THE DISTRICT ATTORNEY FOR THE COLLECTION OF WORTHLESS CHECKS.* Authorizes pilot programs as title indicates. Requires persons participating in the program to pay a \$50 fee which will be deposited in a special revenue fund. These funds are to be used to pay the expenses of administering worthless check programs. Effective October 1, 1997.

ASSUMPTIONS AND METHODOLOGY: Judicial Department

EXPENDITURES

This bad check pilot program is funded in the House budget bill (SB 352 - Fifth Edition). The House Subcommittee on Justice and Public Safety included \$120,000 in non-recurring funds to fund four positions in Wake and Rockingham Counties for FY 1997-98 only. The funds will pay for a DA Investigator and a DA Legal Assistant in each county effective October 1, 1997. Section 15.23 of the bill also requires AOC to report on the implementation and effectiveness of the programs by May 1, 1998.

REVENUES

The amount of revenue that would be collected from the \$50 fee can not be determined at this time. According to the Administrative Office of the Courts (AOC), there is no data on the number of worthless check charges and convictions by county. Statewide, there were 93,887 defendants charged with worthless check offenses in 1996 and 54,088 defendants convicted on that charge. The revenue collected would be remitted to a special revenue fund titled *Collection of Worthless Check Fund*. All fees are subject to appropriation by the General Assembly and may only be used to pay the expenses of administering worthless check programs.

This pilot program would have some impact on court revenues collected by Wake and Rockingham Counties. Under current law, a convicted worthless check offender would pay the following court costs:

- \$5 for service of process and \$6 in facilities fees - remitted to local governments,
- \$7.25 for retirement and insurance benefits of state and local law enforcement officers,
- \$.75 to supplement pension benefits for Sheriffs, and
- \$46 General Court of Justice fee - remitted to the state General Fund

Under the proposed legislation, a worthless check offender participating in this program would pay the \$50 fee in lieu of court costs. Thus, Wake and Rockingham Counties would lose some court revenues if individuals participated in this program instead of going to court.

FISCAL RESEARCH DIVISION

733-4910

PREPARED BY: Richard Bostic and CharlesPerusse

APPROVED BY: Tom L. Covington

DATE: July 15, 1997





MEMORANDUM

TO: Members of the Senate Finance Committee

FROM: Fran Preston^{sp}
Don McCorquodale^{sp}

DATE: August 5, 1997

RE: **HB 1114 Bad Check Collections Pilot**

The sheer volume of bad checks is a problem for both North Carolina's merchants and district attorneys. This bill will **establish a nine-month pilot project** (begins October 1, 1997 and sunsets June 30, 1998) for **Wake and Rockingham counties**.

The program is a win-win.

- ◆ This program offers a **benefit to the check writer**: \$50 fee and deferred prosecution (no criminal record) instead of \$85 court cost plus a criminal record.
- ◆ This program is a **benefit to the check taker**: because it will afford a faster path to restitution.
- ◆ This program is a **benefit to the DA's**: because it affords self-funding for part of their work load that is large and growing larger.
- ◆ If the pilot is successful, there should be a reduction in time spent by law enforcement to serve summons.

Alabama, California, Arizona and New Mexico have **successfully operated a similar program**. We hope that you can support this one-year pilot, in an attempt to resolve a most difficult problem for both DA's and merchants.

This bill has been scheduled for a hearing in the Senate Finance Committee for **Wednesday, August 6**. We hope that you can support this pilot project.

H1114 BAD CHECK COLLECTIONS PILOT

Sponsors: Representatives Wayne Sexton & Rick Eddins

THE PROBLEM

The two groups who suffer most from bad checks are the District Attorneys and the retailers. The sheer volume of checks continues to increase. One small grocery store chain reported to NCRMA that it wrote off \$300,000 in uncollectable checks last year.

THE SOLUTION

Five states have empowered their District Attorneys with the authority to establish check collection units. (Alabama, Arizona, California, New Mexico and Texas.) The check collection units in these states have proven to be an overwhelming success. Checks collections have risen and the passing of bad checks has declined.

This pilot project would allow the DA's in these two counties to establish a process of **deferred prosecution** in lieu of criminal proceedings. It establishes a special fund whereby deferred prosecution monies would be used to fund a check collection unit in Wake and Rockingham county. The goal of the project is to run the units on non-taxpayer monies. The AOC (which has helped the DA's and merchants to fine tune this pilot language) will report on the progress of the project to the 1998 General Assembly.

PLEASE VOTE YES FOR H1114

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

8-5-97

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

John Coleman

Advantage Capital
909 Poydras St
New Orleans, LA.

Nor Murchants

Peyson + Spruill

F. Cook

Sanford Holchauer

Cheresa Kostzewa

"

Charles Heathcock

Treasurer's Office

Joy Magrell

" "

Ange Harris

Commerce

Sec. Norris Tolson

Commerce

Rick Carlisle

"

Brenda Dougherty

Sprint

Bill P. Williams

Commerce

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT

Senator David Hoyle, Co-Chair
Senator John Kerr, Co-Chair

Thursday, August 07, 1997

SENATOR HOYLE,
submits the following with recommendations as to passage:

FAVORABLE

H.B.(CS)1114 Bad Check Collections Pilot
 Sequential Referral: None
 Recommended Referral: None

**UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL**

H.B.(CS #1)99 Camden School Acquisition
 Draft Number: PCS7365
 Sequential Referral: None
 Recommended Referral: None
 Long Title Amended: Yes

TOTAL REPORTED: 2

Committee Clerk Comment: Bills taken up on 8-6-97

SENATE FINANCE COMMITTEE

THURSDAY, AUGUST 7, 1997

AFTER SESSION - ROOM 544 LOB

The Senate Finance Committee met on August 7th with Senator Kerr presiding. There were 25 committee members present.

H.B. 769 - Dropout Prevention/Drivers License

Representative Sherrill was recognized to explain this bill and after her explanation, Senator Hoyle sent forth an amendment. There were several questions from the committee members to the bill sponsor and also to Ruth Sappie and Wayne Hurder from the Department of Motor Vehicles. Senator Dalton moved for the adoption of the amendment and the motion carried. Senator Allran made a motion that the bill be given a "favorable" report as amended, rolled into a new committee substitute and re-referred to Appropriations. Copy of bill, amendment, committee substitute, explanation and letters of support for the bill included in the minutes.

S.B. 956 - Venture Capital Investment Incentive

Representative Wilkins was recognized to give an overview of this bill since it was continued from Wednesday's meeting. After his explanation and questions from the committee members to Representative Wilkins, Mr. John Coleman with Advantage Capital was introduced to answer some of the questions. Copy of bill, committee substitute and explanation included in the minutes.

H.B. 1027 - State Treasurer Venture Capital

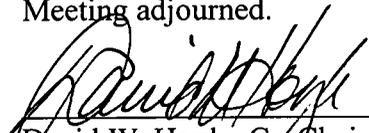
Representative Owens was recognized to give an overview of this bill since it was continued from Wednesday's meeting. Martha Harris briefly explained the new committee substitute. Representative Owens reminded the committee that this bill had already passed the House. Doug Chappell, Department of State Treasurer, was recognized to answer additional questions from the committee members. Senator Hoyle was recognized and apologized to the venture capital bill sponsors and supporters in that all the committee meetings had been rushed and not enough time to really debate the concerns. Senator Kerr in adjourning the meeting stated that everybody needs to get together and come up with some consensus to move this idea forward. Copy of bill, committee substitute and explanation included in the minutes.

Minutes - Senate Finance Committee

August 7, 1997

Page 2

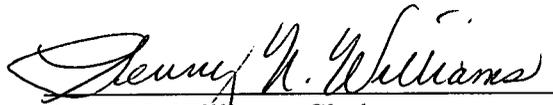
Meeting adjourned.



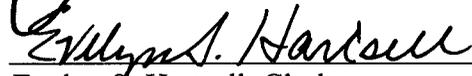
David W. Hoyle, Co-Chair
Senate Finance Committee



John H. Kerr, III, Co-Chair
Senate Finance Committee



Penny N. Williams, Clerk



Evelyn S. Hartsell, Clerk

NOTE:

Agenda is Attachment # 1

Visitors' Sign Up Sheet is Attachment # 2

Committee Report is Attachment # 3

S.B. 629 was not heard at the committee meeting.

AGENDA

SENATE FINANCE

Thursday, August 7, 1997
Room 544

15 Minutes After Session

S.B. 956 Venture Capital Investment Incentive - Sen. Hoyle

S.B. 629 Johnston/Franklin/Cabarrus Schools. - Sen. Wellons

H.B. 1027 State Treasurer Venture Capital - Rep. Owens

H.B. 769 Dropout Prevention/Drivers License - Rep. Sherrill

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

5

HOUSE BILL 769
Committee Substitute Favorable 4/21/97
Committee Substitute #2 Favorable 5/7/97
Fourth Edition Engrossed 5/29/97
Senate Education/Higher Committee Substitute Adopted 6/26/97

Short Title: Dropout Prevention/Drivers License.

(Public)

Sponsors:

Referred to: Finance.

April 3, 1997

- 1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE THAT CERTAIN STUDENTS WHO DROP OUT OF
3 SCHOOL OR DO NOT MAKE PROGRESS TOWARD GRADUATION
4 SHALL NOT BE ELIGIBLE FOR DRIVERS PERMITS OR LICENSES.
5 The General Assembly of North Carolina enacts:
6 Section 1. G.S. 20-11, as amended by Chapter 16 of the 1997 Session
7 Laws, reads as rewritten:
8 "§ 20-11. Issuance of limited learner's permit and provisional drivers license to person
9 who is less than 18 years old.
10 (a) Process. -- Safe driving requires instruction in driving and experience. To
11 ensure that a person who is less than 18 years old has both instruction and experience
12 before obtaining a drivers license, driving privileges are granted first on a limited
13 basis and are then expanded in accordance with the following process:
14 (1) Level 1. -- Driving with a limited learner's permit.
15 (2) Level 2. -- Driving with a limited provisional license.
16 (3) Level 3. -- Driving with a full provisional license.
17 A permit or license issued under this section must have a color background or border
18 that indicates the level of driving privileges granted by the permit or license.
19 (b) Level 1. -- A person who is at least 15 years old but less than 18 years old may
20 obtain a limited learner's permit if the person meets all of the following
21 requirements:

- 1 (1) Passes a course of driver education prescribed in G.S. 20-88.1 or a
2 course of driver instruction at a licensed commercial driver
3 training school.
4 (2) Passes a written test administered by the Division.
5 (3) Has a driving eligibility certificate or a high school diploma or its
6 equivalent.

7 (c) Level 1 Restrictions. -- A limited learner's permit authorizes the permit holder
8 to drive a specified type or class of motor vehicle only under the following
9 conditions:

- 10 (1) The permit holder must be in possession of the permit.
11 (2) A supervising driver must be seated beside the permit holder in
12 the front seat of the vehicle when it is in motion. No person other
13 than the supervising driver can be in the front seat.
14 (3) For the first six months after issuance, the permit holder may drive
15 only between the hours of 5:00 a.m. and 9:00 p.m.
16 (4) After the first six months after issuance, the permit holder may
17 drive at any time.
18 (5) Every person occupying the vehicle being driven by the permit
19 holder must have a safety belt properly fastened about his or her
20 body, or be restrained by a child passenger restraint system as
21 provided in G.S. 20-137.1(a), when the vehicle is in motion.

22 (d) Level 2. -- A person who is at least 16 years old but less than 18 years old may
23 obtain a limited provisional license if the person meets all of the following
24 requirements:

- 25 (1) Has held a limited learner's permit issued by the Division for at
26 least 12 months.
27 (2) Has not been convicted of a motor vehicle moving violation or seat
28 belt infraction during the preceding six months.
29 (3) Passes a road test administered by the Division.
30 (4) Has a driving eligibility certificate or a high school diploma or its
31 equivalent.

32 (e) Level 2 Restrictions. -- A limited provisional license authorizes the license
33 holder to drive a specified type or class of motor vehicle only under the following
34 conditions:

- 35 (1) The license holder must be in possession of the license.
36 (2) The license holder may drive without supervision in any of the
37 following circumstances:
38 a. From 5:00 a.m. to 9:00 p.m.
39 b. When driving to or from work.
40 c. When driving to or from an activity of a volunteer fire
41 department, volunteer rescue squad, or volunteer emergency
42 medical service, if the driver is a member of the
43 organization.

1 (3) The license holder may drive with supervision at any time. When
2 the license holder is driving with supervision, the supervising
3 driver must be seated beside the license holder in the front seat of
4 the vehicle when it is in motion. The supervising driver need not
5 be the only other occupant of the front seat, but must be the
6 person seated next to the license holder.

7 (4) Every person occupying the vehicle being driven by the license
8 holder must have a safety belt properly fastened about his or her
9 body, or be restrained by a child passenger restraint system as
10 provided in G.S. 20-137.1(a), when the vehicle is in motion.

11 (f) Level 3. -- A person who is at least 16 years old but less than 18 years old may
12 obtain a full provisional license if the person meets all of the following requirements:

13 (1) Has held a limited provisional license issued by the Division for at
14 least six months.

15 (2) Has not been convicted of a motor vehicle moving violation or seat
16 belt infraction during the preceding six months.

17 (3) Has a driving eligibility certificate or a high school diploma or its
18 equivalent.

19 A person who meets these requirements may obtain a full provisional license by mail.

20 (g) Level 3 Restrictions. -- The restrictions on Level 1 and Level 2 drivers
21 concerning time of driving, supervision, and passenger limitations do not apply to a
22 full provisional license.

23 (h) Out-of-State Exceptions. -- A person who is at least 16 years old but less than
24 18 years old, who was a resident of another state and has an unrestricted drivers
25 license issued by that state, and who becomes a resident of this State may obtain one
26 of the ~~following~~ following upon the submission of a driving eligibility certificate or a
27 high school diploma or its equivalent:

28 (1) A temporary permit, if the person has not completed a drivers
29 education program that meets the requirements of the
30 Superintendent of Public Instruction but is currently enrolled in a
31 drivers education program that meets these requirements. A
32 temporary permit is valid for the period specified in the permit
33 and authorizes the holder of the permit to drive a specified type or
34 class of motor vehicle when in possession of the permit, subject to
35 any restrictions imposed by the Division concerning time of
36 driving, supervision, and passenger limitations. The period must
37 end within 10 days after the expected completion date of the
38 drivers education program in which the applicant is enrolled.

39 (2) A full provisional license, if the person has completed a drivers
40 education program that meets the requirements of the
41 Superintendent of Public Instruction, has held the license issued by
42 the other state for at least 12 months, and has not been convicted
43 during the preceding six months of a motor vehicle moving
44 violation, a seat belt infraction, or an offense committed in another

1 jurisdiction that would be a motor vehicle moving violation or seat
2 belt infraction if committed in this State.

3 (3) A limited provisional license, if the person has completed a drivers
4 education program that meets the requirements of the
5 Superintendent of Public Instruction but either did not hold the
6 license issued by the other state for at least 12 months or was
7 convicted during the preceding six months of a motor vehicle
8 moving violation, a seat belt infraction, or an offense committed in
9 another jurisdiction that would be a motor vehicle moving
10 violation or seat belt infraction if committed in this State.

11 (i) Application. -- An application for a permit or license authorized by this section
12 must be signed by both the applicant and another person. That person must be the
13 applicant's parent or guardian if the parent or guardian resides in this State and is
14 qualified to be a supervising driver. In all other circumstances, that person must be
15 an adult approved by the Division.

16 (j) Duration and Fee. -- A limited learner's permit expires on the eighteenth
17 birthday of the permit holder. A limited provisional license expires on the eighteenth
18 birthday of the license holder. A full provisional license expires on the date set
19 under G.S. 20-7(f). The fee for a limited learner's permit or a limited provisional
20 license is ten dollars (\$10.00). The fee for a full provisional license is the amount set
21 under G.S. 20-7(i).

22 (k) Supervising Driver. -- A supervising driver must be a parent or guardian of the
23 permit holder or license holder if a parent or guardian signed the application for the
24 permit or license. If a parent or guardian did not sign the application, the
25 supervising driver must be the adult who signed the application. A supervising driver
26 must be a licensed driver who has been licensed to drive for at least five years.

27 (l) Violations. -- It is unlawful for the holder of a limited learner's permit, a
28 temporary permit, or a limited provisional license to drive a motor vehicle in
29 violation of the restrictions that apply to the permit or license. Failure to comply
30 with a restriction concerning the time of driving or the presence of a supervising
31 driver in the vehicle constitutes operating a motor vehicle without a license. Failure
32 to comply with any other restriction, including seating and passenger limitations, is an
33 infraction punishable by a monetary penalty as provided in G.S. 20-176.

34 (m) Insurance Status. -- The holder of a limited learner's permit is not considered
35 a licensed driver for the purpose of determining the inexperienced operator premium
36 surcharge under automobile insurance policies.

37 (n) Driving Eligibility Certificate. -- A person who desires to obtain a permit or
38 license issued under this section and who does not have a high school diploma or its
39 equivalent must have a driving eligibility certificate. A driving eligibility certificate
40 must meet the following conditions:

41 (1) The person who is required to sign the certificate under
42 subdivision (4) of this subsection must show that he or she has
43 determined that one of the following requirements is met:

- 1 a. The person is currently enrolled in school and is making
2 progress toward obtaining a high school diploma or its
3 equivalent.
4 b. A substantial hardship would be placed on the person or the
5 person's family if the person does not receive a certificate.
6 c. The person cannot make progress toward obtaining a high
7 school diploma or its equivalent.
8 (2) It must be on a form approved by the Division.
9 (3) It must be dated within 30 days of the date the person applies for a
10 permit or license issuable under this section.
11 (4) It must be signed by the applicable person named below:
12 a. The principal, or the principal's designee, of the public
13 school in which the person is enrolled.
14 b. The administrator, or the administrator's designee, of the
15 nonpublic school in which the person is enrolled.
16 c. The person who provides the academic instruction in the
17 home school in which the person is enrolled.
18 d. The designee of the board of directors of the charter school
19 in which the person is enrolled.
20 e. The president, or the president's designee, of the community
21 college in which the person is enrolled.

22 Notwithstanding any other law, the decision concerning whether a driving
23 eligibility certificate was properly issued or improperly denied shall be appealed only
24 as provided under the rules adopted in accordance with G.S. 115C-12(27), G.S.
25 115D-5(a3), or G.S. 115C-566, whichever is applicable, and may not be appealed
26 under this Chapter."

27 Section 2. G.S. 20-13.2 is amended by adding a new subsection to read:
28 "(c1) The Division must revoke the permit or license of a person under the age of
29 18 if the proper school authority notifies the Division that the person no longer meets
30 the requirements for a driving eligibility certificate under G.S. 20-11(n).
31 Notwithstanding subsection (d) of this section, the length of revocation must last until
32 the person's eighteenth birthday or until the Division restores the permit or license
33 under this subsection. The Division must restore a person's permit or license before
34 the person's eighteenth birthday, if the person submits to the Division one of the
35 following:

- 36 (1) A high school diploma or its equivalent.
37 (2) A driving eligibility certificate as required under G.S. 20-11(n).

38 Notwithstanding any other law, the decision concerning whether a driving
39 eligibility certificate was properly issued or improperly denied shall be appealed only
40 as provided under the rules adopted in accordance with G.S. 115C-12(27), G.S.
41 115D-5(a3), or G.S. 115C-566, whichever is applicable, and may not be appealed
42 under this Chapter."

43 Section 3. G.S. 115C-12 is amended by adding a new subdivision to read:

1 "(27) Duty to Develop Rules for Issuance of Driving Eligibility
2 Certificates. -- The State Board of Education shall issue rules
3 defining what is equivalent to a high school diploma for the
4 purposes of G.S. 20-11. These rules shall apply to all educational
5 programs offered in the State by public schools, charter schools,
6 nonpublic schools, or community colleges.

7 The State Board also shall issue rules for the procedures a
8 person who is or was enrolled in a public school, in a charter
9 school, or in a nonpublic school accredited by the Board must
10 follow and the requirements that person must meet to obtain a
11 driving eligibility certificate. The person required under G.S. 20-
12 11(n) to sign the driving eligibility certificate must provide the
13 certificate if he or she determines that one of the following
14 requirements is met:

15 a. The person seeking the certificate is currently enrolled in
16 school and is making progress toward obtaining a high
17 school diploma or its equivalent.

18 b. A substantial hardship would be placed on the person
19 seeking the certificate or the person's family if the person
20 does not receive the certificate.

21 c. The person seeking the certificate cannot make progress
22 toward obtaining a high school diploma or its equivalent.

23 These rules shall provide for an appeal to an appropriate
24 education authority by a person who is denied a driving eligibility
25 certificate. The State Board also shall develop policies as to when
26 it is appropriate to notify the Division of Motor Vehicles that a
27 person who is or was enrolled in a public school, in a charter
28 school, or in a nonpublic school accredited by the Board no longer
29 meets the requirements for a driving eligibility certificate."

30 Section 4. G.S. 115D-5 is amended by adding the following new
31 subsection to read:

32 "(a3) The State Board of Community Colleges shall issue rules for the procedures
33 a person who is or was enrolled in a community college must follow and the
34 requirements that person must meet to obtain a driving eligibility certificate. The
35 person required under G.S. 20-11(n) to sign the driving eligibility certificate must
36 provide the certificate if he or she determines that one of the following requirements
37 is met:

38 (1) The person seeking the certificate is currently enrolled in school
39 and is making progress toward obtaining a high school diploma or
40 its equivalent.

41 (2) A substantial hardship would be placed on the person seeking the
42 certificate or the person's family if the person does not receive the
43 certificate.

1 (3) The person seeking the certificate cannot make progress toward
2 obtaining a high school diploma or its equivalent.
3 The rules shall provide for an appeal through the grievance procedures established
4 by the board of trustees of each community college by a person who is denied a
5 driving eligibility certificate. The State Board also shall develop policies as to when
6 it is appropriate to notify the Division of Motor Vehicles that a person who is or was
7 enrolled in a community college no longer meets the requirements for a driving
8 eligibility certificate. The State Board also shall adopt guidelines to assist the
9 presidents of community colleges in their designation of representatives to sign
10 driving eligibility certificates."

11 Section 5. Article 39 of Chapter 115C of the General Statutes is
12 amended by adding the following new Part:

13 "Part 4. Miscellaneous Requirements.

14 **"§ 115C-566. Driving eligibility certificates; requirements.**

15 The Secretary of Administration, upon consideration of the advice of the Division
16 of Nonpublic Education in the Office of the Governor, shall issue rules for the
17 procedures a person who is or was enrolled in a home school or in a nonpublic
18 school that is not accredited by the State Board of Education must follow and the
19 requirements that person must meet to obtain a driving eligibility certificate. The
20 person required under G.S. 20-11(n) to sign the driving eligibility certificate must
21 provide the certificate if he or she determines that one of the following requirements
22 is met:

- 23 (1) The person seeking the certificate is currently enrolled in school
24 and is making progress toward obtaining a high school diploma or
25 its equivalent.
26 (2) A substantial hardship would be placed on the person seeking the
27 certificate or the person's family if the person does not receive the
28 certificate.
29 (3) The person seeking the certificate cannot make progress toward
30 obtaining a high school diploma or its equivalent.

31 The rules shall provide for an appeal to an appropriate educational entity by a
32 person who is denied a driving eligibility certificate. The Division of Nonpublic
33 Education also shall develop policies as to when it is appropriate to notify the
34 Division of Motor Vehicles that a person who is or was enrolled in a home school or
35 in a nonpublic school that is not accredited by the State Board of Education no
36 longer meets the requirements for a driving eligibility certificate."

37 Section 6. The State Board of Education shall initiate and coordinate
38 meetings with the Division of Nonpublic Education in the Office of the Governor
39 and with the State Board of Community Colleges in order to develop coordinated
40 rules, policies, and guidelines needed to implement this act.

41 Section 7. The State Board of Education shall study the effectiveness of
42 this act on the dropout rates and progress toward graduation of students under the
43 age of 18 and shall report the results of this study to the Joint Legislative Education
44 Oversight Committee and the Fiscal Research Division by November 15, 2002.

1 Section 8. This act constitutes a recent act of the General Assembly
2 within the meaning of G.S. 150B-21.1. Every agency to which this act applies that is
3 authorized to adopt rules to implement this act may adopt temporary rules to
4 implement this act. This section shall continue in effect until all rules necessary to
5 implement this act have become effective as either temporary or permanent rules.

6 Section 9. If any section or provision of this act is declared
7 unconstitutional or invalid by the courts, the unconstitutional or invalid section or
8 provision does not affect the validity of this act as a whole or any part of this act
9 other than the part declared to be unconstitutional or invalid.

10 Section 10. Sections 1 and 2 of this act become effective August 1, 1998.
11 The remainder of this act is effective when it becomes law. Sections 1 and 2 of this
12 act do not apply to any person who holds a valid North Carolina limited learner's
13 permit issued before December 1, 1997, who holds a valid North Carolina learner's
14 permit issued before December 1, 1997, or who is a provisional licensee and holds a
15 valid North Carolina drivers license issued before December 1, 1997.



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 769

H769-ARH-007

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

Date _____, 1997

Comm. Sub. []
Amends Title []
Fifth Edition

Senator _____

- 1 moves to amend the bill on page 7, line 16,
- 2 by inserting after the word "Governor" the following phrase:
- 3 "and representatives of nonpublic schools";
- 4
- 5 and on page 7, line 38, by deleting the word "Governor" and by
- 6 substituting the following phrase:
- 7 "Governor, with representatives of nonpublic schools,".
- 8
- 9

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

HOUSE BILL 769
Committee Substitute Favorable 4/21/97
Committee Substitute #2 Favorable 5/7/97
Fourth Edition Engrossed 5/29/97
Senate Education/Higher Education Committee Substitute Adopted 6/26/97
Proposed Senate Committee Substitute H769-PCS6316

Short Title: Dropout Prevention/Drivers License.

(Public)

Sponsors:

Referred to:

April 3, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE THAT CERTAIN STUDENTS WHO DROP OUT OF
3 SCHOOL OR DO NOT MAKE PROGRESS TOWARD GRADUATION
4 SHALL NOT BE ELIGIBLE FOR DRIVERS PERMITS OR LICENSES.
5 The General Assembly of North Carolina enacts:
6 Section 1. G.S. 20-11, as amended by Chapter 16 of the 1997 Session
7 Laws, reads as rewritten:
8 "§ 20-11. Issuance of limited learner's permit and provisional drivers license to person
9 who is less than 18 years old.
10 (a) Process. -- Safe driving requires instruction in driving and experience. To
11 ensure that a person who is less than 18 years old has both instruction and experience
12 before obtaining a drivers license, driving privileges are granted first on a limited
13 basis and are then expanded in accordance with the following process:
14 (1) Level 1. -- Driving with a limited learner's permit.
15 (2) Level 2. -- Driving with a limited provisional license.
16 (3) Level 3. -- Driving with a full provisional license.
17 A permit or license issued under this section must have a color background or border
18 that indicates the level of driving privileges granted by the permit or license.

1 (b) Level 1. -- A person who is at least 15 years old but less than 18 years old may
2 obtain a limited learner's permit if the person meets all of the following
3 requirements:

- 4 (1) Passes a course of driver education prescribed in G.S. 20-88.1 or a
5 course of driver instruction at a licensed commercial driver
6 training school.
- 7 (2) Passes a written test administered by the Division.
- 8 (3) Has a driving eligibility certificate or a high school diploma or its
9 equivalent.

10 (c) Level 1 Restrictions. -- A limited learner's permit authorizes the permit holder
11 to drive a specified type or class of motor vehicle only under the following
12 conditions:

- 13 (1) The permit holder must be in possession of the permit.
- 14 (2) A supervising driver must be seated beside the permit holder in
15 the front seat of the vehicle when it is in motion. No person other
16 than the supervising driver can be in the front seat.
- 17 (3) For the first six months after issuance, the permit holder may drive
18 only between the hours of 5:00 a.m. and 9:00 p.m.
- 19 (4) After the first six months after issuance, the permit holder may
20 drive at any time.
- 21 (5) Every person occupying the vehicle being driven by the permit
22 holder must have a safety belt properly fastened about his or her
23 body, or be restrained by a child passenger restraint system as
24 provided in G.S. 20-137.1(a), when the vehicle is in motion.

25 (d) Level 2. -- A person who is at least 16 years old but less than 18 years old may
26 obtain a limited provisional license if the person meets all of the following
27 requirements:

- 28 (1) Has held a limited learner's permit issued by the Division for at
29 least 12 months.
- 30 (2) Has not been convicted of a motor vehicle moving violation or seat
31 belt infraction during the preceding six months.
- 32 (3) Passes a road test administered by the Division.
- 33 (4) Has a driving eligibility certificate or a high school diploma or its
34 equivalent.

35 (e) Level 2 Restrictions. -- A limited provisional license authorizes the license
36 holder to drive a specified type or class of motor vehicle only under the following
37 conditions:

- 38 (1) The license holder must be in possession of the license.
- 39 (2) The license holder may drive without supervision in any of the
40 following circumstances:
 - 41 a. From 5:00 a.m. to 9:00 p.m.
 - 42 b. When driving to or from work.
 - 43 c. When driving to or from an activity of a volunteer fire
44 department, volunteer rescue squad, or volunteer emergency

1 medical service, if the driver is a member of the
2 organization.

3 (3) The license holder may drive with supervision at any time. When
4 the license holder is driving with supervision, the supervising
5 driver must be seated beside the license holder in the front seat of
6 the vehicle when it is in motion. The supervising driver need not
7 be the only other occupant of the front seat, but must be the
8 person seated next to the license holder.

9 (4) Every person occupying the vehicle being driven by the license
10 holder must have a safety belt properly fastened about his or her
11 body, or be restrained by a child passenger restraint system as
12 provided in G.S. 20-137.1(a), when the vehicle is in motion.

13 (f) Level 3. -- A person who is at least 16 years old but less than 18 years old may
14 obtain a full provisional license if the person meets all of the following requirements:

15 (1) Has held a limited provisional license issued by the Division for at
16 least six months.

17 (2) Has not been convicted of a motor vehicle moving violation or seat
18 belt infraction during the preceding six months.

19 (3) Has a driving eligibility certificate or a high school diploma or its
20 equivalent.

21 A person who meets these requirements may obtain a full provisional license by mail.

22 (g) Level 3 Restrictions. -- The restrictions on Level 1 and Level 2 drivers
23 concerning time of driving, supervision, and passenger limitations do not apply to a
24 full provisional license.

25 (h) Out-of-State Exceptions. -- A person who is at least 16 years old but less than
26 18 years old, who was a resident of another state and has an unrestricted drivers
27 license issued by that state, and who becomes a resident of this State may obtain one
28 of the ~~following~~: following upon the submission of a driving eligibility certificate or a
29 high school diploma or its equivalent:

30 (1) A temporary permit, if the person has not completed a drivers
31 education program that meets the requirements of the
32 Superintendent of Public Instruction but is currently enrolled in a
33 drivers education program that meets these requirements. A
34 temporary permit is valid for the period specified in the permit
35 and authorizes the holder of the permit to drive a specified type or
36 class of motor vehicle when in possession of the permit, subject to
37 any restrictions imposed by the Division concerning time of
38 driving, supervision, and passenger limitations. The period must
39 end within 10 days after the expected completion date of the
40 drivers education program in which the applicant is enrolled.

41 (2) A full provisional license, if the person has completed a drivers
42 education program that meets the requirements of the
43 Superintendent of Public Instruction, has held the license issued by
44 the other state for at least 12 months, and has not been convicted

1 during the preceding six months of a motor vehicle moving
2 violation, a seat belt infraction, or an offense committed in another
3 jurisdiction that would be a motor vehicle moving violation or seat
4 belt infraction if committed in this State.

- 5 (3) A limited provisional license, if the person has completed a drivers
6 education program that meets the requirements of the
7 Superintendent of Public Instruction but either did not hold the
8 license issued by the other state for at least 12 months or was
9 convicted during the preceding six months of a motor vehicle
10 moving violation, a seat belt infraction, or an offense committed in
11 another jurisdiction that would be a motor vehicle moving
12 violation or seat belt infraction if committed in this State.

13 (i) Application. -- An application for a permit or license authorized by this section
14 must be signed by both the applicant and another person. That person must be the
15 applicant's parent or guardian if the parent or guardian resides in this State and is
16 qualified to be a supervising driver. In all other circumstances, that person must be
17 an adult approved by the Division.

18 (j) Duration and Fee. -- A limited learner's permit expires on the eighteenth
19 birthday of the permit holder. A limited provisional license expires on the eighteenth
20 birthday of the license holder. A full provisional license expires on the date set
21 under G.S. 20-7(f). The fee for a limited learner's permit or a limited provisional
22 license is ten dollars (\$10.00). The fee for a full provisional license is the amount set
23 under G.S. 20-7(i).

24 (k) Supervising Driver. -- A supervising driver must be a parent or guardian of the
25 permit holder or license holder if a parent or guardian signed the application for the
26 permit or license. If a parent or guardian did not sign the application, the
27 supervising driver must be the adult who signed the application. A supervising driver
28 must be a licensed driver who has been licensed to drive for at least five years.

29 (l) Violations. -- It is unlawful for the holder of a limited learner's permit, a
30 temporary permit, or a limited provisional license to drive a motor vehicle in
31 violation of the restrictions that apply to the permit or license. Failure to comply
32 with a restriction concerning the time of driving or the presence of a supervising
33 driver in the vehicle constitutes operating a motor vehicle without a license. Failure
34 to comply with any other restriction, including seating and passenger limitations, is an
35 infraction punishable by a monetary penalty as provided in G.S. 20-176.

36 (m) Insurance Status. -- The holder of a limited learner's permit is not considered
37 a licensed driver for the purpose of determining the inexperienced operator premium
38 surcharge under automobile insurance policies.

39 (n) Driving Eligibility Certificate. -- A person who desires to obtain a permit or
40 license issued under this section and who does not have a high school diploma or its
41 equivalent must have a driving eligibility certificate. A driving eligibility certificate
42 must meet the following conditions:

- 1 (1) The person who is required to sign the certificate under
2 subdivision (4) of this subsection must show that he or she has
3 determined that one of the following requirements is met:
4 a. The person is currently enrolled in school and is making
5 progress toward obtaining a high school diploma or its
6 equivalent.
7 b. A substantial hardship would be placed on the person or the
8 person's family if the person does not receive a certificate.
9 c. The person cannot make progress toward obtaining a high
10 school diploma or its equivalent.
11 (2) It must be on a form approved by the Division.
12 (3) It must be dated within 30 days of the date the person applies for a
13 permit or license issuable under this section.
14 (4) It must be signed by the applicable person named below:
15 a. The principal, or the principal's designee, of the public
16 school in which the person is enrolled.
17 b. The administrator, or the administrator's designee, of the
18 nonpublic school in which the person is enrolled.
19 c. The person who provides the academic instruction in the
20 home school in which the person is enrolled.
21 d. The designee of the board of directors of the charter school
22 in which the person is enrolled.
23 e. The president, or the president's designee, of the community
24 college in which the person is enrolled.

25 Notwithstanding any other law, the decision concerning whether a driving
26 eligibility certificate was properly issued or improperly denied shall be appealed only
27 as provided under the rules adopted in accordance with G.S. 115C-12(27), G.S.
28 115D-5(a3), or G.S. 115C-566, whichever is applicable, and may not be appealed
29 under this Chapter."

30 Section 2. G.S. 20-13.2 is amended by adding a new subsection to read:

31 "(c1) The Division must revoke the permit or license of a person under the age of
32 18 if the proper school authority notifies the Division that the person no longer meets
33 the requirements for a driving eligibility certificate under G.S. 20-11(n).
34 Notwithstanding subsection (d) of this section, the length of revocation must last until
35 the person's eighteenth birthday or until the Division restores the permit or license
36 under this subsection. The Division must restore a person's permit or license before
37 the person's eighteenth birthday, if the person submits to the Division one of the
38 following:

39 (1) A high school diploma or its equivalent.

40 (2) A driving eligibility certificate as required under G.S. 20-11(n).

41 Notwithstanding any other law, the decision concerning whether a driving
42 eligibility certificate was properly issued or improperly denied shall be appealed only
43 as provided under the rules adopted in accordance with G.S. 115C-12(27), G.S.

1 115D-5(a3), or G.S. 115C-566, whichever is applicable, and may not be appealed
2 under this Chapter."

3 Section 3. G.S. 115C-12 is amended by adding a new subdivision to read:

4 "(27) Duty to Develop Rules for Issuance of Driving Eligibility
5 Certificates. -- The State Board of Education shall issue rules
6 defining what is equivalent to a high school diploma for the
7 purposes of G.S. 20-11. These rules shall apply to all educational
8 programs offered in the State by public schools, charter schools,
9 nonpublic schools, or community colleges.

10 The State Board also shall issue rules for the procedures a
11 person who is or was enrolled in a public school, in a charter
12 school, or in a nonpublic school accredited by the Board must
13 follow and the requirements that person must meet to obtain a
14 driving eligibility certificate. The person required under G.S. 20-
15 11(n) to sign the driving eligibility certificate must provide the
16 certificate if he or she determines that one of the following
17 requirements is met:

18 a. The person seeking the certificate is currently enrolled in
19 school and is making progress toward obtaining a high
20 school diploma or its equivalent.

21 b. A substantial hardship would be placed on the person
22 seeking the certificate or the person's family if the person
23 does not receive the certificate.

24 c. The person seeking the certificate cannot make progress
25 toward obtaining a high school diploma or its equivalent.

26 These rules shall provide for an appeal to an appropriate
27 education authority by a person who is denied a driving eligibility
28 certificate. The State Board also shall develop policies as to when
29 it is appropriate to notify the Division of Motor Vehicles that a
30 person who is or was enrolled in a public school, in a charter
31 school, or in a nonpublic school accredited by the Board no longer
32 meets the requirements for a driving eligibility certificate."

33 Section 4. G.S. 115D-5 is amended by adding the following new
34 subsection to read:

35 "(a3) The State Board of Community Colleges shall issue rules for the procedures
36 a person who is or was enrolled in a community college must follow and the
37 requirements that person must meet to obtain a driving eligibility certificate. The
38 person required under G.S. 20-11(n) to sign the driving eligibility certificate must
39 provide the certificate if he or she determines that one of the following requirements
40 is met:

41 (1) The person seeking the certificate is currently enrolled in school
42 and is making progress toward obtaining a high school diploma or
43 its equivalent.

1 (2) A substantial hardship would be placed on the person seeking the
2 certificate or the person's family if the person does not receive the
3 certificate.

4 (3) The person seeking the certificate cannot make progress toward
5 obtaining a high school diploma or its equivalent.

6 The rules shall provide for an appeal through the grievance procedures established
7 by the board of trustees of each community college by a person who is denied a
8 driving eligibility certificate. The State Board also shall develop policies as to when
9 it is appropriate to notify the Division of Motor Vehicles that a person who is or was
10 enrolled in a community college no longer meets the requirements for a driving
11 eligibility certificate. The State Board also shall adopt guidelines to assist the
12 presidents of community colleges in their designation of representatives to sign
13 driving eligibility certificates."

14 Section 5. Article 39 of Chapter 115C of the General Statutes is
15 amended by adding the following new Part:

16 "Part 4. Miscellaneous Requirements.

17 **"§ 115C-566. Driving eligibility certificates; requirements.**

18 The Secretary of Administration, upon consideration of the advice of the Division
19 of Nonpublic Education in the Office of the Governor and representatives of
20 nonpublic schools, shall issue rules for the procedures a person who is or was
21 enrolled in a home school or in a nonpublic school that is not accredited by the State
22 Board of Education must follow and the requirements that person must meet to
23 obtain a driving eligibility certificate. The person required under G.S. 20-11(n) to
24 sign the driving eligibility certificate must provide the certificate if he or she
25 determines that one of the following requirements is met:

26 (1) The person seeking the certificate is currently enrolled in school
27 and is making progress toward obtaining a high school diploma or
28 its equivalent.

29 (2) A substantial hardship would be placed on the person seeking the
30 certificate or the person's family if the person does not receive the
31 certificate.

32 (3) The person seeking the certificate cannot make progress toward
33 obtaining a high school diploma or its equivalent.

34 The rules shall provide for an appeal to an appropriate educational entity by a
35 person who is denied a driving eligibility certificate. The Division of Nonpublic
36 Education also shall develop policies as to when it is appropriate to notify the
37 Division of Motor Vehicles that a person who is or was enrolled in a home school or
38 in a nonpublic school that is not accredited by the State Board of Education no
39 longer meets the requirements for a driving eligibility certificate."

40 Section 6. The State Board of Education shall initiate and coordinate
41 meetings with the Division of Nonpublic Education in the Office of the Governor,
42 with representatives of nonpublic schools, and with the State Board of Community
43 Colleges in order to develop coordinated rules, policies, and guidelines needed to
44 implement this act.

1 Section 7. The State Board of Education shall study the effectiveness of
2 this act on the dropout rates and progress toward graduation of students under the
3 age of 18 and shall report the results of this study to the Joint Legislative Education
4 Oversight Committee and the Fiscal Research Division by November 15, 2002.

5 Section 8. This act constitutes a recent act of the General Assembly
6 within the meaning of G.S. 150B-21.1. Every agency to which this act applies that is
7 authorized to adopt rules to implement this act may adopt temporary rules to
8 implement this act. This section shall continue in effect until all rules necessary to
9 implement this act have become effective as either temporary or permanent rules.

10 Section 9. If any section or provision of this act is declared
11 unconstitutional or invalid by the courts, the unconstitutional or invalid section or
12 provision does not affect the validity of this act as a whole or any part of this act
13 other than the part declared to be unconstitutional or invalid.

14 Section 10. Sections 1 and 2 of this act become effective August 1, 1998.
15 The remainder of this act is effective when it becomes law. Sections 1 and 2 of this
16 act do not apply to any person who holds a valid North Carolina limited learner's
17 permit issued before December 1, 1997, who holds a valid North Carolina learner's
18 permit issued before December 1, 1997, or who is a provisional licensee and holds a
19 valid North Carolina drivers license issued before December 1, 1997.

EXPLANATION OF HOUSE BILL 769:
Dropout Prevention/Drivers License (5th Edition)

TO: Senate Finance Committee
FROM: Committee Counsel
DATE: June 25, 1997
SPONSOR: Representative Sherrill

House Bill 769 seeks to encourage students to stay in school by making school enrollment a prerequisite to obtaining and keeping a permit or license to drive. The requirements of the bill would become effective August 1, 1998. The bill coordinates with the graduated drivers' license program the General Assembly enacted earlier this session. This act, like the graduated drivers license act, does not apply to a person who holds a valid North Carolina limited learners' permit, a learner's permit, or a provisional drivers' license issued before December 1, 1997.

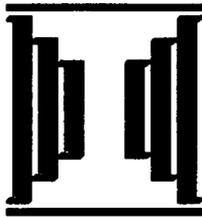
The bill provides that a person under the age of 18 must have a driving eligibility certificate or a high school diploma or its equivalent before the person may obtain a limited learner's permit, a limited provisional license, or a full provisional license. A driving eligibility certificate must be on a form approved by the Division of Motor Vehicles, must be dated within 30 days of the date when the person applies for a permit or license, and must be signed by an appropriate educational entity who indicates that he or she has determined that (i) the person is currently enrolled in school and is making progress towards graduation, (ii) a substantial hardship would be placed on the person or the person's family if the person does not receive the certificate, or (iii) the person cannot make progress towards graduation.

The bill directs the State Board of Education to adopt rules applicable to all educational entities that define what requirements a person must meet to be considered "making progress towards obtaining a high school diploma or its equivalent." Under the current administrative rules, a student athlete must pass at least five out of six courses each semester to be eligible to participate in interscholastic athletic competition. The rules concerning a driving eligibility certificate probably would be similar to these rules. The Board also must adopt rules for the procedures a person who was or is enrolled in a public school, charter school, or nonprofit school that is accredited by the Board must follow and the requirements that person must meet in order to obtain a certificate. These rules also must provide for an appeal to an appropriate educational entity because the issue of whether a certificate was properly issued or improperly

denied cannot be appealed to the Division of Motor Vehicles. The State Board of Community Colleges must adopt similar rules for students who were or are enrolled in a community college. The Department of Administration, upon consideration of the advice of the Division of Nonpublic Education in the Office of the Governor, must adopt similar rules for students who were or are enrolled in home schools or nonpublic schools that are not accredited by the State Board of Education. The State Board of Education must initiate and coordinate meetings with the Board of Community Colleges and the Division of Nonpublic Education so that the rules, procedures, and guidelines needed to implement the act are coordinated. In addition, Section 8 of the bill gives temporary rulemaking authority to the agencies that must adopt rules to implement this act.

The Division of Motor Vehicles must revoke the permit or license of a person under the age of 18 if the Division is notified by the appropriate school authority that the person has quit school. The revocation would last until the person's eighteenth birthday or until the Division restores the permit or license. (The general law is that revocation is for one year.) The person's license or permit must be restored if the person submits to the Division a high school diploma or its equivalent or a driving eligibility certificate. The restoration fee is set by statute at \$25.00.

Section 7 of the bill directs the State Board of Education to study the effectiveness of this act on dropout rates and graduation rates. The report must be completed and submitted to the Joint Legislative Education Oversight Committee and the Fiscal Research Division by November 15, 2002.



NORTH CAROLINA COMMUNITY COLLEGE SYSTEM

LLOYD V. HACKLEY
PRESIDENT

May 27, 1997

ALAMANCE COMMUNITY COLLEGE
ANSON COMMUNITY COLLEGE
ASHEVILLE-BUNCOMBE
TECHNICAL COMMUNITY COLLEGE
BEAUFORT COUNTY
COMMUNITY COLLEGE
BLADEN COMMUNITY COLLEGE
BLUE RIDGE COMMUNITY COLLEGE
BRUNSWICK COMMUNITY COLLEGE
CALDWELL COMMUNITY COLLEGE
& TECHNICAL INSTITUTE
CAPE FEAR COMMUNITY COLLEGE
CARTERET COMMUNITY COLLEGE
CATAWBA VALLEY
COMMUNITY COLLEGE
CENTRAL CAROLINA
COMMUNITY COLLEGE
CENTRAL PIEDMONT
COMMUNITY COLLEGE
CLEVELAND COMMUNITY COLLEGE
COASTAL CAROLINA
COMMUNITY COLLEGE
COLLEGE OF THE ALBEMARLE
CRAVEN COMMUNITY COLLEGE
DAVIDSON COUNTY
COMMUNITY COLLEGE
DURHAM TECHNICAL
COMMUNITY COLLEGE
ECOMBE COMMUNITY COLLEGE
FETTERVILLE TECHNICAL
COMMUNITY COLLEGE
FORSYTH TECHNICAL
COMMUNITY COLLEGE
GASTON COLLEGE
GUILFORD TECHNICAL
COMMUNITY COLLEGE
HALIFAX COMMUNITY COLLEGE
HAYWOOD COMMUNITY COLLEGE
ISOTHERMAL COMMUNITY COLLEGE
JAMES SPRUNT COMMUNITY COLLEGE
JOHNSTON COMMUNITY COLLEGE
LENOIR COMMUNITY COLLEGE
MARTIN COMMUNITY COLLEGE
MAYLAND COMMUNITY COLLEGE
MCDOWELL TECHNICAL
COMMUNITY COLLEGE
MITCHELL COMMUNITY COLLEGE
MONTGOMERY COMMUNITY COLLEGE
NASH COMMUNITY COLLEGE
PAMLICO COMMUNITY COLLEGE
PIEDMONT COMMUNITY COLLEGE
PITT COMMUNITY COLLEGE
RANDOLPH COMMUNITY COLLEGE
RICHMOND COMMUNITY COLLEGE
ROANOKE-CHOWAN
COMMUNITY COLLEGE
ROBESON COMMUNITY COLLEGE
ROCKINGHAM COMMUNITY COLLEGE
ROWAN-CABARRUS
COMMUNITY COLLEGE
SAMPSON COMMUNITY COLLEGE
SANDHILLS COMMUNITY COLLEGE
SOUTHEASTERN COMMUNITY COLLEGE
SOUTHWESTERN COMMUNITY COLLEGE
STANLY COMMUNITY COLLEGE
SURRY COMMUNITY COLLEGE
TRI-COUNTY COMMUNITY COLLEGE
VANCE-GRANVILLE
COMMUNITY COLLEGE
WAKE TECHNICAL
COMMUNITY COLLEGE
WAYNE COMMUNITY COLLEGE
WESTERN PIEDMONT
COMMUNITY COLLEGE
WESLEYAN COMMUNITY COLLEGE
WYOMING TECHNICAL
COMMUNITY COLLEGE
NC CENTER FOR APPLIED
TEXTILE TECHNOLOGY

The Honorable Wilma M. Sherrill
North Carolina House of Representatives
2215 Legislative Building
Raleigh, NC 27601-1096

Dear Representative Sherrill:

As a representative of the North Carolina Community College System, I commend you for introducing H.B. 769. The System office supports H.B. 769 with an amendment that would give the System office the opportunity to develop guidelines for reporting the appropriate information to the Department of Motor Vehicles. It is understood that these guidelines will provide the latitude for local campuses to address their own unique logistical problems, and that the primary responsibility for collecting the information will fall on the individual student.

Due to the new semester conversion for Community Colleges during 1997-98, it is requested that the completion of these guidelines be delayed until June 30, 1998.

If you have any questions, please call me or Jerry Owens in the System office (733-7051; ext. 711 or 314, respectively).

Sincerely,

Barry W. Russell
Senior Vice President



NC ASSOCIATION OF SCHOOL ADMINISTRATORS

Mal Brown, President
Clyde Erwin High School
Asheville, NC 28806

Janet H. Crotts
Executive Director

Julie C. Campbell
Membership Services Director

Barbara Walker
Office Manager

MEMORANDUM

To: Representative Wilma Sherrill

From: Jan Crotts, Executive Director, NCASA

Re: H769 Dropout Prevention/Drivers License

Thank you for introducing House Bill 769. I just want you to know that the NC Association of School Administrators supports the bill and will help to see that it passes into law.

Hopefully, this will be one more step toward seeing that our youth do not drop out of school.



"PUBLIC EDUCATION: NORTH CAROLINA'S BEST INVESTMENT"

OFFICERS

PRESIDENT

Dr. Christine Fitch

Wilson County

PRESIDENT-ELECT

Jack Watts

Alamance-Burlington

VICE PRESIDENT

Ann Whitmire

Polk County

TREASURER

Emily Manning

Duplin County

DIRECTORS

Kitty Barnes

Catawba

Susan M. Black

Moore

Allen Burrus

Dare

Hazel Colwell

Clinton City

Mary Jane Dillard

Jackson

Ward Edwards

Wilford

Robert B. Gaskins

Onslow

Haywood T. Gray

Caswell

Millie W. Hall

Kannapolis City

Charles Harrill

Richmond

Donald Johnson

Northampton

J. Tipton Nicholson

Iredell-Statesville

Leonard E. Peace

Granville

B. Ervin Price

Cleveland

Betty Randolph

Beaufort

Joan Wagoner

Lee

Jack Wilkie

Chatham

Audrey Williams

Hertford

PAST PRESIDENTS'

COUNCIL

Jean Dellinger, 1995-96

Nehemiah Smith, 1992-93

Mary Ellen Maxwell, 1990-91 cc: Dr. Ed Dunlap, Jr.

Hannie Battle, 1986-87

Oliver Smith, 1984-85

Robert Berlam, Ed.D.
Director of Governmental Relations

May 12, 1997

Representative Wilma Sherrill
Room 2215
Legislative Building
Raleigh, NC 27601-1096

Dear Representative Sherrill:

The North Carolina School Boards Association shares your desire to increase student motivation toward greater academic achievement. We are also concerned over the level of school dropouts. Any reasonable legislation that attempts to improve these two situations certainly will have the support of every local school board member.

Toward these objectives, NCSBA supports your legislation HB769 Dropout Prevention/Drivers License. We understand that it will require students to continue to make progress toward graduation in order to gain or maintain a drivers license. Hopefully, this provision will increase their awareness and motivation toward their academic achievement. It places a focus on education as a key to the future of our children.

Should the bill become law, we will work with the State Board of Education to develop meaningful and workable guidelines to define progress. Please call if we can be of assistance.

Sincerely,

Dr. Robert Berlam,
Director of Governmental Relations

RAB/ds



700 South Salisbury Street
PO Box 27347
Raleigh, NC 27611-7347

North Carolina Association of Educators, Inc.

(919) 832-3000
1-800-662-7924

May 14, 1997

President
Cecil S. Banks
President-Elect
Joyce H. Elliott
Executive Director
John I. Wilson
Associate Executive
Director
William T. Newkirk, Sr.

The Honorable Wilma Sherrill
North Carolina House of Representatives
2215 Legislative Building
Raleigh, North Carolina 27601

Dear Representative Sherrill:

The North Carolina Association of Educators commends your leadership on House Bill 769 - Dropout Prevention/Drivers License. We support the bill and its tying together a student's responsibility for academic progress and a drivers license.

Please let us know if we can assist you in the passage of this legislation.

Sincerely,

A handwritten signature in black ink that reads "Cecil S. Banks". The signature is written in a cursive style with a long, sweeping underline.

Cecil S. Banks
President

NORTH CAROLINA CITIZENS
FOR BUSINESS AND INDUSTRY

6 Hillsborough Street, P.O. Box 2508, Raleigh,
North Carolina 27602, Telephone 919/836-1400

Chairman of the Board, Thomas W. Bradshaw, Jr., Raleigh
First Vice Chairman, Stephen P. Zelnak, Jr., Raleigh
Second Vice Chairman, Earl N. Phillips, Jr., High Point
Treasurer, R. Horace Johnson, Raleigh
President & Secretary, Phillip J. Kirk, Jr., Raleigh

Executive Committee:

Barbara K. Allen
Raleigh
John V. Andrews
Monroe
William Cavanaugh III
Raleigh
Bert Collins
Durham
Malcolm E. Everett, III
Charlotte
Paul Fulton, Jr.
Chapel Hill
Seddon Goode, Jr.
Charlotte
Carolyn Grant
Raleigh
William H. Grigg
Charlotte
Meredythe J. Holmes
Durham
Estell C. Lee
Wilmington
Robert R. Mauldin
Rocky Mount
William E. McDonald
Forest
Walter McDowell
Winston-Salem
Henry E. Miller, Jr.
Wilmington
Gordon S. Myers
Asheville
Julianne S. Thrift
Winston-Salem
Calvin B. Wells
Fayetteville
Paul M. Wiles
Winston-Salem
Stephen K. Zaytoun
Cary

Past Chairmen:

L. M. Baker, Jr.
Winston-Salem
Edwin B. Borden
Goldsboro
Richard L. Daugherty
Raleigh
R. Stuart Dickson
Charlotte
Donald R. Hughes
Greensboro
John F. McNair, III
Winston-Salem
John O. McNairy
Kinston
Herwood H. Smith, Jr.
Raleigh
Smedes York
Raleigh
Charles E. Zeigler, Jr.
Gastonia

April 29, 1997

The Honorable Wilma Sherrill
Representative
Room 2215
Legislative Building
Raleigh, North Carolina 27601-1096

Dear Representative Sherrill:

North Carolina Citizens for Business and Industry is pleased to endorse your driver's license bill which, we believe, would go a long way in encouraging more of our young people to stay in school and to continue to make academic progress.

Our State's dropout rate is unacceptably high. Too many of our students do just enough work to get a diploma. However, many are unprepared for today's job market. Your legislation will help motivate students to do better so they can keep or get their driver's license.

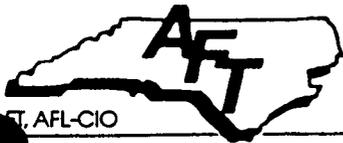
We applaud this legislation as another aspect of the efforts to improve public education, and we urge the General Assembly to enact it.

Sincerely,

Phil

Phillip J. Kirk, Jr.
President

PJKjr/lw



AFL-CIO

American Federation of Teachers / North Carolina

Sarah K. Stewart
President

Bill McInnis
Vice President

Larry Hauser
Finance Officer

Thomas Hefner
Secretary

May 7, 1997

The Honorable Wilma Sherrill
NC House of Representatives
Legislative Building, Room 2215

Dear Representative Sherrill:

On behalf of the members of the American Federation of Teachers in North Carolina, I would like to commend you for your sponsorship of House Bill 769. As an organization, we have long been concerned about what happens to students as a result of being able to have a driver's license at age 16. Many either seriously neglect their school work or drop out of school completely. Your bill makes that a far less desirable option. We fully support the graduated driver's license bill that was signed into law and believe that this is a good companion piece.

All of us recognize that there may be situations in which the general provisions of this bill could cause undue hardship; however, you have made allowance for those extreme cases. We also know that some students who are working very hard may not be able to show measurable gains toward graduation, and you have also allowed for those unusual cases.

We believe that this is a strong bill that will send the message that school is important and that we expect every student not only to attend but to have graduation as a goal as well. Thank you for your part in establishing that school attendance is serious business.

Sincerely,



Sarah Stewart



Professional
Educators of
North Carolina, Inc.

5029 Falls of Neuse Road
Suite 214
Raleigh, NC 27609
(919) 874-0520 tel.
(919) 874-0507 fax
penc@ntwrks.com

"Each Child Belongs to All of Us"

May 5, 1997

The Honorable Wilma M. Sherrill
North Carolina House of Representatives
Room 2215, Legislative Office Building
300 N. Salisbury Street
Raleigh, NC 27603-5925

Dear Representative Sherrill

I am writing to lend our organizational support to your bill HB 576. Our statewide association of over 5,000 educators supports your efforts to use the NC driver license as an incentive for students to successfully complete high school. We especially appreciate your willingness to recognize our concern that hardship cases be considered on an individual basis. We support your balanced legislation and appreciate your leadership on this important issue.

Sincerely,

A handwritten signature in cursive script, appearing to read "Amy Van Oostrum". The signature is written in black ink and is positioned above the printed name and title.

Amy Van Oostrum
Executive Director



North Carolina PTA

Branch of The National PTA
3501 Glenwood Avenue
Raleigh, North Carolina 27612-4934
(919) 787-0534

May 18, 1997

The Honorable Wilma M. Sherrill
State Legislative Building
Raleigh, NC 27601-1096

Dear Representative Sherrill:

I am pleased to inform you that the Executive Committee of the North Carolina PTA Board of Managers agreed to support House Bill 769 – Dropout Prevention/Drivers License at our meeting this afternoon in a unanimous vote. We felt the provisions of the bill would be helpful in encouraging youth to complete their high school education by removing their privilege to obtain and hold a drivers license if they drop out of school. In today's society, it is extremely important for our youth to be adequately educated, and this law would provide additional incentives to strive for that diploma. We believe this bill has the potential to grab the attention of those youth who may consider dropping out and serve as that extra incentive that will cause them to complete their education. We support many measures and programs that attempt to keep youth in school.

We realize there may be a need for exceptions to the provisions of this law from time to time in certain situations. The provisions to exempt youth under specified circumstances were seen as sufficient safeguards for those who might experience undue hardships as a result of the passage of the law.

Thank you for your efforts to encourage our youth to remain in school. We gladly support this attempt to further strengthen the commitment to education in North Carolina. Please let me know if there are additional ways we may assist you.

Sincerely,

Sandy Carmany
President

cc: Jim Polk, Vice President for Legislative Activity
Dr. Sam Haywood, NC PTA Board of Managers



STATE OF NORTH CAROLINA

OFFICE OF THE GOVERNOR

RALEIGH 27603-8001

April 21, 1997

JAMES B. HUNT JR.
GOVERNOR

The Honorable Wilma M. Sherrill
North Carolina House of Representatives
Room 2215
Legislative Building
Raleigh, North Carolina 27601-1096

Dear Wilma:

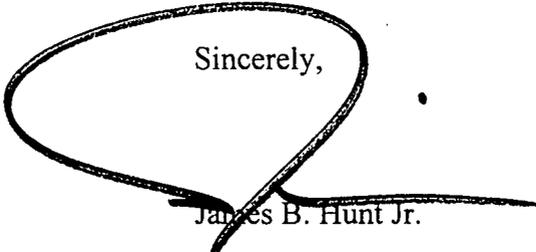
As you know, our young people are our most precious resource. It is important that we focus our efforts on giving our students the best education possible. I am glad we are working together to improve our schools, support our teachers and ensure all young North Carolinians have an opportunity to succeed.

Your proposal to tie driver licenses to graduation and educational progress, contained in HB 769, has great merit. We want our teen-agers to realize that growing older means more than gaining privileges. It means meeting responsibilities—working hard, studying and being good citizens.

To gain the full benefits of our educational system, we want as many young people as possible to stay in school, to learn and to get their diploma. Your bill would certainly help encourage them in this endeavor. I endorse your effort to enact HB 769 and will sign it if your effort is successful.

My warmest personal regards.

Sincerely,



James B. Hunt Jr.

JBH/fs





**NORTH CAROLINA
STATE BOARD OF EDUCATION**

Education Building
301 North Wilmington Street
Raleigh, North Carolina 27601-2825

May 8, 1997

The Honorable Wilma Sherrill
NC House of Representatives
2215 Legislative Building
Raleigh, NC 27601-1096

Dear Rep. Sherrill:

The State Board of Education discussed your bill, HB 769, Dropout Prevention/Drivers License at its regular meeting May 1, 1997. The Board is pleased that you have taken the lead in this initiative to encourage students to stay in school and make progress toward graduation as a requirement to obtain a drivers license.

Attached is a resolution that the Board adopted unanimously in support of HB 769. The Board will follow with interest this bill.

Thank you for all you do to support our public schools. Please let us know when we can be of assistance.

Sincerely,

A handwritten signature in cursive script that reads "Jay".

Jay M. Robinson
Chairman

Attachment

DROPOUT STATISTICS

National Statistics on Consequences (from "School Dropouts: New Information About An Old Problem," Wendy Schwartz, ERIC Clearinghouse on Urban Education, New York, NY, Digest No. 109, 1995)

- "In 1992 dropouts earned slightly under \$13,000 on average, about one-third less than high school graduates."
- Regarding lifetime wages, it is estimated that the "1993 dropout pool will earn \$212,000 less than high school graduates, and \$812,000 less than college graduates."
- In "the last 20 years, the earnings level for dropouts doubled while it nearly tripled for college graduates, a trend that is likely to intensify in the future."
- "Dropouts comprise nearly half of the heads of households on welfare, and a similar percentage of the prison population."

North Carolina Statistics on Consequences

- In 1995, 58.2% of the felons in North Carolina's state prisons reported not having completed high school. (N.C. Department of Corrections, Research Bulletin, Issue No. 38, March 27, 1996)
- In 1990 slightly over 56% of North Carolina's adult heads of household in AFDC programs had less than a high school diploma. (N.C. Division of Social Services, DHR, Initial State Evaluation for the Jobs Program, February, 1990)

STATE BOARD OF EDUCATION RESOLUTION ON DROPOUT
PREVENTION/DRIVERS LICENSE

WHEREAS, the Constitution of the State of North Carolina establishes free public schools to provide equal opportunities for all, and

WHEREAS, over 18,000 students in grades 7-12 dropped out of school in 1995-96 indicating our schools are losing too many students, and

WHEREAS, the State Board of Education believes that all children can learn and should be provided opportunities to achieve in school, and

WHEREAS, dropouts nationally earn approximately one-third less than high school graduates, and

WHEREAS, students should make progress toward graduation to gain the knowledge and skills necessary to be good citizens and employees, and

WHEREAS, requiring students to make progress toward graduation in order to obtain a drivers license will encourage students to stay in school;

NOW THEREFORE, be it resolved that the State Board of Education supports House Bill 769, "An Act to Provide that Certain Students Who Drop Out of School or Do Not Make Progress Toward Graduation Shall Not Be Eligible for Drivers Permits or Licenses."

Jay M. Robinson
Chairman, State Board of Education

May 1, 1997
Date

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 956*

Short Title: Venture Capital Investment Incentive.

(Public)

Sponsors: Senators Hoyle, Cooper, and Odom.

Referred to: Rules and Operations of the Senate.

April 17, 1997

- 1 A BILL TO BE ENTITLED
2 AN ACT TO STIMULATE A SUBSTANTIAL INCREASE IN VENTURE
3 CAPITAL INVESTMENTS IN NORTH CAROLINA BY ALLOWING AN
4 INSURANCE PREMIUMS TAX CREDIT FOR THESE INVESTMENTS.
5 The General Assembly of North Carolina enacts:
6 Section 1. G.S. 53A-35 through G.S. 53A-37 are designated Part 1 of
7 Article 3 of Chapter 53A of the General Statutes, entitled "General Provisions" and
8 the remainder of Article 3 of Chapter 53A of the General Statutes is designated Part
9 2, entitled "North Carolina Enterprise Corporations".
10 Section 2. Article 3 of Chapter 53A of the General Statutes, as amended
11 by this act, is further amended by adding a new Part to read:
12 "Part 3. Certified North Carolina Capital Companies.
13 "§ 53A-70. Requirements for certification of a certified North Carolina capital
14 company.
15 (a) Initial Certification. -- In order to be initially certified as a certified North
16 Carolina capital company, a company must satisfy the following requirements:
17 (1) It is a partnership, corporation, trust, or limited liability company,
18 whether for-profit or nonprofit, whose primary business activity is
19 the investment of cash in approved business ventures.
20 (2) Its cash, marketable securities, and other liquid assets equal at least
21 five hundred thousand dollars (\$500,000).
22 (3) Its officers and its board of directors, partners, trustees, or
23 managers are thoroughly acquainted with the requirements of this
24 Part.

1 (4) No insurance company or affiliate of an insurance company is a
2 managing general partner of the certified North Carolina capital
3 company or controls the direction of investments of the certified
4 North Carolina capital company. This subdivision does not
5 preclude an insurance company or any other party from exercising
6 its legal rights and remedies, which may include interim
7 management of a certified North Carolina capital company, in the
8 event that a certified North Carolina capital company is in default
9 of its statutory obligations or its contractual obligations to the
10 insurance company or other party.

11 **(b) Continuing Certification. -- To remain certified as a certified North Carolina**
12 **capital company, the company must satisfy the following requirements:**

13 (1) Within three years after the date it was initially certified, at least
14 thirty percent (30%) of the certified capital invested in the
15 company must be placed in approved investments.

16 (2) Within five years after the date it was initially certified, at least
17 fifty percent (50%) of the certified capital invested in the company
18 must be placed in approved investments.

19 (3) It shall not invest in a single approved business venture an amount
20 that is more than fifteen percent (15%) of the total certified capital
21 under the company's management at the time of the investment.

22 (4) No insurance company or affiliate of an insurance company is a
23 managing general partner of the certified North Carolina capital
24 company or controls the direction of investments of the certified
25 North Carolina capital company. This subdivision does not
26 preclude an insurance company or any other party from exercising
27 its legal rights and remedies, which may include interim
28 management of a certified North Carolina capital company, in the
29 event that a certified North Carolina capital company is in default
30 of its statutory obligations or its contractual obligations to the
31 insurance company or other party.

32 **(c) Permanent Certification. -- A certified North Carolina capital company that**
33 **has satisfied the requirements of G.S. 53A-70(b) and has invested all of its certified**
34 **capital in approved investments, as demonstrated by its most recent financial**
35 **statement and report filed in accordance with G.S. 53A-71, qualifies for permanent**
36 **certification and is no longer required to obtain continuing certification as required in**
37 **G.S. 53A-71. A certified North Carolina capital company that has qualified for**
38 **permanent certification must continue to submit annual financial statements and**
39 **reports under G.S. 53A-71 for three years after it qualifies for permanent**
40 **certification.**

41 **"§ 53A-71. Procedure for initial and continuing certification; reports.**

42 **(a) Initial Certification. -- In order to be initially certified as a certified North**
43 **Carolina capital company, a company must file an application with the Department**
44 **and pay the initial certification fee. The application shall include any information**

1 and supporting documents required by the Secretary of State to determine whether
2 the company qualifies for initial certification. Within 60 days after an application is
3 filed, the Department shall determine whether the applicant qualifies for initial
4 certification and shall either issue the certification or shall refuse the certification and
5 notify the applicant in detail of the grounds for the refusal, including suggestions for
6 the removal of those grounds.

7 The Department shall review and approve or reject applications in the order
8 submitted. If more than one application is received by the Department on the same
9 day, all applications received on that day shall be reviewed and approved
10 simultaneously, except in the case of incomplete applications or applications for
11 which additional information is requested by the Department and is not supplied by
12 the applicant within the allowable time limits established by the Department. If more
13 than one applicant is certified on the same day, the Department shall ensure that all
14 applicants certified on that day are notified of certification at the same time.

15 (b) Continuing Certification. -- A certified North Carolina capital company that
16 has not qualified for permanent certification must, in order to remain certified,
17 submit an annual application for continued certification and pay the annual review
18 fee. The request shall include any information and supporting documents required
19 by the Secretary of State to determine whether the company qualifies for continued
20 certification.

21 The Department shall conduct an annual review of each certified North Carolina
22 capital company that has not qualified for permanent certification to determine if the
23 company is in compliance with the requirements for initial and continuing
24 certification and to ensure that the company's investments are in compliance with
25 this Part. The review shall be based upon the company's financial statements and
26 other information submitted in accordance with this section.

27 (c) Application Forms; Fees. -- Applications for initial and continuing certification
28 under this section shall be in the form required by the Secretary of State. The
29 Secretary of State shall prepare blank forms for the applications. Each application
30 shall be signed by the owners, a manager, or an executive officer of the company.
31 There shall be annexed to the application the affirmation of the person making the
32 application in the following form: 'Under penalties prescribed by law, I certify and
33 affirm that to the best of my knowledge and belief this application is true and
34 complete.' A person who submits a false application is guilty of a Class 1
35 misdemeanor.

36 The Secretary of State shall charge an applicant a fee of one thousand dollars
37 (\$1,000) for initial certification as a certified North Carolina capital company and a
38 fee of one thousand dollars (\$1,000) for annual review for continuing certification as
39 a certified North Carolina capital company. Fees collected under this section shall be
40 applied to the cost of administering this Part.

41 (d) Periodic Reports. -- Each certified North Carolina capital company shall
42 provide the Department an annual audited financial statement and report that
43 includes an opinion of an independent certified public accountant. The audit shall
44 address the methods of operation and conduct of the business of the company to

1 determine whether the company has complied with this Part and whether the cash
2 invested in the company has been invested as required by this Part. The audit shall
3 also determine whether each business in which the company has invested is an
4 approved business venture as defined in this Article. In addition, each certified
5 North Carolina capital company shall provide the Department a midyear, unaudited
6 update of its annual financial statement and report. The reports and updates shall be
7 in the form prescribed by the Secretary of State and shall include any information
8 required by the Secretary of State about the company and about the approved
9 business ventures in which it has invested.

10 A certified North Carolina capital company that has not qualified for permanent
11 certification shall submit the annual financial statement and report and the midyear
12 update on the due dates specified by the Department. A certified North Carolina
13 capital company that has qualified for permanent certification is no longer required
14 to submit midyear updates but shall continue to submit the annual financial statement
15 and report on the due dates specified by the Department for three years after the
16 company qualifies for permanent certification. Thereafter, no additional financial
17 statements and reports are required under this subsection.

18 "§ 53A-72. Distributions; maximum interest rate.

19 (a) Distributions. -- A certified North Carolina capital company may make
20 qualified distributions at any time. A certified North Carolina capital company may,
21 without restriction, make distributions and payments to debt holders with respect to
22 debt owed them by the company, but no distributions or payments may be made to
23 an equity holder, or any of its affiliates, that is entitled to a credit under Article 8C of
24 Chapter 105 of the General Statutes until the certified North Carolina capital
25 company has qualified for permanent certification. A certified North Carolina capital
26 company may make other distributions only after it has qualified for permanent
27 certification.

28 (b) Maximum Interest Rate. -- A certified North Carolina capital company shall
29 not charge interest on a senior, secured loan at an annual rate that exceeds the prime
30 rate plus three percent (3%).

31 "§ 53A-73. Tax credits.

32 (a) Credit Allowed. -- A person who invests cash in a certified North Carolina
33 capital company is entitled to a tax credit as provided in Article 8C of Chapter 105 of
34 the General Statutes but, notwithstanding the provisions of Division V of Article 4 of
35 Chapter 105 of the General Statutes, is not allowed a tax credit under that Division
36 for the investment. In addition, notwithstanding the provisions of Division V of
37 Article 4 of Chapter 105 of the General Statutes, a certified North Carolina capital
38 company is not allowed a tax credit under that Division for its investments.

39 (b) Allocation of Credits. -- The Department shall allocate the total amount of
40 credit allowed pursuant to G.S. 105-228.10E among taxpayers as provided in this
41 section. A certified North Carolina capital company may apply for allocation of
42 credits on behalf of its investors no earlier than the first business day after it is
43 certified. The application shall be in the form required by the Secretary of State and
44 shall provide all of the following:

- 1 (1) The name of each investor.
- 2 (2) The amount each investor has committed to invest in the company.
- 3 (3) Proof that the investor has committed to invest the funds subject to
4 allocation of the applicable credits pursuant to this section.
- 5 (4) The maximum amount of credit the investment would entitle the
6 investor to under G.S. 105-228.10C for the current taxable year
7 and the following nine taxable years.
- 8 (5) Any other information required by the Secretary of State:

9 Upon receipt of a completed application, the Department shall determine the
10 amount of available credit not yet allocated for each taxable year specified in the
11 application. Within seven business days after receipt of the application, the
12 Department shall allocate to the North Carolina capital company, on behalf of the
13 investors named in the application, the total amount of credit applied for in the
14 application, but only to the extent of available credit not yet allocated for each
15 taxable year. The Department's allocations of credit under this section shall be in
16 writing.

17 The Department shall allocate available credit to applicants in the order the
18 applications are received. If more than one certified North Carolina capital company
19 submits a completed application on the same day, the Department shall make the
20 allocations to those applicants simultaneously. If the amount of credit applied for in
21 the simultaneous applications exceeds the amount of available credit not yet allocated
22 for a taxable year, the Department shall allocate the available credit for that taxable
23 year among the simultaneous applicants on a pro rata basis in proportion to the
24 amount of credit applied for by each.

25 **"§ 53A-74. Decertification of certified North Carolina capital company.**

26 (a) Grounds for Decertification. -- Any material violation of this Part shall be
27 grounds for decertification under this section.

28 (b) Procedure for Decertification. -- If the Department determines that a certified
29 North Carolina capital company is not in compliance with any requirement for
30 continuing certification, it shall, by written notice, inform the officers of the company
31 and the board of directors, manager, trustees, or general partners that the company
32 will be decertified in 120 days after the date the notice is mailed unless the company
33 corrects the deficiencies to bring itself in compliance with the requirements for
34 certification. At the end of the 120-day grace period, if the certified North Carolina
35 capital company is still not in compliance, the Department shall decertify the
36 company and send a notice of decertification to the company and to the Department
37 of Revenue and the Department of Insurance.

38 (c) Effect of Decertification. -- If a certified North Carolina capital company is
39 decertified, no further tax credits for an investment in the company are allowed
40 pursuant to G.S. 105-228.10D.

41 **"§ 53A-75. Rules; report.**

42 The Secretary of State may adopt rules to implement this Part. The Secretary of
43 State shall report to the Legislative Research Commission by October 1 of each
44 odd-numbered year and by February 1 of each even-numbered year the number of

1 certified North Carolina capital companies certified under this Part, the date each
2 company was created, the amount and percentage of certified capital invested by each
3 company, the amount of tax credits allocated to each company, and any other
4 information requested by the Legislative Research Commission."

5 Section 3. G.S. 53A-37 reads as rewritten:

6 "§ 53A-37. Definitions.

7 The following definitions apply in this Article:

8 (1) Affiliate of a certified North Carolina capital company or
9 insurance company. -- Any of the following:

10 a. A person who directly or indirectly beneficially owns
11 (whether through rights, options, convertible interests, or
12 otherwise), controls, or holds power to vote ten percent
13 (10%) or more of the outstanding voting securities or other
14 ownership interests of the company.

15 b. A person ten percent (10%) or more of whose outstanding
16 voting securities or other ownership interests are, directly or
17 indirectly, beneficially owned (whether through rights,
18 options, convertible interests, or otherwise), controlled or
19 held with power to vote by the company.

20 c. A person who directly or indirectly controls, is controlled
21 by, or is under common control with the company.

22 d. A partnership in which the company is a general partner.

23 e. A person who is an officer, a director, or an agent of the
24 company, or is an immediate family member of an officer, a
25 director, or an agent of the company.

26 (2) Approved business venture. -- A business that satisfies all of the
27 following conditions as of the time of a certified North Carolina
28 capital company's first investment in the business:

29 a. It is headquartered in this State, it operates primarily in this
30 State or does substantially all of its production in this State,
31 and it employs a majority of its employees in this State.

32 b. It has no more than 300 employees and, during its most
33 recent fiscal year, it had gross revenues of no more than
34 seven million dollars (\$7,000,000) on a consolidated basis as
35 determined in accordance with generally accepted
36 accounting principles.

37 c. It is not a subsidiary of another corporation.

38 d. It satisfies the conditions established in G.S.
39 105-163.013(b)(3) through (6).

40 (3) Approved investment. -- The investment of cash by a certified
41 North Carolina capital company in such a manner as to acquire
42 capital in a business that, at the time of the first investment in the
43 business by a certified North Carolina capital company, was an
44 approved business venture. The capital acquired may be any debt,

- 1 equity, or hybrid security, whether secured or unsecured, of any
 2 nature, including a debt instrument or security that has the
 3 characteristics of debt but provides for conversion into equity or
 4 equity participation instruments such as options or warrants.
- 5 (4) Business. -- A corporation, a partnership, an association, a limited
 6 liability company, or a sole proprietorship operated for profit.
- 7 (5) Certified capital. -- The cash invested in a certified North Carolina
 8 capital company, either in the form of equity or debt capital,
 9 during the 365-day period after the company has been initially
 10 certified as provided in Part 3 of this Article. If the certified
 11 capital is in the form of debt capital, the debt instrument issued by
 12 the certified North Carolina capital company, at par value or a
 13 premium, must have an original maturity date of at least five years
 14 after the date of issuance and a repayment schedule that is no
 15 faster than a level principal amortization.
- 16 (6) Certified North Carolina capital company. -- A partnership,
 17 corporation, trust, or limited liability company whose primary
 18 business activity is the investment of cash in approved business
 19 ventures and that is certified by the Secretary of State as provided
 20 in Part 3 of this Article.
- 21 (7) Department. -- The Department of the Secretary of State.
- 22 (2) (8) Equity security. -- Common stock, preferred stock, an interest in a
 23 partnership, subordinated debt, or a warrant that is convertible
 24 into, or entitles the holder to receive upon its exercise, common
 25 stock, preferred stock, or an interest in a partnership.
- 26 (9) Insurance company. -- Defined in G.S. 58-1-5.
- 27 (3) (10) Mezzanine finance. -- An investment in the equity securities or
 28 subordinated debt of a Qualified North Carolina Business.
- 29 (11) Person. -- An individual, a corporation, a partnership, an
 30 association, a trust, a limited liability company, or another legal
 31 entity.
- 32 (12) Qualified distribution. -- A distribution or payment to equity
 33 owners of a certified North Carolina capital company or to their
 34 shareholders, officers, directors, partners, members, managers,
 35 employees, or affiliates, in connection with any of the following:
 36 a. Reasonable costs and expenses of forming, syndicating,
 37 managing, and operating the company, including
 38 management fees.
 39 b. An increase in State or federal taxes, penalties, or interest of
 40 the company's equity owners to the extent the increase
 41 relates to the ownership, management, or operation of the
 42 company.
- 43 (4) (13) Qualified North Carolina Business. -- A business whose
 44 headquarters and principal business operations are located in

1 North Carolina and which, together with its affiliates on a
 2 consolidated basis, had gross income during the immediately
 3 preceding fiscal year, determined in accordance with generally
 4 accepted accounting principles without taking into account
 5 extraordinary items, of less than forty million dollars (\$40,000,000).

6 (5) (14) Rural areas. -- Any county in North Carolina which does not
 7 include within its boundaries a city, as defined by G.S. 160A-1(2),
 8 with a population greater than one percent (1%) of the population
 9 of North Carolina.

10 (6) (15) Security. -- A security as defined in G.S. 78A-2(11).

11 (7) (16) Subordinated debt. -- Indebtedness that is or will be subordinated
 12 to other indebtedness of the issuer. Subordinated debt may be
 13 convertible into common stock, preferred stock, or an interest in a
 14 partnership.

15 (8) (17) ~~Traditional Financial Institutions.~~ financial institutions. --
 16 Corporations or associations chartered under ~~Chapters~~ Chapter 53
 17 or 54B of the General Statutes."

18 Section 4. Chapter 105 of the General Statutes is amended by adding a
 19 new Article to read:

20 "ARTICLE 8C.

21 "Premiums Tax Credit for Investments in
 22 North Carolina Small Businesses.

23 "§ 105-228.10A. Purpose.

24 The purpose of this Article is to stimulate a substantial increase in venture capital
 25 investments in North Carolina by providing an incentive for insurance companies to
 26 invest in certified North Carolina capital companies.

27 "§ 105-228.10B. Definitions.

28 The following definitions apply in this Article:

29 (1) Certified capital. -- Defined in G.S. 53A-37.

30 (2) Certified North Carolina capital company. -- A certified North
 31 Carolina capital company created under Article 3 of Chapter 53A
 32 of the General Statutes.

33 "§ 105-228.10C. Premiums tax credit for investments.

34 (a) Credit. -- A person who invests certified capital in a certified North Carolina
 35 capital company is allowed against the gross premiums tax imposed by G.S. 105-228.5
 36 and G.S. 105-228.8 a credit equal to the amount of certified capital invested by the
 37 taxpayer during the taxable year, subject to the limitations provided in this Article.
 38 To claim the credit allowed by this section, the taxpayer must provide the Secretary a
 39 copy of the certified North Carolina capital company's application for allocation of
 40 credit under G.S. 53A-73, a copy of the Secretary of State's written allocation of
 41 credit under G.S. 53A-73, and any other supporting documentation the Secretary
 42 requires.

43 (b) Limitations. -- The taxpayer may not take the entire credit for the taxable year
 44 the investment is made, but may take up to ten percent (10%) of the aggregate credit

1 allowed under this section for that taxable year and for each succeeding taxable year
2 until the entire credit has been used. The amount of credit taken may not exceed the
3 taxpayer's gross premiums tax liability for a taxable year reduced by the sum of all
4 credits allowable except payments of tax by or on behalf of the taxpayer. Subject to
5 the ten percent (10%) limitation, any unused portion of the credit may be carried
6 forward to the five succeeding taxable years.

7 (c) Transfer of Credit. -- A taxpayer may transfer a credit allowed under this
8 section to another taxpayer. The taxpayer must apply for the approval of the
9 Commissioner of Insurance before transferring the credit. The application shall be in
10 the form prescribed by the Commissioner. The application shall identify the
11 proposed transferor and transferee, state the transferor's tax credit balance before and
12 after the proposed transfer, state the amount of the credit to be transferred and the
13 proposed date of the transfer, and include any other information the Commissioner
14 requires regarding the proposed transfer.

15 The Commissioner of Insurance shall approve the proposed transfer if the
16 application is accurate and complete and the Commissioner determines that the
17 proposed transfer will not have an adverse effect on either taxpayer or their
18 policyholders or shareholders. Within 60 days after receiving an application, the
19 Commissioner shall notify the applicant that the proposed transfer has been approved
20 or disapproved.

21 The Commissioner of Insurance shall maintain records and monitor all transferred
22 credits to ensure that transfers do not result in multiple parties claiming the same
23 credit. The Commissioner shall provide the Secretary complete records of all
24 transferred credits.

25 **"§ 105-228.10D. Effect of decertification.**

26 If a certified North Carolina capital company is decertified under G.S. 53A-74, no
27 tax credit or carryforward of a tax credit for an investment in the company is allowed
28 under this Article for a taxpayer's taxable year beginning in the calendar year the
29 decertification occurred or for subsequent taxable years. Decertification of a certified
30 North Carolina capital company does not affect a tax credit allowed under this
31 Article for a taxpayer's taxable year that began before the calendar year in which the
32 decertification occurred.

33 **"§ 105-228.10E. Annual ceiling; cap.**

34 (a) Annual Ceiling. -- The total amount of tax credits that may be taken by all
35 taxpayers under this Article in a taxable year may not exceed fifteen million dollars
36 (\$15,000,000). This amount shall be allocated among taxpayers for each taxable year
37 as provided in G.S. 53A-73.

38 (b) Cap. -- The amount of credit allowed a taxpayer under this Article for a
39 taxable year may not exceed ten percent (10%) of the annual ceiling for that year."

40 Section 5. G.S. 105-228.8(e) reads as rewritten:

41 "(e) This section shall not apply to special purpose obligations or assessments
42 based on premiums imposed in connection with particular kinds of insurance, to the
43 special purpose regulatory charge imposed under G.S. 58-6-25, or to dedicated special
44 purpose taxes based on premiums. For purposes of this section, seventy-five percent

1 (75%) of the one and thirty-three hundredths percent (1.33%) tax on amounts
 2 collected on contracts of insurance applicable to fire and lightning coverage shall not
 3 be a special purpose obligation or assessment or a dedicated special purpose tax
 4 within the meaning of this subsection. The credit allowed by G.S. 105-228.10C shall
 5 not be considered in determining the amount of premium taxes imposed by this
 6 State."

7 Section 6. G.S. 58-6-25(a) reads as rewritten:

8 "(a) Charge Levied. -- There is levied on each insurance company an annual
 9 charge for the purposes stated in subsection (d) of this section. As used in this
 10 section, the term 'insurance company' means a company that pays the gross
 11 premiums tax levied in G.S. 105-228.5 and G.S. 105-228.8, except that the term does
 12 not include a hospital, medical, or dental service corporation regulated under Articles
 13 65 and 66 of this Chapter. The term 'insurance company' does not include a
 14 company regulated under Article 67 of this Chapter. The charge levied in this section
 15 is in addition to all other fees and taxes. The charge shall be at a percentage rate of
 16 the company's premium tax liability for the taxable year. In determining an insurance
 17 company's premium tax liability for a taxable year, the following shall be disregarded:

- 18 (1) The additional taxes imposed by G.S. ~~105-228.8~~ and the 105-228.8.
 19 (2) The additional local fire and lightning tax imposed by G.S.
 20 ~~105-228.5(d)(4)~~ shall be disregarded. 105-228.5(d)(4).
 21 (3) The credit allowed by G.S. 105-228.10C."

22 Section 7. The title of Chapter 53A of the General Statutes reads as
 23 rewritten:

24 "Chapter 53A.

25 "~~Business Development Corporations and North~~
 26 ~~Carolina Capital Resource Corporations:~~ and Access to Capital."

27 Section 8. The title of Article 3 of Chapter 53A of the General Statutes
 28 reads as rewritten:

29 "ARTICLE 3.

30 "~~North Carolina Enterprise Corporations:~~ Corporations and
 31 Certified North Carolina Capital Companies."

32 Section 9. G.S. 53A-35 and G.S. 53A-47 are repealed.

33 Section 10. G.S. 53A-36 reads as rewritten:

34 "§ 53A-36. Legislative findings and purpose.

35 (a) The General Assembly finds ~~and declares~~ that there exists in ~~the State of~~
 36 North Carolina a serious shortage of mezzanine finance capital and credit available
 37 for investment in rural ~~areas~~ areas and other areas in the State. This shortage of
 38 mezzanine finance capital and credit is severe throughout ~~the rural areas of~~ the State,
 39 has persisted for a number of years, and constitutes a grave threat to the welfare and
 40 prosperity of all residents of the State. The lack of access to capital prevents North
 41 Carolina businesses from creating jobs that would otherwise enhance the economy of
 42 the State and provide livelihoods for North Carolina citizens.

43 (b) The General Assembly finds ~~and declares further~~ that private enterprise and
 44 existing federal and State governmental programs have not adequately alleviated the

1 severe shortage of mezzanine finance capital and credit available for investments in
2 ~~rural areas in the~~ this State.

3 (c) The General Assembly finds ~~and declares~~ that it is a matter of grave public
4 necessity that North Carolina Enterprise Corporations be authorized to be created
5 and ~~to be~~ empowered to alleviate these severe shortages of mezzanine finance capital
6 and credit for investment in rural areas of the State. North Carolina Enterprise
7 Corporations shall help eliminate barriers to rural economic development by
8 providing mezzanine finance capital and credit, and other types of financing as
9 appropriate, to businesses in rural areas that have been unable to obtain sufficient
10 financing through traditional financial institutions.

11 (d) The General Assembly finds that it is a matter of grave public necessity that
12 certified North Carolina capital companies be authorized to be created as venture
13 capital companies whose primary business activity is the investment of cash in small
14 North Carolina business ventures that are in need of capital for survival, expansion,
15 new product development, or similar purposes."

16 Section 11. G.S. 53A-38(a) reads as rewritten:

17 "(a) One or more persons, a majority of whom are residents of this State, may, by
18 filing a certificate of incorporation as provided in subsection (b), incorporate a North
19 Carolina Enterprise Corporation under the provisions of this ~~Article~~ Part."

20 Section 12. G.S. 53A-41 reads as rewritten:

21 "**§ 53A-41. Governing law.**

22 Except as otherwise provided in this ~~Article~~ Part, a North Carolina Enterprise
23 Corporation shall be governed by Chapter 55 of the General Statutes."

24 Section 13. G.S. 53A-42 reads as rewritten:

25 "**§ 53A-42. Powers.**

26 A North Carolina Enterprise Corporation created under this ~~Article~~ Part shall
27 have all the powers conferred on business corporations by Chapter 55 of the General
28 Statutes."

29 Section 14. Sections 4, 5, and 6 of this act and G.S. 53A-73, as enacted
30 by Section 2 of this act, become effective for taxable years beginning on or after
31 January 1, 1997, and apply to investments made on or after that date. The remainder
32 of this act is effective when this act becomes law. An application for initial
33 certification as a North Carolina capital company pursuant to G.S. 53A-71 may not
34 be submitted until the first Monday that falls at least 45 days after this act becomes
35 law. G.S. 53A-73 and Article 8C of Chapter 105 of the General Statutes, as enacted
36 by this act, are repealed effective for investments made on or after January 1, 2000.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

D

SENATE BILL 956*
Proposed Finance Committee Substitute S956-CSLC-7/22
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Venture Capital Investment Incentive. (Public)

Sponsors: Senators

Referred to:

April 17, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO STIMULATE A SUBSTANTIAL INCREASE IN VENTURE CAPITAL
3 INVESTMENTS IN NORTH CAROLINA BY ALLOWING AN INSURANCE PREMIUMS
4 TAX CREDIT FOR THESE INVESTMENTS.
5 The General Assembly of North Carolina enacts:
6 Section 1. This act shall be known as the Venture
7 Capital Investment Incentive Act of 1997.
8 Section 2. G.S. 53A-35 through G.S. 53A-37 are
9 designated Part 1 of Article 3 of Chapter 53A of the General
10 Statutes, entitled "General Provisions" and the remainder of
11 Article 3 of Chapter 53A of the General Statutes is designated
12 Part 2, entitled "North Carolina Enterprise Corporations".
13 Section 3. Article 3 of Chapter 53A of the General
14 Statutes, as amended by this act, is further amended by adding a
15 new Part to read:
16 "Part 3. Certified North Carolina Capital Companies.
17 "§ 53A-70. Requirements for certification of a certified North
18 Carolina capital company.
19 (a) Initial Certification. -- In order to be initially
20 certified as a certified North Carolina capital company, a
21 company must satisfy the following requirements:

- 1 (1) It is a partnership, corporation, trust, or limited
2 liability company, whether for-profit or nonprofit,
3 whose primary business activity is the investment
4 of cash in approved business ventures.
- 5 (2) Its cash, marketable securities, and other liquid
6 assets equal at least five hundred thousand dollars
7 (\$500,000).
- 8 (3) Its officers and its board of directors, partners,
9 trustees, or managers have certified that they have
10 a copy of the Venture Capital Investment Incentive
11 Act of 1997 and any applicable rules.
- 12 (4) No insurance company or affiliate of an insurance
13 company is a managing general partner of the
14 certified North Carolina capital company or
15 controls the direction of investments of the
16 certified North Carolina capital company. This
17 subdivision does not preclude an insurance company
18 or any other party from exercising its legal rights
19 and remedies, which may include interim management
20 of a certified North Carolina capital company, in
21 the event that a certified North Carolina capital
22 company is in default of its statutory obligations
23 or its contractual obligations to the insurance
24 company or other party.
- 25 (5) It agrees that, because the tax credits provided by
26 law are considered an investment by the State of
27 North Carolina, it will pay to the State an
28 investment return calculated as provided in G.S.
29 53A-75. In addition, it agrees that its contracts
30 with investors will provide for the company's
31 payment of this investment return to the State.
- 32 (b) Continuing Certification. -- To remain certified as a
33 certified North Carolina capital company, the company must
34 satisfy the following requirements:
- 35 (1) Within two years after the date it was initially
36 certified, at least twenty-five percent (25%) of
37 the certified capital invested in the company must
38 be placed in approved investments.
- 39 (2) Within three years after the date it was initially
40 certified, at least forty percent (40%) of the
41 certified capital invested in the company must be
42 placed in approved investments.
- 43 (3) Within four years after the date it was initially
44 certified, at least fifty percent (50%) of the

- 1 certified capital invested in the company must be
2 placed in approved investments.
- 3 (4) It shall not invest in a single approved business
4 venture an amount that is more than fifteen percent
5 (15%) of the total certified capital under the
6 company's management at the time of the investment.
- 7 (5) No insurance company or affiliate of an insurance
8 company is a managing general partner of the
9 certified North Carolina capital company or
10 controls the direction of investments of the
11 certified North Carolina capital company. This
12 subdivision does not preclude an insurance company
13 or any other party from exercising its legal rights
14 and remedies, which may include interim management
15 of a certified North Carolina capital company, in
16 the event that a certified North Carolina capital
17 company is in default of its statutory obligations
18 or its contractual obligations to the insurance
19 company or other party.
- 20 (c) Permanent Certification. -- A certified North Carolina
21 capital company that has satisfied the requirements of G.S.
22 53A-70(b) and has invested all of its certified capital in
23 approved investments, as demonstrated by its most recent
24 financial statement and report filed in accordance with G.S.
25 53A-71, qualifies for permanent certification and is no longer
26 required to obtain continuing certification as required in G.S.
27 53A-71. A certified North Carolina capital company that has
28 qualified for permanent certification must continue to submit
29 annual financial statements and reports under G.S. 53A-71 for
30 three years after it qualifies for permanent certification.
31 "§ 53A-71. Procedure for initial and continuing certification;
32 reports.
- 33 (a) Initial Certification. -- In order to be initially
34 certified as a certified North Carolina capital company, a
35 company must file an application with the Department and pay the
36 initial certification fee. The application shall include any
37 information and supporting documents required by the Secretary of
38 State to determine whether the company qualifies for initial
39 certification. Within 60 days after an application is filed, the
40 Department shall determine whether the applicant qualifies for
41 initial certification and shall either issue the certification or
42 shall refuse the certification and notify the applicant in detail
43 of the grounds for the refusal, including suggestions for the
44 removal of those grounds.

1 The Department shall review and approve or reject applications
2 in the order submitted. If more than one application is received
3 by the Department on the same day, all applications received on
4 that day shall be reviewed and approved simultaneously, except in
5 the case of incomplete applications or applications for which
6 additional information is requested by the Department and is not
7 supplied by the applicant within 15 days after the request by the
8 Department. If more than one applicant is certified on the same
9 day, the Department shall ensure that all applicants certified on
10 that day are notified of certification at the same time.

11 (b) Continuing Certification. -- A certified North Carolina
12 capital company that has not qualified for permanent
13 certification must, in order to remain certified, submit an
14 annual application for continued certification and pay the annual
15 review fee by July 1 of each year. The request shall include any
16 information and supporting documents required by the Secretary of
17 State to determine whether the company qualifies for continued
18 certification. The request shall also include copies of the
19 certified North Carolina capital company's applications for
20 allocation of credit under G.S. 105-228.10E and of the
21 Secretary's written allocation of credit to the company under
22 G.S. 105-228.10E.

23 The Department shall conduct an annual review of each certified
24 North Carolina capital company that has not qualified for
25 permanent certification to determine if the company is in
26 compliance with the requirements for initial and continuing
27 certification and to ensure that the company's investments are in
28 compliance with this Part. The review shall be based upon the
29 company's financial statements and other information submitted in
30 accordance with this section.

31 (c) Application Forms; Fees. -- Applications for initial and
32 continuing certification under this section shall be in the form
33 required by the Secretary of State. The Secretary of State shall
34 prepare blank forms for the applications. Each application shall
35 be signed by the owners, a manager, or an executive officer of
36 the company. There shall be annexed to the application the
37 affirmation of the person making the application in the following
38 form: 'Under penalties prescribed by law, I certify and affirm
39 that to the best of my knowledge and belief this application is
40 true and complete.' A person who submits a false application is
41 guilty of a Class 1 misdemeanor.

42 The Secretary of State shall charge an applicant a fee of five
43 thousand dollars (\$5,000) for initial certification as a
44 certified North Carolina capital company, a fee of five thousand

1 dollars (\$5,000) for annual review for continuing certification
2 as a certified North Carolina capital company, and a fee of five
3 thousand dollars (\$5,000) for issuing a certificate of permanent
4 certification. The Secretary of State shall credit forty percent
5 (40%) of each fee to the Department of Revenue and shall retain
6 the balance. Fees collected under this section shall be applied
7 to the cost of administering this Part and Article 8C of Chapter
8 105 of the General Statutes.

9 (d) Periodic Reports Before Permanent Certification. -- Each
10 certified North Carolina capital company shall provide the
11 Department the following reports and updates on the due dates
12 specified by the Department. The reports and updates shall be in
13 the form prescribed by the Secretary of State and shall include
14 any information required by the Secretary of State about the
15 company and about the approved business ventures in which it has
16 invested.

17 (1) Annual Audit. -- An annual audited financial
18 statement and report that includes an opinion of an
19 independent certified public accountant approved by
20 the Secretary of State. The audit shall address
21 the methods of operation and conduct of the
22 business of the company to determine whether the
23 company has complied with this Part and whether the
24 cash invested in the company has been invested as
25 required by this Part. The audit shall also
26 determine whether each business in which the
27 company has invested is an approved business
28 venture as defined in this Article.

29 (2) Annual Audit of Cumulative Distributions. -- An
30 audited report of the company's cumulative,
31 nonqualified distributions that includes an opinion
32 of an independent certified public accountant
33 approved by the Secretary of State. The audit
34 shall detail the company's cumulative
35 distributions, other than qualified distributions,
36 to equity holders and debt holders, as compared to
37 the amount of the company's original certified
38 capital and any additional capital contributions to
39 the company. The audit shall determine what annual
40 internal rate of return these cumulative
41 nonqualified distributions, when combined with all
42 tax credits allocated to debt holders and equity
43 holders pursuant to G.S. 105-228.10E, have resulted
44 in, when computed on the amount of the company's

1 original certified capital and any additional
2 capital contributions to the company. The audit
3 shall then compute an amount equal to twenty-five
4 percent (25%) of the amount of these cumulative
5 nonqualified distributions in excess of the amount,
6 combined with the allocated tax credits, required
7 to produce an annual internal rate of return of
8 fifteen percent (15%) and compare that amount with
9 the total amount of investment return the company
10 has paid to the State pursuant to G.S. 35A-75.

11 (3) Midyear Update. -- A midyear, unaudited update of
12 the certified North Carolina capital company's
13 annual financial statement and report described in
14 subdivision (1) of this subsection.

15 (e) Periodic Reports After Permanent certification. -- A
16 certified North Carolina capital company that has qualified for
17 permanent certification is no longer required to submit midyear
18 updates but shall continue to submit, for informational purposes
19 only, the annual financial statement and report described in
20 subdivision (d)(1) of this section on the due dates specified by
21 the Department for three years after the company qualifies for
22 permanent certification. In addition, the company shall continue
23 to submit the annual cumulative distributions audit described in
24 subdivision (d)(2) of this section until it has made final
25 distributions to its investors and will not be making any future
26 distributions other than qualified distributions. Thereafter, no
27 additional financial statements and reports are required under
28 this subsection.

29 "§ 53A-72. Distributions; maximum interest rate.

30 (a) Distributions. -- A certified North Carolina capital
31 company may make qualified distributions at any time. A
32 certified North Carolina capital company may, without
33 restriction, make distributions and payments to debt holders with
34 respect to debt owed them by the company, but no distributions or
35 payments may be made to an equity holder, or any of its
36 affiliates, that is entitled to a credit under Article 8C of
37 Chapter 105 of the General Statutes until the certified North
38 Carolina capital company has qualified for permanent
39 certification. A certified North Carolina capital company may
40 make other distributions only after it has qualified for
41 permanent certification.

42 (b) Maximum Interest Rate. -- A certified North Carolina
43 capital company shall not charge interest on a senior, secured

1 loan at an annual rate that exceeds the prime rate plus three
2 percent (3%).

3 "§ 53A-73. Tax credits.

4 A person who invests cash in a certified North Carolina capital
5 company is entitled to a tax credit as provided in Article 8C of
6 Chapter 105 of the General Statutes but, notwithstanding the
7 provisions of Division V of Article 4 of Chapter 105 of the
8 General Statutes, is not allowed a tax credit under that Division
9 for the investment. In addition, notwithstanding the provisions
10 of Division V of Article 4 of Chapter 105 of the General
11 Statutes, a certified North Carolina capital company is not
12 allowed a tax credit under that Division for its investments.

13 "§ 53A-74. Decertification of certified North Carolina capital
14 company.

15 (a) Grounds for Decertification. -- Any material violation of
16 this Part not cured pursuant to subsection (b) of this section
17 shall be grounds for decertification under this section of a
18 certified North Carolina capital company that has not qualified
19 for permanent certification.

20 (b) Procedure for Decertification. -- If the Department
21 determines that a certified North Carolina capital company is not
22 in compliance with any requirement for continuing certification,
23 it shall, by written notice, inform the officers of the company
24 and the board of directors, manager, trustees, or general
25 partners that the company will be decertified in 120 days after
26 the date the notice is mailed unless the company corrects the
27 deficiencies to bring itself in compliance with the requirements
28 for certification. If the deficiencies are corrected so as to
29 bring the certified North Carolina capital company into
30 compliance within the 120-day grace period, then the violation of
31 this Part shall be considered not to have occurred. At the end
32 of the 120-day grace period, if the certified North Carolina
33 capital company is still not in compliance, the Department shall
34 decertify the company and send a notice of decertification to the
35 company and to the Department of Revenue and the Department of
36 Insurance.

37 (c) Effect of Decertification. -- If a certified North
38 Carolina capital company is decertified, no further tax credits
39 or carryforwards of credits for an investment in the company are
40 allowed as provided in G.S. 105-228.10D. In addition, if a
41 certified North Carolina capital company is decertified before it
42 has met all the requirements of G.S. 53A-70(b)(1) through (3),
43 all tax credits for investment in the company are forfeited as
44 provided in G.S. 105-228.10D.

1 "§ 53A-75. Investment return to State.

2 (a) The tax credits provided in Article 8C of Chapter 105 of
3 the General Statutes are an investment by the State of North
4 Carolina in each certified North Carolina capital company. Each
5 certified North Carolina capital company, as part of its initial
6 certification, has agreed to pay the State a return on its
7 investment. Each year, every certified North Carolina capital
8 company shall determine from its annual audit of cumulative
9 distributions filed pursuant to G.S. 53A-71(d)(2), an amount
10 equal to twenty-five percent (25%) of its cumulative nonqualified
11 distributions that exceed the amount of distributions, combined
12 with all tax credits allocated to debt holders and equity
13 holders, required to produce an annual internal rate of return of
14 fifteen percent (15%). Within 30 days after filing its annual
15 audit of cumulative distributions, the company shall pay the
16 Department of Revenue the excess of this amount over the total
17 cumulative amount it has paid under this section in past years.
18 If a company's annual audit demonstrates that the annual internal
19 rate of return of the company's cumulative nonqualified
20 distributions, combined with all tax credits allocated to debt
21 holders and equity holders, does not exceed fifteen percent
22 (15%), the company is not required to make a payment under this
23 section for that year.

24 (b) A company that fails to make a payment required by this
25 section is subject to the penalties and remedies provided in
26 Article 9 of Chapter 105 of the General Statutes to the same
27 extent as if the required payment were a tax. The Department of
28 Revenue shall credit payments made under this section to the
29 General Fund as nontax revenue.

30 "§ 53A-76. Rules; report.

31 The Secretary of State may adopt rules to implement this Part.
32 The Secretary of State shall report to the Legislative Research
33 Commission by October 1 of each year the number of certified
34 North Carolina capital companies certified under this Part, the
35 date each company was created, the amount and percentage of
36 certified capital invested by each company, the amount of tax
37 credits allocated to each company, and any other information
38 requested by the Legislative Research Commission."

39 Section 4. G.S. 53A-37 reads as rewritten:

40 "§ 53A-37. Definitions.

41 The following definitions apply in this Article:

- 42 (1) Affiliate of a company. -- Any of the following:
43 a. A person who directly or indirectly
44 beneficially owns (whether through rights,

- 1 options, convertible interests, or otherwise),
2 controls, or holds power to vote ten percent
3 (10%) or more of the outstanding voting
4 securities or other ownership interests of the
5 company.
- 6 b. A person ten percent (10%) or more of whose
7 outstanding voting securities or other
8 ownership interests are, directly or
9 indirectly, beneficially owned (whether
10 through rights, options, convertible
11 interests, or otherwise), controlled, or held
12 with power to vote by the company.
- 13 c. A person who directly or indirectly controls,
14 is controlled by, or is under common control
15 with the company on account of common
16 ownership, common directors, or common
17 management.
- 18 d. A partnership in which the company is a
19 general partner.
- 20 e. A person who is an officer, a director, or a
21 management employee of the company, or is a
22 close family member of an officer, a director,
23 or a management employee of the company. For
24 the purpose of this requirement, a close
25 family member is a spouse, parent, child,
26 sibling, parent-in-law, sibling-in-law,
27 son-in-law, or daughter-in-law.
- 28 (2) Approved business venture. -- A business that
29 satisfies all of the following conditions as of the
30 time of a certified North Carolina capital
31 company's first investment in the business:
- 32 a. It has its principal business office in this
33 State, it does a majority of its production in
34 this State, and it employs a majority of its
35 employees in this State.
- 36 b. It has no more than 300 employees and, during
37 its most recent fiscal year, it had gross
38 revenues of no more than seven million dollars
39 (\$7,000,000) on a consolidated basis as
40 determined in accordance with generally
41 accepted accounting principles.
- 42 c. It is not a majority-owned subsidiary of
43 another corporation.

- 1 d. It satisfies the conditions established in
2 G.S. 105-163.013(b)(3) through (6).
- 3 e. Its authorized representative has given the
4 certified North Carolina company investing in
5 it a sworn affidavit certifying that a
6 majority of the proceeds of the investment
7 will be used for operations or capital
8 improvements in North Carolina.
- 9 (3) Approved investment. -- The investment of cash by a
10 certified North Carolina capital company in such a
11 manner as to acquire capital in a business that, at
12 the time of the first investment in the business by
13 a certified North Carolina capital company, was an
14 approved business venture. The capital acquired
15 may be any debt, equity, or hybrid security,
16 whether secured or unsecured, of any nature,
17 including a debt instrument or security that has
18 the characteristics of debt but provides for
19 conversion into equity or equity participation
20 instruments such as options or warrants.
- 21 (4) Business. -- A corporation, a partnership, an
22 association, a limited liability company, or a sole
23 proprietorship operated for profit.
- 24 (5) Certified capital. -- The cash invested in a
25 certified North Carolina capital company, either in
26 the form of equity or debt capital, during the
27 365-day period after the company has been initially
28 certified as provided in Part 3 of this Article.
29 If the certified capital is in the form of debt
30 capital, the debt instrument issued by the
31 certified North Carolina capital company, at par
32 value or a premium, must have an original maturity
33 date of at least five years after the date of
34 issuance and a repayment schedule that is no faster
35 than a level principal amortization.
- 36 (6) Certified North Carolina capital company. -- A
37 partnership, corporation, trust, or limited
38 liability company whose primary business activity
39 is the investment of cash in approved business
40 ventures and that is certified by the Secretary of
41 State as provided in Part 3 of this Article.
- 42 (7) Department. -- The Department of the Secretary of
43 State.

1 issuer. Subordinated debt may be convertible into
2 common stock, preferred stock, or an interest in a
3 partnership.

4 ~~(8)~~ (17) ~~Traditional Financial Institutions~~ financial
5 institutions. -- Corporations or associations
6 chartered under ~~Chapters~~ Chapter 53 or 54B of the
7 General Statutes."

8 Section 5. Chapter 105 of the General Statutes is
9 amended by adding a new Article to read:

10 "ARTICLE 8C.
11 "Premiums Tax Credit for Investments in
12 North Carolina Small Businesses.

13 "§ 105-228.10A. Purpose.

14 The purpose of this Article is to stimulate a substantial
15 increase in venture capital investments in North Carolina by
16 providing an incentive for insurance companies to invest in
17 certified North Carolina capital companies.

18 "§ 105-228.10B. Definitions.

19 The following definitions apply in this Article:

20 (1) Certified capital. -- Defined in G.S. 53A-37.

21 (2) Certified North Carolina capital company. -- A
22 certified North Carolina capital company created
23 under Article 3 of Chapter 53A of the General
24 Statutes.

25 "§ 105-228.10C. Premiums tax credit for investments.

26 (a) Credit. -- A person who invests certified capital in one
27 or more certified North Carolina capital companies is allowed
28 against the gross premiums tax imposed by G.S. 105-228.5 and G.S.
29 105-228.8 a credit equal to the amount of certified capital
30 invested by the taxpayer during the taxable year, subject to the
31 limitations provided in this Article. To claim the credit
32 allowed by this section, the taxpayer must provide the Secretary
33 a copy of each certified North Carolina capital company's
34 application for allocations of credit under G.S. 105-228.10E, a
35 copy of the Secretary's written allocation of credit under G.S.
36 105-228.10E, and any other supporting documentation the Secretary
37 requires.

38 (b) Limitations. -- The taxpayer may not take the entire
39 credit for the taxable year the investment is made, but may take
40 up to ten percent (10%) of the aggregate credit allowed under
41 this section for that taxable year and for each succeeding
42 taxable year until the entire credit has been used. The amount
43 of credit taken may not exceed the taxpayer's gross premiums tax
44 liability for a taxable year reduced by the sum of all credits

1 allowable except payments of tax by or on behalf of the taxpayer.
2 Subject to the ten percent (10%) limitation, to the extent a
3 taxpayer does not use all of the credit it is entitled to take in
4 any year, the unused portion of that year's credit may be carried
5 forward to the five succeeding taxable years.

6 "§ 105-228.10D. Effect of decertification.

7 If a certified North Carolina capital company is decertified
8 under G.S. 53A-74, no tax credit or carryforward of a tax credit
9 for an investment in the company is allowed under this Article
10 for a taxpayer's taxable year beginning in the calendar year the
11 decertification occurred or for subsequent taxable years.
12 Decertification of a certified North Carolina capital company
13 after it has met all the requirements of G.S. 53A-70(b)(1)
14 through (3) does not affect a tax credit allowed under this
15 Article for a taxpayer's taxable year that began before the
16 calendar year in which the decertification occurred. If a
17 certified North Carolina capital company is decertified before it
18 has met all the requirements of G.S. 53A-70(b)(1) through (3),
19 all tax credits previously allowed to taxpayers for investment in
20 the company are forfeited. A taxpayer who forfeits a credit
21 under this section is liable for all past taxes avoided as a
22 result of the credit plus interest at the rate established under
23 G.S. 105-241.1(i), computed from the date the taxes would have
24 been due if the credit had not been allowed. The past taxes and
25 interest are due 30 days after the date the company is
26 decertified; a taxpayer who fails to pay the past taxes and
27 interest by the due date is subject to the penalties provided in
28 G.S. 105-236.

29 "§ 105-228.10E. Cap; annual ceiling.

30 (a) Cap. -- The amount of credit allowed a taxpayer under this
31 Article for a taxable year may not exceed ten percent (10%) of
32 the annual ceiling for that year.

33 (b) Annual Ceiling. -- The total amount of tax credits that may
34 be taken by all taxpayers under this Article in a taxable year
35 may not exceed fifteen million dollars (\$15,000,000). The
36 Department of Revenue shall allocate this amount among taxpayers
37 as provided in this subsection. A certified North Carolina
38 capital company may apply for allocation of credits on behalf of
39 its investors no earlier than the first business day after it is
40 certified. The application shall be in the form required by the
41 Secretary and shall provide all of the following:

42 (1) The name of each investor.

43 (2) The amount each investor has committed to invest in
44 the company.

- 1 (3) Proof that the investor has committed to invest the
2 funds subject to allocation of the applicable
3 credits pursuant to this section.
4 (4) The maximum amount of credit the investment would
5 entitle the investor to under this Article for the
6 current taxable year and the following nine taxable
7 years.
8 (5) Any other information required by the Secretary.

9 Upon receipt of a completed application, the Department shall
10 determine the amount of available credit not yet allocated for
11 each taxable year specified in the application. Within 20
12 business days after receipt of the application, the Department
13 shall allocate to the North Carolina capital company, on behalf
14 of the investors named in the application, the total amount of
15 credit applied for in the application, but only to the extent of
16 available credit not yet allocated for each taxable year. The
17 Department's allocations of credit under this subsection shall be
18 in writing.

19 The Department shall allocate available credit to applicants in
20 the order the applications are received. If more than one
21 certified North Carolina capital company submits a completed
22 application on the same day, the Department shall make the
23 allocations to those applicants simultaneously. If the amount of
24 credit applied for in the simultaneous applications exceeds the
25 amount of available credit not yet allocated for a taxable year,
26 the Department shall allocate the available credit for that
27 taxable year among the simultaneous applicants on a pro rata
28 basis in proportion to the amount of credit applied for by each."

29 Section 6. G.S. 105-228.8(e) reads as rewritten:

30 "(e) This section shall not apply to special purpose
31 obligations or assessments based on premiums imposed in
32 connection with particular kinds of insurance, to the special
33 purpose regulatory charge imposed under G.S. 58-6-25, or to
34 dedicated special purpose taxes based on premiums. For purposes
35 of this section, seventy-five percent (75%) of the one and
36 thirty-three hundredths percent (1.33%) tax on amounts collected
37 on contracts of insurance applicable to fire and lightning
38 coverage shall not be a special purpose obligation or assessment
39 or a dedicated special purpose tax within the meaning of this
40 subsection. The credit allowed by G.S. 105-228.10C shall not be
41 considered in determining the amount of premium taxes imposed by
42 this State."

43 Section 7. G.S. 58-6-25(a) reads as rewritten:

1 "(a) Charge Levied. -- There is levied on each insurance
2 company an annual charge for the purposes stated in subsection
3 (d) of this section. As used in this section, the term 'insurance
4 company' means a company that pays the gross premiums tax levied
5 in G.S. 105-228.5 and G.S. 105-228.8, except that the term does
6 not include a hospital, medical, or dental service corporation
7 regulated under Articles 65 and 66 of this Chapter. The term
8 'insurance company' does not include a company regulated under
9 Article 67 of this Chapter. The charge levied in this section is
10 in addition to all other fees and taxes. The charge shall be at a
11 percentage rate of the company's premium tax liability for the
12 taxable year. In determining an insurance company's premium tax
13 liability for a taxable year, the following shall be disregarded:

14 (1) The additional taxes imposed by G.S. ~~105-228.8~~ and
15 the 105-228.8.

16 (2) The additional local fire and lightning tax imposed
17 by G.S. ~~105-228.5(d)(4)~~ shall be disregarded.
18 105-228.5(d)(4).

19 (3) The credit allowed by G.S. 105-228.10C."

20 Section 8. The title of Chapter 53A of the General
21 Statutes reads as rewritten:

22 "Chapter 53A.

23 "Business Development ~~Corporations and North~~
24 ~~Carolina Capital Resource Corporations, and Access to Capital."~~

25 Section 9. The title of Article 3 of Chapter 53A of the
26 General Statutes reads as rewritten:

27 "ARTICLE 3.

28 "North Carolina Enterprise ~~Corporations, Corporations and~~
29 Certified North Carolina Capital Companies."

30 Section 10. G.S. 53A-35 and G.S. 53A-47 are repealed.

31 Section 11. G.S. 53A-36 reads as rewritten:

32 "§ 53A-36. Legislative findings and purpose.

33 (a) The General Assembly finds ~~and declares~~ that there exists
34 in ~~the State of~~ North Carolina a serious shortage of mezzanine
35 finance capital and credit available for investment in rural
36 ~~areas~~ areas and other areas in the State. This shortage of
37 mezzanine finance capital and credit is severe throughout ~~the~~
38 ~~rural areas of~~ the State, has persisted for a number of years,
39 and constitutes a grave threat to the welfare and prosperity of
40 all residents of the State. The lack of access to capital
41 prevents North Carolina businesses from creating jobs that would
42 otherwise enhance the economy of the State and provide
43 livelihoods for North Carolina citizens.

1 (b) The General Assembly finds ~~and declares further~~ that
2 private enterprise and existing federal and State governmental
3 programs have not adequately alleviated the severe shortage of
4 mezzanine finance capital and credit available for investments in
5 ~~rural areas in the~~ this State.

6 (c) The General Assembly finds ~~and declares~~ that it is a
7 matter of grave public necessity that North Carolina Enterprise
8 Corporations be authorized to be created and ~~to be~~ empowered to
9 alleviate these severe shortages of mezzanine finance capital and
10 credit for investment in rural areas of the State. North
11 Carolina Enterprise Corporations shall help eliminate barriers to
12 rural economic development by providing mezzanine finance capital
13 and credit, and other types of financing as appropriate, to
14 businesses in rural areas that have been unable to obtain
15 sufficient financing through traditional financial institutions.

16 (d) The General Assembly finds that it is a matter of grave
17 public necessity that certified North Carolina capital companies
18 be authorized to be created as venture capital companies whose
19 primary business activity is the investment of cash in small
20 North Carolina business ventures that are in need of capital for
21 survival, expansion, new product development, or similar
22 purposes."

23 Section 12. G.S. 53A-38(a) reads as rewritten:

24 "(a) One or more persons, a majority of whom are residents of
25 this State, may, by filing a certificate of incorporation as
26 provided in subsection (b), incorporate a North Carolina
27 Enterprise Corporation under the provisions of this ~~Article-~~
28 Part."

29 Section 13. G.S. 53A-41 reads as rewritten:

30 "§ 53A-41. Governing law.

31 Except as otherwise provided in this ~~Article,~~ Part, a North
32 Carolina Enterprise Corporation shall be governed by Chapter 55
33 of the General Statutes."

34 Section 14. G.S. 53A-42 reads as rewritten:

35 "§ 53A-42. Powers.

36 A North Carolina Enterprise Corporation created under this
37 ~~Article Part~~ shall have all the powers conferred on business
38 corporations by Chapter 55 of the General Statutes."

39 Section 15. Sections 5, 6, and 7 of this act and G.S.
40 53A-73, as enacted by Section 3 of this act, become effective for
41 taxable years beginning on or after January 1, 1999, and apply to
42 investments made on or after that date. The remainder of this
43 act is effective when this act becomes law. An application for
44 initial certification as a North Carolina capital company

1 pursuant to G.S. 53A-71 may not be submitted until the first
2 Monday that falls at least 45 days after this act becomes law.
3 G.S. 53A-73 and Article 8C of Chapter 105 of the General
4 Statutes, as enacted by this act, are repealed effective for
5 investments made on or after January 1, 2001. If any provision
6 of this act or its application is held invalid, then G.S. 53A-73
7 and Article 8C of Chapter 105 of the General Statutes, as enacted
8 by this act, are repealed effective for investments made on or
9 after the date of the holding of invalidity.

10

EXPLANATION OF SENATE BILL 956 (PCS):
Venture Capital Investment Incentive

TO: Senate Finance Committee
FROM: Committee Staff
DATE: August 5, 1997
SPONSOR: Senator Hoyle

Senate Bill 956 seeks to provide start-up and expansion capital to small businesses by giving private insurance companies that make certain venture capital investments a dollar for dollar tax credit to be applied against the insurance premiums tax owed by these companies. The tax credit is effective for taxable years beginning on or after January 1, 1999, and applies to investments made on or after that date, and it expires for investments made on or after January 1, 2001.

Under the bill, an insurance company invests in a certified North Carolina capital company (CAPCO), which in turn provides capital to approved North Carolina business ventures. The insurance company is entitled to a tax credit of 100% of the cash it invests in a CAPCO during the 365-day period after the company has been initially certified. The credit may be taken at the rate of up to 10% per year until the entire credit is used, subject to an annual maximum credit amount of \$1,500,000. Any unused installment of the credit may be carried forward for five years, subject to the 10% limit. If a CAPCO is decertified, the insurance company is not permitted to take any unused tax credits or carryforwards. If the CAPCO is decertified before it has met the requirement that it invest 50% of its certified capital within four years in approved investments, the taxpayer also forfeits all tax credits and carryforwards previously taken and must repay all back taxes avoided because of the credit, with interest.

The total amount of credit that may be taken by all taxpayers in any one taxable year is \$15,000,000. The credit is allocated to taxpayers on a "first come, first served" basis. The CAPCO must apply to the Department of Revenue for the allocation of credits on behalf of its investors. Upon receipt of the application, the Department will determine the amount of available credit not yet allocated for each taxable year specified in the application. The Department must allocate to the CAPCO, on behalf of its investors, the total amount of credit applied for in the application to the extent of the available credit not yet allocated for each taxable year. To claim the credit, the taxpayer must provide the Secretary of Revenue with a copy of the CAPCO's application for allocation of credit, a copy of the Secretary of Revenue's written allocation of credit, and any other supporting documentation the Secretary may require. The original bill required the Secretary of State to make the allocation; the proposed committee substitute shifts that responsibility to the Department of Revenue. The Department of Revenue has stated that it will have recurring costs of \$22,325 and nonrecurring costs of \$3,200 in taking on this responsibility.

The allocation of the credit appears to violate the uniformity provisions of the North Carolina Constitution. The General Assembly has the authority to create classifications for

taxation, but the class must be reasonable and based on a rational difference of situation and condition. In other words, there must be a rational basis reasonably related to the purpose of the legislation to justify the decision to exclude some parties from the application of the law. Under the allocation method proposed by this bill, a taxpayer who made an investment and applied for allocation of the credit early in the taxable year would be allowed a tax credit and an identical taxpayer who applied for allocation later in the year would not. If this "first come, first served" allocation were held unconstitutional, the bill has a nonseverability clause stating that the tax credit is repealed for investments made on or after that date. For the tax years challenged, however, the State would probably be liable for refunds for those who paid under protest. Other tax credits in existing law provide a cap by allocating the credits on a pro rata basis after all identical applicants have applied for credit, which does not violate the constitution.

An insurance company must invest cash, either in the form of equity or debt capital, in a certified North Carolina capital company to be eligible for the credit allowed by this bill. Traditional private sector venture capital financing involves risks greater than those inherent in other investments. Under this bill, the State assumes this increased risk on behalf of the insurance company by providing tax credits equal to the amount of the investment, thus essentially reimbursing the company for its investment. The proposed committee substitute provides the State a potential return on its investment. Under proposed G.S. 53A-75, a CAPCO would pay the State 25% of the excess of its cumulative distributions that exceed the amount that, when combined with all tax credits allocated, would produce an annual internal rate of return of 15%. The calculation would be made as part of the CAPCO's annual audit and payment to the Department of Revenue would be due within 30 days after the audit. The payments would be credited to the General Fund as nontax revenue.

To be initially certified by the Secretary of State, a capital company must have at least \$500,000 of liquid assets which it would invest in approved business ventures. An approved business venture is a business that meets all of the following conditions:

1. It is headquartered in this State, does a majority of its production in this State, and employs a majority of its employees in this State.
2. It employs no more than 300 employees.
3. It has gross revenues of no more than \$7,000,000 a year.
4. It is not a majority-owned subsidiary of another company.
5. It is engaged primarily in manufacturing, processing, warehousing, wholesaling, research and development, or a service related industry.
6. It does not engage in providing professional services, construction or contracting, selling or leasing at retail, purchase or sale of commercial paper or real estate, personal grooming or cosmetic services, entertainment, athletic or recreation services for a fee.
7. It is not formed for the purpose of acquiring the stock or assets of another business.
8. It is not a real estate related business.

9. Its authorized representative has provided a sworn affidavit that a majority of the proceeds of the CAPCO's investment in it will be used for operations or capital improvements in North Carolina.

For a CAPCO's certification to be renewed, it must invest 25% of the capital invested in it in approved business ventures within two years, 40% within three years, and 50% within five years. The company is also limited to investing no more than 15% of its capital in any one business. Once a CAPCO has invested 100% of the capital invested in it in approved business ventures, it qualifies for permanent certification. It may then distribute investment returns to investors and is no longer required to obtain continuing certification. The company must continue to file annual financial statements and reports for three years after it qualifies for permanent certification. The initial certification, annual review, and permanent certification are handled by the Secretary of State's office for a fee of \$5,000 each, which will be distributed 40% to the Department of Revenue and 60% to the Secretary of State. The Secretary of State is to report to the Legislative Research Commission annually on the amount of the credit taken and the number of taxpayers taking the credit.

The credit allowed by this bill for insurance companies is similar to the income tax credit currently allowed to individuals and small partnerships for investing directly in qualified businesses. Prior to January 1, 1997, the definition of a qualified business was very similar to an approved business venture. The General Assembly expanded the credit to include businesses outside of North Carolina because the credit violated the Commerce Clause of the Constitution when it was limited to investments in North Carolina businesses. Although the credit allowed by this bill is limited to indirect investments in North Carolina businesses and thus discriminates against out-of-state businesses, the Attorney General's office believes that the credit would not be held unconstitutional if challenged because this credit applies only to insurance companies. Congress, through the McCarran-Ferguson Act, has removed all Commerce Clause limitations on the authority of the states to regulate and tax the business of insurance. Committee staff has found no case law on point with the tax credit proposed by this bill. Most of the cases surrounding the McCarran-Ferguson Act concern the differing tax treatment between in-state and out-of-state insurance companies. The Supreme Court has consistently held that a state may discriminate in its tax treatment of insurance companies because of the McCarran-Ferguson Act. The courts have not addressed whether this discrimination may be extended beyond insurance companies to the business ventures in which they invest without a violation of the Commerce Clause. If the bill were invalidated under the Commerce Clause, the bill has a nonseverability clause stating that the tax credit is repealed for investments made on or after that date. For the tax years challenged, however, the State would probably be liable for refunds for those who paid under protest.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

3

HOUSE BILL 1027
Committee Substitute Favorable 5/15/97
Third Edition Engrossed 6/30/97

Short Title: State Treasurer Venture Capital.

(Public)

Sponsors:

Referred to:

April 21, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO STIMULATE SUBSTANTIAL GROWTH OF VENTURE CAPITAL
3 INVESTMENTS IN NORTH CAROLINA THROUGH INVESTMENTS BY THE
4 STATE TREASURER.

5 The General Assembly of North Carolina enacts:

6 Section 1. G.S. 147-69.1(c) is amended by adding a new subdivision to
7 read:

8 "(7) Any of the investments authorized by G.S. 147-69.2(b)(2) through
9 (6) and (b)(9) and (10)."

10 Section 2. G.S. 147-69.2(b) reads as rewritten:

11 "(b) It shall be the duty of the State Treasurer to invest the cash of the funds
12 enumerated in subsection (a) of this section in excess of the amount required to meet
13 the current needs and demands on such funds, selecting from among the ~~following~~
14 following in the State Treasurer's discretion:

15 (1) Any of the investments authorized by G.S. ~~147-69.1(e); 147-69.1(c),~~
16 except that assets of retirement and pension systems may not be
17 invested in the investments authorized by subdivision (9) or (10) of
18 this subsection pursuant to G.S. 147-69.1(c)(7).

19 (2) General obligations of other states of the United ~~States;~~ States.

20 (3) General obligations of cities, counties and special districts in North
21 ~~Carolina;~~ Carolina.

- 1 (4) Obligations of any company, other organization or legal entity
2 incorporated or otherwise created or located within or ~~without~~
3 outside of the United States if ~~such~~ the obligations bear one of the
4 three highest ratings of at least one nationally recognized rating
5 service and do not bear a rating below the three highest by any
6 nationally recognized rating service which rates the particular
7 ~~security~~; security.
- 8 (5) Notes secured by mortgages insured by the Federal Housing
9 Administration or guaranteed by the Veterans Administration on
10 real estate located within the State of North ~~Carolina~~; Carolina.
- 11 (6) Asset-backed securities (whether considered debt or equity)
12 provided they bear ratings by nationally recognized rating services
13 as provided in G.S. 147-69.2(b)(4) and that they do not bear a
14 rating below the three highest by any nationally recognized rating
15 service ~~which that~~ rates the particular ~~securities~~; securities.
- 16 (7) With respect to Retirement Systems' assets referred to in G.S. 147-
17 69.2(b)(8), (i) insurance contracts ~~which that~~ provide for
18 participation in individual or pooled separate accounts of
19 insurance companies, (ii) group trusts, (iii) individual, ~~common~~
20 common, or collective trust funds of banks and trust companies
21 and (iv) real estate investment trusts; provided the investment
22 manager has assets under management of at least one hundred
23 million dollars (\$100,000,000); provided such investment assets are
24 managed primarily for the purpose of investing in or owning real
25 estate or related debt financing located in the United States; and
26 provided that the investment authorized by this subsection shall
27 not exceed ten percent (10%) of the book value of all invested
28 assets of the Retirement ~~Systems~~; Systems.
- 29 (8) With respect to assets of the Teachers' and State Employees'
30 Retirement System, the Consolidated Judicial Retirement System,
31 the Firemen's and Rescue Workers' Pension Fund, the Local
32 Governmental Employees' Retirement System, and the Legislative
33 Retirement System (hereinafter referred to collectively as the
34 Retirement Systems), preferred or common stocks issued by any
35 company incorporated or otherwise created or located within or
36 ~~without~~ outside of the United States, ~~provided~~; if all of the
37 following conditions are met:
- 38 a. ~~That~~ The common stock or preferred stock of ~~such~~ the
39 corporation is registered on a national securities exchange as
40 provided in the Federal Securities Exchange Act or quoted
41 through the National Association of Securities Dealers'
42 Automated Quotations (NASDAQ) ~~system~~; system.
- 43 b. ~~That such~~ The corporation ~~shall have~~ has paid a cash
44 dividend on its common stock in each year of the 5-year

- 1 period next preceding the date of investment and the
2 aggregate net earnings available for dividends on the
3 common stock of ~~such~~ the corporation for the whole of ~~such~~
4 that period ~~shall~~ have been at least equal to the amount of
5 ~~such~~ the dividends ~~paid;~~ paid.
- 6 c. ~~That in~~ In applying the dividend and earnings test under
7 this section to any issuing, assuming, or guaranteeing
8 corporation, ~~where such corporation shall have if the~~
9 corporation acquired its property or any substantial part
10 thereof within a five-year period immediately preceding the
11 date of investment by consolidation, merger, or by the
12 purchase of all or a substantial portion of the property of
13 any other corporation or corporations, or ~~shall have~~
14 acquired the assets of any unincorporated business
15 enterprise by purchase or otherwise, the dividends and net
16 earnings of the several predecessor or constituent
17 corporations or enterprises shall be consolidated and
18 adjusted so as to ascertain whether or not the applicable
19 requirements of this ~~section~~ subdivision have been complied
20 ~~with;~~ with.
- 21 d. ~~That the~~ The book value of common and preferred stocks
22 including securities convertible into common stocks shall not
23 exceed fifty ~~per centum~~ percent (50%) of the book value of
24 all invested assets of the Retirement ~~Systems;~~ provided;
25 ~~further:~~ Systems and the following conditions must also be
26 met:
- 27 1. Not more than one and one-half ~~per centum~~ percent
28 (1 1/2%) of the book value of ~~such~~ the assets shall be
29 invested in the stock of a single ~~corporation;~~ and
30 ~~provided further;~~ corporation.
- 31 2. The total number of shares in a single corporation
32 shall not exceed eight ~~per centum~~ percent (8%) of the
33 issued and outstanding stock of ~~such corporation;~~ and
34 ~~provided further;~~ the corporation.
- 35 3. ~~As used in this subdivision d. and elsewhere in this~~
36 ~~section, book value shall mean adjusted cost basis as~~
37 ~~shown on the records of the State Treasurer.~~
- 38 e. Up to five ~~per cent~~ percent (5%) of the limits authorized in
39 subdivision d. may be invested in the stocks or shares of a
40 diversified investment company registered under the
41 'Investment Company Act of 1940' ~~which~~ that has total
42 assets of at least fifty million dollars (\$50,000,000).
- 43 f. ~~Individual, common~~

1 As used in this subsection, the term 'book value' means adjusted
2 cost basis as shown on the records of the State Treasurer.

3 Notwithstanding the provisions of sub-subdivisions a. through e.,
4 the investments authorized in this subdivision (8) may be made in
5 individual, common, or collective trust funds of banks or trust
6 companies provided that if the investment manager has assets
7 under management of at least one hundred million dollars
8 (\$100,000,000).

9 ~~g. That investments~~

10 Notwithstanding the provisions of sub-subdivisions a. through e.,
11 the investments authorized in this subdivision (8) may be made in
12 securities convertible into common stocks issued by any such such
13 a company, if such the securities bear one of the four highest
14 ratings of at least one nationally recognized rating service and do
15 not bear a rating below the four highest by any nationally
16 recognized rating service which may then rate the particular
17 security.

18 (9) ~~Obligations~~ With respect to assets other than assets of retirement or
19 pension systems, obligations, and securities of the North Carolina
20 Enterprise Corporation, or of a limited partnership in which the
21 North Carolina Enterprise Corporation is the only general partner,
22 not to exceed twenty million dollars (\$20,000,000) from all funds.

23 (10) ~~A~~ With respect to assets other than assets of retirement or pension
24 systems, a limited partnership interest in a partnership whose
25 primary purpose is to invest in venture capital or corporate buyout
26 transactions, not to exceed thirty million dollars (\$30,000,000)
27 transactions within or outside of the United States, not to exceed
28 one hundred thirty million dollars (\$130,000,000) from all funds.
29 This maximum dollar amount does not apply to or restrict the
30 reinvestment in accordance with this subdivision of any income
31 from these investments.

32 (11) With respect to assets of the Escheat Fund, obligations of the North
33 Carolina Global TransPark Authority authorized by G.S. 63A-
34 4(a)(22), not to exceed twenty-five million dollars (\$25,000,000),
35 that have a final maturity not later than September 1, 1999. The
36 obligations shall bear interest at the rate set by the State Treasurer.
37 No commitment to purchase obligations may be made pursuant to
38 this subdivision after September 1, 1993, and no obligations may be
39 purchased after September 1, 1994. In the event of a loss to the
40 Escheat Fund by reason of an investment made pursuant to this
41 subdivision, it is the intention of the General Assembly to hold the
42 Escheat Fund harmless from any such loss by appropriating to such
43 Escheat Fund funds equivalent to such loss."

1 Section 3. As soon as practicable, the State Treasurer shall assure that all
2 assets of retirement and pension systems described in G.S. 147-69.2(a) are no longer
3 invested in investments authorized by G.S. 147-69.2(b)(9) or (10).

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

HOUSE BILL 1027
Committee Substitute Favorable 5/15/97
Third Edition Engrossed 6/30/97
Proposed Senate Committee Substitute H1027-CSLC-8/7
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: State Treasurer Venture Capital.

(Public)

Sponsors:

Referred to:

April 21, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO STIMULATE SUBSTANTIAL GROWTH OF VENTURE CAPITAL
3 INVESTMENTS IN NORTH CAROLINA THROUGH INVESTMENTS BY THE STATE
4 TREASURER.
5 The General Assembly of North Carolina enacts:
6 Section 1. G.S. 147-69.1(c) is amended by adding a new
7 subdivision to read:
8 "(7) Any of the investments authorized by G.S.
9 147-69.2(b)(2) through (6) and (b)(13)."
10 Section 2. G.S. 147-69.2(b) reads as rewritten:
11 "(b) It shall be the duty of the State Treasurer to invest the
12 cash of the funds enumerated in subsection (a) of this section in
13 excess of the amount required to meet the current needs and
14 demands on such funds, selecting from among the ~~following~~
15 following in the State Treasurer's discretion:
16 (1) Any of the investments authorized by G.S.
17 147-69.1(c); 147-69.1(c), except that assets of
18 retirement and pension systems may not be invested
19 in the investments authorized by subdivision (13)
20 of this subsection pursuant to G.S. 147-69.1(c)(7).

- 1 (2) General obligations of other states of the United
2 ~~States;~~ States.
- 3 (3) General obligations of cities, counties and special
4 districts in North ~~Carolina;~~ Carolina.
- 5 (4) Obligations of any company, other organization or
6 legal entity incorporated or otherwise created or
7 located within or ~~without~~ outside of the United
8 States if ~~such~~ the obligations bear one of the
9 three highest ratings of at least one nationally
10 recognized rating service and do not bear a rating
11 below the three highest by any nationally
12 recognized rating service which rates the
13 particular ~~security;~~ security.
- 14 (5) Notes secured by mortgages insured by the Federal
15 Housing Administration or guaranteed by the
16 Veterans Administration on real estate located
17 within the State of North ~~Carolina;~~ Carolina.
- 18 (6) Asset-backed securities (whether considered debt or
19 equity) provided they bear ratings by nationally
20 recognized rating services as provided in G.S.
21 147-69.2(b)(4) and that they do not bear a rating
22 below the three highest by any nationally
23 recognized rating service ~~which~~ that rates the
24 particular ~~securities;~~ securities.
- 25 (7) With respect to Retirement Systems' assets referred
26 to in G.S. 147-69.2(b)(8), (i) insurance contracts
27 ~~which~~ that provide for participation in individual
28 or pooled separate accounts of insurance companies,
29 (ii) group trusts, (iii) individual, ~~common~~ common,
30 or collective trust funds of banks and trust
31 companies and (iv) real estate investment trusts;
32 provided the investment manager has assets under
33 management of at least one hundred million dollars
34 (\$100,000,000); provided such investment assets are
35 managed primarily for the purpose of investing in
36 or owning real estate or related debt financing
37 located in the United States; and provided that the
38 investment authorized by this subsection shall not
39 exceed ten percent (10%) of the book value of all
40 invested assets of the Retirement ~~Systems;~~ Systems.
- 41 (8) With respect to assets of the Teachers' and State
42 Employees' Retirement System, the Consolidated
43 Judicial Retirement System, the Firemen's and
44 Rescue Workers' Pension Fund, the Local

1 Governmental Employees' Retirement System, and the
2 Legislative Retirement System (hereinafter referred
3 to collectively as the Retirement Systems),
4 preferred or common stocks issued by any company
5 incorporated or otherwise created or located within
6 or ~~without~~ outside of the United States, ~~provided:~~
7 if all of the following conditions are met:

8 a. ~~That~~ The common stock or preferred stock of
9 ~~such~~ the corporation is registered on a
10 national securities exchange as provided in
11 the Federal Securities Exchange Act or quoted
12 through the National Association of Securities
13 Dealers' Automated Quotations (NASDAQ) ~~system;~~
14 system.

15 b. ~~That such~~ The corporation ~~shall have~~ has paid
16 a cash dividend on its common stock in each
17 year of the 5-year period next preceding the
18 date of investment and the aggregate net
19 earnings available for dividends on the common
20 stock of ~~such~~ the corporation for the whole of
21 ~~such~~ that period ~~shall~~ have been at least
22 equal to the amount of ~~such~~ the dividends
23 ~~paid;~~ paid.

24 c. ~~That in~~ In applying the dividend and earnings
25 test under this section to any issuing,
26 assuming, or guaranteeing corporation, ~~where~~
27 ~~such corporation shall have~~ if the corporation
28 acquired its property or any substantial part
29 thereof within a five-year period immediately
30 preceding the date of investment by
31 consolidation, merger, or by the purchase of
32 all or a substantial portion of the property
33 of any other corporation or corporations, or
34 ~~shall have~~ acquired the assets of any
35 unincorporated business enterprise by purchase
36 or otherwise, the dividends and net earnings
37 of the several predecessor or constituent
38 corporations or enterprises shall be
39 consolidated and adjusted so as to ascertain
40 whether or not the applicable requirements of
41 this ~~section~~ subdivision have been complied
42 ~~with;~~ with.

43 d. ~~That the~~ The book value of common and
44 preferred stocks including securities

1 convertible into common stocks shall not
2 exceed fifty ~~per centum~~ percent (50%) of the
3 book value of all invested assets of the
4 Retirement ~~Systems; provided, further:~~ Systems
5 and the following conditions must also be met:

6 1. Not more than one and one-half ~~per centum~~
7 percent (1 1/2%) of the book value of
8 such the assets shall be invested in the
9 stock of a single ~~corporation, and~~
10 provided further; corporation.

11 2. The total number of shares in a single
12 corporation shall not exceed eight ~~per~~
13 centum percent (8%) of the issued and
14 outstanding stock of ~~such corporation,~~
15 and provided further; the corporation.

16 3. ~~As used in this subdivision d. and~~
17 ~~elsewhere in this section, book value~~
18 ~~shall mean adjusted cost basis as shown~~
19 ~~on the records of the State Treasurer.~~

20 e. Up to five ~~per cent~~ percent (5%) of the limits
21 authorized in subdivision d. may be invested
22 in the stocks or shares of a diversified
23 investment company registered under the
24 'Investment Company Act of 1940' ~~which that~~
25 has total assets of at least fifty million
26 dollars (\$50,000,000).

27 ~~f. Individual, common~~

28 As used in this subsection, the term 'book
29 value' means adjusted cost basis as shown on the
30 records of the State Treasurer.

31 Notwithstanding the provisions of sub-
32 subdivisions a. through e., the investments
33 authorized in this subdivision (8) may be made in
34 individual, common, or collective trust funds of
35 banks or trust companies ~~provided that~~ if the
36 investment manager has assets under management of
37 at least one hundred million dollars
38 (\$100,000,000).

39 ~~g. That investments~~

40 Notwithstanding the provisions of sub-
41 subdivisions a. through e., the investments
42 authorized in this subdivision (8) may be made in
43 securities convertible into common stocks issued by
44 any ~~such~~ such a company, if ~~such~~ the securities

- 1 bear one of the four highest ratings of at least
2 one nationally recognized rating service and do not
3 bear a rating below the four highest by any
4 nationally recognized rating service which may then
5 rate the particular security.
- 6 (9) Obligations and securities of the North Carolina
7 Enterprise Corporation, or of a limited partnership
8 in which the North Carolina Enterprise Corporation
9 is the only general partner, not to exceed twenty
10 million dollars (\$20,000,000) from all funds.
- 11 (10) A limited partnership interest in a partnership
12 whose primary purpose is to invest in venture
13 capital or corporate buyout ~~transactions,~~
14 transactions within or outside of the United
15 States, not to exceed thirty million dollars
16 (\$30,000,000) from all funds. This maximum dollar
17 amount does not apply to or restrict the
18 reinvestment in accordance with this subdivision of
19 any income from these investments.
- 20 (11) With respect to assets of the Escheat Fund,
21 obligations of the North Carolina Global TransPark
22 Authority authorized by G.S. 63A-4(a)(22), not to
23 exceed twenty-five million dollars (\$25,000,000),
24 that have a final maturity not later than September
25 1, 1999. The obligations shall bear interest at the
26 rate set by the State Treasurer. No commitment to
27 purchase obligations may be made pursuant to this
28 subdivision after September 1, 1993, and no
29 obligations may be purchased after September 1,
30 1994. In the event of a loss to the Escheat Fund by
31 reason of an investment made pursuant to this
32 subdivision, it is the intention of the General
33 Assembly to hold the Escheat Fund harmless from any
34 such loss by appropriating to such Escheat Fund
35 funds equivalent to such loss.
- 36 (12) With respect to assets of the Escheat Fund, a
37 limited partnership interest in a partnership that
38 is domiciled or has an office in North Carolina and
39 whose primary purpose is to provide financing to
40 businesses located in rural North Carolina, not to
41 exceed one hundred million dollars (\$100,000,000).
42 This maximum dollar amount does not apply to or
43 restrict the reinvestment in accordance with this
44 subdivision of any income from these investments.

1 An investment made pursuant to this subdivision
2 must be conditioned on the partnership's
3 reinvestment of the invested funds only in
4 businesses located in rural North Carolina. In the
5 event of a loss to the Escheat Fund by reason of an
6 investment made pursuant to this subdivision, it is
7 the intention of the General Assembly to hold the
8 Escheat Fund harmless from any such loss by
9 appropriating to the Escheat Fund funds equivalent
10 to the loss.
11 (13) With respect to assets other than assets of
12 retirement or pension systems, a limited
13 partnership interest in a partnership whose primary
14 purpose is to invest in venture capital or
15 corporate buyout transactions within or outside of
16 the United States, not to exceed, when combined
17 with the amount invested under subdivision (12) of
18 this subsection, one hundred million dollars
19 (\$100,000,000) from all funds. This maximum dollar
20 amount does not apply to or restrict the
21 reinvestment in accordance with this subdivision of
22 any income from these investments."

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

EXPLANATION OF HOUSE BILL 1027, PCS:
State Treasurer Venture Capital

TO: Senate Finance Committee
FROM: Martha H. Harris, Staff Attorney
DATE: August 7, 1997
SPONSOR: Representative Owens

The proposed committee substitute for House Bill 1027 makes the following changes in the law regarding the State Treasurer's duty to invest certain funds:

1. It authorizes the State Treasurer to invest up to \$100 million of excess cash of the Escheat Fund in North Carolina partnerships that primarily finance rural North Carolina businesses. The partnerships would be required to reinvest the funds only in rural North Carolina businesses.
2. It authorizes the State Treasurer to invest excess cash of non-retirement trust funds in venture capital partnerships. The amount invested, when added to the amount of Escheat Funds invested as described in #1 above, may not exceed \$100 million.
3. It authorizes the State Treasurer to invest excess cash of the General Fund and Highway Fund in a variety of new investments, including venture capital partnerships. The amount invested, when added to the amount invested as described in #1 and #2 above, may not exceed \$100 million.

G.S. 147-69.2 sets out the permitted investments for cash in trust funds and special funds held by the State for any purpose other than meeting State appropriations. Under current law, the cash in these funds may be invested in a variety of obligations and securities, including up to \$30 million in venture capital partnerships and up to \$20 million in obligations or securities of the North Carolina Enterprise Corporation. House Bill 1027 adds two new permitted investments for cash in these funds. It authorizes the State Treasurer to invest up to \$100 million of the Escheat Fund in North Carolina partnerships that primarily finance rural North Carolina businesses. The investment must be conditioned on the partnership's reinvestment of the funds only in rural North Carolina businesses. If this investment results in a loss, the bill states that it is the intent of the General Assembly to appropriate funds to the Escheat Fund to make up the loss. The bill also authorizes the State Treasurer to invest additional cash in these trust funds and special funds, other than retirement or pension systems, in venture capital partnerships. The additional amount invested may not exceed

\$100 million when added to the amount of Escheat Funds invested in North Carolina partnerships financing North Carolina businesses.

G.S. 147-69.1 sets out the permitted investments for cash in the Highway Fund and the General Fund in excess of the amount required to meet current needs and demands. Under current law, the excess cash may be invested in highly liquid assets such as United States obligations, obligations of various federal agencies, obligations of the State, certificate of deposits, and savings accounts. House Bill 1027 amends G.S. 147-69.1(c) to allow the State Treasurer to invest excess cash of the General Fund and the Highway Fund in the following additional assets, some of which are less liquid:

- general obligations of other states
- general obligations of North Carolina cities, counties, and special districts
- highly-rated obligations of U.S. companies
- FHA-insured or VA-guaranteed mortgages on real estate in North Carolina
- limited partnership interests in venture capital partnerships.

The bill makes additional clarifying and technical changes to the statutes governing investments by the State Treasurer. It is effective when it becomes law.

The State Treasurer has a fiduciary duty to seek the best possible investments in terms of return and safety. Existing law reflects the policy of the State that the State Treasurer's investment decisions should be professional decisions made in the best interest of the owner of the assets and not influenced by political or economic development considerations. The Treasurer is independent of fiscal control by the Governor and is authorized to contract with independent professionals and experts as necessary for proper administration of the investment programs. The Treasurer is required to establish annual yield targets for investments and report annually to the General Assembly on the nature and character of all investments, the return on the investments, and the extent to which the annual yield targets have been reached. The Treasurer is also required to report quarterly on all investments to the Joint Legislative Commission on Governmental Operations and to the Co-Chairs of the House and Senate Appropriations Committees.

The State Treasurer has made investments since 1988 in venture capital partnerships and in the North Carolina Enterprise Corporation. The annualized

return on these investments through September 1996 is 4.55%.¹ The annualized return on the State's equity investment fund from September 1988 through September 1996 is 15.31%.

The North Carolina Enterprise Corporation is an entity formed under Article 3 of Chapter 53A of the General Statutes to make investments in small North Carolina businesses. The Corporation focuses on investments that have significant potential to create jobs and diversify and stabilize the economy of rural areas of the State.

The Escheat Fund is one of the trust funds invested by the State Treasurer. Escheated property is property to which the State assumes ownership under Chapter 116B of the General Statutes, either because the property is determined to be abandoned or the property was owned by a person who died and had no heirs. Article IX, 10 of the North Carolina Constitution requires property in the Escheat Fund to be used to "aid worthy and needy students who are residents of this State and are enrolled in public institutions of higher education in this State." The State Treasurer administers the Escheat Fund and resolves the claims of any creditors of those who owned property that has escheated.

In 1987, the State Treasurer was authorized to invest up to 3% of the cash in the General Fund and the Highway Fund in venture capital partnerships. In 1988, this authorization was extended to include up to \$20 million in the North Carolina Enterprise Corporation. During the 1990-91 financial crisis, the cash in the General Fund became low. At that time, the State Auditor informed the General Assembly that investment of the General Fund in these illiquid assets creates a potential problem because when the cash balance is below the amount invested in the illiquid assets, it creates a deficit cash balance. Based on the Auditor's recommendation, legislation was passed in 1990 to prohibit investment of the General Fund and Highway Fund in venture capital partnerships and in the North Carolina Enterprise Corporation and authorizing instead the investment of the less liquid trust funds in these assets. As a result, the pension and retirement funds bought the venture capital and Enterprise Corporation investments from the General Fund. This bill retains the existing authorization for investment of up to \$50 million of pension and retirement funds in venture capital partnerships and the North Carolina Enterprise Corporation, but authorizes the new \$100 million to be invested from only non-pension and retirement sources, including the Highway Fund and the General Fund.

¹ There are ten such investments, with annualized returns ranging from 16.70% to (20.62%), over different periods.

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

Thursday, August 7, 1997

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Ann Duneau WCSR

Paul Sanford Holshouse

Sherezh Kostizewa "

Jack Cyron AFLCCO

Roger Bowe Bowe & Assoc -

Lou Wilson NCAHTCF

Willie Ribick DOR

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

Thursday, August 7, 1997

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

<i>C. S. ...</i>	NC AFL-CIO
<i>Pa. ...</i>	Bldg + Tel. ...
<i>John May</i>	NC CWA COUNCIL
<i>Angie Harris</i>	Commerce
<i>Rich Carlisle</i>	"
<i>Wayne Hunder</i>	DMV
<i>Alan ...</i>	Regulation & ...
<i>Bob Womble</i>	Policy & ...
<i>John ...</i>	TDA
<i>Darrell Arnold</i>	SEANC
<i>Doug ...</i>	Dept. of State ...

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

Thursday, August 7, 1997

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Charles Hetherington	Office of Treasurer
Jay Roberts	JPA Assoc.
Eatherine Davis	Electricities
George Howe	MCOE
Daryl Simmons	EDA, PA
Jon Cerr	Jordan Price
Alan Miles	Bulfinch Division LLP
Susan Valauri	Nationwide
Ann Beckman	SBE
John Coler	Advantage Capital

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT

John H. Kerr, III, Co-Chair
David W. Hoyle, Co-Chair

Monday, August 11, 1997

SENATOR JOHN KERR,

submits the following with recommendations as to passage:

**UNFAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 1,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 2**

H.B.(SCS #1)	769	Dropout Prevention/Drivers License.
		Draft Number: PCS6316
		Sequential Referral: Appropriations
		Recommended Referral: None
		Long Title Amended: No

TOTAL REPORTED: 1

Committee Clerk Comment: HB 769

SENATE FINANCE COMMITTEE

THURSDAY, AUGUST 14, 1997

8:30 A.M. - ROOM 544 LOB

The Senate Finance Committee met. There were 19 members of the Committee present. Senator David W. Hoyle, Co-Chairman, called the meeting to order and introduced the Pages, they are Kathleen Cox from Greenville, N. C., sponsored by Senator Warren, Curtis Dickens from Raleigh, N. C., sponsored by Senator Ballance and Knachelle Butler from Wendell, N. C., sponsored by Senator Ballance.

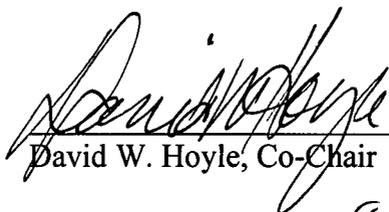
H. B. 566 - Wake Schools Development Changes

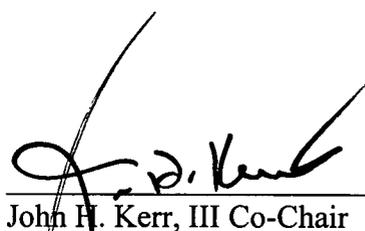
Senator Reeves came to explain the bill. He moved for adoption of a proposed committee substitute, motion passed. Senator Kerr moved for a "favorable" report, motion passed.

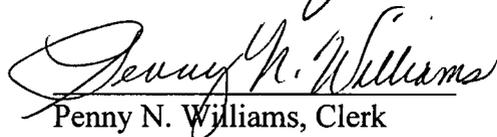
S. B. 624 - Sedalia Incorporated (Guilford)

Senator William Martin came to explain the bill. Senator Foxx moved for a "favorable" report, motion passed.

Meeting was adjourned.


David W. Hoyle, Co-Chair


John H. Kerr, III Co-Chair


Penny N. Williams, Clerk


Evelyn S. Hartsell, Clerk

NOTE:

Agenda is Attachment # 1
Visitor's Registration is Attachment # 2
Committee Report is Attachment # 3

AGENDA

FOR

SENATE FINANCE MEETING

THURSDAY, AUGUST 14, 1997

8:30 A.M., ROOM 544, LOB

H.B. 566 - WAKE SCHOOLS DEVELOPMENT CHANGES - REP. ELLIS

S.B. 624 - SEDALIA INCORPORATED (GUILFORD) - SEN. W. MARTIN

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

2

HOUSE BILL 566
Committee Substitute Favorable 7/3/97

Short Title: Wake Schools Development Charges.

(Local)

Sponsors:

Referred to:

March 20, 1997

- 1 A BILL TO BE ENTITLED
2 AN ACT EXEMPTING THE WAKE COUNTY PUBLIC SCHOOL SYSTEM
3 FROM DEVELOPMENT CHARGES RELATED TO THE CONSTRUCTION,
4 RENOVATION, AND REPAIR OF PUBLIC SCHOOL SYSTEM
5 INFRASTRUCTURE FACILITIES IN WAKE COUNTY AND THE
6 MUNICIPALITIES THEREIN.
7 The General Assembly of North Carolina enacts:
8 Section 1. Notwithstanding any other provision of law, the Wake County
9 Public School System shall be exempt from development charges assessed by Wake
10 County or any municipality having territory within Wake County where the
11 development charge is assessed against the construction, renovation, or repair of
12 public school infrastructure facilities.
13 Section 2. For the purposes of this act:
14 (a) "Development charge" means any:
15 (1) Impact fee, facility fee, development fee, project fee, regulatory fee,
16 or other similar fee assessed in connection with the construction,
17 renovation, or repair of a public school infrastructure facility
18 where the fee is based on the student seating capacity of the
19 facility.
20 (2) Water and sewer acreage fee when the Wake County Public School
21 System has installed water and sewer improvements.
22 (3) Transportation development fee when the Wake County Public
23 School System has installed transportation improvements.

- 1 (4) Utility tap fee.
- 2 (5) Plan review fee.
- 3 (6) Building permit fee.
- 4 (7) Fee to place a mobile classroom unit on property owned by the
- 5 Wake County Public School System.

6 (b) "Public school infrastructure facility" means any building, structure,
7 or other facility used or to be used by the Wake County Public School System for
8 instructional, administrative, or maintenance purposes. The term includes mobile
9 classroom units.

10 Section 3. This act is effective when it becomes law and applies to Wake
11 County Public School System construction, renovation, and repair projects started or
12 in progress on or after that date, except that any valid development charge that
13 accrued prior to that date shall remain valid and payable by the Wake County Public
14 School System.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

HOUSE BILL 566
Committee Substitute Favorable 7/3/97
Proposed Committee Substitute H566-PCS7368

Short Title: Wake Schools Development Charges.

(Local)

Sponsors:

Referred to:

March 20, 1997

1 A BILL TO BE ENTITLED
2 AN ACT EXEMPTING THE WAKE COUNTY PUBLIC SCHOOL SYSTEM AND
3 QUALIFIED NONPUBLIC SCHOOLS OF WAKE COUNTY FROM
4 DEVELOPMENT CHARGES RELATED TO THE CONSTRUCTION,
5 RENOVATION, AND REPAIR OF SCHOOL INFRASTRUCTURE FACILITIES
6 IN WAKE COUNTY AND THE MUNICIPALITIES THEREIN, AND TO
7 CHANGE SEVERAL OTHER LAWS AFFECTING WAKE COUNTY.

8 The General Assembly of North Carolina enacts:

9 Section 1. Notwithstanding any other provision of law, the Wake County
10 Public School System and qualified nonpublic schools of Wake County shall be
11 exempt from development charges assessed by Wake County or any municipality
12 having territory within Wake County where the development charge is assessed
13 against the construction, renovation, or repair of school infrastructure facilities.

14 Section 2. For the purposes of this act:

- 15 (a) "Development charge" means any:
16 (1) Impact fee, facility fee, development fee, project fee, regulatory fee,
17 or other similar fee assessed in connection with the construction,
18 renovation, or repair of a school infrastructure facility where the
19 fee is based on the student seating capacity of the facility.
20 (2) Water and sewer acreage fee when the Wake County Public School
21 System or a qualified nonpublic school has installed water and
22 sewer improvements.

- 1 (3) Transportation development fee when the Wake County Public
2 School System or a qualified nonpublic school has installed
3 transportation improvements.
- 4 (4) Utility tap fee.
- 5 (5) Plan review fee.
- 6 (6) Building permit fee.
- 7 (7) Fee to place a mobile classroom unit on property owned by the
8 Wake County Public School System or qualified nonpublic school.
- 9 (b) "School infrastructure facility" means any building, structure, or
10 other facility used or to be used by the Wake County Public School System or
11 qualified nonpublic school for instructional, administrative, or maintenance purposes.
12 The term includes mobile classroom units.
- 13 (c) "Qualified nonpublic school" means a school having an enrollment of
14 20 or more students, and that has one or more of the characteristics set out in G.S.
15 115C-555.
- 16 Section 3. Chapter 279 of the 1989 Session Laws of North Carolina is
17 repealed.
- 18 Section 4. Section 4 of Chapter 441 of the 1995 Session Laws reads as
19 rewritten:
- 20 "Sec. 4. This act is effective upon ratification. ~~This act shall sunset July 1, 1997.~~"
- 21 Section 5. G.S.90-95.3(b) reads as rewritten:
- 22 "(b) When any person is convicted of an offense under this Article, the court may
23 order him to make restitution in the sum of one hundred dollars (\$100.00) to the
24 State of North Carolina or to a unit of local government for the expense of analyzing
25 any controlled substance possessed by him or his agent as part of an investigation
26 leading to his conviction. Any funds received under this subsection shall be
27 deposited in the General ~~Fund~~. Fund, or with a unit of local government if it
28 provided the controlled substance analysis."
- 29 Section 6. Sections 1 and 2 of this act become effective when they
30 become law and apply to Wake County Public School System or Wake County
31 qualified nonpublic school construction, renovation, and repair projects for which a
32 building permit is issued on or after that date. Any valid development charge that
33 accrued prior to the effective date of this act on a project for which a building permit
34 was issued prior to the effective date of this act shall remain valid and payable by the
35 school system or school.
- 36 Section 7. Sections 3, 4, 5, and 7 of this act apply only to Wake County.
37 Section 4 of this act is effective retroactively from July 1, 1997. Sections 3, 5, and 7
38 of this act become effective when they become law. Any process served pursuant to
39 Chapter 441 of the 1995 Session Laws from July 1, 1997, until the date this act
40 becomes law is validated by this act.

EXPLANATION OF HOUSE BILL 566 (Senate PCS):
Wake Schools Development Charges

TO: Senate Finance Committee
FROM: Martha Walston, Committee Counsel
DATE: August 13, 1997
SPONSOR: Representative Ellis

House Bill 566 is a local bill that exempts the Wake County Public School System and qualified nonpublic schools in Wake County from development charges assessed by Wake County or any municipality with territory in Wake County if the development charge is assessed against the construction, renovation, or repair of school infrastructure facilities. The proposed committee substitute adds qualified nonpublic schools to this exemption and also adds the sections dealing with changes in Wake County regarding restitution for drug analyses, the authority to close streets and alleys in the extraterritorial jurisdiction of the County, and the appointment of private process servers.

A "school infrastructure facility" is any building, structure, or other facility used or to be used by the Wake County public school system or qualified nonpublic school for instructional, administrative, or maintenance purposes. The term includes mobile classroom units.

A "qualified nonpublic school" means a school with an enrollment of at least 20 students and that has one or more of the following characteristics:

- (1) It is accredited by the State Board of Education
- (2) It is accredited by the Southern Association of Colleges and Schools.
- (3) It is an active member of the N.C. Association of Independent Schools.
- (4) It receives no funding from the State.

A "development charge" means the following:

- Impact fee, facility fee, development fee, project fee, regulatory fee, or other similar fee assessed in connection with the construction, renovation, or repair of a school infrastructure facility where the fee is based on the student seating capacity of the facility.
- Water and sewer acreage fee when the county school system or a qualified nonpublic school has installed water and sewer improvements.

- Transportation development fee when the county school system or qualified nonpublic school has installed transportation improvements.
- Utility tap fee
- Plan review fee
- Building permit fee
- Fee to place a mobile classroom unit on property owned by the county school system. or qualified nonpublic school.

Section 3 of the Bill repeals the law that took away the authority of municipalities in Wake County to close streets and alleys located within a municipality's extraterritorial jurisdiction.

Section 4 removes the sunset provision from the law that allows civil process papers, except executions and summary ejectments, to be served by a private process server appointed by the clerk of court. This law was enacted in 1995 and applies only to Wake County.

Section 5 rewrites the section of the Controlled Substances Act regarding restitution for drug analyses to provide that a person convicted under the Act may be ordered to pay restitution to a unit of local government if the unit of local government provides the controlled substance analysis. The section now provides that restitution goes only to the State and is deposited in the General Fund. This section applies only to Wake County.

Section 1 and 2 of the act are effective when they become law and apply to Wake County Public School System or Wake County qualified nonpublic school projects for which a building permit is issued on or after the effective date of the act, except that any "valid development charge" that accrued prior to that date shall remain valid and payable by the school system or school.

Section 3, 4, 5, and 7 apply only to Wake County. Section 4 is effective retroactively from July 1, 1997. Any process served pursuant to the 1995 Wake County law, after July 1, 1977 but before this act becomes law, is validated by this act. Sections 3, 5, and 7 are effective when they become law..

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

2

SENATE BILL 624

Rules and Operations of the Senate Committee Substitute Adopted 8/13/97

Short Title: Sedalia Incorporated (Guilford).

(Local)

Sponsors:

Referred to: Finance.

April 1, 1997

1 A BILL TO BE ENTITLED

2 AN ACT TO INCORPORATE THE TOWN OF SEDALIA.

3 The General Assembly of North Carolina enacts:

4 Section 1. A Charter for the Town of Sedalia is enacted to read:

5 "CHARTER OF THE TOWN OF SEDALIA.

6 "CHAPTER I.

7 "INCORPORATION AND CORPORATE POWERS.

8 "Section 1.1. **Incorporation and Corporate Powers.** The inhabitants of the Town
9 of Sedalia are a body corporate and politic under the name 'Town of Sedalia'.
10 Under that name they have all the powers, duties, rights, privileges, and immunities
11 conferred and imposed on cities by the general law of North Carolina.

12 "CHAPTER II.

13 "CORPORATE BOUNDARIES.

14 "Sec. 2.1. **Town Boundaries.** Until modified in accordance with law, the
15 boundaries of the Town of Sedalia are as follows:

16 BEGINNING at a point, said point being in the south right-of-way line of Bethel
17 Church Road, said point being the northwest corner of Guilford County Tax Map
18 ACL 18-1173, Block 242, Lot 24; thence running along said right-of-way line in an
19 easterly direction a distance of approximately 1,500 feet to the northeast corner of
20 Lot 7 on Guilford County Tax Map ACL 18-1173, Block 242; thence along the
21 eastern line of said Lot 7 a distance of approximately 290 feet to a point, said point
22 being in the northern line of Sedalia Country Park Subdivision; thence in an easterly
23 direction along the northern line of Sedalia Country Park Subdivision and the

1 southern property lines of Guilford County Tax Map ACL 18-1173, Block 242, Lots
2 4, 15, and 52 and Block 207, Lot 8 a distance of approximately 3340 feet to a point,
3 said point being the northeast corner of Guilford County Tax Map ACL 18-1173,
4 Block 207, Lot 19; thence along the eastern lines of Lots 19 and 11 of said Block in a
5 southerly direction a distance of approximately 1660 feet to a point, said point being
6 the northwest corner of College Heights Subdivision, said point also being the
7 southwest corner of said Block 207, Lot 12; thence in an easterly direction along the
8 northern line of College Heights Subdivision, as recorded in P.B. 34, Page 54 in the
9 Office of Guilford County Register of Deeds, a distance of approximately 1850 feet to
10 a point in the west right-of-way line of Sedalia Road; thence in an easterly direction a
11 distance of approximately 60 feet to a point in the east right-of-way line of Sedalia
12 Road at the southwest corner of Guilford County Tax Map ACL 18-1173, Block 207,
13 Lot 17; thence in an easterly direction along the southern lines of lots 17 and 2 of
14 said block a distance of approximately 970 feet to a point, said point being the
15 southeast corner of said Lot 2; thence South $84^{\circ}41'$ East a distance of 839 feet to a
16 point; thence South $65^{\circ}46'$ West a distance of 229 feet to a point; thence South
17 $57^{\circ}03'$ West a distance of 298 feet to a point; thence South $38^{\circ}22'$ West a distance of
18 248 feet to a point; thence South $13^{\circ}19'$ West a distance of 136 feet to a point; thence
19 South $63^{\circ}02'$ West a distance of 585 feet to a point; thence South $28^{\circ}14'$ East a
20 distance of 443 feet to a point; thence South $04^{\circ}47'$ West a distance of 1,151 feet to a
21 point, said point being a common corner with Stoney Creek Golf Course; thence
22 South $88^{\circ}16'$ East along the western golf course line a distance of 154 feet to a point;
23 thence South $03^{\circ}06'$ East a distance of 620 feet to a point; thence South $70^{\circ}34'$ West
24 a distance of 234 feet to a point; thence South $30^{\circ}53'$ East a distance of 544 feet to a
25 point; thence South $06^{\circ}26'$ West a distance of 341 feet to a point; thence South
26 $49^{\circ}11'$ West a distance of 630 feet to a point; thence South $36^{\circ}48'$ East a distance of
27 207 feet to a point; thence South $23^{\circ}01'$ West a distance of 1705 feet to a point, a
28 common corner with Totten Subdivision; thence South $60^{\circ}01'$ East with the Totten
29 Subdivision a distance of 339 feet to a point; thence North $32^{\circ}12'$ East a distance of
30 37 feet to a point; thence South $58^{\circ}21'$ East a distance of 387 feet to a point; thence
31 South $36^{\circ}44'$ West a distance of 382 feet to a point; thence South $50^{\circ}12'$ East a
32 distance of 81 feet to a point; thence South $23^{\circ}28'$ West a distance of approximately
33 170 feet to a point on the north right-of-way line of Burlington Road; thence along
34 said right-of-way line in a westerly direction a distance of 124 feet to a point; thence
35 in a southwesterly direction, crossing Burlington Road, a distance of approximately
36 100 feet to the northeast corner of Guilford County Tax Map ACL 18-1175, Block
37 209, Lot 42; thence in a southwesterly direction along the eastern lines of Guilford
38 County Tax Map ACL 18-1175, Block 209, Lots 42, 41, and 40 a distance of
39 approximately 580 feet to a point, said point being the southeast corner of said Lot
40 40; thence in a northwesterly direction along the southern lines of Guilford County
41 Tax Map ACL 18-1175, Block 209, Lots 40, 10, 39, 35, 36, 37, 21 and 56 a distance of
42 approximately 1860 feet to the western line of Lot 15 on said Block 209; thence in a
43 southerly direction of distance of approximately 120 feet along the eastern line of said
44 Lot 15 to the southeast corner of Lot 15; thence in a westerly direction along the

1 southern lines of Lots 15 and 32 of said Block 209 a distance of approximately 690
2 feet to a point, said point being a common corner of Lots 32 and 63 of said Block
3 209, thence in a southerly direction along the western lines of Lots 63 and 4 of said
4 Block 209 a distance of approximately 1100 feet to a point; thence in a westerly
5 direction along a portion of the western line of said Lot 4 a distance of approximately
6 190 feet to a point, said point being the northeast corner of Guilford County Tax
7 Map ACL 18-1175, Block 209, Lot 64; thence in a southerly direction along the
8 eastern line of Lot 64, and a projection of that line crossing Lot 4 of said block, a
9 distance of approximately 460 feet to a point, said point being in the northern line of
10 Guilford County Tax Map ACL 18-1175, Block 209, Lot 51; thence in an easterly
11 direction a distance of approximately 480 feet along the northern line of said Lot 51
12 to a point, said point being the northeast corner of said Lot 51; thence in a southerly
13 direction along the eastern lines of Lots 51, 48, and 61 of said Block 209 a distance of
14 approximately 330 feet to a point, said point being the southeast corner of said Lot
15 61; thence in a westerly direction a distance of approximately 260 feet to a point, said
16 point being the northeast corner of Lot 55 of said Block 209; thence in a
17 southwesterly direction a distance of approximately 260 feet along the eastern line of
18 said Lot 55 to a point; thence in a westerly direction along the southern line of said
19 Lot 55 and crossing Palmer Road, a distance of approximately 240 feet to a point in
20 the west right-of-way line of Palmer Road; thence in a northerly direction along said
21 right-of-way line a distance of approximately 1900 feet to a point, said point being the
22 southeast corner of Guilford County Tax Map ACL 18-1175, Block 240, Lot 24;
23 thence in a westerly direction along the southern line of said Lot 24 a distance of
24 approximately 1100 feet to a point in the eastern line of Lot 8 of said Block 240,
25 thence along the common line of said Lots 8 and 24 in a northerly direction a
26 distance of approximately 460 feet to the northeast corner of said Lot 8; thence in a
27 westerly direction along the northern line of said Lot 8 a distance of approximately
28 1200 feet to a point, said point being the southwest corner of Lot 22 of said Block
29 240; thence in a northerly direction along the common line of Lots 22 and 8 of said
30 block a distance of approximately 1060 feet to a point, said point being in the south
31 right-of-way line of Burlington Road; thence along said right-of-way line in a
32 northwesterly direction a distance of approximately 560 feet to a point in the west
33 right-of-way line of Bloomfield Road; thence in a southerly direction along said west
34 right-of-way line a distance of approximately 220 feet to a point; said point being the
35 northeast corner of Guilford County Tax Map ACL 18-1175, Block 240, Lot 21;
36 thence in a westerly direction along the northern line of said Lot 21 a distance of
37 approximately 580 feet to the northwest corner of said Lot 21; thence in a northerly
38 direction along the western line of Block 241, Lot 41 a distance of approximately 430
39 feet to the northwest corner of said Lot 41; thence in an easterly direction along the
40 northern line of said Lot 41 a distance of approximately 300 feet to a point in the
41 south right-of-way line of Burlington Road; thence along said right-of-way line in a
42 northwesterly direction a distance of approximately 420 feet to a point on the
43 southern line of Guilford County Tax Map ACL 18-1175, Block 241, Lot 28; thence
44 in a westerly direction along the southern lines of Lots 28 and 10 of said Block 241 a

1 distance of approximately 970 feet to the southwest corner of said Lot 10; thence in a
2 northerly direction along the western lines of Lots 10 and 25 of said Block 241 a
3 distance of approximately 450 feet to a point; thence in a northwesterly direction
4 along the southwestern line of Lot 24 of said Block 241 a distance of approximately
5 90 feet to a point; thence in a northeasterly direction along the northwestern line of
6 said Lot 24 a distance of approximately 380 feet to a point, said point being in the
7 south right-of-way line of Burlington Road; thence in a southeasterly direction along
8 said right-of-way line a distance of approximately 230 feet to a point, said point being
9 on a common property line of Lots 25 and 24 of said block; thence in a northeasterly
10 direction, crossing Burlington Road, a distance of approximately 60 feet to the
11 westernmost corner of Lot 26 of said Block 241; thence following the northern line of
12 said Lot 26 a distance of approximately 680 feet in a northeasterly direction to a
13 point, said point being the southwest corner of Imperial Estates Subdivision; thence
14 in a northerly direction along the western line of Imperial Estates Subdivision a
15 distance of approximately 990 feet to a point; thence along the northwestern line of
16 said subdivision a distance of approximately 1,040 feet in a northeasterly direction to
17 the northwest corner of said subdivision; thence in a westerly direction along the
18 southern line of Guilford County Tax Map ACL 18-1173, Block 242, Lot 46 a
19 distance of approximately 50 feet to a point; thence along the southwestern lines of
20 Lots 46, 14 and 13 of said Block 242 in a northwesterly direction a distance of
21 approximately 600 feet to a point; thence along the southern line of said Lot 13 in a
22 westerly direction a distance of approximately 390 feet to a point, said point being the
23 southwest corner of Lot 13; thence in a northerly direction along the western lines of
24 Guilford County Tax Map ACL Map 18-1173, Block 242, Lots 13, 12, 11, 10, 35 and
25 30 a distance of approximately 1700 feet to a point, said point being the southeast
26 corner of Lot 23 of said Block 242; thence in a southwesterly direction along the
27 south line of said Lot 23 a distance of approximately 430 feet to the southwest corner
28 of said Lot 23; thence in a northerly direction along the western lines of Lots 23, 28
29 and 24 of said Block 242 a distance of approximately 1140 to a point; thence in a
30 westerly direction a distance of approximately 100 feet along said Lot 24 to a point;
31 thence in a northerly direction a distance of approximately 140 feet along the western
32 line of said Lot 24 to a point in the south right-of-way line of Bethel Church Road,
33 said point being the POINT OF BEGINNING.

34 "Sec. 2.2. **Annexations.** (a) Article 4A of Chapter 160A of the General Statutes
35 does not apply to the Town of Sedalia until July 1, 2017.

36 (b) G.S. 160A-58.1(b)(2) shall not apply to the City of Greensboro as it relates to
37 the Town of Sedalia.

38 "CHAPTER III.

39 "GOVERNING BODY.

40 "Sec. 3.1. **Structure of Governing Body; Number of Members.** The governing body
41 of the Town of Sedalia is the Town Council, which has five members.

42 "Sec. 3.2. **Manner of Electing Council.** The qualified voters of the entire Town
43 elect the members of the Council.

1 "Sec. 3.3. **Term of Office of Council Members.** Members of the Council are
2 elected to four-year terms. In 1997 and quadrennially thereafter, three members of
3 the Council shall be elected for four-year terms. In 1999 and quadrennially
4 thereafter, two members of the Council shall be elected for four-year terms.

5 "Sec. 3.4. **Election of Mayor; Term of Office.** At the organizational meeting of the
6 Council following each election, the Council shall elect one of its members to serve
7 as Mayor. The Mayor serves as such at the pleasure of the Council.

8 "CHAPTER IV.

9 "ELECTIONS.

10 "Sec. 4.1. **Conduct of Town Elections.** Town officers shall be elected on a
11 nonpartisan basis. Elections shall be conducted in accordance with Chapter 163 of
12 the General Statutes.

13 "Sec. 4.2. **Determination of Election Results.** The results of election of officers
14 shall be determined by a plurality as provided in G.S. 163-292.

15 "CHAPTER V.

16 "ADMINISTRATION.

17 "Sec. 5.1. **Town to Operate Under Mayor-Council Plan.** The Town of Sedalia
18 operates under the Mayor-Council plan as provided in Part 3 of Article 7 of Chapter
19 160A of the General Statutes."

20 Section 2. (a) Until the organizational meeting of the Town Council of
21 Sedalia following the 1997 municipal election, Ruth Smith, Skip Corley, Myra Lynn,
22 Henry Blackmon, and Duane Bryant shall serve as members of the Town Council.
23 Ruth Smith, Henry Blackmon, and Duane Bryant serve until the organizational
24 meeting after the 1997 election. Skip Corley and Myra Lynn serve until the
25 organizational meeting after the 1999 election.

26 (b) Ruth Smith shall serve as Mayor until the organizational meeting of
27 the Town Council after the 1997 election, except that she shall serve at the pleasure
28 of the Town Council as if she had been chosen by them under Section 3.4 of the
29 Charter.

30 (c) The initial meeting of the Town Council shall be called by the clerk
31 to the Guilford County Board of Commissioners.

32 Section 3. From and after the effective date of this act, the citizens and
33 property in the Town of Sedalia shall be subject to municipal taxes levied for the
34 year beginning July 1, 1997, and for that purpose the Village shall obtain from
35 Guilford County a record of property in the area herein incorporated which was
36 listed for taxes as of January 1, 1997; and the businesses in the town shall be liable for
37 privilege license tax from the effective date of the privilege license tax ordinance.
38 The Town may adopt a budget ordinance for fiscal year 1997-98 without following
39 the timetable in the Local Government Budget and Fiscal Control Act, but shall
40 follow the sequence of actions in the spirit of the act insofar as is practical. For fiscal
41 year 1997-98, ad valorem taxes may be paid at par or face amount within 90 days of
42 adoption of the budget ordinance, and thereafter in accordance with the schedule in
43 G.S. 105-360 as if the taxes had been due and payable on September 1, 1997. The

1 Town of Sedalia is eligible to receive distributions of State funds during fiscal year
2 1997-98.

3 Section 4. (a) The Guilford County Board of Elections shall establish a
4 special candidate filing period for the Town of Sedalia for the 1997 municipal
5 election.

6 (b) The Guilford County Board of Elections may establish a special
7 election date for the 1997 municipal election for the Town of Sedalia.

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

EXPLANATION OF SENATE BILL 624 (2nd Edition) Local:
Sedalia Incorporated (Guilford)

TO: Senate Finance Committee
FROM: Committee Counsel
DATE: August 14, 1997
SPONSOR: Senators Martin, Blust, and Shaw

Senate Bill 624 incorporates the town of Sedalia. The incorporation does not have a referendum.

Sec. 2.1 of the Charter sets out the corporate boundaries.

Sec. 2.2 provides that the Town may not do any voluntary or involuntary annexations under the general law for 20 years. This section further provides that for satellite annexations of Greensboro, the proximity to Sedalia would not be considered. Under general law, satellite annexations by Greensboro could not take place if the area was closer to Sedalia than to Greensboro. The Charter further provides that the governing body of the Town will be a town council with five members. The Town will operate under a Mayor-Council plan.

Section 4(a) of the bill directs the Guilford County Board of Elections to establish a special filing period. This is necessary since the normal general law candidate filing period has already passed for the 1997 municipal election. Section 4(b) allows the Guilford County Board of Elections to hold the regular municipal election later than the November date set by general law. This is necessary because the bill must be precleared by the U.S. Department of Justice under Section 5 of the Voting Rights Act.

The act is effective when it becomes law.

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

8/14/1997

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

<i>Bernard Allen</i>	<i>Secy. of State</i>
<i>James Stem</i>	<i>UTU</i>
<i>Mike Casento</i>	<i>NEHBA</i>
<i>R. Paul Wilons</i>	<i>NEHBA</i>
<i>John Boyle</i>	<i>Boyle Call & Stoupe</i>
<i>J. Ma</i>	<i>NC Assoc of Counties</i>
<i>Boz Smith</i>	<i>lobbyist</i>
<i>Susan Everett</i>	<i>Rep. Ellis (1303 LB)</i>
<i>Alice Parlana</i>	<i>Electricities</i>
<i>Tom Morrow</i>	<i>Sprint</i>
<i>Don An</i>	<i>S&P</i>
<i>Steve Keene</i>	<i>News</i>

SENATE FINANCE COMMITTEE

MONDAY, AUGUST 18, 1997

ON THE SENATE FLOOR
(During Session)

The Senate Finance Committee met during session on August 18, 1997, with Senator Soles presiding. Committee members present for session were present for the meeting.

S.B. 1065 - Amend N.C. Law

A proposed committee substitute was explained for S.B. 1065 and upon motion by Senator Kerr, the PCS was adopted by the committee. Senator Kerr moved for a "favorable" report for the committee substitute and the motion carried. Copy of bill, committee substitute, explanation and fiscal note included with the minutes.

H.B. 590 - Wilson's Mills Charter

Senator Wellons explained this bill and on his motion the bill was given a "favorable" report by the committee. Copy of bill included in the minutes.

Meeting adjourned.

R. C. Soles, Vice Chairman of Finance Committee



Evelyn S. Hartsell, Clerk

NOTE:

Copy of Committee Reports is Attachment # 1

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

FILED - SENATE

S

S 1065 APR 17 1997

SENATE DRSA732-LC123B(3.9)

PRINCIPAL CLERK

Short Title: Amend N.C. Law.

(Public)

Sponsors: Senator Hoyle.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE LAWS OF NORTH CAROLINA.
3 The General Assembly of North Carolina enacts:
4 Section 1. This act becomes effective July 1, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1997

S

D

SENATE BILL 1065
Proposed Committee Substitute S1065-PCSX2809

Short Title: Exempt Severance Pay.

(Public)

Sponsors:

Referred to:

April 21, 1997

- 1 A BILL TO BE ENTITLED
2 AN ACT TO EXPAND THE INCOME TAX EXCLUSION FOR SEVERANCE
3 PAY TO INCLUDE SEVERANCE PAY DUE TO AN EMPLOYEE'S
4 INVOLUNTARY TERMINATION THROUGH NO FAULT OF THE
5 EMPLOYEE.
6 The General Assembly of North Carolina enacts:
7 Section 1. G. S. 105-134.6(b)(11) reads as rewritten:
8 "(11) The amount paid to the taxpayer as severance wages during the
9 taxable year as the result of the ~~permanent closure of a~~
10 ~~manufacturing or processing plant,~~ taxpayer's permanent,
11 involuntary termination from employment through no fault of the
12 employee, not to exceed a maximum of thirty-five thousand dollars
13 (\$35,000) for the taxable year, when added to the amount of
14 severance wages paid to the taxpayer by the same employer during
15 the two preceding taxable years."
16 Section 2. This act is effective for taxable years beginning on or after
17 January 1, 1998.

EXPLANATION OF SENATE BILL 1065:
Exempt Severance Pay (PCS)

TO: Senate Finance Committee
FROM: Martha H. Harris, Staff Attorney
DATE: August 15, 1997
SPONSOR: Senator Hoyle

The proposed committee substitute for Senate Bill 1065 would expand the income tax exclusion for severance pay due to closing of a manufacturing plant and would modify the cap on the exclusion, effective beginning with the 1998 tax year. Except for the effective date, the bill is identical to House Bill 1170, introduced by Representative Buchanan.

In 1996, the General Assembly enacted an income tax exclusion for severance pay a taxpayer receives due to the permanent closure of a manufacturing or processing plant, not to exceed a maximum of \$35,000 for the taxable year. The exemption was expected to reduce General Fund revenues by approximately \$4 million a year. This bill modifies the exemption in three ways:

1. It expands the tax exemption to severance pay received due to any involuntary termination through no fault of the employee. The expanded exemption would include being fired without cause, being laid off due to a reduction in force, as well as being terminated due to a plant closure. It would not include voluntary early retirement or being fired for cause.
2. It expands the tax exemption to cover any type of job in the private or public sector, not just a job at a manufacturing plant.
3. It closes a loophole in the \$35,000 cap. Some companies were able to avoid the \$35,000 cap by paying part of the severance pay in December and the rest in January. The bill closes this loophole by clarifying that the \$35,000 cap applies to the total amount paid over the most recent three-year period.

**NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL ESTIMATE**

BILL NUMBER: SB 1065 (Proposed SCS S1065-PCSX2809)

SHORT TITLE: Exempt Severance Pay

FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 1997-98</u>	<u>FY 1998-99</u>	<u>FY 1999-00</u>	<u>FY 2000-01</u>	<u>FY 2001-02</u>
REVENUES (\$Mill.)		-\$2.09	-\$2.21	-\$2.35	-\$2.49
State General Fund					
PRINCIPAL DEPARTMENT AFFECTED: The personal income tax is administered by the Department of Revenue.					
EFFECTIVE DATE: Tax years beginning on or after January 1, 1998.					

BILL SUMMARY: The 1996 General Assembly enacted legislation that exempted the first \$35,000 of severance pay that results from the permanent closure of a manufacturing or processing plant. The committee substitute expands the exemption to severance pay that results from "the taxpayer's permanent, involuntary termination from employment through no fault of the employee". Thus, the exemption would not be restricted to manufacturing and processing industries and to the permanent closing of such employers. In addition, the new language would cap the exemption at \$35,000 for the current tax year plus the two preceding tax years.

ASSUMPTIONS AND METHODOLOGY: The starting point for the calculation of the tax loss is a 1995 and 1996 calendar year tabulation of announced business closings and layoffs by the Employment Security Commission. This data is derived from a survey of newspaper accounts and from information supplied to ESC from employers experiencing the layoffs and closings. ESC indicates that the tabulation may not include all situations. On the other hand, some of the announced closing and layoffs may not actually occur. In addition, data for April-December 1995 from the Mass Layoff Statistics tabulation of ESC was available to compare to the industry mix of layoffs and closings under newspaper tabulation. The mass layoff data applies only to employers with at least 50 employees and thus is not a complete count.

For the purpose of this analysis it is assumed that 60% of the industries affected by the bill (non-manufacturing) provide severance pay. For manufacturing and processing, the assumed ratio for the 1996 bill was 75%. This data is based on the results of a survey by Lee Hecht Harrison,

(OVER)

personnel consultants (found on the Internet). The nationwide numbers were adjusted downward to get to North Carolina estimates due to the lower pay and benefits in the state, relative to the U.S. A report by Challenger, Gray, and Christmas, Inc., specialists in tabulating layoff data, indicates that the median severance pay package has dropped from 16.7 weeks in 1993 to 12 weeks in the first quarter of 1997. In this analysis, a figure of 8 weeks is used because the legislation affects the nonmanufacturing sectors and the fact the private sector benefits are generally lower in North Carolina.

The average annual pay for nonmanufacturing private sector workers was \$22,937 for the 3rd quarter of 1996.

Finally, a marginal tax rate of 6.5% was used to calculate the tax savings. The analysis assumes that all eligible taxpayers are able to use the full amount of the exemption.

The expanded definition includes severance pay in cases other than permanent layoffs and establishment closings. There is no data to determine the impact of these other situations but it is felt that these numbers will be relatively small. In addition, the impact of applying the \$35,000 cap to a 3-year period instead of one tax year is expected to be minimal.

A growth rate of 6% was used to project the future year impact of the bill. This approximates the rate used in the General Fund Financial Model

FISCAL RESEARCH DIVISION (733-4910)

PREPARED BY: Dave Crotts

APPROVED BY: TOM COVINGTON

DATE: August 18, 1997



SENATE FINANCE COMMITTEE

WEDNESDAY, AUGUST 20, 1997

8:30 A. M. - ROOM 544 LOB

The Senate Finance Committee met. There were 20 members of the Committee present. Senator David W. Hoyle, Co-Chairman, called the meeting to order and introduced the Pages, they are Nathan Garner from Wake Forest, N. C., sponsored by Senator Carrington, R. Danielle Csolak from Fuquay-Varina, N. C., sponsored by Senator Plyler, Nadia Stone from Clayton, N. C., sponsored by Senator Ballance and Sara Flowers from Winston-Salem, N. C., sponsored by Senator McDaniel.

H. B. 13 - Simplify and Reduce Inheritance Tax

Representative Cansler came to explain the bill. Senator Lee moved for adoption of a proposed committee substitute, motion passed. Senator Kerr sent forth an amendment to change on Page 2, line 5 of proposed committee substitute by deleting July 1, 2001 and substituting October 1, 2000 and made a motion for adoption, motion passed. Senator Dannelly moved for a "favorable" report and roll into a new committee substitute, motion passed.

H. B. 469 - Permit Fees

Representative Tallent came to explain the bill. Mr. T. Jerry William with the N. C. Restaurant Association spoke on the bill. Mr. Michael Rhodes with DEHNR spoke on the bill. Senator Albertson moved for a "favorable" report, motion passed.

H. B. 1137 - Soil and Water Conservation Plates

Representative Culp came to explain the bill. Senator Kerr sent forward an amendment to the bill and made a motion for the adoption of amendment, motion passed. Senator Webster moved for a "favorable" report and have amendment rolled into a committee substitute, motion passed.

SENATE FINANCE COMMITTEE

Wednesday, August 20, 1997

Page -2-

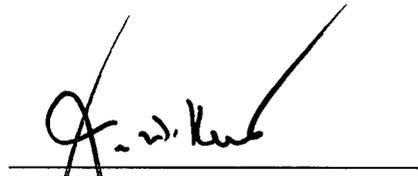
H. B. 115 - 1997 Technical Corrections

Senator Cooper came to explain the bill. Mr. Gerry Cohn, Director of Bill Drafting, spoke on the bill. Senator Kerr moved to amend the bill, motion passed.. Senator Rand made a motion for a "favorable" report as amended and roll into a committee substitute, motion passed.

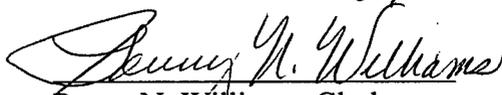
Meeting was adjourned.



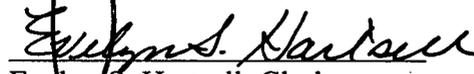
David W. Hoyle, Co-Chair



John H. Kerr, III Co-Chair



Penny N. Williams, Clerk



Evelyn S. Hartsell, Clerk

NOTE:

Agenda is Attachment # 1

Visitor's Registration is Attachment # 2

Committee Report is Attachment # 3

AGENDA

SENATE FINANCE COMMITTEE MEETING

WEDNESDAY, AUGUST 20, 1997

8:30 A.M., ROOM 544, LOB

H.B. 13 - SIMPLIFY AND REDUCE INHERITANCE TAX - REP. CANSLER

H.B. 115 - 1997 TECHNICAL CORRECTIONS - REP. CULPEPPER

H.B. 469 - PERMIT FEES - REP. TALLENT

H.B. 1137 - SOIL AND WATER CONSERVATION PLATES - REP. CULP

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 13

Short Title: Simplify and Reduce Inheritance Tax.

(Public)

Sponsors: Representatives Cansler, Blue, Capps, Church, Neely, Shubert; Aldridge, Baker, Beall, Black, Brown, Creech, Davis, Dedmon, Dockham, Gardner, Goodwin, Hall, Hardy, Hill, Ives, McComas, McMahan, Mitchell, Moore, Morris, Preston, Ramsey, Rayfield, Sexton, Smith, Starnes, Tolson, Warner, Watson, Weatherly, and G. Wilson.

Referred to: Finance.

February 3, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO SIMPLIFY AND REDUCE INHERITANCE TAXES.
3 The General Assembly of North Carolina enacts:
4 Section 1. Article 1 of Chapter 105 of the General Statutes is amended
5 by adding a new section to read:
6 "§ 105-6.1. Phaseout of inheritance tax.
7 When this Article imposes an inheritance tax on property transferred by a
8 decedent but no state death tax credit is allowed under section 2011 of the Code
9 against federal estate tax due on the transfer of the decedent's estate, the amount of
10 inheritance tax is reduced by the appropriate percentage in the phaseout table set out
11 below. When this Article imposes an inheritance tax on property transferred by a
12 decedent and a state death tax credit is allowed under section 2011 of the Code
13 against federal estate tax due on the transfer of the decedent's estate, the amount of
14 inheritance tax that exceeds the maximum credit for state death taxes is reduced by
15 the appropriate percentage in the following phaseout table:

<u>Calendar Year of</u>	<u>Percentage Reduction</u>
<u>Decedent's Death</u>	
18 <u>1998</u>	<u>20%</u>
19 <u>1999</u>	<u>40%</u>
20 <u>2000</u>	<u>60%</u>
21 <u>2001</u>	<u>80%</u>

1 (a) Primary. -- The tax imposed by this Article is payable from the assets of the
2 estate. A person who receives property from an estate is liable for the amount of
3 estate tax attributable to that property.

4 (b) Personal Representative. -- The personal representative of an estate is liable for
5 an estate tax that is not paid within two years after it was due. This liability is
6 limited to the value of the assets of the estate that were under the control of the
7 personal representative. The amount for which the personal representative is liable
8 may be recovered from the personal representative or from the surety on any bond
9 filed by the personal representative under Article 8 of Chapter 28A of the General
10 Statutes.

11 (c) Clerk of Court. -- A clerk of court who allows a personal representative to
12 make a final settlement of an estate without presenting one of the following is liable
13 on the clerk's bond for any estate tax due:

14 (1) An affirmation by the personal representative certifying that no tax
15 is due on the estate because this Article does not require an estate
16 tax return to be filed for that estate.

17 (2) A certificate issued by the Secretary stating that the tax liability of
18 the estate has been satisfied.

19 **"§ 105-32.4. Payment of estate tax.**

20 (a) Due Date. -- The estate tax imposed by this Article is due when an estate tax
21 return is due. An estate tax return is due on the date a federal estate tax return is
22 due.

23 (b) Filing Return. -- An estate tax return must be filed under this Article if a
24 federal estate tax return is required. The return must be filed by the personal
25 representative of the estate on a form provided by the Secretary.

26 (c) Extension. -- An extension of time to file a federal estate tax return is an
27 automatic extension of the time to file an estate tax return under this Article. The
28 Secretary may, in accordance with G.S. 105-263, extend the time for paying the
29 estate tax imposed by this Article or for filing an estate tax return.

30 (d) Interest and Penalties. -- The penalties in G.S. 105-236 apply to the failure to
31 file an estate tax return or to pay an estate tax when due. Interest at the rate set in
32 G.S. 105-241.1 accrues on estate taxes paid after the date they are due.

33 (e) Obtaining Amount Due. -- The personal representative of an estate may sell
34 assets in the estate to obtain money to pay the tax imposed by this Article.

35 **"§ 105-32.5. Making installment payments of tax due when federal estate tax is**
36 **payable in installments.**

37 A personal representative who elects under section 6166 of the Code to make
38 installment payments of federal estate tax may elect to make installment payments of
39 the tax imposed by this Article. An election under this section extends the time for
40 payment of the tax due in accordance with the extension elected under section 6166
41 of the Code. Payments of tax are due under this section at the same time and in the
42 same proportion to the total amount of tax due as payments of federal estate tax
43 under section 6166 of the Code. Acceleration of payments under section 6166 of the
44 Code accelerates the payments due under this section.

1 "§ 105-32.6. Estate tax is a lien on real property in the estate.

2 The tax imposed by this Article on an estate is a lien on the real property in the
3 estate and on the proceeds of the sale of the real property in the estate. The lien is
4 extinguished when one of the following occurs:

5 (1) The personal representative certifies to the clerk of court that no
6 tax is due on the estate because this Article does not require an
7 estate tax return to be filed for that estate.

8 (2) The Secretary issues a certificate stating that the tax liability of the
9 estate has been satisfied.

10 (3) For specific real property, when the Secretary issues a tax waiver
11 for that property.

12 (4) Ten years have elapsed since the date of the decedent's death.

13 "§ 105-32.7. Generation-skipping transfer tax.

14 (a) Tax. -- A tax is imposed on a generation-skipping transfer that is subject to the
15 tax imposed by Chapter 13 of Subtitle B of the Code when any of the following
16 apply:

17 (1) The original transferor is a resident of this State at the date of the
18 original transfer.

19 (2) The original transferor is not a resident of this State at the date of
20 the original transfer and the transfer includes any of the following:

21 a. Real or tangible personal property that is located in this
22 State.

23 b. Intangible personal property that has a tax situs in this State.

24 (b) Amount. -- The amount of the tax imposed by this section is the maximum
25 credit for state generation-skipping transfer taxes allowed under section 2604 of the
26 Code. If property in the transfer is located in a state other than North Carolina, the
27 amount of tax payable is the North Carolina percentage of the credit.

28 If the original transferor was a resident of this State at the date of the original
29 transfer, the North Carolina percentage is the net value of the property transferred
30 that does not have a tax situs in another state, divided by the net value of all property
31 transferred. If the original transferor was not a resident of this State at the date of
32 the original transfer, the North Carolina percentage is the net value of real property
33 that is located in North Carolina plus the net value of any personal property that has
34 a tax situs in North Carolina, divided by the net value of all property transferred,
35 unless the original transferor's state of residence uses a different formula to determine
36 that state's percentage. In that circumstance, the North Carolina percentage is the
37 amount determined by the formula used by the original transferor's state of residence.

38 The net value of property that is located in or has a tax situs in this State is its
39 gross value reduced by any debt secured by that property. The net value of all the
40 property in a transfer is its gross value reduced by any debts secured by the property.

41 (c) Payment. -- The tax imposed by this section is due when a return is due. A
42 return is due the same date as the federal return for payment of the federal
43 generation-skipping transfer tax. The tax is payable by the person who is liable for
44 the federal generation-skipping transfer tax.

1 "§ 105-32.8. Federal determination that changes the amount of tax payable to the
2 State.

3 If the federal government corrects or otherwise determines the amount of the
4 maximum state death tax credit allowed an estate under section 6166 of the Code, the
5 personal representative must, within two years after being notified of the correction
6 or final determination by the federal government, file an estate tax return with the
7 Secretary reflecting the correct amount of tax payable under this Article. If the
8 federal government corrects or otherwise determines the amount of the maximum
9 state generation-skipping transfer tax credit allowed under section 2604 of the Code,
10 the person who made the transfer must, within two years after being notified of the
11 correction or final determination by the federal government, file a tax return with the
12 Secretary reflecting the correct amount of tax payable under this Article.

13 The Secretary must assess and collect any additional tax due as provided in Article
14 9 of this Chapter and must refund any overpayment of tax as provided in Article 9 of
15 this Chapter. A person who fails to report a federal correction or determination in
16 accordance with this section is subject to the penalties in G.S. 105-236 and forfeits the
17 right to any refund due by reason of the determination."

18 Section 4. This act does not affect the rights or liabilities of the State, a
19 taxpayer, or another person arising under a statute amended or repealed by this act
20 before the effective date of its amendment or repeal; nor does it affect the right to
21 any refund or credit of a tax that was available under the amended or repealed
22 statute before the effective date of its amendment or repeal.

23 Section 5. Section 1 of this act becomes effective January 1, 1998, and
24 applies to the estates of decedents dying on or after that date. Sections 2 and 3 of
25 this act become effective January 1, 2002, and apply to the estates of decedents dying
26 on or after that date. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

HOUSE BILL 13

Proposed Senate Committee Substitute H13-CSLC-8/16

ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Reduce Inheritance Tax.

(Public)

Sponsors:

Referred to:

February 3, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO REDUCE INHERITANCE TAXES.
3 The General Assembly of North Carolina enacts:
4 Section 1. Article 1 of Chapter 105 of the General
5 Statutes is amended by adding a new section to read:
6 "§ 105-6.1. Reduction of inheritance tax.
7 When this Article imposes an inheritance tax on property
8 transferred by a decedent but no state death tax credit is
9 allowed under section 2011 of the Code against federal estate tax
10 due on the transfer of the decedent's estate, the amount of
11 inheritance tax is reduced by nine percent (9%). When this
12 Article imposes an inheritance tax on property transferred by a
13 decedent and a state death tax credit is allowed under section
14 2011 of the Code against federal estate tax due on the transfer
15 of the decedent's estate, the amount of inheritance tax that
16 exceeds the maximum credit for state death taxes is reduced by
17 nine percent (9%)."
18 Section 2. This act does not affect the rights or
19 liabilities of the State, a taxpayer, or another person arising
20 under a statute amended or repealed by this act before the
21 effective date of its amendment or repeal; nor does it affect the
22 right to any refund or credit of a tax that accrued under the

1 amended or repealed statute before the effective date of its
2 amendment or repeal.

3 Section 3. This act becomes effective July 1, 1998, and
4 applies to the estates of decedents dying on or after that date.
5 Section 1 of this act is repealed July 1, 2001, and applies to
6 the estates of decedents dying on or after that date.

EXPLANATION OF HOUSE BILL 13 (PCS 8/16):
Reduce Inheritance Tax

TO: Senate Finance Committee
FROM: Martha H. Harris, Staff Attorney
DATE: August 19, 1997
SPONSOR: Representative Cansler
Modified Recommendation of the Revenue Laws Study Committee

The proposed committee substitute for House Bill reduces the amount of inheritance tax payable by 9%. It becomes effective for decedents dying on or after July 1, 1998, and sunsets July 1, 2001. The original bill, which was recommended by the Revenue Laws Study Committee, would have phased the inheritance tax out over five years by reducing it 20% a year starting in 1998.

North Carolina imposes an inheritance tax on property transferred by a decedent. The amount of tax payable depends on the relationship of the person transferring the property (the decedent) to the person receiving the property (the beneficiary). This is in contrast to federal law, which has a single rate schedule for estates.

State law classifies beneficiaries into three classes, Class A, Class B, and Class C, and sets different inheritance tax rates for each class. A Class A beneficiary is a lineal ancestor, a lineal descendant, an adopted child, a step-child, or a son-in-law or daughter-in-law whose spouse is not entitled to any of the decedent's property. A Class B beneficiary is a sibling, a descendant of a sibling, or an aunt or uncle by blood. A Class C beneficiary is anyone who is not a Class A or Class B beneficiary.

Class A beneficiaries have the lowest inheritance tax rates and an inheritance tax credit that amounts to a \$600,000 exemption. Class B beneficiaries have higher rates and no exemption. Class C beneficiaries have the highest rates and no exemption. Thus, North Carolina's rate structure favors transfers to children and parents by giving those transfers the lowest rates plus an exemption and prefers transfers to other close family members over transfers to more distant relatives or to persons who are not related.

The bill reduces the State inheritance tax liability by 9%. This liability is not reduced below the amount of the federal estate death tax credit, however. Therefore, the amount of tax paid by a person who is subject to State inheritance

tax but not the federal estate tax will be reduced by 9% and the amount paid by a person who owes federal estate tax and North Carolina inheritance tax will be reduced by 9% of the difference between the amount of inheritance tax owed and the amount of the federal state death tax credit. Class B and Class C beneficiaries are the groups likely to owe inheritance tax but not federal estate tax because they have no State exemption comparable to the federal.

Until its recent amendment, federal estate tax allowed a unified estate and gift tax credit that effectively exempted \$600,000 of the total estate. The State's Class A exemption was increased in 1996 to mirror this exemption for State inheritance tax. The 1997 federal budget agreement gradually increases the \$600,000 federal exemption until it reaches \$1 million in 2006. The increases are listed in the table below.

<u>Year</u>	<u>Exemption</u>
1998	\$ 625,000
1999	650,000
2000	675,000
2001	675,000
2002	700,000
2003	700,000
2004	850,000
2005	950,000
2006	1,000,000

**NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL ESTIMATE**

BILL NUMBER: House Bill 13 (PCS 8/16)
SHORT TITLE: Reduce Inheritance Tax

FISCAL IMPACT

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

FY 97-98 FY 98-99 FY 99-00 FY 00-01 FY 01-02 FY 02-03

REVENUES

General Fund	(2.50)	(10.60)	(11.36)	(9.00)
---------------------	---------	---------	---------	---------

PRINCIPAL DEPARTMENT(S) &

PROGRAM(S) AFFECTED: Personal Taxes Division, N.C. Department of Revenue

EFFECTIVE DATE: Deaths occurring between July 1, 1998 and July 1, 2001.

BILL SUMMARY: Provides for an across-the-board cut in the inheritance tax of 9% for a 3-year period beginning July 1, 1998.

ASSUMPTIONS AND METHODOLOGY: A compilation of 1993 inheritance tax returns was provided by the Department of Revenue. This tabulation showed tax liability by size of tax return and by class of beneficiary. In addition, the numbers included the North Carolina estate tax ("pickup tax") that is applied when the North Carolina inheritance tax is less than the federal estate tax credit for state death taxes.

SOURCES OF DATA:

Department of Revenue
Federal and State Inheritance Tax Returns
DRI, Forecast of State Personal Income

FISCAL RESEARCH DIVISION (733-4910)

PREPARED BY: H. Warren Plonk, Dave Crotts

DATE: August 18, 1997

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

H. B. No. 13 - CSLC-8/16

DATE _____

S. B. No. _____

Amendment No. _____

(to be filled in by
Principal Clerk)

Rep.) _____
)
Sen.) _____

moves to amend the bill on page 2, line 5,

by deleting "July 1, 2001," and substituting
"October 1, 2000,"

SIGNED 

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

HOUSE BILL 13
Proposed Senate Committee Substitute H13-PCS1454

Short Title: Reduce Inheritance Tax.

(Public)

Sponsors:

Referred to:

February 3, 1997

1 A BILL TO BE ENTITLED

2 AN ACT TO REDUCE INHERITANCE TAXES.

3 The General Assembly of North Carolina enacts:

4 Section 1. Article 1 of Chapter 105 of the General Statutes is amended
5 by adding a new section to read:

6 "**§ 105-6.1. Reduction of inheritance tax.**

7 When this Article imposes an inheritance tax on property transferred by a
8 decedent but no state death tax credit is allowed under section 2011 of the Code
9 against federal estate tax due on the transfer of the decedent's estate, the amount of
10 inheritance tax is reduced by nine percent (9%). When this Article imposes an
11 inheritance tax on property transferred by a decedent and a state death tax credit is
12 allowed under section 2011 of the Code against federal estate tax due on the transfer
13 of the decedent's estate, the amount of inheritance tax that exceeds the maximum
14 credit for state death taxes is reduced by nine percent (9%)."

15 Section 2. This act does not affect the rights or liabilities of the State, a
16 taxpayer, or another person arising under a statute amended or repealed by this act
17 before the effective date of its amendment or repeal; nor does it affect the right to
18 any refund or credit of a tax that accrued under the amended or repealed statute
19 before the effective date of its amendment or repeal.

20 Section 3. This act becomes effective July 1, 1998, and applies to the
21 estates of decedents dying on or after that date. Section 1 of this act is repealed
22 October 1, 2000, and applies to the estates of decedents dying on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

3

HOUSE BILL 469
Committee Substitute Favorable 4/15/97
Committee Substitute #2 Favorable 7/21/97

Short Title: Permit Fees/AB.

(Public)

Sponsors:

Referred to:

March 10, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO CREATE A REINSTATEMENT FEE FOR PERMITS SUSPENDED
3 FOR FAILURE TO PAY PERMIT FEES.
4 The General Assembly of North Carolina enacts:
5 Section 1. G.S. 130A-248(d) reads as rewritten:
6 "(d) The Department shall charge each establishment subject to this section,
7 except nutrition programs for the elderly administered by the Division of Aging of
8 the Department of Human Resources, establishments that prepare and sell meat food
9 products or poultry products, and public school cafeterias, an annual fee of twenty-
10 five dollars (\$25.00). The Department shall charge an additional twenty-five dollar
11 (\$25.00) late payment fee to any establishment that fails to pay the required fee
12 within 45 days after billing by the Department. The Department may, in accordance
13 with G.S. 130A-23, suspend ~~or revoke~~ the permit of an establishment that fails to pay
14 the required fee within 60 days after billing by the Department. The Department shall
15 charge a reinstatement fee of one hundred fifty dollars (\$150.00) to any establishment
16 that requests reinstatement of its permit after the permit has been suspended. The
17 Commission shall adopt rules to implement this subsection. Fees collected under this
18 subsection shall be used for State and local ~~public health~~ food, lodging, and
19 institution sanitation programs and activities. No more than thirty-three and one-third
20 percent (33-1/3%) of the fees collected may be used to support State health programs
21 and activities."

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

EXPLANATION OF HOUSE BILL 469:
Permit Fees

TO: Senate Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: August 19, 1997
SPONSOR: Representative Tallent
Agency Bill

House Bill 469 establishes a reinstatement fee for establishments whose permits are suspended for failure to pay the permit fees at the recommendation of the State Auditor's Office. The reinstatement fee is established at \$150. It also removes the ability of the Department of Human Resources to revoke a permit for failure to pay the permit fees. DHR may continue to suspend a permit.

Restaurants, bars, and other establishments that prepare and serve food or drinks as well as hotels, bed and breakfast inns, and other establishments that provide lodging must have a permit issued annually by the Department. The cost of the annual permit is \$25. An establishment that fails to pay the fee within 45 days after billing by the Department is subject to a late payment fee of \$25. If the establishments fails to pay the fee within 60 days after billing, the Department may suspend or revoke the permit.

Approximately 10% of the 23,000 permittees pay late. Approximately 300 of the 23,000 permittees have their permits suspended for not paying the fee within 60 days of billing. The Department must then begin court proceedings against these permittees for operating without a license. The State's cost to suspend a permit for failure to pay the required permit fee and to initiate court action against an establishment operating with a suspended permit is approximately \$866, as determined by the Office of the State Auditor in its Performance Audit of the Food Sanitation Inspection Program within the Department of Environment, Health, and Natural Resources. In its audit, the Office of the State Auditor found that the current fee structure fails to deter late payment and recommended increasing the late fee and requiring a reinstatement fee to provide an incentive for prompt payment.

The fees collected by the Department must be used for State and local public health programs and activities. Under G.S. 130A-248, no more than one-third of the fees collected may be used to support State health programs and activities. The remaining two-thirds is distributed to the counties to support local food sanitation inspection programs. The reinstatement fees collected would be subject to the one-third cap placed on State program expenditures, and two-thirds would be allocated to local health departments. The bill clarifies the purposes for which the money may be used to State and local food, lodging, and institution sanitation programs.

all fees collected from food and lodging establishments may be used to support state health programs and administrative costs. In addition, the bill proposes to narrow the use of the state's share of any fees collected to the food, lodging and institution sanitation program.

ASSUMPTIONS AND METHODOLOGY:

Revenues

The Department reports that 300 of the 23,000 permittees, in the State, have to be taken to court each year by the Department for operating without a permit. According to the Director of the Division of Environmental Health, approximately 300 permittees could be subject to the \$150.00 reinstatement fee annually. The revenue potential from the reinstatement fee \$45,000.

Expenditures

The State Auditor found in a performance audit of the Food Sanitation Inspection Program that the state's cost to suspend a permit for failure to pay the required permit fee and to initiate court action against an establishment operating with a suspended permit is approximately \$866.00. For cases settled in court, the establishment is required only to pay the \$25.00 permit fee and the \$25.00 late fee plus court costs to have its permit reinstated. Because the state does not recover the \$866.00 in this process, the State Auditor found the current fee structure fails to deter late payment and recommended increasing the late fee and requiring a reinstatement fee to provide an incentive for prompt payment.¹

As written, the bill does not propose to change the allocation of fees collected for permits, late payment or the proposed reinstatement penalty. Although the bill establishes the reinstatement charge to help recover the costs associated with suspending permits, any fees collected will be subject to the one third cap placed on state program expenditures. The remaining two thirds of all fees collected from food and lodging establishments is distributed to county health departments to support local food sanitation inspection programs.

TECHNICAL CONSIDERATIONS:

Although the number of late paying permittees and the number of permittees taken to court has been relatively constant the past several years, the new reinstatement fee is intended to encourage establishments to pay the annual \$25.00 permit fee on time to avoid the late payment charge, permit suspension and court action. The projected revenues assume the number of establishments required to pay the late fee and taken to court does not decline, and therefore reflect the maximum amount likely to be collected.

The department finds the same establishments fail to pay their permit fees on time each year and believes the reinstatement fee will encourage timely payment. Therefore, the department expects actual revenues to be lower than the maximum projected.

¹ Office of the State Auditor, *Performance Audit of the Food Sanitation Inspection Program within the Department of Environment, Health, and Natural Resources*, pp. 20-21.

FISCAL RESEARCH DIVISION

733-4910

PREPARED BY: Warren Plonk & Mona Moon

APPROVED BY:

DATE: August 19, 1997

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

3

HOUSE BILL 1137
Committee Substitute Favorable 4/29/97
Committee Substitute #2 Favorable 5/21/97

Short Title: Soil and Water Conservation Plates.

(Public)

Sponsors:

Referred to:

April 21, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO CREATE A SPECIAL LICENSE PLATE TO PROMOTE SOIL AND
3 WATER CONSERVATION AND TO PROVIDE THAT A PORTION OF THE
4 SALES REVENUE GOES TO FUND WATER QUALITY AND
5 ENVIRONMENTAL EDUCATION.

6 The General Assembly of North Carolina enacts:

7 Section 1. G.S. 20-79.4(b) is amended by adding a new subdivision to
8 read:

9 "(22a1) Soil and Water Conservation. -- Issuable to the registered
10 owner of a motor vehicle in accordance with G.S. 20-81.12.
11 The plate may bear a phrase and picture appropriate to the
12 subject of water quality and environmental protection in North
13 Carolina."

14 Section 2. G.S. 20-79.7(a) reads as rewritten:

15 "(a) Fees. -- Upon request, the Division shall provide and issue free of charge one
16 registration plate to a recipient of the Congressional Medal of Honor, a 100%
17 disabled veteran, and an ex-prisoner of war. All other special registration plates are
18 subject to the regular motor vehicle registration fee in G.S. 20-87 or G.S. 20-88 plus
19 an additional fee in the following amount:

20	<u>Special Plate</u>	<u>Additional Fee Amount</u>
21	Historical Attraction	\$30.00
22	State Attraction	\$30.00

1	Collegiate Insignia	\$25.00
2	Olympic Games	\$25.00
3	Special Olympics	\$25.00
4	<u>Soil and Water Conservation</u>	<u>\$20.00</u>
5	Wildlife Resources	\$20.00
6	Personalized	\$20.00
7	Active Member of the National Guard	None
8	All Other Special Plates	\$10.00."

9 Section 3. G.S. 20-79.7(b) reads as rewritten:

10 "(b) Distribution of Fees. -- The Special Registration Plate Account and the
 11 Collegiate and Cultural Attraction Plate Account are established within the Highway
 12 Fund. The Division must credit the additional fee imposed for the special
 13 registration plates listed in subsection (a) among the Special Registration Plate
 14 Account (SRPA), the Collegiate and Cultural Attraction Plate Account (CCAPA),
 15 and the Natural Heritage Trust Fund (NHTF), which is established under G.S. 113-
 16 77.7, as follows:

17 <u>Special Plate</u>	<u>SRPA</u>	<u>CCAPA</u>	<u>NHTF</u>
18 Historical Attraction	\$10	\$20	0
19 In-State Collegiate Insignia	\$10	\$15	0
20 Out-of-state Collegiate Insignia	\$10	0	\$15
21 Personalized	\$10	0	\$10
22 Special Olympics	\$10	\$15	0
23 Olympic Games	\$10	\$15	0
24 State Attraction	\$10	\$20	0
25 <u>Soil and Water Conservation</u>	<u>\$10</u>	<u>\$10</u>	<u>0</u>
26 Wildlife Resources	\$10	\$10	0
27 All other Special Plates	\$10	0	0."

28 Section 4. G.S. 20-81.12 is amended by adding a new subsection to read:

29 "(b5) Soil and Water Conservation Plates. -- The Division must receive 300 or
 30 more applications for a soil and water conservation plate before the plate may be
 31 developed. The Division shall transfer quarterly the money in the Collegiate and
 32 Cultural Attraction Plate Account derived from the sale of the soil and water
 33 conservation plates to the Soil and Water Conservation Account established in G.S.
 34 143B-297.1."

35 Section 5. Part 7 of Article 7 of Chapter 143B is amended by adding a
 36 new section to read:

37 "§ 143B-297.1. Soil and Water Conservation Account.

38 The Soil and Water Conservation Account is established as a nonreverting account
 39 within the Department of Environment, Health, and Natural Resources. The
 40 Account consists of revenue credited to the Account from the sale of soil and water
 41 conservation special license plates. The Commission shall use the revenue from the
 42 account to fund environmental education and water quality education in North
 43 Carolina."

44 Section 6. This act is effective when it becomes law.

EXPLANATION OF HOUSE BILL 1137:
Soil and Water Conservation Plates (3rd Edition)

TO: Senate Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: August 19, 1997
SPONSOR: Representative Culp

House Bill 1137 would authorize the Division of Motor Vehicles to develop a Soil and Water Conservation special registration plate. The Division would have to receive at least 300 applications for the plate before it could be issued. The cost of the plate would be the regular registration fee plus an additional \$20. The first \$10 of the additional fee would be credited to the Special Registration Plate Fund. The remaining \$10 of the additional fee would be credited to the Collegiate and Cultural Attraction Plate Account and transferred quarterly to the Soil and Water Conservation Account.

The bill establishes a Soil and Water Conservation Account as a nonreverting account within the Department of Environment, Health, and Natural Resources. The Soil and Water Conservation Commission must use the revenue in the account to fund environmental education and water quality education in North Carolina. The Soil and Water Conservation Commission is composed of seven members appointed by the Governor. It is responsible for approving petitions for soil conservation districts and applications for watershed plans.

**NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE**

BILL NUMBER: HB 1137 (Third Edition)

SHORT TITLE: Soil and Water Conservation Plates

SPONSOR(S): Representative Culp

FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 1997-98</u>	<u>FY 1998-99</u>	<u>FY 1999-00</u>	<u>FY 2000-01</u>	<u>FY 2001-02</u>
REVENUES					
Highway Fund - Special Registration Plate Acct.	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000
Collegiate and Cultural Attraction Plate Acct.	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000
EXPENDITURES					
Highway Fund - Special Registration Plate Acct.	\$835	-	-	-	-
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Transportation - Division of Motor Vehicles, Department of Environment, Health and Natural Resources					
EFFECTIVE DATE: The act is effective when it becomes law.					

BILL SUMMARY: The bill authorizes the Division of Motor Vehicles (DMV) to issue a special registration plate to those interested in soil and water conservation if at least 300 applications for such plate are received.

ASSUMPTIONS AND METHODOLOGY:

This fiscal note assumes the issuance of the minimum 300 license plates in FY 1997-98 and renewal of those plates in the following years. There is a one-time cost of \$100 to design the new plate and a one-time production cost of \$2.45 per plate. For 300 plates, the total production cost of \$835 is paid from the Special Registration Plate Account. In addition to the normal \$20

registration fee every license holder pays, there is an additional \$20 annual fee for each Soil and Water Conservation plate. \$10 of the fee will be deposited into the Collegiate and Cultural Attractions Plate Account to be transferred quarterly to the Soil and Water Conservation Account established as a nonreverting account in the Department of Environment, Health and Natural Resources. The other \$10 will go into the Special Registration Plate Account. It is assumed that all persons applying for the Soil and Water Conservation plate currently have a regular plate that will be turned in to DMV upon receipt of the new plate.

FISCAL RESEARCH DIVISION

733-4910

PREPARED BY: Richard Bostic

APPROVED BY: Tom Covington

DATE: August 19, 1997





NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1137

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

H1137-ARB-8/20

Date _____, 1997

Comm. Sub. [yes]
Amends Title []
Third Edition

Senator

1 moves to amend the bill on page 1, lines 7 and 8, by rewriting the
2 lines to read:

3 "Section 1. G.S. 20-79.4(b) is amended by adding a new
4 subdivision, to be inserted by the Revisor of Statutes in the
5 appropriate alphabetical place, to read:";

6
7 and on page 1, line 9, by deleting "(22a1)" and substituting "()".

SIGNED [Signature]
Amendment Sponsor

SIGNED [Signature]
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

HOUSE BILL 1137
Committee Substitute Favorable 4/29/97
Committee Substitute #2 Favorable 5/21/97
Proposed Senate Committee Substitute H1137-PCS6320

Short Title: Soil and Water Conservation Plates.

(Public)

Sponsors:

Referred to:

April 21, 1997

1 A BILL TO BE ENTITLED

2 AN ACT TO CREATE A SPECIAL LICENSE PLATE TO PROMOTE SOIL AND
3 WATER CONSERVATION AND TO PROVIDE THAT A PORTION OF THE
4 SALES REVENUE GOES TO FUND WATER QUALITY AND
5 ENVIRONMENTAL EDUCATION.

6 The General Assembly of North Carolina enacts:

7 Section 1. G.S. 20-79.4(b) is amended by adding a new subdivision, to be
8 inserted by the Revisor of Statutes in the appropriate alphabetical place, to read:

9 "() Soil and Water Conservation. -- Issuable to the registered owner of
10 a motor vehicle in accordance with G.S. 20-81.12. The plate may
11 bear a phrase and picture appropriate to the subject of water
12 quality and environmental protection in North Carolina."

13 Section 2. G.S. 20-79.7(a) reads as rewritten:

14 "(a) Fees. -- Upon request, the Division shall provide and issue free of charge one
15 registration plate to a recipient of the Congressional Medal of Honor, a 100%
16 disabled veteran, and an ex-prisoner of war. All other special registration plates are
17 subject to the regular motor vehicle registration fee in G.S. 20-87 or G.S. 20-88 plus
18 an additional fee in the following amount:

19 <u>Special Plate</u>	<u>Additional Fee Amount</u>
20 Historical Attraction	\$30.00
21 State Attraction	\$30.00

1	Collegiate Insignia	\$25.00
2	Olympic Games	\$25.00
3	Special Olympics	\$25.00
4	<u>Soil and Water Conservation</u>	<u>\$20.00</u>
5	Wildlife Resources	\$20.00
6	Personalized	\$20.00
7	Active Member of the National Guard	None
8	All Other Special Plates	\$10.00."

9 Section 3. G.S. 20-79.7(b) reads as rewritten:

10 "(b) Distribution of Fees. -- The Special Registration Plate Account and the
 11 Collegiate and Cultural Attraction Plate Account are established within the Highway
 12 Fund. The Division must credit the additional fee imposed for the special
 13 registration plates listed in subsection (a) among the Special Registration Plate
 14 Account (SRPA), the Collegiate and Cultural Attraction Plate Account (CCAPA),
 15 and the Natural Heritage Trust Fund (NHTF), which is established under G.S. 113-
 16 77.7, as follows:

17 <u>Special Plate</u>	<u>SRPA</u>	<u>CCAPA</u>	<u>NHTF</u>
18 Historical Attraction	\$10	\$20	0
19 In-State Collegiate Insignia	\$10	\$15	0
20 Out-of-state Collegiate Insignia	\$10	0	\$15
21 Personalized	\$10	0	\$10
22 Special Olympics	\$10	\$15	0
23 Olympic Games	\$10	\$15	0
24 State Attraction	\$10	\$20	0
25 <u>Soil and Water Conservation</u>	<u>\$10</u>	<u>\$10</u>	<u>0</u>
26 Wildlife Resources	\$10	\$10	0
27 All other Special Plates	\$10	0	0."

28 Section 4. G.S. 20-81.12 is amended by adding a new subsection to read:

29 "(b5) Soil and Water Conservation Plates. -- The Division must receive 300 or
 30 more applications for a soil and water conservation plate before the plate may be
 31 developed. The Division shall transfer quarterly the money in the Collegiate and
 32 Cultural Attraction Plate Account derived from the sale of the soil and water
 33 conservation plates to the Soil and Water Conservation Account established in G.S.
 34 143B-297.1."

35 Section 5. Part 7 of Article 7 of Chapter 143B is amended by adding a
 36 new section to read:

37 "§ 143B-297.1. Soil and Water Conservation Account.

38 The Soil and Water Conservation Account is established as a nonreverting account
 39 within the Department of Environment, Health, and Natural Resources. The
 40 Account consists of revenue credited to the Account from the sale of soil and water
 41 conservation special license plates. The Commission shall use the revenue from the
 42 account to fund environmental education and water quality education in North
 43 Carolina."

44 Section 6. This act is effective when it becomes law.

- 1 (2) Displays any badge or identification signifying to a reasonable
2 individual that the person is a sworn law-enforcement officer,
3 whether or not the badge or other identification refers to a
4 particular law-enforcement agency; ~~or~~
5 (3) Unlawfully operates a vehicle on a public street, highway or public
6 vehicular area with an operating red light as defined in G.S.
7 ~~20-130.1(a)~~; 20-130.1(a); or
8 (4) Unlawfully operates a vehicle on a public street, highway, or
9 public vehicular area with an operating blue light as defined in
10 G.S. 20-130.1(c)."

11 Section 3. G.S. 15A-401(b) reads as rewritten:

12 "(b) Arrest by Officer Without a Warrant. --

- 13 (1) Offense in Presence of Officer. -- An officer may arrest without a
14 warrant any person who the officer has probable cause to believe
15 has committed a criminal offense in the officer's presence.
16 (2) Offense Out of Presence of Officer. -- An officer may arrest
17 without a warrant any person who the officer has probable cause
18 to believe:
19 a. Has committed a felony; or
20 b. Has committed a misdemeanor, and:
21 1. Will not be apprehended unless immediately arrested,
22 or
23 2. May cause physical injury to himself or others, or
24 damage to property unless immediately arrested; or
25 c. Has committed a misdemeanor under G.S. 14-72.1, 14-134.3,
26 20-138.1, or 20-138.2; or
27 d. Has committed a misdemeanor under G.S. 14-33(a), ~~G.S.~~
28 ~~14-33(b)(1)~~, ~~or G.S. 14-33(b)(2)~~ 14-33(c)(1), or 14-33(c)(2)
29 when the offense was committed by a person who is the
30 spouse or former spouse of the alleged victim or by a person
31 with whom the alleged victim is living or has lived as if
32 married.

- 33 (3) Repealed by Session Laws 1991, c. 150."

34 Section 4. G.S. 25-9-105(1)(h), as amended by Section 3 of S.L. 1997-
35 181, reads as rewritten:

36 "(h) 'Goods' includes all things which are movable at the time the
37 security interest attaches or which are fixtures (G.S. 25-9-313), but
38 does not include money, documents, instruments, investment
39 property, ~~commodity contracts~~, accounts, chattel paper, general
40 intangibles, or minerals or the like (including oil and gas) before
41 extraction. "Goods" also includes standing timber which is to be
42 cut and removed under a conveyance or contract for sale, the
43 unborn young of animals, and growing crops;"

1 Section 5. G.S. 25-9-312(7), as amended by Section 16 of S.L. 1997-181,
2 reads as rewritten:

3 "(7) If future advances are made while a security interest is perfected by filing, the
4 taking of possession, or under G.S. 25-9-115 or G.S. 25-9-116 on investment property,
5 the security interest has the same priority for the purposes of subsection (5) or G.S.
6 25-9-115(5) with respect to the future advances as it does with respect to the first
7 advance. If a commitment is made before or while the security interest is so
8 perfected, the security interest has the same priority with respect to advances made
9 pursuant thereto. In other cases a perfected security interest has priority from the date
10 the advance is made."

11 Section 6. G.S. 25-9-303(1) reads as rewritten:

12 "(1) A security interest is perfected when it has attached and when all of the
13 applicable steps required for perfection have been taken. Such steps are specified in
14 G.S. 25-9-115, 25-9-302, 25-9-304, 25-9-305 and 25-9-306. If such steps are taken
15 before the security interest attaches, it is perfected at the time it attaches."

16 Section 7. G.S. 28A-18-2(a) reads as rewritten:

17 "(a) When the death of a person is caused by a wrongful act, neglect or default of
18 another, such as would, if the injured person had lived, have entitled him to an
19 action for damages therefor, the person or corporation that would have been so
20 liable, and his or their personal representatives or collectors, shall be liable to an
21 action for damages, to be brought by the personal representative or collector of the
22 decedent; and this notwithstanding the death, and although the wrongful act, neglect
23 or default, causing the death, amounts in law to a felony. The personal representative
24 or collector of the decedent who pursues an action under this section may pay from
25 the assets of the estate the reasonable and necessary expenses, not including
26 attorneys' fees, incurred in pursuing the action. At the termination of the action, any
27 amount recovered shall be applied first to the reimbursement of the estate for the
28 expenses incurred in pursuing the action, then to the payment of attorneys' fees, and
29 shall then be distributed as provided in this section. The amount recovered in such
30 action is not liable to be applied as assets, in the payment of debts or legacies, except
31 as to burial expenses of the deceased, and reasonable hospital and medical expenses
32 not exceeding four thousand five hundred dollars (\$4,500) incident to the injury
33 resulting in death, except that the amount applied for hospital and medical expenses
34 shall not exceed fifty percent (50%) of the amount of damages recovered after
35 deducting attorneys' fees. fees, but shall be disposed of as provided in the Intestate
36 Succession Act. All claims filed for such services shall be approved by the clerk of
37 the superior court and any party adversely affected by any decision of said clerk as to
38 said claim may appeal to the superior court in term ~~time, but shall be disposed of as~~
39 ~~provided in the Intestate Succession Act.~~ time."

40 Section 8. G.S. 41-19(a) reads as rewritten:

41 "(a) Except as extended by subsection (b) of this section, this Article applies to a
42 nonvested property interest or a power of appointment that is created on or after
43 October 1, 1995. For purposes of this section, a nonvested property interest or a
44 power of appointment created by the exercise of a power of appointment is created

1 when the power is irrevocably exercised or when a revocable exercise becomes
2 irrevocable."

3 Section 9. G.S. 68-42 reads as rewritten:

4 "**§ 68-42. Stock running at large prohibited; certain ponies excepted.**

5 From and after July 1, 1958, it shall be unlawful for any person, firm or
6 corporation to allow his or its horses, cattle, goats, sheep, or hogs to run free or at
7 large along the outer banks of this State. This Article shall not apply to horses known
8 as marsh ponies or banks ponies on Ocracoke Island, Hyde County. This Article shall
9 not apply to horses known as marsh ponies or banks ponies on ~~Shackelford~~
10 Shackleford Banks between Beaufort Inlet and Barden's Inlet in Carteret County.
11 Saving and excepting those animals known as 'banker ponies' on the island of
12 Ocracoke owned by the Boy Scouts and not exceeding 35 in number."

13 Section 10. G.S. 68-43 reads as rewritten:

14 "**§ 68-43. Authority of Secretary of Environment, Health, and Natural Resources to**
15 **remove or confine ponies on Ocracoke Island and ~~Shackelford~~ Shackleford Banks.**

16 Notwithstanding any other provisions of this Article, the Secretary of Environment,
17 Health, and Natural Resources shall have authority to remove or cause to be removed
18 from Ocracoke Island and ~~Shackelford~~ Shackleford Banks all ponies known as banks
19 ponies or marsh ponies if and when he determines that such action is essential to
20 prevent damage to the island. In the event such a determination is made, the
21 Secretary, in lieu of removing all ponies, may require that they be restricted to a
22 certain area or corralled so as to prevent damage to the island. In the event such
23 action is taken, the Secretary is authorized to take such steps and act through his duly
24 designated employees or such other persons as, in his opinion, he deems necessary
25 and he may accept any assistance provided by or through the National Park Service."

26 Section 11. G.S. 81A-26(a)(4) reads as rewritten:

27 "(4) The identity of the commodity in the most descriptive terms
28 commercially practicable, including any quality representation
29 made in connection with the sale,"

30 Section 12. G.S. 90-89(c)15. reads as rewritten:

31 "15. ~~Psilocyn.~~ Psilocin."

32 Section 14. G.S. 106-727(b) reads as rewritten:

33 "(b) The Commission shall consist of nine members, as follows:

- 34 (1) The Commissioner of Agriculture;
35 (2) Four members appointed by the General Assembly upon the
36 recommendation of the President Pro Tempore of the Senate in
37 accordance with G.S. 120-121, one of whom shall be designated to
38 serve as chairman as provided in subsection (d) of this section; and
39 (3) Four members appointed by the General Assembly upon the
40 recommendation of the Speaker of the House of Representatives in
41 accordance with G.S. 120-121."

42 Section 15. G.S. 106-802(4) reads as rewritten:

43 "(4) 'Site evaluation' means an investigation to determine if a site
44 meets all federal and State standards as evidenced by the Waste

1 Management Facility Site Evaluation Report on file with the Soil
2 and Water Conservation District office or a comparable report
3 certified by a professional engineer or a comparable report
4 certified by a technical specialist approved by the North Carolina
5 Soil and Water Conservation Commission.

6 ~~Department of Environment, Health and Natural Resources".~~

7 Section 16. G.S. 115C-81.2(e) reads as rewritten:

8 "(e) The State Board of Education shall report to the Joint Legislative Education
9 Oversight Committee by December 31, 1996, and annually thereafter on the
10 comprehensive plan developed under ~~Section 1 of Session Laws 1995 (Reg. Sess.,~~
11 ~~1996), e. 716, s. 1. subsection (a) of this section.~~ The first report shall include
12 revisions made to the standard course of study, teacher certification standards, and
13 teacher education programs. Subsequent reports shall address the effectiveness, based
14 on factors including improved student performance in reading, of the implementation
15 of the plan. The State Board may make recommendations to the General Assembly in
16 any of its reports."

17 Section 17. G.S. 115C-302(f) reads as rewritten:

18 "(f) A teacher may use annual leave, personal leave, or leave without pay to care
19 for a newborn child or for a child placed with the teacher for adoption or foster care.
20 The leave may be for consecutive workdays during the first 12 months after the date
21 of birth or placement of the child, unless ~~the~~ the teacher and local board of education
22 agree otherwise."

23 Section 18. G.S. 115D-2.1(b)(3) reads as rewritten:

24 "(3) The Governor shall appoint to the State Board four members from
25 the State at large and one member from each of the six Trustee
26 Association Regions defined in ~~G.S. 115D-63~~ G.S. 115D-62. The
27 initial appointments by the Governor shall be made effective July
28 1, 1980, or as soon as feasible thereafter. In order to establish
29 regularly overlapping terms, the initial appointments by the
30 Governor shall be made so that three expire June 30, 1981, three
31 expire June 30, 1983, and four expire June 30, 1985. Each
32 subsequent regular appointment by the Governor shall be for a
33 term of six years and until a successor is appointed and qualifies.
34 Any vacancy occurring among his appointees before the expiration
35 of term shall be filled by appointment of the Governor; the
36 member so appointed shall meet the same residential qualification,
37 if any, as the member whom he succeeds and shall serve for the
38 remainder of the unexpired term of that member."

39 Section 19. G.S. 115D-2.1(d) reads as rewritten:

40 "(d) No member of the General Assembly, no officer or employee of the State,
41 and no officer or employee of an institution under the jurisdiction of the State Board
42 and no spouse of any of those persons, shall be eligible to serve on the State Board.
43 Furthermore, no person who within the prior ~~5~~ five years has been an employee of

1 the Department of Community Colleges shall be eligible to serve on the State
2 Board."

3 Section 20. G.S. 131D-2(a1)(4) reads as rewritten:

4 "(4) Individuals whose health needs cannot be met in the specific adult
5 care home as determined by the ~~residence~~, residence; and".

6 Section 21. G.S. 131D-20(6) reads as rewritten:

7 "(6) 'Group home for developmentally disabled adults' means ~~and an~~
8 adult care home which has two to nine developmentally disabled
9 adult residents."

10 Section 22. G.S. 143B-153(3)b. reads as rewritten:

11 "b. For the inspection and licensing of adult care homes for
12 aged or disabled persons as provided by G.S. 131D-2(b) and
13 for personnel requirements of staff employed in ~~adult care~~
14 ~~homes~~ adult care homes;"

15 Section 23. G.S. 148-32.1(b) reads as rewritten:

16 "(b) In the event that the custodian of the local confinement facility certifies in
17 writing to the clerk of the superior court in the county in which said local
18 confinement facility is located that the local confinement facility is filled to capacity,
19 or that the facility cannot reasonably accommodate any more prisoners due to
20 segregation requirements for particular prisoners, or that the custodian anticipates, in
21 light of local experiences, an influx of temporary prisoners at that time, or if the local
22 confinement facility does not meet the minimum standards published pursuant to
23 G.S. 153A-221, any judge of the district court in the district court district as defined
24 in G.S. 7A-133 where the facility is located, or any superior court judge who has
25 jurisdiction pursuant to G.S. 7A-47.1 or G.S. 7A-48 in a district or set of districts as
26 defined in G.S. 7A-41.1 where the facility is located may order that the prisoner be
27 transferred to any other qualified local confinement facility within that district or
28 within another such district where space is available, including a satellite jail unit
29 operated pursuant to G.S. 153A-230.3 if the prisoner is a non-violent misdemeanor,
30 which local facility shall accept the transferred prisoner, if the prison population has
31 exceeded a manageable level as provided for in G.S. 148-4.1(a). If no such local
32 confinement facility is available, then any such judge may order the prisoner
33 transferred to such camp or facility as the proper authorities of the Department of
34 Correction shall designate, notwithstanding that the term of imprisonment of the
35 prisoner is 90 days or less. In no event, however, shall a prisoner whose term of
36 imprisonment is less than 30 days be assigned or ordered transferred to any such
37 camp or facility."

38 Section 24. G.S. 153A-301(a) reads as rewritten:

39 "(a) The board of commissioners of any county may define any number of service
40 districts in order to finance, provide, or maintain for the districts one or more of the
41 following services, facilities and functions in addition to or to a greater extent than
42 those financed, provided or maintained for the entire county:

- 43 (1) Beach erosion control and flood and hurricane protection works.
44 (2) Fire protection.

- 1 (3) Recreation.
- 2 (4) Sewage collection and disposal systems of all types, including
- 3 septic tank systems or other on-site collection or disposal facilities
- 4 or systems.
- 5 (5) Solid waste collection and disposal systems.
- 6 (6) Water supply and distribution systems.
- 7 (7) Ambulance and rescue.
- 8 (8) Watershed improvement projects, including but not limited to
- 9 watershed improvement projects as defined in ~~General Statutes~~
- 10 ~~Chapter 139~~; Chapter 139 of the General Statutes; drainage
- 11 projects, including but not limited to the drainage projects
- 12 provided for by ~~General Statutes Chapter 156~~; Chapter 156 of the
- 13 General Statutes; and water resources development projects,
- 14 including but not limited to the federal water resources
- 15 development projects provided for by ~~General Statutes Chapter~~
- 16 ~~143, Article 21~~. Article 21 of Chapter 143 of the General Statutes.
- 17 (9) Cemeteries.
- 18 (10) Law enforcement if all of the following apply:
- 19 a. The population of the county is over ~~five hundred thousand~~
- 20 500,000 according to the most recent federal decennial
- 21 census.
- 22 b. The county has an interlocal agreement with a city in the
- 23 county under which the city provides law enforcement
- 24 services in the entire unincorporated area of the county.
- 25 c. The county will pay to the city the following percentages of
- 26 the city-county police department budget if there are no
- 27 significant changes to the city's statutory annexation
- 28 authority:
- 29 1. 9.60% for fiscal years 1995-96 and 1996-97.
- 30 2. 7.60% for fiscal years 1997-98 and 1998-99.
- 31 3. 5.60% for fiscal years 1999-2000 and 2000-2001.
- 32 4. 3.60% for fiscal years 2001-02 and 2002-03.
- 33 5. 1.60% for fiscal years 2003-04 and 2004-05.
- 34 Provided, if the difference between the ratio of the
- 35 population in the unincorporated area to the total
- 36 population served by the city-county police department and
- 37 the rate for the current year as stated above is greater than
- 38 fifteen percent (15%), ~~the~~ the county's agreement to pay
- 39 such percentages can be amended to reflect that difference."
- 40 Section 25. Chapter 261 of the 1995 Session Laws is repealed.
- 41 Section 26. Section 2 of Chapter 627 of the 1995 Session Laws as
- 42 rewritten:
- 43 "Sec. 2. G.S. ~~413-133(e)~~ 113-133.1(e) is amended by deleting the words
- 44 'Currituck: Session Laws 1959, Chapter 545.'"

1 Section 27. The Revisor of Statutes is authorized to renumber or reletter
2 those sections and any parts of sections of the General Statutes that have been
3 published in the General Statutes of North Carolina prior to the 1997 Session of the
4 1997 General Assembly and have a number or letter designation that is not
5 compatible with the General Assembly's computer program database to be
6 implemented in 1997 or 1998. This authority is in addition to the authority contained
7 in G.S. 164-10.

8 Section 28. Effective January 1, 1998, G.S. 1-339.25(a), as amended by
9 Section 18 of S.L. 1997-83 and Section 1 of S.L. 1997-119, reads as rewritten:

10 "(a) An upset bid is an advanced, increased or raised bid in a public sale by
11 auction whereby a person offers to purchase real property theretofore sold for an
12 amount exceeding the reported sale price by a minimum of five percent (5%) thereof,
13 but in any event with a minimum increase of seven hundred fifty dollars (\$750.00).
14 ~~the the the~~ An upset bid shall be made by delivering to the clerk of superior court,
15 with whom the report of the sale was filed, a deposit in cash or by certified check or
16 cashier's check satisfactory to the clerk in an amount greater than or equal to five
17 percent (5%) of the amount of the upset bid but in no event less than seven hundred
18 fifty dollars (\$750.00). The deposit required by this section shall be filed with the
19 clerk of the superior court, with whom the report of sale was filed, by the close of
20 normal business hours on the tenth day after the filing of the report of sale, and if the
21 tenth day shall fall upon a Sunday or legal holiday or upon a day in which the office
22 of the clerk is not open for the regular dispatch of its business, the deposit may be
23 made on the day following when ~~said~~ the office is open for the regular dispatch of its
24 business. An upset bid need not be in writing, and the timely deposit with the clerk
25 of the required amount, together with an indication to the clerk as to the sale to
26 which it is applicable, is sufficient to constitute the upset bid, subject to the provisions
27 of subsection (b) of this section."

28 Section 29. G.S. 20-4.01(27)d1. reads as rewritten:

29 "d1. Moped. -- ~~Vehicles having~~ A vehicle that has two or three
30 ~~wheels and operable pedals and equipped with wheels, no~~
31 ~~external shifting device, and~~ external shifting device, and a motor ~~which that~~ does not
32 exceed 50 cubic centimeters piston displacement and cannot
33 propel the vehicle at a speed greater than 20 miles per hour
34 on a level surface."

35 Section 30. G.S. 20-28.2(a), as amended by Section 1.1 of S.L. 1997-379,
36 reads as rewritten:

37 "(a) Meaning of 'Impaired Driving License Revocation'. -- The revocation of a
38 person's driver's license is an impaired driving license revocation if the revocation is
39 pursuant to:

- 40 (1) G.S. 20-13.2, 20-16(a)(8b), 20-16.2, 20-16.5, 20-17(a)(2), 20-
41 17(a)(12), or 20-17.2; or
42 (2) G.S. 20-16(a)(7), ~~20-17(1), or 20-17(9)~~, 20-17(a)(1), or 20-17(a)(9),
43 if the offense involves impaired driving."

1 Section 31. G.S. 20-28.3(a), as enacted by Section 1.2 of S.L. 1997-379,
2 reads as rewritten:

3 "(a) A motor vehicle that is driven by a person in violation of G.S. 20-138.1 or
4 G.S. 20-138.5 is subject to seizure if at the time of the violation the drivers license of
5 the person driving the motor vehicle was revoked as a result of a prior impaired
6 ~~drivers driving~~ license revocation. ~~The revocation of a person's drivers license is an~~
7 ~~impaired drivers license revocation for purposes of this section if the revocation is~~
8 ~~pursuant to:~~

- 9 (1) ~~G.S. 20-13.2, 20-16(a)(8b), 20-16.2, 20-16.5, 20-17(a)(2),~~
10 ~~20-17(a)(12), or 20-17.2; or~~
11 (2) ~~G.S. 20-16(a)(7), 20-17(a)(1), or 20-17(a)(9) if the offense involved~~
12 ~~impaired driving. revocation as defined in G.S. 20-28.2(a)."~~

13 Section 32. Effective December 1, 1997, G.S. 20-7(a1), as amended by
14 Section 8 of S.L. 1997-16, reads as rewritten:

15 "(a1) Motorcycles and Mopeds. -- To drive a motorcycle, a person ~~must have~~ shall
16 have:

- 17 (1) ~~a motorcycle learner's permit, a~~ A full provisional license with a
18 motorcycle learner's permit; and a motorcycle endorsement, or a
19 (2) A regular drivers license with a motorcycle learner's permit; or
20 (3) Either:
21 a. A full provisional license; or
22 b. A regular drivers license, and with a motorcycle
23 endorsement.

24 Subsection (a2) of this section sets forth the requirements for a motorcycle learner's
25 permit.

26 To obtain a motorcycle endorsement, a person ~~must~~ shall demonstrate competence
27 to drive a motorcycle ~~by~~ by:

- 28 (1) ~~passing~~ Passing a road test and test;
29 (2) Passing a written or oral test concerning a motorcycle motorcycles;
30 and
31 (3) ~~must pay~~ Paying the fee for a motorcycle endorsement.

32 Neither a drivers license nor a motorcycle endorsement is required to drive a
33 moped."

34 Section 33. Effective December 1, 1997, G.S. 20-7(a2), as enacted by
35 Section 9 of S.L. 1997-16, reads as rewritten:

36 "(a2) Motorcycle Learner's Permit. -- The following persons are eligible for a
37 motorcycle learner's permit:

- 38 (1) A person who is at least 16 years old but less than 18 years old and
39 has ~~a limited provisional license or~~ a full provisional license issued
40 by the Division.
41 (2) A person who is at least 18 years old and has a license issued by
42 the Division.

43 To obtain a motorcycle learner's permit, an applicant ~~must~~ shall pass a vision test,
44 a road sign test, and a written test specified by the Division. A motorcycle learner's

1 permit expires 18 months after it is issued. The holder of a motorcycle learner's
2 permit may not drive a motorcycle with a passenger. ~~The holder of a motorcycle~~
3 ~~learner's permit who has a limited provisional license may drive the motorcycle only~~
4 ~~at a time when the license holder could drive a motor vehicle without supervision~~
5 ~~under G.S. 20-11.~~ The fee for a motorcycle learner's permit is the amount set in G.S.
6 20-7(l) for a learner's permit."

7 Section 34. (a) G.S. 20-28.6, as enacted in Section 1.5 of S.L. 1997-379,
8 reads as rewritten:

9 "**§ 20-28.6. Forfeiture of right of registration.**

10 (a) A person convicted of violating G.S. 20-138.1 or G.S. 20-138.5 while the
11 person's drivers license is revoked as a result of a prior impaired drivers license
12 revocation as defined in G.S. 20-28.3 forfeits the right to register or have registered a
13 motor vehicle in the person's name until the person's drivers license is restored. The
14 trial judge at the sentencing hearing on the person's charge of violating G.S. 20-138.1
15 or G.S. 20-138.5 while the person's drivers license is revoked as a result of a prior
16 impaired drivers license revocation as defined in G.S. 20-28.3 shall order the
17 defendant's rights of registration forfeited for the period the defendant's drivers
18 license is revoked. The defendant shall be ordered to surrender the registration on
19 all motor vehicles registered in the defendant's name to the Division within 10 days
20 of the date of the order. Information in the order pertaining to the registration of
21 motor vehicles shall be transmitted electronically or otherwise by the clerk of
22 superior court to the Division. The Division shall not thereafter register a motor
23 vehicle in the defendant's name until the defendant's drivers license has been
24 restored.

25 (b) A registered owner other than the operator of the vehicle that is seized
26 pursuant to G.S. 20-28.3 who is not an innocent party pursuant to G.S. 20-28.2
27 forfeits the right to register or have registered in the person's name the motor vehicle
28 seized, until the drivers license of the person whose driving violation resulted in the
29 motor vehicle being seized is restored. The trial judge on the person's charge of
30 violating G.S. 20-138.1 or G.S. 20-138.5 while the person's drivers license is revoked
31 as a result of a prior impaired drivers license revocation as defined in G.S. 20-28.3
32 shall order the registered owner's rights of registration for the seized motor vehicle
33 forfeited for the period the defendant's drivers license is revoked after an opportunity
34 for a hearing and a determination that the requirements of subsections (a) through (c)
35 of G.S. 20-28.2 exist. The registered owner shall be ordered to surrender the
36 registration on the motor vehicle seized to the Division within 10 days of the date of
37 the order. Information in the order pertaining to the registration of motor vehicles
38 shall be transmitted electronically or otherwise by the clerk of superior court to the
39 Division. The Division shall not thereafter register the motor vehicle seized in the
40 registered owner's name until the defendant's drivers license has been restored."

41 (b) G.S. 20-139.1(b5), as enacted in Section 5.4 of S.L. 1997-379, reads as
42 rewritten:

43 "(b5) Subsequent Tests Allowed. -- A person may be requested, pursuant to
44 G.S. 20-16.2, to submit to a chemical analysis of the person's blood or other bodily

1 fluid or substance in addition to or in lieu of a chemical analysis of the breath, in the
2 discretion of the charging officer. If a subsequent chemical analysis is requested
3 pursuant to this subsection, the person shall again be advised of the implied consent
4 rights in accordance with G.S. 20-16.2(a). A person's willful refusal to submit to a
5 chemical analysis of the blood or other bodily fluid or substance is a willful refusal
6 under G.S. 20-16.2."

7 Section 35. G.S. 20-183.8C(b), as amended by Section 7 of S.L. 1997-29,
8 reads as rewritten:

9 "(b) Type II. -- It is a Type II violation for an emissions self-inspector, an
10 emissions inspection station, or an emissions inspection mechanic to do any of the
11 following:

- 12 (1) Use the identification code of another to gain access to an
13 emissions analyzer.
- 14 (2) Keep inspection stickers and other compliance documents in a
15 manner that makes them easily accessible to individuals who are
16 not inspection mechanics.
- 17 (3) Put an emissions inspection sticker on a vehicle that is required to
18 have one of the following emissions control devices but does not
19 have it:
 - 20 a. Catalytic converter.
 - 21 b. PCV valve.
 - 22 c. Thermostatic air control.
 - 23 d. Oxygen sensor.
 - 24 e. Unleaded gas restrictor.
 - 25 f. Gasoline tank cap.
 - 26 g. Air injection system.
 - 27 h. Evaporative emissions system.
 - 28 i. Exhaust gas recirculation (EGR) valve.
- 29 (4) Put an emissions inspection sticker on a vehicle without
30 performing a visual inspection of the vehicle's exhaust system and
31 checking the exhaust system for leaks.
- 32 (5) Impose no fee for an emissions inspection of a vehicle or the
33 issuance of an emissions inspection sticker or impose a fee for one
34 of these actions in an amount that differs from the amount set in
35 ~~G.S. 20-187.3.~~ G.S. 20-183.7."

36 Section 36. G.S. 20-376(1) reads as rewritten:

37 "(1) Federal safety regulations. -- The federal motor carrier safety
38 regulations contained in 49 ~~U.S.C. Subchapter B, Parts 350 through~~
39 ~~399.~~ C.F.R. Parts 382 and 390 through 398."

40 Section 37. G.S. 20-381(1a) reads as rewritten:

41 "(1a) To set safety standards for vehicles of motor carriers engaged in
42 foreign, interstate, or intrastate commerce over the highways of this
43 State and for the safe operation of these vehicles. The Division
44 may ~~stop and inspect a vehicle~~ stop, enter upon, and perform

1 inspections of motor carriers' vehicles in operation to determine if
2 ~~it is in~~ compliance with these standards and may conduct any
3 investigations and tests it finds necessary to promote the safety of
4 equipment and the safe operation on the highway of these
5 vehicles."

6 Section 38. G.S. 20-381(3) reads as rewritten:

7 "(3) To relieve the highways of all undue burdens and safeguard traffic
8 thereon by adopting and enforcing rules and orders designed and
9 calculated to minimize the dangers attending transportation on the
10 highways of all hazardous ~~materials.~~ materials and other
11 commodities."

12 Section 39. Effective June 27, 1997, G.S. 53-212.1, as amended by
13 Section 2.1 of S.L. 1997-241, reads as rewritten:

14 "**§ 53-212.1. Bank agent for deposit institution affiliate.**

15 A bank may act as the agent of any depository institution affiliate in receiving
16 deposits, renewing time deposits, closing loans, servicing loans, and receiving
17 payments on loans and other obligations, without being deemed a branch of such
18 affiliate, in accordance with Section 101(d) of the Reigle-Neal Interstate Banking and
19 Branching Efficiency Act of 1994. An affiliate for the purposes of this section shall
20 include (i) an affiliate as defined in Section 2(k) of the Bank Holding Company Act
21 of 1956, as amended (12 U.S.C. § 1841(k)), and (ii) an affiliate as defined in Section
22 23A(b)(1) of the Federal Reserve Act, as amended (~~12 U.S.C. § 37e(b)(1)~~) (~~but (12~~
23 U.S.C. § 371c(b)(1)), but without regard to whether the bank or the affiliate is a
24 member of the Federal Reserve ~~System~~. System."

25 Section 40. (a) The catch line for G.S. 58-51-61, as enacted in Section 1
26 of S.L. 1997-312, reads as rewritten:

27 "~~§58-51-61.~~ **§ 58-51-62. Coverage for reconstructive breast surgery resulting from**
28 **mastectomy.**"

29 (b) G.S. 58-50-155(a2), as enacted in Section 4 of S.L. 1997-312, reads as
30 rewritten:

31 "(a2) Notwithstanding G.S. 58-50-123(c), the standard health plan developed and
32 approved under G.S. 58-50-125 shall provide coverage for reconstructive breast
33 surgery resulting from a mastectomy at least equal to the coverage required by ~~G.S.~~
34 ~~58-51-61.~~ G.S. 58-51-62."

35 (c) Subsection (a) of this section is effective retroactively to July 10,
36 1997. Subsection (b) of this section becomes effective January 1, 1998.

37 Section 41. If Senate Bill 843 of the 1997 General Assembly becomes
38 law, G.S. 58-31-45 reads as rewritten:

39 "**§ 58-31-45. Report required of Commissioner.**

40 The Commissioner must submit to the Governor a full report of his official action
41 under this Article, with such recommendations as commend themselves to ~~him, and it~~
42 ~~shall be embodied in or attached to his biennial report to the General Assembly.~~
43 him."

1 Section 42. G.S. 58-68-45(b)(3), as enacted by S.L. 97-259, reads as
2 rewritten:

3 "(3) Violation of participation or contribution rules. -- The policyholder
4 has failed to comply with a material plan provision relating to
5 employer contribution or group participation rules, as permitted
6 under ~~G.S. 58-68-40(e)~~ G.S. 58-68-40(d) in the case of the small
7 group market or pursuant to this Chapter in the case of the large
8 group market."

9 Section 43. (a) G.S. 105-305(b), (d), and (e) are repealed.

10 (b) This section becomes effective July 1, 1997.

11 Section 44. G.S. 113-291.3(b)(8), as enacted by Section 15 of S.L. 1997-
12 142, reads as rewritten:

13 "(8) The ~~sale of the~~ edible parts of deer raised domestically in another
14 state may be transported into this State and resold as a meat
15 product for human consumption when the edible parts have passed
16 inspection in the other state by that state's inspection agency or the
17 United States Department of Agriculture."

18 Section 45. G.S. 120-34(a) reads as rewritten:

19 "(a) The Legislative Services Commission shall publish all laws and joint
20 resolutions passed at each session of the General Assembly. The laws and joint
21 resolutions shall be kept separate and indexed separately. Each volume shall contain
22 a certificate from the Secretary of State stating that the volume was printed under the
23 direction of the Legislative Services Commission from ratified acts and resolutions on
24 file in the Office of the Secretary of State. The Commission may publish the Session
25 Laws and House and Senate Journals of extra and special sessions of the General
26 Assembly in the same volume or volumes as those of regular sessions of the General
27 Assembly. In printing, the signatures of the presiding officers and the Governor shall
28 be omitted.

29 The enrolling clerk or the Legislative Services Office shall assign to each bill that
30 becomes law a number in the order the bill became law, and the laws shall be printed
31 in the Session Laws in that order. The number shall be preceded by the ~~letters 'S.L.'~~
32 phrase 'Session Law' or the letters 'S.L.' followed by the calendar year it was
33 ordered enrolled, followed by a hyphen and the sequential law number. Laws of
34 Extra Sessions shall so indicate. In the case of any bill required to be presented to the
35 Governor, and which became law, the Session Laws shall carry, below the date of
36 ratification, editorial notes as to what time and what date the bill became law. In any
37 case where the Governor has returned a bill to the General Assembly with objections,
38 those objections shall be printed verbatim in the Session Laws, regardless of whether
39 or not the bill became law notwithstanding the objections."

40 Section 46. (a) G.S. 120-70.80 reads as rewritten:

41 "**§ 120-70.80. Creation and membership of Joint Legislative Education Oversight**
42 **Committee.**

43 The Joint Legislative Education Oversight Committee is established. The
44 Committee consists of 16 members as follows:

1 (1) Eight members of the Senate appointed by the President Pro
2 Tempore of the Senate, at least two of whom are members of the
3 minority party; and

4 (2) Eight members of the House of Representatives appointed by the
5 Speaker of the House of Representatives, at least three of whom
6 are members of the minority party.

7 Terms on the Committee are for two years and begin on the convening of the
8 General Assembly in each odd-numbered year, except the terms of the initial
9 members, which begin on appointment and end on the day of the convening of the
10 1991 General Assembly. Members may complete a term of service on the Committee
11 even if they do not seek reelection or are not reelected to the General Assembly, but
12 resignation or removal from service in the General Assembly constitutes resignation
13 or removal from service on the Committee.

14 A member continues to serve until his successor is appointed. A vacancy shall be
15 filled within 30 days by the officer who made the original appointment."

16 (b) G.S. 120-70.82(a) reads as rewritten:

17 "(a) The President Pro Tempore of the Senate and the Speaker of the House of
18 Representatives shall each designate a cochair of the Joint Legislative Education
19 Oversight Committee. The Committee shall meet at least once a quarter and may
20 meet at other times upon the joint call of the cochairs."

21 Section 47. G.S. 122C-261(d) reads as rewritten:

22 "(d) If the affiant is a physician or eligible psychologist, the affiant may execute
23 the affidavit before any official authorized to administer oaths. This affiant is not
24 required to appear before the clerk or magistrate for this purpose. This affiant's
25 examination shall comply with the requirements of the initial examination as
26 provided in G.S. 122C-263(c). If the physician or eligible psychologist recommends
27 outpatient commitment and the clerk or magistrate finds probable cause to believe
28 that the respondent meets the criteria for outpatient commitment, the clerk or
29 magistrate shall issue an order that a hearing before a district court judge be held to
30 determine whether the respondent will be involuntarily committed. ~~If a physician or~~
31 ~~eligible psychologist recommends outpatient commitment, the clerk or magistrate~~ The
32 physician or eligible psychologist shall provide the respondent with written notice of
33 any scheduled appointment and the name, address, and telephone number of the
34 proposed outpatient treatment physician or center. If the physician or eligible
35 psychologist recommends inpatient commitment and the clerk or magistrate finds
36 probable cause to believe that the respondent meets the criteria for inpatient
37 commitment, the clerk or magistrate shall issue an order for transportation to or
38 custody at a 24-hour facility described in G.S. 122C-252. However, if the clerk or
39 magistrate finds probable cause to believe that the respondent, in addition to being
40 mentally ill, is also mentally retarded, the clerk or magistrate shall contact the area
41 authority before issuing the order and the area authority shall designate the facility to
42 which the respondent is to be transported. If a physician or eligible psychologist
43 executes an affidavit for inpatient commitment of a respondent, a second physician
44 shall be required to perform the examination required by G.S. 122C-266."

1 Section 48. G.S. 130A-412.1(g), as enacted by Section 2 of S.L. 1997-192,
2 reads as rewritten:

3 "(g) Hospitals and hospital personnel shall not be subject to civil or criminal
4 liability nor to discipline for unprofessional conduct for actions taken in good faith to
5 comply with this section. This subsection shall not provide immunity from a civil
6 liability arising from gross negligence."

7 Section 49. (a) G.S. 131E-146(1) reads as rewritten:

8 "(1) 'Ambulatory surgical facility' means a facility designed for the
9 provision of ~~an ambulatory surgical program~~; a specialty
10 ambulatory surgical program or a multispecialty ambulatory
11 surgical program. An ambulatory surgical facility serves patients
12 who require local, regional or general anesthesia and a period of
13 post-operative observation. An ambulatory surgical facility may
14 only admit patients for a period of less than 24 hours and must
15 provide at least ~~one~~ two designated operating ~~room~~ rooms and at
16 least one designated recovery room, have available the necessary
17 equipment and trained personnel to handle emergencies, provide
18 adequate quality assurance and assessment by an evaluation and
19 review committee, and maintain adequate medical records for each
20 patient. An ambulatory surgical facility may be operated as a part
21 of a physician or dentist's office, provided the facility is licensed
22 under G.S. Chapter 131E, Article 6, Part D, but the performance
23 of incidental, limited ambulatory surgical procedures which do not
24 constitute an ambulatory surgical program as defined in
25 subdivision (1a) and which are performed in a physician or
26 dentist's office does not make that office an ambulatory surgical
27 facility."

28 (b) This section conforms the definition of the term "ambulatory surgical
29 facility" in the Ambulatory Surgical Facility Licensure Act to the definition of the
30 same term in G.S. 131E-176, to reflect the amendment made to that statute by
31 Section 2 of Chapter 7 of the 1993 Session Laws. However, ambulatory surgical
32 facilities with only one operating room developed prior to the effective date of
33 Chapter 7 of the 1993 Session Laws may still be licensed as if this section had not
34 been enacted.

35 Section 50. Effective October 1, 1997, G.S. 143-215.84(e), as enacted by
36 Section 4 of S.L. 1997-394, reads as rewritten:

37 "(~~e~~) (f) In order to reduce or eliminate the danger to public health or the
38 environment posed by a discharge or release of oil or a hazardous substance, an
39 owner, operator, or other responsible party may impose restrictions on the current or
40 future use of the real property comprising any part of the site if the restrictions meet
41 the requirements of this subsection. The restrictions must be agreed to by the owner
42 of the real property, included in a remedial action plan for the site that has been
43 approved by the Secretary, and implemented as a part of the remedial action
44 program for the site. The Secretary may approve restrictions included in a remedial

1 action plan in accordance with standards determined: (i) pursuant to rules for
2 remediation of soil or groundwater contamination adopted by the Commission; (ii)
3 with respect to the cleanup of a discharge or release from a petroleum underground
4 storage tank, pursuant to rules adopted by the Commission pursuant to G.S.
5 143-215.94V; or (iii) as provided in G.S. 130A-310.3(d). Restrictions may apply to
6 activities on, over, or under the land, including, but not limited to, use of
7 groundwater, building, filling, grading, excavating, and mining. Any approved
8 restriction shall be enforced by any owner, operator, or other party responsible for
9 the oil or hazardous substance discharge site. Any land-use restriction may also be
10 enforced by the Department through the remedies provided in this Article, Part 2 of
11 Article 1 of Chapter 130A of the General Statutes, or by means of a civil action. The
12 Department may enforce any land-use restriction without first having exhausted any
13 available administrative remedies. A land-use restriction may also be enforced by
14 any unit of local government having jurisdiction over any part of the site. A land-use
15 restriction shall not be declared unenforceable due to lack of privity of estate or
16 contract, due to lack of benefit to particular land, or due to lack of any property
17 interest in particular land. Any person who owns or leases a property subject to a
18 land-use restriction under this Part shall abide by the land-use restriction."

19 Section 51. Section 8 of Chapter 1436 of the 1957 Session Laws, as
20 rewritten by Section 6 of Chapter 622 of the 1981 Session Laws and by Section 1 of
21 S.L. 1997-163, reads as rewritten:

22 "Sec. 8. To obtain a license for either a stationary bush blind or a floating bush
23 blind, the applicant shall apply in writing to the clerk to the Game Commission
24 enclosing:

- 25 (1) Twenty-five dollars (\$25.00) if the applicant is a resident of North
26 Carolina; or
27 (2) Two hundred fifty dollars (\$250.00) if the applicant is not a
28 resident of North Carolina.

29 In addition to ~~the~~ this nonrefundable application fee, each application shall be
30 accompanied by a nonrefundable processing fee of ten dollars (\$10.00). Applicants
31 shall submit proof of North Carolina residency along with each application.

32 Applicants who are not residents of North Carolina but who were the holders of
33 licensed blinds for the 1996-97 waterfowl season shall be charged as North Carolina
34 residents for all subsequent renewals of that application. However, this exemption
35 terminates if the blind license is not renewed during any subsequent annual renewal
36 period and is not transferable to any different blind location.

37 Float blinds when licensed shall bear the license number or tag, and the same shall
38 be displayed in a prominent or conspicuous place upon the blind."

39 Section 52. Section 1 of S.L. 1997-11 reads as rewritten:

40 "Section 1. That part of Section 1 of Chapter ~~6~~ 7 of the Session Laws of the 1991
41 Extra Session which rewrote G.S. 163-201(a) is repealed."

42 Section 53. Section 1 of S.L. 1997-97 reads as rewritten:

43 "Section 1. ~~Subsection (f) of Chapter 33 of the 1993 Session Laws~~ G.S. 113-
44 291.9(g) is repealed."

1 Section 54. The prefatory language of Section 1 of S.L. 1997-172 reads as
2 rewritten:

3 "Section 1. The title of Article 5 of Chapter ~~30~~ 130A of the General Statutes
4 reads as rewritten:".

5 Section 55. Section 7(a) of S.L. 1997-221 is amended by adding
6 quotation marks at the end.

7 Section 56. Unless otherwise provided, this act is effective when it
8 becomes law.

EXPLANATION OF HOUSE BILL 115 (PSCS) :
1997 Technical Corrections

TO: Senate Finance Committee
FROM: Committee Counsel
DATE: August 20, 1997
SPONSOR:

House Bill 115 makes corrections of a technical nature to various sections of the General Statutes. The amendments recommended by the General Statutes Commission are in Sections 1 through 27 of the bill. These amendments correct spelling, typographical, grammatical, redlining, and other obvious drafting errors, make technical conforming changes, update or correct statutory references, and authorize the Revisor of Statutes to renumber sections or parts of sections if needed by the General Assembly's new computer programs. Section 13 of the bill has been deleted because the section it was amending has been repealed. The repeal and deletion have occurred since the General Statutes summary was prepared. The changes beginning with Section 28 have been identified by legislative and agency staff, many of which are correcting errors or duplicative section numbers in laws adopted during the 1997 Session.

The bill is before Senate Finance because of the recommendations in Sections 43 and 51. This bill also adds more recommendations to correct technical errors in Senate Bill 929.

Section 43 of the bill repeals various subsections of G.S. 105-305. This statute describes the place for listing intangible personal property for property tax purposes. Since House Bill 295, which was ratified April 30th, exempted most intangible personal property from property taxes other than leasehold interests in exempted real property, the following subsections of G.S. 105-305 need to be repealed:

- Subsection (b) which sets out the general rule for determining the residence of the owner as the tax situs for intangible personal property.
- Subsection (d) which refers to intangible personal property of a decedent whose estate is in administration.
- Subsection (e) which refers to intangible personal property held by a trustee, guardian or other fiduciary.

The subsections in G.S. 105-305, setting out listing instructions and the taxation of intangible personal property representing an interest in real property, are not repealed.

Section 51 of the bill makes a technical correction to House Bill 411, ratified on June 9th. HB 411 revised the laws relating to the Game Commission of Currituck County. The technical correction clarifies that the application fee for a bush blind is nonrefundable. The ratified bill only referred to the processing fee as nonrefundable.

The proposed committee substitute for House Bill 115 adds section 43.1 to make a technical correction to Senate Bill 929 (AN ACT TO ENHANCE AND IMPROVE CHILD CARE IN NORTH CAROLINA). This section clarifies that child care centers (now facilities) may use domestic kitchen equipment, provided appropriate temperature levels for heating, cooling, and storing are maintained. A child care center is an arrangement where, at any one time, there are three or more preschool-age children or nine or more school-age children receiving child care. A facility includes child care centers, family child care homes, and any other child care arrangement that provides child care. If the correction is not made there is some concern among local health departments that the provision could be construed to require inspections of family child care homes by the local health department. A family child care home is an arrangement located in a residence where, at any one time, more than two children but less than nine children receive child care.



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 115

AMENDMENT NO. _____
(to be filled in by
Principal Clerk) 3
Page 1 of 3

H115-ALB-10A

Date _____, 1997

Comm. Sub. [YES]
Amends Title []
Third Edition

1 moves to amend the bill on page 13, line 10,
2 by adding the following between lines 10 and 11:
3 "Section 43.1. (a) If Senate Bill 929, 1997 Session becomes
4 law, then G.S. 110-91(1) as rewritten by Section 8 of that act reads
5 as rewritten:
6 (1) Medical Care and Sanitation. -- The Commission for
7 Health Services shall adopt rules which establish
8 minimum sanitation standards for child care centers
9 and their personnel. The sanitation rules adopted by
10 the Commission for Health Services shall cover such
11 matters as the cleanliness of floors, walls, ceilings,
12 storage spaces, utensils, and other facilities;
13 adequacy of ventilation; sanitation of water supply,
14 lavatory facilities, toilet facilities, sewage
15 disposal, food protection facilities, bactericidal
16 treatment of eating and drinking utensils, and
17 solid-waste storage and disposal; methods of food
18 preparation and serving; infectious disease control;
19 sleeping facilities; and other items and facilities as
20 are necessary in the interest of the public health.
21 The Commission for Health Services shall allow child
22 care ~~facilities~~ centers to use domestic kitchen
23 equipment, provided appropriate temperature levels for
24 heating, cooling, and storing are maintained. Child
25 care centers that fry foods shall use commercial



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 115

AMENDMENT NO. _____
(to be filled in by
Principal Clerk) _____
Page 2 of 3

H115-ALB-10A

1 hoods. These rules shall be developed in consultation
2 with the Department.
3 The Commission shall adopt rules for child
4 care facilities to establish minimum requirements
5 for child and staff health assessments and medical
6 care procedures. These rules shall be developed in
7 consultation with the Department of Environment,
8 Health, and Natural Resources. Each child shall
9 have a health assessment before being admitted or
10 within 30 days following admission to a child care
11 facility. The assessment shall be done by: (i) a
12 licensed physician, (ii) the physician's authorized
13 agent who is currently approved by the North
14 Carolina Medical Board, or comparable certifying
15 board in any state contiguous to North Carolina,
16 (iii) a certified nurse practitioner, or (iv) a
17 public health nurse meeting the Department of
18 Environment, Health, and Natural Resources'
19 Standards for Early Periodic Screening, Diagnosis,
20 and Treatment Program. However, no health
21 assessment shall be required of any staff or child
22 who is and has been in normal health when the
23 staff, or the child's parent, guardian, or
24 full-time custodian objects in writing to a health
25 assessment on religious grounds which conform to
26 the teachings and practice of any recognized church
27 or religious denomination.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

HOUSE BILL 115*
Committee Substitute Favorable 4/14/97
Senate Judiciary Committee Substitute Adopted 8/19/97
Proposed Senate Committee Substitute H115-PCS6319

Short Title: 1997 Technical Corrections.

(Public)

Sponsors:

Referred to:

February 12, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE TECHNICAL CORRECTIONS AND CONFORMING
3 CHANGES TO THE GENERAL STATUTES AND SESSION LAWS AS
4 RECOMMENDED BY THE GENERAL STATUTES COMMISSION, AND TO
5 MAKE OTHER TECHNICAL CORRECTIONS AND CONFORMING
6 CHANGES TO THE GENERAL STATUTES AND SESSION LAWS.
7 The General Assembly of North Carolina enacts:
8 Section 1. G.S. 7A-650(b1) reads as rewritten:
9 "(b1) At the dispositional hearing or a subsequent hearing in the case of a
10 juvenile who has been adjudicated delinquent, undisciplined, abused, neglected, or
11 dependent, if the court finds that it is in the best interest of the juvenile for the
12 parent to be directly involved in the juvenile's treatment, the court may order the
13 parent to participate in medical, psychiatric, psychological, or other treatment of the
14 juvenile juvenile. The cost of the treatment shall be paid pursuant to G.S. 7A-
15 647(3)a."
16 Section 2. G.S. 14-277(a) reads as rewritten:
17 "(a) No person shall falsely represent to another that he is a sworn law-
18 enforcement officer. As used in this section, a person represents that he is a sworn
19 law-enforcement officer if he:

- 1 (1) Verbally informs another that he is a sworn law-enforcement
 2 officer, whether or not the representation refers to a particular
 3 agency;
 4 (2) Displays any badge or identification signifying to a reasonable
 5 individual that the person is a sworn law-enforcement officer,
 6 whether or not the badge or other identification refers to a
 7 particular law-enforcement agency; ~~or~~
 8 (3) Unlawfully operates a vehicle on a public street, highway or public
 9 vehicular area with an operating red light as defined in G.S.
 10 ~~20-130.1(a).~~ 20-130.1(a); or
 11 (4) Unlawfully operates a vehicle on a public street, highway, or
 12 public vehicular area with an operating blue light as defined in
 13 G.S. 20-130.1(c)."

14 Section 3. G.S. 15A-401(b) reads as rewritten:

15 "(b) Arrest by Officer Without a Warrant. --

- 16 (1) Offense in Presence of Officer. -- An officer may arrest without a
 17 warrant any person who the officer has probable cause to believe
 18 has committed a criminal offense in the officer's presence.
 19 (2) Offense Out of Presence of Officer. -- An officer may arrest
 20 without a warrant any person who the officer has probable cause
 21 to believe:
 22 a. Has committed a felony; or
 23 b. Has committed a misdemeanor, and:
 24 1. Will not be apprehended unless immediately arrested,
 25 or
 26 2. May cause physical injury to himself or others, or
 27 damage to property unless immediately arrested; or
 28 c. Has committed a misdemeanor under G.S. 14-72.1, 14-134.3,
 29 20-138.1, or 20-138.2; or
 30 d. Has committed a misdemeanor under G.S. 14-33(a), ~~G.S.~~
 31 ~~14-33(b)(1), or G.S. 14-33(b)(2)~~ 14-33(c)(1), or 14-33(c)(2)
 32 when the offense was committed by a person who is the
 33 spouse or former spouse of the alleged victim or by a person
 34 with whom the alleged victim is living or has lived as if
 35 married.
 36 (3) Repealed by Session Laws 1991, c. 150."

37 Section 4. G.S. 25-9-105(1)(h), as amended by Section 3 of S.L. 1997-
 38 181, reads as rewritten:

39 "(h) 'Goods' includes all things which are movable at the time the
 40 security interest attaches or which are fixtures (G.S. 25-9-313), but
 41 does not include money, documents, instruments, investment
 42 property, ~~commodity contracts~~, accounts, chattel paper, general
 43 intangibles, or minerals or the like (including oil and gas) before
 44 extraction. "Goods" also includes standing timber which is to be

1 cut and removed under a conveyance or contract for sale, the
2 unborn young of animals, and growing crops;"

3 Section 5. G.S. 25-9-312(7), as amended by Section 16 of S.L. 1997-181,
4 reads as rewritten:

5 "(7) If future advances are made while a security interest is perfected by filing, the
6 taking of possession, or under G.S. 25-9-115 or G.S. 25-9-116 on investment property,
7 the security interest has the same priority for the purposes of subsection (5) or G.S.
8 25-9-115(5) with respect to the future advances as it does with respect to the first
9 advance. If a commitment is made before or while the security interest is so
10 perfected, the security interest has the same priority with respect to advances made
11 pursuant thereto. In other cases a perfected security interest has priority from the date
12 the advance is made."

13 Section 6. G.S. 25-9-303(1) reads as rewritten:

14 "(1) A security interest is perfected when it has attached and when all of the
15 applicable steps required for perfection have been taken. Such steps are specified in
16 G.S. 25-9-115, 25-9-302, 25-9-304, 25-9-305 and 25-9-306. If such steps are taken
17 before the security interest attaches, it is perfected at the time it attaches."

18 Section 7. G.S. 28A-18-2(a) reads as rewritten:

19 "(a) When the death of a person is caused by a wrongful act, neglect or default of
20 another, such as would, if the injured person had lived, have entitled him to an
21 action for damages therefor, the person or corporation that would have been so
22 liable, and his or their personal representatives or collectors, shall be liable to an
23 action for damages, to be brought by the personal representative or collector of the
24 decedent; and this notwithstanding the death, and although the wrongful act, neglect
25 or default, causing the death, amounts in law to a felony. The personal representative
26 or collector of the decedent who pursues an action under this section may pay from
27 the assets of the estate the reasonable and necessary expenses, not including
28 attorneys' fees, incurred in pursuing the action. At the termination of the action, any
29 amount recovered shall be applied first to the reimbursement of the estate for the
30 expenses incurred in pursuing the action, then to the payment of attorneys' fees, and
31 shall then be distributed as provided in this section. The amount recovered in such
32 action is not liable to be applied as assets, in the payment of debts or legacies, except
33 as to burial expenses of the deceased, and reasonable hospital and medical expenses
34 not exceeding four thousand five hundred dollars (\$4,500) incident to the injury
35 resulting in death, except that the amount applied for hospital and medical expenses
36 shall not exceed fifty percent (50%) of the amount of damages recovered after
37 deducting attorneys' ~~fees- fees,~~ but shall be disposed of as provided in the Intestate
38 Succession Act. All claims filed for such services shall be approved by the clerk of
39 the superior court and any party adversely affected by any decision of said clerk as to
40 said claim may appeal to the superior court in term ~~time, but shall be disposed of as~~
41 ~~provided in the Intestate Succession Act. time."~~

42 Section 8. G.S. 41-19(a) reads as rewritten:

43 "(a) Except as extended by subsection (b) of this section, this Article applies to a
44 nonvested property interest or a power of appointment that is created on or after

1 October 1, 1995. For purposes of this section, a nonvested property interest or a
2 power of appointment created by the exercise of a power of appointment is created
3 when the power is irrevocably exercised or when a revocable exercise becomes
4 irrevocable."

5 Section 9. G.S. 68-42 reads as rewritten:

6 "**§ 68-42. Stock running at large prohibited; certain ponies excepted.**

7 From and after July 1, 1958, it shall be unlawful for any person, firm or
8 corporation to allow his or its horses, cattle, goats, sheep, or hogs to run free or at
9 large along the outer banks of this State. This Article shall not apply to horses known
10 as marsh ponies or banks ponies on Ocracoke Island, Hyde County. This Article shall
11 not apply to horses known as marsh ponies or banks ponies on ~~Shackelford~~
12 Shackleford Banks between Beaufort Inlet and Barden's Inlet in Carteret County.
13 Saving and excepting those animals known as 'banker ponies' on the island of
14 Ocracoke owned by the Boy Scouts and not exceeding 35 in number."

15 Section 10. G.S. 68-43 reads as rewritten:

16 "**§ 68-43. Authority of Secretary of Environment, Health, and Natural Resources to**
17 **remove or confine ponies on Ocracoke Island and ~~Shackelford~~ Shackleford Banks.**

18 Notwithstanding any other provisions of this Article, the Secretary of Environment,
19 Health, and Natural Resources shall have authority to remove or cause to be removed
20 from Ocracoke Island and ~~Shackelford~~ Shackleford Banks all ponies known as banks
21 ponies or marsh ponies if and when he determines that such action is essential to
22 prevent damage to the island. In the event such a determination is made, the
23 Secretary, in lieu of removing all ponies, may require that they be restricted to a
24 certain area or corralled so as to prevent damage to the island. In the event such
25 action is taken, the Secretary is authorized to take such steps and act through his duly
26 designated employees or such other persons as, in his opinion, he deems necessary
27 and he may accept any assistance provided by or through the National Park Service."

28 Section 11. G.S. 81A-26(a)(4) reads as rewritten:

29 "(4) The identity of the commodity in the most descriptive terms
30 commercially practicable, including any quality representation
31 made in connection with the sale,"

32 Section 12. G.S. 90-89(c)15. reads as rewritten:

33 "15. ~~Psilocyn.~~ Psilocin."

34 Section 14. G.S. 106-727(b) reads as rewritten:

35 "(b) The Commission shall consist of nine members, as follows:

- 36 (1) The Commissioner of Agriculture;
- 37 (2) Four members appointed by the General Assembly upon the
38 recommendation of the President Pro Tempore ~~of~~ of the Senate in
39 accordance with G.S. 120-121, one of whom shall be designated to
40 serve as chairman as provided in subsection (d) of this section; and
- 41 (3) Four members appointed by the General Assembly upon the
42 recommendation of the Speaker of the House of Representatives in
43 accordance with G.S. 120-121."

44 Section 15. G.S. 106-802(4) reads as rewritten:

1 "(4) 'Site evaluation' means an investigation to determine if a site
2 meets all federal and State standards as evidenced by the Waste
3 Management Facility Site Evaluation Report on file with the Soil
4 and Water Conservation District office or a comparable report
5 certified by a professional engineer or a comparable report
6 certified by a technical specialist approved by the North Carolina
7 Soil and Water Conservation Commission.

8 ~~Department of Environment, Health and Natural Resources".~~

9 Section 16. G.S. 115C-81.2(e) reads as rewritten:

10 "(e) The State Board of Education shall report to the Joint Legislative Education
11 Oversight Committee by December 31, 1996, and annually thereafter on the
12 comprehensive plan developed under ~~Section 1 of Session Laws 1995 (Reg. Sess.,~~
13 ~~1996), e. 716, s. 1. subsection (a) of this section.~~ The first report shall include
14 revisions made to the standard course of study, teacher certification standards, and
15 teacher education programs. Subsequent reports shall address the effectiveness, based
16 on factors including improved student performance in reading, of the implementation
17 of the plan. The State Board may make recommendations to the General Assembly in
18 any of its reports."

19 Section 17. G.S. 115C-302(f) reads as rewritten:

20 "(f) A teacher may use annual leave, personal leave, or leave without pay to care
21 for a newborn child or for a child placed with the teacher for adoption or foster care.
22 The leave may be for consecutive workdays during the first 12 months after the date
23 of birth or placement of the child, unless ~~the~~ the teacher and local board of education
24 agree otherwise."

25 Section 18. G.S. 115D-2.1(b)(3) reads as rewritten:

26 "(3) The Governor shall appoint to the State Board four members from
27 the State at large and one member from each of the six Trustee
28 Association Regions defined in ~~G.S. 115D-63~~ G.S. 115D-62. The
29 initial appointments by the Governor shall be made effective July
30 1, 1980, or as soon as feasible thereafter. In order to establish
31 regularly overlapping terms, the initial appointments by the
32 Governor shall be made so that three expire June 30, 1981, three
33 expire June 30, 1983, and four expire June 30, 1985. Each
34 subsequent regular appointment by the Governor shall be for a
35 term of six years and until a successor is appointed and qualifies.
36 Any vacancy occurring among his appointees before the expiration
37 of term shall be filled by appointment of the Governor; the
38 member so appointed shall meet the same residential qualification,
39 if any, as the member whom he succeeds and shall serve for the
40 remainder of the unexpired term of that member."

41 Section 19. G.S. 115D-2.1(d) reads as rewritten:

42 "(d) No member of the General Assembly, no officer or employee of the State,
43 and no officer or employee of an institution under the jurisdiction of the State Board
44 and no spouse of any of those persons, shall be eligible to serve on the State Board.

1 Furthermore, no person who within the prior ~~5~~ five years has been an employee of
2 the Department of Community Colleges shall be eligible to serve on the State
3 Board."

4 Section 20. G.S. 131D-2(a1)(4) reads as rewritten:

5 "(4) Individuals whose health needs cannot be met in the specific adult
6 care home as determined by the ~~residencee~~, residence; and".

7 Section 21. G.S. 131D-20(6) reads as rewritten:

8 "(6) 'Group home for developmentally disabled adults' means ~~and an~~ an
9 adult care home which has two to nine developmentally disabled
10 adult residents."

11 Section 22. G.S. 143B-153(3)b. reads as rewritten:

12 "b. For the inspection and licensing of adult care homes for
13 aged or disabled persons as provided by G.S. 131D-2(b) and
14 for personnel requirements of staff employed in ~~adult care~~
15 ~~homes~~ adult care homes;"

16 Section 23. G.S. 148-32.1(b) reads as rewritten:

17 "(b) In the event that the custodian of the local confinement facility certifies in
18 writing to the clerk of the superior court in the county in which said local
19 confinement facility is located that the local confinement facility is filled to capacity,
20 or that the facility cannot reasonably accommodate any more prisoners due to
21 segregation requirements for particular prisoners, or that the custodian anticipates, in
22 light of local experiences, an influx of temporary prisoners at that time, or if the local
23 confinement facility does not meet the minimum standards published pursuant to
24 G.S. 153A-221, any judge of the district court in the district court district as defined
25 in G.S. 7A-133 where the facility is located, or any superior court judge who has
26 jurisdiction pursuant to G.S. 7A-47.1 or G.S. 7A-48 in a district or set of districts as
27 defined in G.S. 7A-41.1 where the facility is located may order that the prisoner be
28 transferred to any other qualified local confinement facility within that district or
29 within another such district where space is available, including a satellite jail unit
30 operated pursuant to G.S. 153A-230.3 if the prisoner is a non-violent misdemeanor,
31 which local facility shall accept the transferred prisoner, if the prison population has
32 exceeded a manageable level as provided for in G.S. 148-4.1(a). If no such local
33 confinement facility is available, then any such judge may order the prisoner
34 transferred to such camp or facility as the proper authorities of the Department of
35 Correction shall designate, notwithstanding that the term of imprisonment of the
36 prisoner is 90 days or less. In no event, however, shall a prisoner whose term of
37 imprisonment is less than 30 days be assigned or ordered transferred to any such
38 camp or facility."

39 Section 24. G.S. 153A-301(a) reads as rewritten:

40 "(a) The board of commissioners of any county may define any number of service
41 districts in order to finance, provide, or maintain for the districts one or more of the
42 following services, facilities and functions in addition to or to a greater extent than
43 those financed, provided or maintained for the entire county:

44 (1) Beach erosion control and flood and hurricane protection works.

- 1 (2) Fire protection.
2 (3) Recreation.
3 (4) Sewage collection and disposal systems of all types, including
4 septic tank systems or other on-site collection or disposal facilities
5 or systems.
6 (5) Solid waste collection and disposal systems.
7 (6) Water supply and distribution systems.
8 (7) Ambulance and rescue.
9 (8) Watershed improvement projects, including but not limited to
10 watershed improvement projects as defined in ~~General Statutes~~
11 ~~Chapter 139~~; Chapter 139 of the General Statutes; drainage
12 projects, including but not limited to the drainage projects
13 provided for by ~~General Statutes Chapter 156~~; Chapter 156 of the
14 General Statutes; and water resources development projects,
15 including but not limited to the federal water resources
16 development projects provided for by ~~General Statutes Chapter~~
17 ~~143, Article 21~~; Article 21 of Chapter 143 of the General Statutes.
18 (9) Cemeteries.
19 (10) Law enforcement if all of the following apply:
20 a. The population of the county is over ~~five hundred thousand~~
21 500,000 according to the most recent federal decennial
22 census.
23 b. The county has an interlocal agreement with a city in the
24 county under which the city provides law enforcement
25 services in the entire unincorporated area of the county.
26 c. The county will pay to the city the following percentages of
27 the city-county police department budget if there are no
28 significant changes to the city's statutory annexation
29 authority:
30 1. 9.60% for fiscal years 1995-96 and 1996-97.
31 2. 7.60% for fiscal years 1997-98 and 1998-99.
32 3. 5.60% for fiscal years 1999-2000 and 2000-2001.
33 4. 3.60% for fiscal years 2001-02 and 2002-03.
34 5. 1.60% for fiscal years 2003-04 and 2004-05.
35 Provided, if the difference between the ratio of the
36 population in the unincorporated area to the total
37 population served by the city-county police department and
38 the rate for the current year as stated above is greater than
39 fifteen percent (15%), ~~the~~ the county's agreement to pay
40 such percentages can be amended to reflect that difference."
41 Section 25. Chapter 261 of the 1995 Session Laws is repealed.
42 Section 26. Section 2 of Chapter 627 of the 1995 Session Laws reads as
43 rewritten:

1 "Sec. 2. G.S. ~~113-133(e)~~ 113-133.1(e) is amended by deleting the words
2 'Currituck: Session Laws 1959, Chapter 545.'"

3 Section 27. The Revisor of Statutes is authorized to renumber or reletter
4 those sections and any parts of sections of the General Statutes that have been
5 published in the General Statutes of North Carolina prior to the 1997 Session of the
6 1997 General Assembly and have a number or letter designation that is not
7 compatible with the General Assembly's computer program database to be
8 implemented in 1997 or 1998. This authority is in addition to the authority contained
9 in G.S. 164-10.

10 Section 28. Effective January 1, 1998, G.S. 1-339.25(a), as amended by
11 Section 18 of S.L. 1997-83 and Section 1 of S.L. 1997-119, reads as rewritten:

12 "(a) An upset bid is an advanced, increased or raised bid in a public sale by
13 auction whereby a person offers to purchase real property theretofore sold for an
14 amount exceeding the reported sale price by a minimum of five percent (5%) thereof,
15 but in any event with a minimum increase of seven hundred fifty dollars (\$750.00).
16 ~~the the the~~ An upset bid shall be made by delivering to the clerk of superior court,
17 with whom the report of the sale was filed, a deposit in cash or by certified check or
18 cashier's check satisfactory to the clerk in an amount greater than or equal to five
19 percent (5%) of the amount of the upset bid but in no event less than seven hundred
20 fifty dollars (\$750.00). The deposit required by this section shall be filed with the
21 clerk of the superior court, with whom the report of sale was filed, by the close of
22 normal business hours on the tenth day after the filing of the report of sale, and if the
23 tenth day shall fall upon a Sunday or legal holiday or upon a day in which the office
24 of the clerk is not open for the regular dispatch of its business, the deposit may be
25 made on the day following when ~~said~~ the office is open for the regular dispatch of its
26 business. An upset bid need not be in writing, and the timely deposit with the clerk
27 of the required amount, together with an indication to the clerk as to the sale to
28 which it is applicable, is sufficient to constitute the upset bid, subject to the provisions
29 of subsection (b) of this section."

30 Section 29. G.S. 20-4.01(27)d1. reads as rewritten:

31 "d1. Moped. -- ~~Vehicles having~~ A vehicle that has two or three
32 ~~wheels and operable pedals and equipped with wheels, no~~
33 external shifting device, and a motor which that does not
34 exceed 50 cubic centimeters piston displacement and cannot
35 propel the vehicle at a speed greater than 20 miles per hour
36 on a level surface."

37 Section 30. G.S. 20-28.2(a), as amended by Section 1.1 of S.L. 1997-379,
38 reads as rewritten:

39 "(a) Meaning of 'Impaired Driving License Revocation'. -- The revocation of a
40 person's driver's license is an impaired driving license revocation if the revocation is
41 pursuant to:

42 (1) G.S. 20-13.2, 20-16(a)(8b), 20-16.2, 20-16.5, 20-17(a)(2), 20-
43 17(a)(12), or 20-17.2; or

1 (2) G.S. 20-16(a)(7), ~~20-17(1), or 20-17(9), 20-17(a)(1), or 20-17(a)(9),~~
2 if the offense involves impaired driving."

3 Section 31. G.S. 20-28.3(a), as enacted by Section 1.2 of S.L. 1997-379,
4 reads as rewritten:

5 "(a) A motor vehicle that is driven by a person in violation of G.S. 20-138.1 or
6 G.S. 20-138.5 is subject to seizure if at the time of the violation the drivers license of
7 the person driving the motor vehicle was revoked as a result of a prior impaired
8 ~~drivers driving~~ license revocation. ~~The revocation of a person's drivers license is an~~
9 ~~impaired drivers license revocation for purposes of this section if the revocation is~~
10 ~~pursuant to:~~

11 (1) ~~G.S. 20-13.2, 20-16(a)(8b), 20-16.2, 20-16.5, 20-17(a)(2),~~
12 ~~20-17(a)(12), or 20-17.2; or~~

13 (2) ~~G.S. 20-16(a)(7), 20-17(a)(1), or 20-17(a)(9) if the offense involved~~
14 ~~impaired driving; revocation as defined in G.S. 20-28.2(a)."~~

15 Section 32. Effective December 1, 1997, G.S. 20-7(a1), as amended by
16 Section 8 of S.L. 1997-16, reads as rewritten:

17 "(a1) Motorcycles and Mopeds. -- To drive a motorcycle, a person ~~must have~~ shall
18 have:

19 (1) ~~a motoreyele learner's permit, a~~ A full provisional license with a
20 motorcycle learner's permit; and a motoreyele endorsement, or a

21 (2) A regular drivers license with a motorcycle learner's permit; or

22 (3) Either:

23 a. A full provisional license; or

24 b. A regular drivers license, and with a motorcycle
25 endorsement.

26 Subsection (a2) of this section sets forth the requirements for a motorcycle learner's
27 permit.

28 To obtain a motorcycle endorsement, a person ~~must~~ shall demonstrate competence
29 to drive a motorcycle ~~by~~ by:

30 (1) ~~passing~~ Passing a road test ~~and test;~~

31 (2) Passing a written or oral test concerning ~~a motoreyele motorcycles;~~
32 and

33 (3) ~~must pay~~ Paying the fee for a motorcycle endorsement.

34 Neither a drivers license nor a motorcycle endorsement is required to drive a
35 moped."

36 Section 33. Effective December 1, 1997, G.S. 20-7(a2), as enacted by
37 Section 9 of S.L. 1997-16, reads as rewritten:

38 "(a2) Motorcycle Learner's Permit. -- The following persons are eligible for a
39 motorcycle learner's permit:

40 (1) A person who is at least 16 years old but less than 18 years old and
41 has ~~a limited provisional license or~~ a full provisional license issued
42 by the Division.

43 (2) A person who is at least 18 years old and has a license issued by
44 the Division.

1 To obtain a motorcycle learner's permit, an applicant ~~must~~ shall pass a vision test,
2 a road sign test, and a written test specified by the Division. A motorcycle learner's
3 permit expires 18 months after it is issued. The holder of a motorcycle learner's
4 permit may not drive a motorcycle with a passenger. ~~The holder of a motorcycle~~
5 ~~learner's permit who has a limited provisional license may drive the motorcycle only~~
6 ~~at a time when the license holder could drive a motor vehicle without supervision~~
7 ~~under G.S. 20-11.~~ The fee for a motorcycle learner's permit is the amount set in G.S.
8 20-7(1) for a learner's permit."

9 Section 34. (a) G.S. 20-28.6, as enacted in Section 1.5 of S.L. 1997-379,
10 reads as rewritten:

11 "**§ 20-28.6. Forfeiture of right of registration.**

12 (a) A person convicted of violating G.S. 20-138.1 or G.S. 20-138.5 while the
13 person's drivers license is revoked as a result of a prior impaired drivers license
14 revocation as defined in G.S. 20-28.3 forfeits the right to register or have registered a
15 motor vehicle in the person's name until the person's drivers license is restored. The
16 trial judge at the sentencing hearing on the person's charge of violating G.S. 20-138.1
17 or G.S. 20-138.5 while the person's drivers license is revoked as a result of a prior
18 impaired drivers license revocation as defined in G.S. 20-28.3 shall order the
19 defendant's rights of registration forfeited for the period the defendant's drivers
20 license is revoked. The defendant shall be ordered to surrender the registration on
21 all motor vehicles registered in the defendant's name to the Division within 10 days
22 of the date of the order. Information in the order pertaining to the registration of
23 motor vehicles shall be transmitted electronically or otherwise by the clerk of
24 superior court to the Division. The Division shall not thereafter register a motor
25 vehicle in the defendant's name until the defendant's drivers license has been
26 restored.

27 (b) A registered owner other than the operator of the vehicle that is seized
28 pursuant to G.S. 20-28.3 who is not an innocent party pursuant to G.S. 20-28.2
29 forfeits the right to register or have registered in the person's name the motor vehicle
30 seized, until the drivers license of the person whose driving violation resulted in the
31 motor vehicle being seized is restored. The trial judge on the person's charge of
32 violating G.S. 20-138.1 or G.S. 20-138.5 while the person's drivers license is revoked
33 as a result of a prior impaired drivers license revocation as defined in G.S. 20-28.3
34 shall order the registered owner's rights of registration for the seized motor vehicle
35 forfeited for the period the defendant's drivers license is revoked after an opportunity
36 for a hearing and a determination that the requirements of subsections (a) through (c)
37 of G.S. 20-28.2 exist. The registered owner shall be ordered to surrender the
38 registration on the motor vehicle seized to the Division within 10 days of the date of
39 the order. Information in the order pertaining to the registration of motor vehicles
40 shall be transmitted electronically or otherwise by the clerk of superior court to the
41 Division. The Division shall not thereafter register the motor vehicle seized in the
42 registered owner's name until the defendant's drivers license has been restored."

43 (b) G.S. 20-139.1(b5), as enacted in Section 5.4 of S.L. 1997-379, reads as
44 rewritten:

1 "(b5) Subsequent Tests Allowed. -- A person may be requested, pursuant to
2 G.S. 20-16.2, to submit to a chemical analysis of the person's blood or other bodily
3 fluid or substance in addition to or in lieu of a chemical analysis of the breath, in the
4 discretion of the charging officer. If a subsequent chemical analysis is requested
5 pursuant to this subsection, the person shall again be advised of the implied consent
6 rights in accordance with G.S. 20-16.2(a). A person's willful refusal to submit to a
7 chemical analysis of the blood or other bodily fluid or substance is a willful refusal
8 under G.S. 20-16.2."

9 Section 35. G.S. 20-183.8C(b), as amended by Section 7 of S.L. 1997-29,
10 reads as rewritten:

11 "(b) Type II. -- It is a Type II violation for an emissions self-inspector, an
12 emissions inspection station, or an emissions inspection mechanic to do any of the
13 following:

- 14 (1) Use the identification code of another to gain access to an
15 emissions analyzer.
- 16 (2) Keep inspection stickers and other compliance documents in a
17 manner that makes them easily accessible to individuals who are
18 not inspection mechanics.
- 19 (3) Put an emissions inspection sticker on a vehicle that is required to
20 have one of the following emissions control devices but does not
21 have it:
- 22 a. Catalytic converter.
 - 23 b. PCV valve.
 - 24 c. Thermostatic air control.
 - 25 d. Oxygen sensor.
 - 26 e. Unleaded gas restrictor.
 - 27 f. Gasoline tank cap.
 - 28 g. Air injection system.
 - 29 h. Evaporative emissions system.
 - 30 i. Exhaust gas recirculation (EGR) valve.
- 31 (4) Put an emissions inspection sticker on a vehicle without
32 performing a visual inspection of the vehicle's exhaust system and
33 checking the exhaust system for leaks.
- 34 (5) Impose no fee for an emissions inspection of a vehicle or the
35 issuance of an emissions inspection sticker or impose a fee for one
36 of these actions in an amount that differs from the amount set in
37 ~~G.S. 20-187.3.~~ G.S. 20-183.7."

38 Section 36. G.S. 20-376(1) reads as rewritten:

39 "(1) Federal safety regulations. -- The federal motor carrier safety
40 regulations contained in 49 ~~U.S.C. Subchapter B, Parts 350 through~~
41 399. C.F.R. Parts 382 and 390 through 398."

42 Section 37. G.S. 20-381(1a) reads as rewritten:

43 "(1a) To set safety standards for vehicles of motor carriers engaged in
44 foreign, interstate, or intrastate commerce over the highways of this

1 State and for the safe operation of these vehicles. The Division
2 may ~~stop and inspect a vehicle stop, enter upon, and perform~~
3 inspections of motor carriers' vehicles in operation to determine if
4 ~~it is in~~ compliance with these standards and may conduct any
5 investigations and tests it finds necessary to promote the safety of
6 equipment and the safe operation on the highway of these
7 vehicles."

8 Section 38. G.S. 20-381(3) reads as rewritten:

9 "(3) To relieve the highways of all undue burdens and safeguard traffic
10 thereon by adopting and enforcing rules and orders designed and
11 calculated to minimize the dangers attending transportation on the
12 highways of all hazardous ~~materials:~~ materials and other
13 commodities."

14 Section 39. Effective June 27, 1997, G.S. 53-212.1, as amended by
15 Section 2.1 of S.L. 1997-241, reads as rewritten:

16 "**§ 53-212.1. Bank agent for deposit institution affiliate.**

17 A bank may act as the agent of any depository institution affiliate in receiving
18 deposits, renewing time deposits, closing loans, servicing loans, and receiving
19 payments on loans and other obligations, without being deemed a branch of such
20 affiliate, in accordance with Section 101(d) of the Reigle-Neal Interstate Banking and
21 Branching Efficiency Act of 1994. An affiliate for the purposes of this section shall
22 include (i) an affiliate as defined in Section 2(k) of the Bank Holding Company Act
23 of 1956, as amended (12 U.S.C. § 1841(k)), and (ii) an affiliate as defined in Section
24 23A(b)(1) of the Federal Reserve Act, as amended (~~12 U.S.C. § 37e(b)(1))~~ (but (12
25 U.S.C. § 371c(b)(1)), but without regard to whether the bank or the affiliate is a
26 member of the Federal Reserve ~~System~~. System."

27 Section 40. (a) The catch line for G.S. 58-51-61, as enacted in Section 1
28 of S.L. 1997-312, reads as rewritten:

29 "~~§58-51-61. § 58-51-62. Coverage for reconstructive breast surgery resulting from~~
30 mastectomy."

31 (b) G.S. 58-50-155(a2), as enacted in Section 4 of S.L. 1997-312, reads as
32 rewritten:

33 "(a2) Notwithstanding G.S. 58-50-123(c), the standard health plan developed and
34 approved under G.S. 58-50-125 shall provide coverage for reconstructive breast
35 surgery resulting from a mastectomy at least equal to the coverage required by ~~G.S.~~
36 ~~58-51-61. G.S. 58-51-62.~~"

37 (c) Subsection (a) of this section is effective retroactively to July 10,
38 1997. Subsection (b) of this section becomes effective January 1, 1998.

39 Section 41. If Senate Bill 843 of the 1997 General Assembly becomes
40 law, G.S. 58-31-45 reads as rewritten:

41 "**§ 58-31-45. Report required of Commissioner.**

42 The Commissioner must submit to the Governor a full report of his official action
43 under this Article, with such recommendations as commend themselves to ~~him, and it~~

1 ~~shall be embodied in or attached to his biennial report to the General Assembly.~~
2 him."

3 Section 42. G.S. 58-68-45(b)(3), as enacted by S.L. 97-259, reads as
4 rewritten:

5 "(3) Violation of participation or contribution rules. -- The policyholder
6 has failed to comply with a material plan provision relating to
7 employer contribution or group participation rules, as permitted
8 under ~~G.S. 58-68-40(e)~~ G.S. 58-68-40(d) in the case of the small
9 group market or pursuant to this Chapter in the case of the large
10 group market."

11 Section 43. (a) G.S. 105-305(b), (d), and (e) are repealed.

12 (b) This section becomes effective July 1, 1997.

13 Section 43.1. (a) If Senate Bill 929, 1997 Session becomes law, then G.S.
14 110-91(1) as rewritten by Section 8 of that act reads as rewritten:

15 "(1) Medical Care and Sanitation. -- The Commission for Health
16 Services shall adopt rules which establish minimum sanitation
17 standards for child care centers and their personnel. The
18 sanitation rules adopted by the Commission for Health Services
19 shall cover such matters as the cleanliness of floors, walls, ceilings,
20 storage spaces, utensils, and other facilities; adequacy of
21 ventilation; sanitation of water supply, lavatory facilities, toilet
22 facilities, sewage disposal, food protection facilities, bactericidal
23 treatment of eating and drinking utensils, and solid-waste storage
24 and disposal; methods of food preparation and serving; infectious
25 disease control; sleeping facilities; and other items and facilities as
26 are necessary in the interest of the public health. The Commission
27 for Health Services shall allow child care ~~facilities~~ centers to use
28 domestic kitchen equipment, provided appropriate temperature
29 levels for heating, cooling, and storing are maintained. Child care
30 centers that fry foods shall use commercial hoods. These rules
31 shall be developed in consultation with the Department.

32 The Commission shall adopt rules for child care facilities to
33 establish minimum requirements for child and staff health
34 assessments and medical care procedures. These rules shall be
35 developed in consultation with the Department of Environment,
36 Health, and Natural Resources. Each child shall have a health
37 assessment before being admitted or within 30 days following
38 admission to a child care facility. The assessment shall be done by:
39 (i) a licensed physician, (ii) the physician's authorized agent who is
40 currently approved by the North Carolina Medical Board, or
41 comparable certifying board in any state contiguous to North
42 Carolina, (iii) a certified nurse practitioner, or (iv) a public health
43 nurse meeting the Department of Environment, Health, and
44 Natural Resources' Standards for Early Periodic Screening,

1 Diagnosis, and Treatment Program. However, no health
2 assessment shall be required of any staff or child who is and has
3 been in normal health when the staff, or the child's parent,
4 guardian, or full-time custodian objects in writing to a health
5 assessment on religious grounds which conform to the teachings
6 and practice of any recognized church or religious denomination.

7 Organizations that provide prepared meals to child care
8 centers only are considered child care centers for purposes of
9 compliance with appropriate sanitation standards."

10 (b) This section becomes effective at the same time as Section 8 of Senate
11 Bill 929, 1997 Session becomes effective.

12 Section 44. G.S. 113-291.3(b)(8), as enacted by Section 15 of S.L. 1997-
13 142, reads as rewritten:

14 "(8) The ~~sale of the~~ edible parts of deer raised domestically in another
15 state may be transported into this State and resold as a meat
16 product for human consumption when the edible parts have passed
17 inspection in the other state by that state's inspection agency or the
18 United States Department of Agriculture."

19 Section 45. G.S. 120-34(a) reads as rewritten:

20 "(a) The Legislative Services Commission shall publish all laws and joint
21 resolutions passed at each session of the General Assembly. The laws and joint
22 resolutions shall be kept separate and indexed separately. Each volume shall contain
23 a certificate from the Secretary of State stating that the volume was printed under the
24 direction of the Legislative Services Commission from ratified acts and resolutions on
25 file in the Office of the Secretary of State. The Commission may publish the Session
26 Laws and House and Senate Journals of extra and special sessions of the General
27 Assembly in the same volume or volumes as those of regular sessions of the General
28 Assembly. In printing, the signatures of the presiding officers and the Governor shall
29 be omitted.

30 The enrolling clerk or the Legislative Services Office shall assign to each bill that
31 becomes law a number in the order the bill became law, and the laws shall be printed
32 in the Session Laws in that order. The number shall be preceded by the ~~letters 'S.L.'~~
33 phrase 'Session Law' or the letters 'S.L.' followed by the calendar year it was
34 ordered enrolled, followed by a hyphen and the sequential law number. Laws of
35 Extra Sessions shall so indicate. In the case of any bill required to be presented to the
36 Governor, and which became law, the Session Laws shall carry, below the date of
37 ratification, editorial notes as to what time and what date the bill became law. In any
38 case where the Governor has returned a bill to the General Assembly with objections,
39 those objections shall be printed verbatim in the Session Laws, regardless of whether
40 or not the bill became law notwithstanding the objections."

41 Section 46. (a) G.S. 120-70.80 reads as rewritten:

42 "**§ 120-70.80. Creation and membership of Joint Legislative Education Oversight**
43 **Committee.**

1 The Joint Legislative Education Oversight Committee is established. The
2 Committee consists of 16 members as follows:

- 3 (1) Eight members of the Senate appointed by the President Pro
4 Tempore of the Senate, at least two of whom are members of the
5 minority party; and
6 (2) Eight members of the House of Representatives appointed by the
7 Speaker of the House of Representatives, at least three of whom
8 are members of the minority party.

9 Terms on the Committee are for two years and begin on the convening of the
10 General Assembly in each odd-numbered year, except the terms of the initial
11 members, which begin on appointment and end on the day of the convening of the
12 1991 General Assembly. Members may complete a term of service on the Committee
13 even if they do not seek reelection or are not reelected to the General Assembly, but
14 resignation or removal from service in the General Assembly constitutes resignation
15 or removal from service on the Committee.

16 A member continues to serve until his successor is appointed. A vacancy shall be
17 filled within 30 days by the officer who made the original appointment."

18 (b) G.S. 120-70.82(a) reads as rewritten:

19 "(a) The President Pro Tempore of the Senate and the Speaker of the House of
20 Representatives shall each designate a cochair of the Joint Legislative Education
21 Oversight Committee. The Committee shall meet at least once a quarter and may
22 meet at other times upon the joint call of the cochairs."

23 Section 47. G.S. 122C-261(d) reads as rewritten:

24 "(d) If the affiant is a physician or eligible psychologist, the affiant may execute
25 the affidavit before any official authorized to administer oaths. This affiant is not
26 required to appear before the clerk or magistrate for this purpose. This affiant's
27 examination shall comply with the requirements of the initial examination as
28 provided in G.S. 122C-263(c). If the physician or eligible psychologist recommends
29 outpatient commitment and the clerk or magistrate finds probable cause to believe
30 that the respondent meets the criteria for outpatient commitment, the clerk or
31 magistrate shall issue an order that a hearing before a district court judge be held to
32 determine whether the respondent will be involuntarily committed. ~~If a physician or~~
33 ~~eligible psychologist recommends outpatient commitment, the clerk or magistrate~~ The
34 physician or eligible psychologist shall provide the respondent with written notice of
35 any scheduled appointment and the name, address, and telephone number of the
36 proposed outpatient treatment physician or center. If the physician or eligible
37 psychologist recommends inpatient commitment and the clerk or magistrate finds
38 probable cause to believe that the respondent meets the criteria for inpatient
39 commitment, the clerk or magistrate shall issue an order for transportation to or
40 custody at a 24-hour facility described in G.S. 122C-252. However, if the clerk or
41 magistrate finds probable cause to believe that the respondent, in addition to being
42 mentally ill, is also mentally retarded, the clerk or magistrate shall contact the area
43 authority before issuing the order and the area authority shall designate the facility to
44 which the respondent is to be transported. If a physician or eligible psychologist

1 executes an affidavit for inpatient commitment of a respondent, a second physician
2 shall be required to perform the examination required by G.S. 122C-266."

3 Section 48. G.S. 130A-412.1(g), as enacted by Section 2 of S.L. 1997-192,
4 reads as rewritten:

5 "(g) Hospitals and hospital personnel shall not be subject to civil or criminal
6 liability nor to discipline for unprofessional conduct for actions taken in good faith to
7 comply with this section. This subsection shall not provide immunity from a civil
8 liability arising from gross negligence."

9 Section 49. (a) G.S. 131E-146(1) reads as rewritten:

10 "(1) 'Ambulatory surgical facility' means a facility designed for the
11 provision of ~~an ambulatory surgical program. a specialty~~
12 ambulatory surgical program or a multispecialty ambulatory
13 surgical program. An ambulatory surgical facility serves patients
14 who require local, regional or general anesthesia and a period of
15 post-operative observation. An ambulatory surgical facility may
16 only admit patients for a period of less than 24 hours and must
17 provide at least ~~one~~ two designated operating ~~room~~ rooms and at
18 least one designated recovery room, have available the necessary
19 equipment and trained personnel to handle emergencies, provide
20 adequate quality assurance and assessment by an evaluation and
21 review committee, and maintain adequate medical records for each
22 patient. An ambulatory surgical facility may be operated as a part
23 of a physician or dentist's office, provided the facility is licensed
24 under G.S. Chapter 131E, Article 6, Part D, but the performance
25 of incidental, limited ambulatory surgical procedures which do not
26 constitute an ambulatory surgical program as defined in
27 subdivision (1a) and which are performed in a physician or
28 dentist's office does not make that office an ambulatory surgical
29 facility."

30 (b) This section conforms the definition of the term "ambulatory surgical
31 facility" in the Ambulatory Surgical Facility Licensure Act to the definition of the
32 same term in G.S. 131E-176, to reflect the amendment made to that statute by
33 Section 2 of Chapter 7 of the 1993 Session Laws. However, ambulatory surgical
34 facilities with only one operating room developed prior to the effective date of
35 Chapter 7 of the 1993 Session Laws may still be licensed as if this section had not
36 been enacted.

37 Section 50. Effective October 1, 1997, G.S. 143-215.84(e), as enacted by
38 Section 4 of S.L. 1997-394, reads as rewritten:

39 "~~(e)~~ (f) In order to reduce or eliminate the danger to public health or the
40 environment posed by a discharge or release of oil or a hazardous substance, an
41 owner, operator, or other responsible party may impose restrictions on the current or
42 future use of the real property comprising any part of the site if the restrictions meet
43 the requirements of this subsection. The restrictions must be agreed to by the owner
44 of the real property, included in a remedial action plan for the site that has been

1 approved by the Secretary, and implemented as a part of the remedial action
2 program for the site. The Secretary may approve restrictions included in a remedial
3 action plan in accordance with standards determined: (i) pursuant to rules for
4 remediation of soil or groundwater contamination adopted by the Commission; (ii)
5 with respect to the cleanup of a discharge or release from a petroleum underground
6 storage tank, pursuant to rules adopted by the Commission pursuant to G.S.
7 143-215.94V; or (iii) as provided in G.S. 130A-310.3(d). Restrictions may apply to
8 activities on, over, or under the land, including, but not limited to, use of
9 groundwater, building, filling, grading, excavating, and mining. Any approved
10 restriction shall be enforced by any owner, operator, or other party responsible for
11 the oil or hazardous substance discharge site. Any land-use restriction may also be
12 enforced by the Department through the remedies provided in this Article, Part 2 of
13 Article 1 of Chapter 130A of the General Statutes, or by means of a civil action. The
14 Department may enforce any land-use restriction without first having exhausted any
15 available administrative remedies. A land-use restriction may also be enforced by
16 any unit of local government having jurisdiction over any part of the site. A land-use
17 restriction shall not be declared unenforceable due to lack of privity of estate or
18 contract, due to lack of benefit to particular land, or due to lack of any property
19 interest in particular land. Any person who owns or leases a property subject to a
20 land-use restriction under this Part shall abide by the land-use restriction."

21 Section 51. Section 8 of Chapter 1436 of the 1957 Session Laws, as
22 rewritten by Section 6 of Chapter 622 of the 1981 Session Laws and by Section 1 of
23 S.L. 1997-163, reads as rewritten:

24 "Sec. 8. To obtain a license for either a stationary bush blind or a floating bush
25 blind, the applicant shall apply in writing to the clerk to the Game Commission
26 enclosing:

- 27 (1) Twenty-five dollars (\$25.00) if the applicant is a resident of North
28 Carolina; or
29 (2) Two hundred fifty dollars (\$250.00) if the applicant is not a
30 resident of North Carolina.

31 In addition to ~~the~~ this nonrefundable application fee, each application shall be
32 accompanied by a nonrefundable processing fee of ten dollars (\$10.00). Applicants
33 shall submit proof of North Carolina residency along with each application.

34 Applicants who are not residents of North Carolina but who were the holders of
35 licensed blinds for the 1996-97 waterfowl season shall be charged as North Carolina
36 residents for all subsequent renewals of that application. However, this exemption
37 terminates if the blind license is not renewed during any subsequent annual renewal
38 period and is not transferable to any different blind location.

39 Float blinds when licensed shall bear the license number or tag, and the same shall
40 be displayed in a prominent or conspicuous place upon the blind."

41 Section 52. Section 1 of S.L. 1997-11 reads as rewritten:

42 "Section 1. That part of Section 1 of Chapter 6 7 of the Session Laws of the 1991
43 Extra Session which rewrote G.S. 163-201(a) is repealed."

44 Section 53. Section 1 of S.L. 1997-97 reads as rewritten:

1 "Section 1. ~~Subsection (f) of Chapter 33 of the 1993 Session Laws~~ G.S. 113-
2 291.9(g) is repealed."

3 Section 54. The prefatory language of Section 1 of S.L. 1997-172 reads as
4 rewritten:

5 "Section 1. The title of Article 5 of Chapter ~~30~~ 130A of the General Statutes
6 reads as rewritten:"

7 Section 55. Section 7(a) of S.L. 1997-221 is amended by adding
8 quotation marks at the end.

9 Section 56. Unless otherwise provided, this act is effective when it
10 becomes law.

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

Name of Committee

Date

8/20/1977

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Umy Jo Bain	Smith Anderson
HUGH TILSON	NCHA
Charles Hawk	DOR
Nancy Pomeranz	DOR
ELIZABETH FULLER	DEHNR
Michael Rhodes	DEHNR
Bernard Allen	Secy. of State
TODD FELTS	DCDI DHR
Paula A. Shel	Covenant w/ NC's Children
Sybil Jaffel	DHR/DCO
Roslyn Sawell	NC Child Care Coalition

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT

Senator David Hoyle, Co-Chair

Senator John Kerr, Co-Chair

Wednesday, August 20, 1997

SENATOR HOYLE,

submits the following with recommendations as to passage:

FAVORABLE

H.B.(CS#2)469 Permit Fees/AB
 Sequential Referral: None
 Recommended Referral: None

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO SENATE C.S. BILL

H.B. 13 Simplify and Reduce Inheritance Tax
 Draft Number: PCS 1454
 Sequential Referral: None
 Recommended Referral: None
 Long Title Amended: Yes

**UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL**

H.B.(CS #2)1137 Soil and Water Conservation Plates
 Draft Number: PCS 6320
 Sequential Referral: None
 Recommended Referral: None
 Long Title Amended: No

**UNFAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 1,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 2**

H.B.(SCS #1) 115 1997 Technical Corrections
 Draft Number: PCS 6319
 Sequential Referral: None
 Recommended Referral: None
 Long Title Amended: No

TOTAL REPORTED: 4

Committee Clerk Comment: None

SENATE FINANCE COMMITTEE

TUESDAY, AUGUST 26, 1997

9 O'CLOCK - ROOM 544 LOB

The Senate Finance Committee met on August 26th with Senator Kerr presiding. There were 16 committee members present. Senator Kerr announced that this would probably be the last scheduled meeting for the Finance Committee.

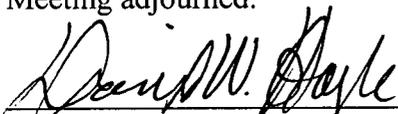
H.B. 600 - Foxfire Assessment Clarification

Gerry Cohen, Director of Bill Drafting, was recognized to explain this bill for the bill sponsor. Senator Albertson moved for a "favorable" report and the motion carried. Copy of bill and fiscal note included in the minutes.

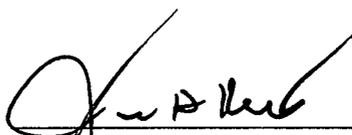
H.B. 537 - Relief for Federal Retirees

Representative Grady was recognized to explain H.B. 537 and upon motion by Senator Dalton a proposed committee substitute was adopted for discussion. Cindy Avrette, Staff Attorney, explained the changes in this bill. Ira Swartz, representing the federal retirees, was recognized and spoke in support of this bill. On motions by Senators Webster, McDaniel and Rand, the committee substitute was given a "favorable" report. Copy of bill, committee substitute and explanation included in the minutes.

Meeting adjourned.



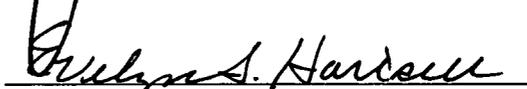
David W. Hoyle, Co-Chair
Senate Finance Committee



John H. Kerr, III, Co-Chair
Senate Finance Committee



Penny N. Williams, Clerk



Evelyn S. Hartsell, Clerk

NOTE:

Agenda is Attachment # 1
Visitors Sign Up Sheet is Attachment # 2
Committee Report is Attachment # 3

AGENDA

SENATE FINANCE COMMITTEE

August 26, 1997 - 9 o'clock a.m.
Room 544

H.B. 537 - Relief for Federal Retirees - Rep. Grady and Rep. Morgan

H.B. 600 - Foxfire Assessment Clarification - Rep. Holmes

- 1 (3) The street improvement project consists of a series of streets all of
2 which are contiguous to at least one other street in the project;
- 3 (4) The street improvement project abuts at least one other paved
4 street in the Village;
- 5 (5) The street improvement project consists solely of a collection of
6 streets for which petitions under Article 10 of Chapter 160A of the
7 General Statutes were received within two years before a
8 preliminary assessment resolution is adopted under the authority of
9 this Article, in accordance with G.S. 160A-223, where:
- 10 a. The petitions taken as a whole were signed by at least forty
11 percent (40%) of the owners of property to be assessed, who
12 represent at least forty percent (40%) of all the lineal front
13 footage of the lands abutting on the streets or portions
14 thereof to be improved; but
- 15 b. Where for at least five streets in the project, the petitions
16 were signed by at least two-thirds of the owners of property
17 to be assessed, who represent at least two-thirds of all the
18 lineal front footage of the lands abutting on the streets or
19 portions thereof to be improved.
- 20 (c) For the purpose of this Article, the term 'street improvement' shall include
21 grading, regrading, surfacing, resurfacing, widening, paving, repaving, the acquisition
22 of right-of-way, underground electrical systems, and the construction or
23 reconstruction of curbs, gutters, and street drainage facilities.
- 24 (d) In ordering street improvements without a petition and assessing the cost
25 thereof under authority of this Article, the Village Council shall comply with the
26 procedure provided by Article 10 of Chapter 160A of the General Statutes, except
27 those provisions relating to the petition of property owners and the sufficiency
28 thereof. Any assessment under the authority of this act must be under a preliminary
29 assessment resolution adopted under G.S. 160A-223 no later than December 31, 1998.
- 30 (e) The effect of the act of levying assessments under the authority of this Article
31 shall for all purposes be the same as if the assessments were levied under authority of
32 Article 10 of Chapter 160A of the General Statutes."
- 33 (b) In order to assess for underground electrical systems under the
34 authority of this act, the Village Council may either commence a new assessment
35 proceeding, or may amend the preliminary resolution for an existing assessment
36 proceeding, and may act under petitions already received for the project.
- 37 Section 2. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 537

Short Title: Relief for Federal Retirees.

(Public)

Sponsors: Representatives Grady, Morgan (Cosponsors); Allred, Baddour, Braswell, Buchanan, Cansler, Capps, Davis, Hurley, Kinney, McAllister, McComas, Morris, Preston, Rayfield, Redwine, Russell, Sexton, Sherrill, Smith, Warner, and Watson.

Referred to: Finance.

March 18, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE RELIEF FOR FEDERAL RETIREES AND THE
3 SURVIVING SPOUSES OF FEDERAL RETIREES.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 105-151.20 reads as rewritten:

6 "**§ 105-151.20. Credit or partial refund for tax paid on certain federal retirement**
7 **benefits.**

8 (a) Purpose; Definitions. -- The purpose of this section is to benefit certain retired
9 federal government workers on account of their public service. The following
10 definitions apply in this section:

11 (1) Federal retirement benefits. -- Retirement benefits received from
12 one or more federal government retirement plans.

13 (2) Net pension tax. -- The amount of tax a taxpayer paid under this
14 Division for the 1985, 1986, 1987, and 1988 tax years on federal
15 retirement benefits, without interest, less any part of the tax for
16 which the taxpayer received a credit under this section before 1997
17 and any part of the tax refunded to the taxpayer before 1997.

18 (3) Tax year. -- The taxpayer's taxable year beginning on a day in the
19 applicable calendar year.

20 (b) Credit. -- A taxpayer who received federal retirement benefits during the 1985,
21 1986, 1987, or 1988 tax year may claim a credit against the tax imposed by this

1 Division equal to the net pension tax on those benefits. The credit allowed under
2 this section shall be taken in equal installments over the taxpayer's first three taxable
3 years beginning on or after January 1, 1996. The credit allowed under this section
4 may not exceed the amount of tax imposed by this Division reduced by the sum of all
5 credits allowed against the tax, except payments of tax made by or on behalf of the
6 ~~taxpayer.~~ taxpayer; any unused portion of a credit installment may be carried forward
7 to succeeding tax years until the entire installment has been taken.

8 (c) Partial Refund Alternative. -- If the amount of tax imposed by this Division on
9 the taxpayer for the taxpayer's 1996 tax year, reduced by the sum of all credits
10 allowed against the tax except payments of tax made by or on behalf of the taxpayer,
11 is less than five percent (5%) of the taxpayer's net pension tax for which credit is
12 allowed, the taxpayer is eligible to elect a partial refund under this subsection in lieu
13 of claiming the credit. The partial refund allowed under this subsection is equal to
14 the lesser of eighty-five percent (85%) of the taxpayer's net pension tax or the
15 reduced amount determined by the Secretary as provided in this subsection. To elect
16 the partial refund, an eligible taxpayer must file with the Secretary on or before April
17 15, 1997, a written request for a partial refund of the taxpayer's net pension. The
18 Secretary shall calculate from these requests eighty-five percent (85%) of the total
19 amount of net pension tax for which partial refunds have been claimed and, if this
20 sum exceeds the amount in the Federal Retiree Refund Account created in this
21 section, shall allocate the amount in the Account among the eligible taxpayers
22 claiming partial refunds by reducing each taxpayer's claimed refund in proportion to
23 the size of the claimed refund. The Secretary shall remit these partial refunds before
24 January 1, 1998.

25 (d) Substantiation; Deceased Taxpayers. -- In order to claim a refund or credit
26 under this section, a taxpayer must provide any information required by the Secretary
27 to establish the taxpayer's eligibility for tax benefit and the amount of the tax benefit.
28 In the case of a taxpayer who is deceased, the representative of the taxpayer's estate
29 may claim the refund ~~or credit~~ in the name of the deceased ~~taxpayer.~~ taxpayer and, if
30 the taxpayer does not qualify for a refund, the surviving spouse may claim the
31 deceased taxpayer's credit. If there is no surviving spouse, the representative of the
32 taxpayer's estate may claim the credit in the name of the taxpayer.

33 (e) Federal Retiree Accounts. -- There are created in the Department of Revenue
34 two special accounts to be known as the Federal Retiree Refund Account and the
35 Federal Retiree Administration Account. Funds in the Federal Retiree Refund
36 Account shall be spent only for partial refunds pursuant to subsection (c) of this
37 section. The Department of Revenue may use funds in the Federal Retiree
38 Administration Account only for the costs of administering this section. Funds in the
39 Federal Retiree Refund Account and the Federal Retiree Administration Account
40 shall not revert to the General Fund until the Director of the Budget certifies that the
41 Department of Revenue has completed all duties necessary to implement this section,
42 including processing the escheat of refund checks that have not been cashed."

43 Section 2. Section 2 of Chapter 19 of the Session Laws, Second Extra
44 Session 1996, is repealed.

1 Section 3. This act is effective for taxable years beginning on or after
2 January 1, 1996.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

HOUSE BILL 537
Proposed Senate Committee Substitute H537-PCS6322

Short Title: Relief for Federal Retirees.

(Public)

Sponsors:

Referred to:

March 18, 1997

- 1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE RELIEF FOR FEDERAL RETIREES AND THE
3 SURVIVING SPOUSES OF FEDERAL RETIREES.
4 The General Assembly of North Carolina enacts:
5 Section 1. G.S. 105-151.20 reads as rewritten:
6 "**§ 105-151.20. Credit or partial refund for tax paid on certain federal retirement**
7 **benefits.**
8 (a) Purpose; Definitions. -- The purpose of this section is to benefit certain retired
9 federal government workers on account of their public service. The following
10 definitions apply in this section:
11 (1) Federal retirement benefits. -- Retirement benefits received from
12 one or more federal government retirement plans.
13 (2) Net pension tax. -- The amount of tax a taxpayer paid under this
14 Division for the 1985, 1986, 1987, and 1988 tax years on federal
15 retirement benefits, without interest, less any part of the tax for
16 which the taxpayer received a credit under this section before 1997
17 and any part of the tax refunded to the taxpayer before 1997.
18 (3) Tax year. -- The taxpayer's taxable year beginning on a day in the
19 applicable calendar year.
20 (b) Credit. -- A taxpayer who received federal retirement benefits during the 1985,
21 1986, 1987, or 1988 tax year may claim a credit against the tax imposed by this
22 Division equal to the net pension tax on those benefits. The credit allowed under
23 this section shall be taken in equal installments over the taxpayer's first three taxable

1 years beginning on or after January 1, 1996. The credit allowed under this section
2 may not exceed the amount of tax imposed by this Division reduced by the sum of all
3 credits allowed against the tax, except payments of tax made by or on behalf of the
4 ~~taxpayer.~~ taxpayer; any unused portion of a credit installment may be carried forward
5 to the 1999 and 2000 tax years.

6 (c) Partial Refund Alternative. -- If the amount of tax imposed by this Division on
7 the taxpayer for the taxpayer's 1996 tax year, reduced by the sum of all credits
8 allowed against the tax except payments of tax made by or on behalf of the taxpayer,
9 is less than five percent (5%) of the taxpayer's net pension tax for which credit is
10 allowed, the taxpayer is eligible to elect a partial refund under this subsection in lieu
11 of claiming the credit. The partial refund allowed under this subsection is equal to
12 the lesser of eighty-five percent (85%) of the taxpayer's net pension tax or the
13 reduced amount determined by the Secretary as provided in this subsection. To elect
14 the partial refund, an eligible taxpayer must file with the Secretary on or before April
15 15, 1997, a written request for a partial refund of the taxpayer's net pension. The
16 Secretary shall calculate from these requests eighty-five percent (85%) of the total
17 amount of net pension tax for which partial refunds have been claimed and, if this
18 sum exceeds the amount in the Federal Retiree Refund Account created in this
19 section, shall allocate the amount in the Account among the eligible taxpayers
20 claiming partial refunds by reducing each taxpayer's claimed refund in proportion to
21 the size of the claimed refund. The Secretary shall remit these partial refunds before
22 January 1, 1998.

23 (d) Substantiation; Deceased Taxpayers. -- In order to claim a refund or credit
24 under this section, a taxpayer must provide any information required by the Secretary
25 to establish the taxpayer's eligibility for tax benefit and the amount of the tax benefit.
26 In the case of a taxpayer who is deceased, the representative of the taxpayer's estate
27 may claim the refund ~~or credit~~ in the name of the deceased ~~taxpayer.~~ taxpayer and, if
28 the taxpayer does not qualify for a refund, the surviving spouse may claim the
29 deceased taxpayer's credit. If there is no surviving spouse, the representative of the
30 taxpayer's estate may claim the credit in the name of the taxpayer but may not carry
31 forward any unused portion of the credit to the 1999 or 2000 tax year.

32 (e) Federal Retiree Accounts. -- There are created in the Department of Revenue
33 two special accounts to be known as the Federal Retiree Refund Account and the
34 Federal Retiree Administration Account. Funds in the Federal Retiree Refund
35 Account shall be spent only for partial refunds pursuant to subsection (c) of this
36 section. The Department of Revenue may use funds in the Federal Retiree
37 Administration Account only for the costs of administering this section. Funds in the
38 Federal Retiree Refund Account and the Federal Retiree Administration Account
39 shall not revert to the General Fund until the Director of the Budget certifies that the
40 Department of Revenue has completed all duties necessary to implement this section,
41 including processing the escheat of refund checks that have not been cashed."

42 Section 2. Section 2 of Chapter 19 of the Session Laws, Second Extra
43 Session 1996, is repealed.

1 Section 3. The Secretary of Revenue shall transfer the sum of eight
2 million dollars (\$8,000,000) from the Federal Retiree Refund Account to the General
3 Fund to reimburse the General Fund for the additional loss resulting from this act.

4 Section 4. Section 3 of this act is effective when it becomes law. The
5 remainder of this act is effective for taxable years beginning on or after January 1,
6 1996.

EXPLANATION OF HOUSE BILL 537 (PCS):
Relief for Federal Retirees

TO: Senate Finance Committee
FROM: Martha H. Harris, Staff Attorney
DATE: August 25, 1997
SPONSOR: Representatives Grady and Morgan

The proposed committee substitute for House Bill 537 provides the following additional relief to federal retirees who paid unconstitutional North Carolina income tax on their federal retirement benefits in 1985, 1986, 1987, and 1988, but did not protest or request a refund within 30 days as required by law:

1. It allows federal retirees to carry forward for two years the unused portion of their credit for payment of these unconstitutional taxes if they cannot claim the entire tax credit because the credit exceeds their tax liability.
2. It allows the surviving spouse of a deceased federal retiree to take the decedent's credit, including the two-year carryforward. If there is no surviving spouse, the decedent's estate may take the credit, but not the two-year carryforward.

The bill is effective retroactively to the 1996 tax year. It requires the Secretary of Revenue to reimburse the General Fund for the costs of the additional tax relief by transferring \$8 million of excess funds in a reserve account created last year.

In 1996, the General Assembly enacted legislation giving federal retirees income tax credits and partial refunds for the North Carolina income taxes they paid on their federal retirement benefits in 1985, 1986, 1987, and 1988. If a federal retiree paid these 1985-88 pension taxes under timely protest, the retiree already received a refund as required by existing law. The 1996 legislation, estimated to cost the General Fund \$117 million over three years, provided relief to nonprotesters, who were not legally entitled to a refund or credit.

The 1996 legislation allowed partial refunds and credits as follows: federal retirees who did not make a timely protest and who pay North Carolina income tax may take a State income tax credit equal to the amount of pension taxes they paid. The tax credit was allowed in three equal, annual installments, one for the 1996 tax year, one for the 1997 tax year, and one for the 1998 tax year. For a taxpayer whose 1996 tax liability was less than 5% of the pension taxes the

taxpayer paid during 1985-88, a one-time refund equal to 85% of the pension taxes was allowed in lieu of a credit. The taxpayer was required to claim this refund by April 1, 1997. The 1996 legislation provided that if a federal retiree who would otherwise be eligible for a credit or refund had died, the retiree's estate could claim the credit or refund.

After the 1996 legislation was enacted, legislators began receiving complaints that it did not provide sufficient relief for surviving spouses or for retirees who did not have enough current tax liability to claim the entire credit. If a retiree eligible for the first installment of the credit for the 1996 tax year died in 1996 or thereafter, the surviving spouse could not claim any of the remaining installments of the credit. The 1996 legislation authorized the estate to claim the credit, but estates often have little or no tax liability against which the credit could be claimed. House Bill 537 addresses this complaint by allowing surviving spouses to claim the credit. The other complaint received was from taxpayers who were ineligible for the 85% refund because their tax liability equaled 5% or more of the amount of pension taxes they paid for 1985-88. Those taxpayers might receive a credit equal to anywhere from 15% to 100% of the pension taxes, depending upon whether they had enough tax liability against which to claim the credit. The credit allowed is nonrefundable - to the extent it exceeds the taxpayer's tax liability, it is lost. Taxpayers with lower liability would receive credit for less than 100% of their pension taxes. House Bill 537 addresses this complaint by allowing taxpayers to carry the unused portion of the credit forward to the following two tax years: 1999 and 2000.

The legislative history of the 1996 legislation indicates that the General Assembly intended that some taxpayers would not receive 100% credit, either because they died in 1996 or later or because their potential credit exceeded their tax liability against which it could be claimed. In the 1996 Second Extra Session, the Senate and the House of Representatives had different approaches to granting relief to nonprotesters for the taxes they paid on their federal pensions from 1985 through 1988. The House passed House Bill 30 (Rep. Grady), which would have provided a full refund of all taxes paid, through a refundable credit payable over four years. If the retiree died, the surviving spouse or estate was entitled to the refund. The estimated cost of the bill was a total of \$142.8 million. In contrast, the Senate passed a Senate Committee Substitute for House Bill 30 that provided only partial relief for an estimated total cost of \$117.7 million. This version of the bill provided only nonrefundable credits and did not provide relief for surviving spouses of deceased retirees. The matter went to conference and the Senate plan prevailed. The two limitations now complained of are the reason the Senate plan cost less than the House plan.

**NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL ESTIMATE**

BILL NUMBER: HOUSE BILL 537 (PROPOSED COMMITTEE SUBSTITUTE)
SHORT TITLE: REFUND FOR FEDERAL RETIREES

FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 1997-98</u>	<u>FY 1998-99</u>	<u>FY 1999-00</u>	<u>FY 2000-01</u>	<u>FY 2001-02</u>
REVENUES (\$MILLION)					
State General Fund*			-2.5	-1.2	-.4
Federal Retiree Reserve	-4.7	-3.3			
PRINCIPAL DEPARTMENT AFFECTED: Department of Revenue					
EFFECTIVE DATE: Taxable years beginning on or after January 1, 1996.					
*Impact may be treated as nonrecurring for budget purposes.					

BILL SUMMARY: The 1996 General Assembly approved legislation that provided relief to federal retirees on the state income tax paid on their pensions during the 1985-88 period, net of any relief already granted (primarily for 1988 tax year). **For the majority of retirees, the relief is provided through a 3-year income tax credit, beginning with the 1996 tax year. In addition, the 1996 bill allowed the representative of a retiree's estate to claim the relief in the name of a deceased retiree.**

The Senate Committee Substitute for House Bill 537 allows an unused credit to be carried forward for two years after the 1996-98 three-year credit period. In the case of a deceased retiree, the surviving spouse will now be able to claim the credit. Finally, the right of an estate to claim the credit in the case of no surviving spouse would end with the 1998 tax year.

The cost of the additional relief for the 1997-98 and 1998-99 fiscal years would be financed by earmarking most of the remaining proceeds in the Federal Retiree Refund Account. The Account is a special budget reserve established to pay one-time refunds to federal retirees who do not normally file and income tax return or whose tax liability is very small. Of the \$25 million earmarked into the Account, a maximum of \$10.5 million will be needed for the one-time refund for certain retirees and \$5.6 million was transferred to address refunds ordered by the courts for certain tax protestors. This will leave an estimated \$8.9 million that will ultimately revert.

(OVER)

ASSUMPTIONS AND METHODOLOGY: The estimated cost of the 1996 legislation providing refunds and tax credits to federal retirees was \$117.8 million. This was \$24.9 million less than the \$142.7 million of cost if all retirees were living and able to obtain 100% relief. Based on mortality data it is estimated that 25% of the retirees have passed away since the 1985-88 period.

FISCAL RESEARCH DIVISION (733-4910)

PREPARED BY: Dave Crotts

DATE: August 25, 1997

VISITOR REGISTRATION SHEET

Senate Finance

Name of Committee

Aug. 26, 1997

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Ira L. Harvey	Fed. Res. Test Force
LYMAN COOPER	CSX CORP.
Nancy Pomeranz	DOR
Jean Cratts	NC Assoc. of Sch. Adm.
Patrice Reuler	NCAAC
Emlyn Hawthorne	NCHA
Ann Jo Bain	Smith Anderson
Gene Uphand	CPA
Paul Zepin	OSBM

SENATE FINANCE COMMITTEE

TUESDAY, AUGUST 26, 1997

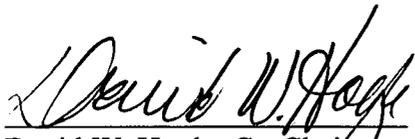
2:00 P.M. - ROOM 544 LOB

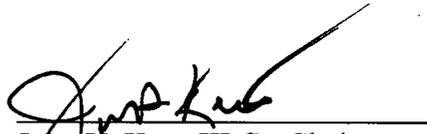
The Senate Finance Committee met. There were 17 members of the Committee present. Senator David W. Hoyle, Co-Chairman, called the meeting to order.

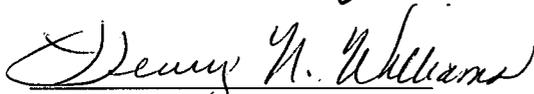
S. B. 594 - Cumberland Local Act

Senator Rand came to explain the bill. Senator Lee moved for adoption of a proposed committee substitute, motion passed. Senator Lee moved for a "favorable" report, motion passed.

Meeting was adjourned.


David W. Hoyle, Co-Chair


John H. Kerr, III Co-Chair


Penny N. Williams, Clerk


Evelyn S. Hartsell, Clerk

NOTE:

Committee Report is Attachment # 1

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

D

SENATE BILL 594
Proposed Committee Substitute S594-CSLCX-8/26

Short Title: Local Sales Tax for Schools.

(Local)

Sponsors:

Referred to:

April 1, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE CERTAIN COUNTIES TO LEVY ONE-CENT LOCAL SALES
3 AND USE TAXES FOR PUBLIC SCHOOL BUILDINGS.
4 The General Assembly of North Carolina enacts:
5 Section 1. This act applies to Cabarrus, Cumberland,
6 Franklin, and Johnston Counties only.
7 Section 2. Subchapter VIII of Chapter 105 of the
8 General Statutes is amended by adding a new Article to read:
9 "ARTICLE 44.
10 "Second One-Cent (1¢) Local Government Sales and Use Tax.
11 "§ 105-525. Short title.
12 This Article is the Second One-Cent (1¢) Local Government Sales
13 and Use Tax Act.
14 "§ 105-526. Limitations.
15 This Article applies only to counties that levy the first
16 one-cent (1¢) sales and use tax under Article 39 of this Chapter
17 or under Chapter 1096 of the 1967 Session Laws, the first
18 one-half cent (1/2¢) local sales and use tax under Article 40 of
19 this Chapter, and the second one-half cent (1/2¢) local sales and
20 use tax under Article 42 of this Chapter.
21 "§ 105-527. Levy of tax.
22 The board of commissioners of a county may, by resolution, levy
23 one percent (1%) local sales and use taxes in addition to any

1 other State and local sales and use taxes levied pursuant to law.
2 Before adopting a resolution under this section, the board of
3 commissioners must give at least 10 days' public notice of its
4 intent to adopt the resolution and must hold a public hearing on
5 the issue of adopting the resolution.

6 "§ 105-528. Administration of taxes.

7 Except as provided in this Article, the adoption, levy,
8 collection, administration, and repeal of the additional taxes
9 authorized by this Article shall be in accordance with Article 39
10 of this Chapter. In applying the provisions of Article 39 of
11 this Chapter to this Article, references to 'this Article' mean
12 'Article 44 of Chapter 105 of the General Statutes'.

13 A tax levied under this Article does not apply to the sales
14 price of food that is not otherwise exempt from tax pursuant to
15 G.S. 105-164.13 but would be exempt from the State sales and use
16 tax pursuant to G.S. 105-164.13 if it were purchased with coupons
17 issued under the Food Stamp Program, 7 U.S.C. § 51.

18 "§ 105-529. Expiration.

19 A tax levied under this Article expires ten years after the
20 effective date of its levy. A county's authorization to levy a
21 tax under this Article expires ten years after the effective date
22 of the first tax a county levies under this Article, even if the
23 tax has not remained in effect for the entire ten-year period.
24 The expiration of a tax pursuant to this Article does not affect
25 the rights or liabilities of a county, a taxpayer, or another
26 person arising under the expired tax; nor does it affect the
27 right to any refund or credit of a tax that would otherwise have
28 been available under the expired tax before its expiration.

29 "§ 105-530. Distribution and use of taxes.

30 (a) Distribution. -- The Secretary shall, on a quarterly basis,
31 distribute to each taxing county the net proceeds of the tax
32 collected in that county under this Article. If the Secretary
33 collects taxes under this Article in a month and the taxes cannot
34 be identified as being attributable to a particular taxing
35 county, the Secretary shall allocate these taxes among the taxing
36 counties in proportion to the amount of taxes collected in each
37 county under this Article in that month and shall include them in
38 the quarterly distribution.

39 (b) Use. -- The proceeds of a tax levied under this Article may
40 be used only for public school capital outlay purposes or to
41 retire debt incurred by the county for these purposes after
42 January 1, 1997."

43 Section 3. A tax levied under Article 44 of Chapter 105
44 of the General Statutes, as enacted by this act, does not apply

1 to construction materials purchased to fulfill a lump sum or unit
2 price contract entered into or awarded before the effective date
3 of the levy or entered into or awarded pursuant to a bid made
4 before the effective date of the levy when the construction
5 materials would otherwise be subject to the tax levied under
6 Article 44 of Chapter 105 of the General Statutes.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1997

S

D

SENATE BILL 594
Proposed Committee Substitute S594-PCSX1889

Short Title: Local Sales Tax for Schools.

(Local)

Sponsors:

Referred to:

April 1, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE CERTAIN COUNTIES TO LEVY ONE-CENT
3 LOCAL SALES AND USE TAXES FOR PUBLIC SCHOOL BUILDINGS.

4 The General Assembly of North Carolina enacts:

5 Section 1. This act applies to Cabarrus, Cumberland, Franklin, and
6 Johnston Counties only.

7 Section 2. Subchapter VIII of Chapter 105 of the General Statutes is
8 amended by adding a new Article to read:

9 "ARTICLE 44.

10 "Second One-Cent (1¢) Local Government Sales and Use Tax.

11 "§ 105-525. Short title.

12 This Article is the Second One-Cent (1¢) Local Government Sales and Use Tax
13 Act.

14 "§ 105-526. Limitations.

15 This Article applies only to counties that levy the first one-cent (1¢) sales and use
16 tax under Article 39 of this Chapter or under Chapter 1096 of the 1967 Session Laws,
17 the first one-half cent (1/2¢) local sales and use tax under Article 40 of this Chapter,
18 and the second one-half cent (1/2¢) local sales and use tax under Article 42 of this
19 Chapter.

20 "§ 105-527. Levy of tax.

21 The board of commissioners of a county may, by resolution, levy one percent (1%)
22 local sales and use taxes in addition to any other State and local sales and use taxes
23 levied pursuant to law. Before adopting a resolution under this section, the board of

1 commissioners must give at least 10 days' public notice of its intent to adopt the
2 resolution and must hold a public hearing on the issue of adopting the resolution.

3 **"§ 105-528. Administration of taxes.**

4 Except as provided in this Article, the adoption, levy, collection, administration,
5 and repeal of the additional taxes authorized by this Article shall be in accordance
6 with Article 39 of this Chapter. In applying the provisions of Article 39 of this
7 Chapter to this Article, references to 'this Article' mean 'Article 44 of Chapter 105 of
8 the General Statutes'.

9 A tax levied under this Article does not apply to the sales price of food that is not
10 otherwise exempt from tax pursuant to G.S. 105-164.13 but would be exempt from
11 the State sales and use tax pursuant to G.S. 105-164.13 if it were purchased with
12 coupons issued under the Food Stamp Program, 7 U.S.C. § 51.

13 **"§ 105-529. Expiration.**

14 A tax levied under this Article expires 10 years after the effective date of its levy.
15 A county's authorization to levy a tax under this Article expires 10 years after the
16 effective date of the first tax a county levies under this Article, even if the tax has not
17 remained in effect for the entire 10-year period. The expiration of a tax pursuant to
18 this Article does not affect the rights or liabilities of a county, a taxpayer, or another
19 person arising under the expired tax; nor does it affect the right to any refund or
20 credit of a tax that would otherwise have been available under the expired tax before
21 its expiration.

22 **"§ 105-530. Distribution and use of taxes.**

23 (a) Distribution. -- The Secretary shall, on a quarterly basis, distribute to each
24 taxing county the net proceeds of the tax collected in that county under this Article.
25 If the Secretary collects taxes under this Article in a month and the taxes cannot be
26 identified as being attributable to a particular taxing county, the Secretary shall
27 allocate these taxes among the taxing counties in proportion to the amount of taxes
28 collected in each county under this Article in that month and shall include them in
29 the quarterly distribution.

30 (b) Use. -- The proceeds of a tax levied under this Article may be used only for
31 public school capital outlay purposes or to retire debt incurred by the county for
32 these purposes after January 1, 1997."

33 Section 3. A tax levied under Article 44 of Chapter 105 of the General
34 Statutes, as enacted by this act, does not apply to construction materials purchased to
35 fulfill a lump sum or unit price contract entered into or awarded before the effective
36 date of the levy or entered into or awarded pursuant to a bid made before the
37 effective date of the levy when the construction materials would otherwise be subject
38 to the tax levied under Article 44 of Chapter 105 of the General Statutes.

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

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

FINANCE COMMITTEE REPORT

Senator David Hoyle, Co-Chair

Senator John Kerr, Co-Chair

Tuesday, August 26, 1997

SENATOR HOYLE,

submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B.	594	Cumberland Local Act	
		Draft Number:	PCSX1889
		Sequential Referral:	None
		Recommended Referral:	None
		Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comment: None

SENATE FINANCE COMMITTEE

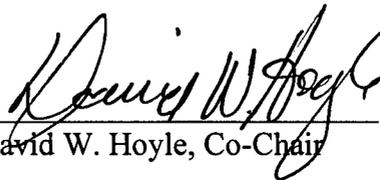
WEDNESDAY, AUGUST 27, 1997

The Senate Finance Committee met in the Chamber of Senate. Members of the Committee gathered around the desks of Senators Hoyle and Kerr for this Meeting. Senator Hoyle called the meeting to order.

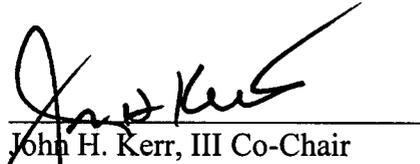
H. B. 39 - Swepsonville Incorporation

Senator Webster moved for adoption of a proposed committee substitute, motion passed. Senator Webster moved for a "favorable" report, motion passed.

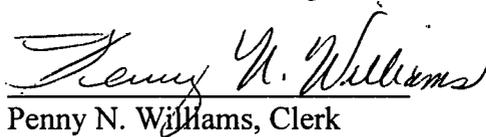
Meeting adjourned.



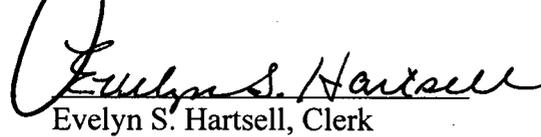
David W. Hoyle, Co-Chair



John H. Kerr, III Co-Chair



Penny N. Williams, Clerk



Evelyn S. Hartsell, Clerk

NOTE:

Committee Report is Attachment # 1

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

D

HOUSE BILL 39
Second Edition Engrossed 3/11/97
Proposed Senate Committee Substitute H39-PCS1458

Short Title: Swepsonville Incorporation.

(Local)

Sponsors:

Referred to:

February 4, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR THE INCORPORATION OF THE TOWN OF
3 SWEPSONVILLE AND THE SIMULTANEOUS DISSOLUTION OF THE
4 SWEPSONVILLE SANITARY DISTRICT, SUBJECT TO A REFERENDUM.
5 The General Assembly of North Carolina enacts:
6 Section 1. In accordance with G.S. 130A-81(1), the Town of
7 Swepsonville is incorporated, and the Swepsonville Sanitary District is simultaneously
8 dissolved. Such incorporation and dissolution are subject to referendum.
9 Section 2. A Charter for the Town of Swepsonville is enacted to read:
10 "CHARTER FOR THE TOWN OF SWEPSONVILLE.
11 "CHAPTER I.
12 "INCORPORATION AND CORPORATE POWERS.
13 "Section 1.1. **Incorporation and Corporate Powers.** The inhabitants of the Town
14 of Swepsonville are a body corporate and politic under the name 'Town of
15 Swepsonville'. Under that name they have all the powers, duties, rights, privileges,
16 and immunities conferred and imposed upon cities by the general law of North
17 Carolina.
18 "CHAPTER II.
19 "CORPORATE BOUNDARIES.
20 "Section 2.1. **Town Boundaries.** Until modified in accordance with law, the
21 boundaries of the Town of Swepsonville are as follows:

1 Tract One:
2 A certain tract or parcel of land located in Thompson Township, Alamance County,
3 North Carolina, and more particularly described as follows:
4 BEGINNING at a point located on State Highway 2158 at the center of a bridge
5 across the Haw River in Alamance County, North Carolina; running thence from said
6 point with SR 2158 the following courses and distances:
7 S. 84 deg. 36' E. 260.00 feet; S. 81 deg. 48' E. 98.76 feet; S. 75 deg. 16' E. 65.41 feet;
8 S. 67 deg. 27' E. 97.49 feet; S. 56 deg. 56' E. 98.40 feet; S. 48 deg. 44' E. 89.37 feet;
9 running thence in the vicinity of George Bason Road, the following courses and
10 distances: N. 55 deg. 49' E. 251.06 feet; S. 16 deg. 00' E. 178.3 feet; N. 30 deg. 54' E.
11 778.2 feet; N. 86 deg. 40' E. 301.6 feet to a point in George Bason Road; running
12 thence with an unnamed road, S. 14 deg. 12' E. 164.85 feet to a point; running thence
13 N. 85 deg. 58' E. 168.9 feet to a point; running thence S. 10 deg. 22' E. 238.5 feet to a
14 point; thence S. 6 deg. 16' W. 213.7 feet to a point; running thence N. 61 deg. 29' E.
15 836.7 feet to a point; running thence S. 35 deg. 33' W. 135.6 feet; running thence S.
16 47 deg. 20' E. 759.4 feet to a point; running thence in the vicinity of NC Highway 119
17 and NC Highway 54, the following courses and distances: N. 85 deg. 45' E. 330.00
18 feet; N. 82 deg. 53' E. 100.00 feet; N. 7 deg. 07' 27" W. 334.4 feet; N. 83 deg. 01' 53"
19 E. 200.97 feet; N. 7 deg. 15' W. 66.06 feet; N. 82 deg. 45' E. 120.12 feet; S. 7 deg. 15'
20 E. 583.22 feet to a point; N. 83 deg. 30' E. 193.11 feet; N. 70 deg. 19' E. 224.55 feet;
21 N. 84 deg. 10' E. 90 feet; N. 4 deg. 48' 5" W. 143.9 feet; N. 85 deg. 15' E. 528 feet; S.
22 89 deg. 16' E. 330.98 feet; N. 85 deg. 33' E. 778 feet; N. 63 deg. 03' E. 141.5 feet; N.
23 23 deg. 11' W. 272.25 feet; N. 26 deg. 57' W. 898.3 feet; N. 78 deg. 23' E. 331.3 feet to
24 a point in N. C. Highway 54; thence N. 80 deg. 37' 40" E. 43.07 feet; N. 39 deg. 38'
25 20" E. 233.38 feet; N. 47 deg. 19' 10" E. 533.29 feet; N. 47 deg. 57' E. 1651.57 feet; S.
26 36 deg. 18' E. 1282.22 feet to a point in N. C. Highway 119; thence with N. C.
27 Highway 119 S. 49 deg. 06' 42" W. 674.29 feet; continuing with N. C. Highway 119,
28 S. 49 deg. 07' W. 540.00 feet; thence in the vicinity of N. C. Highway 119 the
29 following courses and distances: S. 26 deg. 00' E. along an unnamed road, 283.2 feet;
30 S. 49 deg. 02' W. 207.93 feet; S. 67 deg. 01' W. 105.76 feet; S. 49 deg. 02' W. 260 feet;
31 N. 40 deg. 58' W. 50 feet; S. 49 deg. 02' W. 147.14 feet; S. 47 deg. 40' W. 74.69 feet;
32 S. 00 deg. 48' E. 75.11 feet; S. 47 deg. 40' W. 1170 feet, crossing NC Highway 54 and
33 SR 2164; S. 85 deg. 33' W. 1270 feet; S. 16 deg. 48' W. 113.34 feet; S. 89 deg. 37' W.
34 251.6 feet; N. 3 deg. 20' W. 85.53 feet; S. 86 deg. 38' W. 715.35 feet; N. 86 deg. 28'
35 W. 70.24 feet; S. 1 deg. 25' E. 51 feet; S. 82 deg. 50' W. 108.5 feet; S. 1 deg. 25' E. 95
36 feet; S. 83 deg. 25' W. 262 feet; N. 2 deg. 20' W. 153.15 feet; S. 86 deg. 05' W. 353.88
37 feet; N. 1 deg. 25' W. 71.5 feet; S. 88 deg. 35' W. 148.5 feet; S. 52 deg. 13' W. 566.8
38 feet; S. 49 deg. 17' W. 334.5 feet; S. 48 deg. 02' W. 345 feet; running thence in the
39 vicinity of SR 2158 the following courses and distances:
40 S. 43 deg. 24' E. 48.3 feet; S. 50 deg. 04' W. 23 feet; S. 43 deg. 32' E. 367.27 feet; N.
41 38 deg. 29' E. 354.96 feet; S. 66 deg. 36' E. 135.06 feet; S. 20 deg. 54' W. 213.1 feet;
42 S. 26 deg. 41' W. 100 feet; S. 35 deg. 12' W. 100 feet; S. 44 deg. 57' W. 35.48 feet; S.
43 43 deg. 16' E. 154.38 feet; N. 79 deg. 44' E. 9.69 feet; N. 68 deg. 44' E. 209.22 feet; N.
44 21 deg. 44' E. 42.24 feet; N. 30 deg. 09' E. 59.04 feet; N. 82 deg. 44' E. 138 feet; S. 38

1 deg. 14' W. 158.88 feet; S. 39 deg. 34' E. 364.3 feet; S. 61 deg. 34' E. 154.16 feet; S.
2 77 deg. 38' E. 330.64 feet; S. 04 deg. 17' W. 485.7 feet; S. 83 deg. 38' E. 724.10 feet;
3 S. 0 deg. 11' E. 132 feet; N. 83 deg. 38' W. 330 feet; S. 0 deg. 11' E. 284.7 feet; S. 56
4 deg. 05' W. 357.9 feet to a point in SR 2158; running thence N. 35 deg. 24' W. 118.19
5 feet with SR 2158; thence S. 59 deg. 45' W. 513.1 feet; thence N. 33 deg. 54' W.
6 270.40 feet; thence N. 83 deg. 43' W. 394 feet; thence N. 1 deg. 24' E. 101.07 feet with
7 SR 2198; thence N. 88 deg. 36' W. 200 feet; thence N. 1 deg. 24' E. 535 feet; thence
8 N. 8 deg. 20' E. 259.45 feet; thence N. 65 deg. 46' 30" W. 100.54 feet; N. 60 deg. 57'
9 W. 54.8 feet; N. 47 deg. 01' W. 59.7 feet, crossing Woodside Avenue; thence N. 52
10 deg. 14' 40" W. 59.90 feet; thence N. 6 deg. 59' E. 78.97 feet; thence N. 7 deg. 48' W.
11 176.48 feet; thence N. 89 deg. 52' W. 70.55 feet; thence S. 63 deg. 29' W. 580 feet;
12 thence N. 87 deg. 20' W. 135 feet; thence N. 41 deg. 40' W. 100 feet; thence N 36
13 deg. 00' W. 108.80 feet; thence S. 47 deg. 30' W. 87 feet; thence S. 75 deg. 03' W.
14 142.58 feet; thence N. 8 deg. 00' W. 487.7 feet; running thence S. 69 deg. 50' W. 285.0
15 feet to a point in the Haw River; running thence with the center of the Haw River
16 2,500 feet to the point of BEGINNING, and containing 313.40 acres, more or less, as
17 shown on Boundary and Sanitary Sewer Map, Swepsonville Sanitary Sewer District,
18 dated October 25, 1983, and prepared by Alley, Williams, Carmen & King, Inc.,
19 Engineers and Architects, Job. No. 163-83.

20 Tract Two:

21 A certain tract or parcel of land located in Thompson Township, Alamance County,
22 North Carolina, adjoining George Bason Road (SR2156), property owned by W.E. &
23 Mary D. Kirkpatrick, Quarry Development Company, Lacy Overman and Juanita
24 Wilson LaPrade, and being more particularly described as follows:

25 BEGINNING at a control corner located in the southern edge of the 60' right of way
26 of George Bason Road (SR 2156), a corner with Juanita Wilson LaPrade and
27 property owned by Quarry Development, further known as Stonehaven Subdivision,
28 Section 1; running thence from said control corner along the southern edge of the 60'
29 right of way of George Bason Road (SR 2156), the following courses and distances:
30 N. 65 deg. 27' 26" E. 379.33 feet, N. 73 deg. 35' 15" E. 70.71 feet, N. 65 deg. 27' 26"
31 E. 50 feet, N. 57 deg. 19' 38" E. 70.71 feet, N. 65 deg. 27' 26" E. 940.00 feet, N. 73
32 deg. 35' 15" E. 70.71 feet, N. 65 deg. 27' 26" E. 50 feet, N. 55 deg 15' 14" E. 71.06
33 feet and in a curve to the left the following courses and distances: N. 61 deg. 35' 03"
34 E. a chord of 69.95 feet and a radius of 2922.99 feet, N. 59 deg. 25' 42" E. 150.00
35 chord with a radius of 2922.99, N. 56 deg. 06' 01" E. a chord distance of 189.50 feet,
36 a radius of 2922.99 feet to a control corner; thence along the western edge of
37 property owned by W.E. Kirkpatrick, the following courses and distances: S. 25 deg.
38 05' 16" E. 56.38 feet, S. 4 deg. 27' 23" W. 331.13 feet, S. 4 deg. 29' 00" W. 54.07 feet;
39 thence along the western edge of property owned by Mary D. Kirkpatrick, S. 4 deg.
40 20' 00" W. 302.25 feet; thence along the northern edge of property owned by Quarry
41 Development Company the following courses and distances: N. 85 deg. 40' 00" W.
42 184.18 feet, S. 31 deg. 32' 47" W. 89.41 feet, S. 65 deg. 27' 26" W. 753.86 feet, S. 46
43 deg. 54' 41" E. 280.00 feet, S. 60 deg. 06' 32" W. 184.39 feet, S. 51 deg. 46' 50" W.
44 50.08 feet, S. 43 deg. 34' 57" W. 610.71 feet; thence along the northern edge of

1 property owned by Lacy Overman, N. 44 deg. 46' 01" W. 363.62 feet; thence S. 60
2 deg. 37' 15" W. 5.00 feet; thence along the eastern portion of property owned by
3 Juanita Wilson LaPrade, the following courses and distances: N. 36 deg. 35' 46" W.
4 71.95 feet; N. 56 deg. 10' 16" E. 142.00 feet; thence N. 36 deg. 13' 01" W. 661.29 feet
5 to the point of BEGINNING, and containing 32.41 acres, more or less, as depicted in
6 a preliminary final plat, Section 1, Stonehaven Subdivision, by Thompson-Simmons,
7 Inc., Surveyors, dated February 17, 1988.

8 Tract Three:

9 A certain tract or parcel of land located in Thompson Township, Alamance County,
10 North Carolina, adjoining Bason Road, Piedmont Crescent Recreational and
11 Development Company, Inc., and more particularly described as follows:

12 BEGINNING at an existing iron pipe located in the northern edge of the 60' right of
13 way of Bason Road, a corner with property owned by Piedmont Crescent
14 Recreational and Development Company, Inc., and Lot 1, Section 1 Quarry Hills
15 Subdivision (Plat Book 38 at Page 54); thence running along the northern edge of
16 Bason Road 60' right of way, S. 62 deg. 57' 01" W. 320.00 feet to an existing iron
17 pipe; thence running along the western edge of Lot 4, Section 1 Quarry Hills
18 Subdivision (Plat Book 38 at page 54), N. 27 deg. 02' 59" W. 181.38 feet to an
19 existing iron pipe; thence running along the northern bounds of Lots 1 through 4,
20 Section 1 Quarry Hills Subdivision, N. 63 deg. 39' 10" E. 322.59 feet to an existing
21 iron pipe; thence running S. 26 deg. 13' 20" E. 177.44 feet to the point of
22 BEGINNING and containing 1.323 acres, more or less.

23 This description is based on the plat recorded in the Office of the Register of Deeds
24 for Alamance County, North Carolina in Plat Book 38 at page 54 by Thompson-
25 Simmons, Inc., dated November 15, 1988.

26 Tract Four:

27 A certain tract or parcel of land located in Thompson Township, Alamance County,
28 North Carolina, adjoining George Bason Road, Section 1, Quarry Hills Subdivision,
29 and property owned by William Mann, and being more particularly described as
30 follows:

31 BEGINNING at an existing iron pipe located in the northern edge of George Bason
32 Road, a corner with Lot 4, Section 1 Quarry Hills Subdivision, George Bason Road
33 60' right of way and Lot 5, Section 2 Quarry Hills Subdivision (Plat Book 42 at page
34 51); thence running from said existing iron pipe along the boundary between Lots 4
35 and 5, N. 27 deg. 02' 59" W. 181.38 feet to an existing iron pipe; thence running
36 along the southern edge of property owned by William Mann, S. 63 deg. 39' 10" W.
37 232.77 feet to an existing iron pipe; thence running S. 56 deg. 38' 20" W. 27.42 feet to
38 a new iron pipe; thence running along the western edge of Lot 2, Section 2 Quarry
39 Hills Subdivision, S. 27 deg. 02' 59" E. 187.92 feet to a new iron pipe located in the
40 northern edge of the 60' right of way of George Bason Road; thence running in a
41 curve to the right, N. 60 deg. 14' 06" E. a distance of 100.11 having a radius of
42 3699.36 feet and an arc of 100.12 feet to a new iron pipe; continuing in a curve to the
43 right, N. 61 deg. 37' 48" E. a distance of 80.02 feet, having a radius of 3699.36 feet
44 and an arc of 80.02 feet to a new iron pipe; thence continuing N. 62 deg. 52' 05" E.

1 in a curve to the right with a distance of 80.00 feet, a radius of 3699.36, having an arc
2 of 80 feet to the point of BEGINNING, and containing 1.102 acres, more or less, as
3 shown on a plat recorded in the Office of the Register of Deeds of Alamance County
4 entitled 'Final Plat, Section 2 Quarry Hills Subdivision', in Plat Book 42 at page 51.

5 Tract Five:

6 A certain tract or parcel of land lying and being in Thompson Township, Alamance
7 County, North Carolina, adjoining George Bason Road, property owned by Will C.
8 Mann, Ruth M. Bason and Quarry Hills Subdivision, Section 2 and more particularly
9 described as follows:

10 BEGINNING at an existing iron pipe located in the northern edge of the 60' right of
11 way of George Bason Road, a corner with Lot 8 Section 3, Quarry Hills Subdivision
12 (Plat Book 44 at page 71) and Lot 7 Quarry Hills Subdivision Section 2 (Plat Book 41
13 at page 51); thence running in a curve to the left along the northern edge of George
14 Bason Road 60' right of way the following courses and distances: S. 53 deg. 09' 42"
15 W. a distance of 79.98 feet, having a radius of 1085.33 and an arc of 80 feet to an
16 existing iron pipe, S. 48 deg. 56' 18" W. a distance of 79.98 feet, a radius of 1085.33
17 feet and an arc of 80 feet, S. 44 deg. 42' 54" W. a distance of 79.98 feet, a radius of
18 1085.33 feet and an arc of 80 feet, S. 42 deg. 04' 30" W. 20.02 feet having a radius of
19 1085.33 feet and an arc of 20.02 feet to an existing iron pipe; thence continuing along
20 the northern edge of George Bason Road, S. 41 deg. 02' 21" W. 269.35 feet; thence in
21 a curve to the left, S. 41 deg. 17' 46" W. having a distance of 30.63 feet, a radius of
22 1040.38 feet and an arc of 30.63 feet to an existing iron pipe; thence running in a
23 curve to the left with property owned by Ruth M. Bason and Lot 14 Section 3,
24 Quarry Hills Subdivision (Plat 44 at page 71), N. 84 deg. 12' 50" W. 121.67 feet, a
25 radius of 180 feet and an arc of 124.11 feet to an existing iron pipe; thence running S.
26 76 deg. 15' 00" W. 8.18 feet; thence along the western edge of Lot 14, N. 02 deg. 48'
27 00" W. 184.50 feet; thence along the southern edge of property owned by Will C.
28 Mann, a boundary with Lots 8 through 14 Quarry Hills Subdivision, Section 3, the
29 following courses and distances: N. 87 deg. 12' 00" E. 30 feet; N. 42 deg. 41' 10" E.
30 336.99 feet; N. 56 deg. 38' 20" E. 221.68 feet to an existing iron pipe; thence running
31 along boundary of Lots 7 and 8 of Quarry Hills Subdivision, S. 27 deg. 03' 54" E.
32 187.91 feet to point of BEGINNING, and containing 2.91 acres, more or less, as
33 depicted on a final plat Section 3 Quarry Hills Subdivision, recorded in Plat Book 44
34 at page 71 in the Office of the Register of Deeds for Alamance County Registry and
35 being Lots 8 through 14, inclusive.

36 Tract Six:

37 A certain tract or parcel of land lying and being in Thompson Township, Alamance
38 County, North Carolina, adjoining Section 1 Stonehaven Subdivision, Quarry
39 Development, Mary D. Kirkpatrick, and Carroll Eric Barnes, and being more
40 particularly described as follows:

41 BEGINNING at a new iron pipe located in the southern edge of Graystone Drive, a
42 corner with Lot 67, Section 2 Stonehaven Subdivision (Plat Book 50 at page 115),
43 and property owned by Quarry Development Company (Plat Book 35 at page 103);
44 thence running S. 79 deg. 29' 11" W. 85.26 feet to a point in the northern edge of

1 Graystone Drive, a corner with Lot 65 Stonehaven Subdivision, Section 2; running
2 thence along the western edge of Lots 64 and 65, Stonehaven Subdivision, Section 2,
3 N. 46 deg. 54' 23" W. 420.60 feet; running thence along the southern edge of
4 Stonehaven Subdivision, Section 1 and the northern edge of Stonehaven Subdivision,
5 Section 2, N. 65 deg. 27' 25" E. 753.87 feet to a point in the western edge of Crescent
6 Drive; thence running N. 31 deg. 38' 05" E. 89.15 feet to the eastern edge of Crescent
7 Drive, a new iron pipe; thence running along the northern edge of Lot 54, Section 2
8 Stonehaven Subdivision, S. 85 deg. 40' 00" E. 184.18 feet to a control corner; thence
9 running along the western edge of property owned by Mary D. Kirkpatrick, S. 04 deg.
10 20' 00" W. 630.26 feet to a control corner; thence running from said control corner
11 along the northern edge of property owned by Carroll Eric Barnes, S. 75 deg. 10' 58"
12 W. 316.27 feet to an existing iron pipe; thence running S. 13 deg. 44' 14" E. 25.67
13 feet to a corner of Lot 67, Section 2, Stonehaven Subdivision, Carroll Eric Barnes
14 and Quarry Development Company; thence running S. 58 deg. 16' 14" W. 40.43 feet
15 to a new iron pipe; thence running N. 52 deg. 53' 18" W. 180.00 feet to the point of
16 BEGINNING and BEING SECTION 2, STONEHAVEN SUBDIVISION, as recorded
17 in Plat Book 50 at page 15 in the Office of the Register of Deeds for Alamance
18 County.

19 Tract Seven:

20 A certain tract or parcel of land lying and being in Thompson Township, Alamance
21 County, North Carolina, adjoining property owned by Fletcher C. Hunter, Michael
22 W. Williams and Swepsonville Road (SR 2159), and being more particularly
23 described as follows:

24 BEGINNING at an existing iron pipe located in the Swepsonville Road, a corner
25 with property owned by Fletcher C. Hunter and property owned by Ricky D.
26 Billings; running thence along the western edge of property owned by Fletcher C.
27 Hunter and the eastern edge of property owned by Ricky D. Billings and being the
28 boundary, S. 6 deg 00' 08" E. 1126.04 feet to a point; thence running S. 80 deg. 20'
29 22" W. 134.23 feet to a point; thence running along the western edge of property
30 owned by Ricky D. Billings and the eastern edge of property owned by Michael W.
31 Williams, N. 05 deg. 52' 15" W. 1122.27 feet to a point in Swepsonville Road (SR
32 2159); thence running from said point, N. 78 deg. 37' 59" E. 131.95 feet to the point
33 of BEGINNING, and containing 3.402 acres, more or less, as described in a final plat
34 for Ricky D. Billings as recorded in the Office of the Register Deeds for Alamance
35 County in Plat book 38 at page 92.

36 Tract Eight:

37 A certain tract or parcel of land located in Thompson Township, Alamance County,
38 North Carolina, adjoining George Bason Road (S.R. 2156), Swepsonville-Saxapahaw
39 Road, the Haw River and property owned by Will C. Mann and being more
40 particularly described as follows:

41 BEGINNING at an existing iron pipe located in the northern edge of George Bason
42 Road (S.R. 2156) right of way, a corner with the southern corner of Lot 14, Quarry
43 Hills Subdivision, Section 3 (Plat Book 44, page 71); running thence S. 19 deg. 31'
44 30" W. 50.80 feet to a new iron pipe; thence running N. 27 deg. 20' 16" E. 29.92 feet

1 to a point in George Bason Road; running thence from said point, S. 55 deg. 23' 51"
2 E. 49.57 feet to a point in Rivers Edge Drive; running thence S. 83 deg. 16' 45" W.
3 256.66 feet to an existing iron pipe; running thence S. 27 deg. 35' 16" W. 7.84 feet to
4 an existing iron pipe; running thence along the northwestern edge of Lot 2 (Plat
5 Book 9, page 23), S. 30 deg. 32' 55" W. 100.00 feet to an existing iron pipe; running
6 thence S. 27 deg. 40' 53" W. 99.99 feet along the northwestern edge of Lot 3 (Plat
7 Book 9, Page 23) to an existing iron pipe; thence from said pipe, S. 27 deg. 41' 50"
8 W. 119.99 feet to an existing iron pipe; thence S. 27 deg. 43' 18" W. 47.05 feet to a
9 new iron pipe, in the northeast corner of property owned by Don R. Quakenbush
10 and wife, Bobbie L. Quakenbush; running thence along the northwestern edge of
11 property owned by said Quakenbush, S. 52 deg. 49' 28" W. 307.09 feet to an existing
12 iron pipe; continuing along the northwestern edge of property owned by said
13 Quakenbush, S. 52 deg. 38' 28" W. 250.51 feet to a point in Swepsonville-Saxapahaw
14 Road 60' right of way; thence with Swepsonville-Saxapahaw Road, the following
15 courses and distances: N. 50 deg. 04' 01" W. in a curve to the left, a distance of 84.96
16 feet, radius of 603.10 feet and an arc of 85.03 feet; N. 66 deg. 43' 42" W. in a curve to
17 the left, a distance of 263.58 feet, a radius of 603.10 feet and an arc of 265.72 feet; N.
18 83 deg. 33' 46" W. in a curve to the left, a distance of 88.60 feet, a radius of 603.10
19 feet and an arc of 88.68 feet; N. 87 deg. 46' 32" W. 182.61 feet to a point in
20 Swepsonville-Saxapahaw Road; running thence along the eastern edge of the Haw
21 River, N. 20 deg. 13' 36" W. 378.16 feet to a point; continuing along the eastern edge
22 of the Haw River, the following courses and distances: N. 09 deg. 48' 15" W. 232.04
23 feet; N. 13 deg. 42' 54" W. 240.29 feet; N. 00 deg. 18' 04" E. 224.05 feet; N. 19 deg.
24 44' 43" E. 111.00 feet; N. 35 deg. 06' 25" E. 187.88 feet; N. 40 deg. 07' 01" E. 224.53
25 feet to a point in the eastern edge of the Haw River; running thence S. 23 deg. 22'
26 50" E. 349.72 feet to a new iron pipe; running thence S. 16 deg. 11' 40" E. 99.99 feet
27 to a new iron pipe; running thence S. 07 deg. 07' 20" E. 130.00 feet to a new iron
28 pipe; running thence S. 09 deg. 12' 28" E. 271.71 feet to a new iron pipe; running
29 thence N. 82 deg. 30' 17" E. 315.97 feet to a new iron pipe; running thence along the
30 southern edge of property owned by Will C. Mann, the following courses and
31 distances: N. 75 deg. 18' 09" E. 204.77 feet to a new iron pipe; running thence N. 86
32 deg. 27' 57" E. 543.65 feet to an existing iron pipe; running thence with the western
33 edge of Lot 14, Quarry Hills Subdivision, Section 3, S. 02 deg. 46' 38" E. 184.54 feet
34 to an existing iron pipe; running thence with a curve towards the southeast having a
35 bearing of N. 70 deg. 52' 37" E. a chord distance of 91.47 feet, a radius of 260.00 feet
36 and an arc distance of 91.95 feet to an existing iron pipe; running thence S. 60 deg.
37 47' 23" E. 20.71 feet to the POINT OF BEGINNING, containing 28.94 acres, more or
38 less, as described on a survey by Simmons Engineering & Surveying, Inc., dated
39 October 27, 1994, entitled 'Preliminary Plat, Section IV Quarry Hills Subdivision',
40 plat of which is unrecorded. The Presbyterian Home of Hawfields property is
41 excluded from the corporate limits.

42 "Section 2.2. **Annexation Moratorium.** Until August 26, 2017, the Town of
43 Swepsonville may not annex under Article 4A of Chapter 160A of the General
44 Statutes any property lying on the northeast side of North Carolina Highway 54.

1 "CHAPTER III.

2 "GOVERNING BODY.

3 "Section 3.1. **Structure of the Governing Body; Number of Members.** The
4 governing body of the Town of Swepsonville is the Town Council, which has five
5 members.

6 "Section 3.2. **Manner of Electing Board.** The qualified voters of the entire Town
7 nominate and elect the members of the Council.

8 "Section 3.3. **Term of Office of Council Members.** The five members of the
9 Swepsonville Sanitary District Board (including the three elected in 1997) are the
10 initial Town Council members, to serve until their term on the Sanitary District
11 Board would have expired. In 1999 and quadrennially thereafter, two council
12 members shall be elected for four-year terms. In 2001 and quadrennially thereafter,
13 three council members shall be elected for four-year terms.

14 "Section 3.4. **Selection of Mayor; Term of Office.** The Mayor shall be appointed
15 by the Town Council from among its own membership for a four-year term. The
16 Mayor shall have the right to vote on all questions that come before the Council, but
17 shall have no right to break a tie vote in which the Mayor participated.

18 "Section 3.5. **Filling of Vacancies.** Vacancies occurring for any reason in the
19 Town Council shall be filled by the remaining members of the Council for the
20 remainder of the unexpired term.

21 "CHAPTER IV.

22 "ELECTIONS.

23 "Section 4.1. **Conduct of Town Elections.** The Town Council shall be elected on a
24 nonpartisan basis and the results determined by the plurality method in G.S. 163-292.

25 "CHAPTER V.

26 "ADMINISTRATION.

27 "Section 5.1. **Mayor-Council Plan.** The Town of Swepsonville operates under the
28 Mayor-Council plan as provided by Part 3 of Article 7 of Chapter 160A of the
29 General Statutes."

30 Section 3. (a) The incorporation referendum under G.S. 130A-81 shall
31 be held on November 4, 1997. Procedures for the referendum are set out in G.S.
32 130A-81. The Alamance County Board of Elections may adopt a special schedule of
33 notices and absentee voting.

34 (b) If approved by the voters in accordance with G.S. 130A-81, the
35 incorporation of the Town of Swepsonville and simultaneous dissolution of the
36 Swepsonville Sanitary District shall become effective on the second Monday of the
37 month following when the results of the incorporation referendum under G.S. 130A-
38 81 are certified. The Swepsonville Sanitary District shall take all actions necessary to
39 effect this transfer of the assets and liabilities of the Sanitary District to the Town of
40 Swepsonville.

41 Section 4. The organizational meeting of the Town Council of the Town
42 of Swepsonville shall be held at 7:00 p.m. on the second Monday of the month
43 following when the results of the incorporation referendum under G.S. 130A-81 are

1 certified. The transitional provisions of G.S. 130A-81(5) a. through g. shall apply to
2 the Town of Swepsonville and the Swepsonville Sanitary District.
3 Section 5. This act is effective when it becomes law.

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

FINANCE COMMITTEE REPORT

Senator David Hoyle, Co Chair
Senator John Kerr, Co Chair

Wednesday, August 27, 1997

SENATOR HOYLE,

submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO SENATE C.S. BILL

H.B.	39	Swepsonville Incorporation.	
		Draft Number:	PCS1458
		Sequential Referral:	None
		Recommended Referral:	None
		Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comment:

SENATE FINANCE COMMITTEE

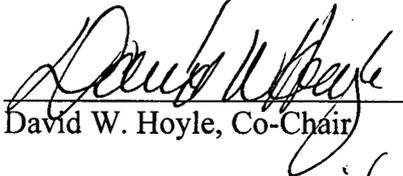
WEDNESDAY, AUGUST 27, 1997

The Senate Finance Committee met in the Senate Chamber at about 5:55 P.M. Seventeen Members of the Committee gathered at the desks of Senators Hoyle and Kerr. Senator Hoyle called the Meeting to order.

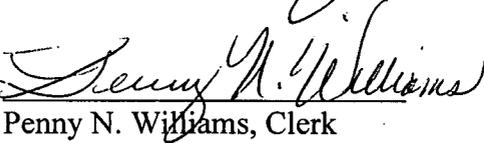
H. B. 72 - Oak Ridge Incorporated

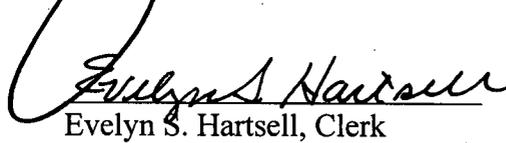
Senator Rand moved for a "favorable" report, motion passed.

Meeting adjourned.


David W. Hoyle, Co-Chair


John H. Kerr, III Co-Chair


Penny N. Williams, Clerk


Evelyn S. Hartsell, Clerk

NOTE:

Committee Report is Attachment # 1

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

2

HOUSE BILL 72

Senate Rules and Operations of the Senate Committee Substitute Adopted 8/14/97

Short Title: Oak Ridge Incorporated.

(Local)

Sponsors:

Referred to: Finance.

February 6, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO INCORPORATE THE TOWN OF OAK RIDGE, SUBJECT TO A
3 REFERENDUM.

4 The General Assembly of North Carolina enacts:

5 Section 1. A charter is enacted for the Town of Oak Ridge to read:

6 "CHARTER OF THE TOWN OF OAK RIDGE.

7 "CHAPTER 1.

8 "INCORPORATION AND CORPORATE POWERS.

9 "Section 1.1. The inhabitants of the Town of Oak Ridge are a body corporate and
10 politic under the name 'Town of Oak Ridge'. Under that name they have all the
11 rights, powers, duties, privileges and immunities conferred and imposed upon cities
12 by the general law of North Carolina.

13 "Section 1.2. (a) Article 4A of Chapter 160A of the General Statutes does not
14 apply to the Town of Oak Ridge until July 1, 2017.

15 (b) G.S. 160A-58.1(b)(2) does not apply to (i) the City of Greensboro as it relates
16 to the Town of Oak Ridge or (ii) the Town of Kernersville as it relates to the Town
17 of Oak Ridge or to property in the Oak Ridge Fire District.

18 "CHAPTER 2.

19 "CORPORATE BOUNDARIES.

20 "Section 2.1. Until changed in accordance with law, the boundaries of the Town of
21 Oak Ridge are as follows:

22 From the southwestern boundary of the Stokesdale City Limits, south on the east side
23 of the Haw River Road to Pepper Road, south on the east side of Pepper Road to NC

1 Hwy. 150, east on NC Hwy. 150 to Beason Road, south on the east side of Beason
2 Road to Reedy Fork Creek, east on Reedy Fork Creek to NC Hwy. 68, south on
3 Hwy. 68 to the Oak Ridge Township line, east on the Oak Ridge Township line to
4 Golden Acre Road, north on Golden Acre Road to the intersection with Alcorn
5 Road (includes all properties known as the Golden Acre Subdivision), north on
6 Alcorn Road to Reedy Fork Creek, east on Reedy Fork Creek to the Oak Ridge &
7 Bruce Township line, north to the southern boundary of Stokesdale City Limits, west
8 following the southern boundary of Stokesdale City Limits to the Guilford County
9 line.

10 "CHAPTER 3.

11 "GOVERNING BODY.

12 "Section 3.1. The governing body of the Town of Oak Ridge is the Town Council,
13 which has five members.

14 "Section 3.2. The qualified voters of the entire Town elect the members of the
15 Town Council.

16 "Section 3.3. From the effective date of this charter until the organizational
17 meeting of the Town Council after the 1999 municipal elections the Mayor, Mayor
18 Pro Tem, and the other three members of Town Council will be:

19 Interim Mayor	Bill Parrish
20 Mayor Pro Tem	Gary Blackburn
21 Council	Mack Peoples
22 Council	Greg Bissett
23 Council	Roger Howerton

24 The Interim Mayor and Mayor Pro Tem named by this section shall only serve as
25 such if another council member is not chosen for that position as provided by Section
26 3.5 of this Charter.

27 "Section 3.4. At the regular Town election in 1999, five council members shall be
28 elected. The persons receiving the three highest numbers of votes shall be elected for
29 four-year terms, and the two persons receiving the next highest numbers of votes shall
30 be elected for two-year terms. In 2001 and quadrennially thereafter, two council
31 members shall be elected for four-year terms. In 2003 and quadrennially thereafter,
32 three council members shall be elected for four-year terms.

33 "Section 3.5. At the organizational meeting of the initial council and at the
34 organizational meeting after each election, the council shall elect one of its members
35 to serve at its pleasure as Mayor.

36 "CHAPTER 4.

37 "ELECTIONS.

38 "Section 4.1. The Town Council shall be elected by the nonpartisan plurality
39 method as provided by G.S. 163-292. Elections shall be governed by general law
40 except as provided otherwise by this Charter.

41 "CHAPTER 5.

42 "ADMINISTRATION.

43 "Section 5.1. The Town of Oak Ridge shall operate under the Mayor-Council
44 plan as provided in Part 3 of Article 7 of Chapter 160A of the General Statutes.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35

"CHAPTER 6.
"TAXATION.

"Section 6.1. Notwithstanding G.S. 160A-209(d), except with the approval of the qualified voters of the Town in a referendum under G.S. 160A-209, the Town may not levy ad valorem taxes in excess of twenty cents (20¢) on the one hundred dollars (\$100.00) valuation. This section does not limit taxation to pay the debt service on general obligation indebtedness incurred by the Town in accordance with law."

Section 2. From and after the effective date of the incorporation, the citizens and property in the Town of Oak Ridge shall be subject to municipal taxes levied for the year beginning July 1, 1997, and for that purpose the Town shall obtain from Guilford County a record of property in the area herein incorporate which was listed for taxes as of January 1, 1997, and the businesses in the Town shall be liable for privilege license tax from the effective date of the privilege license tax ordinance. The Town may adopt a budget ordinance for fiscal year 1997-98, without following the timetable in the local government budget and fiscal control act, but shall follow the sequence of actions in the spirit of the act insofar as is practical. For fiscal year 1997-98 ad valorem taxes may be paid at par or face amount within 90 days of adoption of the budget ordinance, and thereafter in accordance with the schedule in G.S. 105-36 as if taxes had been due and payable on September 1, 1997.

Section 3. (a) The Guilford County Board of Elections, shall conduct an election on the Tuesday after the first Monday in November of 1997 for the purpose of submission of the proposed Charter to the qualified voters of the area described in Section 2.1 of the Charter of the Town of Oak Ridge. Registration for the election shall be conducted in accordance with G.S. 163-288.2.

(b) In the election, the question on the ballot shall be:

"[] FOR [] AGAINST

Incorporation of the Town of Oak Ridge".

Section 4. In such election if a majority of the votes cast are not cast "For incorporation of the Town of Oak Ridge", then Sections 1 and 2 of this act shall have no force or effect.

Section 5. In such election, if a majority of the votes cast shall be cast "For incorporation of the Town of Oak Ridge", then Sections 1 and 2 of this act shall become effective on the date that the Guilford County Board of Elections determines the result of the election.

Section 6. This act is effective when it becomes law.

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

FINANCE COMMITTEE REPORT

Senator David Hoyle, Co-Chair

Senator John Kerr, Co-Chair

Wednesday, August 27, 1997

SENATOR HOYLE,

submits the following with recommendations as to passage:

FAVORABLE

H.B.(SCS)72

Oak Ridge Incorporated.

Sequential Referral: None

Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comment:

HB 72

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 590

Short Title: Wilson's Mills Charter.

(Local)

Sponsors: Representative Creech.

Referred to: Ways and Means, if favorable, Finance.

March 24, 1997

A BILL TO BE ENTITLED

1 AN ACT TO AMEND THE CHARTER OF THE TOWN OF WILSON'S MILLS
2 TO DESCRIBE THE TOWN'S BOUNDARIES.

3 The General Assembly of North Carolina enacts:

4 Section 1. Sec. 2.1 of the Charter of the Town of Wilson's Mills, being
5 Chapter 12 of the 1995 Session Laws, Second Extra Session 1996, reads as rewritten:

6 "Sec. 2.1. **Town Boundaries.** Until modified in accordance with law, the
7 boundaries of the Town of Wilson's Mills are as follows:

8 ~~"Beginning at a point where the east R/W line of SR 1914 intersects the southern
9 R/W of Hwy 70 bypass. Thence along the southern R/W of 70 bypass in a westerly
10 direction to where it intersects with Kenneth R. Jones (Twin Creek S/D) thence in a
11 southerly direction to the southeastern corner of Tax Parcel 17507015. Thence
12 following along the southern line of Tax Parcel 17507015 to where it intersects the
13 eastern right of way of Swift Creek Rd. thence along the eastern of Swift Creek Road
14 in a southerly direction to where it intersects with the western line of Glenview Acres
15 thence along the lines of Glenview Acres encompassing above said subdivision to the
16 western R/W line of Swift Creek Rd. thence along said right of way in a northerly
17 direction to where it intersects the southern R/W of Hwy 70 bypass, thence along the
18 southern R/W of Hwy 70 bypass to where it meets the southwestern property corner
19 of Tax Parcel 17507009A at a perpendicular angle thence along the western property
20 line of Tax Parcel 17507009A to where it intersects Wilson Mills Rd's northern R/W.
21 Thence along said R/W in a westerly direction to the western boundary of Tax Parcel
22 17J0602A thence along the western boundaries of Tax Parcels 17J06023A,
23 17K07005L, 17J06022A and 17J0621 to the northwest corner of 17J0621 thence along
24~~

1 ~~the northern and western lines of Tax Parcel 1750621 to where it intersects the~~
2 ~~southwesterly corner of Tax Parcel 17K07195I thence along the southern property~~
3 ~~line of Tax Parcel 17K07195I to where it joins Tax Parcel 17K0700SE. Thence along~~
4 ~~the western and northern line of Tax Parcel 17K0700SE to the eastern R/W of~~
5 ~~Powhattan Road thence along the eastern R/W of Powhattan Road to where it~~
6 ~~intersects the northern boundary of Tax Parcel 17K07004A thence with the northern~~
7 ~~and western line of Tax Parcel 17K07004A to the southeastern corner of Tax Parcel~~
8 ~~17K07004A. Thence leaving said point traveling in a northeasterly direction to the~~
9 ~~northeastern point of Tax Parcel 17K07005A. Thence along a meandering line~~
10 ~~encompassing Tax Parcels 17K07005B, 17K07195 and 17K08015M to the western R/W~~
11 ~~of Fire Dept Road thence along the western R/W line of Fire Dept Road to where it~~
12 ~~intersects the northern boundary of Tax Parcel 17K07013M. Thence along the~~
13 ~~northern boundary of said parcel to the south eastern corner of Tax Parcel~~
14 ~~17K07013M thence along a meandering line encompassing Tax Parcels 17K0714,~~
15 ~~17099030F, 17K07016A, 17K07016C, 17K07016F, 17K07016G, 17J06016, 17K07015F,~~
16 ~~17K07017A, 17K08024 to the southern R/W of Jones Road thence along the southern~~
17 ~~right of way of said road to the northeastern corner of Tax Parcel 17K08026A thence~~
18 ~~along a meandering line encompassing Tax Parcels 17K08026A thence along a~~
19 ~~meandering line encompassing Tax Parcels 17K08026A, 17K08026L, 17K08027C, and~~
20 ~~17K08026N to the northern right of way of North Carolina Railroad thence along said~~
21 ~~right of way in an easterly direction to where it intersects the eastern right of way of~~
22 ~~NCSR 1914 thence along said R/W in a southerly direction to the point and place of~~
23 ~~beginning.~~

24 Beginning at a point on the western right-of-way of US Highway 70 By-Pass and the
25 intersection of State Road 1501, Swift Creek Road and continues along the right-of-
26 way of US Highway 70 By-Pass in a northwesterly direction until reaching a point
27 perpendicular to tax parcel 17J07009A; thence northeasterly crossing US Highway 70
28 By-Pass to a corner of tax parcel 17J07009A; thence along the western boundary of
29 tax parcel 17J07009A in a northeasterly direction to a point on the southern right-of-
30 way of State Road 1913, Wilson's Mills Road; thence continuing across State Road
31 1913, Wilson's Mills Road to a corner of tax parcel 17J06022K; thence northeasterly
32 along the western boundary of tax parcel 17J06023A, encompassing tax parcel
33 17J06023A, until said line intersects corner of tax parcel 17J06022R; thence along the
34 western boundary of tax parcels 17J06022R, 17J06022A until the line intersects with a
35 point on the southern right-of-way of the Southern Railroad, continuing in a
36 northeasterly direction across the right-of-way of said railroad, intersecting the corner
37 of tax parcel 17J06022, continuing along the western boundary line of tax parcel
38 17J06022 until intersecting at the corner of tax parcel 17J06021; thence along the
39 western boundary of tax parcel 17J06021 in a northerly direction to a corner; thence
40 easterly along the boundary of tax parcel 17J06021 to a corner; thence south along
41 the boundary of tax parcel 17J06021 to the intersection corner of tax parcel
42 17J06017A; thence along the western boundary of parcel 17J06017A to a corner of
43 tax parcel 17J06020E; thence in an easterly direction along the northern boundary of
44 tax parcels 17J06020E, 17J06020A to a corner of tax parcel 17K07005E; thence along

1 the western boundary of tax parcel 17K07005E in a northerly direction, continuing
2 along the northern boundary of tax parcel 17K07005E until intersecting at a point on
3 the western right-of-way of State Road 1901, Powhatan Road; thence crossing State
4 Road 1901, Powhatan Road to a corner of tax parcel 17K07004; thence in a
5 southeasterly direction along the southern boundary of tax parcel 17K07004; thence
6 continuing along the northern boundary of tax parcels 17K07004A, 17Q99001A,
7 17K07005D, 17K07005A, 17K07005B, 17K077195, 17K08015M until intersecting at a
8 point on the right-of-way of Frazier Drive; thence along the northern right-of-way of
9 Frazier Drive until intersecting at a point of the western right-of-way of State Road
10 1908, Fire Department Road; thence along the western right-of-way of State Road
11 1908, Fire Department Road to a point perpendicular to the northern boundary of
12 tax parcel 17K07013M; thence continuing across State Road 1908, Fire Department
13 Road; thence along the northern boundary of tax parcel 17K07013M in a
14 southeasterly direction to a corner, continuing southwestward along tax parcel
15 17K07013M to a corner; thence southeasterly along the easternmost boundary of tax
16 parcel 17K07014 to a corner; thence southwestward along the southern boundary of
17 tax parcels 17K07014, 17Q99030F to a corner; thence southerly along the eastern
18 boundary of tax parcel 17K07016A to a corner; thence southeasterly along the
19 northern boundary of tax parcel 17K07016C to a corner, continuing along the eastern
20 boundary of tax parcel 17K07016F to a corner, continuing along the northern
21 boundary of tax parcel 17K07016G, to a corner; thence northeasterly along the
22 northern boundary of tax parcel 17J06016 to a corner; thence south along the eastern
23 boundary of tax parcels 17J06016, 17K07017C, 17K07017D to a corner; thence
24 southwestward along the southern boundary of tax parcel 17K07017D to a corner;
25 thence south along the eastern boundary of tax parcels 17K08025A, 17K08026A,
26 17K08026L, 17K08027C, 17K08026N to a point on the northern right-of-way of
27 Norfolk Southern Railroad; thence along said right-of-way in a southeasterly direction
28 along the southern boundary line of tax parcels 17K08026, 17K08028A to a corner on
29 said right-of-way of State Road 1914, Bear Farm Road and State Road 1912, Uzzle's
30 Pond Road; thence crossing right-of-way of Norfolk Southern Railroad in a
31 southwestward direction continuing along the westernmost boundary of tax parcels
32 17K08028A, 17K08047 to a point on the southern right-of-way of US Highway 70 By-
33 Pass; thence along the southern right-of-way of US Highway 70 By-Pass in a
34 northwestward direction along the boundary and right-of-way of tax parcels
35 17K08048C, 17K08048E, 17K08048D, 17K08048G, 17K08048, 17K08043G, 17K08044,
36 17K08043M, 17K08043I, 17K08043K, 17K08043H, 17K08029, 17K08030A to a corner
37 on said right-of-way; thence in a westerly direction along the southern boundary of
38 tax parcel 17K08031E; thence along the eastern boundary of tax parcel 17K08005;
39 thence along the southern boundary of tax parcels 17J07015, 17J07014A to a point on
40 the southern right-of-way of Jones Court; thence southwestward along the northern
41 boundary of tax parcel 17J07016 to a point on the eastern right-of-way of State Road
42 1501, Swift Creek Road; thence southwestward along the eastern right-of-way of State
43 Road 1501, Swift Creek Road to a corner perpendicular to tax parcel 17J07018B;
44 thence crossing the right-of-way of State Road 1501, Swift Creek Road to a corner,

1 continuing northerly along the western boundary of tax parcels 17J07018B,
2 17J07018D, 17J07195, 17J07016A, 17J07019K, 17J07019J, 17J07019I, 17J07019H,
3 17J07019G, 17J07019F, 17J07019E, 17J07019D; thence along the northern boundary
4 of tax parcels 17J07019C, 17J07019B, 17J07019A, 17J07018O, 17J07018P, 17J07018Q
5 to a point on the northern right-of-way of State Road 1501, Swift Creek Road; thence
6 in a northeasterly direction along the western right-of-way of State Road 1501, Swift
7 Creek Road to the point of beginning at a point on the southern right-of-way of US
8 Highway 70 By-Pass and State Road 1501, Swift Creek Road."
9 Section 2. This act becomes effective August 2, 1996.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT

John H. Kerr, III, Co-Chair
David W. Hoyle, Co-Chair

Tuesday, August 19, 1997

SENATOR JOHN KERR,

submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B.	1065	Amend N.C. Law	
		Draft Number:	PCSX2809
		Sequential Referral:	None
		Recommended Referral:	None
		Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comment: SB 1065

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT

John H. Kerr, III, Co-Chair

David W. Hoyle, Co-Chair

Tuesday, August 19, 1997

SENATOR JOHN KERR,

submits the following with recommendations as to passage:

FAVORABLE

H.B. 590	Wilson's Mills Charter.
	Sequential Referral: None
	Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comment: HB 590 8 18